

THE PUBLIC BODIES APPEAL TRIBUNAL BILL

(No. VII of 2008)

Explanatory Memorandum

The object of this Bill is to provide for matters required to be prescribed, and for supplementary and ancillary matters pertaining to the Public Bodies Appeal Tribunal set up under section 91A of the Constitution.

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ARRANGEMENT OF CLAUSES

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A BILL

To provide for supplementary and ancillary matters pertaining to the Public Bodies Appeal Tribunal

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Public Bodies Appeal Tribunal Act 2008.

2. Interpretation

In this Act –

“adviser” means an adviser appointed under section 4;

“appellant” means a public officer or a local government officer who has lodged an appeal before the Tribunal;

“Chairperson” means the Chairperson of the Tribunal;

“member” means a member of the Tribunal and includes the Chairperson;

“public body” means a body referred to in section 3(1);

“Tribunal” means the Public Bodies Appeal Tribunal established under section 91A of the Constitution.

3. Jurisdiction of Tribunal

(1) Subject to subsections (2) and (3), the Tribunal shall hear and determine an appeal made by any public officer, or any local government officer, against any decision of the Public Service Commission or the Local Government Service Commission, as the case may be, pertaining to an appointment exercise or to a disciplinary action taken against that officer.

(2) An appeal shall be made –

(a) within 21 days of the notification to the officer of the decision referred to in subsection (1), or within 21 days of such public notification of the decision as may have been made, whichever is the earlier; and

(b) in such form and manner as may be prescribed by the Tribunal.

(3) No appeal shall lie to the Public Bodies Appeal Tribunal where the appeal relates to an appointment made following a call for application for an office by public advertisement.

4. Adviser to Tribunal

(1) Where it appears to the Tribunal to be expedient to do so, it may appoint such number of advisers on an *ad hoc* basis as it considers necessary to assist the Tribunal in the determination of any appeal before the Tribunal.

(2) Where, in the course of any proceedings before the Tribunal, an adviser appointed under subsection (1) is absent, the Tribunal may continue and conclude those proceedings notwithstanding the absence of the adviser.

(3) Any decision of the Tribunal shall be that of the members of the Tribunal.

5. Qualifications of members of Tribunal

The members of the Tribunal shall respectively be –

- (a) a law practitioner of not less than 5 years' standing; and
- (b) a former public officer who, on ceasing to be a public officer, had reached at least the level of a Permanent Secretary or other Supervising Officer, or a higher level in the public service.

6. Procedure and powers of Tribunal

(1) Subject to subsection (5), an appeal made under section 3 –

- (a) shall set out concisely and precisely the grounds on which the appellant seeks to have the decision of a public body quashed or dealt with otherwise; and
- (b) shall be signed by the appellant.

(2) Upon receipt of an appeal under subsection (1), the Tribunal shall –

- (a) notify the public body of such fact; and
- (b) forthwith forward a copy of such appeal to the public body.

(3) The public body shall lodge before the Tribunal its objections, if any, against such appeal.

(4) The Tribunal may, upon a consideration of the grounds set out in an appeal and the objections made against the appeal –

- (a) dismiss the appeal, where it appears to the Tribunal that it is trivial, frivolous or vexatious; or
- (b) entertain such appeal and, for that purpose –
 - (i) call for a report from the public body;

- (ii) require the public body to produce any document or other material which, in the opinion of the Tribunal, relates to the grounds set out in the appeal and which is necessary for consideration of the appeal;
- (c) give notice of the appeal to an officer of any other public body whom the Tribunal considers likely to have been affected by the decision of the public body and require such officer to produce before the Tribunal any material which such officer may wish to produce before the Tribunal in connection with such appeal.

(5) The Tribunal shall not entertain any ground of appeal not raised in the grounds of appeal.

7. Proceedings of Tribunal

(1) The Tribunal shall sit at such place and time as the Chairperson may determine.

(2) Where the Tribunal adjourns any proceedings, it may resume them at such place and time as the Chairperson may determine.

(3) In an appeal before the Tribunal, the onus of proof shall rest with the appellant.

(4) The Chairperson may direct that 2 or more appeals be heard together.

(5) In performing its functions, the Tribunal shall endeavour to combine fairness to the parties with economy, informality and speed.

(6) In the hearing of an appeal, the Tribunal is not bound by the procedures or legal forms of a court of law, and rules of evidence, but shall –

- (a) observe the principles of natural justice;
- (b) keep a written record of its proceedings; and
- (c) give reasons for its decision on the appeal.

(7) The Tribunal may, in relation to any matter before it –

- (a) hear and determine the matter, where a duly summoned party fails to appear on the date fixed for the hearing, without prior notification of valid reasons for his non-appearance and the party having lodged the appeal is present;
- (b) dismiss, strike out or postpone the matter, where the party having lodged the appeal is not in attendance on the date fixed for the hearing.

(8) The Tribunal may –

- (a) make such orders for requiring the attendance of persons and, subject to section 6(4)(b) and (c), the production of articles or documents, as it thinks necessary or expedient;
 - (b) take evidence on oath and for that purpose administer oaths;
 - (c) on its own motion, summon and hear any person as witness; and
 - (d) adopt such procedures as may be necessary for the proper functioning of the Tribunal.
- (9) Any person who –
- (a) fails to attend the Tribunal after having been required to do so under subsection (8);
 - (b) refuses to take an oath before the Tribunal or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;
 - (c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal; or
 - (d) at any sitting of the Tribunal –
 - (i) wilfully insults any member thereof; or
 - (ii) wilfully interrupts the proceedings, or commits any contempt of the Tribunal,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding one year.

8. Determination of Tribunal

(1) For the purpose of hearing and determining any appeal under this Act, the Tribunal shall be constituted by the Chairperson and the 2 members.

(2) No member of, or adviser to, the Tribunal who has a direct interest in any appeal before the Tribunal shall take part in the proceedings relating to the appeal.

(3) Where there is a disagreement among the members of the Tribunal, the decision of the majority shall be the determination of the Tribunal.

- (4) On hearing an appeal, the Tribunal may –
- (a) confirm the decision of a public body;

- (b) quash a decision of a public body and remit the matter back to the public body;
- (c) where appropriate, remit the matter, subject to such conditions as it may determine, to the parties for further consideration by them with a view to settling the matter; or
- (d) make such other order as it deems appropriate.

(5) Subject to section 9, the decision of the Tribunal shall be final and binding on the parties.

9. Judicial review

(1) Any party who is dissatisfied with a decision of the Tribunal under section 8 may apply to the Supreme Court for a judicial review of the decision.

(2) Any party wishing to make an application to the Supreme Court under subsection (1) shall, within 21 days of the date of the notification of the decision of the Tribunal to him –

- (a) lodge the application and the grounds thereof at the Registry of the Supreme Court;
- (b) at the same time, serve a notice of the application to the Tribunal and the other party.

10. Rules

(1) The Tribunal may make such rules for the purpose of instituting and conducting appeal proceedings as it deems fit.

(2) Any rules made under subsection (1) may provide for the taking of fees or the levying of charges.

11. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
