

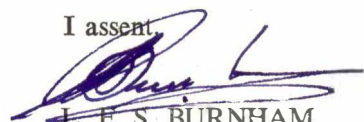


GUYANA

ACT No. 17 of 1984

PUBLIC SERVICE APPELLATE TRIBUNAL ACT 1984

I assent.



E. F. S. BURNHAM,
President.

1984—11—14

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SCHEDULE — Appealable Matters

A.D. 1984] PUBLIC SERVICE APPELLATE TRIBUNAL No. 17]

AN ACT to alter the Constitution in accordance with article 66 and 164 thereof, and to make provision for the establishment of a Public Service Appellate Tribunal and for matters connected therewith or incidental thereto.

Enacted by the Parliament of Guyana :—

A.D. 1984

PART I.

PRELIMINARY

1. (1) This Act may be cited as the Public Service Appellate Tribunal Act 1984. Short title and commencement.

(2) The provisions of Part III shall come into operation on such date, not being prior to the coming into operation of Part II, as the Minister may by order appoint.

PART II.

AMENDMENTS TO THE CONSTITUTION

2. Article 155(1) (d) of the Constitution is hereby altered by the insertion, after the words "member of", of the words "the Public Service Appellate Tribunal,". Alteration of article 155 of the Constitution.

3. Article 192(6) of the Constitution is hereby altered by the insertion, after the word "article", of the words "the Public Service Appellate Tribunal,". Alteration of article 192 of the Constitution.

4. Article 199 of the Constitution is hereby altered by the insertion, after paragraph (2), of the following paragraphs as paragraphs (2A) and (2B) — Alteration of article 199 of the Constitution.

"(2A) Where any power of the Judicial Service Commission is exercised under paragraph (2), any person in respect of whom the power was exercised (including a person who has failed to obtain an appointment) may appeal to that Commission from the decision of the person exercising the power.

(2B) The decision of the Judicial Service Commission on any appeal made under paragraph (2A) shall be final."

Alteration
of article
202 of the
Constitu-
tion.

5. Article 202(2) of the Constitution is hereby altered by the substitution, for the word "The", of the words "Subject to the other provisions of this Constitution, the".

Alteration
of article
207 of the
Constitu-
tion.

6. Article 207 of the Constitution is hereby altered by the substitution, for paragraph (5), of the following paragraph —

"(5) A person shall be disqualified for appointment as an appointed member of the Commission if he is a public officer."

Alteration
of article
209 of the
Constitu-
tion.

7. Article 209 of the Constitution is hereby altered by the re-numbering of it as paragraph (1) of that article and by the insertion, after paragraph (1) as so re-numbered, of the following paragraphs as paragraphs (2), (3) and (4) —

"(2) The Teaching Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under paragraph (1) to any one or more of its members or, with the consent of the Prime Minister, to any public officer.

(3) Where any power of the Teaching Service Commission is exercised under paragraph (2), any person in respect of whom the power was exercised (including a person who has failed to obtain an appointment) may appeal to that Commission from the decision of the person exercising the power.

(4) Subject to the other provisions of this Constitution, the decision of the Teaching Service Commission on any appeal made under paragraph (3) shall be final."

Insertion of
new sub-
heading and
new article
215A in the
Constitu-
tion.

8. The Constitution is hereby altered by the insertion in Title 7 of Part 2, after article 215, of the following sub-heading, and of the following article as article 215A —

Public Service Appellate Tribunal

Establish-
ment and
functions
of the Public
Service
Appellate
Tribunal.

215A. (1) Parliament may, by law, provide for the establishment of a Public Service Appellate Tribunal (hereafter in this article referred to as the "Tribunal") consisting of a chairman and such number of other members, being not less than two, as may be provided by that law.

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- (2) The chairman of the Tribunal shall be appointed by the President by instrument in writing and shall be a person who —
- (a) holds or has held the office of a Judge of the Court of Appeal; or
 - (b) is qualified to be appointed as a Judge of the Court of Appeal and holds or has held the office of a Judge of the High Court.
- (3) A person shall be disqualified for appointment as a member of the Tribunal if he is a member of the Public Service Commission, the Teaching Service Commission or the Police Service Commission or is a public officer.
- (4) A person shall not, while he holds the office of a member of the Tribunal or within a period of three years commencing with the date on which he last held that office, be eligible for appointment to, or act in, any office power to make appointments to which is vested by this Constitution in —
- (a) the President acting in accordance with the advice of, or after consultation with, the Public Service Commission or the Police Service Commission; or
 - (b) the Public Service Commission, the Teaching Service Commission or the Police Service Commission.
- (5) Where a Tribunal has been established under paragraph (1), an appeal shall lie to the Tribunal, subject to such conditions (if any) as may be specified by or under the law by which it is established, in respect of any matter so specified, being a matter in respect of which the Public Service Commission, the Teaching Service Commission, the Police Service Commission or the Commissioner of Police is empowered to make a decision under any provision of this Constitution :

Provided that no appeal shall lie to the Tribunal —

- (a) from any decision of the Public Service Commission or the Police Service Commission in respect of appointment to any office to which article 225 applies or in respect of any matter concerning any person holding, or acting in, any such office;

- (b) from any decision of the Public Service Commission, the Teaching Service Commission or the Police Service Commission in respect of any appointment, in a case where such appointment is required by this Constitution to be made after consultation with such Commission; and
 - (c) from any decision of the Public Service Commission in respect of any matter referred to in article 201(6) to which the Judicial Service Commission has concurred.
- (6) Subject to the provisions of this Constitution, the law referred to in paragraph (1) may make, or authorise the making of, provisions with respect to all matters connected with the Tribunal.
- (7) Without prejudice to the generality of the provisions of the preceding paragraph, but subject to the provisions of this article, such law may, in particular, make, or authorise the making of, provisions for all or any of the following matters —
- (a) the constitution of the Tribunal;
 - (b) the terms and conditions of the appointment of the members of the Tribunal and the qualifications and disqualifications for such appointment;
 - (c) the matters in respect of which, and the persons by whom, an appeal to the Tribunal may be brought and all other matters relating to the jurisdiction, powers and duties of the Tribunal;
 - (d) the manner in which and the conditions, if any, subject to which an appeal to the Tribunal may be brought, including conditions with respect to the time within which the appeal may be brought and the fee payable in respect of the appeal or any application made to the Tribunal; and
 - (e) the practice and procedure of the Tribunal.
- (8) The provisions of article 225 (which relate to removal from office) shall apply to the office of the chairman of the Tribunal, and for the purposes of paragraphs (4) and (6) of that article the prescribed authority shall be the Prime Minister.

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- (9) For the avoidance of doubt it is hereby declared that the prohibition in article 226(6) against enquiry in any court into the question referred to therein shall not apply to proceedings before the Tribunal.
- (10) Save as otherwise provided by Parliament by law, the Public Service Commission, the Teaching Service Commission, the Police Service Commission, the Commissioner of Police, every person to whom any power of any of the aforesaid Commissions or of the Commissioner of Police has been delegated and every public officer, whether or not he is a person to whom any such power has been delegated, and authority shall give effect as expeditiously as possible to the decision of the Tribunal on any appeal brought to it or any application made to it.
- (11) In deciding any question arising in an appeal brought to the Tribunal or an application made to it, no member of the Tribunal shall be subject to the direction or control of any other person or authority.
- (12) Any question whether —
- (a) the Tribunal or any bench thereof has validly performed any function vested in it by or under this Constitution; or
 - (b) any member of the Tribunal or any other person has validly performed any function in relation to the work of the Tribunal,
- shall not be enquired into in any court.

9. Article 232 of the Constitution is hereby altered in the following respects —

- (a) by the insertion in the definition of the expression "public office" in paragraph (1), after the words "public service", of the words "and for the avoidance of doubt it is hereby declared that the expression includes the office of a teacher in the public service and any office in the Police Force";
- (b) by the insertion in paragraph (5) (b), after the word "Constitution", of the words "or of the Public Service Appellate Tribunal";
- (c) by the insertion in paragraph (8), after the words "article 226(6)", of the words "and article 215A(12)".

Alteration
of article
232 of the
Constitu-
tion.

PART III.
PUBLIC SERVICE APPELLATE TRIBUNAL

**Inter-
pretation.**

10. In this Part —

- (a) “appointment by promotion”, in relation to any public officer, includes appointment by way of secondment, transfer or otherwise, of that officer either substantively to, or to act in, any office higher than the office or post that officer was holding substantively immediately before such appointment;
- (b) “article” means an article of the Constitution;
- (c) “the bench of the Tribunal”, in relation to any appeal, or interlocutory proceedings in that appeal, means a bench of the Tribunal constituted as provided in section 20(1) and having jurisdiction to hear that appeal;
- (d) “chairman” means the chairman of the Tribunal;
- (e) “member” means a member of the Tribunal and includes the chairman;
- (f) “Minister” means the Minister charged with responsibility for administrative matters relating to the Tribunal or, if there is no such Minister, the Minister charged with responsibility for public service personnel administration;
- (g) “public office” means an office of emolument in the public service, other than an office within the jurisdiction of the Judicial Service Commission or the Teaching Service Commission or the Office of the Commissioner of Police or any other office in the Police Force;
- (h) “public officer” means the holder of any public office and includes any person appointed to act in any such office;
- (i) “registrar” means registrar of the Tribunal;
- (j) “Service Commission” means the Public Service Commission;
- (k) “Tribunal” means the Public Service Appellate Tribunal established by section 11 and includes a bench of the Tribunal.

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11. (1) There is hereby established a tribunal to be known as the Public Service Appellate Tribunal consisting of a chairman having the qualifications, and appointed in the manner, specified by article 215A(2) and —

Establishment of the Public Service Appellate Tribunal.

- (a) a member to be appointed by the President by instrument in writing from among persons appearing to him to be qualified as having had experience of, and shown capacity in, matters relating to administration, personnel management or public affairs;
- (b) one person to represent each of such organisations (being organisations as appear to the President to represent public officers or classes or sections of public officers) as may be specified by the President by notification in the *Gazette* for the purposes of this subsection, to be appointed by the President by instrument in writing on the nomination of the organisation to represent which the member is appointed.

(2) The names of the members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.

12. (1) Subject to the provisions of article 215A (8), the office of a member shall become vacant at the expiration of three years from the date of his appointment or at such earlier time as may be specified by the instrument by which he was appointed.

Terms and conditions of appointment of the members of the Tribunal

(2) The provisions of subsection (1) shall be without prejudice to the power of the President to revoke the appointment of a member of the Tribunal appointed under section 11(1)(b) on a request being made for such revocation to the President by the organisation to represent which he was appointed.

(3) The other terms and conditions of the appointment of the members of the Tribunal shall be such as may be prescribed by the Minister by regulations.

13. The headquarters of the Tribunal shall be at Georgetown:

Headquarters of the Tribunal.

Provided that the Tribunal may hold its sittings at any other place in Guyana.

Registrar
and other
staff of the
Tribunal.

14. (1) There shall be a registrar of the Tribunal.
- (2) The registrar shall be the chief executive officer of the Tribunal.
- (3) The Minister shall provide the Tribunal with such other staff as it may require for the exercise of its functions.

Oath of
office by
members
and registrar.

15. Every member and the registrar shall before entering on the duties of his office take before the President an oath of office in such form as may be prescribed by the Minister by regulations.

Administra-
tion of oaths
by members
or registrar.

16. Every member and the registrar shall have power to administer oaths and take affidavits, and to take solemn affirmations or declarations in lieu of oaths.

Appeals to
the Tribunal.

17. (1) Subject to, and save as otherwise provided in, the other provisions of this Part, an appeal shall lie to the Tribunal from any decision of the Service Commission in respect of any matter mentioned in the Schedule, in the form in which the Schedule is in force on the date of the decision.

(2) An appeal under subsection (1) may be brought to the Tribunal by any person aggrieved by any decision referred to therein within a period of ninety days computed from -

- (a) the date of the receipt of the decision by him; or
- (b) the date on which he otherwise came to know of the decision,

whichever date is earlier:

Provided that the bench of the Tribunal may entertain an appeal after the expiry of the aforesaid period of ninety days if it is satisfied that there was reasonable cause for the delay.

(3) No appeal shall lie from any decision referred to in subsection (1) made before the commencement of this Part.

(4) Every appeal shall be in such form and accompanied by such documents and by such fees, as may be prescribed by the Minister by regulations.

Parties to
the appeal.

18. (1) All persons likely to be directly affected by the outcome of the appeal shall be made parties to the appeal by the appellant:

Provided that no person shall without his consent be made a party to the appeal as appellant.

(2) The bench of the Tribunal may, at any stage of the proceedings in an appeal, either upon or without the application of any

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party, and on such terms as appear to the bench to be just, order that the name of any party improperly joined be struck out and that the name of any party, who ought to have been joined or whose presence before the bench may be necessary in order to enable the bench effectually and completely to adjudicate upon and settle all questions involved in the appeal, be added.

19. (1) Every appeal shall, as soon as may be practicable after it is brought, be placed by the registrar before a bench of the Tribunal constituted as provided in section 20 (1) for preliminary hearing and notice of the date of such hearing shall be issued to the appellant. **Notice of appeal to the respondent.**

(2) If the bench of the Tribunal after hearing the appellant is satisfied that —

- (a) the appeal is brought within the period specified in section 17 (2) or, if the appeal is brought after the expiry of that period, there was reasonable cause for the delay;
- (b) the appellant has complied with the provisions of section 17 (4) relating to form of the appeal, production of documents and payments of fees, if any; and
- (c) the appeal is not frivolous or vexatious,

it may order that notice be issued to the respondent or, if there are more respondents than one, to all the respondents, to show cause why the appeal should not be allowed, and in other cases it shall dismiss the appeal:

Provided that in a case where the bench of the Tribunal is satisfied of the matters referred to in paragraphs (a) and (c), but is of the opinion that the appellant has not complied with the provisions of section 17 (4) relating to form of the appeal, production of documents and payment of fees in bringing the appeal, the bench of the Tribunal may if it considers the same to be necessary in the interests of justice, allow the appellant reasonable time to comply with the provisions of section 17 (4) and shall dismiss the appeal under this subsection only if the appellant fails or refuses to cure the defect within the time so allowed.

20. (1) Every appeal shall be heard by a bench of the Tribunal consisting of — **Hearing of appeal.**

- (a) the chairman;
- (b) the member referred to in section 11 (1) (a);
- (c) from among the members referred to in section 11 (1) (b), the member nominated by that organisation which has been authorised by the appellant to

represent him in matters relating to his employment or, if there is no such member, one of the aforesaid members to be nominated by the chairman.

(2) Notice of every hearing of the appeal, other than a hearing under section 19, and of the date on which the decision of the bench of the Tribunal is to be announced shall be given to all the parties to the appeal.

(3) A party to the appeal may, unless directed by the bench of the Tribunal for reasons to be recorded in writing to appear personally, appear either personally or through any other person, duly authorised by him in that behalf, or an attorney-at-law.

(4) The Service Commission may, if it so desires, be represented at the hearing by the bench of the Tribunal, of any appeal from a decision by it or any interlocutory proceedings in the appeal, by the Secretary of the Service Commission or an attorney-at-law, and the Secretary of the Service Commission or the attorney-at-law representing the Service Commission shall be entitled to be heard by the bench while hearing the appeal or the interlocutory proceedings in the appeal, as the case may be.

(5) The bench of the Tribunal may, if it appears to be expedient in the interests of justice, postpone or adjourn the hearing of an appeal or application or other proceedings for such time and to such place, and upon such terms, if any, as it may think fit.

Absence of parties at hearing.

21. (1) If any of the parties to the appeal fails to appear when the appeal is called on for hearing by the bench of the Tribunal, the bench may proceed to hear the appeal in the absence of that party.

(2) Where an appeal has been heard by the bench of the Tribunal under subsection (1) in the absence of any party and any order has been made therein adverse to the party so absent, that party may apply, within such time as may be prescribed by the Minister by regulations, to the Tribunal to set aside the order and to re-hear the appeal and, the bench of the Tribunal may, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-heard.

(3) The provisions of subsections (1) and (2) shall apply *mutatis mutandis* to the hearing of an application by the bench of the Tribunal.

Admission of evidence by the bench of the Tribunal.

22. (1) The bench of the Tribunal may, if it appears to the bench to be necessary for the determination of any matter in dispute in any appeal before it, allow the production of evidence or fresh evidence.

(2) The bench of the Tribunal may accept evidence by affidavit or otherwise.

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23. (1) The bench of the Tribunal shall have the power of a Judge of the High Court to summon witnesses, and to call for the production of books, plans and other documents, and to examine witnesses and parties concerned on oath. Power of the bench of the Tribunal to summon and examine witnesses.

(2) A summons for the attendance of a witness or other person, or the production of documents, shall be in such form as may be prescribed by the Minister by regulations, shall be signed by the registrar and shall be served in the same manner as a notice.

24. Every person summoned to attend and give evidence, or to produce books, plans or other documents at any sitting of the bench of the Tribunal, shall be bound to obey the summons served upon him as fully in all respects as a witness is bound to obey a subpoena issued from the High Court, and shall be entitled to like expenses as if he had been summoned to attend the High Court on a civil trial and such expenses shall be paid by the party summoning the witness. Duty of witnesses summoned.

25. (1) Every person, referred to in section 24, refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every such person attending but leaving a sitting of the bench of the Tribunal without the permission of the members of the bench or refusing without sufficient cause to answer, or answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the bench or refusing or omitting without sufficient cause to produce any books, plans or other documents in his possession or under his control and mentioned or referred to in the summons served on him, and every person who shall, at any sitting of any bench of the Tribunal, wilfully insult any member or the registrar or wilfully interrupt the proceedings of the bench, shall be liable on summary conviction to a fine of five hundred dollars and to imprisonment for six months. Penalty for contumacy or insult, interruption of proceedings, etc.

(2) Any witness, who shall wilfully give false evidence in any proceedings before any bench of the Tribunal concerning the subject matter of the proceedings, shall be guilty of perjury and shall be liable to be prosecuted and punished accordingly.

26. (1) The bench of the Tribunal may, if it appears to the bench to be necessary for the determination of any matter in dispute in any appeal before it, direct the Service Commission to produce the record of the proceedings of, or before, the Service Commission relating to the decision appealed from. Power of the bench of the Tribunal to call for the record of the proceedings relating to the decision appealed from.

(2) A direction under subsection (1) shall be addressed to the Secretary of the Service Commission, and sections 24 and 25 shall apply to, and in relation to, any such direction as if it were a summons issued under section 23 to the Secretary and each of the members of the Service Commission.

**Procedure
of the
Tribunal.**

27. (1) Subject to the provisions of this Part, the Minister may make regulations to prescribe the procedure of the Tribunal.

(2) No appeal shall be deemed to be validly decided by the Tribunal unless it is decided by a bench of the Tribunal constituted in the manner provided in section 20 (1).

(3) Subject to the provisions of this Act and the regulations made by the Minister, the Tribunal may regulate its own procedure and the chairman may, after consultation with the other members, make rules for that purpose.

**Order of
the bench
of the
Tribunal.**

28. (1) The bench of the Tribunal shall announce its decision on any matter heard by it as soon as may be practicable after the hearing.

(2) Where all the members of the bench of the Tribunal agree on the decision on any matter before it, that decision shall be the decision of the bench, but where all the members of the bench do not agree on the decision, the decision of the majority of the members of the bench shall be the decision of the bench.

(3) The decision of the bench of the Tribunal shall be in writing and signed by the members of the bench who agree to the decision, and shall state the reasons for the decision:

Provided that a member of the bench who does not agree with the decision of the bench may record and sign his dissent giving the reasons therefor and it shall be annexed to the decision.

(4) A party to the appeal shall, on application made therefor by him and payment of such fees, if any, as may be prescribed by the Minister by regulations, be provided with a copy of the decision of the bench of the Tribunal on that appeal or any proceedings in that appeal.

(5) The decision of the bench of the Tribunal on any appeal brought to it and on any application or other interlocutory proceedings in the appeal shall be final.

**Appeals by
certain
organisa-
tions.**

29. (1) Where any organisation representing public officers or any class or section of public officers is of the view that a decision of the Service Commission involves a principle and the decision is wrong, it may bring an appeal to the Tribunal within a period of ninety days computed from the date on which the secretary of the organisation came to know of the decision:

Provided that the bench of the Tribunal may entertain an appeal after the expiry of the aforesaid period of ninety days if it is satisfied that there was reasonable cause for the delay.

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(2) The decision of the Tribunal on the principle involved in the decision of the Service Commission shall be binding on the Service Commission in regard to any matter that may arise for the consideration of the Service Commission after the date of the decision of the Tribunal, but the decision of the Tribunal on the principle shall not affect anything done by the Service Commission before the aforesaid date.

(3) It shall not be necessary for the organisation bringing an appeal under subsection (1) to make any public officer a party to it or for the Tribunal to hear any public officer.

(4) Subject to the provisions of this section and save as otherwise provided in any other provision of this Part, the other provisions of this Part shall apply *mutatis mutandis* to, and in relation to, any appeal brought by any organisation under subsection (1).

30. (1) Where an appeal, not being an appeal brought under section 29 (1), has been brought to the Tribunal, the bench of the Tribunal may, on application made to it by the appellant and on being satisfied that the interests of justice so require —

- (a) stay the operation of the decision appealed from; or
- (b) make such other order as it considers appropriate in respect of the operation or enforcement of the order appealed from,

on such conditions, if any, as it deems fit.

(2) An order under subsection (1) shall ordinarily be made after notice of the application for the order to the respondent or, if there are more respondents than one, to all the respondents, but if the bench of the Tribunal is satisfied that the delay likely to be caused by the time taken for the service of the notice on the respondent or the respondents may defeat the interests of justice, it may make any order referred to in subsection (1) without the issue of any such notice and thereafter issue notice of the application to the respondent or the respondents:

Provided that a respondent may, on receipt of the notice or otherwise, appear and show cause against the order so made and after hearing the parties to the appeal the bench of the Tribunal may confirm, modify or cancel the order.

31. Notices under this Part shall be in such form, and shall be served in such manner, as may be prescribed by the Minister by regulations. Form and manner of service of notices.

32. Notwithstanding anything contained in any other provision of this Part, no appeal shall lie to the Tribunal from any decision Exemptions

sion of the Service Commission mentioned in the proviso to article 215A (5).

**Power to
amend the
Schedule.**

33. The Minister may by order, subject to negative resolution of the National Assembly, amend the Schedule by including therein any matter in respect of which the Service Commission is empowered to make a decision.

**Power to
make
regulations.**

34. (1) The Minister may make regulations for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may in particular provide for all or any of the following matters —

- (a) the terms and conditions of the appointment of the members of the Tribunal;
- (b) the form of the oath of office to be taken by the members and the registrar;
- (c) the form of an appeal to the Tribunal and the documents and the fees that shall accompany the appeal;
- (d) the forms of applications under this Act; and the time within which an application under section 21 for the re-hearing of an appeal or application shall be made;
- (e) the form of summons for the attendance of a witness or other person or the production of documents;
- (f) the procedure of the Tribunal, including the manner of the hearing of an appeal or application by the bench of the Tribunal, the mode of the proof and admissibility of evidence in proceedings before the bench of the Tribunal, and the recording and proof of the decisions of the bench of the Tribunal;
- (g) the fees payable for obtaining a copy of a decision of the bench of the Tribunal;
- (h) the form and manner of service, of notices under this Act;
- (i) the functions of the registrar;
- (j) any other matter that is required to be, or may be, prescribed by the Minister by regulations made under this Act.

[A.D. 1984 PUBLIC SERVICE APPELLATE TRIBUNAL No. 17]

SCHEDULE

s. 17 (1)

Appealable Matters

1. Appointment by promotion of any person to a public office.
2. Exercise of disciplinary control over any person holding, or acting in, any public office.

Passed by the National Assembly on 1984—09—27

in accordance with article 164 of the Constitution.



F. A. Narain,
Clerk of the National Assembly.

(BILL No. 14/1984)