

No. 543E. 397 D.
Establishments Division,
Ministry of Public Administration
and Home Affairs,
Independence Square,
Colombo 7, 18th October, 1978.

To : All Secretaries to Ministries
and Heads of Departments.

Public Officers under the New Constitution

THIS Circular is being issued on the orders of the Cabinet of Ministers and embodies decisions it has made under powers vested in it by the various articles in Chapter IX of the Constitution.

Introduction

- 1 : 1 The principal portion of the Constitution of the Democratic Socialist Republic of Sri Lanka dealing with Public Officers are Articles 55 to 61.
- 1 : 2 Article 170--Interpretation--defines a Public Officer as a person who holds any paid office under the Republic, other than a judicial officer but does not include--
- (a) the President ;
 - (b) the Speaker ;
 - (c) a Minister ;
 - (d) a member of the Judicial Service Commission ;
 - (e) a member of the Public Service Commission ;
 - (f) a Deputy Minister ;
 - (g) a Member of Parliament ;
 - (h) the Secretary-General of Parliament ;
 - (i) a member of President's staff ;
 - (j) a member of the staff of the Secretary-General of Parliament.
- 1 : 3 The provisions of Articles 55 to 59 apply to Public Officers other than--
- (a) Public Officers directly appointed by the President.
 - (b) Members of the Armed Services.
 - (c) "Scheduled Public Officers" as interpreted in Article 114 (6) of the Constitution, and
- the provisions of this Circular therefore will apply to all Public Officers other than Public Officers of these three categories.
- 1 : 4 The Cabinet of Ministers has made the following decisions in regard to the appointment, transfer, dismissal and disciplinary control of Public Officers under the new Constitution.

Appointment, transfer, dismissal and disciplinary control of Public Officers

- 2 : 1 Appointment includes promotion or transfer involving an increase of salary.

- 2 : 2 Transfer means the moving of a Public Officer from one post to another post in the same service or in the same grade of the same Ministry or Department with no change of salary.
- 2 : 3 An officer in Staff Grade means a Public Officer the initial of whose consolidated salary is Rs. 6,720 per annum or above and whose annual increments are Rs. 360 and above.
- 2 : 4 The power of appointment, transfer, dismissal and disciplinary control of Heads of Departments is vested in the Cabinet of Ministers by Article 55 (2).
- 2 : 5 The Cabinet of Ministers will directly deal with matters of appointment, transfer, dismissal and disciplinary control of—
- (a) Additional Secretaries to Ministries.
 - (b) Government Agents in charge of Districts.
 - (c) Senior Assistant Secretaries to Ministries.
- 2 : 6 Communications regarding the appointment, transfer, dismissal and disciplinary control of—
- (a) Heads of Departments,
 - (b) Additional Secretaries to Ministries,
 - (c) Government Agents in charge of Districts,
 - (d) Senior Assistant Secretaries to Ministries,

will be sent to the Cabinet of Ministers by the Minister concerned. The "Minister concerned" in the case of the officers of the Combined Services will be the Minister in charge of Public Administration who will send such communications in consultation with the Minister in charge of the Ministry concerned.

- 2 : 7 "Minister concerned" and "Ministry concerned" refer respectively to the Minister and Ministry in charge of the Department or other institution in which the Public Officer concerned is working.
- 2 : 8 "The Minister concerned" in the case of the offices in charge of persons appointed by the President (except Secretaries to Ministries) will be the President and, in the case of the Office of the Leader of the House of Parliament, the "Minister concerned" will be the Minister who has been appointed Leader of the House of Parliament.
- 2 : 9 "Head of Department" in the case of a Ministry Office will be the Secretary to the Ministry.
- 2 : 10 In regard to other Public Officers the Cabinet of Ministers has delegated the powers of appointment, transfer, dismissal and disciplinary control to the Public Service Commission and the Public Service Commission has delegated its powers of appointment, transfer, dismissal and disciplinary control to Public Officers as detailed in paragraph 2 : 11 below.
- 2 : 11 The position as far as the whole Public Service is concerned based on—
- Article 55 (2)
the decision of the Cabinet of Ministers for the retention of certain powers,

the delegation of powers by the Cabinet of Ministers to the Public Service Commission, and
the delegation of powers by the Public Service Commission to Public Officers,

is as follows :—

2 : 11 : 1 Appointment, Dismissal and Disciplinary Control.

<i>Category</i>	<i>Description</i>	<i>Authority</i>
1	Heads of Departments Additional Secretaries to Ministries Government Agents Senior Assistant Secretaries to Ministries	Cabinet of Ministers
2	Public Officers in Staff Grade in the Combined Services	Secretary to the Ministry of Public Administration
3	(a) Public Officers in Staff Grade not in the Combined Services (b) Public Officers in Staff Grade in the Auditor General's Department and the Department of Elections, not in the Combined Services	Secretary to the Ministry concerned/Head of the Department if not under a Ministry Secretary to the President
4	Public Officers not in Staff Grade in the Combined Services	Director, Combined Services
5	Public Officers not in Staff Grade and not in the Combined Services	Head of the Department

2 : 11 : 2 Transfers.

<i>Category</i>	<i>Description</i>	<i>Authority</i>
1	Heads of Departments Additional Secretaries to Ministries Government Agents Senior Assistant Secretaries to Ministries	Cabinet of Ministers
2	Public Officers in Staff Grade in the Combined Services (a) Outside a Ministry (b) Within a Ministry (c) Within a Department	Secretary, Ministry of Public Administration Secretary to the Ministry concerned Head of the Department

<i>Category</i>	<i>Description</i>	<i>Authority</i>
3	(a) Public Officers in Staff Grade not in the Combined Services	Secretary to the Ministry concerned/Head of the Department if not under a Ministry
	(b) Public Officers in Staff Grade in the Auditor General's Department and the Department of Elections, not in the Combined Services	Secretary to the President
4	Public Officers not in Staff Grade in the Combined Services	
	(a) Outside a Ministry	Director, Combined Services
	(b) Within a Ministry	Secretary to the Ministry concerned
	(c) Within a Department	Head of the Department
5	Public Officers not in Staff Grade and not in the Combined Services	
	(a) Within a Ministry	Secretary to the Ministry
	(b) Within a Department	Head of the Department

2 : 12 The Public Service Commission will have the powers specified in Article 58 (2) i.e. any Public Officer aggrieved by any order of transfer or dismissal or any other order relating to a disciplinary matter made by a Public Officer to whom the Public Service Commission has delegated its powers shall have a right of appeal to the Public Service Commission.

Schemes of Recruitment

3 : 1 For every post in the Public Service there should be a Scheme of Recruitment which specifies the salary scale of post, the qualifications required, age limits and other similar particulars. The schemes of recruitment in respect of posts in the Public Service which as on 6.9.78 had already received approval as provided for in paragraph 3 : 1 of the Public Administration Circular 54 of 1.7.72 will continue to be in force subject to any such changes as may be made hereafter.

3 : 2 Where a new scheme of recruitment has to be drawn up or where any change has to be effected in an existing scheme of recruitment, the Ministry concerned should prepare the new scheme of recruitment or the amended scheme and forward it to the Director of Establishments of the Ministry of Public Administration. Where the Ministry of Public Administration agrees with the proposed new scheme of recruitment or the amended scheme of recruitment, such schemes should be considered as approved and come into force immediately on approval. Where, however, there is a difference of opinion between the Ministry concerned and the Ministry of Public Administration in relation to a scheme of recruitment, the matter should be submitted to the Cabinet of Ministers for a ruling by the Ministry which prepared the scheme. Where there is a major change in a scheme of recruitment, the Ministry of

Public Administration may suggest to the Ministry concerned that the scheme be submitted to the Cabinet of Ministers for approval even if it is in agreement with the change proposed.

- 3:3 All recruitment to the Public Service should be in accordance with schemes of recruitment approved as provided in paragraphs 3:1 and 3:2 above. If any Appointing Authority wishes to make an appointment whether on a permanent or temporary basis outside the approved scheme of recruitment, it should seek the concurrence of the Ministry of Public Administration. In the event of a difference of opinion between the Ministry concerned and the Ministry of Public Administration, the matter should be referred to the Cabinet of Ministers for a decision, by the Ministry concerned.

Advertisement

- 4:1 As a general rule all vacancies in the Public Service should be publicly advertised except—
- (i) appointments made directly by the Cabinet of Ministers;
 - (ii) in cases in which as on 6.9.78 it had already been provided that recruitment need not be by public advertisement;
 - (iii) in cases in which the Cabinet of Ministers directs that it is not necessary.
- 4:2 Advertisement will not be necessary in the case of promotions within a Department or Service or in special cases where the appointing authority decides that the number of persons having particular specialised qualifications is so few that it is not necessary to resort to public advertisement. Acting appointments made when there is a substantive holder of the post need not be advertised.
- 4:3 The advertisement should be inserted by the Appointing Authority.
- 4:4 All advertisements for vacancies in the Public Service should strictly conform to the approved scheme of recruitment.
- 4:5 When applications for any posts so advertised are received they should be examined in order to check the eligibility of the applicants in terms of the schemes of recruitment and the applications should be scheduled. This should be done in the office of the appointing authority. However, where recruitment is by examination conducted by the Examinations Department, the receipt and scheduling of applications will be done by the Examinations Department.

Selection Boards and Viva Voce Boards

- 5:1 Where the approved scheme of recruitment prescribes a Selection Board or a Viva Voce Board, the Board will be appointed by the Appointing Authority.
- 5:2 At least one of the members of every such Board should be drawn from a Ministry or Department other than the Ministry or Department in which the vacancy exists, unless otherwise specified in the scheme of recruitment.

Letters of Appointment

- 6 : 1 In the case of appointments made directly by the Cabinet of Ministers the letters of appointment will be issued by or on behalf of the Secretary to the Cabinet.
- 6 : 2 In the case of other appointments, the letters of appointment will be issued by the Appointing Authority.
- 6 : 3 Letters of appointment should mutatis mutandis conform to the format set out in Appendix 22 of the Establishments Code as amended by Public Administration Circular No. 43.

Acting Appointments

- 7 : 1 All acting appointments to posts in the Public Service, whether a substantive vacancy exists or not, should be made by the authority empowered to make substantive appointments to the post concerned. An officer appointed to act in a post should have the qualifications specified in the approved scheme of recruitment.
- 7 : 2 If no person with the qualifications specified in the approved scheme of recruitment is available for appointment, and it is necessary that the post should be filled immediately, then the most suitable officer could be appointed to "attend to" duties of the post in terms of Section 13 : 5 of Chapter II of Establishments Code.

Release of Officers to Statutory Boards and Corporations

- 8 : 1 Where a Public Officer is to be released either temporarily or permanently for service in a Public Corporation, subject to the provisions of any law, the Ministry under which the Public Corporation functions should obtain the permission of the appointing authority of the officer concerned, the Secretary to the Ministry in which he holds office and the Secretary to the Ministry of Public Administration.

Procedure for Dismissal and Disciplinary Control of Public Officers

- 9 : 1 The Cabinet of Ministers will, in due course, formulate the procedures to be adopted with regard to the dismissal and disciplinary control of Public Officers in respect of whom it has delegated its powers. Pending the issue of these Rules, the provisions of the Establishments Code c. XLVIII should mutatis mutandis be followed.

Transfer of Public Officers

- 10 : 1 Transfers shall be effected by the respective authorities set out in para. 2 : 11 : 2.
- 10 : 2 Transfers should be effected as far as possible in accordance with the provisions laid down in Chapter III of the Establishments Code.

Confirmation, Extensions of Probationary Periods, Retirements and Resignations.

- 11 : 1 The confirmation of Public Officers, the extension of their probationary periods and the acceptance of their retirements and resignations will be done by the authority responsible for making appointments to the particular post which the officer holds or Service to which he belongs.

Approval of Increments

- 12 : 1 The approval of increments of Public Officers will mutatis mutandis be done by the same authorities specified in Sec. 10 of Chapter VII of the Establishments Code.
- 12 : 2 Where an increment is withheld on disciplinary grounds, it should be done with the approval of the authority exercising disciplinary control in respect of such officer.

Code of Conduct for Public Officers, principles to be followed in making promotions and transfers and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of Public Officers.

- 13 : 1 The provisions of the Establishments Code c. I to c. XLVIII and all Circulars issued by the Ministry of Public Administration and Home Affairs or the Director of Establishments which were in force on 6.9.78 will mutatis mutandis continue to be in force in so far as their provisions are not inconsistent with any of the provisions of this Circular.

Pending Cases

- 14 : 1 In all cases, where action relating to the appointment, transfer, dismissal or disciplinary control of a Public Officer had been initiated prior to the introduction of the New Constitution and was still pending on 6.9.78, the new authority responsible for the appointment, transfer, dismissal or disciplinary control of the officer concerned in terms of this Circular should be consulted on further action to be taken.
- 14 : 2 In cases where a Selection Board had already been appointed to select candidates for appointments, the recommendations of the Selection Board should be sent to the authority now responsible for the appointment under this Circular.
- 14 : 3 In cases where disciplinary proceedings are in progress, they should be completed, and the report of the Inquiry Officer or Tribunal should be sent to the authority now responsible for taking disciplinary action against the officer concerned under this Circular.

Powers of Cabinet of Ministers to alter, vary or rescind appointments, etc. (Article 59)

- 15 : 1 "The Cabinet of Ministers has the power to alter, vary or rescind—
- (a) any appointment, order of transfer or dismissal or any other order relating to a disciplinary matter made, on appeal or otherwise, by the Public Service Commission or a Committee thereof;
 - (b) any order of transfer made by a Minister; or
 - (c) any appointment made by a Public Officer to whom the Public Service Commission or any Committee thereof has delegated its powers under Article 58 (1)."

16. This Circular supersedes Public Administration Circular No. 54 of 1st July, 1972 and the provisions of any other Circulars which are inconsistent with the provisions of this Circular.

D. B. I. P. S. SIRIWARDHANE,
Secretary,
Ministry of Public Administration
and Home Affairs.