

86. Procedure when charge of breach of discipline brought

- (1) A charge under section 83(1)(b), 84(2)(b)(ii) or 85 shall —
 - (a) be in writing;
 - (b) contain the prescribed details of the alleged breach of discipline; and
 - (c) require the respondent to indicate within such period of not less than 7 days as is specified in the charge whether or not he or she admits or denies the charge.
- (2) A respondent charged under section 83(1)(b), 84(2)(b)(ii) or 85 shall admit or deny the charge within the relevant period referred to in subsection (1)(c).
- (3) Subject to section 89, if a respondent admits a charge under subsection (2) and the employing authority finds the charge to be proved, the employing authority —
 - (a) shall, if the charge is a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94(4), dismiss the respondent; or
 - (b) may —
 - (i) reprimand the respondent;
 - (ii) transfer the respondent to another public sector body with the consent of the employing authority of that public sector body or, if the respondent is an employee other than a chief executive officer or chief employee, transfer him or her to another office, post or position in the public sector body in which he or she is currently employed;
 - (iii) impose on the respondent a fine not exceeding an amount equal to the amount of remuneration received by the respondent in respect of the period of 5 days during which he or she was at work as an employee immediately before the day on which the finding of a breach of discipline was made;
 - (iv) reduce the monetary remuneration of the respondent;
 - (v) reduce the level of classification of the respondent; or
 - (vi) dismiss the respondent,or, except when the respondent is dismissed under subparagraph (vi), take action under any 2 or more of the subparagraphs of this paragraph.
- (4) If a respondent denies a charge under subsection (2) and the employing authority is not the Minister, the employing authority may —
 - (a) hold, or direct a person to hold, a disciplinary inquiry into the charge in accordance with prescribed procedures; or
 - (b) if it considers that a special disciplinary inquiry should be held into the charge, request the Minister to direct that a special disciplinary inquiry be held into the charge by a person named in that direction.
- (5) A directed person shall, subject to subsections (6) and (7), comply with the relevant direction given under subsection (4)(a).
- (6) If, at any time after the commencement of a disciplinary inquiry held under subsection (4)(a), the employing authority or directed person considers that a

special disciplinary inquiry should be held into the charge, the employing authority may request the Minister to direct that —

- (a) a special disciplinary inquiry be held into the charge by a person named in that direction; or
 - (b) the disciplinary inquiry be converted into a special disciplinary inquiry and that the person holding the disciplinary inquiry hold the resulting special disciplinary inquiry.
- (7) If the Minister complies with a request made under subsection (4)(b) or (6) and makes a direction referred to in —
- (a) subsection (4)(b), the person named in that direction shall comply with that direction;
 - (b) subsection (6)(a), the person named in that direction shall comply with that direction and the relevant disciplinary inquiry being held under subsection (4)(a) is terminated; or
 - (c) subsection (6)(b), the disciplinary inquiry concerned is converted into a special disciplinary inquiry and the person holding that disciplinary inquiry shall hold the resulting special disciplinary inquiry.
- (8) If a directed person finds at the conclusion of a disciplinary inquiry that —
- (a) a breach of discipline was committed by the respondent, the directed person shall submit that finding to the employing authority and recommend to the employing authority that it act in relation to the respondent under subsection (3) as if the respondent had admitted the charge under subsection (2); or
 - (b) no breach of discipline was committed by the respondent, the directed person shall submit that finding to the employing authority and recommend to the employing authority that it notify the respondent of that finding and that no further action will be taken in the matter.
- (9) On receiving a finding and recommendation under subsection (8), the employing authority shall —
- (a) accept the finding; and
 - (b) in the case of a recommendation made under —
 - (i) subsection (8)(a) in relation to a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94(4), dismiss the respondent;
 - (ii) subsection (8)(a) in relation to a charge other than a charge referred to in subparagraph (i), accept that recommendation and act accordingly in relation to the respondent, or decline to accept that recommendation and take such other action in relation to the respondent as could have been recommended under that subsection; or
 - (iii) subsection (8)(b), accept that recommendation and act accordingly in relation to the respondent.

- (10) If an employing authority finds at the conclusion of a disciplinary inquiry held by itself that —
- (a) a breach of discipline was committed by the respondent, the employing authority shall act under subsection (3) as if the respondent had admitted the charge under subsection (2); or
 - (b) no breach of discipline was committed by the respondent, the employing authority shall notify the respondent of that finding and that no further action will be taken in the matter.
- (11) If a respondent denies a charge under subsection (2) and the employing authority is the Minister, the Minister shall direct a person to hold a special disciplinary inquiry into the charge and the person shall comply with that direction.
- (12) A direction shall not be given under this section to the Commissioner.
- (13) In this section —
- “directed person”** means person directed under subsection (4)(a) to hold a disciplinary inquiry into the charge concerned;
 - “disciplinary inquiry”** means disciplinary inquiry held or directed to be held under subsection (4)(a).