

LEGAL NOTICE NO. 63

THE PARLIAMENTARY SERVICE COMMISSION ACT

IN EXERCISE of the powers conferred by section 36 of the Parliamentary Service Commission Act, the Parliamentary Service Commission makes the following Regulations:—

THE PARLIAMENTARY SERVICE COMMISSION
REGULATIONS, 2002

PART I—PRELIMINARY

1. These Regulations may be cited as the Parliamentary Service Commission Regulations, 2002. Citation.

2. (1) In these Regulations, unless the context otherwise requires— Interpretation.

“Chairman” means the person appointed under section 45B (1) (a) of the Constitution as Chairman of the Commission;

“Commission” means the Parliamentary Service Commission established under section 45B of the Constitution;

“deputed officer” means the Clerk of the National Assembly; “disciplinary control” includes control in so far as it relates to dismissal;

“employee” means any person holding or acting in any office in the Service;

“member” includes any person appointed as a member of the Commission or any person for the time being appointed to act as a member under section 45B (4) of the Constitution;

“official document” means any document or paper prepared by any employee in the course of his employment or any document or paper which comes into the custody of any employee in the course of such employment;

“pensionable employee” means any employee who has been confirmed in the service and admitted to the permanent and pensionable establishment;

“promotion” means the conferment upon a person in the service of an office to which is attached a higher salary or higher salary scale than that attached to the office to which he was last substantively appointed;

“Secretary” means the clerk of the National Assembly and includes any other officer when discharging the functions of the Secretary;

“Seniority” means the relative seniority of employees;

“Service” means the Parliamentary Service established under section 45A of the Constitution;

“transfer” means the posting or secondment of an employee

between departments in the Service, not necessarily being a promotion;

"Vice-Chairman" means the person appointed under section 45B (1) (b) of the Constitution as Vice-Chairman of the Commission.

(2) Nothing in these Regulations empowering an employee or any other person to perform any function vested in the Commission shall preclude the Commission from itself performing that function in any particular case.

PART II—GENERAL

Record of meetings.

3. A record shall be kept of the members present and of the business transacted at every meeting of the Commission.

Dissent by members.

4. Any member who dissents from a decision of the Commission shall be entitled to have his or her dissent and his or her reasons therefor set out in the records of the Commission.

Commission may require attendance and production of documents.

5. (1) The Commission may require any employee to attend and give information before it concerning any matter which it is required to consider in exercise of its functions.

(2) The Commission may require the production of any official document relevant to any exercise of its functions, and any employee who submits any matter for the consideration of the commission shall ensure that all relevant documents and papers are made available to the Commission.

(3) Any employee who, without reasonable excuse, fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission; shall be guilty of a breach of discipline and the Commission may direct the person responsible for initiating disciplinary proceedings against such an employee that disciplinary proceedings should be instituted against such an employee.

Correspondence.

6. All correspondence for the Commission shall be addressed to the Secretary or, in special cases, to the Chairman.

PART III—APPOINTMENTS, PROMOTIONS, TRANSFERS, CONFIRMATION OF APPOINTMENTS AND TERMINATION OF APPOINTMENTS

Delegation of powers to deputed officer.

7. (1) The following powers vested in the Commission are, subject to these Regulations and to such instructions as the Commission may from time to time issue, delegated to the deputed officer—

(a) in respect of offices which have been assigned Parliamentary Scale "10 to "12"—

(i) the power of appointment (including acting appointment), promotion and transfer;

(ii) the power of confirmation in his or her appointment of any employee appointed on probation or the extension

of the probationary period of any such employee;

- (iii) the power to terminate the probationary appointment of any such employee under these Regulations and any other regulations which may be in force;
- (iv) the power to retire compulsorily in accordance with regulation 16 any employee who has reached the age at which he can lawfully be required to retire from the service; and
- (v) the power to retire on the ground of ill health any employee in accordance with regulation 17.

Provided that nothing in these Regulations shall, except in the case of transfer, prevent an employee from appealing directly to the Commission for redress without having to channel his or her appeal through the deputed officer;

- (b) in respect of all employees, the power to employ any person on temporary terms for a period not exceeding twelve months to fill a vacancy in the Service:

Provided that, where the deputed officer considers that there are good reasons for extending such appointment beyond twelve months, details of the employee so appointed, of the office in question and of the reasons for such temporary appointment shall be forwarded to the Commission at least one month before the twelve months' period is due to expire with a recommendation regarding the length of time in excess of twelve months during which the temporary appointment will be required and the reasons for requiring such extension; and

- (c) in respect of employees serving on written contracts or letters of temporary appointment, the power to terminate, otherwise than by dismissal, in accordance with the provisions of a written contract or letter of temporary appointment, the appointment of an employee serving on such contract or letter of temporary appointment:

Provided that nothing in these Regulations shall affect the power of the Commission to terminate the appointment of such employee in accordance with a term or condition contained in his contract or letter of appointment.

(2) The deputed officer exercising the powers conferred on him or her by this regulation shall act in accordance with these Regulations and any other regulations, which may be in force, as appropriate.

(3) Notwithstanding the provisions of this regulation, the Commission may, when necessary, institute an enquiry to determine whether or not the powers delegated under this regulation have been properly exercised by the deputed officer.

8. (1) Subject to regulation 7, where a vacancy occurs or it is known that a vacancy will occur, the deputed officer shall notify the Commission and shall state whether in his or her opinion—

Notification of vacancies.

- (a) a suitably qualified employee will be found in the service; or
- (b) a suitably qualified candidate will be found by advertisement in Kenya or elsewhere.

(2) Where the deputed officer recommends the appointment of an employee held against the establishment of the department in which the vacancy exists, he or she shall furnish to the Commission the record of service in Kenya of the employee recommended together with the names of any employee in the Service who would be superseded and his reasons for recommending such supersession.

(3) Where the deputed officer is unable to recommend the appointment of an employee to fill the vacancy, he or she shall report to the Commission the names of the employees who are held against the establishment of the department in which the vacancy exists and who are serving in the cadre or grade from which promotion would normally be made, together with his reason for not recommending those employees for promotion.

(4) Where the deputed officer is of the opinion that no candidate who is suitably qualified will be found by advertisement in Kenya, he or she shall notify the Commission of the arrangements which exist or are in prospect for the training of local candidates to fill the vacancy.

(5) If the Commission is satisfied that no suitably qualified local candidate is available to fill a vacancy, it shall so inform the deputed officer and no steps shall be taken to recruit a candidate not of local origin unless the Commission certifies that the recruitment is necessary.

Vacancies dependent
on examinations.

9. Subject to regulation 7, where vacancies are to be filled according to the result of examinations held under the authority of the Commission, the procedure set out in paragraphs (1), (2), (3) and (4) of regulation 8 shall not apply and the Commission shall make such arrangements as may be appropriate.

Advertisement of
vacancies.

10. (1) Subject to paragraph (2) and to regulation 7, applications for appointment to vacancies shall be invited by public advertisement in such manner as the Commission may determine.

(2) A vacancy need not be advertised where

- (a) the Commission is satisfied that the vacancy should be filled by the appointment or re-appointment of an employee held against the establishment of the department in which the vacancy exists or by the continued employment of an employee on temporary terms; or
- (b) the Commission is satisfied that there is no reasonable likelihood of any application being received in response to an advertisement from a candidate who is likely to be qualified.

(3) Wherein the opinion of the Commission, it would be likely to find an employee in some department other than that in which the vacancy occurs, it may invite applications from serving employees only.

11: (1) The selection of candidates for appointment and promotion shall be based strictly on merit.

Critica concerning appointment.

(2) In considering promotion, the following factors shall be taken into account—

(a) efficiency;

(b) requisite qualifications;

(c) seniority; and

(d) experience;

(e) sense of responsibility;

(f) initiative;

(g) power of leadership;

(h) power of expression;

(i) relations with staff;

(j) co-operation with members of administration;

(k) general attitude to work of the service, namely

resourcefulness, willingness to undertake other assignments in

times of crises, quality of independent action in taking

decisions, power of leadership; and

(l) general conduct.

(3) Except as may otherwise be provided by the Commission or in these regulations, seniority shall be determined as follows—

(a) as between employees of the same grade—

(i) by reference to the dates on which they respectively

entered the grade;

(ii) if they entered that grade on the same day, by reference

to their seniority on the day immediately preceding that

day;

(iii) if any employees who entered the same grade on the

same day did so by appointment and not by promotion

(excluding promotion from a non-pensionable to a

pensionable grade), their seniority relative to each other

shall be determinable by reference to their respective

ages or, where their ages coincide, by the alphabetical

order of their surnames;

(b) as between employees of different grades on the same salary

scale or the same rate of salary, by reference to the dates

on which they respectively entered their grades;

(c) as between employees of different grades on different salary

scales, by reference to the maximum point on their salary

scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate—

Provided that when assessing the seniority of a pensionable employee, service by himself or herself or any other person in a non-pensionable capacity shall not be taken into account;

(4) Recommendations made to the Commission for promotion shall state whether the person recommended is the senior employee in the department or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of each person in that same department or grade over whom it is proposed that the person recommended should be promoted.

Probationary
appointment.

12 (1) Subject to regulation 7, where an employee has been appointed on probation, the deputed officer shall, not less than three months before the expiration of the probationary period, inform the Commission whether in his or her opinion—

- (a) the employee should be confirmed in his or her office; or
- (b) the probationary period should be extended so as to afford the employee further opportunity to pass any examination, the passing of which is a condition of the confirmation, his or her service otherwise being satisfactory; or
- (c) the probationary period should be extended to afford the employee the opportunity of improvement in any respect in which his or her work or conduct has been adversely reported on; or
- (d) the employee's appointment should be terminated.

(2) The deputed officer shall not recommend the extension or termination of an appointment under subparagraph (c) of subparagraph (d) of paragraph (1) unless he or she has first, by letter, informed the employee of his or her intention and of the right of employee to make representations thereon within a period to be specified in such letter and require the employee to acknowledge receipt of such letter in writing within that period; the deputed officer shall attach copies of all such correspondence to his or her recommendation.

(3) Notwithstanding paragraph (1) but subject to paragraph (2), the deputed officer may, at any time, recommend to the Commission that a probationary appointment be terminated.

13 (1) Where it is desired to transfer without change of designation and grading from his present department to another department, an employee in Parliamentary Scale "5" or above, the recommendations and comments of the deputed officer shall be sent to the Commission, which shall decide whether the transfer should be approved.

(2) Where it is desired to transfer from his or her present office to another office of different designation but of similar grading either in his or her own or another department an employee in Parliamentary Scale "5" or above, the deputed officer shall forward his or her

recommendations and comments to the Commission, which shall decide whether the transfer should be approved.

(3) Nothing in this regulation shall apply to the transfer between departments of employees in the clerical cadres or in any office which is common to departments generally, which will be effected by the deputed officer concerned in consultation, where necessary, with the heads of the departments concerned.

14 (1) Subject to regulation 7, where an employee is serving on a written contract and is willing to engage for a further term of service, the deputed officer shall notify the Commission of the date when such contract will expire, and his or her recommendations, whether it should be renewed or not.

Further engagement.

(2) So far as is practicable, every notification under paragraph (1) shall be forwarded to the Commission in sufficient time to enable the Commission to give its decision not less than three months before the employee's contract is due to expire.

15. The regulations and procedures, which apply to appointments and promotions, shall also apply, where appropriate, to all acting appointments exceeding a period of one month subject to such instructions as the Commission may, from time to time, issue.

Acting appointment.

16. (1) If it appears to the deputed officer that there is reason why a pensionable employee should be called upon to retire from the Service on the grounds that he or she has reached the age at which he or she can lawfully be required to retire from the Service, the deputed officer shall advise the employee that his or her compulsory retirement is under consideration and ask if he or she wishes to make any representations of a personal nature on such a step.

Compulsory retirement on reaching retirement age.

(2) The deputed officer shall forward such representations, if any, together with his own observations to the Commission, and the Commission shall decide whether the employee should be called upon to retire.

(3) On being advised of the decision of the Commission, the deputed officer shall notify the employee.

(4) An employee whose compulsory retirement is under consideration under this regulation may, where possible, be given the option to retire voluntarily provided that the reason for requiring his or her retirement do not involve disciplinary action.

17. (1) Where it appears to the deputed officer that an employee is incapable, by reason of any infirmity of mind or body, of discharging the functions of his or her office, he or she may, (and shall if the employee so requests), call upon the employee to present himself or herself before a medical board (which shall be appointed by the Director of Medical Services), with a view to being ascertained whether or not the employee is incapable as aforesaid.

Retirement on grounds of ill health.

(2) After the employee has been examined, the Director of Medical Services shall forward the medical board's proceedings,

together with his or her comments thereon to the deputed officer who, in turn, shall forward them together with any representations of a personal nature which the employee desires to make and his or her own recommendation to the Commission;

(3) Unless the Commission considers that further inquiry is necessary, in which case it will issue directions to the deputed officer accordingly, it shall decide forthwith whether the employee should be called upon to retire on the grounds of ill health.

(4) On being advised of the decision of the Commission, the deputed officer shall notify the employee.

Termination of appointment on abolition of office.

18. Where an office which is one of a number of similar offices in the Service has been abolished but one or more such offices remain, the deputed officer shall send to the Commission his or her recommendations with full reasons therefor as to which substantive holder of such office shall have his or her appointment terminated or be transferred or seconded to an office in another department, and the Commission shall decide which substantive holder of such office shall have his or her appointment terminated or be transferred or be seconded, as the case may be.

Special procedure.

19. Where the Commission is satisfied that the interest of the Service requires that any matter relating to the appointment, promotion, transfer, secondment or confirmation in his or her appointment of an employee be dealt with otherwise than in accordance with the procedure laid down in this part, it shall take such action or issue such directions with regard to that matter as appears to it to be most appropriate in the circumstances.

PART IV—DISCIPLINE

Delegation of powers to the deputed officers.

20. (1) The following disciplinary powers vested in the Commission are, subject to these Regulations and such instructions as the Commission may, from time to time issue, delegated to the deputed officer—

(a) in respect of all employees—

(i) the powers to interdict any employee under regulation 21;

(ii) the power to suspend any employee under regulation 22;

(iii) the power to stop, withhold or defer a normal increment of any employee or to inflict a severe reprimand or a reprimand on him or her or to stop his or her pay or salary under regulation 29;

(b) in respect of all employees in parliamentary scale "10" to "12" and with less than fifteen years' continuous service—

(i) the power to inflict, in accordance with regulation 38 in the case of pensionable employees, any of the punishments mentioned in subparagraphs (c) to (g)

(inclusive) of paragraph (1) of regulation 24 or in the case of non-pensionable employees, any of the punishment mentioned in that paragraph;

(ii) the power to retire in the interest of the Service any employee in accordance with regulation 36;

(iii) the power to inflict any of the punishments mentioned in paragraph (1) of regulation 24 on any employee who is convicted in any court of a criminal offence in accordance with regulation 33.

(2) the deputed officer exercising the powers conferred on him or her by these regulations shall act in accordance with these Regulations and any other appropriate regulations, which may be in force.

21. (1) If in any case the deputed officer is satisfied that the interest of the Service requires that an employee should cease forthwith to exercise the powers and functions of his or her office, he may interdict the employee from the exercise of those powers and functions, provided proceedings which may lead to his dismissal are being taken or are about to be taken or that criminal proceedings are being instituted against him or her.

Interdiction.

(2) an employee who is interdicted shall receive such salary, not being less than half his or her salary, as the deputed officer shall think fit.

(3) Where disciplinary or criminal proceedings have been taken or instituted against an employee under interdictions and such employee is neither dismissed nor otherwise punished under these Regulations, the whole of any salary withheld under paragraph (2) shall be restored to him or her upon the termination of such proceedings.

(4) If any punishment other than dismissal is inflicted, the employee may be refunded such proportions of the salary withheld as a result of his or her interdiction, as the Commission shall decide.

(5) For the purposes of this regulation and regulation 24, "salary" means basic salary.

22. (1) Where an employee has been convicted of a serious criminal offence, other than such as are referred to in regulations 36(2), the deputed officer may suspend the employee from the exercise of the functions of his or her office pending consideration of his or her case under these Regulations.

Suspension.

(2) the deputed officer may suspend from the exercise of the functions of his or her office, an employee against whom proceedings for dismissal have been taken if, as a result of those proceedings, he or she considers that the employee ought to be dismissed.

(3) While an employee is suspended from the exercise of the functions of his or her office under this regulation, he or she shall not be entitled to any salary:

Provided that the deputed officer may, if he or she thinks fit, direct that any suspended employee shall be granted an alimentary allowance in such amount and on such terms as he or she may determine.

Where criminal charges pending.

23. (1) When a preliminary investigation or a disciplinary inquiry discloses that a criminal offence may have been committed by an employee, the deputed officer shall, unless action by the police has been or is about to be taken, consult the Attorney-General as to whether a prosecution should be instituted and, if the Attorney-General does not advise a prosecution, as to whether disciplinary action should be taken or continue under the appropriate regulation.

(2) If criminal proceedings are instituted against an employee, proceedings for his or her dismissal upon any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal therefrom.

Provided that nothing in this regulation shall be construed as prohibiting or restricting the power of the deputed officer to interdict or suspend such employee.

(3) Where an employee has been acquitted of a criminal charge such employee shall not be dismissed or otherwise punished on any charge upon which he or she has been acquitted, provided that nothing in this regulation shall prevent the deputed officer from dismissing or otherwise punishing, after consultation with the Attorney-General, such employee on any other charge arising out of his or her conduct in the matter unless the charge raises substantially the same issues as those on which he or she has been acquitted.

Punishment.

24. (1) The following are the punishments which may be inflicted upon an employee as a result of disciplinary proceedings arising from misconduct under this Part—

- (a) dismissal;
- (b) termination of appointment;
- (c) reduction in rank or seniority;
- (d) stoppage of increment;
- (e) withholding of increment;
- (f) deferment of increment;
- (g) reprimand (including severe reprimand); and
- (h) recovery of the cost or part of the cost of any loss or breakage caused by default or negligence, provided no such cost has been recovered by surcharge action under the appropriate financial instructions or regulations.

(2) Nothing in this regulation shall limit the powers conferred by these Regulations to require an employee to retire from the Service on the grounds of the interest of the Service.

(3) No punishment shall be inflicted on any employee which would be contrary to any law.

25. Any act amounting to any of the following offences shall constitute misconduct— Misconduct.

- (a) failure or refusal to perform lawful duty;
- (b) contravention of regulation;
- (c) disobedience;
- (d) dishonesty;
- (e) falsehood;
- (f) drunkenness on duty;
- (g) insubordination;
- (h) negligence;
- (i) absence from duty without leave; and
- (j) misuse of the Commission's property.

26. Any act involving any of the following offences shall be an act of gross misconduct— Acts constituting gross misconduct.

- (a) insubordination;
- (b) dishonesty;
- (c) negligence;
- (d) conviction for an offence involving dishonesty;
- (e) repetition of a minor misconduct for which an employee has been found guilty on more than two previous occasions within a year; and
- (f) breach of the oath of secrecy.

27. Any act committed by an employee and amounting to any of the offences referred to in regulation 25 but not included in the list of offences in regulation 26 shall be considered to be an act amounting to a minor misconduct. Minor offence.

28. The following are the penalties which may be imposed in disciplinary proceedings— Penalties.

- (a) for gross misconduct—
 - (i) dismissal; or
 - (ii) termination of appointment; or
 - (iii) reduction in rank or seniority;
- (b) the Commission may impose any of the punishments prescribed by paragraph (c) of this regulation for gross misconduct.
- (c) for minor misconduct—

- (i) deferment of increment;
- (ii) stoppage of increment;
- (iii) suspension or;
- (iv) reprimand;
- (v) recovery of the cost of any loss or breakage in terms of regulations 24.

Deputed officer may
inflict punishment.

29. (1) Notwithstanding any other provisions of these Regulations, the deputed officer may, without reference to the Commission—

- (a) stop, withhold or defer an employee's normal increment for a period not exceeding one year on the grounds of unsatisfactory service:

Provided that if the stoppage or deferment recommended is to be continued beyond one year, the matter shall, except in the case of employees to whom subparagraph (b) of paragraph (1) of regulation 20 applies be referred to the Commission for its decision;

- (b) after investigation and after giving the employee an opportunity for making his or her defence (which shall be recorded), inflict on an employee severe reprimand or a reprimand;

- (c) stop the pay of salary or an employee who has been absent from duty without leave or reasonable excuse an amount which bears the same relation to his or her annual pay or salary as such period of absence bears to one year.

(2) The deputed officer exercising the powers conferred on him or her by this regulation shall act in accordance with these Regulations and any other regulations which may be relevant.

Absence from duty
without leave.

30. Where an employee is absent from duty without leave or reasonable cause for a period exceeding twenty-four hours and the employee cannot be traced within a period of ten days from the commencement of such absence, or if traced no reply to a charge of absence without leave is received from him or her within ten days after the dispatch of the charge to him or her, the authority empowered to dismiss him or her may summarily dismiss him or her.

Pension rights and
privileges lost on
dismissal.

31. Subject to any law for the time being in force, an employee who is dismissed shall forfeit all rights or claim to a pension, gratuity, annual allowance or other retiring award and any rights or claims he or she enjoys in regard to leave or passages at the public expense.

Disciplinary
procedure.

32. (1) All acts of misconduct by employees shall be dealt with under this Part as soon as possible after the time of their occurrence.

(2) Where, in any case which comes to the attention of the Commission, the Commission is of opinion that disciplinary proceedings should be instituted against an employee, the Commission shall notwithstanding any other provisions of these Regulations, direct

the deputed officer to initiate such proceedings:

Provided that, before giving such a direction in a case in which it appears that a criminal offence may have been committed, the deputed officer shall refer the case to the Attorney-General, and if the Attorney-General advises that a prosecution should be instituted, the Commission shall not give such a direction before the conclusion of the prosecution.

33. An employee in respect of whom disciplinary proceedings are to be held under this Part shall be entitled to receive a free copy of any documentary evidence relied on for the purpose of the proceedings, or to be allowed access to it.

Copies of evidence of proceedings.

34. (1) Where the deputed officer after such inquiry as he or she may think fit to make considers it necessary to institute disciplinary proceedings against an employee on the ground of misconduct which, if proved, would in his or her opinion justify dismissal, he or she shall frame a charge or charges against the employee and shall forward a statement of the said charge or charges to the employee together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based, and shall invite the employee to state in writing should he or she so desire, before a day to be specified, any grounds on which he or she relies to exculpate himself or herself.

Proceedings for dismissals.

(2) If the employee does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the deputed officer he or she fails to exculpate himself or herself, the deputed officer shall cause copies of the statement of the charge, or charges, and the reply, if any, of the employee to be laid before the Commission, and the Commission shall decide whether the disciplinary proceedings should continue or not.

(3) If it is decided that the disciplinary proceedings should continue, the Commission shall appoint a committee of two or more persons, to investigate the matter and the persons so appointed shall be persons to whom the Commission may, by virtue of section 45B (10) of the Constitution, delegate its powers.

(4) The Committee shall inform the employee that on a special day the charges made against him or her will be investigated and that he or she shall be allowed or, if the Committee so determines, shall be required to appear before it to defend himself or herself.

(5) If witnesses are examined by the Committee, the employee shall be given an opportunity of being present and of putting questions on his or her own behalf to the witnesses, and no documentary evidence shall be used against him or her unless he or she has previously been supplied with a copy thereof or given access thereto.

(6) The Attorney-General shall, if requested by the Commission, direct a legally qualified officer from the Office of the Attorney-General to present to the Committee the case against the employee concerned.

(7) The Committee shall permit the accused employee to be represented by an advocate.

(8) If during the course of the investigation, grounds for the framing of additional charges are disclosed, the deputed officer shall follow the same procedure as was adopted in framing the original charges.

(9) The Committee having investigated the matter, shall forward its report thereon to the Commission together with the record of the charges framed, the evidence led, the defence and other proceedings relevant to the investigations; and the report of the Committee shall include—

- (a) a statement whether in the Committee's judgement the charge or charges against the employee have been proved and the reasons therefor;
- (b) details of any matters which in the Committee's opinion aggravate or alleviate the gravity of the case; and
- (c) a summing up and such general comments as will indicate clearly the opinion of the Committee on the matter being investigated;

but the committee shall not make any recommendation regarding the form of punishment to be inflicted on the employee.

(10) The Commission, after consideration of the report of the committee, shall, if it is of the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the committee for further investigation and report.

(11) The Commission shall consider the report and shall decide on the punishment, if any; which would be inflicted on the employee or whether he or she should be required to retire in the interest of the service.

Proceedings for
misconduct not
warranting dismissal.

35 (1) Where the deputed officer, after preliminary investigation, considers it necessary to institute disciplinary proceedings against an employee to whom this regulation applies but is of the opinion that the misconduct alleged, if proved, would not be serious enough to warrant dismissal, he or she shall invite the employee to state in writing should he or she so desire, before a day to be specified, any grounds on which he or she relies to exculpate himself or herself.

(2) If the employee does not furnish a reply within the period specified or does not, in the opinion of the deputed officer, exculpate himself or herself, the deputed officer shall cause copies of the statement of the charge, or charges, and the reply, if any, of the employee to be laid before the Commission.

(3) If, on consideration of the report, including the grounds, if any, on which the employee relies to exculpate himself or herself, the Commission is of the opinion that no further investigation is necessary, it shall forthwith decide on the punishment, if any (other than

dismissal), which should be inflicted on the employee.

(4) If the Commission is of the opinion that the matter should be further investigated, it shall request the deputed officer to cause further investigations to be made.

(5) Any such investigation shall normally be undertaken by an employee senior to the employee accused.

(6) In an investigation under this regulation, an employee to whom this regulation applies shall be given an adequate opportunity of making his or her defence.

(7) The deputed officer shall bring the results of any such investigation before the Commission, and unless the Commission requests the deputed officer to make yet further inquiry the Commission shall decide on the punishment, if any (other than dismissal), which should be inflicted on the employee or whether he or she should be required to retire in the interest of the Service.

(8) Notwithstanding this regulation, if at any stage during the proceedings taken under it before final submission to the Commission—

- (a) it appears to the deputed officer that the offence if proved, would justify dismissal; or
- (b) the deputed officer considers that proceedings for retirement of the employee on grounds of the interest of the Service would be more appropriate, such proceedings shall be discontinued and the procedure in regulation 34 or regulation 36 of these Regulations, as the case may be, shall be followed.

(9) Where a reference is made to the Commission under this regulation it shall, if it considers that proceedings should be instituted under regulation 34 of these Regulations, direct the deputed officer accordingly and thereupon the proceedings under this regulation shall be discontinued.

36 (1) If the deputed officer after having considered every report in his or her possession made with regard to an employee, is of the opinion that it is desirable in the interest of the Service that the service of such employee should be terminated on grounds which cannot suitably be dealt with under any other provision of these Regulations, he or she shall notify the employee, in writing, specifying the complaints by reason of which his or her retirement is contemplated together with the substance of any report or part thereof that is detrimental to the employee.

Retirement on grounds of interest of service.

(2) If, after giving the employee an opportunity of showing cause why he or she should not be retired in the interest of the Service, the deputed officer is satisfied that the employee should be required to retire in the interest of the Service, he or she shall lay before the Commission a report on the case, the employee's reply and his or her own recommendation, and the Commission shall decide whether the employee should be required to retire in the interest of the Service.

Employee convicted of criminal offence.

37 (1) If an employee is convicted of a criminal offence which in the opinion of the deputed officer warrants disciplinary proceedings he or she shall lay a copy of the charge and of the judgement and sentence and of any judgement or order made on appeal or in revision before the Commission, and the Commission shall decide whether the employee should be dismissed or subjected to any of the other punishments mentioned in these Regulations.

Cap. 405.

(2) For the purpose of this regulation, proceedings for minor offences, such as those under the Traffic Act and by-laws, may be disregarded, and disciplinary proceedings should normally be confined to proceedings under the Penal Code and other Acts where a prison sentence may be imposed other than in default of payment of a fine.

Cap. 63.

Disciplinary proceedings against an employee in Parliamentary Scale "10" or below with less than fifteen years continuous service.

38 (1) Notwithstanding anything to the contrary appearing in this Part but subject to subparagraph (d) an employee to whom this regulation applies may be dismissed or otherwise punished by the deputed officer only in accordance with the following procedure—

(a) the deputed officer shall cause an investigation to be made in such manner as he or she may think proper;

(b) the employee shall be notified in writing of the charge or charges against him or her and shall be given full opportunity of exculpating himself or herself before a date to be specified in the notification; alternatively, if this is not practicable, the employee shall be called before two or more senior employees of the service, informed verbally of the charge or charges against him or her and given the opportunity of exculpating himself or herself;

(c) where the deputed officer is satisfied that for any reason the accused employee is unable to present his or her case to his or her best advantage, the deputed officer may permit the accused employee to be represented by another employee.

(d) on receipt of the employee's representations, if any, the deputed officer, if satisfied that the case against the employee has been proved, may—

(i) inflict, in the case of pensionable employees, any of the punishments mentioned in subparagraph (c) to (g) (inclusive) of paragraph (1) of regulation 24 or, in the case of non-pensionable employee, any of the punishments mentioned in that paragraph; or

(ii) report the case to the Commission.

(2) After considering any report forwarded under paragraph (1) (d) of this regulation, the Commission may refer the matter back to the deputed officer for further investigation or may forthwith decide on the punishment, if any, which should be inflicted on the employee or whether he or she should be required to retire in the public interest.

(3) The provisions of this regulation shall apply to an employee in Parliamentary Scale "10" or below with less than fifteen years' continuous service.

Part V

Service of notices etc.

39. Where under these Regulations—

(a) it is necessary either—

- (i) to serve any notice, charge or other documents upon an employee; or
- (ii) to communicate any information to any employee having absented himself or herself from duty; and

(b) it is not possible to effect such service upon or communicate such information to such employees personally,

it shall be sufficient if such notice, charge or other document, or a letter containing such information, is sent by registered post addressed to his usual or last known place of address or post office box.

40. Any case not covered by these Regulations shall be dealt with in accordance with such instructions as the Commission may from time to time issue.

Cases not covered by Regulations.

Dated the 24th April, 2002.

F. X. OLE KAPARO,

Chairman,

Parliamentary Service Commission.

