

CHAPTER-XI

Reporting And Investigation Of Loss Of Cash, Stores Or Other Railway Property.

Losses, Frauds And Embezzlements.

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CHAPTER-XI

Reporting And Investigation Of Defalcation And Loss Of Cash, Stores Or Other Railway Property.

1101. Responsibility for Losses -The cardinal principle governing the assessment of responsibility is that, every Government officer should exercise the same vigilance in respect of expenditure from public fund generally as a person of ordinary prudence would exercise in respect of the expenditure and the custody of his own money. Means should be devised to ensure that every railway servant realises fully and clearly that he/she will be held personally responsible for any loss sustained by Government through fraud or negligence on his/her part and also for any loss arising from fraud or negligence on the part of any other railway servant to the extent it may be shown that he/she contributed to the loss by his/her own action or negligence.

While, the competent authority may, in special cases, condone an officer's honest errors of judgement involving financial loss if the officer can show that he has acted in good faith and done his best up to the limits of his ability and experience, personal liability shall be strictly enforced against all officers who are dishonest, careless or negligent in the duties entrusted to them.

1102. Report of Losses -Any defalcation or loss of cash, stores or other property belonging to Government should be reported immediately if it is discovered, to the head of the division or department as the case may be, and in serious cases to the General Manager also, copies of the reports being sent simultaneously to the Financial Adviser and Chief Accounts Officer who will forward a copy to the Principal Director of Audit. If any irregularity or loss is detected by, or is brought to the notice of the Accounts Officer in the first instance, it will be his duty to apprise immediately the administrative authority concerned of the facts of the case and ask for a proper investigation; the Accounts Officer will send a copy of his communication on the subject to the Principal Director of Audit. If, however, the irregularity or loss is discovered by, or is brought to the notice of the administrative authority in the first instance, that authority should immediately report the matter to the Accounts Officer, who will forward a copy of the report to the Principal Director of Audit. Petty cases, that is cases involving losses not exceeding- Rs.10,000/- each need not be reported to the Financial Adviser and Chief Accounts Officer nor by him to the Principal Director of Audit unless there are important features which require detailed investigation and consideration. Every important case involving loss of cash, stores, or property, whether caused as a result of frauds perpetrated or negligence shown by the railway servants, or caused purely by accidents such as fire, etc., should be brought to the notice of

the Railway Board by the General Manager through a preliminary report (to be followed by a detailed report see Para 1103) within six weeks from the date of detection of the loss and a copy of the report endorsed to the Principal Director of Audit simultaneously through the Financial Adviser and Chief Accounts Officer. When the loss involved does not exceed Rs. 50,000 the case need not be reported to the Railway Board unless it represents unusual features or reveals serious defects in procedure.

The preliminary report, which should be based on the facts and first-hand information available, should bring out-

- i) the nature of the loss ,
- ii) whether the matter has been reported to Civil/GR, Police/RPF and Departmental Enquiry Committee ;
- iii) amount involved, actual or approximate;
- iv) steps taken to plug the loop holes, if any; and
- v) the name of the staff apparently responsible.

1103. General Manager's detailed report should clearly bring out-

- a) the amount involved and recovered,
- b) the modus-operandi of the fraud,
- c) the nature of checks which ought to have been exercised under any rule or order and which were omitted, thereby facilitating the fraud.
- d) whether the procedure in force is ineffective in preventing such frauds and, if so, what modification are suggested therein,
- e) disciplinary action taken against the party at fault and the adequacy or otherwise of such action,
- f) whether the Financial Adviser and Chief Accounts Officer agrees to the reports submitted. In the case of his disagreement with the administration on any aspect of the case such disagreement should be reported verbatim to the Railway Board.

The detailed report should be accompanied by Police Report and the findings along with a copy of the proceedings of the Departmental Enquiry committee in all cases involving more than Rs. 50,000 and should contain comments of the railway Administration on all points brought out by the enquiring officer(s). The proceedings of the Enquiry Committee need not, however, be sent to Railway Board where the losses do not exceed Rs. 50,000 but instead these cases, on finalisation, be put up for review by a committee of two Deputy heads of Departments (including a Deputy Chief Accounts Officer) and the Board furnished with (i) the main gist of the recommendations of the Enquiry Committee, (ii) special features brought to light in the report of enquiry and (iii) the result of review indicating, inter-alia, the detail of action taken by the railway administration.

1104. Losses involving the Reserve Bank -Whenever any case of loss, in which there is a possibility of the Reserve Bank being made liable to Government either in respect of operations on Government Accounts conducted by itself or by its agents or otherwise, comes to notice, a report of the loss should also be made, without delay, to the Railway Board. On receipt of the report, the Railway Board will arrange to have the facts examined, while they are fresh, by officers of the Bank and of Government with a view to reaching an amicable settlement or, if this is impossible at least to clearing the ground as far as possible, so that a stated case may be referred to some outside arbitrator or legal authority. This examination will be undertaken at once and independently of any departmental or police inquiry.

1105. Investigation of Losses -It is of the greatest importance to avoid delay in the investigation of any loss due to fraud, negligence, financial irregularity, etc. Should the administrative authority require the assistance of the Accounts 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 an expert Accounts Officer to unravel it, he should apply forthwith for that assistance to the General Manager who will then arrange with the Financial Adviser and Chief Accounts Officer for the services of an investigating staff. Thereafter, the administrative authority and the accounts authority will be personally responsible, within their respective spheres, for the expeditious conduct of the inquiry.

Depending upon the results of the inquiry, departmental proceedings and/or prosecution shall be instituted at the earliest moment against the delinquent officials concerned and conducted with strict adherence to the Disciplinary & Appeal Rule, 1968 and other instructions prescribed in this regard by Government.

1106. Legal Advice -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 the criminal offence, a prosecution should be attempted unless the legal advisers 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.

1107. Laxity of Control -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 the superior officer, the latter should also be called strictly to account and his personal liability in the matter carefully examined.

1108. Recoveries of Losses -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 the railway servant's pecuniary liability it will be necessary to look not only to the circumstances of the case but also the financial circumstances of the railway servant, since it should be recognized that the penalty should not be such as to impair the railway servant's future efficiency.

1109. In particular if the loss has occurred through fraud, every endeavour 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.

1110. It should always be considered whether the depreciated value of the Government property or equipment lost, damaged or destroyed by the carelessness of individuals entrusted with their care should be recovered from the delinquent official. The depreciated value should be taken as prescribed by Railway Board from time to time. The amount to be recovered may be limited to the Government servant's capacity to pay.

1111. Withholding of Pension and Provident Fund Bonus -One reason why it is important to avoid delay (paragraph 1105) is that in the course of a prolonged investigation, Government servants who are concerned may qualify for pension and a pension once sanctioned cannot be reduced or withheld for misconduct committed prior to retirement. As a primary precaution, steps should be taken to ensure that a railway servant concerned in any loss or irregularity, which is the subject of an inquiry, is not inadvertently allowed to retire on pension while the inquiry is in progress. Similar precaution should be taken in the case of a person entitled to the benefits of the State Railway Provident Fund. Accordingly when a railway servant is concerned in any irregularity or loss, the authority investigating the case should immediately inform the Accounts Officer and the administrative authority concerned and it will be the duty of the latter to make a note of the information and to see that pension is not sanctioned or the Provident Fund Bonus is not allowed to be withdrawn before either a conclusion is arrived at as regards the railway servant's culpability or it has been decided by the sanctioning authority that the result of the investigation need not be awaited.

Note -In sanctioning the pension of a railway servant, who is involved in any loss or irregularity which is the subject of an inquiry, the provisions of Rule 2308 of the Indian Railway Establishment Code, volume II and Government of

India's decision under Rule 2534 of the same Code reproduced in Appendix XXX thereof should be borne in mind.

When a pensionable Government Servant is concerned in any irregularity or loss, the authority investigating the case shall bear in mind the provisions contained in Disciplinary & Appeal Rules as amended from time to time and immediately inform the Audit Officer and/or the Accounts Officer, as the case may be, responsible for reporting on his title to Pension or Death- Cum-Retirement Gratuity, and the authority competent to sanction Pension or Death-Cum-Retirement Gratuity and it will be the duty of the latter to make a note of the information and see that the Gratuity or Death-Cum-Retirement Gratuity is not paid before a conclusion is arrived at as regards the Government servant's culpability and final orders are issued thereon.

1112. The fact that persons who were guilty of frauds or irregularities 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.

1113. Police Investigation -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 Senior Superintendent of Police/Commissioner of Police and ask for a regular police investigation under the Code of Criminal Procedure.

Note -Cases of corruption and malpractice have to be referred to the Chief Vigilance Officer/ Vigilance Officer of the Railway Administration/Organisation and if there is no such officer, to the Vigilance Directorate of the Railway Board. The Chief Vigilance Officer/Vigilance Officer /Vigilance Directorate will, in keeping with the instructions on the subject, refer to the Special Police Establishment such of these cases as require investigation by them. As a rule, allegations involving offences of bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records or other serious criminal offences or those requiring expert Police investigations such as cases of possession of disproportionate assets or cases in which a number of non-official witnesses are to be examined, should be referred to the Special Police Establishment for investigation. In such cases a prompt reference to the Special Police Establishment is necessary to guard against the possibility of material evidence being tampered with or destroyed. Once a case is referred to and taken up by Special Police Establishment for investigation, further investigation must be left to them. Parallel investigation by the Administrative authority should be avoided. There would, however, be no objection to investigations being undertaken by the administrative authority to deal with ancillary matters like

examination of existing procedures having a bearing on the cases under investigation by the S. P. E. Further action on the main case should be taken by the department on the completion of the investigation by the S.P.E. and on the basis of their report. However, in the event of delay in completion of investigations by the S. P. E., the department also should move the appropriate authorities to have the finalization of the cases by the S. P. E. expedited.

1114. If the Senior Superintendant of Police/Commissioner of Police agrees that an investigation may be made, the Senior Officer of the department concerned present in the station will (a) request the Senior Superintendant of Police/Commissioner of Police 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 the irregularity leading upto the loss, but who is fully cognizant of the rules and procedure of the office in which the loss has occurred.

1115. Prosecution -When the investigation has been completed, an officer of the 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 the General Manager for orders.

1116. If it is decided to prosecute, the departmental representative will ascertain from the prosecuting officer, having regard to the engagements of the prosecuting staff and the state of work in the Court which would ordinarily hear the case, whether it is necessary to move the District Magistrate to make special arrangements for speedy trial, and will request the prosecuting officer to make any application that he may think necessary.

1117. Witness -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.

1118. Appeal against Acquittals -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 State Government concerned as to the advisability of instituting further

proceedings in revision or appeal, as the case may be, and if the State Government is of opinion that further proceedings are necessary, the State Government shall direct the Public Prosecutor to proceed in the matter. Appeals against acquittals if advised by the state Government should be made only after obtaining the order of the General Manager.

1119. Reports to the General Manager -The Senior Officer of the department concerned present in the station will see that, in addition to the reports required under paragraphs 1102 and 1115 above, prompt reports are submitted to the General Manager through the usual channel regarding-

- 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 an appeal in any case,
- e) the result of any proceedings in revision or appeal.

1120. Notwithstanding anything contained in the foregoing paragraphs, 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 the General Manager before taking action.

Departmental Inquiries

1121. Where fraud or embezzlement of Government funds has occurred, the institution of criminal proceedings should not be regarded by the officer responsible as absolving him from the often laborious task of conducting immediately a thorough departmental inquiry. The natural reluctance to hold an inquiry, enhanced by an apprehension that it may prejudice the result of the trial in a Court of law, has sometimes led to great delay in taking departmental proceedings and the results have been inconclusive. Departmental inquiries should not be delayed pending decision of criminal cases, as at a later stage, the evidence might disappear and the departmental inquiry could not be brought to any conclusion at all. (Also refer to the Note under para 1113).

1122. Prosecution should be the general rule in all those cases which are found fit to be sent to Criminal Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such cases, departmental proceedings should not precede prosecution. In other cases involving less serious offences or involving malpractices of a departmental nature, departmental action only should be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved

difference of opinion between the Central Bureau of Investigation and the administrative authority concerned as to whether prosecution in a court or departmental action should be resorted to in the first instance, the matter should be referred to the Railway Board who will consult the Central Vigilance Commission for advice.

1123. Where a number of persons are involved, one or more criminally, and others in such circumstances as to show negligence, or warrant the suspicion of criminal abatement without sufficient proof to justify prosecution, or have similar features which necessitate, a criminal prosecution of one or more and a departmental inquiry against others, the neglect to institute a formal departmental inquiry, or to carry it to the requisite stage, before criminal proceedings are taken, has the result that many month later, when the criminal case is over, effective departmental action becomes impracticable. The administrative authority concerned should therefore decide on the basis of the facts and records of each case how far and in what cases he can proceed departmentally at once against the subsidiary offenders. Care should also be taken to ensure that as far as possible the offenders are not transferred to another Railway till after the finalization of the criminal/ departmental proceedings against them.

In some cases where action is required against subsidiary offenders it may be possible to take suitable action without assuming or even referring to the guilt of the principal offender and without pre-judging the issues before the Court. For this purpose the authorities may find that the evidence already available is sufficient and in any case they may retain copies (Photostat copies if necessary) of such documents as may have to be put in Court. If action is taken accordingly and it is found later that there is a divergence in the penalties imposed by the Court on the principal accused and those imposed by the departmental authorities on the subsidiary offenders, further departmental action can be taken to suitably revise the penalties already imposed.

1124. The proceedings contemplated in these instructions are those which are regulated by the rules in Appendix XVII to the Indian Railway Establishment Code, Volume I. 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 this Act is not employed should be in accordance with the instructions given above.
