

CHAPTER TWO

THE DISCIPLINED SERVICES

2.1 With the exception of the Customs and Excise, all the disciplined services have their origins in the police. In present-day administration they exist as a group largely for the purposes of pay a usage which we have first observed in the Salaries Commission Report of 1959; but because of the nature of their work their interests meet at a number of points, and this is reflected in a variety of ways, including for example the relationships they have with Security Branch. One of our central tasks is to consider whether the present merging of all disciplined services on one pay scale and their present placings on that scale are the most suited to their work and responsibilities.

2.2 There is little argument for most people that much of the work of the disciplined services involves to a much greater extent than that of other services exposure to potential danger and injury, and to unpleasant conditions; a degree of personal restriction, long and irregular hours of work, and heavy on-call liabilities; the requirement, under discipline, to obey orders and regulations; and the possibility of job related stress. However, some of these factors apply with very much greater force to some of the services than to others; and when this is taken together with the great variety of work content across the services, it is arguable that the things they have in common can be equally matched by the things in which they differ. Though it may be possible to define a disciplined service in terms of the law and the nature of its responsibilities, the generic notion of the term, "the Disciplined Services" sometimes seems a bit nebulous. Opposing views have been expressed to us : on the one hand, that though this term has administrative convenience, particularly for pay structure, its use glosses over each service's unique characteristics; and on the other hand, that the term is valuable because it recognises the special position of the disciplined services in the civil service and the characteristics that they share.

2.3 We set out here some basic material on the disciplined services which we hope will help to further this open-ended debate.

Origins and History

2.4 The origins of the Royal Hong Kong Police Force stretch back to the founding of the colony in 1841 when it had a very broad based role embracing not only traditional police duties but also the fire services and prisons. The Hong Kong Police was accorded the title "Royal" by Her Majesty the Queen

in 1969 in recognition of its services during the 1967 disturbances. Over the years the Police Force has emerged from being a small colonial para-military organisation to a large law enforcement body with an internal security capability.

2.5 The origins of the Correctional Services Department dates from 1841 with the establishment of Victoria Gaol under the charge of Captain William Caine, the Chief Magistrate of Hong Kong and Superintendent of Gaol and Police. In 1879, it was separated from the police as an independent department.

2.6 Before the formation of a rudimentary fire brigade in 1868, all fires in Hong Kong were dealt with by the police and volunteer fire-fighting groups. In 1868, after a series of disastrous fires, a fire brigade was formed under Police Magistrate Charles May. The Fire Brigade was separated from the police in January 1941 and on the recommendation of the Trench Report (1960) changed its title to the Hong Kong Fire Services Department in April 1961. The ambulance service has been part of the Fire Services since the introduction of the first motor ambulance in 1919. Originally police/fire ambulances served emergencies while the Medical Department dealt with non-emergency cases only. All government ambulance resources were placed under the control of the Fire Brigade in 1953. In 1966 the ambulance service was re-organised into a semi-autonomous Ambulance Division staffed by specially trained ambulance personnel.

2.7 The Customs and Excise Department has its roots in the Preventive Service which was founded in September 1909 to enforce and collect duty under the Liquor Ordinance. Initially the Service was a small division of the Import and Export Department which later became the Commerce and Industry Department and still later, the Trade, Industry and Customs Department. In September 1963 the Preventive Service Ordinance was enacted, making the Service a disciplined force by law and in 1982, it was established as a separate Customs and Excise Department.

2.8 Before 1961, immigration control was the responsibility of the police. With the sustained influx of immigrants from China and the general development of Hong Kong, the volume of immigration work steadily increased and a separate Immigration Service was established in 1961 with the enactment of the Immigration Service Ordinance.

Present work and responsibilities

2.9 The disciplined services have unique roles to perform in the civil service : on what we have learned, it appears three of them have functions which, in different ways, are wholly concerned with preserving the security, safety, and well-being of the community : the other two have functions which include this objective with other duties. A special feature of the disciplined services is that the legislation

which governs them includes strict disciplinary codes, and the duties and responsibilities of their staff are prescribed in very great detail. We think it important that this report should contain an account of the general organisational structure, establishment, duties and responsibilities of each disciplined service. To this end, the report contains five annexes (Annexes 2.1 to 2.5) provided by each of the departments, which give factual descriptions of their work, responsibilities and resources. We hope that these annexes will help in the understanding of the issues we discuss in both our Preliminary and Final Reports; and add context and background to the account in Chapter 8 of submissions we have received.

2.10 In addition to these factual accounts, we think it useful to set out here an account of the legal background to the disciplinary status which is implied in the term "Disciplined Services".

Disciplinary status

2.11 As members of the disciplined services, staff are generally responsible for complying with relevant ordinances which prescribe their responsibilities and actions, and are also liable to disciplinary action under specific legislation. They are required by law to obey the lawful orders and instructions of their senior officers, and any member who without good and sufficient reasons fails to carry out any orders or instructions is considered to have committed a disciplinary offence and is liable to disciplinary proceedings and punishment commensurate with the seriousness of the offence. Punishments include reduction in rank, stoppage or deferment of increment, forfeiture of pay, a fine, reprimand/severe reprimand, extra duties or dismissal, as prescribed in relevant ordinances and regulations. Not all statutory requirements on discipline for example the responsibility to act when off-duty, are applicable to all five disciplined services.

2.12 The provisions governing the requirement to take official action even though off duty when the need to take action arises are as follows :-

Police

"Every police officer shall for the purposes of this Ordinance be deemed to be always on duty when required to act as such and shall perform the duties and exercise the powers granted to him under this Ordinance or any other law at any and every place in the Colony where he may be doing duty." (Cap. 232, s.21) The penalty for non-compliance is liability to be dismissed or any other penalties set out under the ordinance for breaches of discipline.

Correctional Services

No specific provisions.

Customs and Excise

"A member who is off duty shall be deemed to be on duty whenever he encounters circumstances which would require him, if actually on duty, to act in enforcing any of the Ordinances specified in the Second Schedule." (Cap. 342, s.17)

The penalty for non-compliance is liability to be dismissed or any other penalties set out under the ordinance for breaches of discipline.

Fire Services

No specific provision.

Immigration

"For the purposes of this Ordinance, every member of the Service shall be deemed to be always on duty when required to act as such and shall perform the duties imposed upon, and exercise the powers granted to him under this Ordinance or any other law at any and every place in the Colony where he may be doing duty." (Cap. 331, s.10)

No specific penalty is stated for non-compliance but punishments for disciplinary offences are reduction in rank, reprimand, forfeiture of pay, stoppage of increment, or extra duties.

2.13 The disciplined services are responsible for a number of essential services and we looked particularly at the constraint on members of the disciplined services against joining trade unions or withdrawing their labour.

2.14 In general we have been told that there is no provision in law or any of the relevant regulations which specifically prohibits disciplined services from participating in strikes. However, there is a number of provisions in legislation and departmental orders governing absence from duty, obeying orders from superior officers and, as described above, being deemed to be on duty if required in three of the services.

2.15 Policemen are specifically prohibited by the Police Force Ordinance from joining any trade union : anyone who joined a trade union would be "disqualified from continuing to be a member of the police force" (Cap. 232, s.8). Section 62 of the Police Force Ordinance also states,

"If any person causes, or attempts to cause, or does any act calculated to cause disaffection amongst the members of the police force, or induces, or attempts

to induce, or does any act calculated to induce any member of the police force to withhold his services or to commit breaches of discipline, he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$2,000 and to imprisonment for 2 years."

A similar provision with the same penalties can also be found in section 17 of the Immigration Service Ordinance (Cap. 331). Accordingly, the prohibition against joining a trade union is unique to the police, while the prohibition against any attempt to cause disaffection amongst the members of a service or induce the withdrawal of labour is confined to the police and immigration services.

2.16 In the Correctional Services Department, there is a unique provision (Cap. 234, s.21) which makes it a punishable offence not to report for work :-

"Any officer of the Correctional Services Department or other person employed in the prisons who -

- (a) after having duly engaged to serve as such absents himself from his duties shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months, and shall be liable to forfeit his office upon conviction."

2.17 Under Regulation 79 of the Emergency (Principal) Regulations (Cap. 241), the Governor is empowered to prohibit any essential services from taking strikes or lock-out actions. Essential service is defined to include :-

"Any undertaking, requirement of or service to the community which is in the opinion of the Governor, signified by notification in the Gazette, is a public utility or essential to the life of the community."

This definition can clearly cover departments other than the disciplined service departments.

2.18 The Discipline Rules in several services make it a disciplinary offence to be absent from duty without leave or for good reason. In addition, the head of each disciplined service is vested with the power to define an officer's duties and to punish him for failing to carry out a lawful order without good and sufficient cause. The head of a disciplined service would thus appear to have the power to take disciplinary action against a striker if he chose, although whether disciplinary action would be taken in a strike would be a management decision.