

CHAPTER 6

Cases Against Government Servants

Part A GENERAL

[1. Cases against public servants or local bodies should be reported to District Magistrates—A Judicial Magistrate taking cognizance of an alleged offence against a servant of the Government or of a Local Body shall report, without delay, to the Chief Judicial Magistrate to whom he is subordinate, the commencement of such proceedings together with brief details of the case and endorse a copy of the same to the District Magistrate who shall forward a copy to the departmental officer-in-charge of the Department to which the accused belongs—a further report will be sent in the same way on the termination of the proceedings, stating whether they have terminated in conviction, discharge or acquittal.

In cases of convictions, a copy of the judgment must be forwarded.]

COMMENTS

Under Chapter VI Volume III it has been provided that a Magistrate taking cognizance of an alleged offence against a public servant should report to the District Magistrate, who in turn is charged with the duty of forwarding a copy of this report to the department concerned. The object of this rule appears to be to inform the administrative department about the institution and the result of criminal cases against the public servants so that in the event of conviction of the public servant the administrative department may be able to take further action. This rule does not mean that wherever a public servant is involved, the case should necessarily be transferred to the file of the Chief Judicial Magistrate. *Ram Sarup v. Mangal Dass*, 75 (1973) PIS. 222.

2. District Magistrate as trying officer should send a report to the departmental officer of the official concerned—Should, however, a District Magistrate himself take cognizance of such a case, he is to follow the same procedure and send the local departmental officer of the official concerned a brief report of the facts of the case for his information.

3. Copies to be supplied free to departmental officers—Copies of judgments or orders, or English translations of vernacular judgments or orders, convicting, acquitting or discharging government servants, including a person subject to Military law or a civilian in military employ, of criminal offences shall be supplied free of charge to the Heads of Departments or Offices concerned.

Part B
CRIMINAL CASES AGAINST POLICE OFFICERS

1. Criticism of Conduct of Police officer in judgments. Action to be taken on such criticism—For judgments criticising the conduct of Police see Chapter 1-H, paragraph 6.

2. Attention is also invited to Rules 16.38(5) and (6) of Punjab Police Rules, 1934 which run as follows:

“(5) In all criminal cases in which strictures are passed on the conduct of the Police by a Criminal Court, whether in a judgment or by means of a separate note, a copy of the judgment or note must be sent to the District Magistrate. When such strictures are passed by a Magistrate’s Court or by a Sessions or High Court otherwise than as in sub-rule (6) below, the procedure indicated in sub-rules (1) and (2) above shall be followed.

(6) If a Sessions Court or the High Court in passing such strictures records its opinions that a special enquiry is necessary, the District Magistrate, on receipt of a copy of the opinion of the Court, shall consider whether to order judicial proceedings or not. If he is of opinion that immediate proceedings before a Criminal Court are likely to be unsuitable or infructuous, he shall refer the case to the Inspector-General of Police, who will in consultation with the Chief Secretary, nominate two officers to hold the special enquiry.”

Part C
CRIMINAL CASES AFFECTING PERSONS BELONGING TO THE ARMED FORCES

1. Cases to be tried only by District and 1st Class Magistrates—Criminal cases against persons belonging to the Armed Forces should only be taken up by District Magistrates or Magistrates of the first class and this direction should be strictly observed.

2. Copy of Judgment to be sent to superior officer of accused—When a person belonging to the Armed Forces is convicted of any offence by any Magistrate, information in the form given below shall be furnished by such Magistrate to the superior officer of the person so convicted:

Forms of Information

| Name (and Military rank) of person convicted | Offence of which convicted | Sentence | Date |
|--|----------------------------|----------|------|
| | | | |

3. Military rank of accused to be stated in the warrant of committal to person—Whenever a soldier is committed to jail whether for trial or under sentences, his military rank shall always be stated in the warrant of commitment, in order that due notice may be given to the military authorities of the day on which, and hour at which, the imprisonment of such person will expire.

4. Information of conviction of pensioned officers—Whenever a military person is convicted and sentenced to imprisonment for a criminal offence, a copy of the judgment or the heads or charge to the jury and final orders, as the case may be, shall be sent to the Controller of Military Accounts and Pensions. The place where the pensioner last drew his pension shall be stated in the covering letter. The copies shall be prepared free of charge in the office of the Court and not by the copying department.

5. Information of conviction of Indian Army reservists—Whenever a reservist of the Army is sentenced by a Criminal Court to imprisonment for any term exceeding three months, the facts are to be reported without delay to the Commandant of the appropriate regimental Centre, in the manner prescribed in Para 2 above.

6. Dual jurisdiction of Court-Martial and Civil Court—In exercise of the powers conferred by sub-section (1) of Section 549 of the Code of Criminal Procedure, 1898 (V of 1898) [See Section 475 of new Code], and in supersession of all previous notifications on the subject, the Central Government hereby makes the following rules for the trial of persons subject to Military, Naval or Air Force law, by a Court to which the said Code applies, or by a Court-martial, namely:

1. (1) These Rules may be called the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1952.

(2) They extend to the whole of India except the States of Jammu and Kashmir and Manipur.

2. In these Rules unless the context otherwise requires:

(i) “Commanding Officer”:

(a) in relation to a person subject to military law means the officer commanding the unit or detachment to which such person belongs or is attached.

(b) in relation to a person subject to naval law means the commanding officer of the ship to which such person for the time being belongs; and

(c) in relation to a person subject to Air force law means the officer for the time being in command of the unit or detachment to which such person belongs or is attached.

(ii) “competent military authority” means the officer commanding the army corps, division area, corps or independent brigade or sub-area in which the accused person is serving and [except in cases falling under Section 70 of the Army Act, 1950 (XLVI of 1950) where death has resulted the officer commanding the brigade or sub-area or station in which the accused person is serving.

(iii) “Competent naval authority” means the Chief of the naval Staff, or Flag Officer (Flotilla) Indian Fleet or Commodore-in-charge, Bombay or Commodore-in-charge, Cochin or Naval Officer-in-charge, or Senior Naval Officer present; and

(iv) “Competent Air Force authority” means the officer commanding the command, wing or station in which the accused person is serving and when death has resulted (except in cases falling under Section 72 of the Air Force Act, 1950 (XLV of 1950), the Chief of the Air Staff.

3. Where a person subject to Military, Naval or Air Force law is brought before a Magistrate and charged with an offence for which he is liable to be tried by a Court-martial, such Magistrate shall not proceed to try such person or to inquire with a view to his commitment for trial by the Court of Sessions or High Court for any offence triable by such Court unless:

(a) he is of opinion for reasons to be recorded, that he should so proceed without being moved thereto by competent Military, Naval or Air Force authority, or

(b) he is moved thereto by such authority.

4. Before proceeding under clause (a) of rule 3, the Magistrate shall give written notice to the commanding Officer of the accused and until the expiry of a period of seven days from the date of the service of such notice, he shall not—

(a) convict or acquit the accused under Section 243, 245, 247 or 248 of the Code of Criminal Procedure, 1898 (V of 1898) [See Sections 252, 253, 254, 255, 256 of new Code] or hear him in his defence under Section 244 [See Section 254 of new Code] of the said Code; or

(b) frame in writing a charge against the accused under Section 254 of the said Code [See Section 246(1) of new Code]; or

(c) Make an order committing the accused for trial by the High Court or the Court of Sessions under Section 213 [There is no equivalent Section to Section 213 of old Code in new Code] of the said Code.

(d) transfer the case for enquiry or trial under Section 192 of the said Code.

5. Where within the period of seven days mentioned in Rule 4 or at any time thereafter before the Magistrate has done any act or made any order referred to in that rule, the Commanding Officer of the accused or competent Military Naval or Air Force authority, as the case may be, gives notice to the Magistrate that in the opinion of such authority, the accused should be tried by a Court-martial, the Magistrate shall stay proceedings and if the accused is in his power or under his control shall deliver him, with the statement prescribed in sub-section (1) of Section 549 of the said Code [See Section 475 of new Code] to the authority specified in the said sub-section.

6. Where a Magistrate has been moved by competent Military, Naval or Air Force authority, as the case may be under clause (b) of Rule 3, and the Commanding Officer of the accused or competent Military, Naval or Air Force authority, as the’ case may be, subsequently gives notice to such Magistrate that, in the opinion of such authority, the accused should be tried by a Court-martial, such Magistrate, if he has not before receiving such notice done any act or made any order referred to in Rule 4, shall stay proceedings and, if the accused in his power or under his control shall in the like manner deliver him, with the statement prescribed in sub-section (1) of

Section 549 of the said Code [See Section 475 of new Code] to the authority specified in the said sub-section.

7. (1) When an accused person has been delivered by the Magistrate under Rules 5 and 6, the Commanding Officer of the accused or the competent Military, Naval or Air Force authority, as the case may be, shall, as soon as may be, inform the Magistrate whether the accused has been tried by a Court Martial or other effectual proceedings have been taken or ordered to be taken against him.

(2) When the Magistrate has been informed under sub-rule (1) that the accused has not been tried or other effectual proceedings have not been taken or ordered to be taken against him the Magistrate shall report the circumstances to the State Government, which may, in consultation with the Central Government, take appropriate steps to ensure that the accused person is dealt with in accordance with law.

8. Notwithstanding anything in the foregoing rules where it comes to the notice of a Magistrate that a person subject to Military, Naval or Air Force law has committed an offence, proceedings in respect of which ought to be instituted before him and that the presence of such person cannot be procured except through Military, Naval or Air Force authorities the Magistrate may by a written notice require the Commanding Officer of such person either to deliver such person to a Magistrate to be named in the said notice for being proceeding against according to law, or to stay the proceedings against such person before the Court-martial, if since instituted and to make a reference to the Central Government for determination as to the Court before which proceedings should be instituted.

9. Where a person subject to Military, Naval or Air Force law has committed an offence which, in the opinion of competent—Military, Naval or Air Force authority, as the case may be, ought to be tried by a Magistrate in accordance with the civil law in force or where the Central Government has, on a reference mentioned in Rule 8, decided that proceedings against such person should be instituted before a Magistrate, the Commanding Officer of such person shall after giving a written notice to the Magistrate concerned, deliver such person under proper escort to that Magistrate.

(Government of India Notification No. S.R.O. 709, dated the 17th April, 1952, as amended by Government of India Notification No. S.R.O. 1740, dated the 22nd September 1953 and No. S.R.O. 126, dated the 11th January, 1956).

7. Dual jurisdiction—In this connection also please see Sections 124, 125 and 126 of the Air Force Act, 1950 (No. XLV of 1950) and Sections 125, 126 and 127 of the Army Act. 1950 (No. XLVI of 1950).

1. Rule 1 substituted vide correction slip No. 7, Rules XZ 20 dated 19-5-1965.