

L.N. 67 of 2006

THE CONSTITUTION OF MALTA

Public Service Commission (Disciplinary Procedure) (Amendment) Regulations, 2006

IN EXERCISE of the powers conferred by Article 121 of the Constitution of Malta, the Public Service Commission has, with the consent of the Prime Minister, made the following regulations:

1. (1) These regulations may be cited as the Public Service Commission (Disciplinary Procedure) (Amendment) Regulations, 2006, and shall be read and construed as one with the Public Service Commission (Disciplinary Procedure) Regulations, 1999, herein after referred to as “the principal regulations”. Citation and commencement.
L.N. 186 of 1999.

(2) These regulations shall come into force on the 27th March 2006.

2. Regulation 5 of the principal regulations shall be renumbered as sub-regulation (1) thereof and immediately after sub-regulation (1) as renumbered, there shall be inserted the following new sub-regulation: Amends regulation 5 of the principal regulations.

“(2) An officer against whom a serious offence under these regulations has been committed (the victim) shall be entitled to file a formal complaint in writing with his Head of Department not later than six months from the date when the alleged offence is committed. The Head of Department shall decide whether or not to initiate disciplinary proceedings in terms of these regulations against the officer against whom the complaint is made, after carrying out a preliminary investigation which is to be concluded not later than fifteen working days from when the Head of Department receives the written complaint:

Provided that, in cases where the victim and the offender do not fall under the responsibility of the same Head of Department, the two Heads of Department concerned shall consult each other before any further action in terms of the regulations is taken by the Head of Department of the alleged offender.”.

3. In sub-regulation (3) of regulation 6 of the principal regulations, for the words “after the conclusion of the disciplinary proceedings,” there shall be substituted the words “from the date when the Head of Department or the Commission, as the case may be, takes the final decision about the guilt or otherwise of the officer concerned,”. Amends regulation 6 of the principal regulations.

Amends regulation
19 of the principal
regulations.

4. Immediately after sub-regulation (2) of regulation 19 of the principal regulations, there shall be inserted the following new sub-regulation:

“(3) Whenever a second case of minor misconduct or breach of discipline or unsatisfactory work by an officer takes place within twenty-four months from the commission of a previous minor disciplinary offence treated under regulation 20, the latter case shall not be treated summarily under regulation 19, but shall be treated under regulation 20.”.

Amends regulation
20 of the principal
regulations.

5. Regulation 20 of the principal regulations, shall be amended as follows:

(a) for paragraph (a) of sub-regulation (2) there shall be substituted the following:

“(a) The Head of Department shall, as expeditiously as practicable and in no case later than thirty working days from the date when the alleged offence comes to his notice, or not later than three calendar months from the date of the signing of a report made in terms of the Inquires Act, prepare a written statement of charges against the officer concerned, setting out particulars of the evidence relied upon to support the charge or charges. The Head of Department shall also inform the officer whether in his opinion the charge or charges constitute a minor or a serious offence and whether the offence could lead to dismissal.”; and

(b) for sub-regulation (3), there shall be substituted the following:

“(3) Notwithstanding the provision of sub-regulation (2) of this regulation:

(a) no action shall be taken in respect of a minor offence which has occurred earlier than twelve months from the time when the alleged minor offence comes to the notice of the Head of Department;

(b) irrespective of whether or not the case had already been investigated by a Disciplinary Board, a Head of Department may, for sufficient justifiable reasons, change his original decision and issue a written warning in terms of regulation 19 instead of proceeding in terms of regulation 20:

Provided that, where the Head of Department had given notice to the officer charged that the charges, if proved, could lead to dismissal, the implementation of any such change of decision shall require the approval of the Commission.”.

6. For sub-regulation (1) of regulation 26 of the principal regulations, there shall be substituted the following: Amends regulation 26 of the principal regulations.

“(1) After the findings of the Board are communicated to the Head of Department and to the officer charged, the following procedure shall apply in all cases, except where the Head of Department had given notice to the officer charged that the charges, if proved, could lead to dismissal:

(a) the officer charged may make written representations or ask for an appointment to make oral representations to the Head of Department, within ten working days from the date on which the findings of the Board are communicated to him, and such representations shall clearly state the grounds on which they are based;

(b) the Head of Department shall consider any representations made to him by the officer charged and shall, as soon as practicable, communicate to the officer his decision on the charge or charges, including, in minor cases, on whether he accepts the Board’s finding of guilt, and on the penalty, if any, that he has imposed:

Provided that if an officer charged with a minor offence is found not guilty by a Board and the Head of Department subsequently disagrees with the Board’s findings, the Head of Department shall immediately inform the officer of his intention to change the findings of the Board, giving specific reasons why he disagrees with the Board’s findings. The officer is also to be informed of his right to make written or oral representations which are to be made to the Head of Department within ten working days from the date of receipt of the letter from his Head of Department informing the officer of his intention to change the Board’s conclusions.

(c) whenever it results from the findings of the Board that the offence, contrary to what was originally stated by the Head of Department, was not of a serious nature the Head of Department may award a lesser penalty than that applicable for serious offences, provided that in such cases the Head of

Department shall enter a note in the records of the case specifying the reasons why he accepted the findings of the Board and consequently awarded a penalty applicable to a minor offence;

(d) whenever an officer admits a charge or fails to make any representations to the Head of Department within the period specified in paragraph (a) of this regulation, the Head of Department shall communicate, as soon as practicable, to the officer charged his decision on the charge or charges and the penalty, if any, that the Head of Department has imposed.”.

Amends regulation 42 of the principal regulations.

7. Sub-regulation (1) of regulation 42 of the principal regulations, shall be amended as follows:

(a) immediately after the words “with such frequency,” there shall be inserted the word “and”; and

(b) immediately after the words “time to time direct.” there shall be inserted the words “Moreover, Heads of Department shall ensure that a separate list is given in the report for each category of offence (serious, minor, summary, criminal).”.

Amends the Schedule of Offences and Penalties to the principal regulations.

8. The Schedule of Offences and Penalties to the principal regulations shall be amended as follows:

(a) for paragraph 3.2 thereof, there shall be substituted the following:

“3.2 Serious Offences (when no criminal proceedings are instituted):

(a) conduct which discredits the department or, more generally, brings the public service into disrepute;

(b) arrogant, abusive or violent behaviour towards the public or other public officers;

(c) failure to exercise proper supervisory functions;

(d) disobeying superior instructions or insubordination with serious consequences;

(e) serious neglect or dereliction of duties;

(f) violent or threatening behaviour or use of offensive or foul language towards a superior;

(g) damage to government property;

(h) immoral, indecent or disgraceful conduct at place of work;

(i) misuse of government funds, property or equipment;

(j) gross negligence at work;

(k) tampering with or misuse of attendance sheets and records (including punch cards/clocks);

(l) falsification or misuse of or tampering with official documents;

(m) divulging of secret or confidential information;

(n) unauthorised absence of more than one day/shift;

(o) sexual harassment;

(p) misuse of electronic equipment;

(q) victimization of witness or an officer/person lodging a report or doing his duty under the regulations;

(r) other offences indicated under “Minor Offences” but having serious consequences;”; and

(b) for paragraph 4.1 thereof, there shall be substituted the following:

“4.1 Penalties for Minor Offences:

(a) First Disciplinary Case – Written Warning

(b) Second Disciplinary Case – Suspension
without pay up to
three (3) days

- (c) Third Disciplinary Case – Suspension without pay up to five (5) days and a “Warning of Dismissal”

- (d) Fourth Disciplinary Case – Dismissal:

Provided that in determining whether the disciplinary charge is a first, second, third or fourth minor case not being instituted under regulation 19, no account shall be taken of offences which occurred prior to twenty-four months from the date of the offence under investigation.

Provided further that a written warning will lapse after twelve months from the date the written warning is issued if no other offence is committed within that period.”.