

**6.26 Procedures in respect of Vigilance & Anti Corruption cases**

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**A. Action on Preliminary Enquiry Reports****(i) Copies of Preliminary enquiry reports not to be made available to Heads of Departments.**

It is not desirable to make available copies of the secret report and thereby run the risk of its secrecy being lost. Also, when copies are made, there is risk of unauthorized extra copies being made, which may be misused. Moreover, the report cannot serve any useful purpose to the Head of the Department as it is only a preliminary report, but on the other hand, its unauthorized divulgence to the accused officer may put him on the alert and induce or enable him to tamper with the further enquiries.

The same consideration will apply also if the Head of the Department is informed of the details of the allegations against the accused official. Copies of preliminary enquiry reports of the Directorate of Vigilance and Anti-Corruption should not be sent to the Heads of Departments and the reasons for the transfer also need not be furnished to them.

**(G.O. (Ms) No.2950, Public (Ser.B), dt.28.11.69)**

**(ii) Procedure to be adopted on Preliminary Enquiry reports where the Departments have to verify the facts and pursue appropriate action.**

Generally Preliminary enquiry reports contain the following paragraphs:-

"The Directorate of Vigilance and Anti-Corruption has conducted only a Preliminary Enquiry and as such neither any witness was examined and statement recorded nor any records collected for the purpose of this enquiry. Hence, the information furnished in this report may be verified by the department with reference to the material given in this report and appropriate action pursued departmentally".

In cases of the type mentioned above, a simple order or letter should suffice asking the Head of the Department to make a departmental verification first; and

- (i) either take whatever further action is thought appropriate at his own level; or
- (ii) Send a report to Government for a decision at Government level on the course of further action.

When the departmental probe based on the preliminary enquiry report of the Director of Vigilance and Anti-Corruption brings out no ground for further action, the Head of Department can drop further action. However, the fact may be reported to the Government, Vigilance Commissioner and Director of Vigilance and Anti-Corruption. In a case, definite charges are framed as a result of the probe into the preliminary enquiry report and on finalization of the disciplinary proceeding it is decided to drop further action, the prior concurrence of the Vigilance commissioner should be obtained.

**(U.O.Note No.84870/94-3, P&AR (N), dt.15.3.95)**

**B. ACTION ON DETAILED ENQUIRY REPORTS.****(a). ACTION OF TRIBUNAL FOR DISCIPLINARY PROCEEDINGS.**

1. The Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 deal with the enquiry by the Tribunal for Disciplinary Proceedings. **The said Rules (as updated as on 31<sup>st</sup> May, 2005) is given in Appendix II.**

**2. Cases which are to be referred to Tribunal for Disciplinary Proceedings.**

According to rule 4(1) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 the Government shall, subject to the provisions of rule 5 of the said Rules, refer the following cases to the Tribunal, namely:-

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(a) Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officers; and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges;

According to rule 4(2) of the said Rules, the Government may, subject to the provisions of rule 5 of the said Rules, also refer to the Tribunal any other case or class of cases which they consider should be dealt with by the Tribunal and the Government, in exercising the power conferred by this sub rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organizational strength of the department concerned in handling cases involving interpretation of rules regulating conditions of service of Government servants.

### **3. Cases which are not to be referred to Tribunal for Disciplinary Proceedings – (vide proviso to sub-rule(1) and sub-rule (3) of Rule 4 of Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.)**

It shall not be necessary to consult the Tribunal for Disciplinary Proceedings:

(i) in any case in which the Tribunal has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination; or

(ii) where the Government propose to pass orders rejecting such appeal or petition.

(iii) cases arising in the Judicial Department.

### **4. Executive authority may with the sanction of Government refer cases to Tribunal for Disciplinary Proceedings-(vide sub rule 4 of rule 4 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955)**

The Executive authority of a local authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the local authority when they are involved in charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this rule. The cases so referred shall be enquired into by the Tribunal in accordance with the rules relating to appointment and punishment of officers and servants of the local authority.

### **5. Tamil Nadu Public Service Commission may refer cases directly to Tribunal for Disciplinary Proceeding without reference to Government – (vide sub-rule 5 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.)**

The Tamil Nadu Public Service Commission may, without reference to the Government, directly refer to the Tribunal cases relating to the Secretary (except when he is a member of the Indian Administrative Service) or a Joint Secretary or a Deputy Secretary or an Under Secretary to that Commission or a member of the staff of that Commission in respect of matters involving corruption or corruption combined with other charges on the part of the officers aforesaid and members of the staff of the Commission and the Tribunal shall conduct the inquiry in accordance with rule 7 of Annexure-II or, as the case may be, rule 4A of Annexure-V to the Tamil Nadu Public Service Commission Regulations, 1954.

6. in respect of cases to be placed before the Tribunal for Disciplinary Proceedings for action under Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 the Commissioner for Disciplinary Proceedings has to be addressed by the Government in a letter.

**(U.O. Note No.19856/97-23, P&AR (N), dt.26.12.2001)**

**A standard form of letter to be adopted by the Government for addressing the Commissioner for Disciplinary Proceedings in this regard is given in Appendix-III.**

**7. Priority in furnishing records to Tribunal for Disciplinary Proceedings.**

Furnishing records to the Tribunal for Disciplinary Proceedings should be given top priority. All Departments of Secretariat and Heads of Departments should furnish the records called for by the Tribunal as quickly as possible and at any rate, within two months from the date of receipt of requisition from Tribunal concerned without fail.

**(Govt. Lr.No.24019/82-1, P&AR (Per.N), dt.30.3.82)**

It has been observed that there are delays in the production of records required by the Tribunal for Disciplinary Proceedings also with the result that the cases get protracted unduly. The Heads of Departments are required to inform the Heads of offices under their control that they will be personally responsible for the production of the records required by the Tribunal for Disciplinary Proceedings.

**(Govt. Lr.No.82908/88-1, P&AR (Per.N), dt.16.8.88)**

If the Tribunals are not able to get the records in time, they will take the matter to the notice of the concerned Head of Department by a D.O. letter. On receipt of this, the Head of Department should arrange for securing the records and delivering them to the Tribunals within three days of receipt of the above letter. In such cases the Head of Department should also take disciplinary action against the Head of Office concerned for the delay in sending the records called for by the Tribunal.

**8. Last known address of the Accused officers to be furnished to Tribunal for Disciplinary Proceedings whenever referring cases to it for enquiry.**

Whenever remitting the case to the Tribunal for Disciplinary Proceedings for enquiry under Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the Department of Secretariat concerned has to ascertain and furnish to Tribunal for Disciplinary Proceedings the last known address/latest official address of the Accused Officers also.

**(Govt. Lr (Ms) No.34, P&AR (N), dt.18.2.2004)**

**9. Nodal Officers to be appointed in each Department of Secretariat to co-ordinate with Tribunal for Disciplinary Proceedings in the matter of serving of Charge Memos/ Charge letters and other processes to the Accused Officers.**

The Department of Secretariat have been instructed to issue orders designating an officer not below the rank of Deputy Secretary to Government dealing with personnel matter as Nodal Officer to coordinate with the Tribunal for Disciplinary Proceedings and Heads of Department in the matter of serving of charge memos/ charges letters and other processes to Accused officers, whenever any request, from the Tribunal for Disciplinary Proceedings are received in the matter. A copy of the orders issued in the matter may be communicated to all Commissioners for Disciplinary Proceedings, Vigilance Commission, Chennai-9 and Directorate of Vigilance and Anti-corruption, Chennai under intimation to Personnel and Administrative Reforms Department.

**(Govt. Lr (Ms) No.34, P&AR (N), dt.18.2.2004)**

**10. Transfer of cases from one Tribunal for Disciplinary Proceedings to another Tribunal for Disciplinary Proceedings.**

As per rule 8A of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the Government may by order in writing, withdraw any case referred to a Tribunal under these rules and pending before that Tribunal and transfer such cases to another Tribunal for enquiry and the Tribunal to which the case is so transferred may, subject to special directions in the order of transfer, proceed either denovo or from the stage at which the case was so transferred.

**11. Withdrawal of Cases from a Tribunal for Disciplinary Proceedings for departmental disciplinary action.**

## **6. DISCIPLINARY PROCEEDINGS**

According to rule 8B of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the Government may, by an order in writing, withdraw at any stage any case referred to a Tribunal under these rules and pending before that Tribunal. After such withdrawal the Government shall pursue further action in respect of State Service officers and shall entrust the cases of Subordinate Service Officers to the Heads of Departments concerned for further action. The Government or the Head of Department, as the case may be, may proceed with further action either *denovo* or from the stage at which the case was so withdrawn from the Tribunal and pass final orders.

### **12. Enquiry report of Tribunal for the Disciplinary Proceedings.**

According to rule 9 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, after the enquiry has been completed, the Tribunal shall send its findings to the Government to the effect whether the charges against the person charged are proved or not. Where the charges are proved, the penalty to be imposed on the person charged shall be decided by the Government or the Head of the Department, as the case may be.

**13. Sending a copy of the Report of Tribunal to the Directorate of Vigilance and Anti-Corruption immediately on its receipt by the department of Secretariat and wait for the Directorate's reaction for two months.**

The departments of the Secretariat should supply a copy of the report of the Tribunal for Disciplinary Proceedings to the Director of Vigilance and Anti-Corruption, immediately on its receipt and before initiating action on it.

**(G.O. (Ms) No.1715, Public (Ser.B), dt.22.8.68)**

The Tribunal should supply to the Departments of the Secretariat concerned an extra copy of its report in each case for supply to the Director of Vigilance and Anti-Corruption.

**(G.O. (Ms) No.1733, Public (Ser.B), dt.18.8.66)**

The Director of Vigilance and Anti-Corruption may write to the Government through Vigilance Commission for a review of the findings of Tribunals, if he considers such a review to be necessary, within two months from the date of receipt of the Government.

**(G.O. (Ms) No.65, P&AR (Per.N), dt.22.2.91)**

**14. Transmission of the report of the Tribunal for Disciplinary Proceedings to the Head of Department for passing final orders in respect of cases involving subordinate officers of the same Department.**

As per rule 10(b) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 in cases relating to Officers of Subordinate Service enquired into by the Tribunal, excepting those referred to in sub clauses (ii), (iii) and (iv) of clause (a) of rule 10 of the said rules the report of the Tribunal, along with the records shall, on receipt by Government, be transmitted to the Head of department concerned for passing final orders.

**A Standard Form of orders to be adopted by the Government for transmission of the report of the Inquiry of the Tribunal for Disciplinary Proceedings to the Head of Department under rule 10(b) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 is given in Appendix IV.**

**(U.O. Note No.19856/97-23, P&AR (N), dt.26.12.01)**

**15. Action by the Government on the report of Tribunal for Disciplinary Proceedings involving State Service Officers or State Service officers and Subordinate officers jointly involved or subordinate officers of different Departments jointly involved.**

According to rule 10(a) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 in cases other than those of the employees of the Municipal Corporations enquired into by the Tribunal, the Government shall be the authority competent to impose a penalty in cases relating to –

(i) Officers of the State Service;

(ii) Officers of the Subordinate Service, whose cases are referred to the Tribunal along with cases relating to Officers of the State Service because the cases are inter-connected or because officers are jointly involved.

(iii) Officers of the Subordinate Service who belong to different departments but are jointly involved, or whose cases are inter-connected; and

(iv) Officers of the Subordinate Service in whose cases, the Government on examination of the report of the Tribunal, decide to disagree with the findings of the Tribunal.

**16. Action on the report of the Tribunal for Disciplinary Proceedings involving officers of the Municipal corporations.**

According to rule 10(c) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the authorities competent to impose a penalty in respect of the officers of the Municipal Corporations shall be as indicated below:

<b>Classes of Officers.</b>	<b>Authority competent to impose a penalty.</b>
(i) Corporation of Chennai: Classes 1(A), 1(B) & II	Government.
<u>Other Municipal Corporations:</u> Classes 1 & II	Government.
(ii) Employees of Classes III and IV referred to the Tribunal along with the officers mentioned under (i) above.	Government.
(iii) Officers holding unclassified posts.	Government.
(iv) Employees of Classes III and IV.	Commissioner of the Municipal Corporation concerned.

**17. Consultation of the Head of Department on findings of Tribunal for Disciplinary Proceedings before arriving at the provisional conclusion as regards penalty.**

According to rule 9A of the Tamil Nadu Civil Services (Tribunal for Disciplinary Proceedings) Rules, 1955, on receipt of the findings of the Tribunal the Government may consult the Head of the Department on such findings if such consultation is deemed necessary, before arriving at a provisional conclusion in regard to the penalty to be imposed on the person charged.

**18. Furnishing a copy of the report of Tribunals for Disciplinary Proceedings to the Accused officer.**

As per Rule 10(a) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, on receipt of the findings of the Tribunal, if the whole or part of the charges are held proved, a copy of the report shall be communicated to the delinquent officer for making further representation, if any, within a reasonable time, not exceeding one month. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the Tribunal enquiry only.

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Recently a case has come to the notice of the Government wherein the appellant alleged that failure to furnish a copy of the Tribunal for Disciplinary Proceeding's report in full had deprived him for a reasonable opportunity to defend himself. The Tamil Nadu Public Service Commission has pointed out that the procedural irregularity in not sending the report of the Tribunal for Disciplinary Proceedings in full to the delinquent officer by the Head of the Department concerned has necessitated the setting aside of the orders of dismissal passed by the Head of the Department and to restart the disciplinary proceedings from the stage at which the irregularity crept in. In order to avoid delay and complications, Heads of Departments and the departments of the Secretariat are requested to supply the accused officers with a full copy of the report of the Tribunal for Disciplinary Proceedings excluding the recommendation of the Tribunal for Disciplinary Proceedings on the quantum of punishment to be imposed instead of supplying only extracts from the reports.

**(Govt. Memo No.82/68-1, Public (Ser.B), dt.3.2.68)**

**19. Enquiry report to be furnished to the Accused Officer along with the final order in cases of acquittal.**

According to rule 12 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 in cases where the acquittal of the officers concerned is proposed on the findings of the Tribunal, the Government or the Head of the Department, as the case may be, shall supply to the officer concerned a copy of the report of the Tribunal along with the final orders passed by them.

**20. Dropping up of action on the report of the Tribunal for Disciplinary Proceedings – Procedure.**

All the departments of the Secretariat and all Heads of departments are informed that the Tribunal cases where it is proposed to drop further action or where it is decided not to proceed further, the Vigilance Commission shall be consulted, as the case may be, by the departments of the Secretariat or by the Heads of Departments through the respective administrative departments of Secretariat concerned.

**(U.O.Note No.69858/ 89-1, P&AR (Per.N) dt.5.8.89)**

The Department of Secretariat are to send files for getting the concurrence of the Vigilance Commissioner to drop further action against the Government servant based on the findings of the Tribunal, only after ensuring (i) that a copy of the Report of the Tribunal had been furnished to the Director of Vigilance and Anti-Corruption and (ii) that the two months period prescribed for the Director to come up to Government for review is over.

**(G.O. (Ms) No.65, P&AR (Per.N), dt.22.2.91)**

**(b). DEPARTMENTAL DISCIPLINARY ACTION.**

1. The following instructions are issued for guidance of the Departments of Secretariat while remitting reports for the Vigilance cases to the Heads of Departments for pursuing departmental action.

i) The communication form to the Head of the Department should be in the form of Government order.

ii) In the communication to the Head of Department no mention regarding the conduct of detailed enquiry by the Directorate of Vigilance and Anti-corruption or the recommendation of Vigilance Commissioner thereon should be made either in the subject or in the order. The Departments of Secretariat are requested to desist from communicating the copies of U.O. Note of Vigilance commissioner or the reference of the Directorate of Vigilance and Anti-Corruption to the Heads of Departments. The instructions issued in this Department's U.O.Note No.68037A/81-3, Personnel and Administrative Reforms (Per.N) Department, dated 21.11.1981 should be followed without fail.

**(Govt. Lr.No.85358/83-3, P&AR (Per.N), dt.30.12.83)**

iii) Necessary instructions may be issued to the Heads of Department to follow the correct procedure stipulated in Circular Memo No.93261A/78-1, Personnel and Administrative Reforms (Per.N) Department dated 1.12.1978.

iv) While issuing remittal orders to the Heads of Departments in the form of Government order, communication must contain the request to the Head of the Department to send copies of the final orders issued in the disciplinary cases to the Vigilance Commissioner and Directorate of Vigilance and Anti-Corruption. It should be ensured that copies of preliminary enquiry reports of the Directorate of Vigilance and Anti-Corruption are not sent to the Heads of Departments and the reasons for such transfer also need not be furnished to them.

**A Standard Form of Government Order to be adopted for remitting of cases to the Heads of Departments for taking Departmental action arising out of Vigilance inquiries is given in Appendix V.**

**(U.O.Note No.17279/05-3, P&AR (N), dt.11.5.05)**

**2. Remittal order should specify the authority who should deal with the disciplinary cases arising out of the report of Directorate of Vigilance and Anti Corruption – Instructions.**

In cases of reports received by Government either from the Directorate of Vigilance and Anti-Corruption or from the Departmental Authorities, where Government are satisfied that a **Prima-facie** case exists, the matter is remitted to the Head of the Department for taking appropriate disciplinary action. A view has been expressed that when a matter like this has been remitted to the Head of the Department, the Head of the Department should himself deal with such disciplinary action instead of remitting the matter to the subordinate authorities which would result in inordinate delay in the disposal of the case.

**(G.O. (Ms) No.1255, P&AR (Per.N), dt.24.12.80)**

This has been examined in detail. The Tamil Nadu Civil Services (Discipline and Appeal) Rules lay down the appropriate authorities for imposition of punishments on Government servants. But the Rules also provide that any authority higher than the appropriate authority can also impose punishments vide rules 14(a) (1) and (2) of the above Rules. As such, legally there can be no objection to the Head of the Department dealing with a disciplinary case referred to him by the Government when even a lower authority is competent to take such action.

In principle, it would be desirable always to refer such matters to the appropriate disciplinary authorities thereby leaving the channels of appeal and revision open to the delinquent official. Moreover, it would be more convenient in most cases, if the enquiries were held by such authority since the delinquent as well as the witnesses would more likely to be at or near the headquarters of such authority. Therefore, the Secretaries to Government are requested to specifically examine in each case while forwarding such reports to subordinate authorities for disciplinary action, whether such case can be dealt with by the appropriate disciplinary authority as laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules or it should be dealt with by the Head of the department himself in view of any special circumstances. If the Secretary to Government decides that the matter should be decided only by the Head of the department, the order should specifically indicate this and state that the Head of the Department shall not remit the case to any lower authority.

**3. Charge letter/ Charge Memo to be issued to the accused Government Servant – No mention about the Directorate of Vigilance and Anti-Corruption enquiry or its report to be made in it – Instructions.**

Part-B note of the Directorate of Vigilance and anti-Corruption is a Confidential report containing only relevant information to be communicated by the administrative department of the Secretariat to the Head of the Department or the Tribunal for Disciplinary Proceedings, as the case may be, for taking disciplinary action against the Accused Officer and it should not be made available to the Accused Officer. The mention of the Vigilance Enquiry and Confidential Report in the charge Memoranda is in no way useful for the departmental enquiry, but it defeats the very

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purpose of maintenance of secrecy. On the other hand, such mention places the Directorate in an embarrassing position, since the Accused Officer may demand, as a matter of right, the filing of this Part "B" Confidential Report as an exhibit and the examination of the Investigation Officer of the Directorate of Vigilance and Anti-Corruption, as a witness in the disciplinary proceedings. To avoid such a situation, charges should be confined only to the offences or irregularities committed by the Accused Officers, as contained in Part-B of the Confidential Report of the Directorate of Vigilance and Anti-Corruption and copies of statement of witnesses, without indicating anything about the enquiry conducted by Directorate of Vigilance and Anti-Corruption and his report.

**(Govt. Circular Memo No.93261A/78-1, P&AR (Per.N), dt.1.12.78)**

### **4. Sending of the copy of Charge letter/ Charge memo/ Show cause notice to the Directorate of Vigilance and Anti-Corruption – Instructions.**

Though the Departmental Disciplinary Authorities are not required to send the draft charges to the Directorate of Vigilance and Anti-Corruption for vetting in all cases, it would be advantageous for the Directorate to have the copies of the show cause Notices/ Charge Memos, framed by the enquiry Officers against the Accused Officers, as soon as they are issued to them as it would enable the Directorate to examine such papers and set right any lacuna noticed at the Inquiry stage itself and thus avert the damage likely to be caused by pursuing a faulty or defective procedure in a departmental enquiry. Copies of such papers, if available, in the respective enquiry/ case files of the Directorate, would make the records complete and help in follow up action as may be necessary. The Government have, therefore, directed that copies of Charge Memo/ Show cause Notice issued to the Accused Officers based on the report/ recommendations of the Director of Vigilance and anti-Corruption/ Vigilance Commissioner, be sent to the Director of Vigilance and Anti-Corruption.(Govt. Lr.No.44581/90-13, P&AR(Per N), Dt.17.2.92)

### **5. Inquiry Officer to inform the Directorate of Vigilance and Anti-Corruption about the exact time and venue of the enquiry- Instructions.**

When departmental action is taken up against an officer, based on a report from the Directorate of Vigilance and Anti-Corruption, the officer who conducts the enquiry, should intimate to the branch concerned in the Directorate of Vigilance and Anti-Corruption of exact time and venue of the enquiry, sufficiently in advance, so that arrangements may be made for the production of witnesses and to enable the officer of the Directorate nominated to assist him. As the above procedure is absolutely essential in the interest of successful conduct of all departmental proceedings, it is essential that the Heads of Departments should follow the above procedure strictly in all such cases.

**(Govt. Memo No.4265/54-5, Public (Ser.D), dt.27.1.55 and reiterated in Govt.Lr.Ms.No.386, P&AR (N), dt.29.12.2004)**

### **6. Supply of records to the delinquents.**

According to the existing instructions, cases of alleged corruption against Government servants of Groups C and D are normally disposed of departmentally by the Head of the Department concerned and the records of the case including the copies of statement of witnesses recorded by the Directorate of Vigilance and Anti-Corruption are passed on to the Head of the Department concerned, for necessary action. According to rule 8 (a) (i) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, in corruption cases tried by the Tribunal for Disciplinary Proceedings, a copy of the statement received from any witness by the Department concerned is furnished to the person charged before each witness is examined by the prosecution, at the time of the enquiry. The same procedure should be followed in corruption case dealt with departmentally and copies for relevant statements of witnesses should be furnished to be delinquent officer before each witness is examined at the enquiry.

**7. Nomination of presenting Officer to present cases before Commissioner for Disciplinary Proceedings / Deputy commissioner for Disciplinary Proceedings in respect of departmental disciplinary cases referred to them for enquiry under rule 17 (b) (i) read with rule 17A of the Tamil Nadu Civil Services (Discipline and Appeal) rules.**

The Disciplinary Authority while referring a case to the Commissioner for Disciplinary Proceedings, Deputy Commissioner for Disciplinary Proceedings under the rule 17A of the Tamil Nadu Civil Services (Discipline and Appeal ) Rules for conduct of enquiry under rule 17(b) (1) of the said Rules should simultaneously nominate a Presenting Officer to present the case before the Commissioner for Disciplinary Proceedings /Deputy Commissioner for Disciplinary Proceedings.

**(Govt. Lr.No.101688 P & AR (Per.N),dt.27.11.85)**

**8. Statement of Witness recorded by Directorate of Vigilance and Anti-Corruption to be filed as exhibits in the Departmental enquires.**

The statements of witnesses recorded by the Directorate of Vigilance and Anti-Corruption may be filed as "exhibits" in the departmental enquires also in the same way as they are filed as "exhibits" in the enquires conducted by the Tribunal for Disciplinary proceedings.

**(Govt.Memo. No.4998/59-8,Public (Ser.D). dt.17.3.60)**

**9. Handing over of records to the Departmental Authority.**

The Heads of Departments and Undertakings are informed that they should, on receipt of orders of the Government remitting cases for departmental action, immediately intimate the Directorate of Vigilance and Anti-Corruption, Chennai the designation of the disciplinary authority to whom the records should be handed over, to enable the Directorate of Vigilance and Anti-Corruption to send the connected records without delay.

**(Govt.Lr.No.3378/90-6, P & AR (Per.N),dt.27.12.90)**

**10. Further probe by the Departmental authorities after the case is enquired and report received from the Directorate of Vigilance and Anti-Corruption – Prohibited.**

When a case has been entrusted to the Directorate of Vigilance and Anti-Corruption and report and it has submitted its report, there should not be any further fresh enquiry by the Departmental Heads. They should frame charges on the basis of the report of the Director and take further action in accordance with the instruction in the matter.

**(Govt. Memo No.5034/69-1, Public (Ser.B), dt.5.9.69)**

**11. Enquiry report to be sent to the Directorate of Vigilance and Anti-Corruption immediately on its receipt and wait for Directorate reaction for two months.**

(a) In all cases where disciplinary proceedings are started on a report from the Director of Vigilance and Anti-Corruption, the disciplinary authority should send a copy of the enquiry officer's report to the Director of Vigilance and Anti-Corruption immediately after the enquiry is over, instead of sending them along with the final orders passed. The disciplinary authority should, however, mark a copy of the final orders passed on them to the Director of Vigilance and Anti-Corruption.

**(Govt. Memo. No.47793A/75-3, Public (Ser.N) dated 27.1.76)**

(b) The Director of Vigilance and Anti-Corruption, may write to the Government through the Vigilance Commission, for a review of the findings in the inquiry report of Departmental Inquiry Officer if he considers such a review is necessary within two months from the date of receipt of the Inquiry Report.

**(Govt. Lr.Ms.No.2, P&AR (N), dt.25.5.2000)**

(c) The Director of Vigilance and Anti-Corruption may write to the Government through the Vigilance Commission with in two months from the date of receipt of a copy of the Inquiry Report

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for the limited purpose of pointing out the procedural infirmities, if any involved in the inquiry. The appreciation of evidence in a disciplinary case arising out of Vigilance Inquiry is to be left to the respective Disciplinary authority. If no such communication is received from the Directorate of Vigilance and Anti-Corruption within two months, the respective disciplinary authority may pass final orders on the inquiry report received.

**(Govt. Lr.No.84, P&AR (N), dt.25.7.2002)**

### **DROPPING OF ACTION BASED ON THE RECOMMENDATION OF VIGILANCE COMMISSION ON THE REPORT OF DIRECTORATE OF VIGILANCE AND ANTI- CORRUPTION.**

#### **(i) On the allegations not substantiated by the Directorate of Vigilance and Anti-Corruption – Instructions.**

If in respect of a Government Servant (or a Public Servant) against whom an enquiry (whether Preliminary or Detailed) is conducted by the Director of Vigilance and Anti-Corruption, it is proposed to drop further action, even before framing charges against the official concerned, calling for his explanation etc. it is necessary for the competent Authority to issue an order dropping further action against the official concerned and to communicate the said order to him and to the Director of Vigilance and Anti-Corruption. After due consideration, it is felt that such an order is necessary, as then only there will be a finality to the enquiry proceedings of the Director of Vigilance and Anti-Corruption.

**(Govt.Lr. (Ms) No.1092, P& AR (Per.N), dt.10.12.87)**

#### **(ii) After the charges framed based on the allegations substantiated by the Directorate of Vigilance and Anti-Corruption – Instructions.**

(a) Where disciplinary proceedings have been initiated against a Government servant by Heads of Departments/Sub-ordinate Officers, on the recommendation of the Vigilance Commission and the Directorate of Vigilance and Anti-Corruption which will be communicated to them by the Government by their remittal orders and it is subsequently proposed to drop further action or not to proceed further, the Vigilance Commission shall be consulted through the concerned administrative Department of the Secretariat. The concerned Department of the Secretariat shall examine all such cases sent by the Heads of Departments in consultation with the Vigilance Commission.

**(Govt. Lr.No.82610/82-19, P & AR (Per.N), dt.19.8.86)**

(b) Where disciplinary proceedings are initiated by the Departments of Secretariat themselves on the recommendation of Vigilance Commission and Director of Vigilance and Anti-Corruption and subsequently it is proposed to drop further action or not to proceed further, the connected file shall be sent to the Vigilance Commission for the advice of the Vigilance Commission.

**(U.O.Note No.82610/82-18, P&AR (Per.N), dt.19.8.86.)**

### **ADEQUATE PENALTY TO BE IMPOSED ON ERRING OFFICIALS WHERE CHARGES FRAMED AGAINST THEM HELD PROVED ON THE BASIS OF INQUIRY REPORT OF THE DIRECTORATE OF VIGILANCE AND ANTI-CORRUPTION – INSTRUCTIONS.**

It is brought to the notice of the Government that the punishments awarded in cases where the investigation was done by the Directorate of Vigilance and Anti-Corruption are sometimes not proportionate of the gravity of the substantiated allegations. In spite of the best efforts of the Directorate only very few persons come to adverse notice with allegations against them substantiated resulting in actionable reports being sent to Government through the Vigilance Commissioner. In disciplinary cases, the functions of the Competent Authorities are *quasi-Judicial* in nature. Discretion is an essential part of the proceedings and it will not, therefore, be possible to lay down any hard and fast formula that a particular punishment should be imposed for a particular type of delinquency. However, deterrent punishment may be quite justified in cases where corruption is proved on the investigation report of the Vigilance Directorate. It is therefore, impressed on all Secretaries to Government that adequate punishments should be imposed on the erring officials arising out of the enquiry reports of the Directorate of Vigilance and Anti-Corruption.

**(U.O.Note No.36969A/71-1, Public (Ser.N), dt.16.7.74 and reiterated in Govt. Lr.No.72762/94-3, P & AR (Per.N.), dt.11.1.95)**

**PROSECUTION AGAINST PUBLIC SERVANTS.**

**1. Sanction of Prosecution in cases arising out of investigation by Directorate of Vigilance and Anti-Corruption – Procedure.**

**(a) Where sanction for prosecution has to be accorded by Government.**

The Director of Vigilance and Anti- Corruption will send to the Vigilance Commission the reports of investigation for being forwarded to the concerned Department of Government with the recommendations of the Vigilance Commissioner.

**(G.O. (Ms) No.43,P&AR(N),dt.30.1.96)**

**(b) Other cases where the authority competent to Sanction Prosecution is other than the Government.**

In these cases also the Director of Vigilance and Anti-Corruption will send his reports of investigation to the Vigilance commission and the Vigilance commission will communicate its decision to the Director of Vigilance and Anti-Corruption under intimation to Government in the administrative department concerned and the Head of Department concerned. The Director will then approach the Competent Authority for sanction of prosecution.

**2. Public Prosecutor, High Court, Madras to be consulted on all cases of sanction for prosecution of public Servants by the Government.**

The Departments of Secretariat may be informed that, where sanction for the prosecution of a public servant has to be accorded by the Government, the Public Prosecutor, Madras High Court, should, as a rule be consulted in the first instance invariably on all such proposals received from any Heads of Departments (including Collectors and Director of Vigilance and Anti-Corruption).

**(U.O.Note No. 166198/65-2, Home (Courts I ),dt.9.11.65)**

**3.Promptness in dealing with the proposals for sanction for prosecution against public servants.**

The Department of Secretariat and Heads of Departments are requested to ensure that utmost promptness is exercised in according sanction for prosecution and that the sanction is accorded within a month. They are also requested to devise effective method to keep a special watch on such cases.

**(Govt.Memo No.69922A/78?3, P&AR(Per.N), dt.19.10.78)**

However, the Supreme Court in W.P.(Criminal) No.340-343 of 1993, Vineet Narain and others vs. Union of India and another has interalia given the following direction vide Judgement dated 18.12.1997.

“The time of 3 months in grant of sanction of prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General or any other Law Officer in the Attorney General Office”.

**(Govt.Lr. No. 9964/98-1 P&AR(N), dt.25.2.98)**

**4.Defects in the orders sanctioning Prosecution to be avoided- Instructions.**

It has been brought to the notice of the Government that, sometimes, the orders sanctioning prosecution of Accused Officers by the Competent authorities are defective on the following points: -

## **6. DISCIPLINARY PROCEEDINGS**

**(G.O.Ms.No.360,P&AR(Per.N), dt.21.3.79)**

- (i) The Model sanction orders enclosed with the investigation report are not strictly adhered to by the competent authorities;
- (ii) Certain additions which were not given in the Model orders, are incorporated in the sanction orders issued by the authorities concerned;
- (iii) Some omission from the Model orders were made by the sanctioning authorities;
- (iv) The orders sanctioning prosecution signed by subordinate officers instead of by the competent authorities or are not in proper form.
- (v) In certain cases, true copies of the orders instead of the originals are sent to the Directorate of Vigilance and Anti-Corruption.

Secretaries to Government /Heads of Departments and District Collectors should ensure that the above defects do not occur in the orders issued by them, sanctioning prosecution of public servants. They are also requested to clear their doubts, if any, by informal consultation with Law officers of the Directorate of Vigilance and Anti-Corruption before issue of orders, where it is considered that deviations from the Model Forms sent by the Director of Vigilance and Anti-Corruption are necessary.

### **5. Authority to sign the Government order.**

An officer not below the rank of Deputy Secretary to Government should sign the order sanctioning prosecution of Government servants, where Government sanction is necessary.

**(U.O. Note No.147477A/78-4,P&AR(Per.N).dt.21.3.79)**

It is not enough if the order sanctioning prosecution sent to the Directorate of Vigilance and Anti-Corruption is a true copy of the order signed by the competent authority and authenticated by its subordinate. The order should be the original order passed by an officer of or above the rank of Deputy Secretary to Government.

### **6. Withdrawal of Prosecution- Guidelines.** (G.O.Ms.No.1977, Public(Ser.B), Dt.19.9.66)

The following principles are to be observed in dealing with the requests or petitions for withdrawal of prosecution:-

- I. When once a case is put in a Court, it should be allowed to take its normal course.
- II. If in any case, it becomes necessary to consider a petition for withdrawal such a petition should be disposed of on the advice of the Vigilance commission, provided that:
  - (a) the Court has not commenced recording evidence,
  - (b) it is clear from the records that the competent authority had not examined the merits of the case before according sanction; and
  - (c) facts have come to light which would show that no offence had been committed by the accused.

### **7. Institution of simultaneous departmental as well as criminal action against Government servants- Instructions.**

The following procedure shall be adopted for taking simultaneous departmental as well as criminal action against Government servants for their misconduct:-

**(G.O. (Ms) No.124,P&AR (Per.N), dt.22.2.83)**

i. When a criminal case is filed solely on a criminal offence committed by the Government servant which is in no way connected with the discharge of his official duties; there is no need to pursue departmental action except placing the Government servant under suspension as contemplated under Tamil Nadu Civil Services (Discipline and Appeal) Rules. The ultimate Departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed of by the Court of Law.

ii. When both departmental as well as criminal action is initiated for the offences of the kind referred to in Para (i) above; in regard to departmental action, charges may be framed against him for the lapses committed by him and final orders may be passed after obtaining the required registers/records/documents from the Court irrespective of the fact whether he is acquitted or not. Thus the departmental action will be confined to the irregularities or lapses committed by the accused officer with reference to the administrative aspect.

2. The following further instructions have been issued by the Government in the matter.

**(Govt.Lr. (Ms) No.321,P&AR(N), dt 12.3.2004)**

(i) There is no objection to use the Xerox or photocopies in disciplinary cases, if they are duly authenticated. In the case of any doubt or where it is felt that the original registers/records/documents have to be perused, the same can be called for from the Court, through the Directorate of Vigilance and Anti-corruption or other concerned investigating Agency, as the case may be. The concerned investigating agencies, namely, the Directorate of Vigilance and Anti-corruption, or other investigating agency, may persuade the court to part with the original registers/records/documents temporarily or may get Xerox or photo copies. Where the Courts are not prepared to part with the original registers/records/documents and if the accused Government servant insists on seeing the originals, the possibility of marking arrangements for the accused to inspect the original registers/records/documents in the Courts should be examined in consultaion with the Directorate of Vigilance and Anti-corruption or the concerned investigating agency.

The Departments of Secretariat /Heads of Departments have to follow these guidelines while taking simultaneous criminal and departmental disciplinary action against Government servants and pass final orders in the disciplinary proceedings quickly without awaiting the result of the criminal cases.

(ii) The enquiry reports of the Director of Vigilance and Anti-Corruption to Vigilance Commission invariably do not contain any recommendation for pursuing simultaneous departmental as well as criminal action against Government servants in the cases where criminal action is to be initiated against them. In future Directorates enquiry reports to the Vigilance Commission may contain recommendations for simultaneous departmental as well as criminal action against Government Servants in such cases.

**(Govt. Lr. (Ms) No. 326,P&AR(N), dt. 19.8.2004)**

8. Cases ended in acquittal by Courts-Fresh Departmental Proceedings – Institution of – Instructions.

Criminal proceedings and disciplinary Proceedings undoubtedly operate in different fields. The question of continuance of domestic enquiry, after acquittal by a Criminal Court on the same charge, has come up before courts of Law from time to time and it has been observed that taking a view that Departmental disciplinary Proceedings cannot be taken after the Criminal Case ended in favour of the delinquent can no longer be construed as good law.

Government have, therefore, issued the following instructions.

(i) that, in the case of an Accused Official acquitted by Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent Disciplinary authority to institute or continue disciplinary proceedings against the said Accused Official for the same charges from which he was acquitted by Court, if the competent Disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings; and

(ii) that, in cases of acquittal of an accused Official by a Court, the competent Disciplinary authority is of the opinion that the departmental proceedings need not be instituted / continued against him, the competent Authority shall, within one month of the date of the judgement (exclusive of the period required for obtaining the copy) shall send a report of such cases to the

## **6. DISCIPLINARY PROCEEDINGS**

Government containing justification for the stand taken by him. Every case so reported shall be accompanied by a copy of the relevant judgement of the Court.

**(G.O. (Ms) No.251, P&AR(Per.N), Dt.21.4.88)**

### **PROCEDURE TO BE FOLLOWED IN RESPECT OF CASES FILED AGAINST THE VIGILANCE INQUIRY IN COURTS/ TAMIL NADU ADMINISTRATIVE TRIBUNAL .**

(1) Director of Vigilance and Anti- Corruption to be consulted before filing counter affidavit/ reply affidavit.

Whenever reply affidavits/counter affidavits have to be filed in the Tamil Nadu Administrative Tribunal/Courts in Vigilance Cases, under investigation/enquiry the Director of Vigilance and Anti-Corruption should be consulted before filing of reply affidavits / Counter affidavits so that the Directorate of Vigilance and Anti-Corruption could check up whether the correct and requisite details have been furnished therein, for contesting the cases effectively.

**(Govt. Lr. (Ms) No.6, P & AR(N), dt. 16.3.2001.)**

(2) Intimation of the Notices / Petitions / Messages etc. received from the High Court / Tamil Nadu Administrative Tribunal or from the Government Advocates by the Departments of Secretariat / Head of Department / other disciplinary authorities to the Directorate of Vigilance and Anti/Corruption.

**(Govt. Lr. (Ms) No.6, P & AR (N), dt. 21.1.2004.)**

Whenever the Notices / Petitions / Messages etc. are received by the Departments of Secretariat / Heads of Departments / other disciplinary authorities from the High Court / Tamil Nadu Administrative Tribunal or from the Government Advocates relating to the cases dealt with by the Directorate of Vigilance and Anti-corruption, Chennai, they should immediately send copies of the same to Directorate of Vigilance and Anti-corruption, Chennai and to the Deputy Superintendent of Police of the Vigilance and Anti-Corruption detachment concerned without any delay so as to enable the Directorate of Vigilance and Anti-corruption to cause making of effective representation in the High Court / Tamil Nadu Administrative Tribunal.

(3) Prompt intimation of important stages of the outcome of the cases filed before Tamil Nadu Administrative Tribunal / Central Administrative Tribunal / High Court against Vigilance enquiries / Investigations to Directorate of Vigilance and Anti-Corruption by the Departments of Secretariat / Heads of Departments / Collectors.

**(Govt. Lr.No.49161/95-1, P & AR (N), dt. 28.9.95.)**

All Departments of Secretariat and Heads of Departments / Collectors are requested to keep the Directorate of Vigilance and Anti/Corruption informed promptly and in time of the important stages as well as the outcome of cases filed before the Courts or applications filed before the Tamil Nadu Administrative Tribunal / Central Administrative Tribunal arising out of Director of Vigilance and Anti-Corruption enquiries / investigations so that effective follow up of action can be taken by the Directorate of Vigilance and Anti-Corruption, wherever necessary. The Heads of Departments are requested to issue suitable instructions to subordinates also in the matter.

### **DISAGREEMENT WITH THE FINDINGS OF THE DIRECTOR OF VIGILANCE AND ANTI-CORRUPTION / VIEWS OF THE VIGILANCE COMMISSIONER BY THE DEPARTMENTS OF SECRETARIAT – PROCEDURE.**

(i) When the Departments of Secretariat disagree with the findings of the Directorate of Vigilance and Anti-corruption—

**(U.O.Note No.36969A/71-1, Public (Ser. N) dt. 16.7.74)**

It should be the normal procedure that in cases where the Departments of the Secretariat agree with the findings of the Directorate, the procedure prescribed in Tamil Nadu Civil Services (Discipline and Appeal) Rules should be followed and final orders passed. If, on the other hand, the Departments of the Secretariat, for sufficient reasons, disagree with the whole or any part of the

findings of the Directorate of Vigilance and Anti-Corruption, the reasons for such disagreement shall be set out clearly and the case brought specifically to the notice of Chief Secretary and Chief Minister before final orders are issued.

(ii) When the views of the Secretary to Government in a Department of Secretariat is different from the views of the Vigilance Commissioner—

**(G.O.D No.1, P & AR (Per.N), dt. 28.1.92 and also vide second proviso to rule 25 of the Tamil Nadu Government Business Rules)**

Where the Vigilance Commissioner has expressed opinions on the case under consideration, which are contrary to or different from the views expressed by the Secretary of the department to which the case belongs and the latter still adheres to his views he can after indicating different views verbatim comment upon these views and also add any further note expressing his own views with justifiable reasons and solicit orders routing the case through the Chief Secretary for approval of his opinion by the Minister concerned and the Chief Minister in all such cases.