

## CHAPTER 8

SUITS BY OR AGAINST THE GOVERNMENT AND PUBLIC  
OFFICERS IN THEIR OFFICIAL CAPACITY.

1. ORDER XXVII, Rule 5 of the Code of Civil Procedure prescribes that in fixing the date for the hearing of a suit against the Government, the Court shall allow a reasonable time for the necessary communication with the department concerned through the proper channel. The period required will depend upon circumstances, and no invariable rule can be laid down on the point, but in most cases a period of two months will probably be suitable. Dates
2. (i) In fixing the period in any case, the representations of the officer who receives the summons or who is conducting the case on behalf of the Government should meet with due consideration, as the Code of Civil Procedure clearly contemplates that reference to Government, through the proper departmental channel, involving a certain delay shall be allowed for, and an extension of time should be given on reasonable cause being shown but, on the other hand, the Civil Courts should be cautious to prevent undue delays, in these as in all other classes of suits. Extension of time.
- (ii) Cases in which Government Departments are concerned and in which officials have to attend, should be disposed of promptly, care being taken to give due notice, where it is necessary for any reason to adjourn the case. Priority.
3. It should further be remembered that Section 80 of the code of Civil Procedure provides that no suit shall be instituted against the Government or a Public Officer in respect of an official act, unless two month's notice has been given of the intention to bring such suit, and that the plaint must contain a statement that such notice has been duly given. Plaints of the nature indicated above which do not contain the required statement, should not be accepted, but should be returned for amendment or be rejected according as it may appear from the statement of the person presenting the plaint that notice has or has not been given. Two months notice before institution of suit.
4. The changes effected in Section 79 of the Civil Procedure Code by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, and Trials of case and persons to whom notice is to be given.

Adaptation of Laws Order, 1950 as to the authority to be named as plaintiff or defendant in suits by or against the Government and in section 80 of the Code by the Code of Civil Procedure (Amendment) Act, 1948, (No. VI of 1948) as to the person to whom notice is to be given in suits intended to be instituted against the Government or against a Public Officer should be borne in mind.

Now, in a suit by or against the Central Government, the Union of India, should be named as the plaintiff or defendant, and in a suit by or against a State Government, the State should be named as plaintiff or defendant. A notice in writing under section 80 C.P.C. has to be delivered to or left at the office of Secretary to the Government when the suit is against the Central Government but where it relates to a railway the notice has to be delivered or left at the office of the General Manager of that railway. In the case of a suit against a State Government the notice has to be delivered to or left at the office of a Secretary to the Government or the Collector of the district.

Definition of Government and Govt. Pleader.

5. The provisions of Rule 8-B of Order XXVII, of the code of Civil Procedure, which defines the terms, 'Government' and 'Government Pleader' for the purposes of that orders, may be carefully studied.

Hearing of suits etc. against the Government..

<sup>[34]</sup>6. To avoid delays in the disposal of suits and proceedings against the Government and to prevent inconvenience the Law Officers of the following directions should be observed:—

Priority.

(1) Suits and proceedings in which Government is a party should be given priority of hearing; and such cases should, when possible, be heard continuously until completion; and

Timely notice of adjournment.

(2) If a date is fixed in a suit affecting the Government, and the Court is not prepared to hear the case on that date, timely notice if necessary by telegram, should be given to the Law Officer concerned by the Court.]

Decree against Government etc. shall specify time for satisfaction.

7. Where in a suit by or against the Government or a public officer in his official capacity a decree is passed against the Union of India or the State or as the case may be, the public officer; <sup>[35]</sup>[The execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such decrees] (Section 82) As regards

the execution of such decrees see paragraph 7 of Chapter 12-C.

8. The following notifications issued by the various Government under the Code of Civil Procedure are published for information:—

I. *Punjab Government Notification No. 1-C, dated the 1st January, 1909.*

With reference to the definition of the expression "Government Pleader" contained in section 2(7) of the Code of Civil Procedure, (V of 1908), the Lieutenant Governor is pleased to appoint the Legal Remembrancer to the Punjab Government, the Government Advocate, Punjab, and the Assistant Legal Remembrancer, Punjab, respectively, to perform all or any of the functions expressly imposed by the said Code on the Government Pleader except the functions specified in Order XXXIII, Rule 6, and in Order XXVII, Rule 4 thereof.

Government  
Pleader.

2. The Deputy Commissioner for the time being of every district in the Punjab is appointed to be the Government Pleader for his district for the purposes of Order XXXIII, Rule 6, and of order XXVII, Rule 4 of the Code of Civil Procedure.

3. Nothing in this notification shall be deemed to affect the provisions of notification No. I-H, dated the 1st January, 1909 (now superseded by Punjab Government Notification No. 1073-J-37/13015 dated the 1st April, 1937, given below), regarding the recognised agents of Government under Order XXVII, Rule 2, of the Code of Civil Procedure.

II. *Punjab Government Notification No. 1073-J-37/13015, Dated the 1st April, 1937.*

In supersession of Punjab Government notification No. I-H, dated the 1st January, 1909 and in accordance with the provisions of Order XXVII, Rule 2 of the First Schedule of the Code of Civil Procedure, 1908 the Governor of the Punjab is pleased to authorise all Deputy Commissioners in the Punjab, in virtue of their office to act for the Government in respect of all Judicial proceedings in which the Punjab Government is concerned and in which they may receive instructions from the financial Commissioners or the Legal Remembrancer to Government.

Recognized  
Agents.

2. In the Absence of the Deputy Commissioner, from his headquarters, the Senior Assistant Commissioner,

or Extra Assistant Commissioner there present is hereby authorised to exercise the power hereby conferred on the Deputy Commissioner.

*III—Punjab Government notification No. 22963—  
Judicial dated the 10th December, 1917.*

Recognised  
Agents.

It is hereby notified that all Government Pleaders are, under Order XXVII, Rule 2 of the First Schedule to the Code of Civil Procedure *ex-officio* authorised to act for the Government in respect of all Judicial proceedings in the Courts within the civil districts for which they are appointed.

*IV—Punjab Government notification No. 1073-J-37/13017/ H/Judicial, dated the 1st April, 1937.*

Verification and  
signing of  
pleadings.

In supersession of Punjab Government notification No. 19798-Judicial, dated the 4th July, 1934, and in accordance with the provisions of Order XXVII, Rule 1 of the First Schedule of the Code of Civil Procedure, 1908, it is hereby ordered that in all suits by or against the Punjab Government Plaints or written statements on behalf of the Punjab Government, shall be signed and verified by the Deputy Commissioner for the time being of the district in which the cause of action in whole or in part arises or by any other gazetted officer of any department concerned who is acquainted with the facts.

*V—Government of India Ministry of Law, New Delhi, the 8th April, 1953 (Published in Gazette of India, Part II, Section III, dated 18-4-1953)*

*Notification No. S.R.O. 699, dated 8th April, 1953.*

Delegation of  
function of  
Central  
Government.

In pursuance of clause (1) of Article 239 and clause (1) of Article 243 of the Constitution, and in supersession of the notification of the Government of India in the late Home Department No. 204/37 Judicial, dated the 5th May, 1938, and in partial modification of the notification of the Government of India in the Ministry of States, No. S.R.O. 460, dated the 24th August, 1950, in so far, as it relates to the Civil Procedure Code, 1908 (Act V of 1908) the President hereby directs that the functions assigned to the Central Government by Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, (Act V of 1908), shall be discharged by the Lieutenant Governor or the Chief Commissioner, as the case may be, of every Part C State, except the State of Manipur, in respect of such Part

C States, and by the Chief Commissioner of the Andaman and Nicobar Islands in respect of these Islands.

*VI.—Delhi State Secretariat, Delhi.*

*Notification No. F.7(9)/55-Judicial (1) dated 27th June, 1906.*

In accordance with the provisions of rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure 1908, read with notification of the Government of India in the Ministry of Law No. S.R.O. 699 dated the 8th April, 1953, and in supersession of this administrations' notification No. F.233/38-General dated the 24th December 1938, it is hereby ordered that in all suits instituted in Delhi by or against the Central or State Government, Plaints or written statements as the case may be, on behalf of the Government shall be signed and verified by the Government, Pleader of the Delhi State Government or by the Deputy Commissioner, Delhi, or by any other Gazetted Officer of any Department concerned who is acquainted with the facts.

Verification and signing of plaint in suit instituted in Delhi.

*VII. —Delhi State Secretariat, Delhi.*

*Notification No. F. 7(9)/55-Judicial (ii) dated the 27th June, 1956.*

In accordance with the provisions of rule 2 of Order XXVII of the First Schedule to the Code of Civil Procedure 1908, read with the notification of the Government of India in the Ministry of Law, No. S.R.O. 699, dated the 8th April, 1953, and in supersession of this administrations' notification No. 233/38 General, dated the 24th December 1938, the Chief Commissioner, Delhi, is pleased to authorise :—

Agents of the Government in suits instituted in Delhi.

(a)The Deputy Commissioner, Delhi (or in his absence from the head quarters, the Senior Assistant or E.A.C. present) and the Government Pleader of the Delhi State, to act for and on behalf of the Government in respect of all civil judicial proceedings in the subordinate Courts at Delhi.

(b)the Advocate General, Punjab any of his Assistants or the Standing Counsel of Delhi State to act for and on behalf of the Government in respect of all Judicial proceedings in the High Court of Judicature, Punjab, Chandigarh and in its Circuit Bench at Delhi.

VIII. MINISTRY OF RAILWAY  
(RAILWAY BOARD)

*New Delhi, the 7th September, 1951.*

S.R.O. No. 1399.—In exercise of the powers conferred by Rule I of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, (Act V of 1908), read with section 141 of the said code, the Central Government hereby authorises the General Manager and the Deputy General Manager of the Southern Railway to sign and verify plaints, written statements petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the said Railway Administration.

(No. E5ILL2/14/3).

IX.

MINISTRY OF RAILWAY  
(RAILWAY BOARD)

*New Delhi, the 8th March, 1952.*

S.R.O. 460.—In exercise of the powers conferred by rule 1 of Order XXVII of the first schedule to the code of civil procedure 1908 (Act V of 1908) read with section 141, of the said Code, the Central Government hereby authorises the General Manager and the Deputy General Manager of the Central Railway to sign and verify plaints, written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the said Railway Administration.

X.

(No. E 5ILL2/14/3.1).

S.R.O. 461.—In exercise of the powers conferred by Rule I of Order XXVII of the First Schedule to the Code of Civil Procedure 1908 (Act V of 1908) read with section 141 of the said Code, the Central Government hereby authorises the General Manager and the Deputy General Manager of the Western Railway to sign and verify plaints, written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the said Railway Administration.

*XI—New Delhi, the 10th July, 1952*

S.R.O. 1250.—In exercise of the powers, conferred by rule I of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) read with section 141 of the said Code, the Central Government hereby appoints each of the persons specified in column 2 of the Schedule annexed hereto to sign and verify plaints, written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the railway administration specified in the corresponding entry in column I of the said Schedule.

<i>Railway Administration</i>	<i>Persons Appointed to sign and Verify the plaint etc.</i>
Northern Railway	.. General Manager and Deputy General Manager.
Eastern Railway	.. General Manager and Deputy General Manager.
Northern Eastern Railway	.. General Manager and Deputy General Manager.

(No. E52LLI/19/3-I)

XII.—S.R.O. 1251.—It is hereby notified for general information that the General Manager and Deputy General Manager of the Northern, Eastern and North Eastern Railways are *ex-officio* authorised to act for and on behalf of the Central Government in respect of all Judicial proceedings in which the Northern, Eastern and North Eastern Railway administration may respectively be concerned.

(No.E52LLI/19/3-II).

*XIII MINISTRY OF RAILWAYS**New Delhi the 18th June, 1953.*

S.R.O. 1266.—In exercise of the powers, conferred by rule I, read with clause (a) of rule 8-B of order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Central Government hereby appoints in addition to the persons already authorised in notifications of the Government of India in the Ministry of Railways

(Railway Board) No. E 51LL2/14/3, dated the 7th September 1951, No. E51LL2/14/3/1, dated the 8th March, 1952, No.E51LL2/14/3/II dated the 8th March, 1952 and E52LLI/19/3—I, dated the 10th July, 1952, each of the persons specified in column 2 of the Schedule annexed hereto to sign and verify written statements, petitions, applications, including applications for execution and any other pleadings or proceedings in any suit or other proceedings relating to compensation (claims) against the Central Government arising out of loss of or damage, to or deterioration of booked consignments in respect of the railway administration specified in the corresponding entry in column I of the said Schedule.

THE SCHEDULE

<i>Railway Administration</i>	<i>Persons Appointed to sign and Verify written statements, petitions etc.</i>		
Southern Railway	.	Chief	Commercial
	.	Superintendent.	
Central Railway	.	Deputy Chief Superintendent.	Commercial
	.	Chief	Commercial
Western Railway	.	Superintendent.	
	.	Deputy Chief Superintendent.	Commercial
Eastern Railway	.	Chief Commercial Supdt.	
	.	Deputy Chief Commercial Supdt.	Commercial
North Eastern Railway	.	Chief	Commercial
	.	Superintendent.	
Northern Railway	.	Deputy Chief Superintendent.	Commercial
	.	Chief Commercial Supdt.	
	.	Deputy Chief Commercial Supdt.	Commercial
	.	Supdt.	

(No. E52LL1/19/3).



**MINISTRY OF RAILWAYS**

XVI

(RAILWAY BOARD)

*New Delhi, the 24th December, 1953.*

S.R.Q. 36.—In exercise of the powers, conferred by rule I, read with clause (a) of rule 8-B, of order XXVII of the First Schedule to the Code of Civil Procedure 1908 (Act V of 1908) the Central Government hereby appoints the District Traffic Superintendent (Claims), North Eastern Railway, headquartered at Calcutta, in addition to the Chief Commercial Superintendent & Deputy Chief Commercial Superintendent, North Eastern Railway, already authorised in the notification of Government of India in the Ministry of Railways (Railway Board) No. E 52 LLI/1913, dated the 18th June, 1953, to sign and verify written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings relating to compensation (claims) against the Central Government arising out of loss of or damage to or deterioration of booked consignments in respect of the North Eastern Railway.

(No. E52LLI/19/3).

XV

S.R.O. 37-1t is hereby notified for general information that the District Traffic Superintendent (Claims), North Eastern Railway, Headquartered at Calcutta, is ex-officio authorised to act for and on behalf of the Central Government in respect of judicial proceedings relating to compensation (claims) against the Central Government, arising out of loss of or damage to or deterioration of booked consignments in respect of the North Eastern Railway.

[No. E52LLI/19/3 (1)].

<sup>[36]</sup> [XVI. Ministry of Railways (Railway Board)  
New Delhi, the 11<sup>th</sup> September, 1961

**G.S.R.1138.-** In exercise of the powers conferred by Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) and in supersession of all notifications on the subject, the Central Government hereby appoints:-

- (i) the officers specified in the Schedule annexed hereto as persons by whom complaints and written-statements in suits in any Court of civil jurisdiction by or against the Central Government in respect of the Railway Administration shall be signed:
- (ii) those of the officers referred to in sub-clause (i) who are acquainted with the facts of the case, as persons by whom such complaints and written-statements shall be verified.

### SCHEDULE

#### 1. Ministry of Railways (Railway Board)

- (i) Secretary.
- (ii) Deputy Secretary.
- (iii) Under Secretary.

#### 2. All Railways

- (i) General Manager.
- (ii) Deputy General Manager.
- (iii) Chief Personnel Officer.
- (iv) Deputy Chief Personnel Officer.
- (v) Chief Commercial Superintendent.
- (vi) Deputy Chief Commercial Superintendent.
- (vii) In the case of the North East Frontier Railway also.
  - (a) Chief Traffic Superintendent.
  - (b) Deputy Chief Traffic Superintendent.

3. The Chittaranjan Locomotive Works, Chittaranjan.

(i) General Manager.

(ii) Deputy General Manager.

4. The Integral Coach Factory, Perambur.

Chief Administrative Officer.

5. The Railway Electrification, Calcutta.

General Manager and Chief Engineer.

6. The Indian Railways locomotive Copotent Works, Varanasi.

Chief Engineer.

7. The Dandakarnya-Bolandri-Kiriburu Railway Project, Waltiar

General Manager.

(F.No. F (G)-55-L12/19/3).

**XVII-MINISTRY OF RAILWAYS**

**(RAILWAY BOARD)**

**New Delhi, the 7<sup>th</sup> October, 1961**

**G.S.R. 1269.-** In pursuance of the provisions of rule 2 of Order XXVII in the First schedule to the Code of Civil Procedure, 1908 (5 of 1908), the Central Government hereby authorizes the Officers specified in the Schedule annexed to the notification of the Government of India in the Ministry of Railway (Railway Board) No. G.S.R. 1138, dated 11<sup>th</sup> September, 1961, to act for and on behalf of the Central Government in respect of any judicial proceeding relating to a Railway Administration.

(C.S. No. 3-Rules/X.A. 19(a), dated the 16<sup>th</sup> January, 1963)]