

PUBLIC SERVICE COMMISSION

DISCIPLINE MANUAL FOR THE PUBLIC SERVICE

**A PUBLICATION OF THE
PUBLIC SERVICE COMMISSION**

Revised 2022

VISION

A Citizen-Centric Public Service

MISSION

To transform the public service for efficient and effective service delivery.

CORE VALUES

Citizen Focus
Professionalism
Innovation
Teamwork

@PSC (2022)

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FOREWORD

Disciplinary control in the public service is one of the Public Service Commission's functions as provided for under Article 234(2) (b) of the Constitution. Public officers are expected to maintain integrity and uphold the dignity of the office to which they are appointed. It is therefore imperative that every public officer adheres to the rules of conduct and ethics as laid out in the law. The Commission, while exercising the powers of disciplinary control, takes cognizance of the fundamental principles of natural justice.

The ultimate objective of discipline is to create a motivated and dedicated officer who upholds proper work ethics for optimal service delivery. I consider that discipline in the service should be viewed not only from the aspect of imposing a punishment against an officer or deterring other officers from committing similar misconducts but also as a way of moulding and developing a positive attitude in the officer. The easiest way to uphold discipline is to emphasize on self-discipline, that is, the conscious deliberate decision to comply with what is expected.

The first Discipline Manual was developed in September, 2007 to guide the process of handling disciplinary cases in the public service. A subsequent review of the manual was carried out in May, 2016 to realign the procedures to the provisions of the Constitution and other relevant legislation following the promulgation of the Constitution of Kenya, 2010, the enactment of the Public Service Commission Act, 2012 and the Fair Administrative Action Act, 2015. The current review has been necessitated by the need to incorporate the provisions of the Public Service Commission Act, 2017 and the Public Service Commission Regulations, 2020.

It is expected that the Manual will address any inconsistencies in handling and determination of discipline cases in the public service. The Manual, however, is not exhaustive and is supposed to be read alongside the service regulations and any other relevant laws.

It is my hope, that this revised Manual will play a vital role in the exercise of disciplinary control in the Public Service.



**A. M. MUCHIRI (AMB.),
CHAIRPERSON,
PUBLIC SERVICE COMMISSION**

PREFACE

The enactment of the Public Service Commission Act, 2017 and gazettelement of the Public Service Commission Regulations, 2020 have necessitated revision of the Discipline Manual for the Public Service, 2016. The objective of the Manual is to guide and ensure consistency in the discharge of disciplinary control in the service.

The Manual provides general guidelines and procedures to be followed in handling and determining discipline cases. I am convinced that the revised Manual will facilitate efficient and effective discharge of the disciplinary control function in the public service.



**DR. SIMON K. ROTICH, C.B.S.,
SECRETARY/C.E.O.,
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DEFINITION OF TERMS

In this Manual, unless the context otherwise requires—

- 'Allow'* - Means to accept an appeal or review.
- 'Appeal'* - Means to apply for the re-examination of a decision or process.
- 'Appellant'* - Means an individual/organization appealing against a decision or a process that is thought to be incorrect, unfair or unfavorable.
- 'Applicant'* - Means an individual requesting the Commission to review its decision on appeal.
- 'Application for Review'* - Means a request to the Commission to reconsider its decision due to fresh material facts, discovery of new evidence or an error apparent on the face of the record that has been noted.
- 'Authority'* - Means institutionalized and legal power inherent in a particular job, function, or position that is meant to enable its holder to successfully carry out his or her responsibility.
- 'Authorized Officer'* - Means a member of the Commission, any officer, body or authority in the public service, appointed by the Commission in writing to perform its delegated functions in a Ministry or State department, or any member of the Commission.
- 'Commission'* - Means the Public Service Commission established under Article 233 (1) of the Constitution.
- 'Constitution'* - Means the Constitution of Kenya, 2010.
- 'Conviction'* - Means being found guilty of a criminal offence by a court of law.
- 'Criminal offence'* - Means an offence under the penal code or any other legislations.
- 'Disallow'* - Means to decline an appeal or application for review.
- 'Dismiss'* - Means to remove an officer from the public service on account of gross misconduct.
- 'Defer increment'* - Means to postpone annual increment for a specified period not exceeding one (1) year.

- 'Delegated powers' - Means the Public Service Commission functions that have been assigned to a member, an Authorized Officer, body or authority in the public service to exercise on its behalf.
- 'Discipline' - Means conforming to service rules, regulations and norms which prescribe expected conduct and behavior of individual officers.
- 'Disciplinary Control' - Means the due process in handling of discipline matters in accordance with the Constitution, legislation, regulations and this Manual.
- 'Interdiction' - Means barring an accused officer from performing powers and functions of the public office to give room for further investigation of the case.
- 'Penalty' - Means a punishment imposed for a violation of law, regulation or rules of conduct.
- 'Public Office' - Means an office in the public service.
- 'Public Officer' - Means any person other than a state officer holding or acting in any public office.
- 'Reprimand' - Means a form of disciplinary action imposed after formal charges that declares an officer's conduct improper.
- 'Show cause letter' - Means a letter requiring an officer to give representations on alleged misconduct.
- 'Suspension' - Means barring an accused officer from performing the functions of a public office on account of misconduct which is likely to lead to dismissal or upon having been convicted or charged with a serious criminal offence pending finalization of a case.
- 'Stop increment' - Means denial of one annual increment which should be reinstated the following year without change of incremental date.
- 'State Officer' - Means a person holding a state office as defined in the Constitution or other legislations.

‘withhold increment’ - Means denial of annual increment for a maximum period of one year which will be restored and arrears paid the following year without change in the incremental date.

ABBREVIATIONS

CHRMAC	County Human Resource Management Advisory Committee
CSG	Civil Service Grade
HRMAC	Human Resource Management Advisory Committee
HRM&D	Human Resource Management and Development
PSC	Public Service Commission

PART ONE - BACKGROUND

1.0 INTRODUCTION

The Public Service Commission is constitutionally mandated to exercise disciplinary control over persons appointed to hold offices in the public service. To effectively discharge this function, the Commission developed the first Discipline Manual in September, 2007 to guide the process of handling disciplinary cases in the public service.

Consequent to the promulgation of the Constitution of Kenya, 2010, enactment of the Public Service Commission Act, 2012 and the Fair Administrative Action Act, 2015, the Commission reviewed the Manual in 2016. The current review has been necessitated by enactment of the Public Service Commission Act, 2017 and the Public Service Commission Regulations, 2020.

1.1 SCOPE

This Manual applies to institutions that fall under the jurisdiction of the Commission in terms of disciplinary matters.

Other Public Service organizations may adopt and customize this Manual for uniformity in approach.

1.2 OBJECTIVES OF THE MANUAL

Under Section 92 of the Public Service Commission Act, 2017, the Commission is empowered to make regulations for better carrying out of its functions. The Commission has developed regulations including those that govern disciplinary control. Further, the Commission has powers to issue instructions and to prescribe instruments on disciplinary action. To enhance the processing and determination of discipline cases, the Commission has revised the Manual for use by Ministries/State Departments.

The general objective of the Manual is to provide guidelines and instruments to be used by public institutions under the jurisdiction of the Commission in handling disciplinary cases.

The specific objectives are to:

- (a) Define discipline in the context of the existing public service regulations.
- (b) Prescribe standard procedures for uniformity in handling disciplinary cases.
- (c) Outline the steps in disciplinary procedures and processes.
- (d) Define roles and responsibilities of different actors in handling disciplinary cases.
- (e) Guide on handling of Court cases arising from disciplinary process.

Further, the manual provides guidelines on the following:

- (i) Alternative interventions in the disciplinary process;
- (ii) Carrying out investigations;
- (iii) Disciplinary Hearings;
- (iv) Application of other forms of punishment other than dismissal; and
- (v) Lodging of an appeal or application for review.

1.3 REFERENCE DOCUMENTS

The Manual does not substitute the regulations issued by the Commission or any law made by Parliament as the case may be, but it is meant to guide the user. The user is therefore, required to read the Manual alongside the following documents:

- (a) Constitution of Kenya, 2010.
- (b) Public Service Commission Act, 2017.
- (c) Public Service Commission Regulations, 2020.
- (d) Access to information Act, 2016.
- (e) Anti-Corruption and Economic Crimes Act, Revised 2016.
- (f) Fair Administrative Action Act, 2015.
- (g) Public Service (Values and Principles) Act, 2015.
- (h) Leadership and Integrity Act, 2012.
- (i) Ethics and Anti-Corruption Commission Act, 2011.
- (j) Employment Act, 2007.
- (k) Labour Institutions Act, 2007.
- (l) Labour Relations Act, 2007.
- (m) The Work Injury Benefits Act, 2007.
- (n) The Occupational Safety and Health Act, 2007.
- (o) Public Officer Ethics Act, 2003.
- (p) Prisons Act (Cap. 90).
- (q) Pensions Act (Cap. 189).

- (r) Human Resource Policies and Procedures Manual for the Public Service, 2016.
- (s) Public Service Commission (Performance Management) Regulations, 2021.
- (t) Penal code.
- (u) Policies and general circulars issued by the Government from time to time.
- (v) Any other law governing public service and employment.

PART TWO – GUIDING PRINCIPLES

2.0 INTRODUCTION

The Constitution, under Article 234 (2) (b), vests the Commission the power to exercise disciplinary control over public officers. Disciplinary control is an integral part in the management of human resource in the public service. It is intended to help and encourage public officers to achieve and maintain standards of conduct, contribute to improved performance and productivity. It is based on principles envisaged in the Constitution and other enabling legislations. Where applicable, other alternative intervention mechanisms need to be explored.

2.1 GUIDING PRINCIPLES

Disciplinary control in the public service is governed by the following principles:

- (a) The rules of natural justice which include:
 - (i) Procedural fairness, where an officer must be allowed adequate opportunity to prepare and present his/her case;
 - (ii) Impartiality of the deciding authority when hearing and making decisions; and
 - (iii) Decisions which are based on logical proof or evidential material.
- (b) Fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. Every officer to whom disciplinary action is taken has a right to:
 - (i) Written reasons for any disciplinary action that is taken against him/her;
 - (ii) Prior and adequate notice of the nature and reasons for the intended disciplinary action;
 - (iii) An opportunity to be heard and to make representations in that regard;
 - (iv) An opportunity to attend proceedings in person or in the company of an expert of his/her choice, cross examine persons who give adverse evidence against him/her and request for adjournment of proceedings where necessary;
 - (v) Legal representation, where the affected officer so requests;

- (vi) Notice of a right to an appeal or review against a disciplinary decision;
- (vii) Information, materials and evidence to be relied upon in making a decision or taking a disciplinary action.
- (c) Thorough investigation on the alleged misconduct shall be undertaken before any disciplinary action is taken.
- (d) Application of other interventions in resolving discipline cases such as training, guidance and counseling.
- (e) Prompt implementation of decisions.
- (f) Right of appeal and application for review of disciplinary related decisions.

2.2 ALTERNATIVE INTERVENTIONS IN THE DISCIPLINARY PROCESS

Psycho- social challenges may impact negatively on an officer's overall work performance, resulting to cases of indiscipline. As such, alternative interventions may be undertaken by the employer to address employee misconduct in place of traditional punitive disciplinary action. This may, under the right circumstances, be a more efficient and effective approach than traditional discipline.

While alternative intervention requires more thoughtful decision-making and thus poses a greater challenge for supervisors than traditional discipline; the results can be worth the time and effort. Alternative intervention may result in modified behavior if used early in the disciplinary process for minor offences, but may not be effective in serious issues or habitual misconduct. The appropriateness of a certain approach will vary, based on the nature of the misconduct and personality of the individual whose conduct needs correcting.

Alternative discipline interventions in the public service may take various forms such as training, workplace guidance and counseling.

2.2.1 Workplace Guidance and Counselling

Some issues which manifest as indiscipline could be a result of psycho-social challenges an employee may be undergoing. It could also be due to lack of clarity of the assignment or the rules and regulations. Understanding the root cause of the problem will ensure application of the correct remedy. Punishing

such an employee will not improve the situation but may aggravate it. Where it is established that the cause of indiscipline is psycho-social related, public institutions are encouraged to adopt workplace guidance and counselling as a first option.

To address the challenge of lack of clarity, the supervisor has the responsibility to hold regular meetings with employees to clarify assignments and explain workplace rules.

With regard to psycho-social challenges, work place counselling will be adopted; the main objective being to bring about a voluntary change in the employee, and help the employee overcome immediate problems and cope with future challenges.

A counseling intervention is not a disciplinary action, as its purpose is not to create a negative experience, but rather to communicate helpful information and provide necessary support in management of psycho-social challenges. Counselling shall ordinarily be conducted by the Public Service Guidance and Counselling Services Unit in line with the Public Service Guidance and Counselling Policy. However, an officer is at liberty to undergo counselling in a private institution at own cost.

Where preliminary investigations establish that an officer is experiencing psycho-social challenges:

- (a) HRMAC shall recommend to the authorized officer that the officer undergoes counselling.
- (b) The Authorized Officer shall inform the affected officer of the recommendation to refer him/her for counselling.
- (c) Upon consent by the affected officer, the Authorized Officer shall make arrangement for the officer to undergo counseling.
- (d) Where the counsellor recommends for an officer to undergo rehabilitation, the Authorized Officer shall refer the officer to a recognized rehabilitation Centre.
- (e) Where an officer declines to undergo counselling or rehabilitation, then the normal disciplinary process shall be initiated.

2.2.2 Training

Persistent under-achievement of performance targets by an employee can be a ground for dismissal. Sometimes an employee may not meet the set targets despite having put best efforts. Before severe punishment of dismissal for

under performance is taken, and if the officer is not guilty of any other misconduct, public institutions should first train the officer with the objective of improving performance.

Supervisors are responsible for identifying individual officers' training needs which will lead to improved performance and productivity. The training intervention may include; induction, coaching, mentoring, role play or job rotation.

PART THREE - DELEGATION OF POWERS AND INSTITUTIONAL FRAMEWORK

3.0 DELEGATION OF POWERS TO AUTHORIZED OFFICERS

The Commission has delegated the following disciplinary powers to Authorized Officers in Ministries/State Departments as provided for in Section 65 of the Public Service Commission Act, 2017 (PSC Act), the Public Service Commission Regulations, 2020 (PSC Regulations) and instructions issued by the Commission to the service from time to time: -

- (a) In respect of all public officers, the power to:
 - (i) Initiate disciplinary process,
 - (ii) Interdict,
 - (iii) Suspend,
 - (iv) Reprimand,
 - (v) Stop pay or salary; and
 - (vi) Stop, withhold or defer annual increment: -
 - (a) Where annual increment is stopped, the officer shall forfeit the increment for that year and it will be reinstated the following year without change of incremental date.
 - (b) Where annual increment is withheld, the officer shall be denied the increment for a maximum period of one (1) year and it will be restored, and arrears paid. The officer shall retain the incremental date.
 - (c) Where annual increment is deferred, the officer's increment shall be postponed for a period not exceeding one (1) year. The deferred increment shall not be paid retrospectively upon the lapse of the period and the incremental date shall take effect on the date deferment lapses.
 - (vii) Recover 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;
 - (viii) Defer promotion;
 - Where deferment of a promotion is imposed, the imposition shall not persist for a period exceeding one (1) year and the deferred promotion shall take effect on the date the deferment lapses.
- (b) In respect of officers in Civil Service Grade 8 or equivalent and below who have not served for an aggregate of fifteen (15) years, the power to:
 - (i) Reduce rank or seniority; and
 - (ii) Dismiss.

All discipline cases handled under delegated powers shall be considered and determined through the Human Resource Management Advisory Committee (HRMAC).

A person who is dissatisfied with a decision made in exercise of delegated powers has a right of appeal to the Commission through the Authorized Officer within a period of ninety (90) calendar days. An advance copy of the appeal may be submitted to the Commission.

3.1 INSTITUTIONAL FRAMEWORK

The institutional framework for handling disciplinary cases is as follows:

3.1.1 In respect of officers in Ministry/State Departments headquarters

(a) Head of department:

Reports the misconduct to the Authorized Officer at the Ministry/State Department.

(b) Head, HRM&D:

- (i) He/she is the secretary to the HRMAC and provides technical advice;
- (ii) Analyzes the misconduct and commences the disciplinary action by issuing a show cause letter on behalf of the Authorized Officer.
- (iii) Summarizes the cases upon receipt of the officers' representations, if any, and submit the cases to the HRMAC.
- (iv) Implement decisions of the Commission and the Authorized Officer.

(c) HRMAC:

Deliberate on the cases and submit their findings and recommendations to the Authorized Officer on the next course of action.

(d) Authorized Officer:

- (i) For cases falling under delegated authority, considers recommendations of the HRMAC and makes decisions.
- (ii) For cases which do not fall under delegated authority, forwards cases with comments and recommendations to the Commission for decision where applicable.
- (iii) For all cases, communicates decisions to affected officers.

- (e) **Public Service Commission:**
 - (i) Considers the recommendations of the Authorized Officers and make decisions related to powers which are not delegated.
 - (ii) Determines appeals arising from decisions made by the Commission or Authorized Officers.
 - (iii) Determines applications for review arising from decisions made by the Commission.
 - (iv) Communicates decisions to Authorized Officers for implementation.

3.1.2 In respect of officers performing National Government functions in Counties

- (a) **Head of Department in the County:**

Reports the misconduct to the County Commissioner.
- (b) **Head, HRM&D:**
 - (i) He/she is the secretary to the CHRMAC and provides technical advice.
 - (ii) Analyzes the misconduct and commences the disciplinary action by issuing a show cause letter on behalf of the County Commissioner.
 - (iii) Summarize the cases upon receipt of the officers' representations, if any, and submit the cases to the CHRMAC.
- (c) **CHRMAC:**

Deliberate on the cases and submit findings and recommendations to the respective Authorized Officer on the next course of action.
- (d) **County Commissioner:**

Chairs the CHRMAC.
Forwards the recommendations of the CHRMAC to the respective Authorized Officer for submission to the HRMAC.
- (e) **Respective HRMAC:**

Deliberates on HRMAC's findings and recommendations and advises the Authorized Officer on the next course of action.

PART FOUR – DISCIPLINARY PROCEDURE

4.0 GENERAL PROVISIONS

The following shall be observed while processing discipline cases:

- (a) Disciplinary cases dealt with under delegated powers shall be processed through the respective Human Resource Management Advisory Committee.
- (b) If criminal proceedings are instituted against an officer or where an officer has been acquitted of a criminal charge in a court of law, the Authorized Officer may institute a disciplinary action on any other charge arising out of his conduct in the matter and impose an appropriate penalty provided that the charge is not similar to the one in court.
- (c) Where an officer has administratively been charged with an offence of a criminal nature, the Authorized Officer shall report the matter to the Directorate of Criminal Investigations, or Ethics and Anti-Corruption Commission whichever is applicable.
- (d) There should be proper framing of charges with full particulars of the case including the applicable provision of the Constitution, legislation or code of conduct alleged to have been breached.
- (e) Where an officer has been charged with desertion of duty, the letter shall be addressed to his/her last known address by registered mail and a copy through electronic mail where address is available.
- (f) The officer shall be notified in writing, be given the particulars of the misconduct as preferred and reasonable opportunity to respond to the allegations. Persons with disability shall be notified in accessible format depending on the nature of the disability.
- (g) In all disciplinary cases, evidence of delivery/dispatch of letter(s) or electronic mail to the officer should be maintained.
- (h) Thorough investigation of an alleged misconduct shall be undertaken before any disciplinary action is taken.
- (i) The officer shall be given an opportunity to be heard in person during the disciplinary process.
- (j) Application of other interventions in resolving discipline cases such as training, guidance and counseling shall be considered.
- (k) Communication of right of appeal and application for review.
- (l) Cases shall be dealt with promptly and finalized within a period of six (6) months. Where it is found impracticable to do so, the Authorized Officer shall report individual cases to the Commission explaining the reason for the delay.

- (m) Where an officer dies prior to finalization of the disciplinary proceedings, the case shall be terminated by the relevant authority.
- (n) Where disciplinary process has not been concluded administratively, including the appeal process, the Authorized Officer shall not recruit an officer to substantively fill the position.
- (o) Where an officer attains the mandatory retirement age while undergoing disciplinary proceedings, the proceedings shall be terminated, and the officer shall retire with applicable pension benefits, subject to the prevailing legislations and government policies.
- (p) The Authorized Officer shall provide to the Commission, a quarterly report on the status of interdicted and suspended officers.
- (q) An officer who is undergoing disciplinary process shall not be transferred until the process is concluded.

4.1 SPECIFIC PROVISIONS

4.1.1 Procedure to be followed in initial disciplinary action

In the event of initial minor misconduct committed by an officer, the supervisor will issue a verbal warning to inform the officer of what is likely to befall him/her in case the misconduct(s) is repeated in future. The verbal warning should be in form of structured discussion which may entail counseling. Record of such a warning signed by both the officer and the supervisor, indicating that there was a meeting should be kept by the supervisor.

In the event an officer repeatedly commits minor offences irrespective of three (3) verbal warning(s), the supervisor shall recommend disciplinary action against the officer.

4.1.2 Disciplinary Procedure

Where an officer fails to reform despite being issued with verbal and written warnings, or where he/she commits gross misconduct as referred to in Section 4.5 of this Manual, the following procedure shall apply.

- (a) **The Procedure to be followed in respect of officers in Civil Service Grade 7 (Job Group P) or equivalent and above, or as determined by the Commission:**

- (i) Upon report of misconduct against an officer, or review of the persistent misconducts of which the officer has been warned severally but failed to reform, the Authorized Officer shall conduct preliminary investigations.
- (ii) If it is established that the misconduct occurred; the officer shall be issued with a ‘show cause letter’ on the alleged misconduct (as per the sample letter provided in *Appendix I*). In the show cause letter, the officer shall be invited to state in writing the grounds, if any, on which he/she relies on to exculpate himself/herself.
- (iii) Where it is found necessary to interdict or suspend an officer, the officer shall be informed of the decision.
- (iv) The officer shall be given a minimum of ten (10) days within which to respond to the charges specified in the show cause letter.
- (v) The officer’s response, if any, shall be forwarded through the supervisor who is expected to comment on each of the representations and make a recommendation.
- (vi) On expiry of the specified period for response to the show cause letter, whether or not the officer has responded, the case shall be presented to the HRMAC for deliberation and recommendation.
- (vii) Where the HRMAC is of the opinion that the matter needs further investigations, the Authorized Officer shall appoint a team to investigate the case within the time specified by the Authorized Officer.
- (viii) The investigation report shall be presented to the HRMAC for deliberation and recommendation.
- (ix) In the event the investigation reveals further misconduct(s) against the officer, a fresh show cause letter shall be issued to him or her and the steps in (iii) to (vii) above shall apply.
- (x) Where an officer requests to be heard in person, the HRMAC shall appoint a panel to hear the case and notice of the hearing shall be issued to the relevant parties.
- (xi) The panel shall conduct the hearing and present a report to the HRMAC for deliberation and recommendation.
- (xii) The HRMAC recommendation shall be forwarded to the Authorized Officer who shall submit the case to the Commission with comments, recommendations, material evidence, records and other requirements as outlined in Section 5.2 of this Manual.
- (xiii) If the Commission is of the opinion that further investigation is necessary before a decision is made, it will direct the Authorized Officer to do so.

- (xiv) The decision of the Commission including the right of appeal shall be communicated to the affected officer by the Authorized officer.
- (xv) The Authorized Officer shall ensure that all decisions of the Commission are fully implemented.
- (xvi) Where a public officer is found culpable of a disciplinary offence, the decision shall be communicated to the relevant professional body, where applicable.

(b) The procedure to be followed in respect of officers in Civil Service Grade 8 (Job Group N) or equivalent and below but have served for an aggregate of fifteen (15) years or more:

Where the affected officer is in CSG 8 or equivalent and below but has served for an aggregate of fifteen (15) years, and HRMAC after following the procedure as outlined in (a) above, is of the view that the officer should either be dismissed or reduced in rank or seniority, the Authorized Officer shall forward the case to the Commission for decision.

(c) The procedure to be followed in respect of officers in Civil Service Grade 8 (Job Group N) or equivalent and below but have not served for an aggregate of fifteen (15) years:

- (i) All the steps in 4.1.2 (a) (i-xii, and xvi) above shall be observed and where the Authorized Officer is of the opinion that further investigation is not necessary, he/she shall decide on the punishment to be inflicted on the accused officer.
- (ii) Where the Authorized Officer finds it necessary to carry out further investigation, the requirements for carrying out investigations as indicated in Section 4.7 of this Manual shall be observed.
- (iii) On receipt of the investigation report, the Authorized Officer shall decide on the appropriate action to be taken based on the recommendations of the HRMAC.

4.2 INTERDICTION AND SUSPENSION

Interdiction and suspension are an integral part of the disciplinary process in the Public Service.

- (a) Where a public officer has been interdicted or suspended, the public officer may, in writing, request the Authorized Officer to communicate the progress and action taken towards conclusion of the disciplinary case and the Authorized Officer shall reply within thirty (30) days from the date of receipt of the officer's request.
- (b) Where an officer has made such a request and the Authorized Officer fails to respond within the specified period or the officer is dissatisfied with the response, he/she may apply to the Commission for lifting of the interdiction or suspension.
- (c) The Commission, shall upon receipt of the application, make a decision which may include termination of the disciplinary proceedings.

4.2.1 Interdiction

An officer may be interdicted from exercising the functions and powers of the public office where;

- (a) Gross misconduct which is likely to lead to dismissal is reported and requires investigation.
- (b) Criminal proceedings are being instituted.

The interdiction process entails the following:

- (a) If the misconduct is one which can lead to dismissal, or criminal proceedings are being instituted, the officer shall be served with a 'show cause letter' which shall also contain a communication on interdiction, a sample of which is provided in *Appendix II*.
- (b) A public officer on interdiction shall be entitled to half of his/her basic salary, full house allowance, and medical insurance cover.
- (c) A public officer who is on interdiction should not leave the duty station without the permission of the Authorized Officer or any other public officer who is empowered to give such permission.
- (d) Where disciplinary or criminal proceedings have been instituted against an officer under interdiction and the officer is not dismissed or otherwise punished, any withheld salary, allowances and benefits shall be restored with effect from the date it was withheld.

- (e) Interdiction shall be lifted by the Authorized Officer on recommendation of the HRMAC or the Commission's directive.
- (f) A public officer whose interdiction has been lifted shall promptly be served with a decision letter, a sample of which is provided in *Appendix III/IV*.

4.2.2 Suspension

1. The circumstances under which an officer may be suspended from exercise of powers and functions of the office include:
 - (a) When charged with serious criminal offence in a court of law
 - (b) Charged under the Anti-Corruption and Economic Crimes Act
 - (c) Upon conviction of a criminal offence
 - (d) When proceedings for dismissal have been instituted and the Authorized Officer determines that the public officer ought to be dismissed.
2. Where a decision has been made to suspend an officer, he/she shall be served with a suspension letter, a sample of which is provided in *Appendix V* and shall:
 - (a) Not leave the duty station without the permission of the Authorized Officer or any other public officer who is empowered to give such permission.
 - (b) Be entitled to half of his/her basic salary, full house allowance, and medical insurance cover.
3. An officer whose suspension has been lifted;
 - (a) Shall promptly be served with a decision letter, a sample of which is provided in *Appendix III/IV*.
 - (b) Shall be reinstated to the public office held before suspension upon lifting of suspension and termination of disciplinary proceedings where the officer has not been otherwise punished.
 - (c) Any withheld salary, allowances and benefits shall be restored with effect from the date it was withheld where the public officer has been found not culpable of the offence.
 - (d) Where a public officer under suspension is not dismissed but any penalty prescribed in the Manual is imposed upon termination of the

proceedings, any withheld salary, allowances and other benefits shall not be restored.

- (e) Suspension shall be lifted by the Authorized Officer on recommendation of the HRMAC or the Commission's directive.

4.3 ABSENCE FROM DUTY WITHOUT LEAVE, REASONABLE OR LAWFUL CAUSE

Where an officer is absent from duty without leave, reasonable or lawful cause, the following steps shall apply:

- (a) Establish the exact dates the officer was absent from duty. If not traced through personal contacts and next of kin within a period of ten (10) days from the commencement of such absence, the salary and other remunerative allowances shall be stopped with effect from the date of absence, and disciplinary action instituted against the officer.
- (b) The officer shall be addressed a registered 'show cause letter' through his/her last known address, giving a reasonable period within which to respond but not less than ten (10) days. The nature of the offence and the contemplated action shall be stated clearly in the letter. A scanned copy of the show because letter may be sent to the officer through electronic mail. (Sample letter is provided as *Appendix VI*).
- (c) If the officer does not respond, or where the response is found to be unsatisfactory, the process in section 4.1.2(a) (vi-xv) shall apply.
- (d) The decision of the Commission or Authorized Officer and the right of appeal or application for review shall be communicated to the officer within seven (7) days.
- (e) When an officer has been absent from duty without permission and subsequently resumes duty, the officer shall not be eligible for payment of salary for the period of absence and any amount erroneously paid shall be recovered.
- (f) In cases of delay in stoppage of salary and an officer is subsequently dismissed on account of desertion, the erroneous payment shall be recovered from the officer(s) who occasioned the payment.

4.4 RETIREMENT FROM THE PUBLIC SERVICE

The Commission or any other lawful authority discharging a disciplinary function may, instead of imposing a penalty, require a public officer to retire on any of the grounds of retirement prescribed under the Public Service Commission Act, 2017. Such retirement may be allowed if the conditions and

procedures prescribed under the PSC Act have been met and the Commission or any other lawful authority is satisfied that: -

- (a) The public officer has raised mitigating factor/s which renders imposition of a penalty too harsh in view of the circumstances of the case;
- (b) The length of service, benefits accrued, and previous good record of the public officer justifies the retirement; or
- (c) Imposing a penalty against the officer is likely to adversely affect the reputation of the public body concerned or the public service generally.

In retiring a public officer, the following process shall apply:

- (a) The Authorized Officer shall address a letter, a sample of which is provided in *Appendix VII*, requiring an officer to show cause within fourteen (14) days why he or she should not be retired.
- (b) The public officer's representations shall within thirty (30) days be submitted to the relevant HRMAC for deliberation and recommendation to the Authorized Officer.
- (c) The Authorized Officer shall within fourteen (14) days submit his/her recommendations including relevant records and documents to the Commission for decision.
- (d) Where the Commission is of the opinion that an alternative punishment be applied, the case shall be returned to the Authorized Officer with instructions that a fresh show cause letter be issued in line with the contemplated disciplinary action.
- (e) Where the Commission concurs with the Authorized Officer's recommendation, a decision will be made and communicated to the Authorized Officer.
- (f) The Authorized officer shall within seven (7) days convey the Commission's decision to the officer, informing him/her of the benefits, if any. The Authorized Officer shall also inform the officer of the right of appeal or application for review within the time provided for in the regulations as per the sample letter provided in *Appendix VIII*.

4.5 GROSS MISCONDUCT

An officer who is found to have committed gross misconduct is liable for summary dismissal. Cases that amount to gross misconduct which may lead to summary dismissal as drawn from the following Acts, among others; the Employment Act, 2007, the Public Service Commission Act, 2017, the Public Officer Ethics Act, the Leadership and Integrity Act, 2012, the Anti-

Corruption and Economic Crimes Act, 2003, the Public Service (Values and Principles) Act, 2015 include:

- (a) Absence from duty without leave or other lawful cause;
- (b) Negligence of duty;
- (c) Intoxication during working hours;
- (d) Using abusive or insulting language or behaving in a manner likely to cause a breach of the peace;
- (e) Insubordination;
- (f) Criminal conviction;
- (g) Incarceration for more than fourteen (14) days following arrest for cognizable offence;
- (h) Willful destruction of government property;
- (i) Theft by public servant;
- (j) Unauthorized use or disclosure of confidential information;
- (k) Falsification of information or references on appointment; and
- (l) Acceptance of any bribe, secret profit or unauthorized commission.

4.6 PENALTIES

All penalties inflicted on a public officer shall be within the law and the Public Service Commission Act, 2017. The following are the penalties which may be inflicted on an officer facing disciplinary action:

- (a) Recovery of cost or part of the cost of any loss or breakage caused by default or negligence provided that no such cost has been recovered by surcharge under the appropriate financial instructions or regulations.
- (b) Reprimand.
- (c) Stoppage, withholding and deferment of salary increment.
- (d) Deferment of promotion.
- (e) Reduction in rank or seniority; provided that the reduction should not be more than one grade or rank.
- (f) Dismissal from the service.

4.7 REQUIREMENTS FOR CARRYING OUT INVESTIGATIONS

Verifiable evidence is the foundation of fairness in disciplinary cases and this can be achieved through investigation of alleged offences. Such investigations should be carried out by committees appointed in writing by the Authorized Officer.

While carrying out investigations, the following shall be observed:

- (a) Investigating committee should comprise of officers senior to the accused officer and should not have dealt with the case before or have interest in the case.
- (b) The Authorized Officer shall give clear terms of reference and specific timelines within which to carry out the investigation.
- (c) The team shall comprise a minimum of three (3) members, and where the number exceed three, it should be an odd number. Experts may be co-opted to assist in understanding of technical aspects of the discipline case.
- (d) The investigating team shall include a human resource officer as a technical advisor.
- (e) The Authorized Officer or a HRMAC member shall not be involved as an investigator of any disciplinary case.
- (f) The officer under investigation shall be interviewed by the investigating committee and be given a chance to produce relevant documents, call and examine witnesses, and peruse any availed documents related to the case.
- (g) After listening to all witnesses and studying all the documents, the committee shall sum up the case and record its findings as evaluated against the evidence.
- (h) The investigating committee shall record details of any matters which may aggravate or mitigate the gravity of the case.
- (i) The investigation report shall be submitted to the relevant HRMAC and shall not contain any recommendation on the form of punishment to be inflicted on the accused officer but should contain:
 - (i) A statement on whether the charges against the officer have been proved;
 - (ii) evidence collected by the team, including any statements by witnesses;
 - (iii) analysis of the evidence and statements; and
 - (iv) Details on any matter that may affect the gravity of the case if any.
- (j) Where further investigations are required as provided for in the regulations, such investigations shall be conducted in accordance with the process in (a) to (i) above.

4.8 DISCIPLINARY HEARING

Disciplinary hearing is an integral part of the disciplinary procedure as provided for in the Employment Act and the Fair Administrative Action Act.

4.8.1 Hearing panel

- (a) The Disciplinary hearing shall be conducted by a committee/panel appointed by the Authorized Officer or the County Commissioner as the case may be.
- (b) The hearing panel shall comprise of the HRMAC/CHRMAC or a sub-committee of the HRMAC/CHRMAC members. The panel should comprise a minimum of three (3) members, and where the number exceeds three; it should be an odd number.
- (c) The panel shall include a human resource officer as a technical advisor.
- (d) The panel may, where necessary, co-opt experts to assist in understanding the technical aspects of the discipline case.

4.8.2 Hearing proceedings

To effectively carry out the hearing, the following procedure shall apply: -

- (a) The panel shall give a notice for hearing of not less than seven (7) days to the accused officer and other interested parties prior to the hearing date as per the sample letter provided in *Appendix IX*.
- (b) In the notice, the accused officer shall be informed of his right to access information, materials, and evidence related to the case.
- (c) The reporting officer and the accused officer together with their witnesses shall be required to attend the hearing proceedings at the same time.
- (d) The accused officer shall be given an opportunity to cross-examine the reporting officer, together with witnesses.
- (e) The defence of the accused officer together with his/her witnesses shall be heard after which the reporting officer shall be given an opportunity to cross-examine.
- (f) Both parties may bring expert witnesses to testify on technical aspects on areas of expertise touching on the disciplinary case.
- (g) Adjournment of the hearing may be granted by the panel upon request by any of the parties provided that compelling reasons have been given.
- (h) The hearing proceedings shall be recorded verbatim.

- (i) At the end of the hearing, each party shall be given an opportunity to make their final submissions in writing.
- (j) Where an officer is represented by an advocate, a union official or any other representative during the disciplinary hearing, the representative may cross examine the witnesses of the complainant and make final submissions on behalf of the officer.
- (k) The hearing panel shall analyze the evidence gathered during the hearing proceedings and record its findings. While analyzing the evidence, the hearing panel shall consider the charges against the officer as captured in the show cause letter, written defence, witness statements, experts' statements among other relevant records.
- (l) The proceedings of the hearing and findings shall be submitted to the HRMAC or CHRMAC and shall not contain any recommendation on the form of punishment to be inflicted on the accused officer but should contain:
 - (i) Evidence collected by the team, including any statements by witnesses;
 - (ii) Analysis of the evidence and statements;
 - (iii) Details on any matter that may mitigate or aggravate the case if any; and
 - (iv) A statement on whether the charges against the officer have been proved.

PART FIVE - APPEALS AND REVIEWS

5.0 APPEALS AND APPLICATIONS FOR REVIEW

Any person dissatisfied by a decision of the Commission, Authorized Officer or any other authority arising from disciplinary proceedings, may appeal to the Commission as per the provision of Section 74 of the Public Service Commission Act within a period of ninety (90) days.

The appellant must demonstrate that either the Authorized Officer or the Commission erred in law or in fact in arriving at the decision.

A person who is dissatisfied or affected by a decision made by the Commission on an appeal regarding a disciplinary case may apply for review of the decision as per the provision of Section 75 of the Public Service Commission Act within a period of six (6) months. The Commission shall admit the application for review if:

- (a) fresh material facts arise which with due diligence could not be presented when the decision was initially made; or
- (b) there is an error apparent on the record of the earlier decision.

5.1 LODGING AN APPEAL OR APPLICATION FOR REVIEW

The process of lodging an appeal or application for review is as follows:

- (a) All appeals shall be in writing and made within a period of ninety (90) calendar days from the date of the letter conveying the decision.
- (b) All applications for review shall be in writing and made within a period of six (6) months from the date of the letter conveying the decision.
- (c) The Commission may entertain an appeal or application for review out of time if, in the opinion of the Commission, the circumstances warrant it.
- (d) All appeals and reviews shall be addressed to the Secretary, Public Service Commission through the Authorized Officer, who shall provide comments and a recommendation on each issue raised in the form provided for in *Appendix X*. While forwarding an appeal or application for review; an officer may submit an advance copy to the Commission.

- (e) An appeal or an application for review shall be accompanied by copies of all material evidence or documents that the appellant wishes to rely on.
- (f) All appeals and applications for review shall be forwarded to the Commission even when they are time barred.
- (g) Decisions on appeals and applications for review shall be conveyed within seven (7) days and the officer informed of the right of application for review where applicable.
- (h) Appeals and applications for review shall only be entertained once.
- (i) Decisions on disciplinary action shall not be deferred or suspended pending the determination of the appeal or application for review.

5.2 CHECKLIST FOR SUBMISSION OF CASES TO THE COMMISSION

The Authorized Officer shall present cases to the Commission in the prescribed format, a sample of which is provided in *Appendix X*. When submitting cases to the Commission, the following must be provided:

- (a) The officer's personal files.
- (b) Authorized Officer's comments on each issue raised by the affected person.
- (c) Authorized Officer's recommendation on the case.
- (d) Investigation report and material evidence where applicable.
- (e) Disciplinary hearing proceedings, where applicable.
- (f) Certified copy of approved HRMAC/CHRMAC minutes.
- (g) All correspondence related to the case.
- (h) Details of any matter which may aggravate or mitigate the gravity of the case.

PART SIX - COURT CASES

6.0 HANDLING COURT CASES

In the event that, the Government is sued in matters arising from the exercise of the Commission's disciplinary powers, including cases handled under delegated authority, the following shall apply:

- (a) The Authorized Officer shall within two (2) days of being served with the court papers notify the Commission and the office of the Attorney General the filing of such court cases and forward all the relevant information and documents.
- (b) The Authorized Officer shall cooperate with the Commission and the office of the Attorney General in handling of all court cases.
- (c) The Authorized Officer shall ensure that witnesses are available to give evidence in court. An officer who fails to appear in court when directed by the Authorized Officer will be held personally liable.
- (d) Court decisions shall be complied with unless the Attorney General has appealed and obtained a stay of the court order.
- (e) The Authorized Officer in consultation with the Commission shall promptly instruct the office of the Attorney General to appeal against the decision of the court when dissatisfied with the decision.
- (f) The Authorized Officer or any other public officer who occasions loss of public funds arising out of failure to comply with court orders shall be held personally responsible.
- (g) The Authorized Officer shall promptly notify the Commission, judgments entered against the government on matters arising from disciplinary proceedings including certified copies of the judgments.
- (h) The Authorized Officer shall monitor and report the status of all court cases to the Commission on quarterly basis.

PART SEVEN – APPENDICES

- Appendix I - Generic Show cause letter.
- Appendix II - Sample Interdiction Letter.
- Appendix III - Letter Lifting Interdiction/suspension.
- Appendix IV - Letter Lifting Interdiction/suspension (where any other penalty is imposed).
- Appendix V - Suspension Letter.
- Appendix VI - Show Cause Letter (absence from duty without reasonable cause).
- Appendix VII - Notice of intention to retire from the service.
- Appendix VIII - Decision letter on retirement from the service.
- Appendix IX - Notice of hearing.
- Appendix X - Format for Presenting Disciplinary Cases, Appeals and Reviews by the Authorized Officer to the Commission.

APPENDIX I – Generic Show Cause Letter

(Letter Head)

To

.....

Thro'

(Supervisor)

Dear Sir or Madam,

**(specify misconduct e.g intoxication during working hours,
negligence of duty, e.t.c in title)**

It has been reported that on(state the date) you..... *(State the particulars of the misconduct and the provisions of legislation or code of conduct contravened)*

In view of the above, disciplinary action which may lead to dismissal from the service on account of.....*(state the misconduct)* is contemplated. However, before this is done, you are hereby called upon to show cause why the intended action should not be taken against you.

Your representation if any, should reach this office within twenty one (21) days from the date of this letter failure to which the contemplated action will be taken without further reference to you.

(Signed)
Authorized Officer

APPENDIX II – Sample Interdiction letter (Letter head)

To

(Registered mail to last known address and scanned copy sent by electronic mail)

Dear Sir/Madam,

INTERDICTION

It has been reported to this office that you (Set out particulars).

In view of the foregoing, you are hereby interdicted from exercising the duties of your office with effect from the date of this letter pending finalization of your case.

While on interdiction, you will be eligible for half salary, full house allowance and medical insurance cover. You should not leave your duty station without the express permission from your immediate supervisor.

(Signed)
Authorized Officer

Copy to: Supervisor

APPENDIX III – Letter Lifting Interdiction/Suspension

(Letter head)

To

.....

Thro'.....

(Supervisor)

.....

Dear Sir/Madam

LIFTING OF INTERDICTION/SUSPENSION

Further to our letter Ref. No..... dated(*the interdiction/ suspension letter*) and after due consideration of your case, it has been decided that the **interdiction/ suspension** imposed on you be and is hereby lifted with effect from..... (*the date of the interdiction/suspension*). Your half salary, allowances and benefits which had been withheld during your interdiction/suspension shall be released. This is in accordance with section 71(4) of the Public Service Commission Act, 2017.

You should report for duty within seven (7) days from the date of this letter.

(Signed)
Authorized Officer

APPENDIX IV – Letter Lifting Interdiction/suspension (where any other penalty is imposed)

(Letter head)

To

.....

Thro'.....

(Supervisor)

.....

Dear Sir/Madam

LIFTING OF INTERDICTION/SUSPENSION

Further to our letter Ref. No..... and after considering your letter dated..... and hearing conducted on(date).....(where applicable), it has been decided that you be(state the punishment as clarified under section 3.0 and 4.6 of this manual).

As the disciplinary process has been concluded, your interdiction/suspension is hereby lifted. In view of the punishment imposed on you, your salary, allowances and benefits which had been withheld during interdiction/suspension shall not be released. This is in accordance with section 71(5) of the Public Service Commission Act, 2017.

However, you are hereby notified that a repeat of the same or similar misconduct in future may lead to commencement of proceedings for your dismissal from the service.

You should report for duty within seven (7) days from the date of this letter.

(Signed)
Authorized Officer

APPENDIX V – Suspension Letter

(Letter Head)

To

.....

Thro'

(Supervisor)

Dear Sir or Madam,

SUSPENSION LETTER

It has been reported to this office that you were charged of a serious criminal offence namely (set out particulars).

Or

Reference is made to our letter Ref No.datedand the representations in your letter dated

This is to inform you that having considered your representations, investigation report and the hearing proceedings, you have been found culpable of (*state alleged offence*), and your dismissal from the service is being contemplated.

Consequently, it has been decided that you be and are hereby suspended from exercising the duties of your office from the date of this letter pending finalization of your case. While on suspension, you will be eligible for half salary, full house allowance and medical insurance cover and you should not leave your duty station without the express permission from your immediate supervisor.

(Signed)
Authorized Officer

APPENDIX VI – Show Cause Letter – absence from duty without leave, reasonable or lawful cause

(Letter Head)

To

.....

Thro'

(Supervisor)

Dear Sir or Madam,

ABSENCE FROM DUTY WITHOUT LEAVE, REASONABLE OR LAWFUL CAUSE

It has been reported that you absented yourself from duty with effect from..... (State the particulars of the absence including number of days)

Your attention is drawn to Section of the Employment Act,(year) which provide that an employee who absents himself/herself from the workplace without leave or other lawful cause, is liable for summary dismissal.

In view of the above, your dismissal from the service on account of absence from duty without leave, reasonable or lawful cause is contemplated, but before this is done, you are hereby called upon to show cause why the intended action should not be taken.

Your representation if any, should reach this office within twenty one (21) days from the date of this letter failure to which the contemplated action will be taken without further reference to you.

(Signed)
Authorized Officer

APPENDIX VII – Notice of Intention to Retire from the Service

(Letter head)

To.....
.....

Thro'
(Supervisor)

Dear Sir or Madam,

NOTIFICATION OF RETIREMENT FROM THE SERVICE

Reference is made to our letter ref No.datedand the representations in your letter dated

This is to inform you that having considered your representations, investigation report and the hearing proceedings, you have been found culpable of (*state alleged misconduct/s*) that warrant dismissal. However, in view of (e.g. long service, mitigating factors, age, previous good record) it is contemplated that you be retired from the service in accordance with Section 68(3) of the Public Service Commission Act, 2017.

Consequently you are hereby required to make a written representation as to why you should not be retired from the service. Your representations, if any, should reach this office within twenty one (21) days from the date of this letter failure to which the contemplated action (*indicated in the earlier show cause letter*) will be taken without further reference to you.

(Signed)
Authorized Officer

APPENDIX VIII – Decision Letter on Retirement from the Service

(Letter head)

To.....
.....

Thro'
(Supervisor)

Dear Sir or Madam,

RETIREMENT FROM THE SERVICE

This is to inform you of the Public Service Commission’s decision to retire you from the service (***indicate grounds***) with effect from(*date*). This is following your acceptance to retire contained in your letter dated.....

In view of this decision, you are required to report to this office within thirty (30) days with a view to submitting a handover report and to conclude arrangements for processing your pension and other terminal benefits. To facilitate processing of your pension benefits, you are required to complete the following documents and return them to this office duly signed for further action:

1. Pension Commutation Form.
2. Official Secrets (Declaration) Act for officers leaving the service.
3. Final Declaration of Income, Assets and Liabilities Form.
4. Clearance Form.

(Signed)
Authorized Officer

APPENDIX IX – Notice of Hearing

(Letter head)

To.....
.....

Thro'.....
(Supervisor)

Dear Sir or Madam,

HEARING NOTICE

TAKE NOTICE that you are required to appear before the (**hearing body**) for the hearing of your case on theday of 20 at (time). The hearing shall be held at (venue). During the hearing, you may be represented by an advocate, a union member or an expert of choice, and you may also bring witnesses to testify on your behalf.

TAKE NOTICE that the hearing may proceed and a determination made your absence notwithstanding.

Dated thisday of20.....

(Signed)
Authorized Officer

APPENDIX X – Format for Presenting Disciplinary Cases, Appeals and Reviews by the Authorized Officer to the Commission

- (i) Name
- (ii) Date of First appointment
- (iii) Personal Number
- (iv) Current designation
- (v) Civil Service Grade/Salary scale
- (vi) Terms of service
- (vii) Date of Birth
- (viii) Work Station

A. Nature of Charge, Offence or Misconduct against the officer

.....

(Set out the particulars in full)

B. Discipline case/Appeal/Review

.....
 *(Specify)*

C. Previous offences or misconduct and punishments (if any)

S/No.	Offence and Date	Punishment/Decision	Date of decision
1.			
2.			
3.			
4.			

D. Criminal convictions

(If any)

S/No.	Criminal charge/offence (include date)	Judgment/Ruling/Order by court (include date)
1		
2		
3		

E. Analysis of the Case on issues raised by the officer and the Authorized Officer's comments on each representation

Officer's Representations	Authorized Officer's comments
1.	
2.	
3.	

F. Findings and Recommendations of the HRMAC

.....
.....

G. Authorized Officer's comments and recommendation

.....
.....

H. List of Appendices

.....
.....

(List all documents attached to this form e.g. personal files, show cause letter, minutes of the relevant Committees, investigation report, hearing proceedings, court rulings/judgments etc.)

(Signed)
Authorized Officer