

AFT PROCEDURE & INVESTIGATION RULES 2008

04/0007/2003-05 REGD. NO. D. L. (N) 04/0007/2003—05 No. 151 Che Gazette of India PUBLISHED BY AUTHORITY WemaY 26, 2008, 4, 1930 NEW DELHI, JULY 20—JULY 26, 2008, SATURDAY/ASADHA 29—SRAVANA 4, 1930 Separate Paging is given to this Part in order that it may be filed as a separate compilation PART 11—Section 4 Statutory Rules and Orders issued by the Ministry of Defence 21 qd, 2008 64.--*rq 2007 (2007 55) 41 (1) 1. 1) fizni fiqq, 2008 I 2. fiqq, 2646 GI/2008 " •fifiq•q" 2007 (2007 55) i; (247) 248 THE GAZETTE OF INDIA: JULY 26, 2008/SRAVANA 4, 1930 [PART II—SEC. 41 (2) 2007 (2007 55) i, I (i) (ii) (iii) 5. 1) yrq (2) grq, (ii) i; (iii) I Vf *ZIT I : 26, 4, 1930 249 fiq)ré (10) (4) (i) fire (11) (12) qvi i, 6, () 1972 3fifiqq, 1972 (1972 18) 7. 1908 (1908 5) •sra 10. rym•usrRY OF DEFENCE New Delhi, the 21st July, 2008. S.R.O. 64.— In exercise of the powers conferred by sub-section (3) of Section 9 read with sub-section (1) and clause (b) of sub-section (2) of Section 41 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government hereby makes the following rules, namely:— 1. Short title and commencement.—(1) These rules may be called the Armed Forces Tribunal (Procedure for investigation of misbehaviour or incapacity of Chairperson, Vice-Chairperson and other Members) Rules, 2008. (2) They shall come into force on the date of their publication in the Official Gazette

2. Extent of application.—These rules shall be applicable to every Chairperson, Vice-Chairperson, Administrative Member and Judicial Member of the Armed Forces Tribunal. 250 GAZETTE OF INDIA: JULY 26, 2008/SRAVANA 4, 1930 3. Definitions.—(1) In these rules, unless the context otherwise requires,— (a) "Act" means the Armed Forces Tribunal Act, 2007 (55 of 2007); [PART 11 —SEC. 4] (b) "Administrative Member" means a Member of the Armed Forces Tribunal established under the Act who is not a Judicial Member within the meaning of clause (g) of Section 3; (c) "Chairperson" means a Chairperson of a Tribunal and includes a Vice-Chairperson; (d) "Committee" means the Committee referred to in sub-rule (2) of rule 4; (e) "Judge" means a sitting Judge of the Supreme Court appointed by the President under sub-rule (2) of rule 5 to conduct the inquiry; (f) "Judicial Member" means a Member of a Tribunal appointed as such under the Act, and includes the Chairperson or a Vice-Chairperson who possesses any of the qualifications specified in sub-section (2) of Section 6; (g) "Member" means a Member (whether Judicial or Administrative) of the Tribunal, and includes a Chairperson and a Vice-Chairperson; (h) "Section" means a Section of the Act; (i) "Tribunal" means the Armed Forces Tribunal established under the Act; (j) "Vice-Chairperson" means a Vice-Chairperson of the Tribunal. (2) Words and expressions used in these rules and not defined but defined in the Armed Forces Tribunal Act, 2007 (55 of 2007) shall have the meaning respectively assigned to them in the Act

4. Committee for investigation of complaints.—(1) If a written complaint, alleging any definite charge of misbehaviour or incapacity to perform the functions of the office in respect of a Member 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 supporting material as may be available, before a Committee consisting of the following officers to investigate into the charges made in the complaint : (iii) Cabinet Secretary Secretary, Ministry of Defence Secretary, Department of Legal Affairs, Ministry of Law and Justice —Chairperson —Member —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 relevant to the inquiry which may be conducted by a Judge of the Supreme Court under these rules. (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

5. Judge to conduct) If on the receipt of the findings of the committee, the President is of the opinion that there are reasonable grounds for making an inquiry into the truth of any imputation of misbehaviour or incapacity of a Member, 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 for the purpose of conducting the inquiry. (3) Notice of appointment of a Judge under sub-rule (2) shall be given to the Member concerned. (4) The President shall forward to the Judge a copy of— (i) the articles of charges

against the Member concerned and the statement of imputations; (ii) the statement of witnesses, if any, and (iii) material documents relevant to the inquiry. : 26, 2008/qrq•q 4, 1930 251 (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 Member concerned 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 Member concerned 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 Member by such Medical Board as may be appointed for the purpose by the President and the Member concerned 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 Member as may be considered necessary and submit a report to the Judge stating therein whether the incapacity is such as to render the Member unfit to continue in office. (9) If the Member 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 Member has refused to undergo, and the Judge may, on receipt of such report, presume that the Member suffers from such physical or mental incapacity as is alleged against the Member. (10) The Judge may, after considering the written statement of the Member and the Medical Report, if any, amend the charges referred to in clause (i) to sub-rule (4) and in such a case, the Member shall be given a reasonable opportunity of presenting a fresh written statement of defence. (11) The Central Government shall appoint its officer or an advocate to present the case against the Member. (12) Where the Central Government has appointed an advocate to present its case before the Judge, the Member concerned shall also be allowed to present his case by an advocate chosen by him

6. 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

7. 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

8. Suspension of Member.—Notwithstanding anything contained in rule 6 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 Member of the Tribunal against whom a complaint is under investigation or inquiry

9. Subsistence Allowance.—The payment of subsistence allowance to a Member 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

10. Inquiry Report.—After the conclusion of the investigation, the Judge shall submit his report to the President stating therein his findings and the reasons thereof on each of the articles of charges separately with such observations on the whole case as he thinks fit. SUMAN K. SHARMA, Under secy. 21 Md, 2008 2007 (2007 55) 7 41 fiqq; 2008 I Gi) " 2007 (2007 55) 2646 GTIog -2 252 THE GAZETTE OF JULY 26, 2008/SRAVANA 4, 1930 [PART 11—Sæ 41 (2) Wii efifiqq, 2007 (2007 55) i, qpf* QTqf, New Delhi, the 21st July, 2008 S.R.O. 65.—In exercise of the powers conferred by clause (k) of sub-section (2) of Section 41 read with Section 7 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Central Government hereby makes the following rules to regulate the procedure of appointment of Vice-Chairperson or other Members of the Armed Forces Tribunal, namely : 1. Short title and commencement—(1) These rules may be called the Armed Forces Tribunal (Procedure for appointment of Vice-Chairperson and other Members) Rules, 2008. (2) They shall come into force on the date of their publication in the Official Gazette. : 26, 2008/5ÄUT 4, 1930 2. Definitions.—(1) In these rules, unless the context otherwise requires,— (a) "Act" means the Armed Forces Tribunal Act, 2007 (55 of 2007); (b) "Chairperson" means the Chairperson of Selection Committee; (c) "Tribunal" means the Armed Forces Tribunal established under section 4 of the Act. 253 (2) Words and expressions used in these rules and not defined but defined in the Armed Forces Tribunal Act, 2007 (55 of 2007) shall have the meaning respectively assigned to them in the Act

3. Composition of Selection Committee.—There shall be a Selection Committee for the purpose of the selection of the Vice-Chairperson and Members in the Tribunal consisting of the following: (a) sitting Judge of the Supreme Court nominated by the Chief Justice of India (b) Chairperson, Armed Forces Tribunal (c) Secretary to the Government of India, Ministry of Defence —Chairperson —Member —Member (d) Secretary, Government of India, Ministry of Law and Justice, Department Legal Affairs —Member

4. Vacancies.— (1) The anticipated vacancies of Vice -Chairpersons and Members shall be placed before the Selection Committee for a block of six months, i.e., January to June and July to December of each calendar year. (2) The Chairperson of the Tribunal shall indicate the number of vacancies of the Vice-Chairperson and the Members to be filled from the judicial stream and the administrative stream respectively to the Central Government whereupon the procedure to fill up the vacancies accordingly shall be initiated by that Government. S. Procedure for inviting/processing of candidatures.— (1) The Selection Committee shall devise its own procedure and lay down guidelines for inviting applications as also for the selection of the Vice-Chairperson and the Members of the Tribunal. (2) The Selection Committee shall recommend the names of persons for appointment as the Vice- Chairperson and Members from amongst the persons on the list of candidates prepared by the Central Government, after obtaining names from the various cadre controlling authorities. (3) The Central Government shall, after taking into consideration the recommendations of the selection Committee, and in consultation with the Chief Justice of India in accordance with the provision contained in Sections 6 and 7 of the Act, make a list of persons for appointment as the Vice-Chairperson and Members of the Tribunal

6. Meetings of the Selection Committee.— (1) The Selection Committee shall normally hold its meetings at New Delhi or at such place or places, as may be authorised by the Chairperson by recording the reasons for the change of the venue of such meetings. (2) The notice/agenda, as the case may be, for the meeting of the Selection Committee shall be issued in advance. The date and venue for the meeting shall be fixed with the convenience of the Chairperson. (3) The minimum quorum for the meeting shall be the Chairperson and at least, one other member

7. Criteria for selection.— Merit in terms of suitability and not seniority shall be the sole criterion in the matter of filling up the post of the Vice-Chairperson from amongst Members of the Tribunal

8. Consultation with the Chief Justice of India.— (1) The recommendations of the Selection Committee shall be placed before the Chief Justice of India for his views. (2) The recommendations of the Selection Committee, together with the views of the Chief Justice of India shall be submitted to the competent authority for orders.

SUMAN K. SHARMA, Under secy. Printed by the Manager, Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064 and Published by the Controller of Publications, Delhi-110054.