

PART B.-AUDIT

1. The Sheriffs Petty Accounts, the Civil Court Deposit Accounts (cash system), the Copy Agency Accounts (District and Sessions Judges Courts and Courts of Small Causes), and the accounts of property made over to the Nazir for custody, will be audited as far as possible once a year under the orders of the Accountant-General by the Examiner, Local Fund Accounts or the Examiner, Outside Audit Department as the case may be and a staff of peripatetic auditors. Annual Audit.

2. Presiding Officers of Courts should cause to be placed at the disposal of the auditors all account registers, documents, etc., as well as any subsidiary papers which may be required by the audit officers. Paper to be placed at the disposal of Auditors.

3. The results of audit will be communicated in printed or typed audit and inspection notes to the Courts concerned, to the District and Sessions Judge, and to the High Court. Audit note to be sent to Court concerned and higher officers.

4. Presiding Officers of Courts, the Senior Sub-Judge where he is the immediate controlling officer, and the District and Sessions Judge should deal promptly with these audit and inspection notes. The action taken should be recorded on an interleaved copy or on the margin of the notes. Copies of these annotated notes should be forwarded to the Examiner, Local Fund Accounts or the Examiner, Outside Audit Department as the case may be and to the High Court, through the immediate controlling officers, if any, and the District and Sessions Judge; and a copy should also be kept and produced for the information of the inspecting officer. The objection statement which accompanies the audit and inspection note should, after the objections recorded therein have been replied to, be kept and put up before the auditors at their next visit. Prompt attention to Audit notes.

5. Whenever an embezzlement, loss of property, fraud or grave irregularity likely to lead thereto, is discovered, enquiries shall be instituted at once by the Presiding Officer of the Court and at the same time report made to the High Court through the immediate controlling officer, if any, and the District and Sessions Judge. Inquiry into embezzlement, loss of property, etc.: Report to Accountant-General: Final report to High Court.

(a) Such cases as involve more than Rs. 200 or present important features which merit detailed investigation or consideration will also be reported by the presiding officer through the District and Sessions Judge to the Accountant-General as required by Article 29, Civil Account Code, Volume I.

(b) In submitting *final* reports, the following points will be reported on to the High Court:-

- (1) The exact nature of the defalcation.
- (2) The full extent of the loss.
- (3) The actual period covered by the defalcation.
- (4) The defects in or neglect of rules by which the loss was rendered possible and the circumstances which facilitated the defalcations
- (5) The names of the officials held personally or technically, directly or indirectly, and wholly or partly responsible for the loss and irregularities committed, and the disciplinary action taken or proposed to be taken against each.
- (6) Whether the case has been tried judicially or not, and if not, why? If so, three copies of the judgment should be forwarded.
- (7) The remedial measures adopted as safeguards against recurrence of such defalcations of irregularities.
- (8) The prospects of recovery of the loss.

The following circular letters of the Punjab Government, which describe the procedure to be adopted on the discovery of defalcations and the principles for the assessment of personal responsibility, should be carefully followed:-

Punjab Government, Finance Department,
Memorandum No. 30161-F, dated 30th
September, 1929.

Punjab Government, Finance Department, letter No. 21204 (Fin.-Genl.), dated 17th July, 1934.

Punjab Government, Finance Department, letter No. 42841 (Fin.-Genl.), dated 16th December, 1935.

Note.-These letters are reproduced in the appendix to these rules.

6. Experience has shown that presiding officers frequently fail to take any effective action when irregularities are brought to their notice. There must be complete investigation of every complaint made to presiding officer. *In no case may a subordinate official be allowed to refund money which has been kept out of account without a report to the higher authorities.* Any such permission given by a presiding officer will be treated as a gross breach of discipline.

Irregularities;
Refund of money
kept out of
account not
allowed.

7. No records or documents filed in any Court accounts should be destroyed till a period of one year has elapsed since they were last audited, and if at the last audit any objection or remark was raised in connection with any record or document, such should be retained until the next audit and not be destroyed until one year has elapsed since the removal of the objection originally raised.

Destruction of
records relating to
audit.

This does not apply to those records which under the rules of the Court form part of a case and are filed with the Court.

APPENDIX

Memo No. 30161-F., dated 30th September, 1929, from J.D. Penny Esq., I.C.S., Secretary to Government Punjab, Finance Department, to all Heads of Departments, District and Sessions Judges and Deputy Commissioners, in the Punjab.

The Governor *of Punjab desires to draw the attention of all officers of Government to the enclosed memorandum embodying the general principle to regulate the enforcement of responsibility for losses sustained by Government through fraud or negligence of individuals.

2. The Governor *of Punjab further desires that these principles should be carefully followed by all Government servants under the administrative control of the State Government.

A memorandum of general principles to regulate the enforcement of responsibility for losses sustained by Government through fraud or negligence of individuals.

Responsibility of officials for loss though fraud or negligence etc.

1. Means should be devised to ensure that every Government servant realises fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part, and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any other Government servant to the extent to which it may be shown that he contributed to the loss by his own action or negligence. The cardinal principle governing the assessment of responsibility in such cases is that every public officer should exert same vigilance in respect of public expenditure and public funds generally as a person of ordinary prudence would exercise in respect of the expenditure and the custody of his own money. While, therefore, Government are prepared to condone an officer's honest errors of judgment involving financial loss, provided the officer can show that he has done his best up to the limits of his ability and experience, they are determined.

*Words "of Punjab" substituted for the words "in council".

To penalise officers who are dishonest, careless or negligent in the duties entrusted to them.

2. It is of the greatest importance to avoid delay in investigation of any loss due to fraud, negligence, financial irregularity, etc. If the irregularity is detected by audit in the 1st instance, it will be the duty of the audit officer to report immediately to the administrative authority concerned. If the irregularity is detected by the administrative authority in the 1st instance, and if it is one which should be reported to the audit officer in terms of Article 29, Civil Account Code, Volume I, he must make the report immediately. Every important case should be brought to the notice of superior authority should as soon as possible- the administrative authority should report to his superior and the audit authority to his superior. Should the administrative authority require the assistance of the audit officer in pursuing the investigation, he may call on that officer for all vouchers and other documents that may be relevant to the investigation and if the investigation is complex and he needs the assistance of expert audit officer to unravel it, he should apply forthwith for that assistance to Government who will then negotiate with the audit officer for the services of an investigating staff. Thereafter the administrative authority and the audit authority will be personally responsible, within their respective spheres, for the expeditious conduct of the enquiry.

Where account offices exist intermediary between audit and the administrative authority, the account offices will discharge the functions prescribed above for audit, but a report will still be necessary to the audit officer in terms of Article 29 of Civil Account Code, Volume I.

3. In any case in which it appears that recourse to judicial proceedings is likely to be involved, competent legal advice should be taken as soon as the possibility emerges. In the case of losses involving a reasonable suspicion of fraud or other criminal offence a prosecution should be attempted unless the legal adviser consider that the evidence available is not such as will secure a conviction. The reasons for not attempting a prosecution should be placed on record in all such cases.

Speedy enquiry:
Report to
higher officers:
Loan of audit
expert.

Legal advice as
to prosecution
of the offender.

Responsibility of superior officer when loss is facilitated by lack of his supervision.

4. In cases where loss is due to delinquencies of subordinate officials and where it appears that this has been facilitated by laxity of supervision on the part of a superior officer, the latter should also be called strictly to account and his personal liability in the matter carefully assessed.

Points to be considered in fixing pecuniary liability of the officers concerned.

5. The question of enforcing pecuniary liability should always be considered as well as the question of other forms of disciplinary action. In deciding the degree of officer's pecuniary liability it will be necessary to look not only to the circumstances of the case but also to the financial circumstances of the officer, since it should be recognized that the penalty should not be such as to impair the Government servant's future efficiency.

In particular, if the loss has occurred through fraud, every endeavor should be made to recover the whole amount lost from the guilty persons, and if laxity of supervision has facilitated the fraud, the supervising officer at fault may properly be penalised either directly by requiring him to make good in money a sufficient proportion of the loss, or indirectly by reduction or stoppage of his increments of pay.

Information to be sent to Accounts officer and authority competent to sanction pension when an inquiry is progress in which pensionable Government servant is concerned.

6. One reason why it is important to avoid delay (*vide* paragraph 2 preceding) is that in the course of a prolonged investigation Government servants who are concerned may qualify for pension, and it is held that under the rules as they now stand (measures to rectify this are under separate consideration) a pension once sanctioned cannot be reduced or withheld for misconduct committed prior to retirement. It follows from this that, as a primary precaution, steps should be taken to ensure that an officer concerned in any loss or irregularity which is the subject of an enquiry, is not inadvertently allowed to retire or pension while the enquiry is in progress, and accordingly when a pensionable Government servant is concerned in any irregularity or loss, the authority investigating the case should immediately inform the Accounts or Audit Officer responsible for reporting on his title to pension and the authority competent to sanction pension and it will be the duty of the latter to make a note of the information and to see that pension is not sanctioned

before either a conclusion is arrived at as regards the Government servant's culpability, or it has been decided by the sanctioning authority that the result of the investigation need not be awaited.

7. The fact that officers who were guilty of frauds or irregularities have been demobilized or have retired and have thus escaped punishment, should not be made a justification for absolving those who are also guilty but who still remain in service.

Guilty officers in service should not be absolved if others equally guilty retire.

No. 21204 (*Fin.-Genl.*), dated Lahore the 17th July, 1934, from A.D. Grindal Esq. P.C.S., Offg. Secretary to Government, Punjab, Finance Department to all Heads of Departments, Commissioners of Divisions, District and Sessions Judges and Deputy Commissioners in the Punjab.

SUBJECT: *Procedure to be followed in prosecutions for the embezzlement of Government Money.*

I am directed to refer to Punjab Government, Finance Department, letter No. 30161-F., dated the 30th September, 1929, regarding the general principles to regulate the enforcement of responsibility for losses sustained by Government through fraud or negligence of individuals and to forward a memorandum embodying certain additional instructions to be followed in the matter.

U.O. No. 1212 (Fin.-Genl.), dated 17th July, 1934.

Copy, together with a copy of the enclosure, forwarded to all Administrative Secretaries to Government, Punjab, for information.

MEMORANDUM

In the memorandum circulated with the Punjab Government, Finance Department, letter No. 30161-F., dated the 30th September, 1929, the general principles regulating the enforcement of responsibility for losses sustained by Government through the fraud or negligence of individuals were fully stated. The following supplementary instructions are issued for the guidance of departmental officers, with special reference to cases in

Which prosecutions in the criminal courts are, or are likely to be, necessary:-

Losses to be report to Audit Officer & official Superior.

(1) All losses of the kind referred to in Article 29 of the Civil Account Code, Volume I, must be reported forthwith by the officer concerned, not only to the Audit Officer, but also to his own immediate official superior. Reports must be submitted as soon as reasonable grounds exist for believing that a loss has occurred; they must not be delayed while detailed enquiries are made.

Report to be submitted to Government.

(2) Reports submitted under (1) above must be forwarded forthwith to Government through the usual channel with such comments as may be considered necessary.

Requisition for investigation by Police.

(3) As soon as a reasonable suspicion exists that a criminal offence has been committed the senior officer of the department concerned present in the station will report to the District Magistrate and ask for a regular police investigation under the Code of Criminal Procedure, 1898.

Manner of investigation.

(4) If the District Magistrate agrees that an investigation may be made, the senior officer of the department concerned present in the station will (a) request the District Magistrate to arrange for the investigation to proceed from day to day, (b) see that all witnesses and documents are made available to the investigating officer; and (c) associate with the investigating officer an officer of the department who is not personally concerned with irregularity leading up to the loss, but who is fully cognizant of the rules and procedure of the office in which the loss has occurred.

Procedure for deciding about prosecution.

(5) When the investigation is completed an officer of department (accompanied by the officer who attended the investigation) must be made available for conferences with the authority who will decide whether a prosecution should be instituted. If it is decided not to prosecute, the case must be reported through the usual channel to Government for orders.

Special arrangements for speedy trial.

(6) If it is decided to prosecute, the departmental representative will ascertain from the prosecuting officer whether, having regard to the engagements of the prosecuting staff, and the state of work in the court which

Would ordinarily hear the case, it is necessary to move the District Magistrate to make special arrangements for a speedy trial, and will request the prosecuting officer to make any application that he may think necessary.

(7) When the case is put into court by the Police, the senior officer of the department concerned present, in the station will see that all witnesses serving in the department, and all documentary evidence in the control of the department, are punctually produced, and will also appoint an officer of the department (preferably the officer who attended the investigation) to attend the proceedings in court and assist the prosecuting staff.

Duty of the department concerned to help prosecution agency.

(8) If any prosecution results in the discharge or acquittal of any person, or in the imposition of sentences which appear to be inadequate, the senior officer of the department concerned will at once consult the District Magistrate as to the advisability of instituting further proceedings in revision or appeal, as the case may be, and if the District Magistrate is of opinion that further proceedings are necessary, will request him to proceed as he would in any other case.

Steps to be taken for lodging revision or appeal.

Only the State Government may, in any case, direct that an appeal be filed from an order of acquittal. In cases instituted on complaint, the complainant can also apply to the High Court for grant of special leave to appeal from such an order. Section 417 of the Code of Criminal Procedure, as amended by Act No. 26 of 1955, should be consulted in this connection.

(9) The senior officer of the department concerned present in the station will see that, in addition to the reports required under (1), (2) and (5) above, prompt reports are submitted to Government through the usual channel regarding:-

Reports to Government about Police investigation and prosecution.

- (a) the commencement of a police investigation;
- (b) the decision to prosecute in any particular case;
- (c) the result of any prosecution;
- (d) the decision to proceed further in revision or appeal in any case;

- (e) the result of any proceedings in revision or appeal.

Reference by department to Government.

(10) Notwithstanding anything contained in (2) – (9) above, the senior officer of the department concerned present in the station may, if he thinks fit, refer any matter through the usual channel for the orders of Government before taking action.

No. 42841 (Fin.-Genl.), dated Lahore, the 16th December, 1935, from C.M.G. Ogilvie, Esq., C.B.E., I.C.S. Secretary to Government, Punjab Finance Department to all Heads of Departments, the High Court, Commissioners of Divisions, District and Sessions Judges and Deputy Commissioners in the Punjab.

SUBJECT: *Department Enquiry in cases of Fraud and Embezzlement of Government Money in which Government servants are involved.*

Summary of previous instructions.

In the Finance Department memorandum No. 30161-F., dated 30th September, 1929, general principles were laid down to regulate the enforcement of responsibility for losses sustained by Government through fraud or negligence of Government servants. It was therein stated (among other things) that it is of the highest importance to avoid delay in the investigation of any such loss; that, where it appears that recourse to judicial proceedings is likely to be involved, competent legal advice should be taken as soon as the possibility emerges; that where there is a reasonable suspicion of fraud or other criminal offence, a prosecution should be attempted unless the legal advisers consider that the evidence available is not such as will secure a conviction; and that, where loss is due to delinquencies of subordinate officials and where it appears that this has been facilitated by laxity of supervision on the part of a superior officer, the latter also should be called strictly to account.

These principles were supplemented by instructions contained in the memorandum attached to the Finance Department letter No. 21204 (Fin.-Genl.), dated 17th July, 1934. These instructions had special reference to cases in which prosecutions in the criminal courts, are,

Or are likely to be, necessary; and laid down (among other things) that as soon as a reasonable suspicion exists that a criminal offence has been committed, the senior officer of the department will report to the District Magistrate and ask for a regular police investigation; and explained the procedure that should follow the investigation.

2. It is now desired to explain as clearly as possible what is necessary to be done in the way of departmental enquiry where a prosecution is, or is likely to be, instituted. It has been found that, where fraud or embezzlement of Government funds has occurred, there is a tendency for the head of the office or department to regard the institution of criminal proceedings as absolving him from the unpleasant and often laborous task of conducting immediately a through departmental enquiry. This natural reluctance may be enhanced by an apprehension that an enquiry may prejudice the result of the trial in a court of law. As a result, there has sometimes been great delay in taking departmental proceedings and the results have been inconclusive. The Central Public Accounts Committee in their report on the accounts of 1933-34 have agreed with the Auditor-General that departmental enquiries should not necessarily be delayed pending decision of criminal cases, as at a later stage the evidence might disappear and the departmental enquiry could not be brought to any conclusion at all.

Department inquiry should not be delayed pending criminal trial.

3. Experience shows that departmental proceedings cannot as a rule proceed concurrently with a criminal prosecution. Much of the evidence in a case of fraud or embezzlement is documentary. As soon as the criminal proceedings begin the documents go to the court as exhibits, and there they must remain till the case is over and (if and appeal is filed) till the appeal is over. But it is essential that every thing should be done to carry the departmental proceedings as far as possible before prosecution begins. The stage to which departmental proceedings, prior to prosecution should be taken must depend on circumstances and cannot be precisely defined. The normal procedure is laid down in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules; and the stage which departmental proceedings can reach may according to circumstances be any one of the stages described or implied in the Rule i.e., the preliminary recording

Inquiry should go on as far as possible before prosecution begins, but findings and sentence should not be recorded until after the disposal of the criminal case.

Of evidence the receipt of the delinquent's written statement after the framing of a charge, the personal hearing, or the enquiry. If it is intended to prosecute, a finding and sentence should not be recorded in the departmental proceedings till after the disposal of the criminal case; but it must be emphasized that the proceedings should be completed up to the point that can properly be reached.

Cases in which several persons are involved but all are not to be prosecuted.

4. A common type of case is that where a number of persons are involved one or more criminally, and others in such circumstances as show negligence, or warrant the suspicion of criminal abetment without sufficient proof to justify prosecution, or have similar features which necessitate a criminal prosecution of one or more and a departmental enquiry against others. In such cases the authority has sometimes neglected to institute a formal departmental enquiry, or to carry it to the requisite stage, before criminal proceedings are taken, when the criminal case is over, effective departmental action has been found impracticable.

Cases in which several persons are involved but all are not to be prosecuted.

5. The general rule should be that in all cases of fraud, embezzlement, or similar offences departmental proceedings should be instituted at the earliest possible moment against all the delinquents and conducted with strict adherence to the rules up to the point at which prosecution of any of the delinquents begins. At that stage it must be specifically considered whether further conduct of the departmental proceedings against any of the remaining delinquents is practicable; if it is, it should continue as far as possible (which will not, as a rule, include finding and sentence). If the accused is convicted and awarded an adequate sentence, the departmental proceedings against him will be formally completed, and the proceedings against other delinquents continued. If accused is not convicted or the accused is inadequately punished, the departmental proceedings against him will be resumed, as will also those against the remaining delinquents.

Action under Public Servants' (Inquiries) Act.

6. The proceedings contemplated in these instructions are those which are regulated by the Civil Services (Classification, Control and Appeal) Rules. Where action is taken under the Public Servants (Inquiries) Act XXXVII of 1850, this ordinarily takes the place of a criminal prosecution as regards the person or persons accused; but the procedure as regards other persons involved against whom the

Act is not employed should be in accordance with the instructions given above.

U.O. No. 3458 (Fin.-Genl.), dated the 16th December, 1935.

Copy forwarded to all Administrative Secretaries to Government Punjab, for information, in continuation of Finance Department U.O. No. 1212 (Fin.-Genl.), dated 17th July, 1934.