

Police

Cap. 167.

POLICE (DISCIPLINE) REGULATIONS, 1998

1998/122.

Authority: These Regulations were made on 17th August, 1998 by the Commissioner of Police under section 33 of the *Police Act* and approved by the Governor-General.

Commencement: 28th September, 1998

PART I*Preliminary*

1. These Regulations may be cited as the *Police (Discipline) Regulations, 1998*. Citation.

2. In these Regulations,

Interpreta-
tion.

"accused officer" means an officer who is charged with an offence against discipline;

"Commission" means the Police Service Commission;

"Disciplinary Code" means the code of offences set out in Part V of the Act;

"misconduct" means an act or omission by an officer that constitutes an offence under the Disciplinary Code;

"officer" means a member of the Police Force below the rank of Inspector;

"prescribed" means prescribed by administrative directives;

"recording officer" means the officer who conducts the hearing of disciplinary proceedings and who is deputed to record the evidence.

3. These Regulations apply to officers who hold or are acting in a rank below the rank of Inspector. Application.

PART II

Disciplinary Proceedings

Hearing of charges.

4. (1) Subject to paragraph (2) and to regulation 8, a charge against an officer for breach of the Disciplinary Code shall be heard by the Commissioner.

(2) The Commissioner may delegate the duty to hear charges against officers to

- (a) any Superintendent other than an Assistant Superintendent;
- (b) any Assistant Commissioner; or
- (c) a disciplinary tribunal.

Serious charges.

5. (1) Where an Assistant Commissioner or a Superintendent begins to try a charge in pursuance of a delegation under paragraph (2), he may, if the facts indicate that it is of a more serious nature than at first appeared, complete the hearing and submit a record of the proceedings together with a summary of his findings to the Commissioner.

(2) The Commissioner shall consider the record and summary submitted under paragraph (1) and give his decision thereon, or he may convene a hearing to take such additional evidence as he considers necessary.

Certain officers not to try charges.

6. (1) An officer who has acted as an investigating officer or who has attempted to resolve a complaint informally shall not, in respect of that case, exercise any duty or function in pursuance of a delegation under paragraph (2) of regulation 4.

(2) The Commissioner may, where he witnesses the commission of an offence against discipline by an officer, carry out any investigation he thinks fit and punish that officer.

7. (1) Where any charge is to be heard by the Commissioner or an Assistant Commissioner, that officer may depute some other gazetted officer to take the evidence. Taking of evidence.

(2) The recording officer shall record the evidence in chief and the questions and answers in cross-examination, and shall submit the record of the evidence with a covering report to the Commissioner or Assistant Commissioner as the case may be.

(3) The recording officer shall not in his covering report make any reference as to whether an accused is guilty or not guilty of an offence against discipline.

8. (1) Where the Commissioner considers a charge to be serious, he may appoint a tribunal comprising Disciplinary Tribunal.

(a) a Chairman, who shall be the Commissioner or an Assistant Commissioner; and

(b) two officers of or above the rank of Superintendent who have not been concerned with the case,

to determine whether an accused officer is guilty of an offence against discipline.

(2) The decision of the tribunal as to whether the accused officer is guilty of the charge may be by a majority decision.

(3) Where the Commissioner is not the Chairman of the tribunal, the Chairman shall submit the findings of the tribunal to the Commissioner, who may upon a finding of guilty of the offence charged determine any punishment to be imposed on the officer.

9. The Commissioner shall issue administrative directives setting out the procedure to be followed by the disciplinary tribunal. Administrative directives.

10. An officer against whom it is proposed to take disciplinary proceedings under these Regulations shall as soon as practicable be informed in writing of the charge against him, and given an adequate opportunity to prepare his defence. Accused to be informed of charge.

Charge to
disclose
offence.

11. A charge brought against an officer shall disclose an offence against discipline as set out in the Disciplinary Code, and shall contain such particulars as may be necessary for giving reasonable information as to the nature of the charge.

Hearing.

12. (1) An accused officer shall be ordered to attend the hearing of the charge, which shall be held in private.

(2) The case against the accused officer shall be presented by an officer of or above the rank of Inspector.

(3) The accused officer may,

(a) conduct his defence in person or be represented by an attorney-at-law; or

(b) with the approval of the Commissioner, be represented by an officer of or above the rank of the accused officer.

(4) The recording officer and the representative of the accused officer may be assisted by a serving officer and, where the case for the accused officer is presented by an attorney-at-law, the recording officer may be assisted by an attorney-at-law.

Record of
proceedings
etc.

13. (1) A verbatim record of the proceedings at the hearing of the case shall be taken.

(2) As soon as practicable after the hearing,

(a) a transcript of the record; and

(b) a copy of the covering report, if it would be prejudicial to national security,

shall be supplied to the accused officer.

Admitting
evidence.

14. (1) The determination as to whether any evidence should be admitted or whether any question should or should not be put to a witness shall be made by the recording officer subject to the rules governing the admissibility of evidence.

(2) Subject to the provisions of this regulation, the recording officer may admit evidence by way of a written statement made by a person, notwithstanding that such person may not be called as a witness.

(3) Evidence under paragraph (2) shall not be admissible if it would not be admissible had it been given orally.

(4) For the purposes of this regulation, a written statement purported to be made and signed by a person and witnessed by another person, shall be presumed to have been made by the person signing unless the contrary is shown.

15. (1) Subject to paragraph (4), if either the accused officer or the recording officer proposes to adduce written evidence under this regulation, that party

Written
evidence.

(a) shall give the other party a copy of the statement at least 14 days before the date of the hearing; and

(b) shall invite the other party to agree or object in writing to the admission of the statement in evidence without the maker thereof being called as a witness and being made available for cross-examination.

(2) If a party within 7 days of the receipt by him of the copy of the statement has objected, the statement shall only be admitted in evidence if the maker thereof is called and is available for cross-examination.

(3) If the parties agree in writing in respect of a particular statement, paragraph (1) shall have effect in relation to the statement as though the reference to a period of 14 days were a reference to such shorter period, expiring before the date of the hearing, as they may agree.

(4) Notwithstanding paragraphs (1), (2) and (3), if at the hearing either party wishes to introduce in evidence a written statement without the maker thereof being called or without a copy of the

statement being made available to the other party in accordance with this regulation, the recording officer may, with the agreement of the other party, allow the statement to be introduced.

(5) Where a written statement is admitted in evidence under this regulation without the maker being called, and

(a) the recording officer conducting the hearing is of the opinion that oral evidence should be given, he may request that the maker be called as a witness; and

(b) if the maker does not give oral evidence, the recording officer may disregard the written statement.

(6) For the purposes of this regulation, "parties" means the accused officer and the recording officer.

Adjourn-
ment.

16. The recording officer may from time to time adjourn the hearing if it appears to him necessary or expedient for the due hearing of the charge, and that officer shall have regard to the need to have the hearing of charges determined expeditiously.

Attendance
of Hearing.

17. (1) If the accused officer without good or sufficient cause fails, refuses or neglects to attend a hearing of the charge, the hearing may be conducted and concluded in his absence.

(2) If good reason is given to the recording officer by or on behalf of the accused officer why that officer is unable to attend the hearing, the recording officer shall postpone or adjourn the hearing.

(3) Subject to paragraph (4), the recording officer shall allow the complainant to attend the hearing while witnesses are being examined or cross-examined on the facts alleged in the charge and, if he considers it appropriate so to do on account of the age of the complainant or otherwise, shall allow the complainant to be accompanied by a friend or relative who is not to be called as a witness at the hearing.

(4) Where the complainant is to be called as a witness at the hearing, he and any person allowed to accompany him shall not be allowed to attend before he gives his evidence.

(5) Where it appears to the recording officer that a witness may, in giving evidence, disclose information which in the public interest ought not to be disclosed to a member of the public, he shall require the complainant and any person allowed to accompany him to withdraw while that evidence is being given.

(6) The complainant and any person allowed to accompany him shall not intervene in nor interrupt the hearing, and where any person behaves in a disorderly or abusive manner or otherwise misconducts himself, the recording officer may exclude that person from the remainder of the hearing.

18. (1) The tribunal, Commissioner or other person hearing the charge under regulation 4 shall, at its conclusion, dismiss the charge or find it proved. Findings.

(2) The accused officer shall be notified in writing of the decision within 14 days of the conclusion of the hearing, and a record shall be made in his personal file.

(3) Where the charge is found proved and the accused officer wishes to appeal or make application for judicial review, a transcript of the record shall on his request in writing, in the prescribed time, be supplied to him.

19. (1) Where the Commissioner proposes to impose a fine on an officer in accordance with section 34 of the Act, the following matters shall be taken into consideration: Punishment by Commissioner.

- (a) the officer's standard of efficiency;
- (b) the general quality of the service of the officer; and
- (c) the conduct of the officer.

(2) Where the Commissioner is of the view that an increment ought to be suspended, deferred or withheld, he shall

- (a) notify in writing the officer concerned, at least one month before the date on which the increment is due, of the reasons for which he considers that the increment ought to be suspended, deferred or withheld; or

(b) where he is unable to notify the officer in accordance with sub-paragraph (a), report the matter to the Chief Personnel Officer.

(3) Where the Commissioner has notified an officer in accordance with paragraph (2)(a), he may suspend, for a period not exceeding 3 months, the payment to that officer of the increment to which the notification relates, and shall at the end of the period of suspension and after considering any further report on the matter

(a) grant the increment from the date on which it became due; or

(b) recommend for the consideration of the Commission that the increment be further suspended or deferred or withheld.

(4) Where the Commissioner proposes to suspend, defer or withhold an increment, the Commissioner shall take the following into consideration:

(a) the nature of the misconduct or dereliction of duty, as the case may be;

(b) the subsequent behaviour of the officer;

(c) the officer's present degree of efficiency;

(d) the fact that suspension of an increment is applicable when for any reason it is thought desirable to reserve judgment and allow for reformation or otherwise;

(e) the fact that deferment of an increment is equivalent to a substantial fine; and

(f) the fact that withholding of an increment may deprive an officer of the amount of that increment during each subsequent year of his service up to the maximum of his scale.

(5) An increment may be

(a) suspended for a period not exceeding 3 months; or

(b) deferred for a period not exceeding 6 months including any period for which it has been suspended.

(6) The Commissioner shall, after considering any report on the matter,

- (a) at the end of the period of suspension of an increment, grant the increment from the date on which it became due;
- (b) at the end of the period of deferral of an increment, recommend for the consideration of the Commission that the increment be restored or further deferred; or
- (c) at any time where an increment was withheld, recommend for the consideration of the Commission that the increment be restored.

(7) Where an increment has been withheld, the Governor-General, acting on the advice of the Commission, may at any subsequent incremental date grant to the officer concerned a special increment in addition to his ordinary increment.

(8) Where the Commissioner proposes to impose a penalty under section 34(1)(a)(i) or (iv) of the Act, he shall give the officer an opportunity to make representations in relation thereto.

20. Where a disciplinary charge is tried by a gazetted police officer other than the Commissioner, then, on the conclusion of the trial, such officer shall forward to the Commissioner a record of the proceedings together with his findings and the particulars of any penalty imposed. Penalties imposed by gazetted officers.

21. (1) Every penalty imposed on an officer who is convicted of an offence against discipline shall be recorded in the service book of that officer. Penalties generally.

(2) A fine imposed on an officer by way of penalty for an offence shall be recovered from the pay of the convicted officer by monthly deductions not exceeding \$25, except where an officer is leaving the Force, when the whole amount of the fine then unpaid shall be deducted from any pay or allowance due to the officer.

Criminal
proceedings.

22. (1) Where criminal proceedings have been instituted against an officer, disciplinary proceedings under the Disciplinary Code upon any grounds arising out of the criminal charge shall not be brought unless

- (a) the criminal proceedings have been concluded;
- (b) the time allowed for appeal has expired; or
- (c) the appeal has been determined or withdrawn.

(2) An officer acquitted of a criminal charge shall not be punished under the Disciplinary Code in respect of the charge of which he has been acquitted.

(3) Nothing in this regulation shall prevent an officer from being punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.

(4) If an officer is convicted in any court on a criminal charge, the Commissioner may consider the relevant proceedings of that court, and if the Commissioner is of the opinion that in the public interest the officer ought to be subjected to a penalty provided for under the Disciplinary Code, the Commissioner may impose a penalty in accordance with the Disciplinary Code.

Appeal.

23. (1) Where a hearing has been conducted in connection with a breach of the Disciplinary Code and the charge has been found proved and a penalty is imposed by an Assistant Commissioner or a Superintendent, the accused may appeal to the Commissioner in accordance with this regulation against

- (a) both the findings and the punishment; or
- (b) punishment only.

(2) The appellant shall give written notice to the Commissioner and shall specify whether the appeal is against both the findings and punishment or the punishment only.

(3) The notice of appeal shall be given within 14 days of the day on which the accused was notified of the punishment.

(4) As soon as possible after the conclusion of the appeal proceedings, the accused shall be notified in writing of the decision and a record made on his personal file.

(5) The Commissioner shall not, in upholding the original finding, award a greater punishment than is provided for under those proceedings.

24. The *Police (Disciplinary) Regulations, 1961* are revoked. Revocation.
L.N. 94 of
1961.