

FOR MY PARENTS
AND
IN LOVING MEMORY OF
MY LATE SISTER

THE DISCIPLINARY PROCESS OF THE
PUBLIC SERVICES OF MALAYSIA

BY

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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.

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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