

PART B- CONFERMENT OF CRIMINAL MAGISTERIAL POWERS

The Hon'ble Judges have been pleased to issue the following instructions, which have been approved by the State Government, in regard to recommendations for the conferment of Criminal Magisterial Powers:-

Instructions in re recommendations for conferment of Criminal Magisterial Powers.

(1) Recommendations for the conferment of Criminal Magisterial Powers upon officers of the Indian Civil Service and Punjab Civil Service should ordinarily originate, as the circumstances of each case may require, with either the district Magistrate, the District and Sessions Judge, the Commissioner or the High Court.

For I.C.S. and Service Officers.

Proposals for the investiture of Tahsildars and Naib-Tahsildars with a higher Magisterial Powers than those which they exercise ex-officio should be made to the High Court through the commissioner and the Financial Commissioners for transmission to Government.

For Tahsildars

(2) Except when it is desire to confer enhanced powers, e.g., the Powers of a section 30 or 260 Magistrate, Additional District Magistrate, etc., upon an Assistant Commissioner or Extra Assistant commissioner, the district Magistrate may address the commissioner either direct or through the District and Sessions Judge. A proposal for the conferment of enhanced powers upon an Assistant Commissioner or Extra Assistant Commissioner, should however, be initiated by the District Magistrate, who will forward his recommendation to the Commissioner through the District and Sessions Judge. The Commissioner will then address the High Court. It is definitely irregular for officers' desires of obtaining these powers to address the Registrar, High Court, direct. In the rare cases where it is proposed to confer Magisterial Powers upon a Subordinate Judge, the proposal should originate with the District Magistrate and should be forwarded through the District and Sessions Judge and the commissioner to the High Court.

Channel of recommendation.

Note- In districts where the judiciary has been separated from the executive, such proposals will be initiated by the Additional District Magistrate who will submit the same to the District and Sessions Judge who in turn will forward his recommendation to the High Court.

When
Commissioner
shall consult
Sessions
Judge.

(3) In other cases, the Commissioner, before forwarding the proposal to the High Court, may consult the District and Sessions Judge if he thinks it necessary to do so: but he shall do so whenever it is proposed to confer on any person the enhanced powers mentioned in paragraph 2 and-

- (a) first class magisterial powers; or
- (b) the powers to commit persons for trial to the Court of Sessions, under section 206 of the Code of Criminal Procedure.

Statement of
previous exercise
of powers to be
sent along with
recommendations

(4) When recommendations for the investiture of Extra Assistant Commissioners and Tahsildars with criminal powers are submitted to the High Court, it should invariably be specified whether the officer recommended has exercised powers before of the same or of a lower class, and for what periods; the Government notification conferring such powers should be quoted in each case. If the officer has never exercised criminal powers before, the fact should be stated.

Necessary
qualifications for
exercise of
special powers.

(5) Special care should be taken when recommending the investiture of officers with the important powers of a Section 30 or 260 Magistrate, or with the powers of an Additional District Magistrate. Ordinarily the qualifications necessary for the conferment of powers under section 30 of the Code of Criminal Procedure are-

- (a) the exercise of first class magisterial powers for at least ten years;
- (b) the officer recommended must be reported to be a capable and reliable Magistrate;
- (c) he should keep his records and write judgments in English; and
- (d) his English should be intelligent and his hand writing legible.

For summary powers under section 260 of the Code of Criminal Procedure, the qualifications are the same except that the officer may have exercised first class magisterial powers for three years and should

Have at least seven years service, ¹[relaxable by two years in fit cases.] An officer recommended for the exercise of the powers of an Additional District Magistrate should have not less than ten years service.

Note-These conditions are not applicable to officers of the Indian Civil Service or the Indian Administrative Service who are governed by the order regulating the training of Assistant Commissioners, the condition that first class magisterial powers should have been exercised for at least ten years before an officer can be invested with powers under section 30 would, however, apply in their case also in view of the amendments of that section by Act, No. 26 of 1955.

(6) Government maintain confidential lists of officers of the Indian Administrative Service and Punjab Civil Service who are considered qualified to exercise or to be tried with certain enhanced civil and criminal powers. These lists are revised annually under instructions which are issued separately by the High Court. The channel prescribed in paragraphs 2 and 3 for the transmission of proposals applies only to the case of individual recommendations made from time to time during the year and not to the procedure for the revision of the annual confidential powers lists.

Recommendations should ordinarily be made at the time of revision of annual confidential powers lists.

Normally, recommendations for the investiture of officers with enhanced powers should be confined to the time of the annual revision of lists, save when enhancement of powers is essential in the interests of work. The records of all officers recommended at the time of such revision are very carefully examined and it means extra work and less accurate results if individual cases are taken up at other times.

(7) It sometimes happens that higher powers are conferred in an emergency upon officers not in every way competent to exercise them permanently: this, however, confers no claim to be given such powers permanently at the next revision of lists. Some officers are apt to consider that because they do not get higher powers, or their names do not appear on the confidential lists of officers qualified to exercise or to be tried with higher powers, as soon as they expect to, there are some undisclosed complaints against them, when the real reason may merely be that the High Court does not consider that they are quite ready to exercise them.

Conferment's of higher powers in emergency does not qualify permanently.

1. Inserted vide Correction Slip No. 28 Rules/II.D.4 dated 13.02.1984