

TUTICORIN PORT EMPLOYEES (CLASSIFICATION, CONTROL AND APPEAL) REGULATIONS, 1979

G.S.R. 101(E): In exercise of the powers conferred by section 126, read with section 28 of the Major Port Trusts Act, 1963 (38 of 1963), the Central Government hereby makes the following Regulations, namely:-

PART I – General

1. Short title and commencement:-

- (1) These regulations may be called the Tuticorin Port Employees (Classification, Control and Appeal) Regulations, 1979.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:-

In these regulations, unless the context otherwise requires,-

- (a) "Act" means the Major Port Trusts Act, 1963 (38 of 1963);
- (b) "Appointing authority" in relation to an employee means the authority prescribed as such in the Schedule;
- (c) "Board", "Chairman" and "Head of Department" shall have the same meanings as in the Act;
- (d) "disciplinary authority" means the authority competent under these regulations to impose on an employee any of the penalties specified in regulation 8;

(e) "employee" means an employee of the Board and includes any such person on foreign service or whose services are temporarily placed at the disposal of the Board and also any person in service of the Central or a State Government or a local or other authority whose services are temporarily placed at the disposal of the Board.

(f) "Schedule" means the Schedule annexed to these regulations.

3. Application:- (1) These regulations shall apply to every employee of the Board but shall not apply to:-

(a) persons in casual employment;

(b) persons liable to be discharged from service or less than one month's notice; and

(c) persons for whom special provision is made in respect of matters covered by these regulations, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Board before or after the commencement of these regulations, in regard to matters covered by such special provisions;

(2) Notwithstanding anything contained in sub-regulation (1) the Board may by order exclude from the operation of all or any of these regulations any class or classes of employees.

(3) If any doubt arises as to whether these regulations or any of them apply to any person, the matter shall be referred to the Board for its decision.

PART II – Classification

4. (1) Classification of posts:- All posts under the Board shall for the purposes of these regulations be classified as follows:-

- (a) Class I posts, that is to say, posts carrying a pay in a scale of pay, the maximum of which is more than Rs.14,600/-, in the revised pay structure.
- (b) Class II posts, that is to say, posts carrying a pay in a scale of pay, the maximum of which is more than Rs.11,975/- but more than Rs.14,600/- in the revised pay structure.
- (c) Class III posts, that is to say, posts carrying a pay in a scale of pay the maximum of which is more than Rs.7,330/- but not more than Rs.11,975/- in the revised pay structure.
- (d) Class IV posts that is to say, posts carrying a pay in a scale of pay, the maximum of which is Rs.7,330,- or below in the revised pay structure.

Provided that after the general revision of the pay structures referred to in sub-regulation (1), the revised pay limits corresponding to those mentioned in sub-regulation(1) shall be as specified by the Central Government, until the pay limits are formally modified by amendment to the regulations.

(2) Any other made by the competent authority and in force immediately before the commencement of these regulations relating to classification of posts in the Port of Tuticorin and the Tuticorin Port Trust shall continue in force until altered rescinded or amended by an order of the Board under sub-regulation (1).

PART III - Appointing authorities

5. Appointment to posts: - (i) All appointments to the posts under the Board which are covered by clause (a) of sub-section (1) of section 24 of the Act shall be made by the Central Government after consultation with the Chairman.

(ii) all appointments to other Class I and Class II posts under the Board which are not covered by clause (a) of sub-section (1) of section 24 of the Act shall be made by the authorities as specified in the Schedule.

6. Appointments to other posts:- All appointments, other than the appointments referred to in regulation 5, shall be made by the authorities specified in this behalf in the Schedule.

PART IV– SUSPENSION

7. Suspension – (1) An employee may be placed under suspension--

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority afore said, he has engaged himself in activities prejudicial to the interests of the security of the state; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2) The order of suspension shall be made --

(a) in the case of an employee holding a post referred to in clause (a) of sub-section (1) of section 24 of the Act by the Chairman;

(b) in any other case by the appointing authority:

Provided that no such order relating to an employee holding a post referred to in clause (a) of sub-section (1) of section 24 of the Act shall have effect until it is approved by the Central Government.

(3) An employee shall be deemed to have been placed under suspension by an order of appointing authority --

(a) with effect from the date of his detention, if he is detained in custody for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Provided that if the employee is acquitted or granted bail, he/she shall be reinstated in service forthwith.

Explanation: The period of forty eight-hours referred to in clause (b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any other directions the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence, of or by, a decision of a court of law, and the disciplinary authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the authority competent to do so from the date of the original order of dismissal removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds

without going into the merits of the case.

(6) (a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where an employee is suspended or is deemed to have been suspended, (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may for reasons to be recorded by him in writing, direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.

PART IV– SUSPENSION

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(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority afore said, he has engaged himself in activities prejudicial to the interests of the security of the state; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2) The order of suspension shall be made --

(a) in the case of an employee holding a post referred to in clause (a) of sub-section (1) of section 24 of the Act by the Chairman;

(b) in any other case by the appointing authority:

Provided that no such order relating to an employee holding a post referred to in clause (a) of sub-section (1) of section 24 of the Act shall have effect until it is approved by the Central Government.

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Provided that if the employee is acquitted or granted bail, he/she shall be reinstated in service forthwith.

Explanation: The period of forty eight-hours referred to in clause (b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any other directions the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence, of or by, a decision of a court of law, and the disciplinary authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the authority competent to do so from the

date of the original order of dismissal removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(6) (a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where an employee is suspended or is deemed to have been suspended, (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may for reasons to be recorded by him in writing, direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.

(7) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do, or by any authority to which that authority is subordinate.

(8) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of Review Committee constituted for the purpose and pass order either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(9) Notwithstanding anything contained in Sub-regulations 6 and 7, an order of suspension made or deemed to have been made under Sub-regulations (1) to (3) of this Regulation shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

PART V – Discipline

8. Penalties. - The following penalties may, if the charge(s) is/are proved, and keeping in view of the gravity of the charge(s) so proved and as hereinafter provided, be imposed on an employee, namely:-

Minor Penalties:

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders;
- (iii)(a) Reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;
- (iv) Withholding of increments of pay;

Major Penalties:

- (v) Save as provided for in Clause (iii)(a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) Reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay; grade, post or service from which he was reduced with or, without further direction regarding conditions of restoration to the grade or post, or service from which the employee was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) Compulsorily retirement;

- (viii) Removal from service which shall not be a disqualification for further employment;
- (ix) Dismissal from service which shall ordinarily be a disqualification for future employment.

Provided that, in every case in which the charge of possession of assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or regard for doing or forbearing to do any official act is established, the penalty mentioned in Clause (viii) or Clause (ix) shall be imposed;

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

Explanation. - The following shall not amount to a penalty within the meaning of this regulation, namely: --

- (i) Withholding of increments of an employee for failure to pass a departmental examination in accordance with the regulations or orders governing the post or the terms of his appointment;
- (ii) Stoppage of an employee at the efficiency for failure time scale on the ground of his unfitness to cross the bar;
- (iii) Non-promotion whether in a substantive or officiating capacity of an employee, after consideration of his case, to a grade or post for promotion to which he is eligible;
- (iv) Reversion to a lower grade or post of an employee officiating in a higher grade or post on the ground that he is considered, after trial, to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct;
- (v) Reversion to his permanent grade or post of an employee appointed on probation to another grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the regulations and orders governing probation;

- (vi) Replacement of the services of an employee whose services have been borrowed from the Central or a State Government or an authority under the control of the Central or a State Government at the disposal of the authority which had lent his services;
- (vii) Compulsory retirement of an employee in accordance with the provisions relating to his superannuation or retirement;

(viii) Termination of the services:--

- (a) of an employee appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the regulations and orders governing probation; or
- (b) of an employee employed under an agreement in accordance with the terms of such agreement;
- (c) of a temporary employee under rule 5 of Tuticorin Port Employees (Temporary Service) Regulations, 1979.

9. Disciplinary authorities.-- The authorities mentioned in the Schedule shall be competent to impose the penalties on the employees of different grades and services as indicated in the said Schedule.

10. Procedure for imposing major penalties.-- (1) No order imposing any of the penalties specified in clauses (v) to (ix) of regulation 8 shall be made except after an inquiry held, as far as may be, in the manner provided in this regulation and regulation 11.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or mis-behaviour as contemplated in the Tuticorin Port Employees (Conduct) Regulations, 1979 against an employee, it may itself inquire into, or appoint an authority, including any serving or retired official of the State or Central Government, Public Sector Undertaking or any Port, to inquire into the truth thereof.

Explanation.-- Where the disciplinary authority itself holds the inquiry, any reference in sub-regulation (7), sub-regulation (20) or sub-regulation (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against an employee under this regulation or regulation 11, the disciplinary authority shall draw up or cause to be

drawn up --

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputation of misconduct or misbehaviour in support of each article of charge, which shall contain --
 - (a) a statement of all relevant facts including any admission of confession made by the employee;
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit, within 30 days, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted or if it considers it necessary so to do, appoint, under sub-regulation (2), an Inquiring authority for the purpose, and where all the articles of charge have been admitted by the employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in regulation 11.

(b) If no written statement of defence is submitted by the employee the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary so to do, appoint under sub-regulation (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any articles of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint any person to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall where it is not the inquiring authority, forward to the inquiring authority

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the employee;
- (iii) a copy of the statements of witnesses, if any referred to in sub-regulation (3);
- (iv) evidence providing the delivery of the documents referred to in sub-regulation (3) to the employee; and
- (v) a copy of the order appointing the "Presenting Officer".

(7) The employee shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the Statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as the inquiring authority may allow.

(8) The employee may take the assistance of any other employee to present the case on his behalf, but shall not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits.

Provided that the employee may take the assistance of any other employee posted at any other station, if the Inquiring Authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits;

Note:- (a) The employee shall not take the assistance of any other employee who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The employee may also take the assistance of a retired employee to present the case on his behalf, subject to such conditions as may be specified by the Board from time to time by general or special order in this behalf.

(9) If the employee who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the employee thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the employee pleads guilty.

(11) The inquiring authority shall, if the employee fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence --

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-regulation (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:-- If the employee applies orally or in writing for the supply of copies of the statements of witness mentioned in the list referred to in sub-regulation (3), the inquiring authority shall, furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of the Board but not mentioned in the list referred to in sub-regulation (3).

Note:-- The employee shall indicate in the notice the relevance of the documents required by him to be discovered or produced by the Board.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in

whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition;

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-regulation (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the interest of the Port Trust, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the employee and withdraw the requisition made by it for the production or discovery of such documents.

(14) (a) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority.

(b) The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee.

(c) The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority.

(d) The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) (a) If it appears necessary before the close of the case on the side of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the employee or may itself call for new evidence or recall and re-examine any witness and in such case the employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the

inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned.

(b) The inquiring authority shall give the employee an opportunity of inspecting such documents before they are taken on the record.

(c) The inquiring authority may also allow the employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Note: -- New evidence shall not be permitted or called for and no witness shall be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) (a) When the case for the disciplinary authority is closed, the employee shall be required to state his defence, orally or in writing, as he may prefer.

(b) If the defence is made orally, it shall be recorded and the employee shall be required to sign the record, in either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) (a) The evidence on behalf of the employee shall then be produced and the employee may examine himself on his side if he so prefers.

(b) The witnesses produced by the employee shall then be examined and may be cross-examined on behalf of the disciplinary authority.

(18) The inquiring authority, may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the employee, or

permit them to file written briefs of their respective cases, if they so desire.

(20) If the employee to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this regulation, the inquiring authority may hold the inquiry ex-parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clause (i) to (iv) of regulation 8 but not competent to impose any of the penalties specified in clauses (v) to (ix) of regulation 8, has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of regulation 8 should be imposed on the employee, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the employee such penalty as it may deem fit in accordance with these regulations.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself;

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain --

- (a) the articles of charge and the statement of imputations of mis-conduct or mis-behaviour;
- (b) the defence of the employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

Explanation.-- If in the opinion of the inquiry authority, the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has a reasonable opportunity of defending himself against such article of charge.

- (ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include --
 - (a) the report prepared by it under clause (i);
 - (b) the written statement of defence, if any, submitted by the employee;
 - (c) the oral and documentary evidence produced in the course of the inquiry;
 - (d) the written briefs, if any, filed by the Presenting Officer or the employee or both during the course of inquiry; and

- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

11. Action on the inquiry report.-- The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority, shall thereupon proceed to hold the further inquiry according to the provisions of regulation 10 as far as may be.

(2) The disciplinary authority shall forward or caused to be forwarded a copy of the report of inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons, for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the employee who shall be required to submit if he so desires, his written representation or submission to the Disciplinary Authority within 15 days, irrespective of whether the report is favourable or not to the employee.

(2A) The Disciplinary Authority shall consider the representation, if any, submitted by the employee and record its findings before proceeding further in the matter as specified in sub-regulations (3) and (4).

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of regulation 8 should be imposed on the employee, it shall notwithstanding any thing contained in regulation 12 make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 8 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed on the basis of the evidence adduced during the inquiry:

Provided that in every case where it is necessary to consult the Central Government the record of the inquiry shall be forwarded by the disciplinary authority along with its recommendations to the Central Government for passing order.

12. Procedure for Imposing Minor Penalties:-- (1) No order imposing any of the penalties specified in clauses (i) to (iv) of regulation 8 shall be passed except after -

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- (a) informing in writing the employee of the proposal to take action against him and of the allegations on which it is proposed to be taken and giving him an opportunity to make any representation he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-regulations (3) to (23) of regulation 10, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the employee under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Central Government where such consultation is necessary.

(2) The record of the proceedings of such cases shall include --

- (i) a copy of the intimation to the employee of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Central Government, if any;

(vi) the findings on each imputation of misconduct or misbehaviour;
and

(vii) the orders on the case together with the reasons therefor.

(3) Notwithstanding anything contained in clause (b) of sub-regulation (1), if in a case it is proposed, after considering the representation, if any, made by the employee under clause (a) of that sub-regulation to with-hold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the employee or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-regulation (3) to (23) of regulation 10, before making an order imposing on the employee any such penalty.

13. Communication of orders.-- Orders made by the disciplinary authority shall be communicated within 45 days of the order to the employee who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority, and a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiry authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him).

14. Common proceedings.-- (1) Where two or more employees are concerned, in any case, the Chairman or the authority competent to impose a penalty of dismissal from service on all such employees may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note:- If the authorities competent to impose the penalty of dismissal on such employees are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the other authorities.

(2) Subject to the provisions of sub-section (1) of section 25 of the said Act, and regulation 9, any such order shall specify --

(i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;

- (ii) the penalties specified in regulation 8 which such disciplinary authority shall be competent to impose; and
- (iii) whether the procedure prescribed in regulations 10 and 11 or regulation 12 or regulation 17 may be followed in the proceeding.

15. Special procedure in certain cases.-- Notwithstanding anything contained in regulations 10, 12 and 14 --

- (i) where a penalty is imposed on an employee on the ground of conduct which had led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing it is not reasonably practicable to hold an inquiry in the manner provided in these regulations; or
- (iii) where the Chairman is satisfied that in the interest of the security of the port it is not expedient to follow such procedure, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit;

Provided that an employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i).

Provided that the approval of the Central Government shall be obtained for passing such orders in relation to an employee referred to in clause (a) of sub-section (1) of section 24 of the said Act.

16. Provisions regarding officers lent by the Board.-- (1) Where the services of an employee are lent by the Board to a State or Central Government or an authority subordinate to them or to a local or other authority (hereinafter in this regulation referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such employee under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him :

Provided that the borrowing authority shall forthwith inform the Board of the circumstances leading to the order of suspension of such employee or the commencement of the disciplinary proceedings; as the case may be.

(2) In the light of the findings in the disciplinary proceedings conducted against an employee --

- (i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of regulation 8 should be imposed on the employee, it may, after consultation with the Board, make such orders on the case as it deems necessary :

Provided that in the event of a difference of opinion between the borrowing authority and the Board, the services of an employee shall be replaced at the disposal of the Board.

- (i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 8 should be imposed on the employee, it shall replace his services at the disposal of the lending authority and transmit to it the proceeding of the inquiry and thereupon the lending authority may, if it is the Disciplinary Authority, pass such orders thereon as it may deem necessary, or, if it is not the Disciplinary Authority, submit the case to the Disciplinary Authority which shall pass orders on the case as it may deem necessary :

Provided that before passing any such order the disciplinary authority shall comply with the provisions of these regulations.

Explanation:-- The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority, or after holding such further inquiry as it may deem necessary as far as may be, in accordance with regulation 10.

17. Provisions regarding officers borrowed by the Board:-- (1) Where an order of suspension is made or a disciplinary proceeding is taken against an employee whose services have been borrowed from the Central Government or a State

Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in these regulations referred to as the "lending authority") shall forthwith be informed of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings as the case may be.

(2) In the light of the findings in the disciplinary proceedings taken against the employee --

- (i) if it is decided that any of the penalties specified in clauses (i) to (iv) of regulation 8 should be imposed on him the disciplinary authority may subject to the provisions of sub-regulation (3) of regulation 11, after Consultation with the lending authority pass such orders on the case as it deems necessary;

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority the services of the employee shall be replaced at the disposal of the lending authority.

- (ii) if the disciplinary authority is of the opinion that any of the penalties specified in clause (v) to (ix) of regulation 8 should be imposed on the employee, it shall replace his services at the disposal of the lending authority and transmit it with the proceedings of the inquiry for such action as it deems necessary.

PART VI – APPEALS

18. Appeals against orders of the Central Government --

Notwithstanding anything contained in this part, appeal shall lie before the competent Court of Law against any order made with the approval of the Central Government.

Note: Any order passed by an inquiring authority in the course of an inquiry under Regulation 10 is not appealable.

19. Appeals against orders of suspension:-- An employee may appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order is immediately subordinate.

20. Appeals against orders imposing penalties.--(1) The authorities mentioned in the schedule shall be competent to entertain appeals against the orders imposing the penalties indicated in the Schedule.

(2) Any employee of a Board aggrieved by an order involving his reduction in rank, removal or dismissal may, within the time mentioned in regulation 22 and in the manner laid down in regulation 23 prefer an appeal--

(a) to the Central Government, where such order is passed by the Chairman;

(b) to the Chairman, in any other case:

Provided that where the person who made the order appealed against becomes, by virtue of his subsequent appointment the appellate authority in respect of such order, an appeal against such order, shall lie to the Central Government and the Central Government in relation to that appeal shall be deemed to be the appellate authority for the purposes of this regulation.

21. Appeals in other cases. -- An appeal against an order --

(a) stopping an employee at the efficiency bar in the time scale on the ground of his un-fitness to cross the bar;

(b) reducing or withholding the pension or denying the maximum pension admissible to the employee;

- (c) determining the pay and allowances for the period of suspension to be paid to an employee on his reinstatement or determining whether or not such period shall be treated as a period spent on duty for any purpose; and
- (d) reverting to a lower grade or post an employee officiating in a higher grade or post otherwise than as a penalty; shall lie, in the case of an order made in respect of any employee, to the authority to whom an appeal against an order imposing upon him the penalty of dismissal from service, would lie.

Explanation.-- In this regulation -

- (i) "employee" includes a person who has ceased to be in the employment of the Board;
- (ii) "pension" includes additional pension, gratuity and any other retirement benefit.

22. Period of limitation for appeals.-- No appeal preferred under this Part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant;

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient causes for not preferring the appeal in time.

23. Form and contents of appeals.-- (1) Every person preferring an appeal shall do so separately and in his own name.

(2)The appeal shall be present to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. But it shall contain all materials statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in it self.

(3) The authority which made the order appealed against shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the Appellate Authority without any avoidable delay, and without waiting for any direction from the Appellate Authority.

24. Submission of appeals.-- Every appeal shall be submitted through the authority which made the order appealed against:

Provided that a copy of the memorandum of appeal may be submitted direct to the appellate authority.

25. Withholding of appeals. -- (1) The authority which made the order appealed against may withhold the appeal if --

- (i) it is an appeal against an order from which no appeal lies; or
- (ii) it does not comply with any of the provisions of regulation 23;
or
- (iii) it is not submitted within the period specified in regulation 22 and no cause is shown for the delay; or
- (iv) it is a representation of an appeal already decided and no new facts or circumstances are adduced:

Provided that an appeal withheld on the ground only that it does not comply with the provisions of regulation 23 shall be returned to the appellant and if it is re-submitted within one month thereof after compliance of the said provisions, shall not be withheld.

(2) Where an appeal is withheld, the appellant shall be informed of the facts and the reasons therefor.

(3) At the commencement of each quarter, a list of appeals withheld by any authority during the previous quarter together with the reasons for withholding them shall be furnished by that authority to the appellate authority.

26. Transmission of appeals.-- (1) The authority which made the order appealed against shall, without any avoidable delay, transmit to the appellate authority every appeal which is not withheld under regulation 25 together with its comments thereon and the relevant records.

(2) The authority to which the appeal lies may direct transmission to it of any appeal withheld under regulation 25 and thereupon such appeal shall be transmitted to that authority together with the comments of the authority withholding the appeal and the relevant records.

27. Consideration of appeal – (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of regulation 7 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in regulation 8 or enhancing any penalty imposed under the said regulation, the appellate authority shall consider --

- (a) where the procedure laid down in those regulations has been complied with, and if not, whether such non-compliance has resulted in denial of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty imposed is adequate, inadequate or service; and pass orders--
 - (i) confirming, enhancing, reducing, or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

Provided that --

- (i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of regulation 8 and an inquiry under regulation 10 has not already been held in the case, the appellate authority shall, subject to the provisions of regulation 15, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of regulation 10 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-regulation (4) of regulation 11 of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;
- (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of regulation 8 and an inquiry under regulation 10 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity as far as may be in accordance with the provision of sub-regulation (4) of regulation 11, of making a representation against the penalty proposed on the basis of the evidence adduced during such enquiry make such orders as it may deem fit; and
- (iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of regulation 10, of making a representation against such enhanced penalty.

(3) In an appeal against any order specified in regulations 19 to 21, the appellate authority shall consider all the circumstances of the case and make such orders as may deem just and equitable.

28. Implementation of orders in appeal.-- The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

PART VII – REVIEW

29. Review.-- (1) Notwithstanding anything contained in these regulations --

- (i) the Central Government; or

- (ii) the Board;
- (iii) the Chairman; or
- (iv) the appellate authority, within six months of the date of the orders proposed to be reviewed, or
- (v) any other authority, specified in this behalf by the Board by a general or special order, and within such time as may be prescribed in such general or special order:

may at any time either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these regulations from which no appeal is allowed, but no appeal has been preferred or from which no appeal is allowed after consultation with the Central Government where such consultation is necessary and may --

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of regulation 8 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in these clauses; no such penalty shall be imposed except after an inquiry in the manner laid down in regulation 10 and after giving a reasonable opportunity to the employee concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Central Government where such consultation is necessary:

Provided further that no power of review shall be exercised by the Chairman, or any other authority specified in clause (iv) of sub-regulation (1) as the case may be, unless --

- (i) the authority which made the order in appeal; or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceedings for review shall be commenced until after -

- (i) the expiry of the period of limitation for an appeal; or
- (ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these regulations.

PART VIII -- Miscellaneous

30. Service or orders notices, etc.-- Every order, notice and other process made or issued under these regulations shall be served in person on the employee concerned or communicated to him by registered post:

Provided that if a notice or order or other process made or issued under these regulations sent by registered post is refused by the employee it shall be deemed to have been served on him.

31. Power to relax time limit and condone delay.-- Save as otherwise expressly provided in these regulations, the authority competent under these regulations to make any order may, if the charge(s) is/are proved and keeping in view of the gravity of the charge(s) so proved or if, sufficient cause is shown, extend the time specified in these regulations for anything required to be done under these regulations or condone any delay.

32. Interpretation.-- Where a doubt arises as to whether any authority is subordinate to or higher than, any other authority or as to the interpretation of any of the provisions of these regulations, the matter shall be referred to the Central Government for its decision.

SCHEDULE

(See regulations 2(b), 2(f) 6, 9 and 20)

Description of post	Appointing Authority	Authority competent to impose penalties which it may impose (with reference to clauses (i) to (ix) in regulation 8)		Appellate Authority
		Authority	Penalties	
1	2	3	4	5
(I) Posts covered by clause (a) of sub-section(1) of section 24 of the Major Port Trusts Act, 1963.	Central Government after consultation with the Chairman	Chairman Central Government.	(i) to (iv) Minor Penalties All	Central Government Central Government
(II) Class I posts (other than those covered by Clause (a) of sub-section (1) of Section 24 of the Major Port Trusts Act, 1963.)	Chairman	Dy. Chairman Chairman	(i) to (iv) Minor Penalties All	Chairman Central Government
(III) Class II	Chairman	Dy. Chairman Chairman	(i) to (iv) Minor Penalties All	Chairman

				Central Government
(IV) Class III	Head of Department	Head of Department	All	Dy. Chairman
(V) Class IV	Head of Department	Head of Department	All	Dy. Chairman

[PET-67/78]

D.K.JAIN, Joint Secy.

FOOT NOTE: The Tuticorin Port Employees (Classification, Control and Appeal) Regulations, 1979, were published in the Gazette of India Extraordinary vide GSR 101(E), dated the 1st March, 1979 and subsequently amended vide:-

- (1) GSR 90(E), dated the 21st January, 1990.
- (2) GSR 466(E), dated the 10th October, 1996.
- (3) GSR 366(E), dated the 29th June, 1998.
- (4) GSR 280(E), dated the 23rd April, 2004.
- (5) GSR 771(E), dated the 25th November, 2004.

