

CHAPTER 21

DIRECTORATE OF PROSECUTION (LEGAL DIVISION)

ORGANIZATION

21.1 The Directorate of Prosecution in the CBI is responsible to conduct and supervise the cases pending trial, appeal and revision in Courts. The Director of Prosecution would be the chief functionary of the Prosecution Wing of the CBI and is vested with the powers of direction and control over the Prosecuting Officers. He will be assisted by the Additional Legal Advisors, Deputy Legal Advisors, Senior Public Prosecutors, Public Prosecutor and Assistant Public Prosecutors posted in the Head Office/High Courts and Zones/Regions and Branches/Units.

FUNCTIONS

21.2 The functions of the Directorate of Prosecution include among others, the following:—

- (i) Tendering Legal Advice in CBI cases.
- (ii) Conducting prosecution in CBI cases.
- (iii) Matters relating to amendment of laws or promulgation of new laws.
- (iv) Matters relating to Notification of offences u/s 3, 5 and 6 of DSPE Act.
- (v) Processing Legal matters pertaining to the Conferences and meetings.
- (vi) Matters relating to interpretation of laws, statutory rules and regulations and amendments thereof.
- (vii) Preparation of Notes on Legal matters for publication in CBI Bulletins/ Periodicals etc
- (viii) Matters relating to the appointment of Special Judges, Magistrates, Retainer Counsels and Special Counsels and other matters related thereto.
- (ix) Matters relating to the Notifications regarding appointment of CBI Prosecuting Officers u/s 24 and 25 of Cr.P.C., 1973.
- (x) Correspondence regarding Parliament Questions on the above matters.

Head of the Directorate of Prosecution

21.3 Director of Prosecution will be the overall incharge of the Prosecution Wing of CBI responsible for all work relating to prosecution, appeal and revision of cases. He will also be responsible for maintaining efficiency, discipline and integrity of all functionaries in the Prosecution Wing.

21.4 The Director of Prosecution will be the Chief Counsellor of the CBI in all legal and procedural matters. He will maintain necessary liaison and contact with the Ministry of Law and keep the Director, Special/Additional Director and Joint Directors informed of all

matters of importance and interest. Subject to general directions of the Director, CBI, the main functions and duties of the Director of Prosecution shall be as under:

- (a) Director of Prosecution in CBI shall be responsible for:
 - (i) Supervising and monitoring the conduct of prosecution in Courts,
 - (ii) Preferring as well as appearing in Appeals, Revisions, etc. on behalf of the CBI in Appellate and Revisional Courts.
 - (iii) Give advice to Police Officers in all legal matters on general points, specific cases or important issues arising during investigation or trial.
 - (iv) To maintain overall control, authority and responsibility for the work, efficiency, integrity and discipline of all legal Officers of CBI.
- (b) Advise the Director, CBI/Additional Directors, CBI in matters involving policy and general principles in connection with investigations or prosecution or Departmental Action.
- (c) Scrutinize and comment on Final Reports in the following types of cases:-
 - (i) Any important case in which the Director, CBI requires his advice.
 - (ii) Cases in which applications for withdrawal have been submitted either by the accused or anyone else on his behalf.
- (d) Scrutiny of cases of exoneration and inadequate punishment of those mentioned in sub-para (c)
- (e) Scrutiny of the judgements in cases mentioned in sub-para (c).
- (f) To examine cases resulting in acquittal, discharge or inadequate sentence and to determine whether appeals or revisions need to be filed.
- (g) Preparing briefs for obtaining opinion of the Attorney General / Solicitor General in cases where Special Leave Petition under Article 136(1) of the Constitution of India is proposed to be moved.
- (h) Reply Parliament Questions involving legal issues.
- (i) To examine matters involving amendments to Laws.
- (j) Preparing Panel of Special Counsels to conduct prosecutions, appeals or revisions on behalf of CBI with the approval of the Government, and operating the same and selecting the retainer counsels for High Courts.
- (k) Visit CBI Regions/Branches to assess the professional functioning of Legal Sections in Branches/Regions.
- (l) Ensure prompt action on the minutes of coordination meetings held at the level of the Branches/Regions, Zones and Head Office between Prosecutors and Investigating Officers.
- (m) Such other subjects relating to legal matters as may be referred to him by the Director, CBI.

Additional Legal Advisor

21.5 Subject to any general or special orders of the Director of Prosecution, the main functions and duties of the Additional Legal Advisor shall be as under:-

- (a) To scrutinize and advise on:
 - (i) Cases against GOs in which Prosecution has been recommended by the Branch SP & Sr. PP or DIG/DLA or any Officer at Hqrs. in which sanction for prosecution has to be issued in the name of the President.
 - (ii) Cases involving Heads of Departments, Heads of Public Sector Undertakings, Military Officers of and above the rank of Brigadier and Members of Parliament.
 - (iii) Important cases against Joint Stock Companies.
 - (iv) EOW case involving amounts as per the powers of Joint Director as per the latest Policy Division Circular.
 - (v) Any other important cases, though not falling in one of the above categories, where the Director, Addl. Director or one of the Joint Directors requires his advice.
- (b) Checking of SP's Report, draft sanction orders and draft charges etc. in the above cases vide para (a).
- (c) Scrutiny of judgements where the accused have been discharged/exonerated or given inadequate punishment in any trial proceeding.
- (d) Tender advice on important legal issues during investigation, supervise prosecution of CBI cases under trial and peruse Court Diaries in all important cases.
- (e) Conduct of important CBI cases in Courts, whenever required.
- (f) In the absence of Director of Prosecution, he will attend to his work.
- (g) Such other subjects relating to legal matters as may be referred to him by the Joint Director/Additional Director and Director.
- (h) Attend coordination meetings with the Joint Director for review of prosecution work and submit the minutes with comments to the Director of Prosecution.

Duties and Responsibilities of the ALA attached to High Court

21.6

- (i) To maintain a record of CBI cases filed in or pending before the High Court and furnish information to Director Prosecution.
- (ii) To conduct all CBI cases coming up in the High Court *suo motu*, except where Special Counsel is engaged.
- (iii) To maintain close liaison with PP/Government Advocate at the High Court to ensure that the Revisions, Appeals or other matters arising out of CBI cases are filed in the High Court well in time and within the period of limitation.
- (iv) To examine the petitions, appeals, revisions etc. to be filed in the High Court on behalf of the CBI before these are filed.

- (v) To examine all cases where interlocutory orders have been passed by the High Court and recommend remedial action to the Director of Prosecution.
- (vi) In Writs and other matters in the High Court, he will examine the parawise comments prepared by the Branch in consultation with the Law Officer concerned.
- (vii) To examine all orders of the High Court in cases where CBI has been made a party and to recommend whether or not to file SLPs/Appeals against such orders.
- (viii) To submit weekly diary of his work to the Director of Prosecution.
- (ix) To supervise preparation of paper books to ensure timely submission of records of CBI cases before the High Court.
- (x) To give advance information of the dates of hearings in all such cases to the concerned Branch.
- (xi) To acquaint himself with the facts of each CBI cases in the High Court and obtain instructions from the Director of Prosecution and the concerned Joint Director.
- (xii) To apply urgently and obtain copies of all judgements from the High Court in CBI cases and forward to the Branches concerned for follow-up action. However, funds shall be provided by the concerned Branch.
- (xiii) To conduct periodic review of the CBI cases pending in the High Court and to make arrangements for getting these disposed of quickly.
- (xiv) To send urgent intimation to the concerned Branches regarding disposal of any matter in the High Court.
- (xv) To send quarterly returns to the Director of Prosecution regarding the matters disposed of during the quarter with the result of each case.
- (xvi) To give intimation to the DLA/Branch concerned of any development in the matters pending in the High Court.
- (xvii) To attend to such other subjects, including filing of Appeal, Revision, etc. in the High Court on behalf of the Government of India, as may be referred to him by the Director of Prosecution.
- (xviii) To perform such other duties as he may be required to perform by Director of Prosecution.

Duties of Deputy Legal Advisor

21.7 Subject to any general or special orders of the Director of Prosecution, the main functions and duties of the Deputy Legal Advisor will be as follows:

- (i) Comments on Final Reports in cases wherein the authority competent to pass final orders is of the rank of DIG and above.
- (ii) Conduct of important cases of the Branch in the Court as taken by himself.
- (iii) DLA shall carry out inspection of all the prosecution branches of his Region once in a year. Every year in the month of January, DLAs should prepare their Inspection Programme of Malkhana of the Branches of their Region which should be intimated to the ALA and SP/DIG concerned (Ref. Policy Division Circular No. 24/2003, dated 27-11-2003)

- (iv) While the individual Prosecutor/Law Officer is fully responsible and accountable for successful and effective prosecution of cases and all matters pending in various Courts/tribunals etc. assigned to him, the DLAs at the Regional level shall closely supervise the functioning and performance of the Prosecutors at the Branch level and shall hold monthly meetings on a regular basis with the Prosecutors to review the progress, achievement of targets etc. Monthly reports containing the details of deliberations at the Branch level shall be sent to the Regional DIG/ALA and SP by the DLA concerned for prompt follow-up and coordination (Ref. Policy Division Order, dated 6th May, 2002.
- (v) The DLA attached to the Directorate of Prosecution will be in addition, incharge of Legal Division and perform all those duties specifically entrusted to Legal Division.
- (vi) DLA should ensure monthly submission of progress report in all the cases pending within his Region in the Courts of Special Judges appointed under Prevention of Corruption Act, 1988 in the proforma circulated by the Directorate of Prosecution or any other information required by Directorate of Prosecution/Policy Division pertaining to trial/Court matters.
- (vii) Advice in legal matters on general points or specific issues arising during investigation or trial, as may be requested by the DIG.
- (viii) Checking and vetting of SP's Reports, draft sanction orders for prosecution, draft charges, statement of allegations etc. in cases in which comments are given by him on Final Reports according to sub-paras (a) and (b) above.
- (ix) Scrutiny of results of Court trials and Departmental Action and scrutiny of Court Diaries in respect of cases.
- (x) Scrutiny of exoneration cases and those of inadequate punishment, mentioned in sub-paras (a) and (b) above.
- (xi) Review of judicial decisions relating to Criminal Law and procedure arising from cases and preparation of notes and comments thereon for publication in the CBI Bulletin/Periodicals/Reports.
- (xii) Such other subject relating to legal matters as may be allotted to them by the DIG.
- (xiii) Maintaining close liaison with DIG & SsP and to attend periodical meetings to review prosecution cases.
- (xiv) To supervise the work and conduct of the Senior PPs/PPs/APPs working under him in the Region/branches, where he is posted.

Prosecuting Staff

21.8 In every Branch one or more Officers of the rank of Sr. Public Prosecutor, Public Prosecutor and Assistant Public Prosecutor are provided to look after legal matters, prosecution and trial of cases in Courts etc.

Sr. Public Prosecutor

21.9 The Sr. Public Prosecutor will be responsible for the entire work relating to prosecution in the Branch and supervise the Public Prosecutors and Assistant Public Prosecutors working under him. In particular:

- (i) He will ensure that the records relating to his section are correctly and properly maintained and that statements, returns and reports are submitted in proper time and without delay.
- (ii) He will comment on Final Reports, scrutinize the charge sheets to be filed in Courts and draft sanction orders for prosecution.
- (iii) He will ensure preparation of paper books containing statement of witnesses and copies of documents, as necessary under the law, are supplied to accused persons in good time.
- (iv) He will conduct the prosecution in Court of all important cases and will submit Court Diaries in respect of such cases.
- (v) He will ensure the proper conduct of prosecution by PPs/ Assistant Public Prosecutors of his Branch and give them necessary help, guidance and advice.
- (vi) He will prepare and forward conviction, acquittal and discharge reports in the prescribed form.
- (vii) He will take steps to obtain certified copies of the judgements, as may be necessary without delay. In cases in which appeal or revision is recommended and prepare a self-contained note giving the reasons for acquittal or discharge and the grounds on which Appeal or Revision is considered necessary.
- (viii) He will be responsible for seeing that Government Counsels or Special Counsels engaged in SPE cases are fully and properly briefed.
- (ix) He will arrange to keep in touch with the progress of SPE cases coming up in the High Court.
- (x) In cases which are to be sent up for Regular Departmental Action he will be responsible for the preparation of draft charges, statement of allegation and list of witnesses, list of documents relied upon etc.
- (xi) In cases which are to be sent up for Court trial, he will record detailed notes in the prescribed register regarding disposal of case property. He will be responsible for obtaining orders from Courts as soon as possible about disposal of case property.
- (xii) He will ensure that warrants are obtained for the arrest of absconding accused persons and that necessary action is taken under Section 82 and 83 Cr.P.C.
- (xiii) He will be responsible to see that summons to witnesses are issued from Courts in proper time.

- (xiv) He should be available to discuss cases with Investigating Officers and to give them guidance and advice on legal points arising during the course of investigation.
- (xv) He will keep the Superintendents of Police, DLA informed of all important matters concerning the work of his Section or concerning the proceedings in Courts or in Departmental Action.
- (xvi) He will inspect the Malkhana once in three months.
- (xvii) He will attend the coordination meetings with SP to review progress of cases under trial and other important matters relating to prosecution.

Public Prosecutors & Assistant Public Prosecutors

21.10 Public Prosecutors and Assistant Public Prosecutors will perform such duties as are allotted to them by the Sr. Public Prosecutor. They will conduct such cases in Courts as are allotted to them. They will submit Court Diaries about their cases and keep the Sr. Public Prosecutor and the Superintendent of Police informed of all developments in the cases under their charge. In respect of cases entrusted to them they will carry out all the functions that have been mentioned above for the Sr. Public Prosecutor.

21.11 Public Prosecutors and Assistant Public Prosecutors will ensure the maintenance of such records and registers and prepare such statements, returns and reports as they may be asked to by the Sr. Public Prosecutor. They will give comments on Final Reports in those cases which are marked to them by the Sr. PP and also perform such other duties as may be allotted to them.

Office Superintendent Directorate of Prosecution

21.12 The Office Superintendent, Legal Division will be responsible for the work and efficiency of the Section. In particular, these functions will be:

- (a) To open and mark of dak of his Section except that addressed by name to senior Officers. He should bring immediately to the notice of the ALA or Sr. PP any matter of particular importance or interest.
- (b) To keep watch on reminders and important references received from Ministries Departments relating to his Section and take necessary action to expedite matters.
- (c) To check and ensure the correctness, priority and quick despatch of all outgoing dak of his Section.
- (d) To ensure that timely reminders are issued whenever necessary.
- (e) To check all files and registers of his Section every month and to ensure that they are up-to-date and properly maintained.
- (f) To deal and to keep in his personal custody top secret and secret files made over to him.
- (g) To prepare notes and reviews on various matters, whenever required to do so.

- (h) To check the attendance of the staff of his Section and maintain the efficiency, speed and discipline of the Section.
 - (i) Scrutiny and submission to the Additional Legal Advisor the weekly arrear list of his Section on every Monday or the next working day if Monday happens to be a Holiday.
 - (j) To ensure that all returns and statements are prepared correctly and submitted in proper time.
 - (k) To do any other work entrusted to him by the Additional Legal Advisor or the other superior Officers.
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