

Disciplinary Guarantees for the Public Employee in the Saudi Law

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ABSTRACT- The Saudi law has granted the administration numerous disciplinary powers against the public employee in the area of its disciplinary responsibility; however, in light of these disciplinary and punitive powers of the administration, the public employee must be protected from any tyranny, abuse, injustice, or bargaining that may be exercised against him by some of the administration's people. As a result, these protections shield public employees from the administration's tyranny, persecution, and arbitrariness. Thus, the purpose of this research is to uncover the disciplinary guarantees for public employees in the Saudi law, as well as their sufficiency in protecting the public employee and guaranteeing that the administration does not use them as a means of tyranny or arbitrariness. The study subject concerned the adequacy of these guarantees in the Saudi legislation, and the significance of the research lay in determining the adequacy of these guarantees in order to achieve protection for public employees. Furthermore, the researcher employed the descriptive, analytical, and comparative method, by collecting facts and data, analyzing them, and comparing them in order to elucidate the features linked to the study's issue. Finally, the study's results revealed that there are some problems in achieving guarantees of protection for the public employee from the administration's arbitrariness and tyranny in the Saudi law, and the researcher suggested some amendments to the legislation related to the disciplinary responsibility of the public employee in the Saudi law to ensure his complete protection from any abuse or tyranny by the administration.

Keywords: Disciplinary guarantees, Public employee, Saudi laws and administration.

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1. INTRODUCTION

Any deviation of the powers, authorities and duties of a public office by a public employee is subject to disciplinary responsibility, which aims not to deviate powers and authorities of the public function in inappropriate ways to its status and purpose.

At the same time, the disciplinary responsibility of the public employee must be balanced with the protection of the public employee through the provision of guarantees and procedures to ensure that disciplinary responsibility is not used by the administration as a means of tyranny or arbitrariness to put pressure on the public employee or to threaten him with bargaining for any purpose.

Therefore, these guarantees, which consist of guarantees of disciplinary responsibility for the public employee in Saudi law, will be shown in this research, and to determine that their sufficiency in not be used as a means of tyranny, abuse, or settling personal accounts for the administration with the public employee.

The public employee in the Kingdom of Saudi Arabia is subject to a disciplinary system in his jurisdiction as issued by

Royal Decree No. A/7 in 1970 AD, the Law of Disciplinary System for Legal Employees and the Job Discipline System, issued by Royal Decree No. A/18 in 2021 AD, these two systems are the main system of disciplinary in public job and the public employee is distinguished from the rest of the private sector employees by the two mentioned systems. To add, in return for the guarantees that granted by the legal system to the public employee, the system assigned him some of the duties and he will be questioned and held accountable in the event of his breach of those duties. The system also guaranteed a number of legal guarantees to provide protection to public employee from arbitrary management. The employee's breach of his job duties is a disciplinary offense that requires punishment and follow-up, including what is considered a criminal offense, such as the employee's violations that involve wasting public money or the interests of the state, which are laid down by the penal law and require punishment if conditions are existing, and due to circumstances and problems that surrounding the issue of discipline of the public employee, the Saudi legislator dedicates an entire chapter to it, stipulating the disciplinary system which is applicable on public employees in the event of such violations.

1.1 Problem of the Research

The problem of the study is to reveal the legal shortcomings in what the administrative system in the Kingdom of Saudi Arabia dealt with the issue of disciplining the public employee in the extent of the inadequacy of the guarantees that have been guaranteed by the Saudi law for the public employee and an attempt to fill the legal void through this research.

1.2 The Central Question of the Research

What must the public employee be held accountable for in terms of disciplinary violations? When a public employee is questioned by the government, how much protection does the Saudi legal system provide?

1.3 Reasons of the Study

- Illustration of behaviors that are in breach of the public employee's job duties and for which the public employee must be held accountable.
- When disciplinary infractions occur, determine who is in responsibility of investigating the public employee.
- Clarify the system's guarantees to government employees who violate disciplinary rules.

1.4 Importance of the Research

It shows the importance of studying the process of disciplining the public employee because of the punitive problems involved that may be used as a remedy for the administration. This disciplinary process is lacking in several guarantees that protect the rights of the accused public employee and reinforce the principle of legality that government institutions strive to apply when disciplining a public employee, ensuring the achievement of the public interest and the application of the principles of legality, justice, and equality in the issuance of punishment, its application, and its aftermath.

1.5 Objective of the Research

- Determining the authorities in charge of conducting the administrative investigation that ensures the public employee's rights when disciplined.
- Clarifying the competent authority that takes disciplinary actions against the public employee.
- Identifying the present public employee discipline assurances, as well as their sufficiency and practicality in ensuring that the norm of legality is upheld for him.

1.6 Assumes of the Research

- Employees in the Kingdom of Saudi Arabia have a variety of disciplinary rights guaranteed by the legal system.
- The guarantees that the Saudi system involves are not sufficient to protect the employee from arbitrary sanctions.

1.7 Scope of the Research

The study's objective scope is the legal guarantees provided to a public employee in the application of a disciplinary penalty, and the study's spatial scope is the Kingdom of Saudi Arabia's borders.

1.8 Methodology of the Research

The comparative analytical-descriptive method between the Saudi law and other Arab laws and clarifying of judicial decisions and rulings related to the subject of the study.

1.9 Structure of the Research

Chapter One: The Essence of Disciplinary Investigation

- **First Topic:** The Definition of Disciplinary Investigation.
First Section: The Definition of Disciplinary Investigation in Jurisprudence.
Second Section: The Definition of the Judicial Disciplinary Investigation.
- **Second Topic:** Disciplinary Investigation Authorities.
First Section: The Entity that has the Original Jurisdiction to Conduct the Investigation.
Second Section: The Exceptional Jurisdiction of the Monitoring and Investigation Commission to Conduct the Investigation.

Chapter Two: Guarantees of Disciplinary Investigation

- **First Topic:** Guarantees of Detecting and Investigating Disciplinary Offenses.
First Section: Guarantees of the Stage of Detecting the Disciplinary Offense.
Second Section: Guarantees of the Investigation Stage in the Disciplinary Offense.
- **Second Topic:** Keeping a Record of the Investigation.
First Section: Requirement of Codification in the Law.
Second Section: Requirement of Codification in the Judiciary.
- **Third Topic:** The Right of Confrontation and the Right of Defense.
First Section: The Right of Confrontation.
Second Section: The right of Defense.
- **Fourth Topic:** Neutrality and Impartiality.
First Section: The Definition of the Principle.
Second Section: Inculcation the Principle of Neutrality in the Saudi Law.
- **Fifth Topic:** Trial and Implementing the Rule.
First Section: Guarantees of the Trial Stage in the Disciplinary Offense.
Second Section: Guarantees of Implementing of the Judgment in the Disciplinary Offense.
Third Section: Guarantees of Eliminating Disciplinary Punishment and Rehabilitation.

Conclusion: Results and Recommendations

2. THE ESSENCE OF DISCIPLINARY INVESTIGATION

2.1 The Definition of Disciplinary Investigation

2.1.1 The definition of Disciplinary Investigation in Jurisprudence

The Kingdom of Saudi Arabia's legal system didn't define disciplinary investigation, so administrative jurisprudence and the judiciary took over the definition of administrative investigation. It has been defined as a set of aimed actions to verify and establish the physical existence of the facts

attributed to employee, gathering evidence and determining the responsibility of employee regarding to it¹.

It is also defined as a preliminary procedure aimed at revealing the reality of the relationship between the accused and the accusation against him. Others said that it is a set of procedures of the Administrative Investigation Authority through research, investigation and objective investigation against disciplinary offense to illustrate its reality and observance of the safeguards guaranteed by the system in evidence to determine whether the act was committed by employee is an offence or not, attributed to the employee and held accountable for it².

Among these definitions, it can be defined as a preliminary procedure carried out by the jurisdiction authority as a system to reveal the reality of facts, which the employee is accused for and to identify the circumstances of its occurrence, its evidence, and the culprit.

2.1.2 The Definition of Judicial Disciplinary Investigation

The administrative courts of the administrative judiciary in the Kingdom of Saudi Arabia did not issue a definition of the disciplinary investigation, but some rulings referred to some conditions for the validity of the investigation and some of them provide that the validity of a disciplinary investigation is required to be accompanied by the necessary inquiries and explanations and it performs in accordance with the legal conditions and circumstances, which are obligatory for the assigned to collect evidences³.

Some rules of the Board of Grievances state that disciplinary violations consist of acts committed by the public employee whom the administrative authority considers an insult to the dignity and honor of the public office, and what is considered a violation of its morals, a disturbance of trust and respect for the job itself. In an administrative offence, it is sufficient to carry the acts attributed to the employee and to act against good reputations. Hence, the assessment of all is the authority of the administration, as long as its assessment in this regard is based on established principles in the papers and leads to the result that involves⁴.

2.2 Disciplinary Investigation Authorities

The administration had the competence to conduct investigations with public officials regarding the disciplinary violations attributed to them, prior to the issuance of the Employee Disciplinary Regulations in 1970 AD. However, after the disciplinary system, the Oversight and Anti-

Corruption Authority has been established to carry out this task and it has been given to the administrative bodies, thus, disciplinary offences are investigated by the administrative authority, which has the inherent jurisdiction and the Oversight and Anti-Corruption Authority, which is exceptional jurisdiction, along with the administrative authority.

2.2.1 The Entity that has the Original Jurisdiction to Conduct the Investigation

The presidential authority exerts its oversight role in accordance with the powers granted to it by the legal system and the subsequent investigation procedures with subordinates with the aim of revealing the violations attributed to them. It will be done through a competence body named: investigation administration, or legal administration affairs, or monitoring unities⁵. The administration authority has the authority to conduct investigations with its employees in accordance with article 5 of the Disciplinary System "without prejudice to the legality of the investigation with the authority of the concerned administrative authority in monitoring, examining complaints and investigating, this authority is competent, within the limits of the rules stipulated in this system, as following: 1- conducting the necessary oversight to detect financial and administrative offenses".

The competence to conduct investigations is for the administrative body, which has drawn it from its presidential authority, and the law has granted it the right to monitor and supervise its employees until the proper performance of their work is ensured. The investigation of the offending employee is conducted through the assignment of the immediate administrative head of an employee of the follow-up unit. Moreover, in the absence of a statutory provision stipulating that the employee of its administration is prohibited from conducting an investigation by himself. However, the requirements of justice require that the powers of investigation and judgment should not be combined in the hands of the administrative head, in implementation of a great justice principle, which is the separation between the powers of judgment and accusation, a principle that must not be violated even if the text is absent⁶.

2.2.2 The Exceptional Jurisdiction of the Monitoring and Investigation Commission to Conduct the Investigation

The administrative body is given the original competence to conduct the administrative investigation with the public employee. As an exception, this task has been assigned to the Monitoring and Investigation Commission, which specializes in conducting investigations under the Public Employees Disciplinary System and the Job Discipline System⁷.

¹Ali Khattar Shatnawi, Principles of Administrative Law, Public Service, Wael Publishing institution, Amman, 1994, p. 406.

²Khaled Khalil Al-Zaher, Disciplinary rules of Employees in the Kingdom of Saudi Arabia, a Comparative Study, Library of Law and Economics, Riyadh, 1426 AH / 2005, p. 179.

³Board of Grievances Ruling No. 19/T of 1397AH, Case No. 19/Q of 1397AH, Set of Sharia and Regulatory Principles decided by the Cases investigation Committee, period between 1397 AH - 1399 AH, p. 68.

⁴Judgment of the Board of Grievances No. 14/T/1 of 1404 AH, in Case No. 2/26/Q of 1403 AH.

⁵Suleiman Al-Tamawi, Administrative Judiciary, Third Book, Disciplinary Judiciary, a comparative study, Dar Al-Fikr Al-Arabi, Cairo, 1995, p. 521

⁶Abd al-Latif bin Shedid al-Harbi, Disciplinary Guarantees in the Public Service, a jurisprudential analysis study, Al-Dar Engineering Press, Cairo, 1427 AH / 2006 AD, p. 281.

⁷Jaber Abu Zaid, Administrative Law in the Kingdom of Saudi Arabia, 3rd Edition, Hafez Publishing House, Jeddah, 2006, p. 316.

The competence of the Control and Anti-Corruption Authority is an exception to the general principle, which is evading the general rule that ensures the investigation of the presidential authority is empowered in the administrative body, which is understood from the text of Article Five of the Public Employees Disciplinary System and the text of Article Twelve of the Job Discipline System, which is clearly evidenced by this. It defines the cases in which the Control and Anti-Corruption Authority has exclusive jurisdiction to conduct the investigation, and these cases are as follows:

First: When the public employee commits a criminal offense, the administrative authority, in case it discovers that the employee has committed a criminal offense, shall send the investigation papers with the employee to the head of the supervisory authority to take the necessary measures⁸.

Second: If the administrative authority discovers that the employee's violation is after leaving the service and before the lapse of ten years from the date of leaving the job, in this case, the administrative authority does not have the right to conduct investigation procedures with the employee because the employee's relationship with the administrative authority is interrupted by the interruption of the job that linked him to his boss. Hence, the jurisdiction is for the oversight commission to conduct investigation in this matter.

Third: If the offence is detected by the Authority in the exercise of its oversight function, as the head of the administrative body sees what requires investigation, he assigns investigators to conduct it, and the entity to which the employee belongs must be notified of conducting the investigation before the investigation procedures begin.

Fourth: If the administrative authority to which the employee belongs finds that his violation requires a penalty of dismissal, in that case, the administrative authority must inform the control body and send it all investigation papers within thirty days from the date of receiving papers to conduct the investigation.

Fifth: If the employee commits a violation in an entity other than the one to which he is affiliated, in that case, the Investigation and Monitoring Commission must conduct investigation with him.

Sixth: More than one employee affiliated with more than one administrative body committing administrative violations linked to each other⁹.

3. GUARANTEES OF DISCIPLINARY INVESTIGATION

The disciplinary system for public officials and the job discipline system stipulates a set of formal guarantees that the

investigation authority must observe with the employee in the case he commits disciplinary violations, as a guarantee of the employee's rights to conduct a fair investigation aimed at revealing the truth and preventing the abuse of the investigation authority or its transgression of its authority.

3.1 Guarantees for Detecting and Investigating the Disciplinary Offense

3.1.1 Guarantees for the Stage of Detecting the Disciplinary Offense

The term disciplinary offense expresses any violation of the general rules in the public office and it is independent of the criminal charges that require criminal accountability and require the imposition of punishment, as it is a breach of duties or a violation of prohibitions stipulated in the job regulations, which requires disciplinary punishment, including the employee's violation of the instructions of his superiors at work.

At the same time, the disciplinary violation is detected, in which the principle of legality must be implemented, and the penalty is applied to the employee after proving the violation.

It is well established that if the employee committed a violation as a result of a written order issued to him by his boss and he informed his boss of that violation, and based on this, he will not be punished.

Accordingly, every employee violates the duties or violates the prohibitions stipulated in the laws and regulations that are subject to disciplinary punishment. If the employee issued a statement during the performance of his work that prevents the work from proceeding as required, the employee must be punished¹⁰.

The accusation for a disciplinary offense may be from the administrative authority, which accuses that the employee has violated, and this would be as the administrative authority refers the violating employee to investigation.

The employee may be accused of a violation by the Monitoring and Investigation Commission. If the Monitoring and Investigation Commission takes over, then the employee will be referred to this commission according to the Commission's decision, and it is the one who indicts the accusation against the competent authority of the Board of Grievances.

3.1.2 Guarantees of the Investigation Stage of the Disciplinary Violation

Investigation in disciplinary infractions varies depending on the size of the infraction and is carried out either from the presidential system, the quasi-judicial system or the judicial system. The presidential disciplinary system is the system that is used according to the origin in that field, considering that it is closest to the employee and best to estimate the extent of the

⁸Abdul Mohsen Rayan, Principles of the Comparative Saudi Administrative System, third edition, Hafez Publishing House, 2008/1429, p. 222.

⁹Abdul Latif bin Shedi Al-Harbi, previous reference, p. 316.

¹⁰Muhammad Asfour, Disciplinary Controls in the Public Service, Journal of Administrative Sciences, Fifth Year, First Issue, p. 42.

violation, and thus to estimate the appropriate penalty for the size of the violation without the need for the intervention of an external body. The quasi-judicial system is a disciplinary system that is close to the presidential system. The authority responsible for imposing penalties under this system is from the presidential authority. The point is that the body that undertakes the investigation, before issuing its punitive decision, must consult special bodies, and there are many countries that use the semi-presidential system in the investigation with disciplinary violation¹¹, and Finally the disciplinary system requires investigation in disciplinary violation, and this requires a complete separation between the presidential authority, which often undertakes the filing and follow-up of the disciplinary case, and the independent private judicial bodies. To add, the decision issued by the judicial authority is binding on the presidential authority, and the investigation of disciplinary violations by the judicial authority provides the necessary guarantee for the employee, but it is considered ineffective in disciplinary¹².

3.2 Keeping a Record of the Investigation

3.2.1 Requirement of Codification in the Law

The regulator in Saudi Arabia has taken care of the need to codify the investigation that is carried out through the administrative authorities or the Control and Investigation Authority, and the disciplinary system emphasized that the date, time and place of the investigation should be recorded in the papers and each paper of the investigation papers should be signed by the person who conducted the investigation and the employee whom has been investigated. The law prohibited any write-off or modification in the investigation papers and this is clearly shown in the text of Articles 11 of the Saudi Employees Disciplinary System and Article Ten of the Job Discipline System. In Article 11 of the Employee Disciplinary System, the regulator stipulates that "the investigation shall be in writing and shall be recorded in a record or serial records in which the date, place and time of its opening and completion are indicated. The regulator also stipulated in Article 10 of the Job Discipline System that "the competent minister may impose the penalties stipulated in Article (6), except for dismissal". Furthermore, the regulator stipulated in Article 4 of the Job Discipline System that, "It is not permissible to impose a disciplinary penalty on the employee unless he is investigated in writing and his statements are heard, investigating his defense and proving that in a record, and the decision issued for the penalty shall be justified." The importance of writing in the Saudi system is clear from the fact that it is a condition of the validity of the investigation and it is an essential procedure that results in the invalidity of the investigation if it is neglected. The Saudi regulator also made writing a condition before imposing a disciplinary punishment on the employee, regardless of the nature of the penalty imposed, whether it was severe or simple. Hence, the

importance of writing the investigation becomes clear in that it is a proof against all, as writing is the best method of proof and is considered and approved by the investigator's memory, which may betray him¹³. Moreover, the condition of writing leads to ensure the both sides: administration and employee, preventing one of the parties from deceiving the other, so neither of them can accuse the other without evidence, and the employee cannot deny the investigation or what it came with because he signed on it. Writing is an important disciplinary guarantee, and its importance increases in assisting the administrative judge when raising the issue to him, if there is a need for that¹⁴.

3.2.2 Requirement of Codification in the Judiciary

The administrative judiciary in the Kingdom of Saudi Arabia has settled on the necessity of conducting an investigation in writing with the accused employee, before issuing the decision to punish him, and the ruling of the Disciplinary Authority in the Kingdom was cited in this regard. One of the pillars of the disciplinary lawsuit and the consequences of that is the invalidity of the lawsuit and its non-acceptance, considering that the filing of the investigation papers is the first procedure by which the case begins¹⁵. Likewise, what was stated in the judgment issued by the Board of Grievances, in which it was stated that if the investigation was not conducted with the employee in writing, the penalty would not be imposed. This is what was stipulated in Article 18 of the Regulations for Authorized: "The penalty may not be imposed except after conducting a written investigation with the accused employee and hearing the employee's statements regarding the violations attributed to him." In the case that the administrative authority does not comply with this condition, it will thus be a breach of the system, and the penalty that it inflicted on the employee will be defective, and a judgment may be passed to drop it¹⁶.

3.3 The Right of Confrontation and the Right of Defense

3.3.1 The Right of Confrontation

The concept of confrontation in the Saudi system is not different from other legal systems, as administrative jurisprudence defines it as hearing the employee's statements regarding the violations attributed to him and the evidence of the violations so that he can stand up for it and defend himself. The confrontation may be personal or verbal, and the personal confrontation is when the accused in the violating employee is confronted with another or a witness to the violation, so he hears their statements in the violation and makes his statements.

¹¹Tharwat Abdel Aal, Public Service, Faculty of Law, Assiut University, 2003, p. 315

¹²Abdel-Fattah Hassan, Discipline, Dar Al-Nahda Al-Arabiya, 1998, p. 52.

¹³Muhammad Maged Yaquout, Principles of Investigation of Disciplinary Violations, New University House, Alexandria, 2007, p. 177.

¹⁴Abdul Aziz Khalifa, Disciplinary Guarantees in the Public Service, National Center for Legal Publications, 2008, p. 107.

¹⁵Judgment of the Disciplinary Board, session 9/16/1397 AH in Case No. 24 of 1397 AH, Group Two, p. 512.

¹⁶Judgment of the Board of Grievances, No. 289/T/3 in 1409 AH, Case No. 14/4/s for the year 1408 AH.

The statements made by the employee may be evidence of his innocence of the violations attributed to him¹⁷. The disciplinary system stipulates that confrontation is one of the inalienable rights of employees, and no side can violate or ignore this right. Hence, the investigation is only conducted in the presence of the employee in person, unless the public interest requires conducting an investigation in the employee's absence. Article 10 of the employee discipline system states that "the investigation is in the presence of the person who will be investigated, unless the public interest requires conducting the investigation in his absence". The right to face is not limited to the employee discipline system only, but it is an inalienable right for any accused, so the list of pleadings and procedures ensured this right. Accordingly, the principle of confrontation is an inherent right in Saudi systems. The efforts of the Board of Grievances have settled on the illegitimacy and invalidity of any investigation that included explicit charges against the employee. The investigation to be reliable must be based on clearly defined charges without confusion or ambiguity, and it was stated in a ruling issued by the Board of Grievances that reviewing the investigation and its contents if it appears in which the accused was not confronted with explicit charges and the accusation was implicitly charged against him, so that accusation is flimsy and unreliable. In all cases, the accusation must be explicit, and the employee is allowed to respond to the accusations against him¹⁸, and the confrontation does not result in forcing the employee to make his statements regarding what is attributed to him, but the employee cannot argue that his statements were not heard, because in that case, he would have missed the opportunity to defend himself willingly without the intervention of Investigation Board. However, if the employee insists on refraining, he may follow up the progress of the procedures of the case under investigation in the light of the established facts. The implementation of the principle of confrontation entails informing the employee of the charges against him in the papers and documents that the investigation body relied on in accusing the employee, and the Saudi regulator explicitly states that in article 23 of the Saudi Disciplinary System, "the accused or his representative has the right to review the investigation papers in the presence of the court secretary, and with the permission of the council president, he has the right to make copies of them." Accordingly, the principle of confrontation with the accused is one of the guarantees, which have been guaranteed by the Saudi system, whether it is completed in the investigation or trial stage. Through the confrontation, the accused will be informed of all the charges against him and the evidence supporting them, and the accused has the opportunity to discuss those evidences and ask for clarification and inquiry¹⁹.

3.3.2 The Right of Defense

¹⁷Abdul Latif bin Shedid Al-Harbi, previous reference, p. 390.

¹⁸Judgment of the Board of Grievances No. 9/T/2 of 1406 AH, in Case No. 8/1/S of 1405 AH.

¹⁹Muhammad Rifaat Abd al-Wahhab, Principles and Provisions of Administrative Law, Al-Halabi Publications, Lebanon, 2005, p. 438.

The right of defense is the main nucleus of all guarantees. All other guarantees are based on the accused's right to defend himself. Defense is one of the most important legal principles that the administrative judiciary has settled on in general, and comparative systems in particular²⁰. The establishment of the principle of defense came as a result of the birth of the theory of general principles, and that principle was established in order to apply it to every administrative decision that includes the meaning of the penalty, in order to mitigate the general rule that the administration does not have to inform individuals about decisions that will take against them based on the authority of administration in taking its decisions unilaterally, but the administration should not be allowed to exceed of its disciplinary power. Ignoring the right of defense in any incident attributed to the accused or the failure to do, will clearly affect the course of the investigation and may negatively affect the outcome of the investigation and might end up invalidating the decision issued by the administration because it exceeds the limits of the administration's authority. But the nature of administrative law, which made it difficult to codify all its provisions, came to be lacking in some administrative issues, especially the important ones, but for the important role of administrative law in building an edifice of administrative legality, it is necessary to establish a theory of general principles of administrative law to be an independent source of legislation that ensures the effectiveness of judicial control over the authority. Although this legislative shortcoming is taken on some comparative systems, however, the Saudi regulator was more cautious than it, so he mentioned texts that guarantee the right of defense for the accused, whether they are stipulated explicitly or implicitly, including the text of article 26 of the Basic Law of Governance in Saudi Arabia "The state protects human rights according to the rules of Islamic Sharia" and the right of defense is one of the rights guaranteed by Islamic Sharia for the accused. In the disciplinary field, the right to defense is expressly guaranteed in article 35 of the Employee Disciplinary System, "A disciplinary penalty may not be imposed on an employee except after being investigated in writing, hearing his statements, investigating his defense and proving that in the decision issued for punishment or in an attached record."

3.4 Neutrality and Impartiality

3.4.1 The Definition of the Principle

Impartiality is considered one of the guarantees that the regulator has guaranteed to employees in the field of discipline. There is no point in informing the employee of the charges against him and giving him the opportunity to make his statements and defend himself unless the accused is treated fairly, this is in the case that the investigation body is not objective in hearing and ruling, and the ruling will not be fair except in complete impartiality. The absence of this guarantee voids all previous guarantees of their external manifestations, and other guarantees have no real meaning²¹. Comparative systems emphasized this guarantee, so most of them stipulate that the investigator should have the attributes of impartiality,

²⁰Muhammad Rifaat Abdul-Wahhab, previous reference, p. 416.

²¹Ali Khattar Shatnawi, previous reference., p. 583.

integrity and efficiency, and only those who have these qualities are entrusted with the investigation, in order to ensure a fair and equitable investigation and far away from the means of pressure and interference, as it seeks to achieve the goal of investigation. The impartiality of the investigator can only be achieved by separating the authority of the investigation from the authority of the accusation, so it is not possible to combine the two authorities, the authority of the accusation and the judgment, even if the investigation is conducted under this framework, so it is just a formal procedure and there is no benefit behind it²². The principle of impartiality has a personal nature represented in the necessity of freeing the investigator from all manifestations of bias and inclination, in addition to the objective nature that requires the necessity of separating the powers of prosecution and punishment.

3.4.2 Inculcation of the Principle of Impartiality in the Saudi Law

The statutory texts are explicit on the establishment of the principle of impartiality in the trial, including the text of article 24 of the Employee Disciplinary System that "the accused and the representative of the Oversight and Investigation Commission may request the dismissal of any member of the court if there is a reason to a response. The head of the commission has to judge in this request quickly". It is noted that this article guarantees the investigator the right to reply and step aside, but the response and step aside is in the following cases: firstly: cases of stepping down for lack of validity. Article 90 of the legal pleadings system indicated that it is not permissible for the judge to consider the case if he is a spouse of one of the litigants, or a relative or a son-in-law to the fourth degree, or if he is an agent, guardian or custodian of one of the litigants, or if he or his wife or one of his relatives is on a pole ancestry has interest in the lawsuit filed. Secondly: response cases. It is stipulated in article 92 of the Law of Pleadings Law and it can be summarized as if the judge or his wife has a lawsuit similar to the lawsuit he is considering or if he or his wife had a dispute with one of the parties to the dispute brought before the judge.

3.5 Trial and Implementing the Rule

3.5.1 Guarantees of the Trial Stage in the Disciplinary Offense

The stage of the disciplinary trial includes many procedures that should be followed to get guarantees for the employee, and there are many rules that govern these procedures, which begin with announcing the employee's attendance and achieving the trial²³.

3.5.1.1 Procedures for Notifying the Attendance of Employee

In the Saudi system, all communications are by official letters in accordance with the text of article 9 of the rules of pleadings and procedures before the Board of Grievances,

issued by Council of Ministers No. 190, which stipulates that "The Chairman of the Board of Grievances or his representative shall refer the case to the competent department, and the head of the department-upon receipt of the case- shall set a date for its consideration. The Monitoring and Investigation Commission and the accused shall be notified with a copy of the indictment, and the time period between notification and the date of the hearing shall not be less than thirty days".

3.5.1.2 Characteristics of Disciplinary Action

The disciplinary session is defined as the period of time during which the judge sits to discuss the case in the room designated for that in the Board of Grievances, and one of the clerks assists the judge in the session. One of the guarantees that the system guarantees to the employee is the attendance of the accused in those sessions, and the Saudi regulator stipulated in Article 15 of the system of pleadings and procedures in the Court Grievances No. 190 in 1409 AH: "The sessions of the disciplinary department are only valid in the presence of all its members and in the presence of the prosecutor in criminal and disciplinary cases". If the necessary number of members is not available, someone who completes the investigation shall be called, and the sessions shall be public unless the department considers that it is necessary to keep it confidential.

3.5.2 Guarantees of Implementing of the Judgment in the Disciplinary Offense

The organizer has guaranteed several disciplinary guarantees after the issuance of the disciplinary penalty, and these guarantees have a fundamental position, and among those guarantees is the possibility of objecting to the disciplinary decision issued against him. The objection to the disciplinary decision is based on the principle of legality. There is no penalty without mistake or arbitrariness issued in the disciplinary decision, and other possibilities that provide the employee with guarantees subsequent to the issuance of the disciplinary decision. As for the grievance against the disciplinary penalty, the grievance is considered one of the most important guarantees that guaranteed by the Saudi regulator, and it is an indication of the employee's refusal to issue a disciplinary sanction against him. Disciplinary grievance divides into two types, either it is a voluntary grievance, which is a tool in which the employee voluntarily chooses to object to the decision issued against him, and the grievance may be compulsory, which is person considered will offered compulsory in specific cases²⁴. The administrative grievance requires several conditions, the first of which is that the grievance must be submitted by the concerned employee or his legal representative. This means that the grievance must be submitted by the person concerned himself as the owner of the interest that affected his legal position, and to submit the grievance after the issuance of the final administrative decision and before filing a lawsuit, the grievance must also be submitted within the legal period for filing an action for

²²Amjad Jihad Nafeh Ayyash, Disciplinary Accountability Guarantees for the Public Employee, Comparative Study, Master's Thesis, An-Najah National University, Nablus, 2007, p. 26.

²³Wali Fathi, Mediator in the Civil Judiciary, Dar Al-Nahda Al-Arabiya, 1981, p. 531.

²⁴Mujib Abdullah Fairouz, Ph.D. Research, Procedures and Guarantees for Disciplining the Public Employee in the Light of the Civil Service Law, Arab Renaissance House, 2017, pg.331.

cancellation, and the complainant must be serious in its grievance and the grievance is feasible²⁵.

3.5.3 Guarantees of Eliminating Disciplinary Punishment and Rehabilitation

The regulator stipulated in article 21 of the Job Discipline System that (disciplinary penalties imposed on the employee shall be erased after the lapse of two years from the date of their issuance, unless another penalty is issued against him during that period). The aim of this is to protect the employee if his morals have improved and does not commit anything that would require disciplinary punishment for the same act again. The explanatory memorandum of the employee discipline system clarified some of the controls related to the controls for erasing the penalty as follows:

- Punishment is a right assigned by the system to the employee, and the employee must submit a request for that.
- The employee must improve his behavior and prove his efficiency in performing the work within a period of two years from the date of imposing the penalty.
- Erasing the disciplinary penalty does not entail dropping the rights incurred by the employee, such as administrative or financial violations, such as compensation.
- In order for the penalty to be erased, a decision must be issued by the competent minister to abolish the penalty.

4. CONCLUSION

It was found that the disciplinary system in the Kingdom of Saudi Arabia and other comparative systems is based on a set of principles and guarantees that achieve social justice among the categories of public employees and achieve a balance between the right of the administrative apparatus to prosecute and acquit workers, while providing the employee with the right of confrontation with the violations attributed to him and providing the right of defending for the violating employee. All the elements of the investigation must be legally correct, and none of the investigation guarantees are breached, his statements are heard regarding what is attributed to him, confronted with the statements of witnesses, and given the opportunity to defend himself. The regulator also required that the investigator must follow the principles of impartiality, integrity and to issue his decisions with the utmost objectivity without bias or extremism.

5. RESULTS

1. The public employee's discipline system and the job discipline system require justice and equality for all public employees and based on observing a principle in which the administration's right to accusation is balanced with its right to oversight and discipline.
2. The investigation is conducted with the employee who has committed a disciplinary offense by assigning his direct administrative head to one of the employees of

the follow-up unit to which he is affiliated. However, the requirements of justice require that the powers of investigation and judgment should not be combined in the hands of the administration, in accordance with a great principle of justice, which is the separation between the powers of judgment and accusation, which is a principle that must not be violated even in the absence of the text.

3. In order for the disciplinary investigation to be considered, it must have all the necessary basics and guarantees, including the guarantees of summoning the employee, asking him and confronting him with what is attributed to him.
4. The guarantees stipulated in the Saudi Disciplinary System and the Job Discipline System are a cornerstone in the field of discipline because discipline within the framework of the public office aims to reform more than punishment, accountability and discipline in the administrative system is based on filling gaps.

6. RECOMMENDATIONS

1. The guarantees of impartiality, which are a right established in administrative systems in general, must be observed, and we believe that the Saudi regulator should stipulate them in the employee discipline system.
2. The investigation of disciplinary violations attributed to the public servant must be assigned to an independent, neutral side that is not affiliated with the administration to which the accused belongs, until the principle of impartiality is achieved in order to achieve and ensure justice for him.
3. The necessity of having the religious and moral conscience of the investigator and his assistants so that the decision is based on justice and knowing that Allah watches over his decisions.

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²⁵Suleiman Al-Tamawi, Administrative Judiciary, Elimination Court, Dar Al-Fikr, 1976, p. 605.

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