

CHAPTER 23

ANALYSIS OF COURT JUDGEMENTS AND FILING OF APPEALS, REVISIONS etc.

Conviction/Acquittal/Discharge Reports

23.1 After the judgement is pronounced in a CBI case, a report on conviction/ acquittal/discharge shall be forwarded by the Sr. PP to Regional DLA with a copy to the Branch SP and DIG who will intimate the concerned Department/Undertaking or Ministry to which the accused public servant belongs. A copy will also be sent to the concerned Administrative Ministry through which the sanction for prosecution was obtained in the name of President of India. Even if, it is contemplated to file appeals/revisions in such cases, reports shall not be held up.

23.2 A Register of Acquittals and Discharge will be maintained in the prescribed form in the Legal Section of each CBI Branch in which details of each case ending in acquittal/discharge in trial/appeal shall be indicated. The register will contain the following columns:—

Regular Case No.	Section(s) of Law	Name(s) of Accused persons	Name & Designation of the I.O.	Name & Designation of the P.P.	Name of the Court	Grounds of Acquittal/ discharge	Action recommend-ed by the Branch Sr. PP/SP	Order of the Director Prosecu-tion
1	2	3	4	5	6	7	8	9

23.3 In the cases of acquittal/discharge or conviction carrying less than the minimum mandatory punishment, application for certified copy of judgement should invariably be filed by the Prosecutor incharge of the case either on the date of judgement or on the following day. He should ensure that the certified copy contains endorsements regarding the date of application, the date on which the certified copy was ready and the date when it was delivered. The Branch SP will make the necessary funds available wherever such copies are not available free of cost. The Retainer Counsels will similarly obtain judgements in the High Courts and wherever there are no Retainer Counsels, it shall be the responsibility of the Branch Sr.PP to request the Government Advocate for obtaining certified copies of judgement. The Sr. PP shall take all necessary steps to obtain copies of judgements expeditiously and the Branch SP will facilitate the process.

23.4 The Branch Sr.PP should ensure that the certified copy of judgements in all cases together with the comments of the I.O., the SP and his own comments are forwarded to the DLA/DIG at least two months before expiry of the limitation period to allow in depth examination of issues by the Directorate of Prosecution and the Director, CBI before a proposal is moved to challenge the judgement in appeal or revision.

Scrutiny of Judgement

23.5 Each judgement should be scrutinized and examined with reference to the following points :—

- (i) Whether the sentence is adequate or inadequate;
- (ii) Whether appeal for enhancement of sentence is feasible.
- (iii) Whether acquittal or discharge is justifiable;
- (iv) Whether any material is available for filing an appeal against acquittal or discharge.
- (v) Whether a reference needs to be made to the Attorney-General or his nominee to ascertain whether acquittal was due to flawed investigation or Prosecution and to fix responsibility.

Loopholes in Procedures

23.6 The judgements in each case have also to be scrutinized to examine any breach of rules and regulations and to suggest necessary steps to prevent lapses, if any. In such cases, the Branch Sr. PP in consultation with the Branch SP will send a report to the DLA/DIG who will forward it to the Director of Prosecution through the JD/ALA. The Director of Prosecution may advise the Director, CBI to intimate the result of such scrutiny to the concerned Ministry/Department to take corrective measures through issue of suitable instructions to the subordinate formations. The CVC will also be informed of such scrutiny in all those cases where its advice was sought.

Recommending Appeals and Revisions

23.7 While examining a case for filing appeal against the acquittal, the various decisions enunciated by various High Courts and the Supreme Court on the scope and power of the Appellate Court to interfere with an acquittal in exercise of its powers under Section 378 Cr.P.C. should be kept in mind. Though a High Court has full powers to review at large the evidence upon which an acquittal order is founded and to reach its own conclusions, the following factors should be taken into consideration before recommending an appeal:–

- (a) Views of the Trial Court regarding credibility of the witnesses;
- (b) Reluctance of the Appellate Court to disturb the findings on facts recorded by the Trial Court which had the advantage of seeing and hearing the witnesses;
- (c) Right of the accused to the benefit of doubt;
- (d) Any other factor considered relevant by the Director of Prosecution.

23.8 High Courts do not normally interfere with orders of the lower Courts in exercise of their inherent powers under Section 482 Cr.P.C, except in cases of real and substantial injustice. Consequently, an appeal for enhancement of the sentence should be made after considering the part played by each accused in commission of the offence. Similarly, filing of revision applications in interlocutory matters should not be resorted to unless there is some substantial question of law involved or, the impugned order, if allowed to stand, is likely to have far-reaching consequences. The revisions in the Courts of Sessions can be filed by CBI Prosecutors and in the High Court by the Retainer Counsels with the approval of the Additional Director. Wherever, CBI do not have Retainer Counsels in any High Court, a request for filing the revisions has to be sent to the DP&T as the Central Government alone can make a request to the State Government to direct their Public Prosecutor to file such revision.

Watching Progress in Appeals filed by Accused

23.9 Proper care should be taken to watch progress in the appeals filed by accused persons against their conviction. The following instructions may be carefully complied with at the Branch level:–

- (i) Daily Cause List of cases heard in the High Court should be carefully perused by the Sr. PP.
- (ii) Sr.PP should maintain up-to-date Conviction Register of the Branch. The SP should also check it during his quarterly inspections.
- (iii) In those cases where the Branch Office and the High Court are located in the same place, a Court Naib of the rank of ASI should be earmarked for keeping a watch on such cases.
- (iv) Where Branches and High Courts are not located at the same place steps should be taken for the appointment of a Retainer Counsel in the High Court for watching these cases. The Branch SsP/Sr.PP concerned, wherever necessary, should send their proposals to the Director of Prosecution with sufficient facts and figures to justify the

appointment of the Retainer Counsel. Till the time Retainer Counsel is appointed, the Branch SP and Sr.PP should make adequate arrangements to watch such cases.

23.10 The SP and Sr. PP of all CBI Branches should intimate their respective Regional DIsG/DLA regarding any matter filed in the Supreme Court by the accused persons. This intimation should be sent along with full particulars, including the SLP to the Directorate of Prosecution through the RO/DLA who will keep liaison with the Central Agency Section of the Supreme Court and inform the branches of the development/ progress and the next date fixed in the Supreme Court in those matters. The monthly lists of the appeals and revisions pending in the High Court/Supreme Court have to be furnished by the Sr. PP/SP to the DLA/DIG in three parts, i.e. Part-I for new matters, Part-II for watching progress in pending matters and Part-III for matters disposed of.

Reports of Acquittal/Discharge

23.11 Whenever a case ends in acquittal or discharge a report will be prepared by the Prosecutor incharge of the case, after obtaining a copy of the judgement. He will clearly show the reasons for acquittal or discharge and whether there were any defects in investigation or in prosecution which led to the unsatisfactory result. Adverse remarks regarding investigation or prosecution will also be clearly mentioned.

23.12 The report so prepared will be commented upon by the Sr. PP of the Branch concerned unless he himself has prepared it. The report will also be examined by the Superintendent of Police of the Branch along with the Final Reports I & II and the judgement. If an appeal or revision is recommended to be filed against the acquittal, a self-contained note will be prepared by the Sr. PP giving in brief the facts of the case and the reasons why the appeal or revision is considered justifiable. In his comments the Prosecutor will discuss the specific points raised in the judgement and give clear reasons for his disagreement with the same. The reasons given by the Prosecutor should be supported by the evidence on record and his recommendations should be clear and unambiguous.

23.13 The period of limitation should be specifically mentioned and the dates when application for a copy of the judgement was made and obtained as well as the time taken in giving comments should also be indicated. Ordinarily, the Prosecutor should not take more than a week for giving his comments from the time of the receipt of the copy of judgement. If more time is taken he should account for the same. The SP and the Sr. PP will make a thorough and critical study of all the documents, record their own comments and suggestions and forward without delay all the papers to the Director of Prosecution through Regional/Zonal office for orders in the matter. All such papers should be accompanied by the proforma of limitation.

23.14 Copies of judgements and comments of the Prosecutor should be sent to the Director of Prosecution in triplicate in all cases ending in acquittal/discharge. One certified copy of the judgement, copies of the depositions of witnesses and the statements of the accused should also be forwarded through the DLA/DIG to the Director of Prosecution. If the Director of Prosecution recommends filing of an appeal, a copy of the judgement and a copy of the comments of the Director of Prosecution will be forwarded to the Administrative Ministry after obtaining the approval of the Director. Cases where no appeal/revision is required should have the approval of the Additional Director/Director depending on the status of the accused. If the Ministry agrees with the recommendation of the Director of Prosecution, the certified copy of the judgement and a copy of the comments of the Director of Prosecution will be forwarded to the CBI Retainer Counsel. If Retainer Counsel has not been appointed, the papers will be forwarded to the State Government for instructing the Public Prosecutor to file the appeal. Retainer Councils are authorized to file revision with the approval of Director/ Additional Director, CBI depending on the status of the accused.

23.15 Where appeal or revision is recommended, action should not be held up for want of a certified copy of the judgement. Such comments should be given immediately on an uncertified copy of

the judgement and forwarded to the Director of Prosecution in time. A certified copy of the judgement should be sent thereafter, as soon as it is obtained.

23.16 The following procedure shall be followed in respect of all adverse remarks, strictures or criticism found in Court judgements in CBI cases:—

23.16.1 **Action to be taken in case of Criticism by Courts in Judgements:** Sr. Public Prosecutor in consultation with SP of the Branch will carefully go through judgements and such records of the case, as may be necessary, including the documents and records of the CBI and the Court. They will then consider whether any further action is called for in respect of any adverse remark, stricture or criticism made by the Court and whether it is necessary to obtain the explanation or comments of the concerned Officers. After obtaining such explanations or clarification, they should determine whether any CBI Officer was at fault and, if so, what further action is required to be taken. The findings should be reported to the Competent Authority urgently.

23.16.2 Irrespective of their own views on the judgements pronounced by the Courts, Sr. PP/SP of the Branch should send, along with a copy of the judgement, a full report through the Regional Zonal Office to the Director Prosecution in every case where an adverse remark or criticism has been passed by a Court of Law. This report should be clear and sufficiently detailed and should generally be in the following form :—

- (i) Each adverse remark should be reproduced *in extenso* and a serial number given to it for facility of reference.
- (ii) Each remark should then be analyzed and discussed separately.
- (iii) The material and the arguments on which each remark is based should be mentioned.
- (iv) Any relevant material that might not have been brought to the notice of the Court or overlooked or ignored by the Court be mentioned.
- (v) The explanation of those concerned should be given.
- (vi) All points, for and against the remarks, should be discussed and the views and conclusions of the SP and Sr. PP given.
- (vii) Action, if any, taken or proposed to be taken should be mentioned at the end of the report.

23.17 Reports for filing appeals/revisions against acquittal or discharge orders should not be held up on the ground that the adverse remarks against the CBI Officers in the judgement were under scrutiny.

23.18 In case the strictures passed in a case are found *prima facie* justified, an internal committee comprising of the Director, CBI, Director of Prosecution and others as laid down in Policy Division Circular should examine the case, fix responsibility and take action against those found guilty of dereliction of duty, within one month of such examination.

23.19 In important cases where the Director, CBI disagrees with the advice of the Director of Prosecution, the matter may be referred to the Attorney-General of India for his views. Thereafter, the decision taken by the Director, CBI, keeping in view the opinion of the Attorney General would be deemed to be final.

Important cases resulting in Acquittal

23.20 If an important case, so categorized for close monitoring, on the basis of the amount involved, status of the accused, the sensitive nature of the investigation involving elected representatives etc., ends in acquittal, a reference should be made to the Attorney General or one of his nominees to determine whether the acquittal was as a result of flaws in investigation or prosecution, fix responsibility for such flaws and to examine whether it is a fit case for appeal. Such references should be drafted by the Director of Prosecution in consultation with Director, CBI and should invariably contain their own respective views.

Disagreement between Prosecution and Investigating Wing

23.21 In important cases where the Director, CBI disagrees with the advice of the Director of Prosecution, the matter shall be referred to the Attorney General of India for his views. Thereafter, the decision taken by the Director, CBI, keeping in view the opinion of the Attorney-General, would be deemed final.

23.22 Cases should be treated closed only when no further action of appeals or revision is pending. In all cases ending in acquittal where no appeal or revision is recommended, it should be examined whether Departmental Action can be recommended.
