

CHAPTER 9

PRELIMINARY ENQUIRIES

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9.1 When, a complaint is received or information is available which may, after verification as enjoined in this Manual, indicate serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 Cr.P.C., a Preliminary Enquiry may be registered after obtaining approval of the Competent Authority. Sometimes the High Courts and Supreme Court also entrust matters to Central Bureau of Investigation for enquiry and submission of report. In such situations also which may be rare, a 'Preliminary Enquiry' may be registered after obtaining orders from the Head Office. When the verification of a complaint and source information reveals commission of a *prima facie* cognizable offence, a Regular Case is to be registered as is enjoined by law. A PE may be converted into RC as soon as sufficient material becomes available to show that *prima facie* there has been commission of a cognizable offence. When information available is adequate to indicate commission of cognizable offence or its discreet verification leads to similar conclusion, a Regular Case must be registered instead of a Preliminary Enquiry. It is, therefore, necessary that the SP must carefully analyse material available at the time of evaluating the verification report submitted by Verifying Officer so that registration of PE is not resorted to where a Regular Case can be registered. Where material or information available clearly indicates that it would be a case of misconduct and not criminal misconduct, it would be appropriate that the matter is referred to the department at that stage itself by sending a self-contained note. In such cases, no 'Preliminary Enquiry' should be registered. In cases, involving bank and commercial frauds, a reference may be made to the Advisory Board for Banking, Commercial & Financial Frauds for advice before taking up a PE in case it is felt necessary to obtain such advice.

9.2 While proposing registration of a Preliminary Enquiry pertaining to the abuse of official position by a public servant in the matter of business/commercial decision, the important difference between a business risk and a *mala fide* conduct should be kept in mind with view to ensure that while corrupt public servants are suitably dealt with the *bona fide* business/commercial decisions taken by public servants in discharge of their official duties are not taken up for unnecessary probe.

9.3 Sometimes, the cases of unnatural death are referred to CBI for enquiry. A Preliminary Enquiry in such cases should be registered and taken up under Section 174 Cr.P.C. to ascertain the cause of death and to decide whether criminal offence is made out requiring registration of a Regular Case or not.

9.4 Regardless of the amount involved in frauds, CBI may register any case with the approval of Head Office if it has reasons to believe that it has interstate or international ramifications and can not be investigated by local Police or where the *modus operandi* adopted by the accused is quite different or of a novel type, viz., Cyber Crime etc

9.5 In all petty cases, a report should be sent to the concerned administrative authority for appropriate action. In any particular case however, when it is felt by the SP of the Branch that the matter should be enquired into by CBI notwithstanding these instructions it should be referred to the Head Office. Whenever, in accordance with the above instructions or otherwise, a decision is taken by any CBI Branch to refuse registration of a case on the complaint of a Department/Undertaking, a copy of the communication containing such refusal should be sent to the Regional Office along with the reasons for declining registration.

Registration of PE against retired Government Servants

9.6 The registration of Preliminary Enquiry against a retired public servant should be resorted to rarely, even though as per Rule 9(1) of the Central Civil Service Pension Rules, 1972, the President of India reserves to himself the right of withholding pension or gratuity, or both, either in full or in part, or withdrawing a pension either in full or in part, whether permanently or for a

specified period, and of ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. As per the provisions of Rule 9(2)(b) of the said Rules, the Departmental proceedings, if not instituted while the Government Servant was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of any event, which took place more than 4 years before such institution. Such proceedings cannot be instituted without the consent of the President of India. Therefore, the decision to register a PE against retired Government Servants should be taken at a senior level and after careful examination of all the facts in the light of the provisions detailed above.

PE Registration Report

9.7 As soon as it is decided to register a PE, the SP will take action to get the PE Registration Report prepared, which will invariably be vetted by him and in case of important enquiries even drafted by him. Registration Report of PE should be written in the PE Registration Report Form and not on the form prescribed for recording First Information Report under Section 154 Cr.P.C. Beside the allegations in brief, the complete details of the suspects involved should be recorded in the PE Registration Report. In respect of the public servants found involved in the matter, their Group, the Service (IAS,IRS,IPS etc.), present designation, scale of pay, present pay and date of superannuation (if available) should also be mentioned in the P.E. registration report. The copies of the PE Registration Reports should be sent to the authorities mentioned in the Annexure 9-A to this chapter

9.8 In cases, wherein more than one suspect is involved in an enquiry, extreme care should be taken in naming the suspect persons while drafting PE Registration Report. Only those suspects should be named in the PE Registration Report against whom overt acts are attributed. Officers of the rank of SP and above should, therefore, thoroughly scrutinize every draft PE Registration Report from this point of view, and satisfy themselves that persons against whom no *prima facie* evidence is available are not named in the PE Registration Report.

Crime Register for PEs

9.9 A serial number of the Branch shall be allotted to each P.E. Registration Report in the format prescribed in CRIMES Module or self-generated by the CRIMES Module if the same is used for preparing the report. The relevant details will be entered in the CRIMES module immediately thereafter. Wherever the CRIMES Module is not operational, the same may be entered in the Crime Register of PE. Developments in each PE will be noted in the CRIMES Module or the relevant columns of the register from time to time

Collection of Documents/ Recording of Statements in PE

9.10 The Preliminary Enquiries relating to allegations of bribery and corruption should be limited to the scrutiny of records and interrogation of bare minimum persons which may be necessary to judge whether there is any substance in the allegations which are being enquired into and whether the case is worth pursuing further or not.

9.11 The required documents/records should be collected under a proper receipt memo. The statements of witnesses during the Preliminary Enquiries should be recorded in the same manner as recorded during the investigation of Regular Cases. However, issuance of notices under section 91 Cr.P.C. and 160 Cr.P.C. shall not be resorted to during PE.

Procedure for Converting a P.E. into an R.C.

9.12 The Preliminary Enquiries will result either in registration of Regular Cases or in Departmental Action, or referred to the department through a self contained note for such action, or being closed for want of proof. As soon as sufficient material disclosing the commission of a cognizable offence is available during the course of Preliminary Enquiry and it is felt that the outcome of investigation is likely to culminate in prosecution, a Regular Case should be registered at the earliest. In cases of Gazetted Officers or Commissioned Officers or important cases, the Superintendent of Police shall convert the PE into RC after obtaining orders of the Competent Authority.

9.13 In deciding whether a PE should be converted into an RC or not, the Superintendent of Police should take into consideration the following points, amongst others, that may be applicable in each particular case:-

- (a) Whether it is necessary to do so for other processes of law required in aid of investigation.
- (b) Whether there is possibility of making out a Court case by further investigation.

9.14 The Superintendents of Police must personally satisfy themselves that if a PE is converted into an RC, it should result in prosecution. They should exercise due care and caution in such conversion and avoid hasty or premature action in this regard. Converting a PE into an RC solely with a view to get the PE out of the list of time-barred cases should not be resorted to.

Quick Closure of cases of mere Departmental Irregularities

9.15 In some cases, it might become clear, soon after the enquiries are started, that nothing useful is likely to come out or that the case is really fit for a departmental probe only. No time should be wasted over such cases and the PEs should be recommended for closure or for departmental probe, as may be appropriate, as early as possible.

Enquiry Conclusion Reports in PEs

9.16 The enquiries in the PE must be completed within three months from the date of its registration. The respective DIsG/JDs will monitor all PEs which remain pending for more than 3 months. At the conclusion of enquiry in every PE, the Investigating Officer will prepare a Enquiry Conclusion Report in the prescribed form and submit it to the Superintendent of Police, who will pass final orders in respect of PEs involving non-gazetted public servants and Non-Commissioned Officers. In appropriate cases, the SP may dispense with preparation of FR-II by the Law Officers. He shall seek orders from the Regional DIG/Zonal JD/Head Office, as the case may be, in respect of the cases of other categories by forwarding Enquiry Reports along with his comments. Final Report in the prescribed form need not be prepared when a PE is converted into RC.

Sending of Documents in Suitable Action Cases

9.17 In the PEs against NGOs in which "Suitable Action" by the concerned Department is recommended, the documents collected from the Department to which the suspect public servant belongs may be sent to the CVO of the concerned Department along with the SP's Report, with a detailed list. If some documents have been collected from other departments, private persons/firms etc., these need not be sent to the CVO along with the SP's Report and instead their certified copies should be sent. After the SP's Report is despatched to the CVO of the Department concerned, the Branch SP should write a D.O. Letter to the CVO asking him to let him know specifically within a period of two months from the date of receipt of the SP's Report, whether he requires any of the documents collected from other departments, private persons/firms or whether those may be returned to the departments/parties from which these were collected. If the SP receives any request from the CVO, he may examine the same in the interest of the case and act accordingly. If no reply is received from the CVO concerned within the stipulated time, the original documents may be returned to the departments/private persons/firms concerned with a request to keep them in safe custody till the proceedings are concluded.

9.18 In PEs against Gazetted Officers in which only "Suitable Action" is recommended, all the documents may be kept in the Branch Malkhana till the advice of the CVC is received by the department and their final decision is known. If the CVC also agrees with the CBI recommendation for "Suitable Action", the documents may be sent to the CVO in the manner laid down in the previous para. After it is known that the documents collected from other departments, private persons/firms are not required by the CVO, these may be returned to the departments or parties from which these were collected under intimation to the CVO.

9.19 In cases in which the CVO desires to see the documents collected from other departments or parties before deciding the nature of administrative action, these may be shown or sent to him with a detailed list. Soon after these are seen by the CVO and are no longer required by him, the same may be collected back and returned to the departments or parties from whom those were collected, under intimation to the CVO.

Procedure Regarding PEs Received from Other Branches for Part Enquiries

9.20 Whenever requests are received from another Branch to make part- enquiries in their PE within the local limits of the Branch concerned, these should be entered by the latter Branch in a separate Crime Register of PE and given serial numbers for reference. The SP receiving such request may get the part- enquiry done at the earliest and forward the report to the SP concerned as early as possible.

PE REGISTRATION REPORTS, TO WHOM SENT

Copies of the PE Registration Report should be sent by the Branch immediately after registration to the following, in confidential covers addressed by name. Each copy of the Registration Report should contain indication of the endorsements made to all others concerned. All copies should be clean and legible. If need be, further copies be made through photocopy process.

A:

- (i) Joint Director of the respective Zone.
- (ii) DIG of the concerned Zone/Region.
- (iii) Director, Administrative Vigilance Division, Department of Personnel in the following types of cases only:-
 - (a) *Officers of whom the Department of Personnel is the controlling authority;*
 - (b) *Gazetted or Commissioned Officers of the Central Government removable by the President;*
 - (c) *Members of Parliament*
 - (d) *Other important persons.*
- (iv) CVC in the following types of cases:-
 - (a) *Cases referred by the CVC to CBI;*
 - (b) *Cases against Gazetted Officers, Commissioned Officers, even when on deputation to Public Undertaking;*
 - (c) *Other Officers in respect of whom CVC advice is required.*
- (v) Ministries and Departments concerned as under:-
 - (a) *Head of the Department concerned -- Cases involving Non-Gazetted Officers.*
 - (b) *CVO of the Ministry concerned/ Head of the Department --Cases involving Gazetted Officers*
- (vi) CVO of the Banking Division, Ministry of Finance/CVO of the concerned Ministry in respect of other PSUs:
Cases involving CMDs of the Bank/PSUs
- (vii) Chief Vigilance Officer concerned as under:
 - (a) *Cases involving Bank employees,*
 - (b) *Cases involving other PSUs.*

B:

Copies of PE Registration Report involving Commissioned & Civilian Gazetted Officers of the Defence Forces should be endorsed to the following authorities:-

- (a) Cases involving Commissioned/Gazetted Officers (Civilian):
 - (i) *HQ of Command concerned,*
 - (ii) *HQ of Formation concerned,*
 - (iii) *Adjutant General's Branch, Army HQ, New Delhi.*
 - (iv) *CVO of the Ministry of Defence.*
- (b) Cases involving Non-Commissioned/ Non-Gazetted Officers (Civilian).
 - (i) *HQ of Command concerned.*
 - (ii) *HQ of Formation concerned.*

A copy of the PE Registration Report in all cases involving M.E.S. Officers (both Gazetted and Non-Gazetted) should be endorsed to the Engineer-in-Chief, Army Hqrs., DHQ, P.O., New Delhi-110 010.

PE Registration Reports regarding cases against employees of Border Roads Organization may be endorsed to the following authorities:-

- (i) Cases involving Gazetted Officers:

*Chief Vigilance Officer,
Border Roads Development Board,
B. Wing, 4th Floor, Sena Bhawan,
New Delhi-110 011.*

- (ii) Cases involving Non-Gazetted Officers:

*Director-General,
Border Roads, Seema Sarak Bhawan, Naraina,
Ring Road,
New Delhi.*

C:

In case the suspect/accused person is a State Government employee, on deputation to the Central Government, an extra copy of the PE Registration Report should be sent to the Ministry/Department and a request should be made to send a copy of the PE Registration Report to the State Government concerned for their information.

Copies of the PE Registration Report in respect of cases against officers belonging to All India Services serving in the States may also be sent to the Department of Personnel, and the Central Vigilance Commission, New Delhi for information.

D:

In case of a PE Registered on the orders of Hon'ble Supreme Court/High Courts, copy of the PE Registration Reports be also endorsed to the Registrar of the said Court.
