

PROCEDURAL GUIDELINES FOR CONDUCTING ENQUIRIES RELATED TO ALLEGATIONS OF MISCONDUCT BY STAFF & TRUSTEES OF EL SHADDAI
(EL SHADDAI CHARITABLE TRUST)

*Doc. No. :
PR – 48*

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The Board of Trustees in their Board Meeting dated 27-01-2012 exhorted on the need of a procedural guideline to address various issues of Misconduct by staff and Trustees of El Shaddai.

The purpose of these guidelines is to describe the process that would be followed in conducting enquiries related to allegations of misconduct by staff and Trustees of El Shaddai. The process would have 3 stages. All complaints have to be placed before the Board of Trustees (BOT), who, if satisfied on the genuineness of the Complaint and the same has the necessary qualification to be proceeded as per Clause 6.2, then the BOT should forward it to the disciplinary Committee. The Disciplinary Committee (DC) should immediately set up an enquiry committee/Enquiry officer to conduct enquiry as per Clause 3 and 4 and send their report to the (DC).

The DC may if necessary, conduct further enquiry on the report of the DC and recommend the punishment as per clause 5. The final report from the DC shall be forwarded to the BOT for necessary action and implementation.

The entire process will be based on fundamental fairness in procedural terms, including with respect to providing those against whom allegations are made notice of investigations and an opportunity to be heard, efforts to ensure balance and thoroughness, appropriate confidentiality and freedom from reprisal.

The BOT also needs to reassure those who bring complaints or provide information in good faith regarding possible misconduct are guaranteed, full protection from reprisal. In cases where the BOT feels the complaint is malicious and has unsubstantiated charges of misconduct, then the Board needs to distance itself from the said individual in future.

1. DISCIPLINE AND APPEAL RULES.

In exercise of the powers conferred on the Board of Trustees as per Trust Deed dated 24-06-1997 under Clause 9 sub-section 9, the Board of Trustees of El Shaddai on the 1st day of August, 2012, makes the following Procedural Guidelines for Conducting Enquiries Related to Allegations of Misconduct by Staff and Trustees of El Shaddai.

It shall come into effect from the 1st August 2012.

These Procedural Guidelines for Conducting Enquiries are applicable to the Board of Trustees of El Shaddai, to all its officers, staff and sub-staff.

Approved By

Name

Matthew Kurian

Designation

Managing Trustee

Signature

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2. DEFINITIONS

3.

Board of Trustees (BOT) means all Trustees including the Founder Trustees who constitute the Governing Body of the Trust El Shaddai.

Disciplinary Committee means the authority competent to appoint the Enquiry committee/enquiry officer under these rules to conduct any inquiry, recommend and impose any of the penalties specified herein under.

3.1 SUSPENSION

A. Having regard to the circumstances in any case and where articles of charge have been drawn up in the nature of charges, the Board of Trustees of El Shaddai if satisfied that it is necessary or desirable to place under suspension any of the trustees, staff or sub-staff against whom disciplinary proceedings are contemplated or is pending, the Board of Trustees of El Shaddai may pass an order placing the said person/s under suspension.

B. Any of the trustee, officer, staff or sub staff of working under the control of the Board of Trustees of El Shaddai, who are detained in official custody whether on a criminal charge or otherwise for a period exceeding 48 hours shall be deemed to have been suspended under this rule.

C. Where a penalty of dismissal, removal or compulsory retirement from trusteeship, service imposed upon a person under suspension is set aside in appeal, or on review under these rules and the case is remitted for further enquiry, or action or with any other directions, the order of suspension shall be deemed to have continued in force on and from the date of the original order of dismissal or compulsory retirement and shall remain in force until further orders.

D. An order of suspension made or deemed to have been made shall be in force until it is modified or revoked by the Board of Trustees.

E. An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the Board of Trustees after due recommendation from the DC.

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3.2 SUBSISTENCE ALLOWANCE DURING SUSPENSION.

A. The person/s placed under suspension or deemed to have been suspended shall be entitled to receive a subsistence allowance if he/she was drawing salary not exceeding 50% of the basic pay last drawn by him at the time of his suspension. He will not entitle for any other allowances or dearness pay etc.

B. Such a suspended person will be entitled to receive subsistence allowance under this rule only on furnishing of a notarized affidavit that he is not engaged in any other employment, business, profession or vocation.

C. The Board of Trustees to sanction the subsistence allowance shall be the suspending authority.

3.3 ADMISSIBILITY OF PAY AND ALLOWANCES AND TREATMENT OF SERVICE ON RE-INSTATEMENT AFTER DISMISSAL, REMOVAL AS A RESULT OF APPEAL OR REVIEW.

A. When a person who has been dismissed, removed or compulsorily retired is reinstated in service as a result of appeal or review or would have been reinstated but for his retirement, while under suspension or not, the authority competent to order reinstatement shall consider and make specific order:-

(i) Regarding the pay and allowances to be paid to the person for the period of his absence from duty including the suspension period pending enquiry preceding the dismissal, removal or compulsory retirement.

(ii) Whether or not the said period shall be treated as period spent on duty.

(iii) Whether the reinstated person will be entitled to receive full pay and allowances for the period under suspension, if the competent authority has ordered reinstatement in service after fully exonerating the person, or in cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority or by a court of competent jurisdiction.

a. In case falling under the above rule the period of absence from duty including the period of suspension preceding dismissal removal or compulsory retirement shall be treated as duty for all purposes.

(iv) Where the competent authority to order reinstatement is of the opinion that the suspension was wholly unjustified, such a person shall be paid the full pay and allowances subject to adjustment of the SUBSISTENCE allowance paid to him.

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4. VIOLATIONS DEEMING ENQUIRY

- (i). Acceptance of gifts promising obligation from the trust.*
- (ii). Collection of subscriptions and donations etc. citing Trust name.*
- (iii). Employment with other firm while in service as staff drawing salary from ESCT.*
- (iv). Insolvency and habitual indebtedness.*
- (v). Unauthorized communication of information which needs to be protected.*
- (vi). Public criticism of the trust and trustees and its policies.*
- (vii). Joining any communal organization and indulging in acts illegal.*
- (viii). Bigamous marriages.*
- (ix). Intoxication while on duty.*
- (x). Indulging in Demonstrations which affects the trust.*
- (xi). Joining association or forming union while working for the Trust.*
- (xii). Indulging in act involving moral turpitude*
- (xiii). Abuse and harassment of inmates in the homes*
- (xiv). Violating any provisions of law relating to children and Women.*
- (xv). Involved in supplying of intoxicating substances to inmates of ESCT.*
- (xvi). Misappropriation of funds from ESCT.*
- (xvii). Harassment and sexual harassment at workplace.*

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5. PENALTIES.

A. MINOR PENALTIES.

- (i) Censure.*
- (ii) Withholding of promotion.*
- (iii) Withholding of increments of pay.*

B. MAJOR PENALTIES.

- (i) Reduction to a lower stage in the time scale of pay for a specified period.*
- (ii) Reduction to a lower stage in the scale of pay which shall ordinarily be a bar to promotion.*
- (iii) Compulsory retirement with terminal benefits.*
- (iv) Removal from service.*
- (v) Removal from trusteeship in the case of trustees.*

C. The Institution irrespective of the action taken against the charged employee/staff/Trustee in case of misappropriation/harassment can also approach the competent forum to redress the issue by taking punitive action or for recovery of moneys.

6. AUTHORITY COMPETENT TO INSTITUTE PROCEEDINGS AND TO IMPOSE PENALTY.

I: - Disciplinary Committee (DC):-

- (a) The BOT shall constitute a DC for a period of 2 years.*
- (b) The DC would consist of 5 members.*
- (c) The members of DC shall be paid honorarium as decided by the BOT for every sitting.*
- (d) The DC shall have powers to inspect any document of the ESCT which has a direct link to the complaint made.*

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- (e) The members would be nominated by the BOT and it would consist of 2 members from the BOT, 2 members from the Staff and a person of repute who is a resident of Goa.
- (f) Once the members are nominated by the Board, the Disciplinary committee can sit together and select a Chairperson.
- (g) The members selected to the Committee after one term cannot continue in the committee for another term. The reappointment of the member could be considered after a gap period of 3 years.
- (h) If the complaint is against one of the members of the DC, the said member has to step down and the remaining members would conduct proceedings.
- (i) If there is a common complaint against 2 members of the DC, the said members have to step down and the remaining members of the Disciplinary committee along with the Board of Trustees would have to nominate persons in their place to conduct proceedings in the said complaint.
- (j) Once a Complaint is received by the disciplinary Committee from the Board of Trustees, they may appoint an Enquiry Committee/Enquiry Officer who would look into the bonafides of the complaint and report his findings to the Disciplinary Committee.
- (k) The checking of the bonafides of the Complaint would have to be disposed of by the EC / EO within a time frame of 1 month.
- (l) Once the EC / EO gives his/their findings that the complaint is bonafide then the disciplinary committee would conduct proceedings and would give sufficient opportunity to the Complainant and the other parties including the person against whom the complaint has been filed. The EC shall have powers to take on record documents in pursuance of the inquiry.
- (m) All expenses related to the proceedings can be sent by the Disciplinary committee to the Trust.

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II:- Complaints

- (a) All Allegations or complaints of misconduct should be submitted in the form of written and signed memorandum, describing the concern pertaining to possible misconduct and the same should be addressed to the BOT.*
- (b) An inmate of ESTC can forward a complaint to the BOT through any office bearers or directly.*
- (c) No anonymous complaints would be entertained except when they relate to circumstances involving the reputation of the ESCT if there is unanimous approval of the Board (if it is against a member of the Board, unanimous approval minus the person accused).*
- (d) When there are 3 continuous anonymous complaints against the same individual for the same allegation or different set of allegations, then the complaints would be taken by the Board of Trustees on file.*
- (e) Any person, staff, worker, Trustee or members of the DC can forward the complaint received by them to the BOT.*
- (f) Once a complaint is received by the BOT from any source and it qualifies to be a complaint as per clause 6(II) (a), 6(II) (b) and 6(II) (c), then the Board would have a discussion of the same and would decide on a simple majority to send it to the Disciplinary Committee or to refuse any enquiry for the same which has to be recorded in writing and signed by all trustees.*
- (g) The time period in which the Complaint has to be sent by the BOT to the DC should be within a period of one month from the receipt of the complaint.*

III:- Enquiry Committee / Enquiry officer

- (a) The Enquiry Committee / Enquiry Officer will be appointed by disciplinary committee according to nature of complaint and the person on whom allegation is.*
- (b) The members of EC / EO shall be paid honorarium as decided by the BOT for every sitting.*
- (c) The Enquiry Officer should not be a person related to the trust and should have legal background or should have conducted enquiry when he/she was in service either with the Government/Private Institution.*
- (d) If the DC decides that the enquiry be conducted by a EC, consisting of 3 persons, one of which should be person with legal background or should have conducted enquiry when he was in service either with the Government/Private Institution.*

Approved By

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| Approved By | | | <i>Signature</i> |
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- (e) *If the allegations are of sexual violation/harassment, the EC should only appoint an enquiry committee and there need to be a minimum of one woman in the EC.*
- (f) *The EC /EO should make sure that the entire process must be documented and should be properly arranged in a manner wherein there should not be any flaw later when there is a scrutiny to the proceedings. Minutes of the meetings should be well documented.*

IV: - Preliminary enquiry by Enquiry officer/Enquiry Committee.

- a. *After the DC receives the Complaint, the DC would sit and decide according to the nature of the Complaint and the person on whom the allegation is whether to set up an Enquiry officer or an Enquiry Committee.*
- b. *After deciding whether it is enquiry officer or Enquiry Committee to conduct proceedings the Disciplinary committee would have to with a simple majority decide who would be the Enquiry officer or who would constitute the Enquiry Committee according to rule 6.(III).*
- c. *The preliminary enquiry will be conducted by the enquiry officer/Enquiry Committee appointed by the DC and can also be conducted ex-parte as the main purpose of this enquiry is to ascertain whether there is a prima facie case.*
- i. *If the enquiry officer/Enquiry Committee feels that the person/s on whom allegation is alleged needs to be also included in the enquiry then proper notice should be served on him. The enquiry officer/Enquiry Committee will collect all available evidences and relevant documents and in important cases evidences of witnesses be reduced to writing and got signed by those witnesses and if necessary in the presence of the person on whom the allegation is charged.*
- d. *During such enquiry the charged person should normally be given an opportunity to explain the allegations made against him to find out if he is in a position to give any satisfactory information or explanation which may render any further investigation. The charged official may take the assistance of another official to present the case or on his behalf, but may not engage a legal practitioner for the purpose.*
- e. *The preliminary enquiry is only in the nature of fact finding enquiry, where there can be ex-parte examination or investigation and ex-parte reports. The investigation report along with the*

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preliminary evidences collected is examined by the enquiry officer to come to a conclusion whether a prima-facie case exists for initiation of formal disciplinary proceedings.

- f. The EC/EO should take care not to express as far as possible, any definite opinion on the merits which will have an effect in the final outcome of the case. The enquiry officer/Enquiry Committee should not go into the question whether the person is guilty or not. He has to only find out whether there is a prima facie case warranting further trial. The prima facie evidence is based on preponderance of probability. Based on the above probe the enquiry officer/Enquiry Committee should submit his/their report to the Disciplinary committee.*

V: - Procedure of the enquiry by the Disciplinary Committee

- a. Once the report is received by the Disciplinary Committee from the EC/EO, then the DC should decide whether to drop the complaint if the report from the EC/EO states so or to continue with further enquiry.*
- b. Whenever the DC is of the opinion that there are grounds for enquiring the truth of any imputation of misconduct, or misbehavior or complaint against any staff, officer or Trustees of El-Shaddai they would have to do the following. They would have to send a notice to both the complainant and the charged person. The DC would then cause to be delivered to the charged official a copy of the articles of charge a statement of relevant facts, including any admission or confession made by the charged official and the list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained and shall require the charged official to submit within such time as may be specified a written statement of his defense and to state whether he desires to be heard in person.*
- c. On receipt of the written statement in defense, the DC would at its own option call back the witnesses and examine them personally and also look on the documents available. The charged official may take the assistance of another official to present the case or on his behalf, but may not engage a legal practitioner for the purpose. The Charged official can bring his witness and give his list of witnesses on the date fixed for the inquiry, the Disciplinary committee shall be entitled to re-examine the witnesses at any points of time during the inquiry.*
- d. The DC may also put such questions to the witnesses as it thinks fit. The DC may for reasons to be recorded in writing, remit the case to inquiring authority and report, and the inquiring*

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authority shall thereupon proceed to hold the further inquiry as the case may be or if the disciplinary committee shall, if it disagrees with the findings of the inquiring authority on any articles of charge record the reasons for such disagreement and record its own findings on such charges, if the evidence on record is sufficient for the purpose.

- e. Once the Disciplinary Committee comes to the conclusion if the charged official is guilty or not guilty they would forward their report and the penalty imposed to the BOT. The Board of Trustees should look into the report and the penalties imposed and decide the same by a simple majority to implement the recommendations.*

7. Application of the Guideline:-

All the staff appointed prior to the framing of this guideline and the staff to be appointed thereafter shall be subjected to this guideline. All amendments or changes hereinafter to this guideline shall have a retrospective effect.

This procedural guideline will be kept at all branches of El-Shaddai Charitable trust and displayed on the child rescue website. A separate email id to be created to look into complaints/issues, which would be managed by the DC and the same, shall be displayed at the notice Board of all its branches.

Approved By

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