



SECRETARIAT BRANCH
N.P.K.R.R. MAALIGAI,
144, ANNA SALAI
CHENNAI-2.

Memorandum No.27733/A17/A171/2022-1, Dated the 14th September 2022.

Sub: TANGEDCO – Simultaneous departmental disciplinary proceedings for the same set of charges as in the criminal cases connected with the discharge of official duty (including Trap and Arrest Case) – Procedures to be followed – Guidelines issued by the Government - Copy - Communicated.

- Ref: 1. G.O.Ms.No.124, P&AR (Per.N) Department, dated 22.02.1983.
2. Memo.No.49363/D1/86-1 (SB), dated 28.07.1986.
3. Memo.(Per) No.73361/A5/A51/2000-1 (SB), dated 30.09.2000.
4. Government's Lr.No.54473/N/2000-12, P&AR (N) Dept., dt.03.12.2001.
5. Memo.No.24262/A18/A181/2002-3 (SB), dated 11.07.2002.
6. Government's Lr.No.91/N/2012-1, P&AR (N) Dept., dt.19.06.2012 as communicated in Memo.(Per) No.64393/ A18/A181/ 2012-1 (SB), dated 18.10.2012.
7. Orders of the Hon'ble Madurai Bench of Madras High Court, Madurai dated 29.07.2019 in W.P.(MD) No.4156/2016.
8. Memo No.38138/A18/A181/2021-1 (SB), dated 18.10.2021.
9. G.O. (Ms) No.66, HRM (N) Dept, dated 06.07.2022.
10. G.O. (Ms) No.80, HRM (N) Dept, dated 01.08.2022.

In continuation of the Memo eighth cited, a copy of the Government Orders 9th & 10th cited is communicated to all the Disciplinary Authorities for strict adherence.

2. The receipt of the Memorandum shall be acknowledged.

**A.MANIKKANNAN,
SECRETARY.**

To

All Chief Engineers.
All Chief Financial Controllers/TANGEDCO & TANTRANSCO.
The Chief Internal Audit Officer/Audit Branch.
All Superintending Engineers.
All Deputy Secretaries & Under Secretaries/Secretariat Branch.
All Senior Personnel Officers & Personnel Officers/Administrative Branch.

Copy to:

The Assistant Personnel Officer/Tamil Development – for publication in Bulletin.
All Officers/Sections/Secretariat Branch & Vigilance Cell.

:: TRUE COPY :: FORWARDED :: BY ORDER ::

[Signature]
16-09-2022
SECTION OFFICER.
[Signature]
16/9/22



ABSTRACT

Public Services – Simultaneous departmental disciplinary proceedings for the same set of charges as in the criminal cases connected with the discharge of official duty (including Trap and Arrest Case) – Procedures to be followed – Guidelines – Issued.

Human Resources Management (N) Department

G.O.(Ms.) No.66

Dated 06.07.2022

சுபகிருது, ஆணி - 22

திருவள்ளூர் ஆண்டு - 2053

Read:

1. Government Circular Memo No.38965/79-1, Personnel and Administrative Reforms (Per-N) Department, dated 26.05.1979.
2. Government Order (Ms.) No.124, Personnel and Administrative Reforms (Per-N) Department, dated 22.02.1983.
3. Government Letter (Ms.) No.321, Personnel and Administrative Reforms (N) Department, dated 12.08.2004.
4. Government Letter (Ms.) No.326, Personnel and Administrative Reforms (N) Department, dated 19.08.2004.
5. Government Letter No.54196/N/2007-4, Personnel and Administrative Reforms (N) Department, dated 28.03.2008.
6. Directions of the Hon'ble High Court of Madras in W.A.No.1988 of 2021, dated 30.09.2021.
7. Directions of the Hon'ble Madurai Bench of Madras High Court in W.P.(MD).No.14356 of 2019, dated 08.02.2022.

ORDER:

In the Government Circular first read above, instructions were issued to the competent authorities that simultaneous departmental action should be taken against the Government Servants for their lapses in performing their duties and responsibilities.

2. In the Government Order second read above, instructions were issued to the effect that simultaneous departmental disciplinary action will be confined to the irregularities or lapses committed with reference to the administrative aspect and that may be finalized after obtaining the required registers / records / documents from the Court irrespective of the fact whether he is acquitted in the criminal case or not.

3. In the Government Letter third read above, instructions were issued that in simultaneous departmental disciplinary action, when the original of registers / records / documents are available with the Courts, there is no objection to use the xerox or photo copies of the same, if they are duly authenticated, so as to pass final orders in such cases quickly without awaiting the result of the criminal case.

(p.t.o.)

4. In the Government Letter fourth read above, it has been instructed that the Directorate of Vigilance and Anti-Corruption's inquiry report should specifically contain recommendation for simultaneous departmental action as well as criminal action against Government Servants in the cases where criminal action is to be initiated against them in connection with the discharge of their official duties.

5. In the Government Letter fifth read above, after detailed examination with reference to the various decisions of the Apex Court, it was clarified that the views of the Vigilance Commission or Directorate of Vigilance and Anti-Corruption have to be obtained before a decision is taken regarding the initiation of simultaneous departmental action in trap cases.

6. In spite of these instructions, there are instances where decisions are being taken by the disciplinary authorities at their discretion, on case to case basis. Due to this, uniformity is not being followed by the disciplinary authorities in initiating / continuing / disposing the simultaneous departmental disciplinary action. In most of the cases, the competent authorities do not initiate simultaneous departmental action for years together on the ground that the criminal case for the same offence is pending before the Court of Law. In some cases, the competent authorities have kept in abeyance the simultaneous disciplinary proceedings till the outcome of the criminal case.

7. The Hon'ble Supreme Court of India, in various cases, has clearly laid down a dictum that there is no bar in law for initiation of simultaneous departmental proceedings on the same set of allegations as in the criminal case and for concluding the said proceedings without awaiting the outcome of the case, since, in a criminal trial the charge has to be proved 'beyond reasonable doubt' and where as in a departmental inquiry the standard of proof is 'preponderance of probability'.

8. Considering the fact that the Government Servants are kept under prolonged suspension for the pending criminal case and the competent authorities are not initiating simultaneous departmental action for years together, the Hon'ble High Court in its order sixth and seventh read above, have made certain directions and the principles to be followed in the simultaneous departmental disciplinary proceedings initiated against the Government Servants for the same set of charges as in the criminal case, by citing various decisions of Supreme Court of India.

9. The Government have examined the case with the existing instructions along with the directions and principles made by the Hon'ble High Court. After detailed examination, the Government issue the following guidelines with regard to simultaneous departmental disciplinary action against the Government Servants for the same set of charges as in the criminal cases connected with discharge of their official duty (including Trap and Arrest Case) in supersession of Government Letter fifth read above:-

(1)	It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously, for a criminal misconduct committed by a Government Servant in connection with the discharge of his official duties;
(2)	The nature of both proceedings and the test applied to reach final conclusion in the criminal case and in the departmental action are entirely different;

(3)	In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', the accused cannot be convicted by a Court of Law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer by taking decision on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such rigidity is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar to continue the departmental disciplinary proceedings, for the same set of charges as in the criminal case pending before the Court of Law and the same may be concluded without awaiting the outcome of the said criminal case. There is no legal bar for both proceedings to go on simultaneously;
(4)	The departmental enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the departmental enquiry;
(5)	Particular care need to be taken for retention of copies of documents while handing over the same to an investigating agency. These documents may be attested after comparison with the originals;
(6)	If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;
(7)	If the criminal case is registered under the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988) and if the original records are seized by the investigating authority, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings. As per the instructions issued in the Government Order and the Letter second and third read above, there is no objection to use the xerox or photo copies in disciplinary cases, if they are duly authenticated;
(8)	In disciplinary proceedings, the delinquent officers should be allowed to peruse all or any of the records pertaining to that case or be furnished with copy thereof, if he so desires, either before or after the inquiry;
(9)	If a Government Servant does not submit the written statement of defence or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the inquiring authority may hold the inquiry ex-parte as per Rule 17(f) of the said Rules;

(p.t.o.)

(10)	An order of suspension, if required, may be issued in the prescribed format as per the rules;
(11)	As per Rule 53(3) of the Fundamental Rules, no payment under sub-rule (1) shall be made unless the Government Servant continues to reside in the place fixed from time to time, by the authority which made (or) deemed to have made the order of suspension. The above said rule provision to be adhered strictly while sanctioning the subsistence allowance;
(12)	As far as the departmental action on corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988);
(13)	The disciplinary proceedings should be finalized within the time limits set out in the Government Letter (Ms.) No.1118/Per N/87, Personnel and Administrative Reforms (N) Department, dated 22.12.1987 by following the procedure laid down in the rules so as to avoid delay in processing of disciplinary cases pending against the Government Servants;
(14)	In the cases where the corruption charges are proved against a Government Servant in the simultaneous disciplinary case initiated against him on the same set of charges as in the criminal case, the punishment prescribed under the provisos to Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall be imposed;
(15)	In the cases, where the departmental disciplinary action is initiated against the Government Servant for the same set of charges as in the criminal case, if the disciplinary authority considers that the exoneration in the departmental disciplinary action based on the "not proved" findings of the Inquiry Officer, could affect the criminal case pending against him, the Vigilance Commission and Directorate of Vigilance and Anti-Corruption, as the case may be, has to be consulted before finalizing the disciplinary proceedings as per the instructions issued in Government Order (D) No.98, Personnel and Administrative Reforms (N) Department, dated 04.06.2010;
(16)	In the cases, where charges are "proved" and the Government Servant is retained in service under the Fundamental Rule 56(1)(c), if the punishment is other than major punishment (Dismissal, Removal), such cases may be kept in abeyance till the disposal of the criminal case;
(17)	An Order of conviction, if any, passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then, if necessary, the Head of the Department or the Government may examine to exercise the power of revision / review as the case may be under the relevant rules;

(18)	Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules, if the charges are held proved;
(19)	Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the departmental enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.
(20)	The pendency of the appeal filed against the conviction in a criminal case or a stay on the sentence will have no effect on the initiation of disciplinary proceedings under Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;
(21)	If a case involves complicated questions of the fact and law or examination of any witness in the departmental enquiry prior to the examination of the said witness before the Court in the connected criminal case would cause prejudice to the interest of the prosecution case pending in the Court and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance, till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible;
(22)	Any failure on the part of the disciplinary authority to initiate simultaneous departmental proceedings against the Government Servants in criminal cases connected with the discharge of their official duties (including Trap and Arrest Case) will be viewed seriously and it will entail severe action to be initiated against the officials responsible for it.

(BY ORDER OF THE GOVERNOR)

V. IRAI ANBU
CHIEF SECRETARY TO GOVERNMENT

To
All Additional Chief Secretaries / Principal Secretaries / Secretaries to Government,
Secretariat, Chennai-600 009.
The Additional Chief Secretary / Vigilance Commissioner and
Commissioner for Administrative Reforms, Secretariat, Chennai-600 009.
The Registrar, Hon'ble High Court, Chennai-600 104.
All Departments of Secretariat, Chennai-600 009.
All the Heads of Departments.
All District Collectors.

(p.t.o.)

Copy to:

- The Secretary, Vigilance Commission, Secretariat, Chennai-600 009.
The Director, Directorate of Vigilance and Anti-Corruption, Chennai-600 016.
Office of the Minister for Finance and Human Resources Management,
Chennai-600 009.
Office of the Minister for Law, Chennai-600 009.
The Principal Private Secretary to Chief Secretary to Government, Chennai-600 009.
The Senior Principal Private Secretary to Secretary to Government,
Human Resources Management Department, Chennai-600 009.
The Private Secretary to Secretary to Government, Law Department,
Chennai-600 009.
The Law (HRM-Scrutiny) Department, Chennai-600 009.
The Human Resources Management (L1/L2/L3) Department,
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The Vigilance Commission (VC-I/VC-II/VC-III),
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V. Balaji Kumar
06/7/2022
SECTION OFFICER
8-88
06/07/22



ABSTRACT

Public Services – Simultaneous departmental disciplinary proceedings for the same set of charges as in the criminal cases connected with the discharge of official duty (including Trap and Arrest Case) – Procedures to be followed – Guidelines issued – Amendment – Issued.

Human Resources Management (N) Department

G.O.(Ms.) No.80

Dated 01.08.2022

சுபகிருது, ஆடி - 16

திருவள்ளூர் ஆண்டு - 2053

Read:

G.O. (Ms.) No.66, Human Resources Management (N) Department,
dated 06.07.2022.

ORDER:

In the Government Order read above, guidelines have been issued with regard to the simultaneous departmental disciplinary proceedings for the same set of charges as in the criminal cases connected with the discharge of official duty (including Trap and Arrest Case) as directed by the Hon'ble High Court in Writ Appeal No.1988 of 2021, dated 30.09.2021 and Writ Petition (MD) No.14356 of 2021 dated 08.02.2022.

2. The following amendment is issued to the Government Order read above:-

Amendment.

In the Government Order read above, in paragraph 9, in Sl.No.20 of tabular column, for the words "stay on the sentence", the words "suspension of sentence" shall be substituted.

(BY ORDER OF THE GOVERNOR)

**V.IRAI ANBU
CHIEF SECRETARY TO GOVERNMENT**

To

All Additional Chief Secretaries / Principal Secretaries / Secretaries to Government,
Secretariat, Chennai-600 009.

The Additional Chief Secretary / Vigilance Commissioner and
Commissioner for Administrative Reforms, Secretariat, Chennai-600 009.

The Registrar, Hon'ble High Court, Chennai-600 104.

All Departments of Secretariat, Chennai-600 009.

All the Heads of Departments.

All District Collectors.

(P.T.O.)

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Chennai-600 009.
Office of the Minister for Law, Chennai-600 009.
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The Senior Principal Private Secretary to Secretary to Government,
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The Private Secretary to Secretary to Government, Law Department,
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V. Badalun'ham
01/08/2022
SECTION OFFICER
P. S. S.
01/08/2022