FOR MY PARENTS

AND

IN LOVING MEMORY OF

MY LATE SISTER

THE DISCIPLINARY PROCESS OF THE PUBLIC SERVICES OF MALAYSIA

ROHAYA BINTI HASHIM

A project paper submitted in partial fulfilment of the requirement for the Degree of Bachelor of Laws (Honours) in the Faculty of Law.

Faculty of Law
University of Malaya
Kuala Lumpur

September 1976

PERAKUAN KEIZINAN

Dalam mengemukakan Kertas Projek ini bagi memenuhi sebahagian dari kehendak-kehendak Peraturan untuk mendapat ijazah Sarjana Muda Undang-Undang, Universiti Malaya, saya yang bertandatangan di bawah, dengan ini mengesahkan bahawa saya telah bersetuju supaya perpustakaan-perpustakaan di Universiti Malaya memberi kebenaran dengan bebasnya kepada sesiapa yang hendak membuat rujukkan dan kajian ataupun untuk rujukkan dan kajian terhad. Seterusnya, saya juga bersetuju bahawasanya kebenaran untuk menyalin, memadan, menyedut atau menggunakan bahan-bahan kajian dalam Kertas Projek ini untuk maksud-maksud akademik bolehlah dibenarkan oleh Dekan, Fakulti Undang-Undang mengikut budibicaranya. Adalah difahamkan bahawa penyalinan atau pencitakan Kertas Projek ini dalam apajua bentuk sekalipun untuk maksud-maksud keuntungan tidaklah dibenarkan, melainkan dengan kebenaran bertulis dari saya.

.....

(ROHAYA BTE HASHIM)

Fakulti Undang-Undang
Universiti Malaya.

September 1976.

PREFACE

The writer's study of Constitutional and Administrative Law in 1974 and 1975 respectively, during which period she was exposed to and became very impressed with the various aspects of natural justice or procedural safeguards which can protect a citizen's rights, was largely instrumental in leading her to choose a subject dealing with the procedural aspects of administration as the topic for this Project Paper. This covers a highly discretionary area in the law relating to public servants where administrative powers can be easily abused unless there are adequate procedural safeguards to protect the public servants against the capricious and arbitrary decisions of the authorities concerned. It is also felt that with the growth and complexities of employment under the State, the importance of the subject dealt with is increasing everyday. These, together with the unavailability of any written text in Malaysia on the subject, have strongly prompted the writer to make an attempt to present information relating to the disciplinary procedures of the public services in particular. In doing so, much emphasis is placed on the rights of public servants and the adequacy or inadequacy of the statutory safeguards and how these can affect the security of tenure of their appointments.

The writer is happy to be able to acknowledge here her many debts and thanks to her supervisor, Professor M.P. Jain, for his invaluable advice and suggestions for improvements and his constant encouragement in the preparation of this paper.

The writer also wish to express her gratitude to Encik Wan Awang bin Wan Ya'acob, Director of Public Service Department, and Encik Yusuf Ramli, for without their clearance, this study, which necessarily requires some research at the Public Services Commission and the Public Service Department, would have been impossible.

Many thanks are also due to Encik Sulaiman Ali, Assistant Director of the Public Service Department for his kind co-operation and for enlightening the writer on the various aspects of the disciplinary procedure conducted by the Disciplinary Authority.

The writer is also grateful to Encik Ahmad Said, Encik Shamsul and Cik Kasmah who are officers in the Public Services Commission and the Public Service Department dealing with discipline, who have, in one way or another, assisted her in collecting the relevant data.

Finally, while gratefully acknowledging the help received from many sources, the writer wishes to say that the responsibility for views expressed in this paper and errors found is entirely her own.

September, 1976. ROHAYA HASHIM

CONTENTS

		Page
PREFACE		i
CONTENTS		iii
LIST OF CASES		vi
LIST OF STATUTES		ix
ABBREVIATIONS		x
CHAPTER		
I	INTRODUCTION	1
II	DISCIPLINE IN THE PUBLIC SERVICE	7
	A. Necessity And Objective Of Disciplinary Control.	7
	B. Basis Of Disciplinary Action.	10
	a. The Written Code Of Conduct and Rules.	11
	b. The Unwritten Code of Conduct.	14
	C. Conclusion.	16
III	THE DISCIPLINARY AUTHORITIES	18
IV.	THE DISCIPLINARY PROCEDURE	28
	A. Introduction.	28
	B. The General Procedure: Preliminary Investigation And Departmental Inquiry.	30

CHAPTER		Page
V.	THE REQUIREMENTS AND SCOPE OF REASONABLE OPPORTUNITY TO BE HEARD.	41
	A. Meaning of Reasonable Opportunity To be Heard Under Article 135(2).	41
	B. Notice Of The Charge And Notice To Show Cause.	43
	C. Oral Hearing	46
	D. Opportunity For Cross-examination	49
	E. Right To Be Represented	53
	F. Opportunity Or Opportunities To Be Heard.	61
	G. Limitations To The Protection Afforded By Article 135.	67
VI	THE DISCIPLINARY PUNISHMENTS	77
	A. Introduction.	77
	B. Types And Nature Of Punishments.	78
	1. Warning and Reprimand	79
	2. Fine and Forfeiture of Salary	79
	3. Withholding of Increment.	80
	4. Stoppage of Increment.	81
	5. Deferment of Increment.	82
	6. Reduction of Salary.	84
	7. Reduction in Rank and Dismissal.	85
	C. Basis And Implementation of Decisions.	89
VII	REMEDIES	94
VIII	RECOMMENDATIONS AND CONCLUSION	100

		Page
APPENDIX I	Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969.	115
APPENDIX II	Composition Of The Public Services Disciplinary And Appeal Boards And The Limits Of Their Jurisdiction.	116
APPENDIX III	Particulars And Document Required At Appellate Stage.	127
BIBLIOGRAPHY		129

LIST OF CASES

	Pages
Attorney-General, Singapore v. Ling How Doong. [1969] 1 M.L.J. 154.	5, 63, 64, 102.
Doresamy v. Public Services Commission. [1971] 2 M.L.J. 127.	55, 57, 61, 95.
Enderby Town Football Club v. The Football Association Limited and Anor. [1971] 1 All E.R. 215.	58, 59.
Gnanasundram v. Public Services Commission. [1956] 2 M.L.J. 157.	69.
Government of Malaysia v. Lionel [1974] 1 M.L.J. 3	71, 72, 73, 76.
Government of Malaysia v. Rosalind Oh Lee Peck Inn. [1973] 1 M.L.J. 222.	104.
Gullapalli Nageshwar Rao v. A.P. Transport Corporation. A.I.R. 1959 SC 308.	48.
Haji Ariffin v. Government of Pahang. [1969] 1 M.L.J. 6.	69, 73.
Haji Wan Othman v. Government of the Federation of Malaya. [1966] 2 M.L.J. 42.	100.
In re Sambasivam [1969] 1 M.L.J. 219.	29, 50.
Isman bin Osman v. Government of Malaysia. [1973] 2 M.L.J. 143.	25, 50, 65, 102, 103.
Khemchand v. Union of India. A.I.R. 1958 SC 300	49, 61.
Kodeeswaran v. Attorney-General Ceylon. [1970] 2 W.L.R. 456.	104.

Pages

Laxmi Narain v. District Magistrate. A.I.R. 1960 ALL 55. 15.

Ling How Doong v. Attorney-General, Singapore. [1968] 2 M.L.J. 253. 66.

Mahan Singh v. Government of Malaysia. [1974] 1 M.L.J. 148. 74.

Mohamed v. Commissioner of Lands and Mines, Trengganu and anor. [1968] 1 M.L.J. 227. 99.

Munusamy v. Public Services Commission. [1967] 1 M.L.J. 199. 67, 68, 72, 75.

Najar Singh v. Government of Malaysia. [1974] 1 M.L.J. 138. 47, 48.

Parshottam Lal Dhingra v. Union of India. A.I.R. 1958 SC 36. 68, 70.

Pett v. Greyhound Racing Association Limited. [1968] 2 ALL E.R. 545. 53, 57, 58, 59.

Phang Moh Shin v. Commissioner of Police and Ors. [1967] 2 M.L.J. 186. 33, 43, 45, 52, 63, 102.

Rangachari v. Secretary of State. A.I.R. 1937 PC 27. 27.

Re Gilmore's Application. [1957] 1 ALL E.R. 796. 99.

Re San Development Company's Application. [1971] 2 M.L.J. 254. 102

Sithambaram v. Attorney-General. [1972] 2 M.L.J. 175. 5, 64, 65.

State of Bihar v. Abdul Majid. A.I.R. 1954 SC 245. 105.

	Pages
Sudhir Ranjan v. State of West Bengal. A.I.R. 1961 Calcutta 626.	45.
Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 28 M.L.J. 169.	23, 25, 41, 42, 43, 62, 101.
The High Commissioner for India v. I.M. Lall. A.I.R. 1948 PC 121.	61, 67.
University of Ceylon v. Fernando. [1960] 1 ALL E.R. 631.	51, 56.
V.C. Jacob v. Attorney-General. [1970] 2 M.L.J. 175.	5, 64, 65.
Wong Keng Sam v. Pritam Singh Braar. [1968] 2 M.L.J. 158.	5, 29, 37.

LIST OF STATUTES

Pensions Ordinance, 1951.

Public Officers (Conduct and Discipline)
(General Orders, Chapter "D") Regulations 1969.

Public Services Disciplinary Board Regulations, 1972.

The Administrative Procedure Act of the United States of America, 1946 (as amended).

The Federal Constitution.

The Tribunals and Inquiries Act, 1958, of England.

ABBREVIATIONS

A.I.R.	All India Report.
ALL E.R.	All England Report.
Ch.	Chapter.
fn.	Footnote.
G.O.D.	Refer to General Orders, Chapter "D", e.g. when G.O.D. 30 is quoted, it refers to regulation 30 of General Orders, Chapter "D" (Public Officers, Conduct and Discipline Regulations, 1969).
J.I.L.I.	JOurnal of the Indian Law Institute.
M.L.J.	Malayan Law Journal.
Mal. L.R.	Malayan Law Review.
W.L.R.	Weekly Law Report.

CHAPTER I

INTRODUCTION

At Common Law, servants of the Crown held office during the pleasure of the Crown and might be dismissed at any time; nor was there a requirement that any reason be assigned for dismissal. No action lay against the Crown regarding such dismissal, even if it was contrary to the express terms of the contract of employment. But the harsh results of the Common Law rules have been mitigated in many countries, like India and Malaysia, by statutory or constitutional provisions designed to improve the position of the employee.[1]

Part X of the Malaysian Constitution makes provisions relating to the public services of Malaysia and also entrenches the constitutional rights of public servants. Article 132 (2A) of the Constitution is nothing new - it only reaffirms and enacts the above-mentioned Common Law rule that all public servants hold office during the pleasure of the Crown. But in so affirming, Clause (2A) goes further by providing that it is now subject to exceptions expressly provided by the Constitution. Such exceptions are provided in Article 135. Article 135 provides that :

> (1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which at the time of dismissal or reduction has power to appoint a member of that service of equal rank.

---

[1] Srivastava, K.D., Disciplinary Action Against Government Servants And Its Remedies, 3rd Edition, p. 53.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

Thus for all dismissals and reductions in rank to be valid in Malaysia, they must comply with the procedure laid down in Article 135 of the Constitution and any subsidiary legislation made for the purpose of carrying out the object of Clause (2) of Article 135.

By having such provisions in the Constitution there is an obvious attempt to ensure security of tenure against mala-fide punishment and the public servants cannot be hired and fired arbitrarily or at the private and personal whim of anybody, however great the power entrusted to him. If a public servant is guilty of misconduct he should, no doubt, be proceeded against under the relevant disciplinary rules, subject of course to the safeguards prescribed by Article 135(1) and (2); but with regard to honest straightforward and efficient public servants it is of utmost importance even from the point of view of the State that they should enjoy a sense of security (which they would not if they are to hold office strictly during the pleasure of the Ruler) which alone can make them feel independent and truly efficient.

Recognising the importance of adequate protection for the public servants, especially against the capricious action from the superior authority, the primary objective of this paper is therefore to make a study of the effectiveness of the procedural safeguards contained in Article 135 and other legislations and the case law which has now built up around those provisions and how they have affected the security of tenure of public servants in Malaysia.

The scope of the paper is however wider than that. Since Article 135 which is principally discussed in this paper is mainly concerned with procedural safeguards in disciplinary proceedings against the public servant, the writer feels it necessary and proper to also include a discussion of the whole disciplinary process in the

public services. This will perform the dual function of presenting, to one who is interested in the subject matter, information relating to the stages of the disciplinary process and at the same time make a study in a more effective way of the protection given to the public servant at the various stages.

Hence, bearing all these in mind, the layout of the whole paper would be such that Chapter II will act as an introductory chapter and deal with discipline in general - the necessity of maintaining it, public service ethics, the various rules and regulations that govern the conduct of public servants and regulate disciplinary control over them.

Chapter III deals with the establishment of Public Services Commission and other disciplinary authorities and their powers and limits of jurisdiction in matters pertaining to disciplinary control over all persons who are members of the public service. Clause (1) of Article 135 would be mainly discussed here as that Clause concerns the proper authority to dismiss or reduce in rank and gives an added protection to the public servant not to be dismissed by the wrong authority.

Chapter IV and V constitute the main portion of the study since these two chapters go into the actual procedure and working of the disciplinary authorities. This is the crucial area where the necessity of providing protection to the public servant is most important so as to achieve a fair and just decision. Chapter IV will however give only a description of the procedure that is adopted by the disciplinary authorities in practice and will discuss only briefly some of the procedural safeguards contained in the Constitution and Chapter "D" of the General Orders, that are and should be complied with. Since the procedural safeguards given by the Constitution to the public servants is very significant and, bearing in mind the primary objective of this paper, a separate chapter, that is Chapter V, has been devoted to deal with them more extensively and in a more effective way. Attention is

also focussed on the procedure provided by the General Orders and how they affect the protection given to public servants. Throughout this paper and especially in this chapter, decided cases have been noted at appropriate places, incorporating almost all the cases which the writer can trace under the different headings. The writer had also ventured cautiously to make some comments where relevant and offer her submission where judges have differed.

Chapter VI deals with the penalties that may be imposed by the Disciplinary Authority on the public servant for his improper acts or omissions which constitute offences calling for disciplinary action, their nature, basis of implementation and the consequences on the public servant. And to complete it all, the writer finds it necessary to discuss the various avenues and channels through which the aggrieved public servant may seek redress against the disciplinary action taken. This was dealt in Chapter VII.

Finally, in the light of the findings of the study, some recommendations and suggestions are made in Chapter VIII to ensure that the protection given to public servants is not whittled away or made into a mere formality.

It must be pointed out here that this paper does not attempt to cover in detail the procedure of one particular Disciplinary Board, nor make a study of all the Disciplinary Boards. Since there are numerous departmental disciplinary authorities, it would not be possible to study and discuss in detail the procedure carried out in practice by any individual board. Hence discussion of the disciplinary procedure is necessarily restricted to those carried out by the Public Services Department and the Public Services Commission. However, since disciplinary proceedings must be strictly conducted in accordance with the provisions of the Constitution, the General Orders and the instructions contained in the various Public Service circulars and directives regarding disciplinary procedure, the general working of all the disciplinary

boards must be almost similar to one another and the practice carried out by the two mentioned departments can be said to be representative of the working of the whole disciplinary machinery of the public services. Further, these two departments are of more relevance as centres for research to be done since the major punishments, which are of more interest in the paper, are imposed by them.

The methodology employed in this study is varied. The main source is the Public Services Commission and the Public Service Department and the relevant statutes relating to discipline in this country. Information was obtained through interviews held with the relevant officials in charge of discipline in both the Public Services Commission and Department. Various case files were made available to the writer but due to the confidential nature of the topic covered, only certain selected disciplinary board and appeal board cases were allowed to be studied and only a few copies of the public services circulars which contain directions to Heads of Departments on the way to conduct disciplinary proceedings were allowed to be retained for the purpose of this study. In addition to this, although the writer's request to observe the proceedings of an oral hearing was granted, it was regrettable that no oral hearing was held during the course of making this study.

Further, since there is at the moment no written text available on the law relating to public servants in Malaysia, much reliance was placed on the case law relating to the interpretation of the provisions of the Constitution. Reliance was also placed on Singapore decisions. By way of clarification it should be added that even though those provisions are provisions of the Malaysian Constitution, yet they have been held by the courts in Singapore to give public servants in Singapore the same constitutional protection afforded to public servants in Malaysia. In Wong Keng Sam v. Pritam Singh Braar[2], Wee Chong Jin C.J.

---

[2] /1968/ 2 M.L.J. 158, 160. The same view was taken in Attorney-General, Singapore v. Ling How Doong /1969/ 1 M.L.J. 154; Sithambaram v. Attorney-General /1972/ 2 M.L.J. 175.

in the Federal Court of Singapore held that "Article 135(2) of the Constitution of Malaysia....has constitutional force in Singapore." The learned Chief Justice has also held in V.C. Jacob v. Attorney-General[3] that "Article 132(2A) of the Constitution of Malaysia.... has constitutional force in Singapore after 9th Aug., 1965, in spite of the separation of Singapore from the Federation of Malaysia." Furthermore the Constitution (Amendment) Act, 1970, of Singapore has enacted Article 78(3) which is in the same terms as Article 132(2A). Hence the writer has safely relied on Singapore decisions too.

The provisions of the Indian Constitution in relation to procedural safeguards are almost similar to its Malaysian counterpart and hence, Indian decisions are of persuasive authority and where relevant they are also relied upon to assist in the interpretation of our constitutional provisions; and where the provisions are different they have been distinguished.

Other sources consulted include textbooks, periodicals, law reports and legal journals which are available in the University of Malaya Library, the High Court Library and the library at the Institute of Public Administration.

---

[3] [1970] 2 M.L.J. 133, 137.

in the Federal Court of Singapore held that "Article 135(2) of the Constitution of Malaysia....has constitutional force in Singapore." The learned Chief Justice has also held in V.C. Jacob v. Attorney-General[3] that "Article 132(2A) of the Constitution of Malaysia.... has constitutional force in Singapore after 9th Aug., 1965, in spite of the separation of Singapore from the Federation of Malaysia." Furthermore the Constitution (Amendment) Act, 1970, of Singapore has enacted Article 78(3) which is in the same terms as Article 132(2A). Hence the writer has safely relied on Singapore decisions too.

The provisions of the Indian Constitution in relation to procedural safeguards are almost similar to its Malaysian counterpart and hence, Indian decisions are of persuasive authority and where relevant they are also relied upon to assist in the interpretation of our constitutional provisions; and where the provisions are different they have been distinguished.

Other sources consulted include textbooks, periodicals, law reports and legal journals which are available in the University of Malaya Library, the High Court Library and the library at the Institute of Public Administration.

---

[3] [1970] 2 M.L.J. 133, 137.

CHAPTER II

DISCIPLINE IN THE PUBLIC SERVICE

A. Necessity And Objective Of Disciplinary Control

The maintenance of discipline is one of the most important tasks of an organisation and it is basically essential for the proper and efficient functioning of any organised activity. The word discipline is derived from the Latin word "disciplina" which means mental and moral training and development of character[1]. Discipline therefore enforces conformation to certain codes of conduct and provides punitive measures for those who fail to abide by that conduct.

The public service exists to execute the policy of the Government in serving the public interest. It carries out many and varied functions and its role today has become more significant with the expansion of Government activities. With the Government embarking on the Third Malaysia Plan, the public service will be called upon to carry out and implement Government directives with a higher degree of efficiency and integrity. Given the larger size of the investment effort, in particular the need to ensure effective implementation of development programmes for the redressal of socio-economic and structural imbalances, administrative efficiency will be crucial. This necessitates improvements being made to the administrative machinery, requiring higher levels of professional capability and dedication in the formulation and implemention of programmes and projects in line with national objectives. Each and every public officer plays a definite role and their attitudes, interests and motivations must be aligned with national objectives. In this context, the Government takes a serious view of public officials who deviate from the standard of conduct

---

[1] Nigro F.A., Public Personnel Administration, 1963, p. 408.

expected of them and stronger disciplinary action will continue to be taken against them.[2] This is essential to ensure that the officers are fully aware of and continue to meet their responsibilities. An inefficient public service can only bring failure to many development projects and the end result would be disastrous to a developing country like Malaysia. Disciplinary control is therefore very necessary to prevent defects in administrative machinery.

Apart from this objective, it is also essential that the public servants are all subjected to disciplinary control in order that :

(i) the integrity and good name of the public service may be maintained;

(ii) the most efficient service is rendered to the public;

(iii) those who commit a breach of the Code of Conduct as set out pertaining to the public services in general or neglect to carry out the responsibilities incumbent upon them in particular can be suitably punished.[3]

It should be noted that discipline as being referred to in relation to the purpose of this paper denotes a negative method of fostering efficiency. It brings about corrective or salutary effect through punitive and deterrent measures.

It must also be remembered that there are other positive methods of maintaining good order and discipline in an organisation. To affect punishment is the ultimate recourse where other methods have

---

[2]Malaysia, Third Malaysia Plan, Kuala Lumpur, Government Printer, 1976, p. 268.

[3]Public Services Commission, Guide to Disciplinary Control In The Public Service, 1967, p. 1.

proved futile. If disciplinary proceedings can be considered as a "cure" for any undesirable breaches of service rules and regulations, then, there must be ways and means of preventing such breaches. And, since "prevention is better than cure", it is therefore more desirable for Heads of Departments to take due precautions against the deterioration of discipline than to apply stringent punitive measures. Thus, Heads of Departments should see that there exists clearly defined rules and regulations to supplement the General Orders and other service regulations; a fair and well-defined division of labour; effective supervision of work; a proper system of hearing personal complaints and grudges so that they can be dealt with sympathetically; good and amicable staff relations and mutual respect and due appreciation of each other's duties and responsibilities.[4]

The above factors together with an effective system of disciplinary control conducted by the public services Disciplinary Authorities would no doubt bring about the development of a well-organised and well-disciplined public service. In addition, the work of the National Bureau of Investigation is also instrumental in maintaining discipline in the public service. The Bureau was established as a surveillance and investigating agency for the prevention of corruption. It operates from its headquarters in Kuala Lumpur and maintains a branch office in every state, except Perlis which shares the same office with Kedah, in order to ensure a full coverage of the country. The Bureau advices the Government on the incidence of corrupt practices and will recommend disciplinary action against any corrupt officer to the Disciplinary Authority. The recommendations are usually acted upon although the Bureau has no power to oblige the Disciplinary Authority to act on them. Thus, the Bureau's constant surveillance of and investigation into the conduct of public servants also help to minimise such undesirable malpractices such as bribery or corruption in the public service.

---

[4] Ibid. p. 2.

B. Basis Of Disciplinary Action

The right to institute disciplinary action arises out of employment. The employment is the contract of service between the employer, that is the Government, and the employee whereunder the employee agrees to serve the employer subject to his control and supervision.[5] Thus, where a person has entered into the position of servant, and if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to take disciplinary action against him. There is no doubt that the relationship of master and servant[6] existing between the Government and those employed by it calls for the observance of certain basic rules of conduct and a breach of these may very well form the subject matter of disciplinary proceedings.

It was also brought to the writer's attention that in order to enable the Government to take disciplinary action against the public servant, it is not a condition precedent that the misconduct or indiscipline on the part of the servant must arise within his employment. It appears that even if the act of misconduct or indiscipline was committed in his private life or outside employment, so long as it is likely to bring disrepute to the public service, the public servant has exposed himself to a disciplinary action.[7] It is therefore important that public servants are made fully aware of what is expected and what is not expected of them in conducting their affairs, both within and outside employment.

---

[5] K.D. Srivastava, Op.cit., fn. 1, Ch. 1.

[6] Services under the State are generally governed by the Common Law of master and servant, but they have some peculiar features in that they are governed by departmental rules and statutory provisions.

[7] Assistant Director, Public Services Department, Kuala Lumpur (personal communication).

B. (1) The Written Code Of Conduct And Rules: The Public Officers (Conduct And Discipline) (General Orders, Chapter "D") Regulations, 1969.

There are many sets of rules relating to the conduct of the public servants. The rules have been framed by the Federal Government as well as the State Governments. But all these rules provide for practically the same matters and many of them are almost in identical terms. For all practical purposes, therefore, it would be sufficient to examine the provisions of the Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969, hereinafter referred to as G.O.D., as these rules govern all Federal and State Public Services departments in Malaysia.

G.O.D. 3 lays down in broad general terms the code of conduct to be observed by the public servant.[8] It imposes not only duties but certain prohibitions on them. It specifies certain acts which can be done by public servants only in a certain way and certain others which may not be done by them at all. In so far as the rules provide for discipline, and, in doing so forbid conduct of certain varieties, their aim is merely regulation of the conduct of public servants as such servants. If a public servant disregards any of these rules which bear upon discipline and conducts himself in a manner not approved by the rules or forbidden by them, he may incur the penalties for which the disciplinary rules provide.[9]

The first of the duties of a public servant is that he "shall at all times and on all occasions given his undivided loyalty and devotion to the Yang Di-Pertuan Agong, the country and the Government."[10] The code of conduct also stress that conflict of private interests with

---

[8]Refer to Appendix I.

[9]G.O.D. 36.

[10]G.O.D. 3(a).

public duties should be avoided and that he shall neither subordinate his public duty to his private interests, nor use his public position for his private advantage." This is because such acts would inevitably impair his usefulness as a public officer.

Public officers must also remember that the honour and good repute of the public services are in their hands at all times and therefore, if their conduct is likely "to bring the Public Service into disrepute or to bring discredit"[12] they will be liable to disciplinary action. An officer shall also be honest, must not conduct himself in an irresponsible manner or in such a manner as may be construed to be guilty of insubordination or impertinence. It would be open to the Head of Department to consider reasonably whether the conduct of the public servant falls within the ambit of these recognised misconducts so as to attract disciplinary action, and, this will naturally depend upon the facts and circumstances of each case.

Besides the code of conduct just mentioned, the G.O.D. also create further offences which may form a basis for disciplinary action. For practical purposes these may be generally classified.[13] Hence, all offences involving apprehension by the police and a trial in a court of law would be in the category of "criminal involvement."

Irresponsibility and inefficiency is another category and these terms are used complimentary to each other since an irresponsible act can cause inefficiency and an inefficient officer is usually irresponsible. Nowhere in the General Orders is inefficiency defined but G.O.D. 23 requires every officer to report officially to his next senior officer or the Head of Department the case of any officer working under him who is inefficient or lacking in industry. This points out

---

[11] G.O.D. 3(b) (c) (d).

[12] G.O.D. 3(e).

[13] As classified by the Public Services Commission.

that inefficiency involves any lack of industry. Hence, where there is a failure in the dispensation of duties as scheduled or as laid down in any instruction or regulation, an act of irresponsibility is also apparent. Some of the offences that could be included under this category would be absence from duty without leave or reasonable cause, coming late to work or leaving office before it is time and repeating a disciplinary offence or errors in the performance of duties over which due caution or warning had already been given. Most of the offences committed in the public service falls under this category, of which absence without leave or reasonable cause is the most common.[14] G.O.D. 22 specifically lays down or defines the scope of this offence.

Serious pecuniary embarrassment is the next most committed class of offences and G.O.D. 10, 11 and 12 lay down the rules and regulations concerning this. This rule requires that a public servant should manage his private affairs in such a manner so as to avoid indebtedness or insolvency since this would necessarily impair the efficiency of an officer. G.O.D. 10(1) stipualtes the various forms by which serious pecuniary embarrassment may be incurred and act as a guide for Heads of Departments. An officer is said to be in a state of serious pecuniary embarrassment if he is made a judgement debtor, a bankrupt, an insolvent wage earner, or is under heavy debts and liabilities, the aggregate of which exceeds the sum of three months his monthly emoluments. An officer shall also be guilty of a serious breach of discipline and render himself liable to disciplinary action if he attempts to conceal the fact of his embarrassment by not reporting his pecuniary embarrassment or give false or misleading account about it to the Head of Department.[15]

The rule with regard to borrowing or resorting to a money-lender[16] is designed to maintain the integrity of the public service

---

[14] Statistics on offences from 1971 to 1975, Public Services Department, Kuala Lumpur.

[15] G.O.D. 10(5).

[16] G.O.D. 9.

and are important since financial difficulties can lead to other unsatisfactory situations, such as abusing his official position in order to liquidate his obligation. However, it should be noted that the rule itself, recognising human weaknesses, does not contain a strict prohibition and only embodies what one may call a strong wish that public servants should avoid habitual indebtedness in the public interest.

There are also provisions in the General Orders for the prevention of corruption in the public service and these were included as a result of recommendations made by the Anti Corruption Agency. These provisions[17] relate to the prohibition against receiving or giving of presents and entertainment, relate to reporting ownership of land or other property and investments not later than three months after first appointment to the service and also with regard to possession of property disproportionate to an officer's known sources of income.

Besides the above classes of offences, public servants are also prohibited from habitually purchasing or selling securities or speculating in the rise and fall in prices of commodities.[18] A problem would arise here as it would be very difficult to draw the precise line of demarcation between regular investment or management of a private fortune and speculative transactions. Again, each case has to depend on the relevant facts and circumstances.

B. (2) The Unwritten Code Of Conduct.

It is particularly to be emphasised that the General Orders cannot be so framed as to form an exhaustive code. It is wrong to say that since a particular act is not expressly forbidden, no breach of

---

[17] G.O.D. 5, 6, 7 and 8.

[18] G.O.D. 13.

discipline has been committed. In addition to the code of conduct specified in the above regulations there exists what is known as an unwritten code of conduct which must be observed by every public servant. It is interesting to note that in this connection the Government can exercise some control over the private life of its servants even in matters not falling within the ambit of the conduct rules. This is mainly to secure a sound and healthy public opinion of the Service.

It generally follows that the unwritten code of conduct requires public servants to behave like decent citizens in their private lives, that is, they have to observe certain community standards of decency and morality and avoid scandalous sort of living. For example, if a public servant is found drunk and behaving in a disorderly manner or is found gambling in a public place or commits adultery, he would undoubtedly expose himself to disciplinary proceedings.

It is arguable that public servants should be free to conduct their private lives in any way they desire and not be subjected to the scrutiny of the administration; but as said in one case, "if Government were to sit back and permit its officials to commit any outrage in their private lives...., the result may very well be a catastrophic fall in the moral prestige of the administration."[19]. It may also be said here that G.O.R. 3(e) which requires the public servants to behave in a manner which would not bring the public service into disrepute or discredit refers to the unwritten code of conduct though not exhaustively. It is therefore clear that the code of conduct deal with the behaviour of a public servant not only in his official but also in his private life.

---

[19] Laxmi Narain v. District Magistrate, A.I.R. 1960 ALL 55.

C. Conclusion

In conclusion, it should be noted that the code of conduct as laid down in the General Orders is in broad general terms, especially G.O.D. 3(e). It does not lay down a proper standard of behaviour for public servants although it requires them to avoid impropriety or unbecomingness in behaviour. Behaviour runs through the general course of life, in conduct, in manners, in dress, in speech and also in association. Modern approach to life has changed many ideals and the idea of right and wrong varies from person to person. Hence, to leave the standard of behaviour pattern of public servants to the subjective satisfaction of the Disciplinary Authority has its dangers. The act of a public servant may be looked upon as bringing disrepute or discredit to the public service by a particular authority but it may be judged as proper enough not to warrant disciplinary action by another. Therefore, however undesirable it may be for a public servant to lead his life in an immoral or disorderly manner, it is equally undesirable to leave the appraisement of his behaviour to the subjective satisfaction of the Disciplinary Authority. G.O.D. 3(e) therefore suffers from the infirmity that it requires public servants to behave in a manner which would not bring the public service into disrepute or discredit in accordance with standards which may vary according to opinion and which is more likely to be opened to abuse.

Thus if the Government feels that a certain conduct or class of conduct is unethical or improper, then it should lay down the rule in more specific terms and also the boundaries within which the rule is to operate. It is good to note that there have been attempts to overcome this defect in the regulations. The Public Services Commission as well as the Public Services Department have every now and then provide Heads of Departments with guidelines to refer to. These are found in the Treasury Instructions, service circulars and Government directives. These, together with proper disciplinary procedures and statutory safeguards which will be discussed in a later chapter would contribute substantially to safeguarding the interests and security of tenure of the

public servants against the abuse of discretion.

CHAPTER III

THE DISCIPLINARY AUTHORITIES

The maintenance of discipline as stressed in the preceding chapter is essential for the proper and efficient functioning of any organised activity such as those undertaken by the public service. One of the ways that this can be achieved is by exercising disciplinary control over the public service. Thus the demands of an efficient public service requires that certain bodies should be vested with broad disciplinary powers to exercise disciplinary control over the public servants. In Malaysia, disciplinary power is vested in the various service commissions. This is clear from Article 144(1) of the Federal Constitution which deals with the functions of service commissions, that is "to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends." Hence it may be seen that the basic duties of the service commissions fall into the broad categories of appointment, promotion and discipline.

Jurisdiction of the service commissions is delineated by the Constitution and extends, with certain exceptions over the services from which their titles are derived - that is to say, the Police Force Commission and the Railway Service Commission in general terms hold jurisdiction over members of these two services.[1]

In relation to the scope of this paper, the relevant service commission will be the Public Services Commission whose jurisdiction extends to all members of the general public service of the Federation and the joint public services.[2] In addition, the state public services

---

[1] Article 140 and 141 of the Federal Constitution respectively.

[2] Article 139. "Joint public services" is defined by Article 133(1) as "Joint services, common to the Federation and one or more of the States or, at the request of the States concerned, to two or more States, may be established by Federal Law.

of both Penang and Malacca are included in the constitutional jurisdiction of the Public Services Commission; and it is also provided that other States, by law of the appropriate state legislature may invite the Commission to extend its jurisdiction to that state.[3] Three States, namely Pahang, Perlis and Negri Sembilan have requested and is under the jurisdiction of the Public Services Commission.[4] If in any State there is no such law in force, then such a State must establish its own State Public Service Commission. To prevent the abrogation of this provision through State inaction, the Constitution provides[5] that any State that has no public service commission will thereafter be liable to the jurisdiction of the Public Services Commission should Parliament by Federal law so provide.

It is therefore clear that the authority to exercise disciplinary control over the public service in Malaysia lies in either the Central Public Services Commission or the State Public Service Commission. For the purposes of this paper henceforth, reference will be made only to the central Public Services Commission which clearly has a much wider jurisdiction and is more representative of the working of the disciplinary machinery in the Federation.

It is to be emphasised here that, although by virtue of Article 144(1) of the Constitution disciplinary functions are vested in the Public Services Commission, it is not the only body that can deal with disciplinary matters concerning members of the public service. As reports[6] indicate, the large increase in the numbers of officers subject to the Commission's jurisdiction and the need to maintain some of the pattern of

---

[3]Article 139(1) and (2).

[4]Tilman, Robert O., The Public Services Of The Federation Of Malaya, 1961, p. 235.

[5]Article 139(1) and (2). Public Service Commissions have been established in Johore, Selangor, and Perak. Kelantan and Trengganu have a joint service commission. Tilman, R.O., Ibid. p. 235.

[6]Public Services Commission, Annual Report of the Public Services Commission, Federation of Malaya, 1957-1958; p. 7.

disciplinary control obtaining prior to Independence made it imperative for the Commission to exercise the powers of delegation provided by the Constitution. By Article 144(6), the Commission is empowered to delegate any of its statutory functions as specified in Article 144(1) to any officer or board of officers in the service subject to its jurisdiction and that officer or board shall exercise those functions under the direction and control of the Commission.

Therefore, for various reasons, and in particular in order to maintain, as far as possible, uniformity of treatment throughout the service and effective control of the public service, the Commission after its formation, decided to delegate its functions only for the most junior grades and retain direct responsibility for all the others. But, as necessity and convenience demands it, such delegations of disciplinary functions have been made from time to time and today, more powers to exercise disciplinary control over public servants including those in the higher grades are vested in the disciplinary boards in the various departments and ministries. In short, these are the departmental disciplinary authority.

In Malaysia, subsidiary legislation regulates the various disciplinary boards which can exercise the powers of the Public Services Commission. There was the Public Services Disciplinary Board Regulations, 1967, which has now been repealed by the Public Services Disciplinary Board Regulations, 1972. These Regulations framed under the powers conferred by Clause (5B) of Article 144 of the Constitution established Public Services Disciplinary Boards and provided for matters relating to the appointment of the members of, and the procedure to be followed by, the disciplinary board and the appeal board. The composition of the disciplinary boards in the Federal ministries and departments and the limits of their jurisdiction are set out in Appendix II of this paper. As will be noticed, disciplinary boards for various categories of officers are different. There are separate disciplinary boards for the Managerial and

Professional Group, the Executive and Sub-Professional Group, the Clerical and Technical Group and the Subordinate and Manual Group.

Therefore in the public service, the task of handling disciplinary proceedings is well distributed into the hands of the Public Services Commission, the various departments which are under the jurisdiction of the Public Services Commission and the Public Services Department. Thus, for all cases of dismissal, reduction in rank, reduction of salary and deferment of increment (other than those in the Subordinate and Manual Group), the appropriate disciplinary authority is the Public Services Commission. It is the duty of Heads of Departments therefore, to report all disciplinary cases meriting the four mentioned penalties to the Public Services Commission to be dealt with by it. Apart from these, the Public Services Commission acts as an appellate body for those in the Managerial and Professional Group and for all the officers in the other three groups it acts as their appellate body only in cases involving dismissal.

The Public Service Department and the various disciplinary boards have the authority to exercise all disciplinary powers except those which are already vested in the Public Services Commission. Between the Public Service Department and the departmental disciplinary boards there is yet another division of powers. The Public Service Department has within its jurisdiction only members of the Managerial and Professional Group and the rest are dealt with by their relevant departmental disciplinary authorities. But with regard to officers in the Subordinate and Manual Group, the departmental disciplinary authorities have been given the powers to exercise all disciplinary powers including dismissal.[7]

The Public Service Department also acts as an advisory and appellate body. According to the Assistant Director of the Public Service,

---

[7]Regulation 2, Public Services Disciplinary Board Regulations, 1972.

departments generally seek the advice of the Advisory Board when dealing with disciplinary cases.[8] This procedure has been highly encouraged and has become an accepted practice. The Advisory Board, when requested, would furnish the departmental disciplinary boards with the details on what appropriate measures and penalties to impose or give its approval or reasoned disapproval on the measures proposed to be taken by the disciplinary board. Such advice may not be accepted although most often than not it is. However, even if it is not accepted initially, the fact that members of the Advisory Board is at the same time functioning as an Appeal Board,[9] the advice, if proper, would ultimately be enforced if the case goes on appeal. It is noteworthy that notwithstanding the fact that the advice may not be accepted, consultation with the Public Service Department itself affords an important right to the public servants. The fact that there is one central body, though merely advisory in nature, would ensure to a certain degree that there is uniformity and fairness in treatment.

It is interesting to note at this juncture that the Constitution lays down certain provisions to protect the public servants from being dismissed by the wrong authority. Hence it is necessary to look more closely in this area and to see whether there are any limits on the powers of delegation by the Public Services Commission.

The relevant provision in the Constitution which is concerned with the authority who may validly effect dismissal or reduction in rank is Clause (1) of Article 135. This Clause provides that :

---

[8]Personal communication.

[9]The Public Service Department Appeal Board is entrusted with the duty to hear appeals from officers in the Executive and Sub-Professional Group, the Clerical and Technical Group, and the Subordinate and Manual Group, but only on cases not meriting dismissals. Appeals on dismissals for these groups are under the jurisdiction of the Public Services Commission.

> (1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

This therefore means that the authority must not be subordinate to and must be either higher or equal in rank with the authority which, at the time of dismissal or reduction, had the power to appoint a person of the rank equal to that of the public servant. It may be noted that in this respect the Malaysian provision differs from the Indian Article 311(1). In India the disciplinary authority must not be subordinate to that which appointed the public servant; in the Malaysian provision the disciplinary authority should not be subordinate to that which has power to appoint at the time of dismissal or reduction in rank.

To demonstrate the operation of Article 135(1) and how it can serve as a protection to the public servants from being dismissed by the wrong authority, reference must be made to the Privy Council case of Surinder Singh Kanda v. The Government of the Federation of Malaya.[10] In that case, Surinder Singh Kanda had been dismissed in 1958 by the Commissioner of Police under the provisions of the Police Ordinance 1952. It was clear that before the introduction of the Constitution, i.e. in 1957, the Commissioner could appoint an officer of Surinder Singh Kanda's rank under section 9(1) and could dismiss him for a disciplinary offence under Section 45(1). It was argued that after the introduction of the Constitution, the provisions of the Police Ordinance could not operate for the Constitution had created a Police Service Commission with powers

---

[10] /1962 7 28 M.L.J. 169. This seems to be the only reported case in which Clause (1) of Article 135 has been subject to interpretation.

to appoint members of the Police Service; that at the date of dismissal the power to appoint a person of Surinder Singh Kanda's rank was vested in this Police Service Commission; and that, since the Commissioner of Police was "an authority subordinate" to the Commission, the dismissal violated Article 135(1).

The Privy Council agreed with these submissions and felt that the existing law as to the Police Commissioner's powers conflicted with the Constitution and that in a conflict of this kind, the Constitution must prevail; and therefore the existing law should be modified to bring it into accord with the Constitution. This led the Privy Council to the conclusion that the dismissal of Surinder Singh Kanda by the Police Commissioner (being subordinate to the Police Service Commission) was contrary to Article 135(1) and therefore void.

It is therefore clear that in order to see who have power to dismiss a public servant, it is necessary under Article 135(1) to ask who had power at that time to appoint an officer of his rank: for no one could dismiss who could not appoint.

It was earlier mentioned that the Constitution created a Public Services Commission which has the power to appoint members of the public service and this therefore means that, by virtue of Article 135(1), only the Public Services Commission has the powers of dismissal and reduction in rank over all the members of the public service. However, a look at Appendix II will show that the Public Services Commission is vested with the powers of dismissal and reduction in rank over all categories of officers except one. This is the Subordinate and Manual Group, over which the departmental disciplinary authority can exercise all disciplinary powers including dismissal and reduction in rank. This is because the power to appoint public servants of this rank have been delegated by the Public Services Commission, subject to their direction and control, to the various departments and ministries.

Although the Public Services Commission can delegate any of its functions under Article 144(6), it is fruitful to see whether any limitations or restrictions have been placed on this power. And, in relation to this, it is important to question whether an authority such as the Public Services Commission can delegate its power to appoint and its power to dismiss a public servant or to reduce him in rank. In Surinder Singh Kanda's case Lord Denning said:[11]

> The Police Service Commission [which, by virtue of Article 144(7) exercises the same functions as the Public Services Commission] can, of course, delegate any of its functions under Article 144(6) but still it is its own duty and its own power that it delegates. It remains throughout therefore the authority which has power to appoint, even when it does by a delegate.

Therefore if the authority which dismisses or reduces in rank cannot constitutionally be subordinate to the authority which at the time of dismissal or reduction has authority to appoint a public servant of equal rank and there cannot, as was also decided in Kanda's case, be more than one appointing authority at the same time,[12] it would seem to follow that though an authority like the Public Services Commission can delegate its power to appoint, it cannot delegate its power to dismiss or reduce in rank even though Article 144(6) allows a Commission to delegate 'any of its statutory functions.' This question of a Commission's power to delegate its functions in so far as they relate to dismissals or reduction in rank of public servants was raised in the quite recent case of Isman bin Osman v. Government of Malaysia.[13] In that case the above interpretation

---

[11] Ibid at p. 171.

[12] "It appears to their Lordships that there cannot, at one and the same time, be two authorities, each of whom has a concurrent power to appoint members of the police service. One or other must be entrusted with the power to appoint." per Lord Denning, Ibid.

[13] [1973] 2 M.L.J. 143.

was accepted and in the words of Sharma J :[14]

> Article 135(1) makes it mandatory that as far as dismissal or reduction in rank of a government servant is concerned it cannot validly be done by an authority which is subordinate to the authority which could have made the appointment at the time of the dismissal. Articles 140(6)(b) and 144(6) afford to the Commission a means of convenience in its work, to ease its burden as it were. Article 135, however, secures to the servant concerned a constitutional guarantee that he shall not be dismissed by any subordinate authority. It thus appears that there is capacity for some conflict between the provisions of Article 144(6) and the provisions of Article 135(1) should the Commission decide to delegate its powers of dismissal to some other person or authority. The conflict thus becomes a conflict between the convenience of the Commission and the constitutional rights guaranteed to the public servant. In the event of such a conflict I think it is the duty of the court to keep preserved the constitutional guarantees enshrined in the Constitution for the benefit of the government servant and the security of his tenure. The conflict between the provisions of the two articles can, however, be reconciled if it is held that the Commission has no power to delegate its functions in so far as they relate to the dismissal or reduction in rank of the public servant and I do so hold.

Another interesting case on this aspect is the Privy Council

---

[14] Ibid. at p. 149.

case of Rangachari v. Secretary of State.[15] Their Lordships of the Privy Council held that the appointing authority could not delegate his statutory power to dismiss to an authority subordinate to him, so as to defeat the proviso to section 96 B of the Government of India Act 1935 to which Clause (1) of Article 311 of the Indian Constitution corresponds and therefore to destroy the protection given by it to the government servant. It was also held that if any Rule authorised such delegation, such Rule would be ultra vires and void.

It may therefore be concluded that authorities such as the Public Services Commission cannot fully exercise the power of delegation conferred on them by Article 144(6) - although they may delegate their power to appoint, they cannot delegate their power to dismiss a public servant or to reduce him in rank.

In summing up, it can be said that there is a clear allocation of responsibility in the administration of disciplinary control to ensure that disciplinary action is dealt with speedily and effectively. The writer is also satisfied that the allocation of the powers and duties of the various disciplinary boards under the Public Services Disciplinary Board Regulations, 1972, was carefully done so as not to infringe on the protection provided by Article 135(1). In addition, there are also various checks like Treasury Instructions or government directives, Advisory Board and Appeal Boards to ensure that there is uniformity and fair treatment throughout the Service.

---

[15] A.I.R. 1937 P.C. 27.

CHAPTER IV

THE DISCIPLINARY PROCEDURE

A. Introduction

Many decisions on disciplinary cases made by the Disciplinary Authority when appealed to the court by the officer who had been dismissed or reduced in rank as a result of disciplinary proceedings instituted against him have been decided for the appellant. It has always been the case that the decision of the court pin-pointed defects in the procedure adopted by the Disciplinary Authority. More often than not the officer dismissed was not given an adequate or reasonable opportunity to be heard as required by Article 135(2) of the Constitution.

The object of Article 135 is to afford a safeguard against arbitrary dismissal or reduction in rank. In relation to the law relating to public servants, procedural rules such as these are regarded as the principal weapon for protecting the security of tenure of public servants. They provide the procedure for the working of the disciplinary machinery so as to allow it to work to produce just and fair results. Thus much emphasis and importance is placed on procedural rules and Jayakumar[1] has rightly described Article 135(2) as the "most litigated provision" of the Constitution. The provisions of Article 135 must be strictly observed and failure to comply would expose the decision of the Disciplinary Authority to be reviewable by a court of law. A court of law, however, can only adjudicate over procedural matters and not on the nature of punishment awarded as this is a prerogative of the Disciplinary Authority.

In Malaysia, subsidiary legislation exist which contains provisions for the procedure to be followed in disciplinary proceedings.[2] The fundamental doctrine of the supremacy of the Constitution would require that

---

[1] Jayakumar, "Protection For Civil Servants: The Scope Of Article 135(1) and (2) Of The Malaysian Constitution As Developed through the Cases." [1969] 2 M.L.J. liv.

[2] Public Officers (Conduct And Discipline) (General Orders, Chapter "D") Regulations, 1969, Part II.

such subsidiary legislation conforms to the requirements of Article 135. Assuming that they are consistent with Article 135, it is fruitful to question here whether all the provisions are mandatory or whether only those provisions which implement Article 135 are mandatory.

In the case of Wong Keng Sam v. Pritam Singh Braar[3], it was held that only such rules as were made for the purpose of carrying out Article 135(2) of the Malaysian Constitution were mandatory. Other rules which could not, upon construction, be said to be made for implementing Article 135(2) were only directory "as being purely procedural rules" and the violation of them would not necessarily give the aggrieved person a legal right to redress.

However, it is interesting to note that Raja Azlan Shah J. when dealing with the procedural provisions in Chapter "D" of the General Orders relating to disciplinary procedure with a view to dismissal in the case of In re Sambasivam[4] held that "these procedural provisions are to be treated as mandatory and therefore must be strictly construed." This decision is of course more favourable to the public servant. It therefore appears that now, not only are dismissals made in breach of the provisions of Article 135 of the Constitution justiciable, but also dismissals made in breach of procedural provisions in subsidiary legislation concerning disciplinary proceedings. This is especially so, where the subsidiary legislation is made for the purpose of carrying out the object of Article 135(2) of the Constitution.

Hence, because of the importance of the procedural provisions in safeguarding the security of tenure of public servants, it is proposed to deal in this chapter rather briefly with the general procedure that the

---

[3] [1968] 2 M.L.J. 158. Wee Chong Jin C.J. was here referring to the [Singapore] Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964.

[4] [1969] 1 M.L.J. 219. This High Court decision has been affirmed by the Federal Court [1970] 1 M.L.J. 61, 62. "The learned judge held, in my view quite rightly, that the procedural provisions set out thereunder should be treated as mandatory and strictly observed." Per Ong Hock Thye C.J.

Disciplinary Authority has to follow. In the next Chapter, the requirements and scope of the reasonable opportunity to be heard that should be given to the public servant at various stages of the enquiry has been discussed in some depth and detail.

B. The General Procedure: Preliminary Investigation And Departmental Inquiry.

The institution of disciplinary proceedings originates from a complaint being made against an officer to his Head of Department. This in turn usually originates from G.O.D. 23 which makes it compulsory for any officer who finds "that any officer working under him is inefficient or lacking in industry or is guilty of any breach of any of the provision of this General Orders "to report the matter to the Head of Department. The Head of Department shall, on receiving such complaints or reports from any officer, the National Bureau of Investigation, or the Public Complaints Bureau, carry out a preliminary investigation or inquiry to ascertain whether a prima facie case exists in the matter complained. Only on being satisfied that the complaint is legitimate and justifiable in the light of evidence adduced shall he proceed to report the matter to the appropriate Disciplinary Authority.

The nature of investigation and disciplinary procedure varies with the gravity of the punishment proposed to be inflicted. Under Chapter "D" of the General Orders, the procedure for imposing a penalty less than dismissal or reduction in rank, that is the procedure for what is usually termed as 'lesser offences', is different from the one required for imposing a higher or severer penalty of reduction to a lower post or grade or dismissal from service which shall ordinarily be a disqualification for future employment. Therefore broadly speaking there are two main categories of investigation and disciplinary procedure, that is, one for 'lesser offences' and another for 'serious offences.'

In the case of the former, it would be enough if the officer is informed in writing by the Disciplinary Authority of the proposal to take action against him, the allegation on which it is proposed to be taken and is given an opportunity to explain the lapse in his work or conduct, before a punishment is imposed.[5] In the case of the latter category, however, a regular procedure[6] would have to be gone into, which would, inter alia, include the framing of the charges, giving a 'hearing' to the public servant, holding a further inquiry when necessary, giving reasonable opportunity to cross-examine witnesses, producing evidence and defences and all that is necessary to give the officer concerned a reasonable opportunity of being heard, as is required by Article 135(2) of the Constitution. The focus of later attention is on this procedure, that is the procedure for inflicting major punishments like dismissal or reduction in rank.

As mentioned earlier, on receipt of a complaint, the Head of Department will make a preliminary inquiry as he deems proper to ascertain the prima facie truth of the allegations and the evidence available in support thereof. For such a preliminary inquiry hardly any rules exist and it is not necessary that the public servant should be given any notice thereof. But such a procedure, that is preliminary inquiry, is implicit in the very nature of things. Although not obligatory, a preliminary inquiry is a very desirable step to take in order to frame a charge. This is because public servants should not be charged with offences recklessly and without reason.

However there is one important limitation on such an inquiry, in that, it is no substitute for the departmental hearing or inquiry itself conducted by the Disciplinary Authority. The preliminary inquiry is merely for the purposes of framing a charge and the results cannot be

---

[5] G.O.D. 29.

[6] G.O.D. 30.

deemed to be conclusive. The departmental inquiry on the other hand starts with the charge sheet which must be specific and must set out all the necessary particulars. It is no excuse to say that regard being had to the previous proceedings, the officer concerned should be taken to have known all about the charge. Whether he knew it or not he must again be told of the charges and the necessary particulars without which a man cannot defend himself. The proceedings here are required to be in conformity with well-known principles of natural justice.

G.O.D. 30(2) commences the hearing. It makes it obligatory on the part of the Disciplinary Authority to communicate the charge to the officer together with all the relevant documents to support the charge and call upon him "to state in writing a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself;" - in short, notice to show cause why disciplinary action should not be taken against him. Although it is not stated when the fourteen day period commences, it seems obviously clear that this should commence from the date the officer concerned receives his charge-sheet from the Disciplinary Authority. This should be made clear to the officer and together with this it should also be made clear that if he fails to "furnish any representation within the time fixed,[7] or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer."[8] The decision as to what punishment to impose will be based on certain matters discussed in chapter six.

Having arrived at a decision, the Chairman of the Disciplinary Board must write down or cause to be written down the complaints communicated to the officer, the decision of the Board and the basis or reasons of the decision and these will then be communicated to the officer and

---

[7] The minimum period given is fourteen days but this period may be extended to usually twenty-one days depending on the seriousness and difficulties of the case.

[8] G.O.D. 30(4).

to his Head of Department who will then take the necessary action against him.

It is necessary that everything should be carefully noted down because in case the officer were to appeal against the decision, the appellate authority would need all those particulars, without which an equitable consideration of the appeal is impossible. This was made clear by Buttrose J. in the case of Phang Moh Shin v. Commissioner of Police and Ors.[9] in which the plaintiff claimed that he had no notice or inadequate notice of the charge against him in point of time and this gave rise to a sharp conflict of evidence. The learned judge observed that there are often lengthy delays, which can sometimes mean a couple of years before a case is brought to trial and one's memory is apt to become unreliable and important details like whether a copy of the charge was given to the appellant, are forgotten. He therefore maintains that it is "both necessary and important for officers conducting disciplinary proceedings from the time the officer in question is first charged until the conclusion of the hearing including, inter alia, applications by him for an adjournment, if any, calling upon him for his defence, ascertaining whether he has any witnesses whom he desires to call and what submissions or comments he has to make on the evidence...."[10]

Failure to record down the particulars can bring about undesirable consequences, as it did in the above case. Because the records were silent, considerable weight and importance were attached to the plaintiff's letter of appeal and it was with regret that judgement was made for the plaintiff although it was clear to the learned judge that the plaintiff was "quite unfit to be or remain a member of the Singapore Police Force."

---

[9] / 1967 / 2 M.L.J. 186.

[10] Ibid. p. 190.

It would be noticed that the inquiry or hearing conducted by the Disciplinary Authority so as to give the officer the right to be heard is merely "on the papers" and there is no provision for oral hearing except, when the Disciplinary Authority feels that the case needs further clarification.

G.O.D. 30(5) provides that "where the Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry...." to inquire into the matter and make a report to the relevant Disciplinary Authority. There are also clear provisions for the appointment and working of the Committee of Inquiry whose very existence will provide the public servant with a further measure of security that his case would be carefully and properly dealt with so as to bring about a just result. At this stage, the public servant may have a further opportunity of showing cause through a more effective hearing, that is an oral hearing.

G.O.D. 30(6) provides the rules to be observed at this inquiry stage like issuing the notice of inquiry to the officer and the Committee is given the discretion whether to allow or not to allow the officer to appear before the Committee to further exculpate himself. However, when such an inquiry is conducted the officer is normally allowed to make a personal appearance. And if witnesses are examined by the Committee, there is no doubt that he shall be present and put questions to the witnesses on his own behalf.[11] The officer may even be given permission, that is if the Committee exercises its discretion in his favour, to engage an advocate and solicitor or a senior member of the public service to represent his case. In short, these are some of the requirements of natural justice and reasonable opportunity to be heard which will have to be observed so as to bring the procedure in compliance with the requirements of Article 135(2). For fear of overlapping, the writer intends to

---

[11] G.O.D. 30(7).

discuss the case law and the scope of these very important procedural safeguards provided by the service regulations and the Constitution in the next chapter.

Thus, such an inquiry as mentioned above can to a certain extent be more favourable to the accused public servant. It is therefore unfortunate that this writer's research indicates that at the time of writing, this stage of the disciplinary procedure is rarely being made use of in the public service[12]; the reason being that most of the cases though meriting dismissal or reduction in rank are simple and need no further clarification and the use of a Committee of Inquiry would inevitably slow down the disciplinary process and thus cause a back-log in cases. Therefore usually the Disciplinary Authority exercises its discretion not to appoint a Committee of Inquiry. Most of the time it will make a study of a case, to the best of its ability, based on the facts supplied in the charge-sheet, the accused's service record, personal particulars and letter to show cause or letter of explanation and then hope that it has made a 'just' assessment of the case and that there will be no appeal on the case.

G.O.D. 30 relates to the procedure to be adopted when dealing with 'serious offences' and G.O.D. 30(5) is part of this procedure and gives the Disciplinary Authority the discretion whether or not to appoint a Committee of Inquiry when it considers the case needs further clarification. It is the writer's opinion that since such proceedings anticipate the imposition of severe penalties, it is only fair, in the interests of justice, that the public servant should be given recourse to all possible avenues or channels to meet and defend his case. The writer views that regard being had to the nature of the offence and consequences of the disciplinary action, each case should be treated with all the seriousness due to it and the Disciplinary Authority should exercise its discretion

---

[12] Public Services Commission (personal communication with the Deputy Chairman of the Disciplinary Board).

carefully and wisely, possibly making full use of the function of a Committee of Inquiry which may be able to provide the accused with better chances of clearing himself.

Since such an inquiry is important procedurally, it would be fruitful to look more deeply into the present provisions regulating it. This would necessarily touch on issues such as the power to initiate and hold inquiry and the rules that the Committee has to observe besides those already mentioned.

By the very wordings of G.O.D. 30(5) it is clear that it is not necessary that the dismissing authority should itself hold the inquiry although it is competent and may make the inquiry itself. Although, as we have seen, the power to dismiss itself cannot be delegated, it is open to the dismissing authority to take the assistance of some subordinate or other authority superior to the accused official to inquire and report, provided that the ultimate responsibility for the exercise of the power to dismiss remains with the person who is entitled to dismiss.

Usually, at least two senior Government officers are selected, with due regard to the standing of the officer concerned and to the nature and gravity of the complaints which are the subject of the inquiry. However extra care must be taken in selecting the inquiry officers. It would be a violation of the principles of natural justice if the Disciplinary Authority or the officer selected for inquiry is the person against whom the person charged has made allegations or who is a witness for the prosecution and who is, accordingly, interested to bring the guilt home to the accused at any cost, for example, the officer's Head of Department. This is reinforced by the proviso to G.O.D. 30(5). This is to ensure that the Committee is free from bias and the case would not be prejudiced to the accused. It must be pointed out here that even if the adjudicator does not actually import his personal bias into a decision, the principle is that if he is personally interested in the matter, the possibility of

bias will disqualify him. As the famous maxim goes, "justice must not only be done but manifestly and undoubtedly seen to be done." If the facts of the case show that there is a reasonable likelihood of bias, then the decision in that case may be vitiated.

The Committee, after inquiring into the matter, must make a report to the Disciplinary Authority.[13] There is nothing in the regulations specifying in what form the report of the Committee should be and in such a case, Wee Chong Jin C.J. in Wong Keng Sam v. Pritam Singh Braar[14] said:

> Such a report may well take the form merely of an opinion based on all the evidence that has been brought before it by both sides or, it may well be in the form of an opinion together with recommendations or, it may well be in the form of an opinion together with advice or, it may well be in some other form.

Thus it becomes clear that no specific form is required for submitting the report of the Committee of Inquiry.

It is always assumed that once the committee has submitted its report to the Disciplinary Authority, the committee would have completed its duties and cease to exist. But this is not necessarily so. A Committee of Inquiry is not a judicial tribunal of which it can be said that once these proceedings are concluded and a decision made by it on the matter to be adjudicated by it that it is functus officio and thereby has no more jurisdiction in the matter. Further the regulations contain no provisions as to when a Committee of Inquiry shall cease to exist. It

---

[13] C.O.D. 30(10).

[14] Op.cit., fn. 3, Ch. IV, at p. 160.

seems therefore that the Disciplinary Authority is entitled to require the same committee to make further inquiries and to consider further evidence sometimes by way of hearing the evidence of a fresh witness and to sit for that purpose.[15] This power to refer the matter back to the committee for further enquiry and report has now been given statutory force by the provisions of G.O.D. 30(10). When this happens, the committee must of course call upon the accused or his counsel to appear before it and again follow the necessary steps that are essential so as to comply with the constitutional safeguards.

Finally the Disciplinary Authority will then act on the evidence recorded in the report of the Committee of Inquiry but the findings of the inquiry officers must not be taken as final. The Disciplinary Authority must itself determine the question of guilt or innocence and then decide on the measure of punishment to impose. The punishment will then have to be entered into the officer's Record of Service Book.[16]

As soon as possible the Disciplinary Authority should send to the officer a written notice of decision which should include not only the decision itself but also a statement of findings of fact and the reasons for the decision. The notice of decision should in addition always set out clearly the rights of appeal against the decision.

It is appropriate to emphasise here the need to give reasoned decisions. Most countries, like England and the United States of America have advocated the giving of reasoned decisions by such bodies. This is because if the tribunal proceedings are to be fair to the citizen, reasons should be given to the fullest practicable extent. Therefore in both England and the United States, the legislature has stepped in to require administrative authorities to give reasons. Section 12 of the Tribunals

---

[15] Ibid.

[16] G.O.D. 43.

and Inquiries Act, 1958, requires an administrative tribunal "to furnish a statement, either written or oral of the reasons for the decision if requested, on or before the giving or notification of the decision, to state the reasons."

In the United States, Section 8(b) of the Administrative Procedure Act, 1946, requires all administrative decisions to be accompanied by "findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record."

There is no general enactment in Malaysia like the Tribunal and Inquiries Act, 1958, or the Administrative Procedure Act, 1946, and the parent statutes do not say that the administrative authority acting under them are to give reasons. In the absence of the legislative prescription the task falls on the judiciary to infer the requirement of reasons. But ideally and for the sake of certainty the procedural law should incorporate the duty to give reasoned decisions by administrative tribunals.

Giving of reasons by the administration for its action against the individual minimises chances of arbitrariness on its part and abuse of power by it. A decision is apt to be better if the reasons for it have to be set out in writing because the reasons are then more likely to have been properly thought out and ensures that the administration has applied its mind to the problem in hand. Further, a reasoned decision is essential in order that, where there is a right of appeal, the applicant can assess whether he has good grounds of appeal and know the case he will have to meet if he decides to appeal.[17] In such cases the individual will be in a better position to challenge the administrative action in a court of law where the administration has abused its power, acted on irrelevant considerations, ultra vires or not in accordance with law. Disclosure of reasons will thus strengthen the hand of the courts in controlling administrative action.

---

[17] Report of the Franks Committee on Administrative Tribunals And Enquiries Cmnd., 1957.

With all these advantages in giving of reasons it should have been the normal rule, but unfortunately this is not so. Sometimes disclosure of reasons is avoided on the pretext of public interest and sometimes of administrative efficiency. However, on balance the conclusion is inescapable that ordinarily reasons ought to be given except in those cases where the public policy clearly warrants a contrary approach.

CHAPTER V

THE REQUIREMENTS AND SCOPE OF REASONABLE OPPORTUNITY TO BE HEARD

A. Meaning of Reasonable Opportunity To Be Heard Under Article 135(2).

The protection given to public servants in Malaysia by Article 135(2) is very significant. However, the expression "reasonable opportunity" has not been defined by the framers of the Constitution and perhaps for quite understandable reasons. The expression "reasonable" is not susceptible of a clear, precise definition, for what is reasonable in one case may not be reasonable in another. What is reasonable is not necessarily what is best but what is fairly appropriate to the purpose under all the circumstances. Thus most cases involving the application of the constitutional provision turn on the facts and circumstances of the case.

However it must be stressed here that the words have acquired a legal meaning and cannot be left to the vagaries of each individual since this would introduce a thousand shades of reasonableness which cannot be permitted. The word "reasonable" must therefore mean according to the rules of law, that is, embodying the rules of natural justice. In this context the cases are very important guides to aid us in understanding the rules and principles of natural justice and also to know the type of acts and omissions which may lead to a violation of the requirement of granting a reasonable opportunity to be heard.

Several decisions on the meaning and requirements of a reasonable opportunity to be heard have now been given in Malaysia and Singapore and a clearer idea of what is required is emerging. The starting point came with the Privy Council's decision in Surinder Singh Kanda v. Federation of Malaya[1] in which Lord Denning gave a lucid exposition of reasonable oppor-

---

[1] [1962] 28 M.L.J. 169.

tunity as envisaged by Article 135(2). Lord Denning, placing reliance on the decisions of all the cases involving natural justice - from the celebrated judgement of Lord Loreburn L.C. in Board of Education v. Rice[2] down to the decision of the Privy Council in University of Ceylon v. Fernando[3] said that :

> The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: Nemo judex in causa sua and Audi alteram partem. They have recently been put in the two words Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him, and then he must be given a fair opportunity to correct or contradict them.[4]

The reasonable opportunity of being heard in Article 135(2) can therefore be described as the Constitutional enactment of the audi alteram partem rule. Bearing in mind the concept of reasonable opportunity to be heard formulated by Lord Denning in Surinder Singh Kanda's case, the writer will proceed to discuss the various requirements of that concept which will have to be observed by all disciplinary bodies at both the pre-

---

[2] [1911] A.C. 179.

[3] [1960] 1 All E.R. 631.

[4] Op.cit. fn. 1 Ch. V, at p.172.

hearing and hearing stage and also to determine the scope of its application.

B. Notice Of The Charge And Notice To Show Cause

The most important requirement at the preliminary or pre-hearing stage is that the public servant must know exactly the case against him which means that he must not only know the precise charge against him but also what evidence has been given and what statements have been made affecting him. The public servant must also have access to all the documents which the disciplinary authority has access to.[5]

In applying these principles, the Privy Council in Surinder Singh Kanda's case felt that "the furnishing of a copy of the Findings of the Board of Inquiry [which condemned Surinder Singh Kanda] to the adjudicating officer.... coupled with the fact that no such copy was furnished to the plaintiff" amounted to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him. Their Lordships did "not think it was correct to let him have the Report of the Board of Inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice."

In Phang Moh Shin v. Commissioner of Police[6], Buttrose J. in deciding that there had been no reasonable opportunity also attached a lot of weight and importance to the fact that no copy of the charge was ever supplied to the Plaintiff. There were also other relevant documents and their contents were never disclosed to the plaintiff at any time during the disciplinary proceedings. The contents were prejudicial to the character

---

[5] Phang Moh Shin v. Commissioner of Police [1967] 2 M.L.J. 186; Surinder Singh Kanda v. Federation of Malaya [1962] 28 M.L.J. 169. C.O.O. 30(7) provides that ".... no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto."

[6] [1967] 2 M.L.J. 186.

of the plaintiff and by withholding the documents from him, he was never given an opportunity of answering or explaining them. This led the learned judge to conclude that "these matters must have resulted in a real likelihood of bias, that is, an operative prejudice whether conscious or unconscious on the part of the third defendant," and therefore held that the plaintiff's dismissal from the Singapore Police Force was illegal, void, inoperative and of no effect.

The public servant must also be given a fair opportunity to meet the case against him. This means that he must be given adequate notice of the charge and sufficient time in order to prepare his defence. As had been mentioned in the previous chapter, G.O.D. 30(2) provides the accused with fourteen days, commencing from the date of receipt of the charge, to give a written reply of the grounds upon which he relieves to exculpate himself to the Disciplinary Authority. Allowances are also made for serious or difficult cases in which the time limit may be extended to twenty-one days. Therefore the time period given here is quite reasonable though in certain cases where numerous documents have to be studied, there should also be provisions to allow for extension of time to at least a month so that the accused can prepare his defence properly.

However, in cases involving a further enquiry, G.O.D. 30 does not specify the length of time to be given to the accused official before he is required to appear before a Committee of Inquiry to defend himself. All that G.O.D. 30(6) provide is that the officer shall be informed of the day on which his case will be brought before the committee and that he shall be allowed to exculpate himself. Thus there is the danger that there may be cases in which sufficient time is not given to the accused to perhaps call his own witnesses and to prepare his defence more effectively.

Thus, in deciding whether sufficient time was given so as to constitute the giving of reasonable opportunity to defend himself to the

accused, one must necessarily look at the facts and circumstances of the case. In this connection, it has been held in the Indian case of Sudhir Ranjan v. State of West Bengal[7] that "to give only one day's time to show cause to a person residing in another town does not afford to him a reasonable opportunity to defend himself."

Such an issue was also raised in the case of Phang Moh Shin v. Commissioner of Police.[8] The case involved a Police Inspector in Singapore who was found to be negligent in his duty. He was called by a Commission of Enquiry to answer the charge and to show cause why he should not be dismissed. The notice served on him was sent on Saturday and he was asked to appear before the Commission of Enquiry the following Monday. Buttrose J. took into consideration that "the weekend had all but arrived and the plaintiff was on 24-hour reserve duty the whole of the Sunday and Sunday night" and held that the notice given was totally inadequate for the plaintiff to meet and answer the charge and therefore he was entitled to the declaration that his dismissal was void. The learned judge further maintained that the disciplinary proceedings were conducted in an unreasonable manner and flouted the principles of natural justice. The proceedings lasted the entire day and the plaintiff was kept standing, albeit at ease, throughout. He was not proferred a chair or a table or note paper or any facilities for making notes and was never called to make his defence or asked if he had any comments or submissions to make on the evidence.

Therefore, as we have already seen, all relevant documents, statements and reports must be made available to the accused official. The accused should not be taken unaware about any document or evidence relied on against him. He should also be allowed timely inspection of those documents so that he may have an effective opportunity to challenge

---

[7] A.I.R. 1961 Calcutta 626.

[8] Op.cit. fn. 6, Ch. V

them. All these are required and are to be strictly observed when notice of the charge is given to the accused so that he may be given a reasonable opportunity of meeting the charges.

C. Oral Hearing

In Malaysia, there is no question at all whethere there is a right to a hearing in cases involving a dismissal or reduction in rank. Article 135(2) of the Constitution gives the public servant a constitutional right to be heard in a disciplinary action. As to what constitutes a 'hearing' it is not statutorily defined. Thus it may or may not be an oral hearing.

As discussed in the previous chapter, the disciplinary procedure provided by G.O.D. 30 does not make provisions for an oral hearing except when the case needs further clarification and the Disciplinary Authority exercises its discretion to appoint a Committee of Inquiry. Even then it is within the discretion of the Committee whether to require or not to require the officer to appear before the Committee to further try to exculpate himself. Thus, the situation is such that the Disciplinary Authority only has the power to decide a case 'on the papers', that is to say, without the parties being heard in person at all. However, even when the Disciplinary Authority is deciding 'on the papers' the public servant must be given a hearing in the sense of an opportunity to make written representations and to rebut or correct those statements made by the other side to exculpate himself.[9] The situation being as such under the General Orders, it is proposed to discuss here the judicial point of view whether oral hearing is a vital part of a 'reasonable opportunity to be heard under Article 135(2), whether the provisions of

---

[9] G.O.D. 30(2).

the General Orders is inconsistent with the Constitution and whether there is a right to oral hearing before the Disciplinary Authority or the Committee of Inquiry.

In Majar Singh v. Government of Malaysia,[10] Suffian C.J. held that an oral hearing is not an essential requirement of a reasonable opportunity of being heard. However, Suffian C.J. qualified his dictum and said, "there is no evidence here that the plaintiff ever demanded an oral hearing before his dismissal. If he had and had been refused, then probably he would have had a stronger case."[11] Thus it appears that the public servant can only claim a right to oral hearing if he requests for it.

It can be queried whether it is reasonable to make the accused's right to have an oral hearing contingent on his taking the initiative to make such a request. It should be recognised that most public servants can be regarded as the ordinary man on the street with little or no knowledge at all of his fundamental rights. Unless he is legally represented, which is quite rare under the present situation, it is quite unreasonable to expect the layman to take the initiative to enforce his rights. It is therefore submitted that having regard to the nature of the case, the Disciplinary Authority should at least inform the public servant, perhaps in the charge-sheet, that he may request for an oral hearing if he so wishes.

It is only through this way that we can regard the public servant as having been allowed to state his case in a manner most consistent with fairness. Knowing his rights, the public servant may want to give oral evidence in person. When a man is heard in person, he has a wider and more extensive opportunity of meeting the accusation made against him than when he gives evidence, for evidence even when given in

---

[10] [1974] 1 M.L.J. 138.

[11] Ibid. at p. 141.

person has got to be confined to facts, while hearing is not confined to facts only but can be utilised for reasoning out a matter and showing that what was stated in the charges could not be relied upon because of the circumstances to which he may point out.[12] The importance of personal or oral hearings was also stated by the Indian Supreme Court in Gullapalli Nageshwar Rao v. A.P. Transport Corporation,[13] in these words:

> Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view.

Thus it can be seen that oral hearing is a very effective form of hearing and a public servant should always be told and made aware of his right to request for such a hearing if he so wishes.

However, under the present circumstances, it can be said that even if the public servant knows his rights and requests for an oral hearing, it is still within the Disciplinary Authority's discretion to refuse or disallow oral hearing. No doubt Suffian C.J. has expressed his view, in Majar Singh's case, that if a request was made and it was turned down, the public servant would have a stronger case in court. But it must be remembered that this means that the public servant has to go through another lengthy and expensive trial in court to vindicate his rights and apart from that, there is no certainty that other judges would adopt the same attitude as that of Suffian's C.J. There is no Privy Council ruling, as yet, on this aspect.

---

[12] Srivastava, K.D., Op.cit., fn. 1, Ch. I.

[13] A.I.R. 1959 SC 308.

Therefore, here again the writer would like to draw attention to the situation in India on this aspect and perhaps follow the example set there. In the case of Khemchand v. Union of India,[14] it was held that so far as disciplinary inquiries are concerned, it is well settled that it is obligatory, vide Rule 55 of the 1930 Classification Rules, to give oral hearing when the accused servant desires it. Therefore it is clear that in India, so far as government servants are concerned the uncertainty or ambiguity whether oral hearing will be given when requested has been removed for the rules do so insist and, as explained in Khemchand's case, it is required by the Indian Article 311(2).

Hence, recognising the importance of an oral hearing before the Disciplinary Authority or before certain officers selected for such a purpose, the law relating to the disciplinary procedure, viz., Chapter "D" of the General Orders should be suitably amended so as to insist on or to make it obligatory on the part of the Disciplinary Authority to allow oral hearing when the public servant makes such a request.

D. Opportunity For Cross-Examination

An opportunity to meet the charges also mean an opportunity to deny the fault and establish one's innocence. It may therefore include an opportunity to defend oneself by cross-examining the witnesses produced against him and by examining himself and any other witnesses in support of his defence or through other evidence of his own. In this way he is given very effective means or opportunity to explain, correct and contradict the witnesses' evidence which is being relied on against him and thus show the strength and reliability of the evidence. Being of such importance, the question whether in Peninsular Malaysia the accused official is entitled as of right to examine witnesses shall

---

[14] A.I.R. 1958 S.C. 300.

be dealt here.

In relation to this, there is one provision in the General Orders that can aid us in interpreting whether a reasonable opportunity under Article 135(2) includes an opportunity to cross-examine the witnesses. G.O.D. 30(7) provides that :

> If witnesses are examined by the Committee the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf....

This provision makes it clear that the accused official must be given the opportunity to cross-examine any of the witnesses examined by the Committee. This view can be supported by the observations made by Raja Azlan Shah J. in In re R. Sambasivam,[15] that ".....rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them." Sharma J. in Isman bin Osman v. Government of Malaysia[16] took the same view when he stated that "the reasonable opportunity envisaged in Article 135(2) includes..... an opportunity to defend himself by refuting the evidence proposed to be considered against him and if necessary (depending on the circumstances) to cross-examine the witnesses produced against him and leading evidence in support of his defence".

---

[15] [1969] 1 M.L.J. 219 at p. 222.

[16] [1973] 2 M.L.J. 143 at p. 145.

However, Wee Chong Jin C.J. in V.C. Jacob v. Attorney-General[17] said that, "the Privy Council has decided that a right to question the witnesses brought against a man is not required by natural justice" and that he was bound to follow a decision of the Privy Council. He was here referring to the Privy Council decision in University of Ceylon v. Fernando[18] in which the main ground of objection was that the respondent was not given an opportunity to question the "essential witness" against him. But one should note that Lord Jenkins in the Privy Council said that if the respondent had requested the right to cross-examine witnesses brought against him and his request had been refused, he would have regarded it as a formidable objection. He added, "there is no ground for supposing that, if the /respondent/ had made such a request, it would not have been granted." Thus, it is respectfully submitted that Wee Chong Jin C.J. is quite wrong when he suggested that the Privy Council decided that a right to question witnesses brought against a man is not required by natural justice. All that the Privy Council decided was that it was not necessary for the disciplinary authority to volunteer the suggestion that the respondent can cross-examine witnesses brought against him if he so wishes, not that the right to question witnesses is not required by natural justice. It is therefore clear that the accused official is not entitled as of right but if he requests the right to cross-examine the witnesses, he must be given that right and opportunity.

The rules of natural justice also require that a person who has the right to cross-examine the witnesses who may depose against him must be made aware, prior to the date of the enquiry, of the names of such witnesses together with some indication as to the nature of the evidence that they would give. Unless he is made aware of these two

---

[17] /1970/ 2 M.L.J. 133 at p. 136.

[18] /1960/ 1 All E.R. 631 at p. 641.

facts it is obviously impossible for him to get ready to cross-examine them. In relation to this, copies of the original complaint and of the statements of prosecution witnesses, if any, recorded during the preliminary investigation, should be made available to the accused officer too.

It is also desirable that the witnesses should, as far as possible, give their evidence in the presence of the accused and the officer conducting the inquiry. In Chong Hoh Shin's case, Buttrose J. viewed that it would be wrong "for the court to countenance an inquiry in which only a cross-examination, without the officer concerned hearing what evidence the witnesses are going to give, is permitted. It is difficult to see, how, if the witnesses do not give their evidence before the officer conducting the inquiry, he can properly evaluate and appraise the evidence without hearing and seeing them giving it. The way in which a witness gives his evidence, his demeanour and bearing are important matters to be taken into consideration in determining the weight and value to be attached to his evidence."[19]

He was also of the opinion that even if the witnesses do not give their evidence in the presence of the plaintiff, their evidence should be recorded and be made available to the plaintiff before the inquiry. In this particular case their pre-recorded statements were merely read out in the presence of the plaintiff who was thereupon told to cross-examine the witnesses. Those pre-recorded statements were never made available to the plaintiff for him to refer to and he had to cross-examine the witnesses as best as he could from what he could remember of the statements which were read out. In such circumstances, the accused officer could not be said to be given a reasonable opportunity to meet the charges and challenge them effectively.

---

[19] Op.cit., fn. 6 Ch. V, at p. 132.

Further, the fact that a public servant should be given a reasonable opportunity to defend himself by a cross-examination if he so requests would mean that there should generally be no objection to his request to call his own witnesses to give evidence on his behalf and he and his witnesses can in turn be cross-examined. In such a case the inquiry officer has got a discretion to refuse to summon witnesses but he should only do so when he strongly feels that unreasonable delay and expense would be incurred and the evidence of the witnesses is not directly relevant or necessary. The non-production of a relevant witness which is requested by the accused official would surely be prejudicial to his case and would amount to a denial of a reasonable opportunity to defend himself.

E. Right To Be Represented

The third requirement which may be regarded as a further delineation of the second requirement revolves around the question of representation. Where a public servant is charged and a departmental inquiry is held, does he have a right to be represented or assisted by a professional lawyer or a friend? Is denial of the opportunity to the public servant to be represented by counsel a denial of a reasonable opportunity to be heard under Article 135(2) of the Constitution? Can a right to be represented by Counsel or other person be claimed under the principles of natural justice or service rules applicable to the facts of the case? These are some of the questions that have only recently confronted our judges in the Malaysian courts and which are attempted to be answered here, keeping in mind the important decision of Lord Denning in Pett v. Greyhound Racing Association Limited[20] wherein he had said that where a tribunal is dealing with

---

[20] [1968] 2 All E.R. 545.

matters affecting a man's reputation and livelihood or any matters of serious import, natural justice requires that he can be defended if he wishes by counsel or solicitor.

In relation to this, G.O.O. 30(8) gives the Committee of Inquiry an unfettered discretion to allow for legal representation. It provides that :

> The Committee may in its discretion, permit the Government or the officer to be represented by an officer in the Public Service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission: Provided that where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented.

It follows therefore that the normal rule would be such that in a departmental inquiry, the public servant cannot claim as a matter of right that he should be allowed to be represented by a lawyer or some other person in the public service. Nevertheless, there may be cases of exceptional difficulty such as those involving a complexity of facts, large number of charges, volumes of evidence and there may be special circumstances like the educational attainments and experience of the public servant which may show that without legal assistance he will not be able to adequately cross-examine the witnesses or to establish his innocence, and thus the help of a lawyer may be allowed. In such circumstances it may safely be said that denial of legal assistance may be equivalent to denial of a reasonable opportunity to be heard within the meaning of Article 135(2) and the entire proceeding is liable to be quashed. It is to be noted here that although the disciplinary authority

is vested with the discretion whether or not to permit the officer concerned legal representation, it is not the final arbiter as to whether its refusal for legal representation is reasonable or not. It is for the Court to enquire in each case into the question, whether, having regard to all the relevant features of the disciplinary proceedings and the circumstances of the case it was unreasonable to deny such representation.

The question of right of representation before administrative tribunals in Malaysia seems to be a new concept which is fast gaining recognition. It is good to note that the recent decision of Raja Azlan Shah J. in Boresamy v. Public Services Commission[21] seems to recognise the importance of representation before tribunals in Malaysia. Although the main issue in that case was whether the presentation of the appeal may be made by a solicitor on behalf of an aggrieved person, the learned judge's ensuing discussion was clearly directed towards the wider question of right to representation before administrative tribunals. In affirming the right to representation the learned judge said :

> The considerations requiring assistance of Counsel in the ordinary courts are just as persuasive in proceedings before disciplinary tribunals. This is especially so when a person's reputation and livelihood are in jeopardy. If the ideal of equality before the law is to be meaningful, every aggrieved person must be accorded the fullest opportunity to defend himself.... where the regulations are silent on the right to the assistance of counsel, he cannot be deprived of such right of assistance.[22]

---

[21] [1971] 2 M.L.J. 127.

[22] Ibid at p. 130

However, a year earlier, Wee Chong Jin C.J. in V.C. Jacob v. Attorney General[24] said that he was "bound to decide that the Committee of Inquiry has not denied the plaintiff a reasonable opportunity of being heard merely because it has refused the plaintiff's request to be represented before it by an advocate and solicitor." In that case the plaintiff challenged the Committee of Inquiry's finding against him on the ground, inter alia, that he was denied the right to be represented before the Committee by an advocate and solicitor. The learned judge, after making extensive references to the Privy Council decision of University of Ceylon v. Fernando[24] disposed of this ground by holding himself bound to follow a decision of the Privy Council and thus made the decision quoted above.

This formulation of his conclusion seems unfortunate and is open to criticism. It must be pointed out that Fernando's case brought into sharp focus the highly variable content of the natural justice concept and demonstrated the need to evaluate each set of factual circumstances on its own merits. The factual situation of one case is certainly no precedent for subsequent cases. Previous cases are at best, guides that are illustrative of the application of an abstract principle of law to the reality as presented by the facts in the dispute. For the Chief Justice to hold himself "bound" by the Privy Council decision without an appraisal of the circumstances surrounding the case at hand, displayed a lack of comprehension of the relative nature of natural justice precepts and thus weakens the reliability of his decision.

---

[23] [1970] 2 M.L.J. 133 at p. 135.

[24] Op.cit. fn. 3, Ch. V. In Fernando's case which also involved disciplinary charges, it was held that a fair hearing had been given although witnesses had been heard in Fernando's absence. He had been given a sufficient account of what they had said and he had not requested to confront or cross-examine them either by himself or by an advocate.

Thus Raja Azlan Shah J.'s decision in Doresamy's case which is more favourable to the public servant is very much welcomed and the writer would preferably choose to follow this decision rather than Lee Chong Jin's judgement which, being that of a Singapore High Court is merely persuasive.

It is interesting to note that Raja Azlan Shah J. viewed the question of representation not only through the agency principle, that is the right at common law for any person who is sui juris to appoint an agent to act for him but also from the natural justice perspective. Here, the judgement of Lord Denning in Pett v. Greyhound Racing Association[25] must be referred to since the similarity of approach of these two learned judges to this problem of representation is quite striking and both emphasise the situations in which legal representation should be allowed.

The "considerations" in Raja Azlan Shah J.'s contemplation which required assistance of Counsel in disciplinary proceedings in the circumstances were hardly at variance with those articulated by Lord Denning. Lord Denning said :

> The plaintiff is here facing a serious charge .... if he is found guilty, he may be suspended or his licence may not be renewed. [If] the charge concerns his reputation and his livelihood.... he is entitled not only to appear by himself but also to appoint an agent to act for him....once it is seen that a man has a right to appear by an agent, then I see no reason why that agent should not be a lawyer. It is not every man who has the ability to defend himself on his own. He cannot bring out

---

[25] Op.cit. fn. 20., Ch. V.

> the points in his own favour or the weakness in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it every-day.... If justice is to be done, he ought to have the help of someone to speak for him; and who is better than a lawyer who has been trained for the task? I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.[26]

Lord Denning, followed by Raja Azlan Shah J., was demonstrating how unfair it was, in the circumstances to expect the parties themselves to state their case.

The cases also illustrate that special weight and importance must be attached to the potential consequences of the proceedings when considering whether or not to permit legal representation. In Pett's case for example, the potential consequences of the proceedings were the suspension or non-renewal of the licence. Lord Denning was clearly mindful of the fact that the livelihood of a trainer was dependant on the possession of this licence. In contrast, the case of Enderby Town Football Club v. The Football Association Limited and Anor.[27] illustrates a case which did not involve a severe penalty and was most certainly not attendant upon any loss of livelihood. Hence the decision that natural justice rules were not breached although representation was excluded.

---

[26] Ibid at p. 549.

[27] [1971] 1 All E.R. 215.

The other consideration dealt by the two cases was the appropriateness of a legally trained person to participate in the proceedings and illustrates that each tribunal must have regard to the nature of the hearing, when considering the kind of representation it will allow, and whether exclusion of legal representation would result in the parties to the proceedings being seriously disadvantaged. In Pett's case the charge was one of drugging a dog. The hearing was to be oral and the methods of inquiry and establishment of the facts were closely analogous to an ordinary criminal trial for which a legally trained person was specially suited. But in Enderby's case, the question involved the game of football, no points of law were likely to arise and it was all part of the proper regulation of the game. It was further viewed that the adjudicators were men "with a great fund of common sense and experience of football and the rules in question" and hence it would be better for the proceedings of a domestic tribunal to be conducted informally without legal representation.

It must of course be made clear that natural justice does not require that a person be allowed to state his case in the most persuasive manner; it suffices if it is presented in a fashion consistent with fairness. Given this test, it is surely possible to envisage factual situations, like in Pett's case, where representation could be imported as a necessary ingredient of natural justice. It is hoped that our Committee of Inquiry, when being faced with a question of whether or not to permit legal representation, will bear all these considerations in mind. In the case of a matter arising under Article 135(2), there is no doubt at all that any one of the punishments mentioned, namely, dismissal from service or reduction in rank would affect the public servant's reputation or livelihood and hence legal representation should be allowed.

In Malaysia, it is already generally agreed that a patent denial of natural justice is occasioned where only one party to a dispute is permitted legal representation. This has been given statutory force by virtue of the proviso to G.O.D. 30(6) which states that "where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented."

In relation to G.O.D. 30(6), the writer has earlier mentioned that, that regulation gives the Committee of Inquiry a discretionary power and it may permit legal representation only in exceptional cases. Provided that the Committee applies its mind fully to the facts and circumstances of the case, as done by Lord Denning, the regulations will appear to be a proper one. However, by so providing, the writer's research indicate that it can only give rise to a very undesirable situation - uncertainty and arbitrariness in application. Again, the writer discovered that legal representation has rarely been allowed, even in cases of dismissal from service. Legal representation, if he so desires, should not be denied to the public servant on the grounds that he can by his age, experience, the number of witnesses, the nature of evidence and charges effectively conduct his own defence. If, on these grounds he can conduct his own defecce, he would not have asked for legal representation in the first place which demands heavy expenses on his side. Further, such excuses given in not permitting legal representation would mean not taking into account the serious consequences of the disciplinary proceedings of matters arising under Article 135.

The fact is that, in a case where a public servant's livelihood and reputation is at stake, where, for example, he is about to be dismissed after long years of service on certain charges, he would want to get the maximum possible help from all available sources and if this means getting a competent lawyer to present his case, then he should not be denied access to a lawyer. It is submitted that the courts should, in the

interpretation of the scope of reasonable opportunity to be heard under Article 135(2), follow the example set by Boresamy's case and lean more in favour of legal representation than give it a narrow and restrictive meaning. Although this concept of right to assistance by counsel is still new in Malaysia and has yet to be developed in scope, Raja Azlan Shah J's decision in Boresamy's case has provided us with a good starting point and demonstrated that Malaysia is in keeping with the current trend in most countries towards expressly permitting representation.

F. Opportunity Or Opportunities To Be Heard

Article 135(2) talks of a reasonable opportunity of being heard. The question which the writer will now consider and which has been constantly considered by the Courts in Malaysia and Singapore is whether this provision requires a public servant to be given an opportunity to be heard twice - once at the enquiry stage against the allegations or charges made against him and again, against the proposed punishment or penalty.

In India, the case of The High Commissioner for India v. I.M. Lall[28] has decided that Article 311(2) of the Indian constitution require an opportunity to be heard not only on the charges or allegations but also on the question of penalty, that is, be allowed to make representations on the question of the proper punishment. The holding in Lall's case has been persuasive in subsequent Indian and Pakistan Supreme Court decisions interpreting the respective constitution. For example, the case of Khem Chand v. Union of India,[29] also decided that the constitution requires two opportunities to be given to the public servant.

---

[28] A.I.R. 1948 PC 121

[29] A.I.R. 1958 SC 300

Although there are differences between the wordings of Article 311(2) of the Indian Constitution and Article 135(2) of the Malaysian Constitution, the question whether 'reasonable opportunity of being heard' in Article 135(2) involves also a two-fold opportunity has been discussed in local cases and as will be shown, the two opportunities rule does not seem to have such a clear acceptance in Malaysia.

The first case in which the issue arose was Surinder Singh Kanda v. Federation of Malaya[30]. Rigby J. in delivering the judgement of the High Court relied on Lall's case and accepted as correct the view that there was a right to be heard on the charges as well as on the punishment. And since it was found that Surinder Singh Kanda had been given an opportunity to be heard on the question of dismissal Rigby J. held that Article 135(2) had not been violated.

However, the Court of Appeal's judgement[31] in this (Kanda's) case still leaves the question concerning the two opportunities doctrine undecided. Sheridan and Groves have suggested that the Court of Appeal "did not think the Indian rule of two hearings applied because of the differences in wording in the Malaysian Constitution."[32] But Jayakumar[33] has pointed out that the Court of Appeal did not decide this point. He demonstrated that Hill J.A. accepted the view that there are two opportunities but was unwilling to base his acceptance purely on Lall's case but Thomson C.J. clearly rejected the two opportunities doctrine. Neal J. however declined to decide the point. When the case went up

---

[30] [1960] 26 M.L.J. 115.

[31] [1961] 27 M.L.J. 121.

[32] Sheridan and Groves, The Constitution Of Malaysia, 1967, at p. 182.

[33] Jayakumar, Dismissal Of Government Servants: Surinder Singh Kanda v. Federation of Malaya. 1963 5 Mal. L.R. 160.

to the Privy Council, this point was not considered.

The two opportunities doctrine was also considered and appear to receive acceptance in Attorney-General, Singapore v. Ling How Doong.[34] In the High Court of Singapore, Winslow J. held that :

> [T]he Public Services Commission....should in my view have given him an opportunity of being heard on the proposed punishment of dismissal. He should have been informed that it was proposed to dismiss him and he should have been given a reasonable opportunity of being heard as to the reasons why such a course of action should not be taken. Only then could it be said that the requirements of Article 135(2) have been complied with.[35]

Wee Chong Jin C.J., delivering the judgement of the Federal Court took the same view and pointed out that Inspector Ling could not reasonably be expected to know that the Public Services Commission was also considering whether or not to dismiss him and added that "he had a right to know his dismissal was under consideration by the Public Services Commission and therefore a right to be heard on the question of dismissal.... If he had been given the right to be heard on dismissal he might well defend himself by urging that it was not fair or it was ultra vires the Public Services Commission to put him in double jeopardy...."[36]

The case of Phang Moh Shin v. Commissioner of Police[37] also made a reference to the two opportunities doctrine. Buttrose J. after

---

[34] [1969] 1 M.L.J. 154.

[35] [1968] 2 M.L.J. 253 at p. 259.

[36] Loc.cit. at p. 156.

[37] [1967] 2 M.L.J. 186 at p. 188.

examining the disciplinary proceedings concluded that the principles of natural justice had been flouted because "having decided to convict him the third defendant never gave him the plaintiff an opportunity of being heard in mitigation of penalty or of commenting or explaining the extraneous matters of complaint against him."

The decisions in the above two cases would seem to show that the two opportunities doctrine have found clear acceptance. However, this matter was again taken up in Sithambaran v. Attorney-General[38] and in spite of the two previous decisions, Tan Ah Tah J. observed that "in Singapore there is no decided case which expressly lays it down that the officer must be informed about the proposed dismissal before his plea in mitigation is heard. "Ling How Doong's case was then distinguished as a case involving somewhat unusual and special facts and described it as a case of enhancement of punishment without due notice to the police officer and without giving him a reasonable opportunity of being heard. In Sithambaran's case itself, Tan Ah Tah J. held that the plaintiff was given a reasonable opportunity of being heard before he was dismissed. This case suggests that the courts will not insist that the public servant must be informed about the proposed dismissal before his plea in mitigation is heard by the Disciplinary Authority. If during the course of the enquiry, the enquiry authority informs the public servant that he has been found guilty and asks him if he has anything to say in mitigation, this will be regarded as a sufficient second opportunity.

However, it should be pointed out that this requires the public servant to make his plea in mitigation even before he knows whether the dismissing authority will accept the recommendations of the inquiry authority and even before he is informed about the proposed dismissal.

---

[38] [1972] 2 M.L.J. 175 at p. 177.

It forces a public servant to make a plea in mitigation in relation to dismissal even though the Disciplinary Authority might only have a reprimand or fine in mind. Hence, this makes the decision in Sithambaran's case unsatisfactory and unattractive to the public servant.

The question whether a public servant should be given two opportunities to be heard was also considered by Wee Chong Jin C.J. in V.C. Jacob v. Attorney-General[39] where he ruled on a situation in which it is not necessary to give the public servant two opportunities. This is in a case where the public servant is informed that the question of his dismissal from the public service was under consideration on grounds clearly indicated in the letter informing him of the inquiry and he is therefore left in no doubt at all that if the charges against him are proved he might suffer the extreme penalty of dismissal from service. It follows that in such a case the public servant will be afforded, at the earliest stage in the matter, the opportunity to make representations, if he so desires, to the Committee of Inquiry as to why he should not suffer the contemplated penalty of dismissal on the charges enumerated against him.

Finally in the recent case of Ismen bin Osman v. Government of Malaysia,[40] Sharma J. stated that "the reasonable opportunity envisaged in Article 135(2) includes.... an opportunity to make his representation as to why the proposed punishment should not be inflicted on him."

In summing up on the present position relating to the two opportunities doctrine, it can be said that all the decisions discussed here seem to indicate that the two opportunities rule does not have such a clear acceptance in Malaysia. Some Judges are of the opinion that 'reasonable opportunity' in Article 135(2) requires two opportunities to be given to the public servant whilst others either clearly reject

---

[39] Op. cit. fn. 17, Ch. V.

[40] Op.cit. fn. 16, Ch. V.

the two opportunities doctrine or decline to decide the point. And there are still others who play it safe by not directly making a ruling whether in Malaysia one or two opportunities ought to be given but merely provide us, as a guide, certain situations when it is not necessary to give an opportunity again to the public servant to make his plea in mitigation of the proposed penalty before the Disciplinary Authority.

However, it does appear that the Courts would be much more willing to insist on two opportunities to be heard where the original allegations and charges against the public servant attract a variety of punishments ranging from dismissal to a mere caution. This is clear when Winslow J. in Ling How Loong v. Attorney-General, Singapore,[41] said that he would have been reluctant to interfere with the decision of the Public Services Commission if "the original charges against the plaintiff only attracted one punishment, namely dismissal." In insisting that the plaintiff should be given a second opportunity to be heard, the learned judge took into consideration the facts that the plaintiff originally faced one of a variety of punishments, the Police Commissioner's award was merely that of a fine and a reprimand and thus the decision of the Public Services Commission to enhance the punishment to dismissal would take the public servant by surprise. On appeal, Wee Chong Jin C.J. dismissed the appeal and affirmed the lower court's decision that the dismissal by the Public Services Commission was null and void on the grounds that, inter alia, the respondent had not been given a reasonable opportunity to be heard on the question of his dismissal.

Finally, bearing in mind the uncertainty in Malaysia revolving around the question whether 'reasonable opportunity' in Article 135(2) includes a second opportunity to plead in mitigation of the

---

41 [1969] 2 M.L.J. 253 at p. 259.

proposed penalty, the writer wishes to add that it is now really up to the Malaysian legislature to improve on the present situation. The legislature can, if they wish, follow the Indian example; that is to say by making use of the amending process to provide more in favour of the public servant. It should be noted here that the Indian cases on the one or two opportunities question, such as Lall's case which was cited earlier, turn mainly on clause (2) of Article 311 prior to its amendment. After its amendment in 1963, Article 311(2) specifically incorporates the second right to be heard on the question of penalty and thus, India, unlike Malaysia, has no more doubts hovering over the two opportunities doctrine.

C. Limitations To The Protection Afforded By Article 135

A literal interpretation of Article 135 seems to suggest that for every termination of service or demotion, the public servant must be given the protection provided by that Article. It is unfortunate for the public servants that this does not seem to be the true position and that, not every and any termination of service attracts the protection in Article 135. This is because the expressions 'dismissed' and 'reduced in rank' is not used in its ordinary everyday sense. The Courts, in deciding whether the constitutional protection is attracted, have always found it necessary to draw a distinction between dismissal and mere termination of service and between reduction in rank and mere demotion. For this purpose the Courts have resorted to one criterion, that is, the penalty test. This means that in order for a termination of service to amount to a dismissal or reduction in rank within the meaning and protection of Article 135, an element of punishment must be present.

The first case in which the element of penalty arose was Nunusamy v. Public Services Commission[42] in which the Privy Council held

---

[42] [1967] 1 M.L.J. 199.

that the expressions 'dismissed' and 'reduced in rank' in Article 135(2) carried with them an element of penalty or punishment. Their Lordships felt that the use of the phrase "dismissed or reduced in rank or suffer any other disciplinary measure" in Article 135(3) which immediately follows the relevant Article strengthened the view that 'dismissal' and reduction in rank must be disciplinary actions and therefore involve the element of penalty.

To clearly establish the applicability of the penalty test the Privy Council also relied, in particular, on Parshottam Lal Dhingra v. Union of India[43] which decided that a reduction in rank must be a punishment if it carries penal consequences with it and to determine this, two tests are to be applied. The plaintiff must first show that he has a right to the post or rank and secondly, show that he has suffered evil consequences such as forfeiture of pay or allowances, loss of seniority in his substantive rank or stoppage or postponement of future chances of promotion.

Thus in Munusamy's case itself, the facts were that the Public Services Commission had terminated Munusamy's appointment as a Probationary Assistant Passport Officer without being given an opportunity of being heard in his defence and he was reverted to his previous post of Immigration Officer. Applying the above tests to this case, the Privy Council decided that "there had been no reduction of rank enabling the appellant to rely on the provisions of Article 135(2) of the Constitution and so obtain a hearing for the reason that the action of the respondent / the Commission / cannot be characterised as by way of punishment.[44] Thus in cases where the two tests cannot be satisfied, the appointment can be terminated without a hearing being given to the accused official.

---

[43] A.I.R. 1958 SC 36.

[44] Loc.cit. at p. 202.

The need for the element of penalty was also stressed in two other cases. In Ghanasundram v. Public Services Commission,[45] the services of a temporary employee was terminated without giving him a hearing. In rejecting the application of Article 135(2) to this case, Raja Azlan Shah J. said that in the circumstances of the case there had been no dismissal since "dismissal presupposes some disciplinary proceedings against him whereby he is found guilty of indiscipline and misconduct...."

Later in Haji Ariffin v. Government of Pahang,[46] Suffian F.J. after referring to both Chingma's case and Munusamy's case concluded that "it is therefore clear that dismissal in West Malaysia is accompanied by penal consequences, but not mere termination of service."

The cases therefore show that the courts have assigned a limited scope to the words 'dismissed' and 'reduced in rank' by insisting on the presence of the element of punishment before the protection in Article 135(2) can be invoked. This emphasis has, unfortunately, cut down the value of the protection of Article 135 to the public servant.

The application of the protection enshrined in Article 135 is further limited by the fact that the courts have also drawn a distinction between 'dismissal' and 'termination of service in accordance with the terms of the contract of employment', and that the safeguards provided by the Constitution can only operate in the former case.

The case of Haji Ariffin v. Government of Pahang[47] demonstrate

---

[45] [1966] 2 M.L.J. 157 at p. 159

[46] [1969] 1 M.L.J. 6.

[47] Ibid.

that if the Government has the option of either terminating the service in accordance with the terms of the contract or to dismiss for misconduct, and if it chooses the former course of action, Article 135 is not attracted. But if it chooses to institute disciplinary proceedings and impose a penalty or dismiss, then the public servant must be given an opportunity to be heard as required by Article 135(2). In this case the appellant was a Kathi and had a contract of service which made his appointment terminable at one month's notice or on payment of one month's salary plus cost of living allowances in lieu of notice on either side. There was some disagreement between the Kathi and the Head of the Department of Religious Affairs and the latter recommended to the Ruler that the Kathi's service be terminated. The Ruler chose to act under the Kathi's terms of appointment and accordingly terminated his service on three month's notice. The Kathi was given no hearing and the judges of both the High Court and the Federal Court held that the Kathi's service had been lawfully terminated and that an opportunity of being heard under Article 135 is not required. The judges were of the view that as long as the termination was founded on the right flowing from the contract then prima facie the termination is not a punishment within the meaning of Article 135(2).

Counsel for the appellant argued that the real reason for termination was dissatisfaction with the appellant and relied on a passage in Dhingra's case[48] to the effect that where the Government has the right to terminate under the contract without observing the constitutional restriction but instead choose to punish the servant and the termination was founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of the Constitution must be complied with.

---

[48] Op. cit. fn. 43, Ch. V, at p. 49.

Suffian F.J. did not reject this view but held that in this case, the Ruler had neither chosen to punish the appellant nor found the termination of his service on misconduct. The Ruler had purely proceeded on the terms of the contract and such termination does not attract the Constitutional protection "even though misconduct is also present and even though that is a real reason for the action taken"[49]. The learned judge further added that "while it is true that the Kathi has lost a steady job, the termination does not involve a penalty or punishment so as to make it a dismissal within the meaning of Article 135(2).... and it is not, therefore, necessary first to give him a reasonable opportunity of being heard."[50]

This was a case in which the public servant has served for over seven years and if his services can simply be terminated on giving the requisite notice after a disagreement with a departmental head and without a hearing accorded to him, then surely there is a need for a second look at the Constitutional provisions designed to protect the security of tenure of public servants.

This unsatisfactory position can be further illustrated by the Privy Council's ruling in Government of Malaysia v. Lionel[51] which appears to strongly establish the primacy of contract over constitutional safeguards. In this case, the respondent was appointed a temporary clerk interpreter in 1953 with the Police Clerical Service on a contract of employment which incorporated the right of either party to terminate the contract on one month's notice. In 1962, disciplinary action was

---

[49] Dictum of Bose J. in Parshottam Lal Dhingra v. Union of India, A.I.R. 1958 SC 36 at p. 51; cited approvingly by Suffian F.J.

[50] Op. cit. fn. 46 Ch. V, at p. 17.

[51] [1974] 1 M.L.J. 3.

instituted against him for alleged breaches of discipline, that is for having conducted himself in such a manner as to bring the public service into disrepute and with having been insubordinate on two occasions. He was required to exculpate himself within fourteen days of the receipt of the charge but his attempt to do so failed and the Chief Police Officer proceeded to terminate his services. The respondent attempted to treat the termination of his employment as a dismissal and claimed a declaration that it was void and inoperative as it was done by the Chief Police Officer instead of the Public Services Commission. The Privy Council held that the respondent's employment was terminated in accordance with the terms of his appointment and as such a termination did not constitute dismissal, there was no merit in the respondent's argument that his dismissal was void for failing to comply with Article 135.

Here, a public servant who has served for nearly nine years has his service terminated at one month's notice because that is one of the terms of his 'temporary' contract. It is submitted that if a temporary public servant can become eligible to obtain pension after ten years of service, there is no good reason why he should not also be entitled to the constitutional protection against an abrupt termination of his employment. In Lionel's case, the protection of Article 135(1) would have been particularly valuable as the charge involved insurbodination on two occasions.

Further it should be pointed out that the premature termination of an appointment for an alleged misconduct involves not only the loss of a career but also the loss of future earnings and prospect of pension. In Munusamy's case, the Privy Council decided that forfeiture of pay or allowances was a punishment which would attract the protection of Article 135. But in Lionel's case the Privy Council has now appeared to have decided that a termination of employment in accordance with the contract of employment which brings the public servant's pay entirely

to an end is not a punishment even though the termination of employment is brought about because the public servant has failed to exculpate himself.

In relation to this it is also noteworthy to contrast Haji Ariffin's case and Lionel's case. Whilst Haji Ariffin's case envisaged a situation where the Government had to decide which course of action to take before any proceedings were taken, Lionel's case has made the situation worse by ruling that even after the institution of disciplinary proceedings, the Government still has the final choice of dismissing or terminating in accordance with the terms of the engagement. The end result may simply be summed up as establishing the primacy of contract over Constitutional safeguards and giving the Government a blanket authority to raise the banner of contract to side-step Constitutional safeguards.

Although it is recognised that an arrangement by contract ought to be given effect in law, it is respectfully submitted that the contract of employment ought not to be used as a means of setting aside an important constitutional right. The simple order of termination in accordance with the terms of the contract should not be made to become a camouflage for an order of dismissal by way of punishment.

Another method which is open to the Government to avoid giving public servants the protection of Article 135 is by invoking the provisions of G.O.D. 44, that is termination of employment in the public interest. This regulation has the effect of creating a sense of insecurity in the minds of the public servants and invest the authorities with very wide powers which may conceivably be abused - and this, the staff side of the National Joint Council maintains, has found to be evident in a number of cases.[52]

---

[52] In a letter [( ) dlm. MBKPP.01/37] from the Staff Side to the Official Side of the National Joint Council.

The effect of G.O.D. 44 is that a public servant's services may be terminated "where it is represented to or is found by the Government that it is desirable that any officer should be required to retire from the public service in the public interest...." and in such cases, the procedure may not be in accordance with the procedure laid down by Article 135. Thus the Government may act on representations and the officer may not be given the opportunity to defend himself against the representations adequately.

Further, it is not always true to say that compulsory retirement under G.O.D. 44 is not a punishment and therefore does not attract the protection of Article 135. The Staff Side has stated[53] that a number of officers have had their services terminated by the use of G.O.D. 44 without any opportunity of being heard and such officers have also suffered 5% to 10% reduction on their pension emoluments by way of punishment. Clearly the use of G.O.D. 44 in certain cases can be by way of penalty and amounts to dismissal as envisaged by Article 135(2) and requires an opportunity to be heard to be given to the public servants.

The only judicial pronouncement made in relation to G.O.D. 44 is in the very recent case of Mahan Singh v. Government of Malaysia.[54] The plaintiff who had served the Government for more than twenty-four years had a termination letter served on him stating that the Government had decided to pension him off in the public interest and in pursuance of G.O.D. 44. The plaintiff claimed that the termination was a dismissal and therefore invalid as he had not been given an opportunity to be heard. Sharma J. held that the plaintiff was in fact dismissed even though the Government purported to terminate his services. The

---

[53] Ibid.

[54] [1974] 1 M.L.J. 149.

termination of service amounted to a dismissal within the meaning of that term in Article 135(2) of the Constitution. This was because the learned judge felt that the letter of termination if shown to any future employer would cause doubts about the plaintiff's capacity and character. Any future employer would think that the plaintiff had been guilty of disloyalty to the King and guilty of bad conduct in his work. The order of termination therefore resulted in a stigma or punishment to the employee and therefore amounted to a dismissal.

The decision is certainly very favourable to the public servant. Most letters of termination could somehow be regarded as stigmas and if the effect of that is to convert 'terminations' into 'dismissals' then public servants will once again receive the constitutional protection of Article 135. It is to be hoped that the decision will survive an appeal to the Privy Council which is now being contemplated.[55]

Finally, the writer wishes to stress again here that Article 135 is directed towards regulating dismissal procedures in order to protect public servants against the arbitrary exercise of discretionary power. The writer suggests that the courts undertake a vigorous scrutiny of every purported termination to ensure that the Constitutional safeguards are not abrogated by allowing what is really a dismissal to be clothed in contractual garb. The penalty test, that is "whether evil consequences such as forfeiture of pay or allowances, loss of seniority... ...[56] would be a useful criterion in this determination provided that it is recognised that losing a livelihood is as much a penalty as is forfeiture of pay or loss of seniority. The need for such an approach is made all the more imperative when it is realised that Government servants are subject, or can be readily made subject to the kind of contract

---

[55] The Straits Times, 4th May, 1974 at p. 20.

[56] Lord Hodson J. in Munusamy v. Public Services Commission [1967] 1 M.L.J. 199, P.C.

under which Lionel or Haji Ariffin was engaged.

However, the courts always felt themselves bound by a Privy Council ruling and it is unlikely that they are prepared to adopt a different approach and correct the injustice done to the public servants. Following the Privy Council's approach in Lionel's case, the Constitutional safeguards would be left with little significance and value and would be undeserving of Constitutional status. Thus it is high time our legislators take a second look at the Constitutional 'protection' provided in Article 135 and introduce some amendments so as to include, if possible, all terminations within the purview of its protection.

CHAPTER VI

DISCIPLINARY PUNISHMENTS

A. Introduction

This chapter deals with the penalties that may be imposed by the Disciplinary Authority on a public servant for improper acts and omissions which constitute offences calling for disciplinary action. The breaches of discipline that may lead to the imposition of penalties are numerous and varied and, as has been discussed earlier in Chapter II,[1] it is not possible to codify all of them. In fact the public servants are as much bound to follow the written code of conduct as the unwritten one.

G.O.D. 36 lays down ten types of disciplinary punishment that a Disciplinary Authority may impose on an officer. The Disciplinary Authority may impose any one or any combination of two or more of the punishments listed down but is not allowed to impose any other punishments not listed. The ten punishments are :

(i) warning;
(ii) reprimand;
(iii) fine;
(iv) forfeiture of salary;
(v) withholding of increment;
(vi) stoppage of increment;
(vii) deferment of increment;
(viii) reduction of salary;
(ix) reduction in rank; and
(x) dismissal.

---

[1] Ante., p. 14.

The first six penalties, varying from a mere warning to a stoppage of increment, are regarded as minor penalties, whilst the penalties of deferment of increment, reduction of salary, reduction in rank and dismissal are regarded as major penalties. The General Orders however do not provide for specific punishments for different disciplinary offences or category of offences. The regulations leave it to the discretion of the punishing authority to select the appropriate punishment or punishments, having regard to the gravity of the offence found proved against the public servant. The Disciplinary Authority will also take into account other considerations when deciding what punishments to impose and these will be dealt with later in this chapter. In dealing with the nature of punishments, an attempt will however be made to make references generally to some of the usual offences that merit certain specific punishment.

8 (1) Types And Nature Of Punishments

(a) Warning And Reprimand

The imposition of the first two punishments, viz., a 'warning' and 'reprimand' is the most common way to punish a public servant. They are also the lightest of all the punishments. However it is not true to say that these two punishments can only arise out of a disciplinary action. They may also be imposed on a public servant not by way of a punishment. There may be occasions when a superior officer may find it necessary to criticise adversely the work of an officer working under him, e.g. pointing out negligence, carelessness, lack of thoroughness, and delays, or he may call for an explanation for some act or omission and taking all the circumstances into consideration, he might feel that the matter is not serious enough to justify formal disciplinary proceedings and will therefore take some kind of informal

action such as the communication of a written warning, admonition or reprimand to the public servant.

A warning and a reprimand which is the subject of discussion here are the punishments which are imposed on a public servant after going through some formal disciplinary proceedings and finding him guilty. These two penalties are usually imposed together because the offences which merit such penalties are almost similar in nature. The public servants who are awarded such punishments are mainly first offenders and the offences committed are not so serious in nature, e.g. coming late to work, leaving office before it is time and indebtedness causing some financial hardship and therefore do not warrant some other heavier penalties.

The penalty here will take the form of a written warning to the public servant that a repetition of the same offence will in future make him liable to a heavier punishment and certain adverse comments and remarks will be made against his conduct. The Head of Department will then record the particulars of the punishment into the public servant's Record of Service Book. This might, to some extent, also affect the assessment of the public servant's merit and suitability for promotion in future.

(2) Fine And Forfeiture of Salary

The Disciplinary Authority may, if it considers appropriate, punish the officer by making him pay a fine or forfeit part of his salary. These two penalties are regulated by G.O.D. 37. G.O.D. 37(i) sets a limit on the amount of the fine that the Disciplinary Authority can impose. Any fine imposed on any one occasion must not exceed an amount equal to three days' basic

salary of the officer concerned, and if the officer is fined on more than one occasion in any single month, the aggregate of the fines imposed on him in that month must not exceed a sum equal to 15% of his monthly basic salary.

Forfeiture of salary is usually imposed on an officer for being absent without leave or reasonable cause. However it must be borne in mind that in such a case the forfeiture is not considered as a fine under the General Orders[2] and it follows that it is not governed by the above provisions relating to the maximum amount of fine on any particular occasion or in any particular month. The amount of salary to be forfeited for being absent without leave or reasonable cause will usually be decided by the Disciplinary Authority. But in cases where there is no decision made on the amount, the amount to be forfeited "shall be calculated with reference to the actual period in which the officer had absented himself."[3] All fines or forfeitures are deducted from the monthly emoluments of the officer concerned.

(3) Withholding of Increment

Withholding of increment is another form of punishment that can be imposed on a public servant. All public servants have a right to increment but the competent authority is given power to withhold increment if a public servant's conduct has not been good or his work has not been satisfactory. Such a punishment is usually imposed when a public servant repeats any acts or omissions for which he has been given a warning and a reprimand. Like all disciplinary punishments, this punishment can also be imposed on first offenders if the

---

[2] G.O.D. 37(ii).

[3] Ibid.

offence committed is a serious one, such as giving a false or misleading account of the extent of his pecuniary embarrassment when directed to do so. It can also be imposed as a punishment for acts of insubordination.

The imposition of such a penalty on the public servant means that during the period for which the punishment is effective, he is not entitled to receive any increment that may be due to him. However, at the end of the said period, he shall be entitled to receive the increment which was due to him but has been withheld from him by reason of this punishment. The maximum period that may be imposed for this punishment is three months and "when imposed the officer shall be warned in writing that if he does not show any improvement in his work or conduct during the period in which the punishment is effective, he shall be liable to a more severe punishment of either stoppage of increment or deferment of increment."[4] Thus, by the very nature of the punishment itself, the public servant is given not only the opportunity to improve and better himself but is also given an added incentive to achieve this. If he succeeds he gets back whatever increment originally withheld from him. If he fails, he will be threatened with a much more severe penalty.

(4) Stoppage of Increment

This punishment is often imposed on a public servant for offences which merit the penalty of withholding of increment and despite the warning given to improve himself, continues to repeat the said offences. Among other offences for which this punishment can be imposed are the offences of :

---

[4] G.O.D. 38(1).

(i) disobeying orders such as continuing to receive entertainment (within the meaning of G.O.D. 5) from certain businessmen after being warned not to;

(ii) serious pecuniary embarrassment;

(iii) coming to work in a state of being drunk; and

(iv) continue to behave in a disrespectful manner towards the general public after being warned.

For the imposition of this punishment, the Disciplinary Authority is not fettered by any time limit and therefore can impose the punishment for any length of time it thinks fit. The effect of such a punishment is that, during the period in which the punishment is effective, the officer shall not be entitled to any increment. However, at the end of the said period "he will draw his salary at the rate which would have been payable to him if his increment had not been so stopped."[5] It must be added that such a punishment "does not alter the incremental date of the officer upon whom it is imposed nor does it entail any loss of seniority of that officer."[6]

(5) Deferment Of Increment

Deferment of increment is generally imposed on the officer as a punishment for serious offences which do not justify a reduction in rank or a dismissal. This may be due to certain mitigating factors which the Disciplinary Authority has taken into account. The Disciplinary Authority usually resort to this punishment after all other punishments had

---

[5] G.O.D. 39(1).

[6] G.O.D. 39(2).

failed to have its effect on the officer concerned to improve his work and conduct. If the offence is serious enough it may even be imposed on first offenders. Some of the offences which merit such a punishment are :

(i) disobeying orders and disobeying them in such a disrespectful manner as may be construed to be guilty of insubordination;

(ii) serious pecuniary embarrassment;

(iii) speaking in public on any matter which is the subject of a political controversy between two or more political parties by an officer in the Managerial and executive group;

(iv) habitual acts of approving the work done by contractors as being completed and in order without prior examination or checking; and

(v) acts of dishonesty such as finding the officer enjoying a film in a cinema whilst he was supposed to be on medical leave.

The punishment may be imposed by the Disciplinary Authority for any period not less than three months[7] and usually, in practice, not exceeding three years. When such a punishment is imposed on an officer he is not entitled to any increment for and during the period in which the punishment is effective. Apart from this, G.O.B. 40(2) lays down further consequences upon the officer on whom the punishment is imposed. The consequences are such that "his incremental date shall be altered to the date on which the punishment expires" and shall remain

---

[7] G.O.B. 40(1).

so until he reaches the maximum of his scale or gains a remission. In addition, whilst the punishment of stoppage of increment does not entail any loss of seniority on the officer, an officer shall, when awarded with a deferment of increment suffer the loss of seniority by a period equal to that of the punishment.

However, for this punishment, a remedy is offered to the officer concerned in the form of a remission of the punishment under G.O.D. 41. The officer may apply to the Disciplinary Authority for such a remission and this application may be "made at any time not earlier than one year from the date on which the punishment expires."[8] To earn a remission it shall be necessary for the work and conduct of the officer to have so improved as to have earned a positive recommendation from the Head of Department to the Disciplinary Authority that the remission applied for should be approved.[9] If the Officer's application is approved he gets a remission of this punishment but this will not restore any loss of seniority to the officer.[10]

(6) Reduction Of Salary

The penalty of reduction of salary is usually awarded to an officer who commits an offence which merit the punishment of deferment of increment but this punishment (deferment of increment) cannot be awarded to the officer because he has reached the maximum of the salary scale of his grade. Because of this, the officer who has received punishment in the form of a reduction of salary must bear the same amount of losses

---

[8] G.O.D. 41(1).

[9] G.O.D. 41(2).

[10] G.O.D. 41(3).

from both aspects of seniority and finance, which he would have suffered if the penalty of deferment of increment can be imposed.

This punishment is regulated by G.O.D. 42. The extent of the punishment imposed on the officer must not place him in a "position where he will receive a salary less than the minimum of the salary segment in which he is at the time when this punishment is imposed."[11] The regulation further provide that the officer will suffer the consequences of "loss of seniority by a period equal to that which will take him to earn the salary which he was drawing immediately before this punishment was imposed."[12]

(7) Reduction In Rank And Dismissal

The nature of these last two punishments listed under G.O.D. 36 is not clarified anywhere in the General Orders. However, a reference to these two punishments is made in Article 135 of the Federal Constitution and has been the subject of litigation in a number of cases. It was clarified in the previous chapter that 'reduction in rank' and 'dismissal' have been interpreted by our courts as not meaning a mere demotion and termination of service respectively. Dismissal and reduction in rank are technical terms used in cases where a person's services are terminated or altered by way of punishment and are also used to denote the two most severe punishments.

In stating the nature and elements of these two punishments reference must be made to the Privy Council decision in Munusamy v. Public Services Commission.[13] Their Lordships

---

[11] G.O.D. 42(2).
[12] G.O.D. 42(3).
[13] [1967] 1 M.L.J. 202.

have clearly stated that dismissal and reduction in rank are disciplinary actions and therefore must involve the element of penalty. They further clarified that in order to determine whether the consequences are penal in nature, either of the following elements must be present:

(i) the public servant has, but for such termination or reduction in rank, a right to hold the post or the rank; or

(ii) the public servant has been visited with evil consequences such as forfeiture of pay or allowances, loss of seniority in his substantive rank, stoppage or postponement of future chances of promotion.

The above therefore constitute the nature and consequences of the two disciplinary punishments. The punishments put an indelible stigma on the officer affecting his whole future career and once dismissed the officer will no longer be eligible to apply for any other government posts. An officer whose service is merely terminated does not forfeit any claims to pension even if the service is terminated in circumstances reflecting discredit.[14] But a public officer who has been dismissed by way of a disciplinary punishment forfeits all claims to pension, retiring allowance, gratuity or any other benefit which he might otherwise have been eligible.[15] Bearing in mind the severe consequences that ensue from such a punishment the Disciplinary Authority must therefore exercise their power to dismiss with extreme care and caution, that is they must weigh the circumstances surrounding each case care-

---

[14] S8, 9 and 10 of the Pensions Ordinance, 1951.

[15] S5(1) of the Pensions Ordinance, 1951.

fully, give the public servant a reasonable opportunity to meet the charges and defend his case and should only award such a punishment if they are satisfied that the offence committed really justify such an action to be taken.

The punishment of reduction in rank is usually imposed in a case where, initially, the nature of the offence committed justifies a dismissal but because of certain mitigating factors the officer is only reduced in rank. Other offences which the Disciplinary Authority usually feels merit this punishment are those where the officer is found to be unsuitable and incapable of continuing to hold a particular post because of certain factors like deterioration of work due to deterioration in character. Such situations if allowed to continue may result in inefficiency but is not serious enough to warrant a dismissal.

In relation to dismissals, some of the offences which justify such a punishment are :

(i) the act of consciously obstructing the Government's efforts towards development, thus projecting an attitude of disloyalty to the Government;

(ii) acts of using one's official position to gain a personal advantage or corruption;

(iii) absent without leave or reasonable cause for seven consecutive days;

(iv) other less serious offences which have become serious in nature because of frequent repetition of the same offences; and

(v) criminal convictions in a court of law such as theft, robbery, corruption and criminal breach of trust.

It must be pointed out that once a public servant is found guilty on a criminal charge and is convicted in a court of law, he is not automatically dismissed from service. He can only be dismissed if he has been through another kind of formal departmental disciplinary proceedings and the Disciplinary Authority has come to the conclusion that he should be dismissed.

Usually, when criminal proceedings are instituted against an officer, the Disciplinary Authority after being made aware of the institution of criminal proceedings against the officer and after considering all relevant information may, if it thinks fit, interdict the officer from the exercise of his duty. This interdiction may be made effective from the date of his arrest or the date in which summons are served on him and "the officer shall, unless and until he is suspended, be allowed to receive only such portion of the emoluments of his office not being less than one half as the Disciplinary Authority may think fit."[16] In practice the officer usually gets only half of his salary.

As has been said earlier, when an officer is found guilty and convicted in court he is not dismissed straight away from his service. He will first be suspended and this usually implies that disciplinary action with a view to dismissal is being contemplated. During such a period the officer ceases to get any emoluments and neither does the unpaid portion of his salary whilst under interdiction gets refunded.[17] This

---

[16] G.O.D. 31(3).

[17] G.O.D. 31(4).

may have harsh effects on the public servant especially if he has a lot of dependents. It is therefore desirable that any disciplinary action that is contemplated against him should be instituted immediately and dealt with in a speedy manner.

The Disciplinary Authority after considering the charge, the notes of evidence and judgement of the court together with full particulars of the officer's past record and bearing in mind the effect of the breach of discipline on the image of the public service, may either dismiss the officer in which case he will not be entitled to any unpaid portion of his emoluments or inflict some lesser punishment like reduction in rank or deferment of increment. In the latter case the question of his emoluments during the period of interdiction and suspension shall be at the discretion of the Government. What usually happens is that only a portion will be refunded and the rest treated as a fine.

C. Basis Of Disciplinary Decisions

It has been noted that the General Orders do not provide for specific punishments for different disciplinary offences and that it is left to the discretion of the Disciplinary Authority to select the appropriate punishment having regard to the gravity of the offence and the circumstances surrounding each case. Each case is therefore treated on its own merits.

In deciding on the nature of punishment to be awarded, the Disciplinary Authority will take into account the gravity and seriousness of the offence committed and this will in turn depend on several factors which will be discussed here. When a disciplinary action arises, the Head of Department will usually submit a report to the Disciplinary

Authority containing the officer's record of service and a recommendation as to the nature of punishment to be awarded. The Disciplinary Authority will accept or vary the recommended punishment depending on its findings. The officer's record of service will often show the number of years the officer has served the Government and will also show that he either has a clean record and this is his first offence or he has received copies of warnings and reprimands in respect of previous breaches of discipline. If the offence committed is not so serious and is a first offence, the punishment awarded will be a light one but if it is habitual, indicating that the officer has not done anything to improve himself and has a strong tendency of continuing to behave in such a manner, then strong and effective measures must be taken against him.

The other factors which may also be taken into consideration before a decision is made are :-

(i) the extent of damage done to the good name and image of the public service;

(ii) the consequences of the offence in so far as it is prejudicial to good order and discipline and the good name of the department concerned;

(iii) in cases of disobedience and insubordination especially, it is important to consider whether the commission of the offence is premeditated or the result of being provoked by the senior officer;

(iv) the amount and length of training that has been given to the officer. Whilst it is proper to expect an officer who has been given adequate training to perform his duties very efficiently, it is quite unfair to expect that same standard of work from another officer who has not have sufficient training;

(v) whether the officer is mentally sound or is there any evidence of mental lapses in the past.

(vi) the public servant's age, maturity of thought and reasoning and the consequences of being dismissed if still a minor or nearing pensionable age. In this case, if the public servant is of declining age and because of this his mental and physical health is deteriorating it must be considered whether he will still be useful to the public service and if so whether he should remain in his rank or should be reduced in rank. If the public servant is a young officer serving in the subordinate and manual group and tends to be difficult and belligerent, he should be given a more effective punishment and this may even amount to a dismissal. A young officer, in contrast to one who is nearing pensionable age, is more likely to get another job elsewhere. But if a young officer is convicted on a first offence and the punishment awarded reflects leniency on the part of the law, another chance to serve in the service is usually allowed to him;

(vii) the length and merit of the officer's service. An officer nearing the age of retirement after a long meritorious service and convicted of a charge that do not entirely damage the merit of his past services may be compulsorily retired from service under G.O.D. 44 with or without any reduction in his eligibility for pensionable benefits;

(viii) the gravity of the offence committed in view of the officer's official status, experience and educational attainments. As an example, those in the subordinate

and Manual Group with little educational background and holding posts which demands less responsibility are assumed to be more prone to quarrelling and fighting than those who are more highly educated and belong to the Managerial and Executive Group. Thus, if a labourer gets into a fight with another person and is subsequently convicted of assault and battery in a court of law then surely the damage done to the image and good name of the public service as a result of such a conviction is less than when, say an Assistant District Officer, is convicted for a similar offence; and

(ix) other mitigating circumstances such as the number of dependents the public servant has to support.

The gravity of each offence will thus be based on some of the above factors and if all the circumstances surrounding the case permit a lenient view to be taken on the matter, the public servant will be awarded a light punishment. The punishment awarded may be lighter than that recommended by the Head of Department or as contemplated in the charge-sheet but not heavier. For example, whatever punishment is to be awarded to an officer against whom disciplinary action was taken with a view to punishment less than dismissal shall not be punished in excess of this intention such as by termination of service, retirement in the public interest or outright dismissal. However, disciplinary action with a view to dismissal may be commuted to lesser punishments depending on the merit of the case.

Once a decision has been reached the public servant will receive through his Head of Department, a written decision of the Disciplinary Authority. This procedure is significant in that, if the public servant wishes to make an appeal against the decision he can only do so within

fourteen days, that is from the date of receipt of the written decision.[18] Finally, as directed by G.O.D. 43, all punishments must be recorded in the public servant's Record of Service Book.

---

18 ... Disciplinary Board Regulations, 1972

CHAPTER VII

REMEDIES

It is proposed to discuss in this chapter the various forms of remedies and to see in what respects and manner these are available to the public servants.

In every well-managed organisation there is a need for grievance procedures. In respect of disciplinary action, this takes the form of appeals. This is the more common term used in the public service, connoting a special safeguard to protect public servants from abuse. The procedural safeguards during the course of the disciplinary proceedings discussed earlier may offer the public servant some measure of protection against arbitrary action but these alone are not sufficient. Appeal rights are therefore generally meaningful and they do act as a brake on hasty, ill-conceived decisions. Thus most jurisdictions provide public servants with an opportunity to prefer an appeal against the disciplinary action taken. Such appeals may take the form of a departmental remedy, that is the right to appeal to an appellate board established for that purpose, or it may take the form of a statutory right of appeal to the courts on points of law.

Attention will be focussed on departmental remedies first and it can be said at the outset that in Malaysia, the right to appeal is the only form of departmental remedy available to the public servant and the exercise thereof depend on specific rules and regulations. It must be noted too that there is no inherent right of appeal and such a right is a creature of statute. An appeal would therefore be possible if the Statute gives a right to it and this is so stated in Article 144(5B)(ii) of the Federal Constitution.

The right to appeal together with the system of disciplinary Appeal Boards constituted under the Public Services Disciplinary Board

Regulations, 1972 therefore provides a striking evidence of the desire to further protect public servants in Malaysia from arbitrary punishment. This means that for all disciplinary offences which have been proved against the public servant, the Disciplinary Authority may impose any punishment ranging from a fine to a dismissal but the public servant, when he is dissatisfied with the penalty imposed or with any part of the disciplinary proceedings by which the decision was arrived at, may appeal to the relevant Appeal Board.

The function of the Appeal Board is to receive, consider and decide on any appeal made in accordance with the provisions of the 1972 regulations. The composition of the Appeal Boards for the various categories of officers are set out in Appendix II and bearing in mind that there must be uniformity and fair treatment, it will be observed that the task of hearing appeals is carefully and well-distributed between the Public Services Commission and the Public Services Department. The Public Services Commission's Appeal Board not only acts as the appellate board for officers in the Managerial and Professional Group but also hears all appeals against dismissals. For all other categories of officers and for all decisions, except as respects dismissals, appeals may be heard before the Public Services Department's Appeal Board.

Appeals to the appellate board must strictly be made in accordance with the provisions of the 1972 regulations, otherwise they may be rejected. Regulation 13(1) provides that an appeal must be made in writing by the Appellant to an Appeal Board through his Head of Department. This provision has been subjected to judicial interpretation in the case of Doreasamy v. Public Services Commission,[1] in which the main issue was whether the appeal must be made by the appellant himself or can it be made by some other person on his behalf. In that case, the presentation of an appeal was made by a solicitor on behalf of the aggrieved

---

[1] [1971] 2 M.L.J. 127.

person. The Chairman of the Disciplinary Board who was responsible for the preparation of the appeal noticed that the appeal was made by the applicant's solicitor and so he informed the applicant that the appeal against his dismissal cannot be considered by the Public Services Commission as the appeal was not made by the applicant personally in writing as provided by Regulation 13(1). The Federal court, in recognising the importance of legal representation, decided that where the aggrieved person has a statutory right of appeal and the regulations are silent on the right to assistance of counsel, he cannot be deprived of such right and added that "if the ideal of equality before the law is to be meaningful, every aggrieved person must be accorded the fullest opportunity to defend himself at the appellate review stage."[2]

The appeal must also be made to the Head of Department within fourteen days from the date on which the decision to be appealed against together with the notice of right to appeal is communicated to the public servant in writing. Therefore it is important to confirm the date of receipt of the decision so as to fix the period during which an appeal can be made under regulation 13(1). Letters of appeals may not be entertained and can be rejected if it is handed after the fourteen day period[3] but it is desirable that the Disciplinary Authority exercise their power to reject with caution here so as not to deny justice to a person with strong and valid grounds of appeal merely on the ground that his appeal was late. If a good cause is shown, permission should be given to extend the time adequately. It is also desirable that when an application for an appeal is made and rejected, the grounds for rejection must be properly spelled out and notified to the applicant. This may ensure that appeals will not be rejected arbitrarily.

On receipt of the appeal the Head of Department must, as early as possible, submit the appeal together with his comments to the Discipli-

---

[2] Ibid.

[3] Public Service Circular - Perj. Sulit MP/7003/20.

nary Authority. The Chairman himself or any member delegated by him for the purpose must prepare records or a summary of the records of the proceedings of the Board and the statement setting out the grounds on which the Board arrived at its decision. It is important that the records must contain all necessary particulars so that the Appeal Board can make a fair assessment of the whole case. Such records, the contents of which are shown in Appendix III must be sent to an Appeal Board not later than thirty days from the receipt of the appeal by the Disciplinary Board. It appears that for every stage of the process, a time limit is set and the underlying reason is to ensure that appeals will be dealt with as speedily as possible so as to avoid the undesirable consequences which a public servant may suffer in cases of delays. However due to red tape, non-compliance on technical grounds such as submitting insufficient copies of the records and failure to provide sufficient facts to the Appeal Board by the Chairman of the Disciplinary Board, etc., all add up to produce a backlog of cases. Hence, there are cases which take almost one or two years before a decision can be reached, causing much distress, anxiety and suffering to the public servant.

The procedure for the hearing of the appeal is regulated by regulation 14. The Chairman of the Appeal Board convenes a meeting of the Appeal Board to consider the appeal and it will decide the appeal solely on the merits of the grounds of the appeal alone without receiving any further evidence or statement. This is the usual procedure in practice and it partakes of the character of the original proceeding. However, although oral hearing hearing and opportunity of cross-examination of departmental witnesses and of production of defence witnesses are almost always obligatory when requested for at the formal inquiry stage, their necessity is diminished at the appellate stage. This is because there is a marked difference between a decision given by an officer who acts in the consciousness that he is primarily responsible for the investigation and decision of the case and the act of one who is expected only to satisfy

himself that another officer who had the primary responsibility has properly dealt with the case. Principles of natural justice are themselves flexible and variable depending on the circumstances of the case and therefore it cannot be said that principles of natural justice are necessarily violated if an oral hearing is not given by the appellate authority to the aggrieved person. Whether it is required or not depends on the regulations and the circumstances of each case.

The proviso to paragraph (2) of regulation 14 states that, "....an Appeal Board subject to the Appellant's right of being heard may at its sole discretion call for any statement or evidence from any person if it is of the opinion that it would be fair and just so to do." It is therefore implicit in the proviso that if the Appeal Board exercise its discretion to admit fresh evidence against the appellant, it must give the appellant an opportunity to defend himself, either orally or in writing, as the case may require, against that fresh evidence. Similarly, if the appellate authority empowered under the regulations to enhance the penalty does propose to so enhance, it must give a fresh notice to show cause against the proposed higher punishment.

The Appeal Board after considering the appeal may remit the case to the Disciplinary Board for rehearing.[4] This is rarely the case though, for the Appeal Board feels that on appeal, it has taken the task to consider the case fully from all angles and there is no further necessity for a rehearing. It may also confirm or vary the decision of the Disciplinary Board,[5] whichever is fit. This decision of the Appeal Board shall be final.[6]

Although the regulations provide that the decision of the appellate body is final this does not mean that there is no further right to bring an

---

[4]Regulation 14(3), Public Services Disciplinary Board Regulations, 1972.

[5]Ibid.

[6]Regulation 14(4).

action to the courts of law. The effect of the words that the decision of a statutory tribunal "shall be final" was considered in the Federal Court case of Mohamed v. Commissioner of Lands and Mines, Trengganu and Anor.[7] and heavy reliance was placed on Lord Denning's judgement in Re Gilmore's Application.[8] Denning L.J. said:

> The remedy by certiorari is never to be taken away by any Statute except by the most clear and explicit words. The word "final" is not enough. That only means "without appeal". It makes the decision final on the facts, but not final on the law. Notwithstanding that the decision is by a Statute made "final", certiorari can still issue for excess of jurisdiction or for error of law on the face of the record.[9]

Thus a public servant, if dissatisfied with the decision of the appellate board may further bring an action in Court on questions of law. As Romer L.J. said,[10] "the inferior tribunals are bound to go wrong from time to time in matters of law. Their members constitute, in the main, of people who have devoted their lives to activities far removed from the study and practice of law, and neither by training nor, by experience can they be expected to have that knowledge of principles of construction which is so necessary for the proper understanding and application of the various statutes and regulations which often come before them.... It is not in the public interest that inferior tribunals of any kind should be ultimate arbiters on law."

Judicial remedies can be availed by the public servant who had been wronged through the courts of law in the country by way of a suit or writ on the grounds of violation of statutory safeguards. In 1966, in

---

[7] [1968] 1 M.L.J. 227.

[8] [1957] 1 All E.R. 796

[9] Ibid at p. 801.

[10] Ibid at p. 803.

Haji Wan Othman v. Government of the Federation of Malaya,[11] Thomson L.P. for the Federal Court was reluctant to express his view on "how far the 'rights' of public servants are justiciable under the present Constitution." Now it seems, that not only are dismissals made in breach of the provisions of Article 135 of the Constitution justiciable, but also dismissals made in breach of procedural provisions in subsidiary legislation concerning disciplinary proceedings. This is especially so, where the subsidiary legislation is made for the purpose of carrying out the object of Article 135(2) of the Malaysian Constitution.[12]

As said earlier, judicial remedies may be obtained by way of a suit or writ. Out of the five writs, only the writ of certiorari, mandamus and prohibition can be used for getting redress in matters relating to disciplinary action. All these remedies are discretionary; save in very exceptional circumstances such as the infringement of fundamental rights, a person aggrieved cannot demand them as of right when he has made out a case of unlawful action or omission. It is entirely for the court to decide whether it will exercise its jurisdiction or not. However the courts have generally regarded the constitutional protection to the public servant against arbitrary dismissal as of sufficient importance and therefore proper to afford in a case, where the material facts are not in dispute, immediate redress against the violation of the constitutional protection. Remedy by way of writs is short, simple and effective and therefore this remedy is especially desirable in cases which should be speedily determined such as when the validity of the dismissal of a public servant is in question.

Therefore, for the aggrieved public servant, there are many different avenues of getting redress through the courts. He may make an application for certiorari to quash a decision of the quasi-judicial body.

---

[11] [1966] 2 M.L.J. 42, 45.

[12] For a discussion of the cases on this point, please refer to Chapter IV.

However it must be borne in mind that a writ of certiorari cannot be granted to quash the decision of the inferior tribunal acting within its jurisdiction on the ground that the decision is bad. It must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it, or in violation of the principles of natural justice or a breach of Article 135 of the Constitution. Article 135(2) guarantees a public servant a hearing prior to dismissal or reduction in rank and this has been equated by the Privy Council in Surinder Singh Kanda v. Government of the Federation of Malaya[13] with the audi alteram partem rule. It was thus recognised by the Privy Council in that case that certiorari is an appropriate remedy, though not the exclusive remedy in such a situation.

The writ of prohibition is another available remedy and it is almost similar to certiorari in that it will lie to the same bodies as certiorari and on similar grounds. The only difference is that whilst certiorari can be used only after a decision has been made, prohibition can only be used to stop the quasi-judicial body from deciding the matter or to prevent it from proceeding or continuing to entertain other like cases outside its jurisdiction.

If the position is such that the Disciplinary or Appeal Board had omitted or refused to decide a matter which it was bound to decide, a writ of mandamus may be applied to command or compel the Board to determine the question which was left undecided. Its purpose is to see that justice is done to all cases where there is a specific legal right and no specific legal remedy for enforcing such a right or it may issue in cases where there is an alternative legal remedy, yet such mode of redress is less convenient,beneficial and effectual. An example of a case in which the writ of mandamus was issued is the case of Re San Development

---

[13] Op.cit. fn. 10, Ch. III

Company's Application.[14] That case involved an appeal which was made out of time and the appellants had applied for permission to proceed with the appeal notwithstanding that the appeal was not lodged within the time limited. The Commissioner of appeals dismissed the application on the grounds that he had no discretion to permit any person to proceed with an appeal notwithstanding that the notice of appeal was not lodged within the time limited, where the solicitor of the party had been negligent. The appellants made an application for an order of certiorari to quash the order made by the Commissioner of Appeals and for an order of mandamus directing the said Commissioner to hear and determine the appeal. It was held that the Commissioner had a discretion and he had not exercised it and therefore the order of the Commissioner was quashed and an order of mandamus was made directing the Commissioner to consider and determine the application of the appellants according to law.

Judicial remedies are also available by way of a suit for declaration, injunction or a suit for damages for wrongful dismissal. Declarations can be obtained to declare that the purported dismissal was null, void and inoperative for excess of jurisdiction or breach of the rules of natural justice and that the employee continues in employment. A number of decisions have been declared invalid on these grounds and the public servant reinstated.[15]

A public servant may also claim, separately or together with a suit for declaration, the consequential relief of damages for wrongful dismissal. The question regarding the amount of damages must depend on the facts of each case and it is for the court to fix the amount in the exercise of its judicial discretion. The amount of damages in general is

---

[14] [1971] 2 M.L.J. 254.

[15] Phang Moh Shin v. Commissioner of Police and Ors. [1967] 2 M.L.J. 186, Attorney-General, Singapore v. Ling How Doong [1969] 1 M.L.J. 154, Isman bin Osman v. Govt. of Malaysia [1973] 2 M.L.J. 143.

usually measured by the loss suffered by reason of such dismissal and the time that may probably be taken and the reasonable chance of getting re-employment should also be kept in view. There may be exceptional cases where circumstances may well enter into the computation of quantum of damages, for instance, employment in a specialised department, in which case, alternative employment will be difficult to get.

A public servant is further entitled to recover his arrears of salary. The rule of English Law that a public servant cannot maintain a suit against the Crown for recovery of arrears of pay does not prevail in Malaysia and this together with the right to obtain such a relief by the public servant is fortified by the decision of Sharma J. in Isman bin Osman v. Government of Malaysia.[16] In that case a police constable who was dismissed from the Police Force in contravention of Article 135 of the Malaysian Constitution was able to secure a declaration in his favour that his dismissal from service was null and void, inoperative and of no effect and that he still continued to be a member of the Royal Malaysian Police Force and that he was entitled to all the arrears of salary as from the date of his purported dismissal. In delivering the judgement, Sharma J. said:[17]

> Clauses (1) and (2) of Article 135 and Clause (2) of Article 132 of the Constitution provide constitutional limitations upon the right of the Yang Di-Pertuan Agong to dismiss members of the various services at his will.... The argument that a government servant can neither recover arrears of pay nor damages on the ground that conferment of the benefit of pay for service rendered to the Crown

---

[16] Ibid.

[17] Ibid. at p. 147.

> is a matter of bounty and grace for the Crown, that it is not a matter of right of the public servant and that the Crown can never be made liable for damages in tort cannot in view of the provisions of the Constitution hold good. The prerogative right of the Crown to dismiss its servants at will is exercisable only subject to the limitations contained in the Constitution. It thus follows that if any of those limitations are contravened the aggrieved public servant gets a right to maintain an action against the Crown for appropriate relief. The conditions of service are regulated by Federal Law or State Law.... The rule of English law that a public servant cannot maintain a suit against the State or against the Crown for recovery of arrears of salary therefore does not prevail here in view of the specific provisions of our Constitution.

And again in Government of Malaysia v. Rosalind Oh Lee Peck Inn,[18] the Federal Court has taken the view that the relationship between the public servant and the Crown is a contractual one - albeit a contract of a very special kind and have held in that case that a public servant is entitled to arrears of his salary. Suffian F.J., on the authority of the Privy Council decision in Kodeeswaran v. Attorney-General of Ceylon[19] said that he considered "arrears of salary of a civil servant of the Crown, as distinguished from a member of the armed forces, constituted a debt recoverable from the Crown."

Because of the similarity of the constitutional provisions of the Malaysian and Indian Constitution, the position in India in relation to the right of a public servant to bring an action for damages and recovery of arrears of salary is similar to the Malaysian position. In

---

[18] [1973] M.L.J. 222 at pp. 224-225.

[19] [1970] 2 W.L.R. 456.

India, the case of State of Bihar v. Abdul Majid[20] has decided that if the constitutional protection are violated, the wrongfully dismissed government servant can maintain an action for appropriate relief and there is no warrant for the proposition that relief in such a suit must be limited to a declaration and that the court cannot go beyond it. The government servant can also recover his salary since the date of wrongful dismissal by an ordinary action against the Government on the basis of quantum meruit or contract.

Therefore in Malaysia, a public servant who might be the victim of an injustice at the hands of the Disciplinary Authority has several possible course of action open to him - he may suffer the wrong in comparative silence; he may appeal against the decision made to the relevant Appeal Board through the proper departmental appellate procedures; if still dissatisfied with the decision of the Appeal Board, he may further bring the case up for review in a court of law and he may also maintain a claim for damages or recovery of arrears of salary.

---

[20] AIR 1954 SC 245;

CHAPTER VIII

CONCLUSION AND MAIN RECOMMENDATIONS

The writer began by pointing out that the interests and success of the State would require efficiency, integrity, impartiality, discipline and like qualities on the part of the public servant and the State should necessarily have the power to ensure that every public servant possesses these qualities and to prevent any person who lack these qualities from being in the public service. Hence, it has been seen that Public Services Commissions and other Disciplinary Authorities have been established and are quite well developed in this country with the appropriate powers given to them by the Constitution and the General Orders to exercise disciplinary control over the members of the public services. These Statutes have also provided a sort of specific and standard procedure that have to be followed by them when dealing with disciplinary proceedings and based on such provisions, the Disciplinary Authorities have managed to maintain disciplinary control in the public services consistently and reasonably well.

The laying down of such procedural requirements have also been said to assure reasonable justice and fair treatment to the public servant. But in the course of this study it has been seen that there are some obvious deficiencies in the procedure which need to be corrected if justice is to be done to the accused public servant. The procedural safeguards too have been greatly diluted by the judges and together with the limitations imposed on them, the resultant protection given to the public servant at present is quite inadequate. This situation needs to be improved in certain respects and an attempt is made here to offer some suggestions, besides those already given in the body of this paper, which may ensure that the disciplinary proceedings are conducted more justly and to ensure that the Constitutional protectional given to public servants will be of more significance and value.

One unsatisfactory feature in relation to the general disciplinary proceedings, in particular at the hearing or inquiry stage which is the most important stage of the procedure, is that an oral hearing is not made obligatory under the General Orders even in a case which involves the implementation of a major punishment like dismissal. Recognising the importance of a formal department inquiry with an oral hearing,[1] it is proposed that the power to allow an oral hearing to take place should not be made discretionary but should be made obligatory in cases involving the imposition of the major punishments when the public servant desires it or requests for it. For this purpose the disciplinary procedure provided in Chapter "D" of the General Orders should be suitably amended so as to insist on or make it obligatory on the part of the Disciplinary Authority to allow oral hearing when the public servant makes such a request.

Once it is settled that it is obligatory under the General Orders to give oral hearing when the accused servant desires it, the next matter that has to be considered here is the presiding officers or persons who can sit and hear the evidence and arguments put forward at the hearing. In this respect it must be borne in mind that the purpose of giving an oral hearing is to give an effective opportunity to the public servant to prove his innocence and for the hearing to be effective it must also be conducted in an impartial manner. This means that any personal bias on the part of an officer would disqualify him to sit at the hearing.

Bearing in mind the risk of departmental or personal bias and that the hearing conducted must be an effective one, the writer suggests that the presiding officers be appointed specifically for the purpose of conducting hearings and should hold no other posts in the public service.

---

[1] See Ch. V, pp. 47-49.

There should be at least two neutral persons appointed and at least one of them should be legally qualified. Thus, whenever there is a hearing the hearing must be before such appointed persons. This is more favourable than to appoint different persons who are not experts in conducting a hearing, each time there is a hearing. By having a permanent set of officers to conduct hearings would mean that these officers would, after some time, gain the necessary knowledge and expertise in this particular field, especially in the interpretation and application of the law. This would also result in some kind of uniformity of treatment at all hearings.

Provisions must also be included to ensure that any such officer must at any time withdraw from presiding at the hearing if he is deemed to be disqualified by reason of personal, or departmental bias. Further the presiding officers must not be made responsible to or subject to the supervision or direction of any other officer. The presiding officers must, finally, make a report of their findings to the Disciplinary Authority.

Ideally, the public servant should know in good time before the hearing starts, the case against him so as to have sufficient time to prepare his defence, and have a fair opportunity to meet the case against him. The time period during which a public servant is allowed to make a written representation containing the grounds to exculpate himself against the charge is statutorily limited to two weeks. This is clearly not sufficient in some cases. In a case involving a serious offence which merits dismissal for instance, the public servant would have to make a study of numerous documents, perhaps do some investigation of his own and may want to consult a lawyer and together with all the technicalities which he has to comply with, the public servant may even need a month or more to prepare his defence and answer the charges adequately and effectively. Provisions should therefore be made to allow more flexibility in the time period given to the public servant to answer the charges and in difficult cases a time period of about one month should be given without hesitation and without the public servant

having to ask for extension of time.

With regards to the procedural requirements before a hearing, it is good to note that our courts have always held that the public servant should know the precise charge against him which must not be vague or ambiguous; he must also know all the evidence made affecting him; he must have access to all the documents which the disciplinary authority has access to and then he must be given the opportunity of adducing all relevant evidence on which he relies. The public servant may also cross-examine witnesses, if he so desires, at the hearing.

The general conclusion regarding the right to be represented by counsel, as demonstrated by Doresamy v. Public Services Commission,[2] is that Malaysia is in keeping with the current trend in most countries towards expressly permitting representation. But even in this area, some improvements can be made with the object of making the public servant more certain of his rights rather than to wait for the Court to determine it for him. This is so because by having such provisions like G.O.D. 30(8) which gives the Committee of Inquiry a discretionary power to permit legal representation only in exceptional cases would only give rise to a very undesirable situation of uncertainty and arbitrariness in application. Further to make this important plea for legal representation depend finally in each case on the way the Court would review the facts would mean that a public servant who has already been punished will go through another expensive and protracted case in the courts to vindicate his rights. On principle, therefore, it is submitted that unless there are overriding claims of public policy in any class of matters, which must be laid down, it is necessary to give the public servant a right to be represented by counsel at all times. This right should not be curtailed unless legal representation can be seen to

---

[2] Op.cit., fn. 21, Ch. V.

work obvious inequities. Therefore the law, in particular G.O.D. 30(8), should be suitably amended and made clear on this point. This step would also be in line with the Franks Committee Report.[3] The Franks Committee Report has paved the way for extension of legal representation before statutory tribunals in England by recommending that the right to legal representation should be curtailed only in the most exceptional circumstances[4] and not vice-versa as is the present situation in Malaysia.

In making the recommendations for extension of legal representation in all cases in Malaysia the writer is aware of the arguments that have always been advanced against this - that it would go against some of the fundamental reasons of establishing administrative tribunals, namely, the need for cheapness, speed and to do away with over-formality in the procedure. It may indeed be argued that speed and reasonable costs themselves are aspects of justice but it is submitted that natural justice is also another aspect of justice, viz., procedural safeguards to ensure compliance with notions of fairness and that it ought in certain cases, especially those involving the imposition of major punishments, be accorded priority over other relatively lesser facets of justice. Justice ought not to be sacrificed for the sake of convenience and speed. Perhaps there is some delay but this seems to be a cheap price to pay for fairness in administration.

The question of expenses is also not forgotten here. Fair adjudication would inevitably often cost more than unfair adjudication, and bearing in mind that there are poor public servants, who, through lack of funds would be unable to obtain the guiding hand of counsels in cases where assistance by legal representation is most essential, it is proposed that the right to legal representation should be accompanied by

---

[3] Report of the Franks Committee on Administrative Tribunals and Enquiries, Cmnd (1957).

[4] Ibid at p. 92.

the introduction of an official scheme of legal aid before disciplinary tribunals.

Another unsatisfactory feature is the constitutional provisions themselves. We have seen that Article 135(1) and (2) and Article 132(2A) of the Malaysian Constitution are the constitutional means by which public servants in Malaysia have attempted to secure the tenure of their appointments. But, unfortunately, the constitutional protection afforded to public servants has been confined by the decisions of the Courts only to cases of 'dismissal' and 'reduction in rank' i.e. cases involving disciplinary proceedings and involving a punishment or penalty. Protection is therefore not afforded to public servants against various kinds of terminations of their employment, such as termination in accordance with their contract of employment, compulsory retirements in the public interest and reversions to former substantive positions. The emphasis on the element of penalty or punishment and fine distinctions being made between 'dismissal' and termination of service in accordance with the terms of the contract of employment has cut down the valuable protection of Article 135. It is actually the duty of the courts to ensure that the constitutional protection given to public servants is not unduly eroded but they seem to have failed in this area. It would therefore seem that the hope that the judges will reinterpret the expressions 'dismissal' and 'reduction in rank' is very slim and to wait for such a turn of events would be futile and would not provide any immediate solution to the problem of the public servants.

Perhaps the best solution to rectify this position is to amend Article 135(1) and (2) of the Constitution, i.e. by adding the words "or have his employment terminated" after the words "reduction in rank". Article 135(1) and (2) would then read as follows :

> (1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132

> shall be dismissed, reduced in rank or have his employment terminated by an authority subordinate to that which, at the time of the dismissal, reduction or termination, has power to appoint a member of that service of equal rank.
>
> (2) No member of such a service as aforesaid shall be dismissed, reduced in rank or have his employment terminated without being given a reasonable opportunity of being heard.

Additional provisions could also be included in Chapter "D" of the General Orders to the effect that the rules of natural justice apply to all cases of dismissal, reduction in rank and any termination of employment.

Such proposals and suggestions for amending the Constitution should necessarily have strong support from the public service unions, namely the National Joint Council, Staff Side, whose main function is to negotiate with the Official Side of the Council in matters relating to the conditions of service of public employment, including discipline. They should therefore continue to negotiate with the Government to make possible the various necessary amendments. Finally if it is not possible to amend the Constitution, the Public Service Unions could perhaps legitimately insist that public service contracts are rewritten to ensure that terminations of employment other than 'dismissals' and 'reductions in rank' are subject to the same rules as 'dismissals' and 'reductions in rank.' If the constitutional protection of the public servant can be taken away by contract, it can surely be returned to the public servant by way of contract.

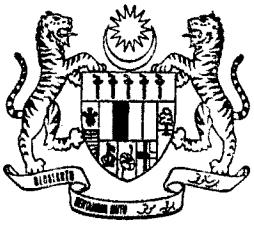
Finally, the writer is satisfied that there are sufficient avenues through which the aggrieved public servant may seek redress

against the disciplinary action taken against him. There is also an ideal appeal structure. This takes the form of a general appeal on fact, law and merits against the decision of the disciplinary board to an appellate board and all decisions of the disciplinary and appellate boards are subject to review by the Courts on points of law. Generally, it was found that reasoned decisions are given by the disciplinary authority but this requirement should be stated in more imperative terms in order to compel the disciplinary authority to give full reasons for their decisions at all times and thus any error of law in such a decision would then subject the decision to quashing by order of certiorari. It is also now clear that the fact that the decision of the appellate board may be expressed in the Statute as "final" does not oust this jurisdiction. Thus there is an ultimate control in regard to matters of law by the courts. In this respect therefore the system of adjudication can hardly fail to appear fair to the applicant if he knows that he will normally be allowed two attempts to convince independent bodies of the soundness of his case.

However, in concluding this study it can be said that the court's jurisdiction to interfere in disciplinary matters conducted by the Disciplinary Authority is limited. Although they can consider whether the opportunity afforded to the public servant is reasonable or not, they are not concerned with the sufficiency or reliability of evidence on which the action has been taken, except in those cases where the finding of the inquiry officer is based on no evidence at all or on mere suspicion. Further the courts cannot also sit in judgement on the quantum of punishment. It is therefore not difficult to envisage cases in which the game is played according to rules, all the principles of natural justice and formalities are observed and finally an inconvenient or unwanted public servant is dismissed and left with no legal redress. He may clamour aloud that he has been victim of malice and although any executive action which is mala-fide is legally void, the public servant

will find it extremely difficult to prove malice and allegations of mala-fide have seldom succeeded in courts. In this respect it can be said that the constitutional guarantee of Article 135 is merely illusory. The ultimate safeguard, therefore, for a public servant, is the integrity and sense of fair play of the Disciplinary Authority.

APPENDIX A



MALAYSIA

Peratoran[2] Pegawai[2] Awam (Kelakuan dan Tatatertib) (Perentah[2] 'Am, Bab "D"), 1969

Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969

Di-terbitkan sebagai P.U. (A) 273 dalam Warta Kerajaan Persekutuan Perundangan (A) Tambahan No. 52 bertarikh 28hb Julai, 1969.

MALAYSIA

ORDINAN (KUASA² PERLU) DHARURAT, 1969

(Ordinan 1 dan Ordinan 2)

PERATORAN² PERLU (PERENTAH² 'AM, BAB D), 1969

PADA menjalankan kuasa² yang di-beri di-bawah sekshen 2 Ordinan No. 1 (Kuasa² Perlu) Dharurat, 1969, Pengarah Gerakan yang di-tetapkan di-bawah sekshen 2 Ordinan No. 2 (Kuasa² Perlu) Dharurat, 1969, dengan ini membuat peratoran² yang berikut:

Nama.

1. Peratoran² ini boleh-lah di-namakan **Peratoran² Perlu (Perentah² 'Am, Bab D), 1969.**

Penggantongan Perentah² 'Am, Bab D, 1968. *P.U. 290/68.*

2. Bagi tempoh sa-lama keadaan dharurat maseh di-kuatkuasakan, peruntokan Peratoran² Pegawai² Awam (Kelakuan dan Tatatertib) (Perentah² 'Am, Bab D), 1968, hendak-lah di-gantong dan peruntokan Peratoran² Pegawai² Awam (Kelakuan dan Tatatertib) (Perentah² 'Am, Bab D), 1969, sa-bagaimana di-nyatakan dalam Jadual bersama ini hendak-lah di-pakai sa-bagai ganti-nya.

Kuatkuasa Perentah² 'Am, Bab D, 1969. *P.U. 432/56.* *P.U. 290/68.*

3. Bagi tempoh sa-lama keadaan dharurat maseh di-kuatkuasakan, achara² tatatertib yang di-peruntokkan dalam Perentah² 'Am yang di-nyatakan dalam Jadual bersama ini hendak-lah di-pakai bagi apa² pelanggaran terhadap mana² peruntokan Peratoran² Pegawai² Awam (Kelakuan dan Tatatertib), 1956, atau Peratoran² Pegawai² Awam (Kelakuan dan Tatatertib) (Perentah² 'Am, Bab D), 1968, sa-bagaimana achara² itu di-pakai bagi apa² pelanggaran terhadap mana² peruntokan Perentah² 'Am sa-bagaimana di-nyatakan dalam Jadual bersama ini.

JADUAL

(Peratoran 2)

KANDONGAN

1. Nama.

BAHAGIAN 1

KELAKUAN

2. Tafsiran.
3. Tata kelakuan.
4. Pekerjaan luar.
5. Hadiah.
6. Kerai'an.
7. Mempunyaï tanah atau lain² harta dan pelaboran.
8. Pegawai yang menyenggara taraf hidup melebehi mata pencharian persendirian atau gaji jawatan-nya.
9. Meminjam wang.
10. Kesusahan berat kerana hutang.
11. Laporan mengenaï hutang sa-saorang pegawai oleh Pendaftar Mahkamah.
12. Pegawai Pemegang Harta di-kehendaki melaporkan hutang sa-saorang pegawai.
13. Ramalan di-larang.
14. Refel dan loteri.
15. Meminjamkan wang.

16. Wang kenangan.
17. Kebenaran menerbitkan buku, dsb.
18. Larangan mengenaï pernyataan awam.
19. Larangan mengenaï menjalankan kerja sa-bagai penyunting akhbar.
20. Kegiatan politik.
21. Membawa langkah[2] pembicharaan dan bantuan guaman.
22. Ta' hadhir bekerja tanpa chuti.
23. Melaporkan kelakuan atau kerja yang tidak memuaskan.
24. Kelakuan dalam masa berchuti atau masa berchuti sa-belum bersara.
25. Menulis surat rayuan.
26. Jurubahasa.

BAHAGIAN 2

ACHARA TATATERTIB

27. Sharat[2] bagi membuang kerja, dsb.
28. Erti "di-thabitkan", "thabitan".
29. Achara tatatertib bagi kerja yang tidak memuaskan atau salah-laku yang tidak mematutkan pembuangan kerja atau penurunan pangkat.
30. Achara bagi membuang kerja dan menurunkan pangkat.
31. Pembicharaan jenayah terhadap sa-saorang pegawai.
32. Langkah[2] untok membuang kerja tidak boleh di-ambil jika pembicharaan jenayah belum selesai.
33. Tidak boleh di-buang kerja jika di-bebaskan kechuali, dsb.
34. Achara mengenaï thabitan.
35. Tahan-kerja dan penggantongan-kerja.

BAHAGIAN 3

PERUNTOKAN[2] 'AM

36. Hukuman tatatertib.
37. Denda atau meluchut-hak gaji.
38. Menahan kenaikan gaji.
39. Memberhentikan kenaikan gaji.
40. Menanggoh kenaikan gaji.
41. Remishen mengenaï penanggohan kenaikan gaji.
42. Menurunkan gaji.
43. Hukuman di-kehendaki di-masokkan dalam Rekod Perkhidmatan pegawai itu.

BAHAGIAN 4

PELBAGAI

44. Penamatkan kerja demi kepentingan awam.
45. Kuatkuasa Perentah[2] 'Am, Bab D, 1969.
46. Pemakaian.

1. Peratoran[2] ini boleh-lah di-namakan **Peratoran[2] Pegawai[2] Awam (Kelakuan dan Tatatertib) (Perentah[2] 'Am, Bab D), 1969,** kemudian daripada ini di-sebut sa-bagai **Perentah[2] 'Am.** Nama.

BAB D

KELAKUAN DAN TATATERTIB

BAHAGIAN 1

KELAKUAN

2. Dalam Perentah[2] 'Am ini— Tafsiran.

"Pehak-berkuasa Tatatertib", mengenai sa-saorang pegawai, erti-nya Surohanjaya Perkhidmatan berkenaan yang mempunyai bidangkuasa atas perkhidmatan dalam mana pegawai itu berkhidmat sa-bagai sa-orang anggota mengikut peruntokan Bahagian 10 Perlembagaan, dan termasok-lah sa-saorang pegawai atau sa-suatu lembaga pegawai[2] dalam perkhidmatan awam yang boleh menjalankan tugas[2] Surohanjaya itu berhubong dengan kawalan tatatertib menurut Fasal (5A), (5B) atau (6A) Perkara 144 Perlembagaan;

"Ketua Jabatan" termasok-lah sa-saorang pegawai yang di-tetapkan sa-bagai demikian oleh Ketua Pengarah Perkhidmatan Awam;

"pegawai" erti-nya sa-saorang anggota dalam perkhidmatan awam Persekutuan atau, bagi Negeri yang telah menerima Perentah[2] 'Am ini, erti-nya sa-saorang anggota dalam perkhidmatan awam Negeri itu.

3. Berikut ia-lah tata kelakuan bagi pegawai[2] dalam perkhidmatan awam. Tindakan tatatertib boleh di-ambil di-bawah Perentah[2] 'Am ini terhadap mana[2] pegawai yang melanggar mana[2] satu daripada tata kelakuan itu: Tata kelakuan.

(*a*) sa-saorang pegawai hendak-lah pada sa-tiap masa dan pada sa-tiap waktu menumpukan ta'at setia-nya yang tidak berbelah bagi kapada Yang di-Pertuan Agong, negara dan Kerajaan;

(*b*) sa-saorang pegawai tidak boleh membelakangkan kewajipan awam-nya kerana kepentingan persendirian-nya;

(*c*) sa-saorang pegawai tidak boleh berkelakuan sa-chara yang harus menyebabkan kepentingan persendirian-nya bertentangan dengan kewajipan awam-nya;

(*d*) sa-saorang pegawai tidak boleh berkelakuan sa-chara yang ia ketahui atau ia boleh di-jangka dengan menasabah akan mengetahui bahawa kelakuan itu harus menyebabkan shak yang menasabah di-hati orang[2] awam bahawa—

(i) ia telah membiarkan kepentingan[2] persendirian-nya bertentangan dengan kewajipan[2] awam-nya dan dengan demikian menyebabkan ia kurang berguna sa-bagai sa-orang pegawai awam; atau

(ii) ia telah menggunakan kedudokan awam-nya untok faedah persendirian-nya;

(*e*) sa-saorang pegawai tidak boleh berkelakuan sa-chara yang boleh menchemarkan atau menchachatkan nama baik perkhidmatan awam;

(*f*) sa-saorang pegawai tidak boleh kekurangan kechekapan atau keusahaan dan tidak boleh berkelakuan sa-chara yang boleh di-ertikan dengan menasabah sa-bagai kekurangan kechekapan dan keusahaan;

(*g*) sa-saorang pegawai hendak-lah jujor dan tidak boleh berkelakuan sa-chara yang boleh di-shaki sa-bagai tidak jujor;

(*h*) sa-saorang pegawai tidak boleh berkelakuan sa-chara tidak bertanggong-jawab;

(*i*) sa-saorang pegawai tidak boleh membawa atau chuba membawa apa² jua jenis pengaroh atau tekanan luar untok menyokong atau memajukan sa-suatu tuntutan berhubong dengan perkhidmatan awam sama ada tuntutan itu ada-lah tuntutan persaorangan-nya atau tuntutan lain² anggota perkhidmatan awam; dan

(*j*) sa-saorang pegawai tidak boleh berkelakuan sa-chara yang boleh di-ertikan sa-bagai melakukan kesalahan ingkar perentah.

Pekerjaan luar.

4. (1) Kechuali sa-takat mana sa-saorang pegawai di-kehendaki dalam perjalanan kewajipan-nya atau di-berikuasa dengan nyata oleh Ketua Jabatan-nya mana² jua pegawai tidak boleh—

(i) mengambil bahagian sa-chara langsong atau sa-chara tidak langsong dalam pengurusan atau perjalanan apa² usaha perdagangan, pertanian atau perusahaan;

(ii) bertugas sa-bagai wasi, pentadbir atau penerima;

(iii) sa-bagai sa-orang pakar, memberi apa² laporan atau keterangan pakar, sama ada dengan perchuma atau untok mendapatkan upah;

(iv) menjalankan apa² kerja bagi mana² yayasan, sharikat, firma atau orang persaorangan untok mendapatkan upah.

(2) Walau pun demikian itu sa-saorang pegawai boleh memohon kebenaran untok menjalankan jenis² kerja yang di-tentukan dalam perenggan (1) dalam Perentah 'Am ini bagi faedah diri-nya atau faedah saudara-mara-nya yang dekat atau bagi mana² badan yang bukan mencheri keuntongan yang ia ada-lah sa-orang pemegang jawatan-nya.

(3) Bagi menimbangkan sama ada kebenaran patut di-beri atau tidak, Ketua Jabatan hendak-lah mengambil perhatian tentang tata kelakuan yang di-nyatakan dalam Perentah 'Am 3 dan, khusus-nya, hendak-lah menentukan supaya dengan kebenaran itu—

(i) kegiatan itu tidak akan dengan apa² chara menyebabkan pegawai itu kurang berguna sa-bagai sa-orang penjawat awam; dan

(ii) pekerjaan atau usaha itu tidak akan menyebabkan dengan apa² chara pertelingkahan dengan kepentingan jabatan-nya atau tidak akan dengan apa² chara bertentangan dengan kedudokan pegawai itu sa-bagai sa-orang penjawat awam.

Apa² kebenaran yang di-beri di-bawah Perentah 'Am ini hendak-lah terta'alok kapada suatu sharat bahawa kewajipan awam pegawai itu hendak-lah di-beri keutamaan daripada kegiatan, usaha atau pekerjaan-nya yang di-benarkan bagi-nya itu.

(4) Kechuali sa-takat mana di-tetapkan sa-lain-nya, segala wang yang di-terima oleh sa-saorang pegawai sa-bagai saraan memberi apa² perkhidmatan yang tersebut dalam perenggan (1) dalam Perentah 'Am ini hendak-lah di-bayar kapada Perbendaharaan yang berkenaan untok di-simpan sementara menantikan keputusan Ketua Pengarah Perkhidmatan Awam, ia-itu bagi Pegawai² Persekutuan atau keputusan Setiausaha Kerajaan Negeri, bagi Pegawai² Negeri tentang banyak-nya, jika ada, yang boleh di-simpan oleh pegawai itu sendiri dan oleh kakitangan²-nya.

Hadiah.

5. (1) Sa-saorang pegawai tidak boleh menerima atau memberi atau pun membenarkan isteri dan anak-nya (jika ada, termasok anak angkat yang sah di-sisi undang²) menerima atau memberi hadiah (kechuali pemberian² sahabat handai atau saudara-mara sendiri) sama ada hadiah itu berupa wang, barang², tambang perchuma atau lain² faedah diri.

(2) Sa-saorang pegawai tidak boleh menerima daripada persatuan² atau kumpulan² lain atau daripada orang² yang bekerja di-bawah-nya apa² chendera-mata yang berharga, tetapi ia boleh di-benarkan oleh Ketua Jabatan menerima surat² pujian daripada persatuan² atau kumpulan² atas sebab perpisahan atau persaraan-nya dengan sharat surat² pujian itu tidak di-masokkan dalam bekas² yang berharga.

(3) Kebenaran boleh di-beri oleh Ketua Jabatan untok membolehkan pegawai² yang bekerja di-bawah-nya memungut yuran² sa-chara sepontan, atau mengadakan pungutan² persendirian sa-sama mereka, bagi maksud memberi sa-suatu hadiah kapada sa-saorang kakitangan jabatan-nya atas sebab persaraan atau perkahwinan kakitangan tersebut atau perkahwinan anak kakitangan tersebut atau atas sebab apa² peristiwa lain yang sesuai.

(4) Jika sa-suatu hadiah yang di-larang di-terima oleh Perentah 'Am ini di-beri dalam hal keadaan yang tidak mungkin dapat menolak-nya (mithal-nya, jika niat hendak memberi hadiah itu tidak di-beritahu terlebeh dahulu) maka hadiah itu boleh-lah di-terima dengan rasmi tetapi hendak-lah di-serahkan dengan sa-berapa segera kapada Perbendaharaan dan hal keadaan itu di-laporkan kapada Pehak-berkuasa Tatatertib.

(5) Penerimaan hadiah daripada orang² ternama yang tidak mungkin di-tolak dengan tidak menyinggong perasaan hendak-lah di-laporkan kapada Pehak-berkuasa Tatatertib dan hadiah itu hendak-lah di-lepaskan sa-bagaimana di-arah.

(6) Jika di-fikirkan perlu bagi sa-saorang pegawai memberi sa-suatu hadiah atau sa-suatu hadiah balasan atas belanja Kerajaan kapada wakil atau pegawai Kerajaan luar negeri, Kementerian Luar Negeri hendak-lah di-tanya dan kebenaran untok perbelanjaan yang di-chadangkan itu hendak-lah di-dapati daripada Perbendaharaan.

(7) Sa-saorang pegawai yang menerima hadiah daripada wakil atau pegawai Kerajaan luar negeri hendak-lah melaporkan hal itu kapada Ketua Jabatan-nya yang akan memutuskan tindakan yang sesuai untok di-ambil.

Kerai'an.

6. Sa-saorang pegawai tidak boleh menerima apa² jua jenis kerai'an daripada mana² orang, atau orang awam, atau ahli mana² kelab, yayasan atau persatuan jika kerai'an itu boleh di-ertikan dengan menasabah sa-bagai suatu perbuatan atau perchubaan untok mempengarohi pelaksanaan kewajipan rasmi pegawai itu supaya memehak kapada kepentingan pemberi-nya atau mana² orang awam, ahli mana² kelab, yayasan atau persatuan itu atau di-ertikan dengan apa² chara sa-bagai bertentangan dengan tata kelakuan yang tersebut dalam Perentah 'Am 3.

Mempunyai tanah atau lain² harta dan pelaboran.

7. (1) Sa-saorang pegawai ada-lah di-kehendaki dengan sa-berapa segera yang boleh tetapi tidak lewat daripada 3 bulan sa-lepas ia mula² di-lantek kapada perkhidmatan supaya melaporkan kapada Pehak-berkuasa Tatatertib yang berkenaan segala kepentingan yang di-pegang oleh-nya, isteri-nya dan anak-nya (jika ada, termasok anak angkat yang sah di-sisi undang²) mengenai apa² harta sama ada tanah, rumah atau pelaboran² atau membuat suatu penyata "tiada". Pehak-berkuasa Tatatertib hendak-lah mengarahkan supaya hal ini di-rekodkan dalam Buku Rekod Perkhidmatan pegawai itu.

(2) Sa-saorang pegawai boleh memperoleh atau memegang pelaboran^2 persendirian atau mempunyaï rumah atau tanah atau lain^2 harta, dengan sharat bahawa pelaboran^2 tersebut atau pemunyaan akan harta itu tidak bertentangan dengan tata kelakuan yang tersebut dalam Perentah 'Am 3 dan juga dengan sharat bahawa perolehan, pegangan atau pemunyaan mengenaï pelaboran^2, rumah, tanah atau lain^2 harta yang tersebut itu hendak-lah di-beritahu kapada Pehak-berkuasa Tatatertib tidak lewat daripada 3 bulan dari tarikh perolehan, pegangan atau pemunyaan itu dan Pehak-berkuasa Tatatertib hendak-lah mengarahkan supaya hal ini di-rekodkan dalam Buku Rekod Perkhidmatan pegawai itu.

(3) Jika sa-kira-nya ada apa^2 waswas tentang sama ada pelaboran atau harta yang di-chadang untok di-pegang atau di-perolehi itu bertentangan dengan tata kelakuan yang di-nyatakan dalam Perentah 'Am 3, sa-saorang pegawai hendak-lah memohon kebenaran, melaluï Ketua Jabatan-nya, daripada Pehak-berkuasa Tatatertib yang berkenaan untok memperoleh atau memegang pelaboran persendirian atau pun untok mempunyaï rumah atau tanah atau lain^2 harta. Bagi menimbang-kan sama ada kebenaran itu di-beri atau tidak, Pehak-berkuasa Tatatertib itu hendak-lah mengambil perhatian tentang perkara^2 yang berikut, ia-itu—

(i) pendapat Ketua Jabatan;

(ii) besar-nya, banyak-nya atau nilai pegangan, pelaboran, rumah, tanah atau harta itu berbanding dengan kemampuan pegawai itu sendiri;

(iii) sama ada perolehan atau pegangan itu akan bertelingkah dengan kepentingan^2 jabatan di-mana pegawai itu bekerja atau bertentangan dengan kedudokan pegawai itu sa-bagai sa-orang penjawat awam; atau dengan apa^2 chara bertentangan dengan tata kelakuan yang tersebut dalam Perentah 'Am 3;

(iv) sama ada kemungkinan kechaman dari luar di-sebabkan oleh ada-nya pertentangan di-antara kepentingan persendirian dengan tanggong-jawab awam, atau kemungkinan skandal; dan

(v) apa^2 faktor lain yang di-fikirkan perlu oleh Pehak-berkuasa Tatatertib bagi menjaga kejujoran dan kechekapan perkhidmatan awam.

Pegawai yang menyenggara taraf hidup melebehi mata pencharian persendirian atau gaji jawatan-nya.

8. (1) Jika pada pendapat Pehak-berkuasa Tatatertib sa-saorang pegawai ada-lah sa-benar-nya atau pada zahir-nya—

(i) menyenggara taraf hidup yang tidak sa-padan dengan gaji jawatan-nya dan apa^2 mata pencharian persendirian-nya yang di-ketahuï, jika ada; atau

(ii) menguasaï atau memileki sumber^2 wang atau harta aleh atau harta takaleh, yang tidak sa-imbang dengan gaji jawatan-nya dan mata pencharian persendirian-nya yang di-ketahuï atau yang tidak menasabah di-jangka boleh di-peroleh oleh pegawai itu dengan gaji jawatan-nya dan apa^2 mata pencharian persendirian-nya yang di-ketahuï,

Pehak-berkuasa Tatatertib boleh meminta pegawai itu supaya men-jelaskan bagaimana ia boleh menyenggara taraf hidup tersebut atau bagaimana ia telah mendapat sumber^2 wang atau harta itu.

(2) Jika, apabila di-minta, pegawai itu tidak dapat memberi apa^2 penjelasan atau jika ia memberi sa-suatu penjelasan yang tidak memuas-kan hati Pehak-berkuasa Tatatertib, Pehak-berkuasa Tatatertib boleh kemudian-nya mengambil tindakan tatatertib dengan tujuan membuang-kerja pegawai itu menurut Perentah 'Am 30 atau mengambil apa^2 langkah sa-bagaimana di-fikirkan patut oleh Pehak-berkuasa Tatatertib.

Meminjam wang.

9. (1) Tiada sa-saorang pegawai pun boleh meminjam daripada sa-saorang, sama ada sa-bagai prinsipal atau penjamin, atau dengan apa[2] chara meletakkan diri-nya bertanggong wang kapada sa-saorang (sama ada dalam Perkhidmatan Awam Persekutuan atau Negeri atau lain[2]), ia-itu sa-saorang—

(*a*) yang terta'alok sa-chara langsong atau sa-chara tidak langsong kapada kuasa jawatan-nya;

(*b*) yang tinggal atau memileki tanah atau menjalankan perniagaan dalam kawasan kuasa jawatan-nya;

(*c*) yang dengan-nya pegawai itu ada atau mungkin ada mempunyaï urusan rasmi; atau

(*d*) pemberi pinjam-wang berdaftar.

Bagi maksud Perentah 'Am ini perkataan "orang" ada-lah termasok kumpulan orang, di-perbadan atau tidak di-perbadan.

(2) Walau bagaimana pun, sa-saorang pegawai boleh meminjam daripada bank, sharikat insuran, sharikat kerjasama atau melakukan hutang melaluï barang[2] yang di-peroleh dengan jalan perjanjian sewa-beli dengan sharat bahawa—

(*a*) bank, sharikat insuran, sharikat kerjasama yang daripada-nya pegawai itu meminjam atau orang yang dengan-nya ia menanda-tangani perjanjian sewa-beli itu tidak terta'alok sa-chara langsong atau sa-chara tidak langsong kapada kuasa jawatan-nya, atau pun tidak ada mempunyaï apa[2] urusan rasmi dengan pegawai itu yang boleh membawa kapada skandal awam atau di-ertikan bahawa pegawai itu telah menyalah-gunakan kedudokan awam-nya untok faedah persendirian-nya; dan

(*b*) jumlah semua hutang pegawai itu tidak menyebabkan atau tidak mungkin menyebabkan kesusahan berat kerana hutang sa-bagaimana di-ta'arif di-bawah Perentah 'Am 10.

(3) Terta'alok kapada perenggan (2), sa-saorang pegawai boleh melakukan hutang[2] yang berikut, dengan sharat bahawa jumlah semua hutang-nya tidak mungkin menyebabkan kesusahan berat kerana hutang—

(*a*) wang yang di-pinjam atas chagaran tanah yang di-gadai atau di-gadaijanjikan, jika wang tersebut tidak lebeh daripada nilai tanah tersebut;

(*b*) overderaf yang di-benarkan oleh bank;

(*c*) wang yang di-pinjam daripada sharikat insuran atas chagaran polisi;

(*d*) wang yang di-pinjam daripada Kerajaan atau sharikat kerja-sama; atau

(*e*) wang yang kena di-bayar atas barang[2] yang di-peroleh dengan jalan perjanjian sewa-beli.

Kesusahan berat kerana hutang.

10. (1) Bagi maksud Perentah[2] 'Am ini perbahasaan "kesusahan berat kerana hutang" erti-nya keadaan berhutang sa-saorang pegawai yang telah sa-benar-nya menyebabkan kesusahan kewangan yang berat kapada-nya memandang kapada jumlah hutang yang telah di-lakukan oleh-nya; dan dengan tidak menyentoh erti yang 'am bagi perbahasaan itu, sa-saorang pegawai hendak-lah di-sifatkan sa-bagai ada dalam kesusahan berat kerana hutang—

(i) jika jumlah semua hutang dan tanggongan-nya yang tidak ber-chagar lebeh daripada jumlah tiga kali ganda gaji bulanan-nya pada sa-suatu masa tertentu;

(ii) jika pegawai itu sa-orang siberhutang hukuman, sa-lagi hutang hukuman itu maseh belum di-jelaskan; atau

(iii) jika pegawai itu sa-orang bankrap atau sa-orang pemakan gaji tidak berkemampuan, sa-lagi ia maseh menjadi sa-orang bankrap yang belum di-lepaskan atau, mengikut mana yang berkenaan, sa-lagi sa-suatu hukuman ka-atas-nya untok Pegawai Pemegang Harta maseh belum di-tunaikan.

(2) Kesusahan berat kerana hutang, tidak kira apa jua sebab-nya, hendak-lah di-anggap sa-bagai sa-mesti-nya menchachatkan kechekapan sa-saorang pegawai dan menyebabkan pegawai itu boleh di-kenakan tindakan tatatertib.

(3) Jika kesusahan berat kerana hutang yang telah berlaku atau mungkin berlaku ada-lah akibat malang yang tidak dapat di-elakkan, Kerajaan hendak-lah memberi kapada pegawai itu apa^2 bantuan yang di-fikirkan perlu mengikut hal keadaan.

(4) Jika sa-saorang pegawai dapati bahawa hutang-nya ada-lah menyebabkan atau mungkin menyebabkan kesusahan berat kerana hutang kapada-nya, ia hendak-lah segera melaporkan perkara itu kapada Ketua Jabatan-nya.

(5) Sa-saorang pegawai yang tidak melaporkan atau berlengah^2 melaporkan kesusahan berat kerana hutang atau yang melaporkan kesusahan berat kerana hutang tetapi tidak menyatakan kesusahan itu sa-penoh-nya atau pun memberi penjelasan yang palsu atau yang mengelirukan mengenai-nya ada-lah melakukan suatu kesalahan yang berat terhadap tatatertib (tidak kira apa jua telah menyebabkan kesusahan itu pada mula^2-nya), dan ia boleh-lah di-kenakan tindakan tatatertib.

(6) Sa-lagi sa-saorang pegawai ada dalam kesusahan berat kerana hutang, ia hendak-lah hilang kelayakan untok kenaikan pangkat atau memangku sa-suatu jawatan yang lebeh tinggi atau melompati sekatan kechekapan.

Laporan mengenai hutang sa-saorang pegawai oleh Pendaftar Mahkamah.

11. Pendaftar Mahkamah Tinggi, ia-itu bagi pembicharaan dalam Mahkamah Tinggi dan Pendaftar Mahkamah Seshen, bagi pembicharaan dalam Mahkamah Seshen dan Mahkamah Mejisteret hendak-lah melaporkan kapada Ketua Jabatan yang berkenaan darihal tiap^2 orang pegawai awam—

(i) yang, sa-bagai sa-orang siberhutang hukuman; tidak terbukti dari fail guaman sa-bagai telah menjelaskan hutang-nya dalam masa empat belas hari dari tarikh hukuman;

(ii) yang telah memfail permohonan kebankrapan-nya sendiri atau untok mendapat perentah pentadbiran pemakan gaji; atau

(iii) yang terhadap-nya suatu permohonan kebankrapan dari sipiutang telah di-serahkan.

Pegawai Pemegang Harta di-kehendaki melaporkan hutang sa-saorang pegawai.

12. (1) Pegawai Pemegang Harta hendak-lah, sa-lepas sahaja menyiasat dengan chukup-nya tentang hal ehwal sa-saorang pegawai awam yang menjadi bankrap atau pemakan gaji yang tidak berkemampuan, menyampaikan atau memberitahu kapada Ketua Jabatan yang berkenaan—

(i) Pernyataan Hal Ehwal yang telah di-fail oleh sibankrap atau pemakan gaji yang tidak berkemampuan itu menurut undang^2 Kebankrapan yang berkuatkuasa dari sa-masa ka-samasa;

(ii) banyak-nya perentah ansoran yang di-chadang atau di-buat;

(iii) sama ada atau tidak Pegawai Pemegang Harta berchadang hendak mengambil apa^2 langkah pembicharaan lagi dan, jika berchadang, suatu kenyataan ringkas mengenai-nya;

(iv) sebab utama kebankrapan itu;

(v) sama ada pada pendapat-nya kes itu berkaitan dengan malang yang tak dapat di-elakkan, kelakuan yang menjatohkan kehormatan atau apa[2] hal keadaan khas yang lain, sama ada yang menyokong atau tidak menyokong pegawai itu;

(vi) apa[2] perkara lain yang, menurut budibichara-nya, patut di-sebut.

(2) Sa-telah menimbangkan laporan di-bawah perenggan (1) dalam Perentah 'Am ini dan laporan daripada Ketua Jabatan yang berkenaan itu mengenai kerja dan kelakuan pegawai itu pada masa sa-belum dan semenjak pegawai itu dalam kesusahan berat kerana hutang, Pehak-berkuasa Tatatertib hendak-lah memutuskan sama ada hendak meng-ambil tindakan tatatertib atau tidak, dan jika hendak mengambil, apa-kah tindakan yang hendak di-ambil.

(3) Jika hukuman yang di-kenakan di-bawah perenggan (2) dalam Perentah 'Am ini berupa pemberhentian atau penanggohan kenaikan gaji maka apabila habis tempoh pemberhentian atau penanggohan kenaikan gaji tersebut, Pehak-berkuasa Tatatertib boleh memerentahkan supaya wang sa-banyak kenaikan gaji yang di-pulehkan itu di-tambah kapada ansoran[2] yang kena di-bayar kapada Pegawai Pemegang Harta atau kapada sipiutang atau sipiutang[2] hukuman yang lain.

(4) Sa-saorang pegawai yang mendapat pembatalan kebankrapan-nya boleh-lah di-anggap sa-bagai telah memulehkan kedudokan kewangan-nya dengan sa-penoh.

(5) Jika hutang sa-saorang pegawai terjumlah kapada kesusahan berat kerana hutang akan tetapi pegawai itu tidak di-hukum menjadi bankrap atau pemakan gaji tidak berkemampuan, maka kes-nya hendak-lah di-ulangkaji pada tiap[2] tahun.

Ramalan di-larang.

13. Sa-saorang pegawai tidak boleh membuat ramalan tentang turun naik-nya harga barang[2], sama ada barang[2] tempatan atau barang[2] luar negeri, atau tentang membeli atau menjual chagaran dengan harga yang tinggi sa-kali (stok dan saham), jika ramalan itu mungkin menjatohkan nama baik-nya atau nama baik jabatan-nya.

Refel dan loteri.

14. Sa-saorang pegawai ada-lah di-larang mengadakan refel atau loteri dengan harta persendirian-nya.

Meminjamkan wang.

15. Sa-saorang pegawai tidak boleh meminjamkan wang dengan di-kenakan bunga, sama ada atas gadaijanji atau apa[2] lain, atau menggerenti atau menjadi penjamin bagi wang yang di-pinjamkan dengan di-kenakan bunga, kapada mana[2] orang lain. Tiada apa[2] jua dalam Perentah 'Am ini boleh di-sifatkan sa-bagai menchegah ahli[2] sharikat kerjasama berdaftar atau pertubohan kebajikan yang di-luluskan daripada menjadi penjamin bagi pinjaman[2] yang di-buat oleh sharikat[2] itu, atau sa-bagai menchegah mana[2] pegawai daripada menyimpan wang dalam akaun deposit di-mana[2] bank atau di-Bank Simpanan Pejabat Pos atau dari-pada menjadi penjamin bagi wang yang di-pinjamkan oleh Kerajaan kapada sa-orang pegawai lain.

Wang kenangan.

16. Sa-saorang pegawai tidak boleh mengadakan atau menggalakkan dengan giat pungutan wang untok mengambil sempena penghargaan awam terhadap kelakuan-nya sendiri atau kelakuan sa-orang pegawai lain akan tetapi jika wang itu di-pungut sa-chara sepontan oleh orang[2] di-luar perkhidmatan awam, maka wang[2] ini boleh di-tujukan pada maksud[2] awam dan di-kaitkan dengan nama orang yang telah berjasa mendapat kepujian umum itu.

Kebenaran menerbitkan buku, dsb.

17. (1) Kechuali dengan kebenaran Ketua Jabatan, sa-saorang pegawai tidak boleh menerbitkan atau pun menulis apa² buku, makalah atau lain² karya (dalam Perentah 'Am ini di-rujok sa-bagai "penerbitan yang di-chadangkan"), yang berdasarkan ma'alumat rasmi.

(2) Pada menimbangkan sama ada kebenaran bagi penerbitan yang di-chadangkan itu di-beri atau tidak, Ketua Jabatan hendak-lah memandang kapada kepentingan Kerajaan dan awam, dan jika di-fikirkan-nya perlu, ia boleh meminta pendapat lain² Ketua Jabatan yang berkenaan.

(3) Apabila di-kemukakan kapada Ketua Jabatan suatu ringkasan kasar mengenai bidang penerbitan yang di-chadangkan itu dan kaedah penyusunan yang akan di-pakai bagi-nya, Ketua Jabatan boleh memberi kebenaran sementara untok penerbitan yang di-chadangkan itu di-jalankan: Dengan sharat bahawa kebenaran mu'tamad tidak boleh di-beri melainkan jika naskhah penoh dan lengkap bagi penerbitan yang di-chadangkan itu telah di-kemukakan kapada Ketua Jabatan, dan Ketua Jabatan berpuashati bahawa penerbitan yang di-chadangkan itu tidak bertentangan dengan kepentingan Kerajaan atau awam.

(4) Pada menjalankan kewajipan-nya di-bawah perenggan (2) dan (3), Ketua Jabatan hendak-lah berusaha sa-daya upaya-nya supaya tidak berlengah² tetapi hendak-lah membuat sa-suatu keputusan dengan sa-berapa segera yang boleh.

(5) Jika kebenaran bagi penerbitan yang di-chadangkan itu di-beri, kebenaran itu hendak-lah terta'alok kapada suatu sharat yang di-sifatkan ada, ia-itu—

(*a*) penerbitan yang di-chadangkan itu tidak boleh di-terbitkan sa-chara yang boleh di-fahamkan bahawa penerbitan itu telah mendapat sokongan, bantuan atau anjoran rasmi; atau

(*b*) penerbitan yang di-chadangkan itu tidak boleh sa-kali² mengandongi perkataan "penerbitan di-luluskan" atau perkataan² yang bermaksud demikian itu.

Larangan mengenai pernyataan awam.

18. (1) Sa-saorang pegawai tidak boleh, dengan lisan atau dengan bertulis atau dengan apa² chara lain, membuat sa-suatu pernyataan awam mengenai dasar atau keputusan Kerajaan atas apa² soal, atau pun mengedarkan sa-suatu pernyataan itu sama ada di-buat oleh-nya atau oleh sa-saorang lain. Walau bagaimana pun Perentah 'Am ini tidak-lah di-pakai terhadap sa-suatu pernyataan awam yang di-buat oleh sa-saorang pegawai berhubong dengan pelaksanaan jawatan awam-nya.

(2) Kechuali dengan kebenaran Ketua Jabatan, sa-saorang pegawai tidak boleh, dengan lisan atau dengan bertulis atau dengan apa² chara lain, membuat apa² pernyataan awam atau membuat apa² ulasan mengenai apa² perkara berhubong dengan kerja Jabatan di-mana ia sedang atau telah bekerja—

(*a*) jika pernyataan atau ulasan itu boleh di-anggap dengan menasabah sa-bagai menunjokkan dasar Kerajaan; atau

(*b*) jika pernyataan atau ulasan itu boleh atau mungkin mendatangkan serba salah kapada Kerajaan.

(3) Kechuali dengan kebenaran Ketua Jabatan, sa-saorang pegawai tidak boleh, dengan lisan atau dengan bertulis, membinchangkan sa-chara terbuka kapada awam apa² langkah yang di-ambil oleh Kerajaan atau apa² langkah rasmi yang di-ambil oleh pegawai²-nya.

(4) Bagi maksud Perentah 'Am ini "pernyataan awam" atau "membinchangkan sa-chara terbuka kapada awam" termasok-lah membuat apa² pernyataan atau ulasan kapada akhbar atau kapada awam atau dalam masa membuat apa² sharahan atau uchapan atau siaran mengenai-nya dengan jalan bunyian atau penglihatan.

Larangan mengenai menjalankan kerja sa-bagai penyunting akhbar.

19. Sa-saorang pegawai tidak boleh menjalankan kerja sa-bagai penyunting apa² akhbar, majallah atau mengambil bahagian sa-chara langsong atau sa-chara tidak langsong dalam pengurusan-nya, atau dengan apa² chara memberi sumbangan wang kapada-nya, kechuali yang berikut—

(i) majallah jabatan atau kakitangan;

(ii) majallah profeshenal;

(iii) penerbitan pertubohan² sukarela, yang bukan pertubohan politik.

Kegiatan politik.

20. (1) Kechuali sa-bagaimana di-peruntokkan dalam perenggan (3), sa-saorang pegawai tidak boleh mengambil bahagian dalam apa² jua kegiatan politik atau menjalankan apa² jua kegiatan politik atau memakai lambang mana² parti politik.

(2) Kechuali sa-bagaimana di-peruntokkan dalam perenggan (3), sa-saorang pegawai hendak-lah bersikap membisu dalam hal² politik dan khusus-nya ia tidak boleh—

(*a*) beruchap kapada awam mengenai apa² hal yang menjadi perkara perbalahan politik di-antara dua atau lebeh daripada dua parti politik;

(*b*) menulis surat atau bertemu-ramah dengan akhbar² mengenai hal² tersebut;

(*c*) menerbitkan buku atau makalah atau risalah membentangkan pendapat²-nya atas perkara² berkenaan dengan sa-suatu parti politik; atau mengedarkan buku, makalah atau risalah itu;

(*d*) mengambil bahagian dalam merayu undi bagi menyokong sa-orang atau beberapa orang chalun dalam sa-suatu pilehanraya;

(*e*) menjalankan kerja sa-bagai sa-orang wakil pilehanraya atau wakil di-tempat mengundi atas sifat apa² jua untok atau bagi pehak sa-saorang chalun dalam sa-suatu pilehanraya.

(3) Sa-saorang pegawai yang berchuti sa-belum bersara boleh mengambil bahagian dalam kegiatan² politik, jika—

(*a*) ia telah mendapat kelulusan Kerajaan terlebeh dahulu untok mengambil bahagian dalam kegiatan² tersebut; dan

(*b*) dengan mengambil bahagian demikian itu ia tidak melanggar peruntokan² Ordinan Rahsia Kerajaan, 1950. *15/1950.*

Kelulusan untok mengambil bahagian dalam kegiatan² politik boleh di-minta oleh pegawai itu tatkala mengemukakan permohonan-nya untok kebenaran bersara.

Membawa langkah³ pembicharaan dan bantuan guaman.

21. (1) Mana² pegawai tidak boleh mengambil apa² langkah untok membawa langkah² pembicharaan bagi kepentingan-nya sendiri berhubong dengan perkara² yang berbangkit daripada kewajipan² awam-nya tanpa persetujuan Kerajaan terlebeh dahulu.

(2) Sa-saorang pegawai yang menerima notis mengenai langkah pembicharaan yang di-chadang hendak di-bawa ka-atas-nya berkenaan dengan perkara² yang berbangkit daripada kewajipan² awam-nya atau yang menerima apa² peroses mahkamah berhubong dengan langkah pembicharaan tersebut hendak-lah segera melaporkan perkara itu kapada Ketua Jabatan-nya untok mendapat arahan tentang sama ada dan bagaimana notis atau, mengikut mana yang berkenaan, peroses mahkamah itu hendak di-akuterima, di-jawab atau di-bela.

(3) Sa-saorang pegawai yang berkehendakkan bantuan guaman untok menempah dan mengarahkan sa-saorang peguam bagi maksud pembicharaan berhubong dengan perkara² yang berbangkit daripada kewajipan² awam-nya boleh membuat permohonan kapada Ketua

Pengarah Perkhidmatan Awam. Permohonan tersebut hendak-lah mengandongi segala nyataan dan hal keadaan kes itu serta pendapat Ketua Jabatan yang telah di-pertimbangkan tentang keadaan terlibat-nya pegawai itu, dan hendak-lah di-'alamat dan di-kemukakan kapada Ketua Pengarah Perkhidmatan Awam melalui Peguam Negara.

(4) Apabila di-terima kelak, Ketua Pengarah Perkhidmatan Awam boleh menolak permohonan tersebut atau meluluskan-nya terta'alok kapada nasihat Peguam Negara tentang—

(*a*) banyak-nya bantuan guaman yang akan di-luluskan;

(*b*) peguam yang hendak di-tempah dan di-arah oleh pegawai itu; atau

(*c*) apa² sharat lain yang di-fikirkan baik oleh Peguam Negara,

dan, sa-lanjut-nya, kapada suatu sharat yang di-sifatkan ada ia-itu jika sa-kira-nya pada akhir pembicharaan itu Mahkamah menghukum supaya pegawai itu di-bayar kos pembicharaan itu maka Kerajaan tidak akan membayar apa² wang daripada bantuan guaman yang telah di-luluskan itu melainkan jika kos pembicharaan yang di-hukum di-bayar kapada Pegawai itu tidak menchukupi untok membayar bayaran menempah dan mengarahkan sa-saorang peguam.

(5) Bayaran untok memakai sa-orang peguam yang di-tempah dan di-arah oleh atau bagi pehak sa-saorang pegawai dalam pembicharaan² berhubong dengan perkara² yang berbangkit daripada kewajipan² awam-nya kechuali dengan kelulusan Ketua Pengarah Perkhidmatan Awam tidak akan di-bayar daripada wang awam.

Ta' hadhir bekerja tanpa chuti.

22. (1) Sa-saorang pegawai yang ta' hadhir bekerja tanpa chuti atau tanpa apa² sebab yang menasabah boleh di-kenakan tindakan tatatertib.

(2) Peruntokan² yang berikut hendak-lah di-pakai terhadap sa-saorang pegawai yang ta' hadhir bekerja tanpa chuti atau tanpa apa² sebab yang menasabah dan perbahasaan "ta' hadhir bekerja" di-bawah ini hendak-lah di-tafsirkan sa-bagai ta' hadhir bekerja tanpa chuti atau tanpa apa² sebab yang menasabah.

(3) Jika sa-saorang pegawai ta' hadhir bekerja sa-lama tempoh tidak lebeh daripada tujoh hari dalam sa-suatu bulan tertentu, maka, atas laporan oleh Ketua Jabatan-nya, Pehak-berkuasa Tatatertib boleh, jika di-fikirkan-nya tindakan tatatertib dengan tujuan membuang kerja tidak patut di-ambil, mengambil tindakan ka-atas pegawai itu menurut Perentah 'Am 29 dan mengenakan apa² hukuman yang di-fikirkan-nya patut dan dalam hal yang demikian, tempoh ta' hadhir bekerja itu boleh-lah di-kira sa-bagai tempoh chuti ta' bergaji.

(4) Jika sa-saorang pegawai ta' hadhir bekerja sa-lama tempoh lebeh daripada tujoh hari dalam sa-suatu bulan tertentu maka hal itu hendak-lah di-laporkan segera oleh Ketua Jabatan kapada Pehak-berkuasa Tatatertib dengan memberi tarikh² dan hal keadaan ta' hadhir bekerja itu dan apa² ma'alumat sa-lanjut-nya yang mungkin di-kehendaki berkenaan dengan pegawai itu. Kemudian-nya, sa-telah menimbangkan laporan tersebut, Pehak-berkuasa Tatatertib boleh mengambil tindakan tatatertib terhadap pegawai itu mengikut Perentah 'Am 30 dengan tujuan membuang kerja atau menurunkan pangkat-nya.

(5) Jika sa-saorang pegawai ta' hadhir bekerja dan tidak dapat di-kesan, Ketua Jabatan-nya hendak-lah mengarahkan supaya suatu surat A.T. berdaftar (Akuan Terima) di-hantar kapada pegawai itu ka-'alamat-nya yang akhir di-ketahui menghendaki pegawai itu memberi penjelasan mengapa ia ta' hadhir bekerja dan juga mengarah-nya supaya melaporkan diri untok bekerja dengan serta merta. Jika tujoh hari sa-lepas pegawai itu menerima surat berdaftar tersebut ia maseh

juga ta' hadhir bekerja atau tiada apa² perkhabaran di-dapati mengenai-nya atau daripada-nya, atau jika surat berdaftar tersebut di-kembalikan tak-terserah, maka Ketua Jabatan itu hendak-lah menghantar suatu laporan kapada Pehak-berkuasa Tatatertib sa-bagaimana di-kehendaki di-bawah perenggan (4). Sa-telah menimbangkan laporan tersebut Pehak-berkuasa Tatatertib hendak-lah mengambil tindakan tatatertib dengan tujuan membuang kerja atau menghukum pegawai itu mengikut Perentah 'Am 29 tetapi jika surat berdaftar itu di-kembalikan tak-terserah, Pehak-berkuasa Tatatertib hendak-lah mengambil langkah untok memberitahu dalam *Warta* yang pegawai itu ta' hadhir bekerja dan ia tidak dapat di-kesan.

(6) Jika walau pun pemberitahu telah di-buat dalam *Warta* pegawai itu maseh tidak kembali bekerja dalam tempoh tujoh hari dari tarikh penyiaran *Warta* itu, pegawai itu hendak-lah di-sifatkan sa-bagai telah di-buang kerja.

Melaporkan kelakuan atau kerja yang tidak memuaskan.

23. (1) Jika sa-saorang pegawai dapati bahawa mana² pegawai yang bekerja di-bawah-nya tidak chekap atau kurang berusaha atau melakukan kesalahan melanggar mana² peruntokan Perentah² 'Am ini, maka pegawai yang mula² tersebut itu hendak-lah melaporkan dengan segera hal itu dengan lisan atau dengan bertulis kapada pegawai kanan yang di-atas-nya atau kapada Ketua Jabatan-nya.

(2) Jika pegawai yang mula² tersebut itu tidak melaporkan hal itu, maka ia hendak-lah di-sifatkan sa-bagai bersalah kerana tidak chekap dan dengan demikian ia boleh di-kenakan tindakan tatatertib.

Kelakuan dalam masa berchuti atau masa berchuti sa-belum bersara.

24. Sa-saorang pegawai yang berchuti rehat atau yang berchuti sa-belum bersara hendak-lah terus terikat oleh Perentah² 'Am ini dan oleh Peratoran² dan Perentah² lain yang berkenaan dengan jawatan-nya, dan, khusus-nya, ia tidak boleh menerima apa² kerja persendirian untok mendapatkan upah tanpa mendapat kebenaran terlebeh dahulu dari Ketua Pengarah Perkhidmatan Awam ia-itu bagi Pegawai² Persekutuan dan kebenaran Setiausaha Kerajaan Negeri, bagi Pegawai² Negeri.

Menulis surat rayuan.

25. Mana² pegawai Kerajaan tidak di-benarkan menerima apa² bayaran kerana menulis apa² surat rayuan.

Jurubahasa.

26. (1) Kechuali sa-bagaimana di-peruntokkan oleh perenggan (2) dan (3) Perentah 'Am ini, mana² jurubahasa atau pegawai lain tidak boleh membuat apa² terjemahan bagi apa² suratan kechuali—

(*a*) untok kegunaan pejabat dalam perjalanan kewajipan biasa-nya; atau

(*b*) untok sa-saorang awam dengan bayaran yang di-tetapkan.

(2) Jika sa-saorang awam yang tidak boleh membacha sa-suatu suratan yang di-maksudkan untok-nya meminta sa-saorang jurubahasa atau sa-saorang pegawai lain menghuraikan isi kandongan suratan itu sa-chara lisan, permintaan itu boleh-lah di-benarkan dengan sharat bahawa permintaan itu tidak mengganggu kerja² lain dan bahawa tiada apa² bayaran atau hadiah di-beri atau di-terima.

(3) Jika sa-saorang yang berpendapatan kechil meminta supaya suatu terjemahan di-buat bagi sa-suatu suratan yang di-katakan sa-bagai berkaitan dengan apa² pembicharaan dalam mahkamah atau pejabat, Pendaftar atau ketua pejabat yang berkenaan itu (mengikut mana yang berkenaan) boleh, menurut budibichara-nya, membenarkan sa-orang jurubahasa, atau sa-orang pegawai lain yang mengerti bahasa yang di-kehendaki itu supaya membuat suatu ringkasan bertulis mengenai kandongan suratan itu dengan tiada apa² bayaran. Dalam tiap² hal yang demikian itu pendua bagi ringkasan itu hendak-lah di-failkan dalam mahkamah atau pejabat itu bersama dengan minit asal yang membenarkan perkhidmatan perchuma itu.

(4) Perentah 'Am ini ada-lah berkenaan dengan suratan² yang di-perchayai berhubong dengan guaman atau urusan rasmi lain, sama ada yang maseh belum selesai atau yang di-chadangkan, dan tidak-lah men-chegah jurubahasa² dan pegawai² lain daripada membuat terjemahan bagi suratan² yang mengandongi kepentingan sejarah atau sastera.

BAHAGIAN 2

ACHARA TATATERTIB

Sharat² bagi membuang kerja, dsb.

27. Dalam semua pembicharaan tatatertib di-bawah Bahagian ini tiada sa-saorang pegawai boleh di-buang kerja atau di-turunkan pangkat melainkan ia telah di-beritahu dengan bertulis tentang alasan² yang atas-nya di-chadang hendak di-ambil tindakan terhadap-nya dan ia telah di-beri peluang yang menasabah untok membela diri.

Erti "di-thabitkan", "thabitan".

28. Istilah "di-thabitkan" atau "thabitan" termasok-lah suatu pendapat atau suatu perentah yang melibatkan suatu pendapat oleh sa-suatu mahkamah jenayah di-Malaysia atau di-luar negeri atau oleh suatu badan yang layak yang di-berikuasa untok menjalan penyiasatan terus di-bawah mana² undang² bertulis menyatakan bahawa orang yang di-pertudoh atau di-tudoh itu telah melakukan kesalahan.

Achara tatatertib bagi kerja yang tidak memuaskan atau salah-laku yang tidak mematutkan pembuangan kerja atau penurunan pangkat.

29. Jika Pehak-berkuasa Tatatertib yang berkenaan di-beritahu atau jika ia dapati bahawa sa-saorang pegawai ada-lah bersalah kerana kerja yang tidak memuaskan atau kerana salah-laku dan kerja atau salah-laku itu, pada pendapat Pehak-berkuasa Tatatertib itu, tidak chukup berat untok mematutkan pembicharaan di-jalankan di-bawah Perentah 'Am 30 dengan tujuan membuang kerja atau menurunkan pangkat maka sa-telah memberi peluang kapada pegawai itu untok memberi penjelasan tentang kemerosotan kerja atau kelakuan-nya, Pehak-berkuasa Tatatertib boleh mengenakan apa² hukuman yang di-fikirkan-nya patut ka-atas pegawai itu.

Achara bagi membuang kerja dan menurunkan pangkat.

30. (1) Jika Pehak-berkuasa Tatatertib yang berkenaan atau Ketua Pengarah Perkhidmatan Awam di-beritahu atau jika ia dapati bahawa sa-saorang pegawai ada-lah bersalah kerana kerja yang tidak memuaskan atau kerana salah-laku dan kerja atau salah-laku itu, pada pendapat Pehak-berkuasa Tatatertib itu, mematutkan pembuangan kerja atau penurunan pangkat, maka peruntokan² yang berikut hendak-lah di-pakai.

(2) Pehak-berkuasa Tatatertib, sa-telah menimbangkan segala ma'a-lumat yang ada dalam milek-nya menyatakan bahawa ada kes *prima facie* untok membuang kerja atau menurunkan pangkat, hendak-lah mengarahkan supaya di-hantar kapada pegawai itu suatu pernyataan bertulis, di-sediakan, jika perlu, dengan bantuan Jabatan Undang², mengenai alasan atau alasan² yang atas-nya di-chadang hendak membuang kerja atau menurunkan pangkat pegawai itu dan hendak-lah meminta pegawai itu membuat suatu surat-rayuan, dalam tempoh tidak kurang daripada empat belas hari, mengandongi alasan² yang hendak di-gunakan oleh pegawai itu untok membebaskan diri-nya.

(3) Jika sa-telah menimbangkan surat-rayuan tersebut yang di-buat oleh pegawai itu Pehak-berkuasa Tatatertib berpendapat bahawa kerja yang tidak memuaskan itu atau kelakuan pegawai itu tidak chukup berat untok mematutkan pembuangan kerja atau penurunan pangkat, Pehak-berkuasa Tatatertib boleh mengenakan apa² hukuman yang di-fikirkan-nya patut ka-atas pegawai itu.

(4) Jika pegawai itu tidak mengemukakan apa² surat-rayuan dalam tempoh yang di-tetapkan itu, atau jika ia mengemukakan sa-suatu surat-rayuan yang tidak membebaskan diri-nya dengan memuaskan hati Pehak-berkuasa Tatatertib, maka Pehak-berkuasa Tatatertib hendak-lah kemudian-nya menimbang dan memutuskan sama ada hendak membuang kerja atau menurunkan pangkat pegawai itu.

(5) Jika Pehak-berkuasa Tatatertib berpendapat bahawa kes terhadap pegawai itu memerlukan penjelasan sa-lanjut-nya, Pehak-berkuasa Tatatertib boleh melantek suatu Jawatan-kuasa Siasatan terdiri daripada tidak kurang daripada dua orang pegawai kanan Kerajaan yang di-pileh dengan memandang kapada taraf pegawai yang berkenaan itu dan kapada jenis dan berat-nya pengaduan^2 yang di-siasat itu, dengan sharat bahawa sa-saorang pegawai yang lebeh rendah pangkat-nya daripada pegawai yang di-siasat itu, atau pun Ketua Jabatan pegawai itu, tidak-lah boleh di-pileh menjadi anggota Jawatan-kuasa itu.

(6) Pegawai itu hendak-lah di-beritahu bahawa soal mengenai pembuangan kerja atau penurunan pangkat-nya akan di-bawa ka-hadapan Jawatan-kuasa itu pada suatu hari yang di-tentukan dan bahawa ia akan di-benarkan dan, jika di-putuskan oleh Jawatan-kuasa itu, ia adalah di-kehendaki hadhir di-hadapan Jawatan-kuasa itu dan membebaskan diri-nya.

(7) Jika saksi^2 di-pereksa oleh Jawatan-kuasa itu, pegawai itu hendaklah di-beri peluang hadhir dan mengemukakan soalan^2 kapada saksi^2 itu bagi pehak-nya sendiri dan tiada apa^2 keterangan suratan boleh digunakan terhadap pegawai itu melainkan ia terlebeh dahulu di-beri satu salinan-nya atau di-benarkan melihat-nya.

(8) Jawatan-kuasa itu boleh, menurut budibichara-nya, membenarkan Kerajaan atau pegawai itu di-wakili oleh sa-orang pegawai dalam Perkhidmatan Awam atau, dalam hal^2 yang terkechuali, oleh sa-orang peguam dan, terta'alok kapada apa^2 penanggohan yang menasabah perlu untok membolehkan pegawai itu mengemukakan kes-nya dengan sendiri, Jawatan-kuasa itu boleh menarek balek kebenaran itu pada bila^2 masa: Dengan sharat bahawa jika Jawatan-kuasa itu membenarkan Kerajaan di-wakili, ia hendak-lah juga membenarkan pegawai itu di-wakili demikian itu juga.

(9) Jika, dalam perjalanan siasatan itu, terzahir alasan^2 sa-lanjut-nya mengenai pembuangan kerja dan Pehak-berkuasa Tatatertib fikirkan penyiasatan terhadap pegawai itu patut di-teruskan atas alasan^2 itu, pegawai itu hendak-lah di-beri suatu pernyataan bertulis mengenai alasan itu dan langkah^2 yang sama hendak-lah di-ambil saperti yang di-tetapkan di-atas mengenai alasan^2 yang asal itu.

(10) Sa-telah menyiasat berkenaan dengan perkara itu, Jawatan-kuasa itu hendak-lah membuat suatu laporan kapada Pehak-berkuasa Tatatertib. Jika Pehak-berkuasa Tatatertib fikirkan laporan itu patut di-jelaskan mengenai sa-suatu hal atau jika siasatan sa-lanjut-nya ada-lah di-kehendaki, maka perkara itu boleh di-rujokkan kembali kapada Jawatan-kuasa itu untok siasatan dan laporan sa-lanjut-nya.

(11) Jika, sa-telah menimbangkan laporan Jawatan-kuasa itu, Pehak-berkuasa Tatatertib berpendapat—

(*a*) bahawa pegawai itu patut di-buang kerja atau di-turunkan pangkat, Pehak-berkuasa Tatatertib hendak-lah mengarahkan demikian itu dengan segera;

(*b*) bahawa pegawai itu tidak patut di-buang kerja atau di-turunkan pangkat, tetapi patut menerima hukuman yang lebeh ringan, Pehak-berkuasa Tatatertib boleh mengenakan ka-atas pegawai itu apa^2 hukuman yang lebeh ringan yang di-fikirkan-nya patut; atau

(*c*) bahawa pembicharaan itu menzahirkan alasan^2 yang chukup untok menghendaki pegawai itu bersara demi kepentingan awam, Pehak-berkuasa Tatatertib hendak-lah mengeshorkan demikian itu kapada Kerajaan. Soal penchen hendak-lah di-uruskan di-bawah undang^2 Penchen.

Pembicharaan jenayah terhadap sa-saorang pegawai.

31. (1) Jika pembicharaan jenayah di-bawa terhadap sa-saorang pegawai, Pendaftar Mahkamah di-mana pembicharaan tersebut di-bawa, Ketua Jabatan yang membawa langkah pembicharaan tersebut dan pegawai itu sendiri hendak-lah menghantar kapada Ketua Jabatan yang di-bawah-nya pegawai itu berkhidmat—

(*a*) pada masa pembicharaan tersebut di-mulakan, ma'alumat yang berikut—

(i) pertudohan atau pertudohan[2] terhadap pegawai itu;

(ii) jika di-tangkap, tarikh dan waktu pegawai itu telah di-tangkap;

(iii) sama ada pegawai itu ada dalam jaminan atau tidak; dan

(iv) apa[2] ma'alumat lain yang berkaitan; dan

(*b*) pada akhir pembicharaan tersebut, keputusan pembicharaan jenayah tersebut.

(2) Apabila Ketua Jabatan mengetahuï bahawa langkah pembicharaan ada-lah sedang di-bawa terhadap sa-saorang pegawai Jabatan-nya ia hendak-lah menyiasat perkara itu daripada pehak-berkuasa yang tersebut dalam perenggan (1) dan daripada pegawai yang berkenaan itu sendiri dengan tujuan untok mendapat ma'alumat tersebut. Apabila menerima ma'alumat tersebut, Ketua Jabatan hendak-lah menghantar-nya kapada Pehak-berkuasa Tatatertib bersama dengan shor-nya sama ada pegawai itu patut di-tahan-kerja atau tidak.

(3) Sa-telah menimbangkan ma'alumat tersebut dan shor Ketua Jabatan itu atau sa-telah Pehak-berkuasa Tatatertib itu sendiri mengetahuï tentang ada-nya pembicharaan jenayah di-bawa terhadap pegawai itu, jika sa-kira-nya tidak ada ma'alumat tersebut, maka jika di-fikirkan patut oleh Pehak-berkuasa Tatatertib itu, ia boleh menahan pegawai itu daripada menjalankan kewajipan-nya, dan penahanan-kerja itu boleh berkuatkuasa mulaï dari tarikh pegawai itu di-tangkap atau dari tarikh saman di-sampaikan kapada pegawai itu, dan kemudian-nya, melainkan dan sa-hingga jawatan pegawai itu di-gantong, pegawai itu hendak-lah di-benarkan menerima sa-bahagian daripada gaji jawatan-nya tidak kurang daripada satu-perdua banyak-nya sa-bagaimana di-fikirkan patut oleh Pehak-berkuasa Tatatertib.

(4) Jika pembicharaan jenayah terhadap pegawai itu berkeputusan dengan ia di-thabitkan Pehak-berkuasa Tatatertib boleh menggantong pegawai itu daripada menjalankan kerja sementara menanti keputusan Pehak-berkuasa Tatatertib di-bawah Perentah 'Am 34 dan kemudian-nya pegawai itu tidak-lah berhak menerima apa[2] bahagian gaji-nya yang belum di-bayar dan yang di-tahan sa-masa ia di-tahan-kerja, dan ia juga tidak-lah berhak menerima apa[2] gaji jua pun dari tarikh ia di-thabitkan itu.

(5) Jika pembicharaan jenayah terhadap pegawai itu berkeputusan dengan ia di-bebaskan dan tiada apa[2] rayuan di-buat terhadap pembebasan tersebut oleh atau bagi pehak Penda'awa Raya, maka pegawai itu boleh-lah biasa-nya di-benarkan bertugas balek sa-lepas pembebasan tersebut tetapi jika rayuan di-buat terhadap pembebasan tersebut, pegawai itu hendak-lah terus di-tahan-kerja sa-hingga rayuan tersebut di-selesaikan.

Langkah' untok membuang kerja tidak boleh di-ambil jika pembicharaan jenayah belum selesai.

32. Jika pembicharaan di-bawa terhadap sa-saorang pegawai, tiada apa[2] langkah untok membuang kerja-nya atas apa[2] alasan yang terlibat dalam pertudohan jenayah itu boleh di-ambil sementara menanti pembicharaan jenayah itu selesai.

Tidak boleh di-buang kerja jika di-bebaskan kechuali, dsb.

33. Sa-saorang pegawai yang di-bebaskan tidak boleh di-buang kerja atas pertudohan yang ia telah di-bebaskan tetapi tiada apa² jua dalam Perentah 'Am ini boleh menchegah tindakan tatatertib di-ambil terhadap pegawai itu atas apa² alasan lain yang berbangkit daripada kelakuan-nya dalam perkara itu: Dengan sharat bahawa alasan² tersebut tidak membangkitkan pada asas-nya soal² yang sama saperti soal² yang dari-pada-nya ia telah di-bebaskan.

Achara mengenai thabitan.

34. (1) Jika pembicharaan jenayah terhadap sa-saorang pegawai ber-keputusan dengan ia di-thabitkan, maka Ketua Jabatan-nya, sa-telah menerima keputusan pembicharaan itu, hendak-lah memohon kapada Pendaftar Mahkamah di-mana pembicharaan terhadap pegawai itu di-jalankan suatu salinan rekod pembicharaan tersebut, ia-itu per-tudohan, chatitan² keterangan dan hukuman Mahkamah. Sa-telah menerima rekod tersebut, Ketua Jabatan hendak-lah menghantar-nya kapada Pehak-berkuasa Tatatertib beserta dengan butir² penoh mengenai rekod perkhidmatan pegawai itu yang lalu dan shor Ketua Jabatan tentang sama ada pegawai itu patut di-buang kerja atau di-kenakan apa² hukum lain bergantong kapada jenis dan berat-nya kesalahan yang di-lakukan itu berkaitan dengan sa-takat mana-kah kesalahan itu menchemarkan nama-baik perkhidmatan.

(2) Jika sa-telah menimbangkan suratan² yang di-hantar oleh Ketua Jabatan itu, Pehak-berkuasa Tatatertib berpendapat bahawa pegawai itu patut di-hukum dengan hukuman yang lebeh ringan daripada di-buang kerja atau di-turunkan pangkat, maka Pehak-berkuasa Tatatertib boleh-lah dengan segera mengenakan apa² hukuman yang lebeh ringan yang di-fikirkan-nya patut.

(3) Jika sa-telah menimbangkan suratan² yang di-hantar oleh Ketua Jabatan itu, Pehak-berkuasa Tatatertib berpendapat bahawa pegawai itu patut di-buang kerja atau di-turunkan pangkat, Pehak-berkuasa Tatatertib hendak-lah meminta pegawai itu dalam tempoh tidak kurang daripada empat belas hari supaya membuat surat-rayuan menyatakan mengapa ia tidak patut di-buang kerja atau di-turunkan pangkat. Pegawai itu hendak-lah menghantar surat-rayuan itu melalui Ketua Jabatan-nya dan Ketua Jabatan itu boleh memberi apa² pendapat atau ulasan² yang sa-lanjut-nya atas perkara itu, jika di-fikirkan-nya perlu.

(4) Sa-telah menimbangkan surat-rayuan yang di-hantar oleh pegawai itu di-bawah perenggan (3) di-atas, Pehak-berkuasa Tatatertib maseh berpendapat bahawa pegawai itu patut di-buang kerja atau di-turunkan pangkat, Pehak-berkuasa Tatatertib boleh mengarahkan demikian itu dengan segera; atau jika ia berpendapat bahawa pegawai itu patut di-kenakan hukuman yang lebeh ringan atau apa² hukum lain, Pehak-berkuasa Tatatertib boleh-lah mengenakan ka-atas pegawai itu hukuman yang lebeh ringan itu atau apa² hukum lain yang di-fikirkan-nya patut.

(5) Jika hukuman yang lebeh ringan itu tidak mengakibatkan pegawai tidak di-buang kerja, soal gaji-nya dalam tempoh tahan-kerja dan penggantongan kerja itu hendak-lah terpulang kapada budibichara Kerajaan.

Tahan-kerja dan penggantongan-kerja.

35. (1) Pehak-berkuasa Tatatertib, jika di-fikirkan-nya patut, boleh menahan daripada menjalankan kerja—

(*a*) sa-saorang pegawai yang pembicharaan jenayah sedang di-bawa terhadap-nya sa-bagaimana di-peruntokkan dalam Perentah 'Am 31 dan tahan-kerja itu boleh di-kuatkuasakan mulai dari tarikh ia di-tangkap atau dari tarikh saman di-sampaikan kapada-nya; atau

(*b*) sa-saorang pegawai yang pembicharaan bagi membuang kerja-nya sedang atau akan di-ambil terhadap-nya dan tahan-kerja itu boleh di-kuatkuasakan mulai dari tarikh tahan-kerja itu di-arahkan.

(2) Pehak-berkuasa Tatatertib biasa-nya boleh menahan-kerja sa-saorang pegawai dalam hal[2] yang berikut—

(*a*) apabila jenis kesalahan yang ia di-pertudohkan itu berkaitan sa-chara langsong dengan kewajipan[2]-nya;

(*b*) apabila kehadhiran-nya di-pejabat akan menghalang penyia-satan; atau

(*c*) apabila ia boleh mendatangkan keadaan serba salah jika di-benarkan menjalankan kewajipan[2] dan tanggong-jawab[2] biasa-nya.

(3) Sa-saorang pegawai yang telah di-tahan-kerja, melainkan dan sa-hingga ia di-gantong-kerja atau di-buang kerja, hendak-lah di-benarkan menerima sa-bahagian gaji jawatan-nya, tidak kurang daripada satu-perdua banyak-nya sa-bagaimana yang di-fikirkan patut oleh Pehak-berkuasa Tatatertib.

(4) Jika pembicharaan terhadap pegawai itu tidak berkeputusan dengan ia di-thabitkan atau di-buang kerja atau di-kenakan apa[2] hukuman lain, maka sa-telah di-beri sa-mula jawatan-nya ia hendak-lah di-bayar bahagian gaji yang belum di-bayar dan yang di-tahan sa-masa ia di-tahan-kerja.

(5) Jika pembicharaan jenayah terhadap pegawai itu berkeputusan dengan ia di-thabitkan, ia hendak-lah di-gantong daripada menjalankan jawatan-nya dan ia tidak-lah berhak menerima apa[2] bahagian gaji-nya yang belum di-bayar dan yang di-tahan sa-masa ia di-tahan-kerja, dan juga ia tidak-lah berhak menerima apa[2] gaji dari tarikh ia di-thabitkan. Jika pegawai itu kemudian-nya di-beri sa-mula jawatan-nya oleh kerana pembicharaan di-bawah Perentah 'Am 34 tidak berkeputusan dengan ia di-buang kerja, soal gaji-nya dalam masa di-tahan-kerja dan di-gantong kerja itu hendak-lah terpulang kapada budibichara Kerajaan.

(6) Jika pembicharaan untok membuang kerja-nya berkeputusan dengan ia di-buang kerja, maka ia tidak-lah berhak menerima apa[2] bahagian daripada gaji-nya yang belum di-bayar, tetapi jika hukuman ada-lah lain daripada hukuman buang-kerja, maka ia boleh mendapat balek bahagian gaji yang di-tahan itu, ia-itu sa-banyak yang di-fikirkan patut oleh Pehak-berkuasa Tatatertib.

(7) Sa-saorang pegawai yang di-tahan-kerja atau di-gantong kerja oleh sebab di-thabitkan tidak boleh meninggalkan Malaysia dalam masa sa-belum ia di-beri sa-mula jawatan-nya atau di-buang kerja tanpa kebenaran Pehak-berkuasa Tatatertib; dan jika pegawai tersebut ber-khidmat di-Perutusan[2] Malaysia di-luar negeri, ia boleh di-panggil balek ka-Malaysia dan sementara menanti ia di-beri sa-mula jawatan-nya atau di-buang kerja, ia tidak boleh meninggalkan Malaysia tanpa kebenaran Pehak-berkuasa Tatatertib.

BAHAGIAN 3

PERUNTOKAN[2] 'AM

Hukuman tatatertib.

36. Pehak-berkuasa Tatatertib boleh mengenakan ka-atas sa-saorang pegawai mana[2] satu atau apa[2] champoran daripada dua atau lebeh daripada dua hukuman yang berikut—

(i) amaran;

(ii) chelaan;

(iii) denda;

(iv) meluchut-hak gaji;

(v) menahan kenaikan gaji;

(vi) memberhentikan kenaikan gaji;

(vii) menanggohkan kenaikan gaji;

(viii) menurunkan gaji;

(ix) menurunkan pangkat;

(x) buang kerja.

Denda atau meluchut-hak gaji.

37. Jika Pehak-berkuasa Tatatertib berpendapat bahawa sa-saorang pegawai patut di-hukum dengan bayaran denda atau luchutan-hak gaji, ia boleh membuat demikian menurut peruntokan[2] yang berikut—

(i) kechuali sa-bagaimana di-peruntokkan dalam perenggan (ii) di-bawah ini, apa[2] denda yang di-kenakan pada sa-suatu masa tidak boleh lebeh daripada jumlah tiga hari gaji pokok pegawai yang berkenaan itu; dan jika sa-saorang pegawai di-denda lebeh daripada sa-kali dalam mana[2] satu bulan, jumlah semua-nya denda yang di-kenakan ka-atas-nya dalam bulan itu tidak boleh lebeh daripada lima belas peratus daripada gaji pokok bulanan-nya;

(ii) luchutan-hak gaji yang di-kenakan ka-atas sa-saorang pegawai kerana ta' hadhir bekerja tanpa chuti atau tanpa apa[2] sebab yang menasabah atau yang berlaku di-bawah Perentah 'Am 35 (6) tidak boleh di-kira sa-bagai denda di-bawah Perentah 'Am ini dan, oleh yang demikian, tidak-lah terta'alok kapada perenggan (i) di-atas mengenai jumlah maksima denda pada sa-suatu masa yang tertentu atau dalam sa-suatu bulan yang tertentu. Jumlah gaji yang di-luchut-hak kerana ta' hadhir bekerja tanpa chuti atau tanpa apa[2] sebab yang menasabah melainkan jika sa-lain-nya di-putuskan oleh Pehak-berkuasa Tatatertib, hendak-lah di-kira mengikut tempoh sa-benar yang sa-lama-nya pegawai itu ta' hadhir bekerja;

(iii) segala denda atau luchutan-hak hendak-lah di-potong daripada gaji bulanan pegawai yang berkenaan itu dan hendak-lah di-bayar atau di-pindahkan kapada Akauntan Negara untok di-keredit ka-dalam suatu kumpulan wang yang di-namakan Kum-pulan Wang Denda;

(iv) suatu penyata tahunan hendak-lah di-buat oleh Akauntan Negara menunjokkan baki keredit Kumpulan Wang Denda itu pada 31hb Disember tiap[2] tahun dan jumlah yang di-bayar oleh jabatan masing[2] dalam tempoh dua belas bulan yang lalu;

(v) Menteri Kewangan boleh mengarahkan chara bagaimana Kum-pulan Wang itu hendak di-belanjakan terta'alok kapada per-untokan bahawa perbelanjaan[2] itu hendak-lah di-buat sa-chara yang mendatangkan faedah kapada pegawai[2] yang berkhidmat dalam jabatan di-mana denda itu telah di-kenakan atau sa-chara yang mendatangkan faedah kapada pegawai[2] 'am-nya;

(vi) denda dan luchutan-hak yang di-kenakan ka-atas Pegawai[2] Negeri hendak-lah di-pungut dan di-belanjakan sa-chara yang di-putuskan oleh Kerajaan Negeri yang berkenaan itu.

Menahan kenaikan gaji

38. (1) Hukuman menahan kenaikan gaji boleh di-kenakan oleh Pehak-berkuasa Tatatertib sa-lama sa-suatu tempoh tidak lebeh daripada tiga bulan dan boleh di-kenakan dengan tak payah di-beritahu pegawai yang berkenaan itu terlebeh dahulu, tetapi apabila di-kenakan pegawai itu hendak-lah di-beri amaran dengan bertulis bahawa jika ia tidak menun-jokkan apa[2] perbaikan dalam kerja atau kelakuan-nya dalam tempoh hukuman itu berkuatkuasa, ia boleh di-kenakan hukuman yang lebeh berat lagi ia-itu sama ada di-hentikan kenaikan gaji atau di-tanggoh kenaikan gaji.

(2) Jika hukuman menahan kenaikan gaji di-kenakan ka-atas sa-saorang pegawai, ia tidak-lah berhak dalam tempoh hukuman itu berkuatkuasa menerima apa² kenaikan gaji yang terhak kapada-nya. Walau bagaimana pun pada akhir tempoh tersebut ia ada-lah berhak menerima kenaikan gaji yang terhak kapada-nya tetapi telah di-tahan oleh kerana hukuman ini melainkan jika Pehak-berkuasa Tatatertib telah mengarahkan supaya kenaikan gaji-nya itu di-berhentikan atau di-tanggohkan.

Memberhentikan kenaikan gaji.

39. (1) Hukuman memberhentikan kenaikan gaji boleh di-kenakan oleh Pehak-berkuasa Tatatertib sa-lama sa-suatu tempoh dan apabila di-kenakan ka-atas sa-saorang pegawai, pegawai itu tidak-lah berhak bagi dan sa-lama tempoh hukuman itu berkuatkuasa menerima apa² kenaikan gaji; tetapi walau bagaimana pun pada akhir tempoh tersebut ia hendak-lah menerima gaji-nya mengikut kadar yang sa-patut-nya kena di-bayar kapada-nya jika kenaikan gaji-nya telah tidak di-berhentikan.

(2) Hukuman ini tidak-lah mengubah tarikh kenaikan gaji pegawai yang di-kenakan hukuman ini dan juga tidak-lah menyebabkan kehilangan kekananan pegawai itu.

Menanggoh kenaikan gaji.

40. (1) Hukuman menanggoh kenaikan gaji boleh di-kenakan oleh Pehak-berkuasa Tatatertib bagi sa-suatu tempoh tidak kurang daripada tiga bulan dan apabila di-kenakan ka-atas sa-saorang pegawai, pegawai itu tidak-lah berhak bagi dan sa-lama tempoh hukuman itu berkuatkuasa menerima apa² kenaikan gaji.

(2) Hukuman ini ada-lah juga mendatangkan akibat² yang berikut ka-atas pegawai yang di-kenakan hukuman itu—

(*a*) tarikh kenaikan gaji-nya hendak-lah di-ubah kapada tarikh bila hukuman itu habis tempoh-nya;

(*b*) tarikh kenaikan gaji-nya hendak-lah terus saperti tarikh yang telah di-ubah di-bawah perenggan (*a*) hingga ia menchapai tangga gaji maksima-nya atau mendapat remishen di-bawah Perentah 'Am 41; dan

(*c*) pegawai itu hendak-lah menanggong kehilangan kekananan sa-lama tempoh yang sama dengan tempoh hukuman itu.

Remishen mengenai penanggohan kenaikan gaji.

41. (1) Walau bagaimana pun, sa-saorang pegawai yang di-kenakan hukuman penanggohan kenaikan gaji boleh memohon kapada Pehak-berkuasa Tatatertib untok mendapat remishen atas hukuman itu. Permohonan tersebut boleh di-buat pada bila² masa yang tidak lebeh awal daripada tiga tahun daripada tarikh hukuman itu habis tempoh-nya.

(2) Untok mendapatkan remishen, kerja dan kelakuan pegawai itu mesti-lah telah bertambah baik supaya Ketua Jabatan-nya boleh memberi sokongan positif kapada Pehak-berkuasa Tatatertib supaya remishen yang di-minta itu di-luluskan.

(3) Walau bagaimana pun apa² remishen atas hukuman ini tidak boleh sa-kali² memulehkan apa² jua kehilangan kekananan pegawai itu.

Menurunkan gaji.

42. (1) Jika sa-saorang pegawai telah menchapai tangga gaji maksima dalam tingkatan-nya, Pehak-berkuasa Tatatertib boleh mengenakan ka-atas pegawai itu hukuman turun gaji sa-lama tempoh yang di-fikirkan-nya patut.

(2) Hukuman ini tidak boleh meletakkan pegawai itu pada suatu kedudokan di-mana ia akan menerima gaji kurang daripada gaji minima dalam segmen di-mana ia berada pada masa hukuman ini di-kenakan.

(3) Pegawai itu hendak-lah menanggong kehilangan kekananan salama tempoh yang sama dengan lama-nya tempoh yang di-perlukan untok mendapat gaji yang di-dapati-nya sa-belum sahaja hukuman ini di-kenakan.

Hukuman di-kehendaki di-masokkan dalam Rekod Perkhidmatan pegawai itu.

43. Ketua Jabatan hendak-lah mengarahkan supaya tiap² hukuman yang di-kenakan ka-atas sa-saorang pegawai di-bawah Perentah² 'Am ini di-chatitkan dalam Buku Rekod Perkhidmatan pegawai itu menyatakan butir² hukuman itu.

BAHAGIAN 4

PELBAGAI

Penamatan kerja demi kepentingan awam.

44. (1) Walau apa pun peruntokan Perentah² 'Am ini jika rayuan di-buat kapada Kerajaan atau jika Kerajaan dapati bahawa ada-lah perlu supaya sa-saorang pegawai di-kehendaki bersara daripada perkhidmatan awam demi kepentingan awam atau atas alasan² yang tidak boleh di-uruskan dengan sesuai-nya menurut achara yang di-tetapkan dalam Perentah² 'Am ini, Kerajaan boleh-lah meminta suatu laporan penoh daripada Ketua Jabatan di-mana pegawai itu berkhidmat. Laporan tersebut hendak-lah mengandongi butir² mengenai kerja dan kelakuan pegawai itu dan ulasan², jika ada, daripada Ketua Jabatan.

(2) Jika Kerajaan berpendapat bahawa penjelasan yang sa-lanjut-nya ada-lah di-kehendaki Kerajaan boleh mengarahkan supaya pegawai itu di-beritahu akan pengaduan² yang oleh kerana-nya perkhidmatan-nya di-chadang hendak di-tamatkan itu.

(3) Jika sa-telah menimbangkan laporan atau (jika Kerajaan telah memberitahu pegawai itu sa-bagaimana tersebut dalam perenggan (2)) sa-telah memberi peluang kapada pegawai itu untok mengemukakan jawapan terhadap pengaduan² itu Kerajaan berpuashati, memandang kapada sharat² perkhidmatan, kegunaan pegawai itu kapada perkhidmatan, kerja dan kelakuan pegawai itu dan segala hal keadaan kes itu yang lain, bahawa ada-lah perlu demi kepentingan awam untok menamatkan perkhidmatan pegawai itu, maka Kerajaan boleh-lah menamatkan perkhidmatan pegawai itu mulai dari tarikh sa-bagaimana di-nyatakan oleh Kerajaan.

(4) Jika Pehak-berkuasa Tatatertib telah menshorkan kapada Kerajaan supaya sa-saorang pegawai di-kehendaki bersara daripada perkhidmatan awam demi kepentingan awam, Kerajaan boleh menamatkan perkhidmatan pegawai tersebut.

(5) Bagi tiap² penamatan perkhidmatan sa-saorang pegawai di-bawah Perentah 'Am ini, soal penchen hendak-lah di-uruskan mengikut undang² yang berkenaan dengan penchen.

Kuatkuasa Perentah' 'Am, Bab D, 1969.
P.U. 432/56.
P.U. 290/68.

45. Achara² tatatertib yang di-peruntokkan dalam Perentah² 'Am ini hendak-lah di-pakai bagi apa² pelanggaran terhadap mana² peruntokan Peratoran² Pegawai² Awam (Kelakuan dan Tatatertib), 1956 atau Peratoran² Pegawai² Awam (Kelakuan dan Tatatertib) (Perentah² 'Am, Bab D), 1968, sa-bagaimana achara² itu di-pakai bagi apa² pelanggaran terhadap mana² peruntokan Perentah² 'Am ini.

Pemakaian.

46. Perentah² 'Am ini tidak-lah mengikati Kerajaan.

Di-perbuat pada 17 haribulan Julai, 1969.

TUN HAJI ABDUL RAZAK BIN DATO' HUSSEIN,
Pengarah Gerakan

EMERGENCY (ESSENTIAL POWERS) ORDINANCE, 1969

(Ordinance 1 and Ordinance 2)

ESSENTIAL (GENERAL ORDERS, CHAPTER D) REGULATIONS, 1969

IN exercise of the powers conferred under section 2 of the Emergency (Essential Powers) Ordinance No. 1, 1969 the Director of Operations designated under section 2 of the Emergency (Essential Powers) Ordinance No. 2, 1969 hereby makes the following regulations:

Citation.

1. These regulations may be cited as the **Essential (General Orders, Chapter D) Regulations, 1969.**

Suspension of General Orders, Chapter D, 1968.
P.U. 290/68.

2. For so long as the state of Emergency continues to be in force the provisions of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1968 shall be suspended and the provisions of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969 as set out in the Schedule hereto shall have effect in place thereof.

Effect of General Orders, Chapter D, 1969.
L.N. 432/56.
P.U. 290/68.

3. For so long as the state of Emergency continues to be in force the disciplinary procedures provided in the General Orders set out in the Schedule hereto shall apply to any breach or contravention of any provision of the Public Officers (Conduct and Discipline) Regulations, 1956 or the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1968 as they apply to any breach or contravention of any provision of the General Orders as set out in the Schedule hereto.

SCHEDULE

(Regulation 2)

CONTENTS

1. Citation.

PART I

CONDUCT

2. Interpretation.
3. Code of conducts.
4. Outside employment.
5. Presents.
6. Entertainment.
7. Ownership of land or other property and investments.
8. Officers living beyond private means or official emoluments.
9. Borrowing money.
10. Serious pecuniary embarrassment.
11. Report of indebtedness of an officer by Court Registrars.
12. Official Assignee to report indebtedness of an officer.
13. Speculation forbidden.
14. Raffles and lotteries.

15. Lending money.
16. Memorial funds.
17. Permission for publication of books, etc.
18. Prohibition of public statements.
19. Prohibition on acting as editor of newspapers.
20. Political activities.
21. Institution of legal proceedings and legal aid.
22. Absence without leave.
23. Reporting unsatisfactory work or conduct.
24. Conduct on leave or leave prior to retirement.
25. Petition writing.
26. Interpreters.

PART II

DISCIPLINARY PROCEDURE

27. Conditions for dismissal, etc.
28. Meaning of "convicted", "conviction".
29. Disciplinary procedure for unsatisfactory work or conduct not warranting dismissal or reduction in rank.
30. Procedure in dismissal and reduction in rank.
31. Criminal proceedings against an officer.
32. No proceedings for dismissal where criminal proceedings pending.
33. No dismissal in case of acquittal except, etc.
34. Procedure in case of conviction.
35. Interdiction and suspension.

PART III

GENERAL PROVISIONS

36. Disciplinary punishments.
37. Fine or forfeiture of salary.
38. Withholding of increment.
39. Stoppage of increment.
40. Deferment of increment.
41. Remission of deferment of increment.
42. Reduction of salary.
43. Punishment to be entered into the officer's Record of Service.

PART IV

MISCELLANEOUS

44. Termination of employment in the public interest.
45. Effect of General Orders, Chapter "D", 1969.
46. Application.

Citation.

1. These regulations may be cited as the **Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969,** hereinafter referred to as the **General Orders.**

CHAPTER D

CONDUCT AND DISCIPLINE

PART I

CONDUCT

Interpretation.

2. In these General Orders—

"Disciplinary Authority" in relation to an officer means the appropriate Service Commission whose jurisdiction extends to the service of which the said officer is a member in accordance with the provisions of Part X of the Constitution, and includes an officer or a board of officers in the public service by whom the Commission's function relating to disciplinary control is exercisable in pursuance of Clauses (5A), (5B) or (6A) of Article 144 of the Constitution;

"Head of Department" includes an officer designated as such by the Director-General of Public Service;

"officer" means a member of the public service of the Federation or, in the case of a State which has adopted these General Orders, a member of the public service of that State.

Code of conducts.

3. The following are the code of conducts of officers in the public service. The breach of any one of these conducts by an officer renders him liable to disciplinary action under these General Orders:

(*a*) an officer shall at all times and on all occasions give his undivided loyalty and devotion to the Yang di-Pertuan Agong, the country and the Government;

(*b*) an officer shall not subordinate his public duty to his private interests;

(*c*) an officer shall not conduct himself in such a manner as is likely to bring his private interests into conflict with his public duty;

(*d*) an officer shall not conduct himself in such a manner as he knows, or as can reasonably be expected to know, that such conduct is likely to cause a reasonable suspicion in the minds of the public that—

(i) he has allowed his private interests to come into conflict with his public duties and thereby impair his usefulness as a public officer; or

(ii) he has used his public position for his private advantage;

(*e*) an officer shall not conduct himself in such manner as to bring the public service into disrepute or to bring discredit thereto;

(*f*) an officer shall not lack efficiency or industry nor shall he conduct himself in such manner as can reasonably be construed as lacking in efficiency and industry;

(*g*) an officer shall be honest and shall not conduct himself in such a manner as to lay himself open to suspicion of dishonesty;

(*h*) an officer shall not conduct himself in an irresponsible manner;

(*i*) an officer shall not bring or attempt to bring any form of outside influence or pressure to support or advance a claim relating to the public service whether the claim is his individual claim or that of other members of the public service; and

(*j*) an officer shall not conduct himself in such a manner as may be construed to be guilty of insubordination.

Outside employment.

4. (1) Save insofar as he is required in the course of his duty or is expressly authorised by his Head of Department to do so, no officer may—

(i) take part directly or indirectly in the management or proceedings of any commercial, agricultural or industrial undertaking;

(ii) function as an executer, administrator or receiver;

(iii) as an expert, furnish any report or give expert evidence, whether gratuitously or for reward;

(iv) undertake for reward any work for any institution, company, firm or private individual.

(2) An officer may nonetheless apply for permission to undertake specified services of the type mentioned in paragraph (1) of this General Order for the benefit of himself or his close relatives or for any non-profit making body of which he is an office holder.

(3) In considering whether or not permission should be granted, the Head of Department shall have regard to the code of conducts laid down in General Order 3 and, in particular, shall ensure that by such permission—

(i) the activity does not in any way tend to impair the officer's usefulness as a public servant; and

(ii) the occupation or undertaking does not in any way tend to conflict with the interest of the department or be inconsistent with the officer's position as a public servant.

Any permission granted under this General Order shall be subject to a condition that the public duty of the officer shall take priority over his activity, undertaking or occupation for which such permission is granted.

(4) Save insofar as it may otherwise be prescribed, all sums received by any officer by way of remuneration for rendering any of the services mentioned in paragraph (1) of this General Order shall be paid into the appropriate Treasury on deposit pending the decision of the Director-General of the Public Service in the case of Federal Officers or the State Secretary in the case of State Officers as to the amount, if any, which may be retained by the officer personally and by members of his staff.

Presents.

5. (1) An officer shall not receive or give nor shall he allow his wife and children (if any, including legally adopted children) to receive or give presents (other than gifts of personal friends or relatives) whether in the form of money, goods, free passages or other personal benefits.

(2) An officer shall not receive from associations or other groups or from his subordinates any token of value, but he may be permitted by the Head of Department to receive addresses from associations or groups on the occasion of his departure or retirement provided that such addresses are not enclosed in receptacles of value.

(3) Permission may be granted by the Head of Department to enable the collection of spontaneous subscriptions by officers under him, or private uncanvassed collections from amongst the said officers, for the purpose of making a presentation to a member of the staff of his department on the occasion of the said member's retirement or marriage or the marriage of the said member's child or any other appropriate occasions.

(4) If the circumstances are such as to make it impracticable to refuse a present the receipt of which is prohibited by this General Order (e.g., if no previous notice of the intention to offer a present has been given) it may be formally accepted but shall be handed as soon as practicable to the Treasury and the circumstances reported to the Disciplinary Authority.

(5) The receipt of presents from distinguished personages which it has not been possible to refuse without giving offence shall be reported to the Disciplinary Authority and the present shall be disposed of as directed.

(6) Where it is considered necessary for an officer to make a present or a return present at the expense of the Government to representatives or officials of a foreign Government, the Ministry of Foreign Affairs shall be consulted and sanction for the proposed expenditure thereof shall be obtained from the Treasury.

(7) An officer receiving a present from representatives or officials of a foreign Government shall report it to his Head of Department who will decide on the appropriate action to be taken thereon.

Entertainment.

6. An officer shall not accept entertainment of any description by any person, or a member of the public, club, institute or association where such entertainment could reasonably be construed as an act or an attempt to influence the performance of his official duties in favour of the interest of the giver or any member of the public, club, institute or association or in any way inconsistent with the code of conducts laid down in General Order 3.

Ownership of land or other property and investments.

7. (1) As soon as possible not later than 3 months after his first appointment to the service, an officer shall be required to report to the appropriate Disciplinary Authority all the interests held by him, his wife and children (if any, including legally adopted children) of any property whether land, house or investments or to make a nil return. The Disciplinary Authority shall cause this fact to be recorded in the officer's Record of Service Book.

(2) An officer may acquire or hold private investments or own house or land or other property, provided that the said investments or the ownership of property are not inconsistent with the code of conducts laid down in General Order 3 and provided further that not later than 3 months from the date of acquisition, holding or ownership of the said investments, house, land or other property this fact shall be notified to the Disciplinary Authority who shall cause this fact to be recorded in the officer's Record of Service Book.

(3) In cases of doubt as to whether the investments or property proposed to be held or acquired is inconsistent with the code of conducts laid down in General Order 3, an officer shall apply for permission from the appropriate Disciplinary Authority to acquire or hold private investment or own a house or land or other property through his Head of Department. In considering whether the said permission is to be granted or not, the Disciplinary Authority shall have regard to the following, namely—

(i) the opinion of the Head of Department;

(ii) the size, amount or value of the holding, investment, house, land or property in relation to the officer's own means;

(iii) whether the acquisition or holding thereof will conflict with the interests of the department in which the officer is employed or be inconsistent with the officer's position as a public servant; or in any way inconsistent with the code of conducts laid down in General Order 3;

(iv) whether there is likelihood of outside criticism on grounds of incompatibility between private interest and public responsibility, or likelihood of scandal; and

(v) any other factor which the Disciplinary Authority may consider necessary for upholding the integrity and efficiency of the public service.

Officers living beyond private means or official emoluments.

8. (1) Where the Disciplinary Authority is of the opinion that an officer is or appears to be—

(i) maintaining a standard of living which is not commensurate with the official emoluments and any known private means, if any; or

(ii) in control of or in possession of pecuniary resources or property, movable or immovable, which are disproportionate to his official emoluments and his known private means or which could not reasonably be expected to have been acquired by the officer with his official emoluments and any known private means, the Disciplinary Authority may call upon the officer to explain how he is able to maintain the said standard of living or how he came by his pecuniary resources or property.

(2) If, when called upon, the officer fails to give any explanation or gives an explanation which does not satisfy the Disciplinary Authority, the Disciplinary Authority may thereupon take disciplinary action with a view to dismissal in accordance with General Order 30 or take such steps as the Disciplinary Authority may deem fit.

Borrowing money.

9. (1) No officer may borrow either as principal or as surety from, or in any manner place himself under a pecuniary obligation to, a person (whether in the Public Service of the Federation or of the State or otherwise), being a person—

(*a*) who is directly or indirectly subject to his official authority;

(*b*) who resides or possesses land or carries on business within the local limits of his official authority;

(*c*) with whom the officer has or is likely to have official dealings; or

(*d*) who is a registered money lender.

For the purpose of this General Order, the word "person" shall include a body of persons corporated or unincorporated.

(2) An officer may, however, borrow from banks, insurance companies, co-operative societies or incur debts through acquiring goods by means of a hire-purchase agreement provided that—

(*a*) the banks, the insurance companies, co-operative societies from which the officer borrows or the person with whom he signs a hire-purchase agreement are not directly or indirectly subject to his official authority, nor having such official dealings with the officer as may lead to public scandal or be construed that the officer has abused his public position for his private advantage; and

(*b*) the aggregate of his debts does not or is not likely to cause him in serious pecuniary embarrassment defined under General Order 10.

(3) Subject to paragraph (2), an officer may incur the following debts, provided that the aggregate of his debts is not likely to cause him serious pecuniary embarrassment—

(*a*) sums borrowed on the security of land charged or mortgaged, where the said sums do not exceed the value of the said land;

(*b*) overdrafts allowed by banks;

(*c*) sums borrowed from insurance companies on the security of policies;

(*d*) sums borrowed from the Government or co-operative societies; or

(*e*) sums due on goods acquired by means of hire-purchase agreements.

Serious pecuniary embarrassment.

10. (1) For the purpose of these General Orders the expression "serious pecuniary embarrassment" means the state of an officer's indebtedness which, having regard to the amount of debts incurred by him, has actually caused serious financial hardship to him; and without prejudice to the general meaning of the said expression, an officer shall be deemed to be in serious pecuniary embarrassment—

(i) if the aggregate of his unsecured debts and liabilities at any given time exceeds the sum of three times his monthly emoluments;

(ii) where he is a judgment debtor, for as long as the judgment debt remains unsettled; or

(iii) where he is a bankrupt or an insolvent wage earner, for as long as he remains an undischarged bankrupt or as the case may be for as long as any judgment against him in favour of the Official Assignee remains unsatisfied.

(2) Serious pecuniary embarrassment from whatever cause, will be regarded as necessarily impairing the efficiency of an officer and rendering him liable to disciplinary action.

(3) If serious pecuniary embarrassment which has occurred or is likely to occur is the result of unavoidable misfortune, the Government will give the officer such assistances as the circumstances appear to warrant.

(4) If an officer finds that his debts cause or are likely to cause serious pecuniary embarrassment to him, he shall forthwith report the matter to the Head of Department.

(5) An officer who fails or delays in reporting his serious pecuniary embarrassment or who reports the same but fails to disclose its full extent or gives false or misleading account thereof shall be guilty of a serious breach of discipline (whatever the first cause of the embarrassment may be), and shall render himself liable to disciplinary action.

(6) As long as an officer is in serious pecuniary embarrassment, he shall be disqualified for promotion or acting in a higher appointment or crossing an efficiency bar.

Report of indebtedness of an officer by Court Registrars.

11. Registrars of the High Courts in respect of proceedings in the High Courts and Registrars of the Sessions Courts in respect of proceedings in the Sessions and Magistrates Courts shall report to the appropriate Head of Department every case of a public officer—

(i) who, being a judgment debtor, does not appear from the file of the suit to have settled the debt within fourteen days from the date of the judgment;

(ii) who has filed his own petition in bankruptcy or for a wage earner's administration order; or

(iii) against whom a creditor's petition in bankruptcy has been presented.

Official assignee to report indebtedness of an officer.

12. (1) The Official Assignee will, as soon as he has sufficiently investigated the affairs of a public officer who is a bankrupt or an insolvent wage earner, communicate to the appropriate Head of Department—

(i) the Statement of Affairs filed by the bankrupt or an insolvent wage earner in accordance with the Bankruptcy law in force from time to time;

(ii) the amount of instalment order proposed or made;

(iii) whether or not the Official Assignee proposes to initiate any further proceedings and, if so a brief indication of their nature;

(iv) the main cause of the bankruptcy;

(v) whether in his opinion the case involves unavoidable misfortune, dishonourable conduct or any other special circumstances, favourable or unfavourable to the officer;

(vi) any other matter which in his discretion he thinks it proper to mention.

(2) On consideration of the report under paragraph (1) of this General Order and a report by the appropriate Head of Department on the officer's work and conduct before and since he has been in serious pecuniary embarrassment the Disciplinary Authority will decide whether to take disciplinary action, and, if so, what action to take.

(3) If the punishment imposed under paragraph (2) of this General Order takes the form of a stoppage or deferment of increment, the Disciplinary Authority may, on the expiry of the said stoppage or deferment of increment, order that an amount equivalent to the restored increment be added to the instalments payable to the Official Assignee or other judgment creditor or creditors.

(4) An officer who obtains annulment of his bankruptcy may be treated as having fully restored his credit.

(5) Where an officer's debts amount to serious pecuniary embarrassment but he has not been adjudged bankrupt or an insolvent wage earner his case will be reviewed annually.

Speculation forbidden.

13. An officer shall not speculate in the rise and fall in prices of commodities, whether local or foreign, or to purchase or sell securities on margin (stocks and shares), if such speculation is likely to bring discredit to himself or his department.

Raffles and lotteries.

14. An officer shall not hold raffles or lotteries of his private property.

Lending money.

15. An officer shall not lend money at interest, whether on mortgage or otherwise, or guarantee or stand as surety for money lent at interest, to any other person. Nothing in this General Order shall be deemed to prevent members of registered co-operative societies or approved benefit societies from standing as sureties for loans made by the societies, nor shall it be deemed to prevent any officer from placing money in a deposit account in any bank or in the Post Office Savings Bank, or standing as a surety for money lent by the government to another officer.

Memorial funds.

16. An officer may not promote or actively encourage the raising of funds to mark public approbation of his own conduct or that of another officer but where such funds are spontaneously raised by persons outside the public service, these funds may be dedicated to public purposes and connected with the name of the person who has merited such a proof of the general esteem.

Permission for publication of books, etc.

17. (1) Except with the permission of the Head of Department, an officer shall not publish nor write any book, article or other work (in this General Order referred to as the "proposed publications") which is based on official information.

(2) In considering whether or not permission for the proposed publication is to be granted, the Head of Department shall have regard to the interest of the Government and the public, and may if he considers it necessary, seek the opinion of other appropriate Heads of Departments.

(3) On the submission to the Head of Department of a brief outline of the scope of the proposed publication and the method of treatment to be applied thereto, the Head of Department may give a provisional permission for the proposed publication to be proceeded with: Provided that no final permission therefor shall be granted unless a full and complete manuscript thereof shall have been submitted to the Head of Department, and he is satisfied that the proposed publication is not against the interests of the Government or the public.

(4) In exercising his duty under paragraphs (2) and (3), the Head of Department shall make his best endeavour not to be dilatory but to come to a decision as expeditiously as possible.

(5) If permission for the proposed publication is granted, it shall be subject to an implied condition that—

(*a*) the proposed publication shall not be so published as may reasonably be implied that it has received an official support or backing or sponsorship; or

(*b*) the proposed publication shall not under any circumstances bear the words "publication is approved" or words to that effect.

Prohibition of public statements.

18. (1) An officer shall not, either orally or in writing or in any other manner, make any public statement on the policies or decisions of the Government on any issue, nor shall he circulate any such statement whether made by him or any one else. Nothing in this General Order, however, shall apply to a public statement made by an officer in connection with the performance of his public office.

(2) Except with the permission of the Head of Department, an officer shall not either orally or in writing or in any other manner make any public statement or comment on any matter relating to the work of the Department in which he is or was employed—

(*a*) where such statement or comment may reasonably be regarded as indicative of the policy of the Government; or

(*b*) where such statement or comment may embarrass or is likely to embarrass the Government.

(3) Except with the permission of the Head of Department, an officer shall not either orally or in writing discuss publicly any measures taken by the Government or any official proceedings taken by its officers.

(4) For the purpose of this General Order, "public statement" or "discuss publicly" includes the making of any statement or comment to the press or to the public or in the course of any lecture or speech or the broadcasting thereof by sound or vision.

Prohibition on acting as editor of newspapers.

19. An officer shall not act as the editor of, or take part directly or indirectly in the management of, or in any way make financial contributions to, any newspaper, magazine or journal except the following—

(i) department or staff magazine;

(ii) professional journal;

(iii) publications of voluntary organisations, not being a political organization.

Political activities.

20. (1) Except as provided in paragraph (3), an officer shall not take part in or carry on any political activities nor shall he wear emblems of any political party.

(2) Except as provided in paragraph (3), an officer shall maintain a reserve in political matters and in particular he may not—

(*a*) speak in public on any matter which is the subject of a political controversy between two or more political parties;

(*b*) write letters or give interviews to the press on such matters;

(*c*) publish books or articles or leaflets setting forth his views on matters pertaining to a political party; or circulate such books, articles or leaflets;

(*d*) engage in canvassing in support of a candidate or candidates at an election;

(*e*) act as an election agent or polling agent in any capacity for or on behalf of a candidate at an election.

(3) An officer on leave prior to retirement may engage in political activities, if—

(*a*) he has obtained prior approval of the Government to engage in the said activities; and

(*b*) by being so engaged he does not contravene the provisions of the Official Secrets Ordinance, 1950. *15/1950.*

Approval to engage in political activities may be applied for by the officer at the same time as he submits his application for permission to retire.

Institution of legal proceedings and legal aid.

21. (1) No steps may be taken by any officer to institute legal proceedings in his own personal interest in connection with matters arising out of his public duties without the prior consent of the Government.

(2) An officer who receives notices of the intended institution of legal proceedings against him in connection with matters arising out of his public duties or who receives any process of court relating to the said legal proceedings shall immediately report the matter to the Head of Department for instruction as to whether and how the notice or as the case may be the process of court is to be acknowledged, answered or defended.

(3) An officer who desires legal aid to retain and instruct an advocate and solicitor for the purpose of legal proceedings in connection with matters arising out of his public duties may make an application to the Director-General of Public Service. The said application shall contain all the facts and circumstances of the case together with the considered opinion of the Head of Department as to the nature of the officer's involvement, and shall be addressed and submitted to the Director-General of Public Service through the Attorney-General.

(4) On receipt thereof the Director-General of Public Service may reject the said application or approve it subject to the advice of the Attorney-General as to—

(*a*) the amount of legal aid to be approved;

(*b*) the advocate and solicitor to be retained and instructed by the officer; or

(*c*) any other conditions which the Attorney-General may consider advisable,

and to a further implied condition that in the event of the officer being awarded cost by the court at the conclusion of the said legal proceedings no payment in respect of the legal aid so approved will be made by the Government unless the amount of cost so awarded to him is insufficient to meet charges for retaining and instructing an advocate and solicitor.

(5) Charges for employing an advocate and solicitor retained and instructed by or on behalf of an officer in legal proceedings in connection with matters arising out of his public duties otherwise than by virtue of approval by the Director-General of Public Service will not be paid for from the public fund.

Absence without leave.

22. (1) An officer who is absent without leave or without reasonable cause shall be liable to disciplinary action.

(2) The following provisions shall apply to an officer who is absent without leave or without reasonable cause and the expression "absent" hereunder shall be construed as absent without leave or without reasonable cause.

(3) Where an officer is absent for a period not exceeding seven days within any given month, upon report by the Head of Department, the Disciplinary Authority in cases where it is not considered justifiable to initiate disciplinary action with a view to dismissal may deal with the officer in accordance with General Order 29 and impose such punishment as it may deem fit and in that event the period of the said absence may be treated as that of no-pay leave.

(4) Where an officer is absent for a period exceeding seven days within any given month that fact shall forthwith be reported by the Head of Department to the Disciplinary Authority giving the dates and the circumstances of the absence and any further information which may be required concerning the officer. Upon consideration of the said report, the Disciplinary Authority may then institute disciplinary action against the officer in accordance with General Order 30 with a view to dismissal or reduction in rank.

(5) Where an officer is absent and cannot be traced, the Head of Department shall cause to be sent to the officer's last known address an A.R. (Acknowledgement of Receipt) registered letter requiring him to give an explanation as to his absence and at the same time directing him to report for duty at once. If seven days after the receipt of the said registered letter by the officer he is still absent or nothing is heard of or from him, or if the said registered letter is returned undelivered, the Head of Department shall proceed to submit a report to the Disciplinary Authority as required under paragraph (4). Upon consideration of the said report the Disciplinary Authority shall institute disciplinary action with a view to dismissal or deal with the officer in accordance with General Order 29, but in cases where the said registered letter is returned undelivered, the Disciplinary Authority shall take steps to notify in the *Gazette* the fact of the officer's absence and his untraceability.

(6) If despite notification in the *Gazette* the officer fails to return to duty within a period of seven days from the date of the publication of the *Gazette*, the officer shall be deemed to have been dismissed from the service.

Reporting unsatisfactory conduct or work.

23. (1) If an officer finds that any officer working under him is inefficient or lacking in industry or is guilty of any of the breach of any of the provisions of these General Orders, the first mentioned officer shall forthwith report either orally or in writing to his next senior officer or the Head of Department.

(2) Failure to do so shall deem the first mentioned officer himself guilty of inefficiency and renders him liable to disciplinary action.

Conduct on leave or leave prior to retirement.

24. An officer on vacation leave or on leave prior to retirement shall continue to be bound by these General Orders and other Regulations and Orders applicable to his appointment, and, in particular, he shall not accept any private employment for reward without previously

obtaining the sanction of the Director-General of Public Service in the case of Federal Officers and the State Secretary in the case of State Officers.

Petition writing.

25. No Government officer is permitted to receive payment for writing petitions.

Interpreters.

26. (1) Except as provided by paragraphs (2) and (3) of this General Order, no interpreter or other officer may make any translation of any document except—

(*a*) for official use in the course of his ordinary duty; or

(*b*) for a member of the public—on payment of the prescribed fee.

(2) If a member of the public who cannot read a document intended for himself requests an interpreter or other officer to explain the gist of it orally, the request may be granted provided that it does not interfere with other duties and that no fee or present is offered or accepted.

(3) If a person of small means requests that a translation may be made of a document alleged to be relevant to any proceedings in a court or office, the Registrar or head of the office concerned (as the case may be) may in his discretion authorise an interpreter, or other officer familiar with the language required, to make a written summary of the contents of the document, without fee. In every such case a duplicate of the summary shall be filed in the court or office together with the original minute authorising the free service.

(4) This General Order refers to documents which are believed to relate to litigation or other official business, pending or contemplated, and does not prevent interpreters and other officers from making translations of documents of historic or literary interest.

PART II

DISCIPLINARY PROCEDURE

Conditions for dismissal, etc.

27. In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard.

Meaning of "convicted", "conviction".

28. The terms "convicted" or "conviction" include a finding or an order involving a finding of guilt by a criminal court in Malaysia or abroad or by a competent body conferred with power to conduct summary investigation under any written law that the person charged or accused has committed an offence.

Disciplinary procedure for unsatisfactory work or misconduct not warranting dismissal or reduction in rank.

29. Where it is represented to, or is found by, the appropriate Disciplinary Authority that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct is in the opinion of the Disciplinary Authority not serious enough to warrant proceedings under General Order 30 with a view to dismissal or reduction in rank, the Disciplinary Authority may, after giving an opportunity to the officer to explain the lapse in his work or conduct, impose upon the officer such punishment as it may deem fit.

Procedure in dismissal and reduction in rank.

30. (1) Where it is represented to, or is found by, the appropriate Disciplinary Authority or the Director-General of Public Service that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the following provisions shall apply.

(2) The Disciplinary Authority shall after considering all the available information in its possession that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself.

(3) If after consideration of the said representation furnished by the officer that Disciplinary Authority is of the opinion that the unsatisfactory work or conduct of the officer is not serious enough to warrant dismissal or reduction in rank, the Disciplinary Authority may impose upon the officer such punishment as it may deem fit.

(4) If the officer does not furnish any representation within the time fixed, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

(5) Where the Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry consisting of not less than two senior Government officers who shall be selected with due regard to the standing of the officer concerned and to the nature and gravity of the complaints which are the subject of the inquiry, provided that an officer lower in rank than the officer who is the subject of the inquiry or the officer's Head of Department shall not be selected to be a member of the Committee.

(6) The officer shall be informed that, on a specified day, the question of his dismissal or reduction in rank will be brought before the Committee and that he will be allowed and, if the Committee shall so determine, shall be required to appear before the Committee and exculpate himself.

(7) If witnesses are examined by the Committee, 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 thereto.

(8) The Committee may, in its discretion, permit the Government or the officer to be represented by an officer in the Public Service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission: Provided that where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented.

(9) If, during the course of the inquiry, further grounds of dismissal are disclosed, and the Disciplinary Authority thinks fit to proceed against the officer upon such grounds, the officer shall be furnished with a written statement thereof and the same steps shall be taken as are above prescribed in respect of the original grounds.

(10) The Committee having inquired into the matter, shall make a report to the Disciplinary Authority. If the Disciplinary Authority considers that the report should be amplified in any respect or that further inquiry is desirable, the matter may be referred back to the Committee for further inquiry and report.

(11) If, upon considering the report of the Committee, the Disciplinary Authority is of opinion—

(*a*) that the officer should be dismissed or reduced in rank, it shall forthwith direct accordingly;

(*b*) that the officer does not deserve to be dismissed or reduced in rank, but deserves some lesser punishment, it may inflict upon the officer such lesser punishment as it may deem fit; or

(*c*) that the proceedings disclose sufficient grounds for requiring him to retire in the public interest, it shall recommend to the Government accordingly. The question of pension will be dealt with under the Pensions legislation.

Criminal proceedings against an officer.

31. (1) Where criminal proceedings are instituted against an officer, the Registrar of the Court in which the said proceedings are instituted, the Head of Department who initiates the said proceedings and the officer himself shall send to the Head of Department under whom the officer is serving—

(*a*) at the commencement of the said proceedings, the following information—

(i) the charge or charges against the officer;

(ii) if arrested, the date and time when the officer was arrested;

(iii) whether he is on bail or not; and

(iv) such other information as is relevant; and

(*b*) at the conclusion of the said proceedings, the result of the said criminal proceedings.

(2) Upon becoming aware that criminal proceedings are being instituted against an officer, the Head of Department shall make inquiries from the authorities mentioned in paragraph (1) and from the officer himself with a view to getting the said information. Upon receipt of the said information, the Head of Department shall forward it to the Disciplinary Authority together with his recommendation as to whether or not the officer should be interdicted from duty.

(3) Upon consideration of the said information and the recommendation of the Head of Department or upon itself becoming aware of the institution of criminal proceedings against the officer in the absence of the said information, the Disciplinary Authority may, if it thinks fit, interdict the officer from the exercise of his duty, which interdiction may be made effective from the date of his arrest or the date on which summonses are served on him, and the officer thereupon shall, unless and until he is suspended, be allowed to receive only such portion of the emoluments of his office not being less than one half as the Disciplinary Authority may think fit.

(4) Where criminal proceedings against the officer result in his conviction, the Disciplinary Authority may suspend the officer from the exercise of his office pending its decision taken under General Order 34 and thereupon he shall not be entitled to any of the unpaid portion of his emoluments withheld from him whilst under interdiction, nor shall he be entitled to receive any emoluments at all from the date of his conviction.

(5) Where criminal proceedings against the officer result in his acquittal and no appeal is lodged against the said acquittal by or on behalf of the Public Prosecutor, the officer may normally be allowed to resume duty after the said acquittal but where an appeal is lodged against the said acquittal, the officer shall continue to remain under interdiction until the said appeal is finally disposed of.

No proceedings for dismissal where criminal proceedings pending.

32. Where criminal proceedings are being instituted against an officer, no proceedings for his dismissal upon any grounds involved in the criminal charge may be taken against him pending the conclusion of the criminal proceedings.

No dismissal in case of acquittal except, etc.

33. An officer who is acquitted shall not be dismissed on the charge upon which he is acquitted but nothing in this General Order shall prevent disciplinary action from being taken against the officer on any other grounds arising out of his conduct in the matter: Provided that the said grounds do not raise substantially the same issues as that on which he is acquitted.

Procedure in case of conviction.

34. (1) Where criminal proceedings against an officer result in his conviction, upon receipt of the result of the proceedings, the Head of Department shall apply to the Registrar of the Court in which the proceedings against the officer had taken place for a copy of the record of the said proceedings, i.e., the charge, the notes of evidence and judgment of the Court. Upon receipt of the said record, the Head of Department shall submit the same to the Disciplinary Authority together with full particulars with regard to the officer's past record of service and recommendation of the Head of Department as to whether the officer should be dismissed from the service or otherwise dealt with depending on the nature and gravity of the offence committed in relation to the degree of disrepute which it brings to the service.

(2) If after consideration of the said documents submitted by the Head of Department, the Disciplinary Authority is of the opinion that the officer merits lesser punishment than dismissal or reduction in rank, it may proceed forthwith to inflict such lesser punishment as it may deem fit.

(3) If after consideration of the said document submitted by the Head of Department, the Disciplinary Authority is of the opinion that the officer merits dismissal or reduction in rank, it shall call upon the officer to make within a period of not less than fourteen days representations in writing why he should not be dismissed from the service or reduced in rank. In submitting his representations he shall do so through his Head of Department, who may further give his views or comments on the matter, if he considers necessary.

(4) After consideration of the representations submitted by the officer under paragraph (3) above, if the Disciplinary Authority is still of the opinion that the officer merits dismissal or reduction in rank, it may forthwith direct accordingly; or if it is of the opinion that the officer should be inflicted with lesser punishment or otherwise dealt with, the Disciplinary Authority may forthwith inflict upon the officer such lesser punishment or deal with him in such manner as it may deem fit.

(5) If as a result of the lesser punishment the officer is not dismissed, the question of his emoluments during the period of interdiction and suspension shall be at the discretion of the Government.

Interdiction and suspension.

35. (1) The Disciplinary Authority may, if it thinks fit, interdict from the exercise of his duty—

(*a*) an officer against whom criminal proceedings are being instituted as provided for in General Order 31 and such interdiction may be made effective from the date of his arrest or the date on which summonses are served on him; or

(*b*) an officer against whom proceedings for his dismissal are being or about to be taken and such interdiction may be made effective from the date on which the interdiction is directed.

(2) The Disciplinary Authority may normally interdict an officer in the following cases—

(*a*) when the nature of the offence with which he is charged is directly related to his duties;

(*b*) when his presence in the office would hamper investigation; or

(*c*) when he may be a source of embarrassment if allowed to carry on his usual duties and responsibilities.

(3) An officer who has been interdicted shall, unless and until he is suspended or dismissed, be allowed to receive such portion of the emoluments of his office, not being less than one half as the Disciplinary Authority may think fit.

(4) If the proceedings against the officer do not result in his conviction or dismissal or other punishment, on being reinstated, he shall be paid the portion of the emoluments which had been withheld from him whilst under interdiction.

(5) If the criminal proceedings against the officer result in his conviction, he shall be suspended from the exercise of his office and shall not be entitled to any of the unpaid portion of his emoluments withheld from him whilst under interdiction, nor shall he be entitled to receive any emoluments from the date of his conviction. If he is later reinstated because the proceedings under General Order 34 do not result in his dismissal, the question of his emoluments during the interdiction and suspension shall be at the discretion of the Government.

(6) If the proceedings for his dismissal result in his dismissal, he shall not be entitled to any unpaid portion of his emoluments, but if the punishment is other than dismissal, he may be refunded such portion of the emoluments withheld from him as the Disciplinary Authority may think fit.

(7) An officer who is under interdiction or suspension as a result of being convicted shall not leave Malaysia during the interval before he is reinstated or dismissed without the permission of the Disciplinary Authority; and if the said officer is serving in Malaysian Missions overseas, he may be recalled to Malaysia and pending the reinstatement or dismissal, he shall not leave Malaysia without the permission of the Disciplinary Authority.

PART III

GENERAL PROVISIONS

Disciplinary punishments.

36. A Disciplinary Authority may impose on an officer any one or any combination of two or more of the following punishments—

(i) warning;
(ii) reprimand;
(iii) fine;
(iv) forfeiture of salary;
(v) withholding of increment;
(vi) stoppage of increment;
(vii) deferment of increment;
(viii) reduction of salary;
(ix) reduction in rank;
(x) dismissal.

Fine or forfeiture of salary.

37. Where the Disciplinary Authority considers that an officer should be punished by payment of a fine or forfeiture of salary, it may do so in accordance with the following provisions—

(i) except as provided in paragraph (ii) hereunder, any fine imposed on any one occasion shall not exceed an amount equal to three days' basic salary of the officer concerned; and if an officer is fined on more than one occasion in any single month, the aggregate of the fines imposed on him in that month shall not exceed a sum equal to fifteen per centum of his monthly basic salary;

(ii) forfeiture of salary imposed on an officer for being absent without leave or reasonable cause or occurring under General Order 35 (6) shall not be considered as fine under this General Order and, therefore, shall not be governed by paragraph (i) above relating to the maximum amount of fine on any particular occasion or in any particular month. The amount of salary forfeited for being absent without leave or reasonable cause unless otherwise decided by the Disciplinary Authority, shall be calculated with reference to the actual period in which the officer had absented himself;

(iii) all fines or forfeitures shall be deducted from the monthly emoluments of the officer concerned and shall be paid or transferred to the Accountant-General for credit to a fund known as the Fines Fund;

(iv) an annual return shall be made by the Accountant-General showing the balance at credit of the Fines Fund on 31st December each year and the amounts paid by respective departments during the preceding twelve months;

(v) the Minister of Finance may direct the manner in which the Fund shall be disbursed subject to the provision that disbursements shall be made either in a manner beneficial to officers serving within the department within which the fines were imposed or in a manner beneficial to officers in general;

(vi) fines and forfeitures imposed on State Officers shall be collected and disbursed in such manner as may be decided by the Government of the State concerned.

Withholding of increment.

38. (1) The punishment of withholding of increment may be imposed by the Disciplinary Authority for any period not exceeding three months and may be so imposed without prior notice to the officer concerned, but when imposed the officer shall be warned in writing that if he does not show any improvement in his work or conduct during the period in which the punishment is effective, he shall be liable to a more severe punishment of either stoppage of increment or deferment of increment.

(2) Where the punishment of withholding of increment is imposed upon an officer, he shall not, during the period in which the punishment is effective, be entitled to receive any increment that may be due to him. At the end of the said period, however, he shall be entitled to receive the increment which was due to him but has been withheld from him by reason of this punishment unless on the direction of the Disciplinary Authority, his increment has been stopped or deferred.

Stoppage of increment.

39. (1) The punishment of stoppage of increment may be imposed by the Disciplinary Authority for any period and when imposed upon an officer, he shall not for and during the period in which the punishment is effective, be entitled to any increment; and at the end of the said period, however, he will draw his salary at the rate which would have been payable to him if his increment had not been so stopped.

(2) This punishment does not alter the incremental date of the officer upon whom it is imposed nor does it entail any loss of seniority of that officer.

Deferment of increment.

40. (1) The punishment of deferment of increment may be imposed by the Disciplinary Authority for any period of not less than three months and when imposed upon an officer, he shall not for and during the period in which the punishment is effective, be entitled to any increment.

(2) This punishment shall also have the following consequences upon the officer on whom it is imposed—

(*a*) his incremental date shall be altered to the date on which the punishment expires;

(*b*) his incremental date shall continue to be the same as has been altered under paragraph (*a*) until he reaches the maximum of his scale or gains remission under General Order 41; and

(*c*) the officer shall suffer the loss of seniority by a period equal to that of the punishment.

Remission of deferment of increment.

41. (1) An officer upon whom the punishment of deferment of increment is imposed may, however, apply to the Disciplinary Authority for a remission of the punishment. The said application may be made at any time not earlier than three years from the date on which the punishment expires.

(2) To earn a remission, it shall be necessary for the work and conduct of the officer to have so improved as to have earned a positive recommendation from the Head of Department to the Disciplinary Authority that the remission applied for should be approved.

(3) Under no circumstances shall any remission of this punishment restore any loss of seniority to the officer.

Reduction of salary.

42. (1) Where an officer has reached the maximum of the salary scale of his grade, the Disciplinary Authority may impose upon him the punishment of reduction of salary for such period as it may think fit.

(2) The extent of this punishment shall not place the officer in a position where he will receive a salary less than the minimum of the salary segment in which he is at the time when this punishment is imposed.

(3) The officer shall suffer the loss of seniority by a period equal to that which will take him to earn the salary which he was drawing immediately before this punishment was imposed.

Punishment to be entered into the officer's Record of Service.

43. For every punishment imposed on an officer under these General Orders, the Head of Department shall cause to be entered in the Record of Service Book a note containing particulars of the punishment.

PART IV

MISCELLANEOUS

Termination of employment in the public interest.

44. (1) Notwithstanding these General Orders, where it is represented to or is found by the Government that it is desirable that any officer should be required to retire from the public service in the public interest or on grounds which cannot suitably be dealt with by the procedure laid down in these General Orders, the Government may call for a full report from the Head of Department in which the officer is serving. The said report shall contain particulars relating to the work and conduct of the officer and the comments, if any, of the Head of Department.

(2) Where the Government considers that it requires further clarification, it may cause to be communicated to the officer the complaints by reason of which the termination of his service is contemplated.

(3) If after considering the report or (in the case of the Government having communicated to the officer as in paragraph (2)) after giving the officer an opportunity of submitting a reply to the complaints the Government is satisfied that having regard to the conditions of the services, the usefulness of the officer thereto, the work and conduct of the officer and all the other circumstances of the case, it is desirable in the public interest so to do, the Government may terminate the service of the officer with effect from such date as the Government shall specify.

(4) Where the Disciplinary Authority has recommended to the Government that an officer should be required to retire from the public service in the public interest, the Government may so terminate the service of the said officer.

(5) In every case of such termination of service of an officer under this General Order, the question of pension shall be dealt with in accordance with the law relating to pensions.

Effect of General Orders, Chapter D, 1969. *L.N. 432/56. P.U. 290/68.*

45. The disciplinary procedures provided in these General Orders shall apply to any breach or contravention of any provision of the Public Officers (Conduct and Discipline) Regulations, 1956, or the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1968, as they apply to any breach or contravention of any provision of these General Orders.

Application.

46. These General Orders shall not bind the Government.

Made this 17th day of July, 1969.

TUN HAJI ABDUL RAZAK BIN DATO' HUSSEIN,
Director of Operations

DICETAK OLEH
MOHD. DAUD BIN ABDUL RAHMAN, KETUA PENGARAH PERCETAKAN
SEMENANJUNG MALAYSIA, KUALA LUMPUR
1974

Harga: $1.00

APPENDIX II:

COMPOSITION OF THE PUBLIC SERVICES DISCIPLINARY AND APPEAL BOARDS AND THE LIMITS OF THEIR JURISDICTION

(As provided by the Public Services Disciplinary Board Regulations, 1972)

M I N I S T R I E S

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
I.	Managerial And Professional Group.			
	(a) Super Timescale Officers in the managerial and professional group and superscale "S" grade (women officers, superscale "M") and above.	1st Sch. Para (1) Chairman - Chief Secretary to the Government. Member - Director-General, Public Service.	Shall exercise all disciplinary powers except those of : (i) dismissal; (ii) reduction in rank; (iii) reduction of salary; (iv) deferment of increment.	Public Services Commission.
	(b) Ordinary Scale: (Malaysian Administrative and Diplomatic Service)	1st Sch. Para 2 Chairman - Chief Secretary to the Government. Member - Director-General Public Service.		Public Services Commission.

M I N I S T R I E S

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
	(c) Ordinary Scale: (Non-Malaysian Administrative and Diplomatic Service)	1st. Sch. Para 1(2) Chairman - Secretary-General to the Ministry. Member - Head of Division concerned (if the Head of Division is the Secretary-General, then the Deputy Secretary-General for that Division will act as member.		Public Services Commission.
II.	Executive and Sub-Professional Group and The Clerical and Technical Group.	1st Sch. Para 1 (iii) Chairman - Deputy Secretary-General (or the Under Secretary of the Ministry concerned. Member - Principal Assistant Secretary (or Assistant Secretary)	Shall exercise all disciplinary powers except those of : (i) dismissal; (ii) reduction in rank; (iii) reduction of salary; (iv) deferment of increment.	Executive and Sub-Professional Group. 2nd Sch. Para. (1). Chairman - Director-General, Public Service.

MINISTRIES				
No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
		Note: The Principal Assistant Secretary cannot become a member if the Chairman is of the status of a Principal Assistant Secretary.		Member - (i) Solicitor-General or representative. (ii) Deputy Secretary Prime Minister's Department. Clerical And Technical Group. 2nd Sch. Para (ii). Chairman - Deputy Director-General, Public Service. Member - (i) Under Secretary (Administrative) of the Treasury.

MINISTRIES

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
				(ii) Representative of the Solicitor General For cases of Dismissal Public Services Commission.
III.	The Subordinate And Manual Group.	1st. Sch. Para 1(vi) Chairman - Head of Department. Member - a member from the Managerial and Professional Group (the Under Secretary or the Assistant Principal Secretary to the Ministry.	Shall exercise all disciplinary powers including dismissal.	For all cases except dismissal 2nd. Sch. Para (iii). Chairman - Director (Service Division) Public Services Department Member - (1) Deputy-Director (Development Administrative Unit) Prime Minister's Department.

MINISTRIES

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
				(2) Representative of the Solicitor-General. For cases of dismissal only Regulation 12(3) Public Services Commission.

COMPOSITION OF THE PUBLIC SERVICES DISCIPLINARY BOARDS

AND THE LIMITS OF THEIR JURISDICTION

DEPARMENTS

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
I.	Managerial And Professional Group			
	(a) Managerial and Professional Group and Superscale "J" grade (women officers; Superscale "M") and above.	1st Sch. Para 1(1) Chairman - Chief Secretary to the Government. Member - Director-General, Public Service.	Shall exercise all disciplinary powers except those of : (i) dismissal (ii) reduction in rank (iii) reduction of salary (iv) deferment of increment.	Public Service Commission.
	(b) Ordinary Scale: (MADS)	1st Sch. Para 2 Chairman - Chief Secretary to the Government. Member - Director-General Public Service.		Public Service Commission.
	(c) Ordinary Scale: (non-MADS)	1st Sch. Para 1(iv) Chairman - Head of Department. Member - Under-Secretary (or Principal		Public Service Commission.

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
			DEPARTMENTS	
		Assistant Secretary or Assistant Secretary)		
	(d) Chinese Affairs Officers; Officers in the Malay Administrative Service serving in a State.	1st. Sch. Para 1(iv) Chairman - Head of Department. Member - Representative of Director-General, Public Services (instead of the Secretary-General to the Ministry)		
	(e) For departments whose Head of Department is a member of the Police or Armed Forces.	Chairman - Secretary-General to the Ministry concerned. Member - Inspector-General of Police or the Deputy Inspector General of Police; or Chief of the Armed Forces Staff, or the Deputy whichever is applicable.		Public Services Commission.

DEPARTMENTS

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
II.	Executive And Sub-Professional Group And The Clerical And Technical Group (a) For departments whose Head of Department is not a member of the Police or Armed Forces.	1st. Sch. Para 1(v) Chairman - Head of Department concerned. Member - Deputy/Assistant Head of Department (or an officer of the Managerial and Professional group)	Shall exercise all disciplinary powers except those of: (i) dismissal (ii) reduction in rank (iii) reduction of salary (iv) deferment of increment	Executive And Sub-Professional Group for (a) and (b) 2nd Sch. Para (i) Chairman - Director-General, Public Service. Member - (1) Solicitor-General or his representative. (2) Deputy Secretary to the Prime Minister's Department

DEPARTMENTS

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
	(b) For departments whose Head of Department is a member of the Police or Armed Forces.	Chairman - Deputy Secretary-General or the Principal Assistant Secretary to the Ministry concerned. Member - Head of Department or Deputy Head of Department (or an officer of the managerial and professional group.		The Clerical And Technical Group for (a) and (b). 2nd Sch. Para (ii) Chairman - Deputy-Director-General, Public Services. Member - (1) Under Secretary (Administration) of the Treasury. (2) Representative of the Solicitor-General For cases of Dismissal Public Services Commission.

DEPARTMENTS

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
III.	The Subordinate And Manual Group	1st. Sch. Para (vi). Chairman - Local Head of the Department or Division. Member - Deputy/Assistant Head of Department (or an officer not lower than the Executive and Sub-Professional Group).	Shall exercise all disciplinary powers including dismissal.	2nd. Sch. Para (iii). Chairman - Director (Service Division) Public Services Department. Member - (1) Deputy Director (Development Administration Unit). (2) Representative of the Solicitor-General.

DEPARTMENTS

No.	Category of Officers	Composition of Disciplinary Board	Limits of Jurisdiction	Appeal Board
				For cases of Dismissal. Public Services Commission

NOTE: For all cases of dismissal, reduction in rank, reduction of salary and deferment of increment (other than those in the Subordinate and Manual Group) the appropriate disciplinary authority is the Public Services Commission.

APPENDIX III

PARTICULARS AND DOCUMENTS REQUIRED AT APPELLATE STAGE

The following particulars and documents will be required and must be submitted in full to the Appeal Board and arranged in the following order :

1. Particulars regarding the Appellant....Appendix "A".

   (1) Name:

   (2) Age: Date of Birth:

   (3) Appointment, Division and date of first appointment into Government service.

   (4) Date of confirmation in the first appointment and emplacement on the pensionable establishment.

   (5) Present appointment and Division.

   (6) Dates of appointment to and confirmation in the present appointment.

   (7) Present salary.

   (8) Other particulars such as other disciplinary actions and punishments imposed and the dates.

2. Initial report by the Head of Department on the case appealed against....As Appendix "B".

3. (1) Charge/charges and Summary of the disciplinary proceedings conducted by the Board.

   (2) Date of forwarding the charge to the Appellant and receipt by the Appellant;

   (3) Appellant's reply to the charges....As Appendix "C"

4. (1) Date of convening meeting and designations of officers who sat as Chairman and members of the Board;

(2) Grounds of decision made by the Board on the case;

(3) Date of receipt of decision of the Board by the Appellant;

(4) Date of receipt of letter of appeal by the Head of Department;

(5) Date of receipt of letter of appeal by the Board....As Appendix "D".

5. The Appellant's letter of appeal....As Appendix "E".

6. Comments of the Head of Department of the Appellant on the points raised in the appeal....As Appendix "F".

7. Comments of the Chairman of the Board on the points raised in the appeal....As Appendix "G".

8. If the case is as a result of criminal conviction:

(1) Date of interdiction and/or suspension of Appellant;

(2) Notes of evidence of criminal case....As Appendix "H";

(3) Grounds of judgement given by the Criminal Court....As Appendix "I".

9. Appellant's Schedule of duties at the time material to the case appealed against ....As Appendix "J".

10. Latest and up-to-date statement of service of Appellant....As Appendix "K".

11. Latest postal address of appellant.

BIBLIOGRAPHY

TEXTBOOKS

Basu, Durga Das, Basu's Commentary On The Constitution of India; 5th Edition, S.C. Sarkar & Sons (Pte) Limited, Calcutta, India.

Bhatia, Madan, Public Services Law Through The Cases; 1969, Tripathy (Pte) Ltd., New Delhi.

Goyal, K.N., Law Relating To Government Servants And Servants Of Statutory Bodies; Eastern Law House, Calcutta.

Jayakumar, S., Constitutional Law Cases From Malaysia And Singapore; 1971. Malayan Law Journal Ltd., Singapore.

Nigro, Felix A., Public Personal Administration; 1963, Holt, Rhinehart and Winston Inc., New York.

Srivastava, K.D., Disciplinary Action Against Government Servants And Its Remedies; 3rd Edition (1970), Eastern Book Company, Lucknow, India.

Sheridan, L.A. and Groves H.E., The Constitution of Malaysia, 1967; Oceana Publications, Inc. Dobbs Ferry, New York.

Tilman, Robert O., The Public Services Of The Federation Of Malaya, 1961 (unpublished).

ARTICLES/CASE COMMENTS

Jayakumar, S., "Dismissal Of Government Servants," Surinder Singh Kanda v. The Government Of the Federation Of Malaya. [1962] 28 M.L.J. 169. 6 Mal. L.R. 173.

Protection For Civil Servants: The Scope of Article 135(1) and (2) of the Malaysian Constitution As Developed Through The Cases. (1969) 2 M.L.J. liv.

Swaminathan, Lakshmi, A Civil Servant's Right To Be Represented In Disciplinary Proceedings. 1974 16 J.I.L.I. 282.

Jain, S.N., Giving Of Reasons By Administrative Bodies. 1974 16 J.I.L.I. 142.

OTHER PUBLICATIONS

Annual Report Of The Public Services Commission, Federation Of Malaya, 1957/1958.

Franks Committee Report On Administrative Tribunals And Inquiries, Cmnd. 1957.

Guide To Disciplinary Control In The Public Service, 1957; Government Printer, Kuala Lumpur.

The Third Malaysia Plan, 1976; Government Printer, Kuala Lumpur.