

NOTIFICATION

New Delhi, the 27th October, 2009

G.S.R. 779(E).— In exercise of the powers conferred by clause (s) of sub section (2) of section 87, read with subsection (3) of section 54 of the Information Technology Act 2000 (21 of 2000), and in supersession of the Cyber Regulations Appellate Tribunal (Procedure for Investigation of misbehaviour or Incapacity of Presiding Officer) Rules, 2003, except as respects things done or omitted to be done before such supersession, Central Government hereby makes the following rules, namely:—

1. Short title and commencement.— (1) These rules may be called the Cyber Appellate Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of Chairperson and Members) Rules, 2009.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.— (1) In these rules, unless the context otherwise requires,—

(a) "Act" means the Information Technology Act 2000 (21 of 2000);

(b) "Chairperson" means the Chairperson of the Cyber Appellate Tribunal appointed under section 49 of the Act;

(b) "Committee" means a Committee constituted under sub-rule (2) of rule 3;

(c) "Member" means the Member of the Cyber Appellate Tribunal appointed under section 49 of the Act;

(d) "Tribunal" means the Cyber Appellate Tribunal established under sub-section (1) of section 48 of the Act.

(2) All other words and expressions used but not defined in these rules shall have the meaning respectively assigned to them in the Act.

3. Committee for investigation of complaints.— (1) If a written complaint, alleging any definite charges of misbehaviour or incapacity to perform the functions of the offices in respect of the Chairperson or the Member, as the case maybe, is received by the Central Government, it shall make a preliminary scrutiny of such complaint.

(2) If, on preliminary scrutiny, the Central Government considers it necessary to investigate into the allegation, it shall place the complaint together with other material as may be available, before a Committee consisting of the following officers to investigate the charges of allegations made in the complaint, namely :-

- (i) the Secretary (Co-ordination and Public Grievances) in the Cabinet Secretariat, Government of India - Chairman;
 - (ii) the Secretary, Department of Information Technology, Government of India – Member;
 - (iii) the Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India -- Member.
- (3) The Committee shall devise its own procedure and method of investigation, which may include recording of evidence of the complainant and collection of material under rule 4, which may be relevant to the conduct of inquiry.
- (4) The Committee shall submit its findings to the President as early as possible within a period that may be specified by the President in this behalf.
- 4. Judge to conduct inquiry.**— (1) If, the President, on receipt of the report of the Committee under sub-rule (4) of rule 3, is of the opinion that there are reasonable grounds for making an inquiry into the truth of any imputation of misbehaviour or incapacity of the Chairperson or the Member, as the case maybe, then, he shall make a reference to the Chief Justice of India requesting him to nominate a Judge of the Supreme Court to conduct the inquiry.
- (2) The President shall, by order, appoint the Judge of the Supreme Court nominated by the Chief Justice of India (hereinafter referred to as the Judge) for the purpose of conducting the inquiry.
- (3) Notice of appointment of the Judge under sub-rule (2) shall be given to the Chairperson or the Member, as the case may be.
- (4) The President shall forward to the Judge a copy of—
- (a) the articles of charges against the Chairperson or the Member, as the case maybe, and the statement of imputations;
 - (b) the statement of witnesses, if any; and
 - (c) material documents relevant to the inquiry.
- (5) The Judge appointed under sub-rule (2) shall complete the inquiry within such time or further time as may be specified by the President.
- (6) The Chairperson or the Member, as the case maybe, shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Judge.
- (7) Where it is alleged that the Chairperson or the Member, as the case maybe, is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Judge may arrange for the medical examination of the Chairperson or the Member, as the case may be, by such Medical Board as may be appointed for the purpose by the President and the Chairperson or the Member, as the case may be, shall submit himself to such medical examination within the time specified in this behalf by the Judge.
- (8) The Medical Board shall undertake such medical examination of the Chairperson or the Member, as the case may be, as may be considered necessary to and submit a report to the Judge stating therein whether the incapacity is such as to render the Chairperson or the Member, as the case maybe, unfit to continue in office.
- (9) If the Chairperson or the Member, as the case maybe, refuses to undergo such medical examination as considered necessary by the Medical Board, the Board shall submit a report to the Judge stating therein the examination which the Chairperson or the Member, as the case maybe, has refused to undergo, and the Judge may, on receipt of such report, presume that the Chairperson or the Member, as the case may be, suffers from such physical or mental incapacity as is alleged in the article of charges referred to clause (a) of sub-rule (4).

(10) The Judge may, after considering the written statement of the Chairperson or the Member, as the case maybe, and report of the Medical Board, if any, amend the article of charges referred to in clause (a) of sub-rule (4) and in such case, the Chairperson or the Member, as the case maybe, shall be given a reasonable opportunity of presenting a fresh written statement of defence.

(11) The Central Government shall appoint an officer of that Government or an advocate to present the case against the Chairperson or the Member, as the case may be, before the Judge.

(12) Where the Central Government has appointed an advocate to present its case before the Judge, the Chairperson or the Member, as the case maybe, shall also be allowed to present his case by an advocate chosen by him.

5. Application of the Departmental Inquiries (Enforcement of Witness and Production of Documents) Act, 1972 to inquiries under these rules.— The provisions of the Departmental Inquiries (Enforcement of Witness and Production of Documents) Act, 1972 (18 of 1972), shall apply to the inquiries made under these rules as they apply to departmental inquiries.

6. Powers of Judge.— The Judge shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and shall have power to regulate his own procedure including the fixing of places and times of his inquiry.

7. Suspension of Chairperson or Member.— Notwithstanding anything contained in rule 4, and without any prejudice to any action being taken in accordance with the said rule, the President, keeping in view the gravity of charges may suspend the Chairperson or the Member, as the case may be, of the Tribunal against whom a complaint is under investigation or inquiry.

8. Subsistence allowance.— The payment of subsistence allowance to a Chairperson or the Member, as the case may be, under suspension shall be regulated in accordance with the rules and orders for the time being applicable to a Secretary to the Government of India belonging to the Indian Administrative Service.

9. Inquiry Report.— After the conclusion of the investigation, the Judge shall submit his report to the President stating therein his findings and the reasons therefor on each of the articles of charges separately with such observations on the whole case as he thinks fit.

[No. 9(16)/2004-EC]
N. RAVI SHANKER, Jt. Secy.