

CHAPTER 8

Suits by or Against the Government and Public Officers in Their Official Capacity

1. Date—Order XXVII, Rule 5, of the Code of Civil Procedure prescribed that in fixing the date for the hearing of a suit against the Government, the Court shall allow a reasonable time for the necessary communication with the department concerned through the proper channel. The period required will depend upon circumstances, and no invariable rule can be laid down on the point, but in most cases a period of two months will probably be suitable.

2. (i) Extension of time—In fixing the period in any case, the representations of the officer who receives the summons or who is conducting the case on behalf of the Government should meet with due consideration, as the Code of Civil Procedure clearly contemplates that reference to Government, through the proper departmental channel, involving a certain delay shall be allowed for, and an extension of time should be given on reasonable cause being shown but on the other hand, the Civil Courts should be cautious to prevent undue delays, in these as in all other classes of suits.

(ii) Priority—Cases in which Government Departments are concerned and in which officials have to attend, should be disposed of promptly, care being taken to give due notice, where it is necessary for any reason to adjourn the case.

3. Two months institution of notice before institution of suit—It should further be remembered that Section 80 of the Code of Civil Procedure provides that no suit shall be instituted against the Government or a Public Officer in respect of an official act, unless two month's notice has been given of the intention to bring such suit, and that the plaint must contain a statement that such notice has been duly given. Plaints of the nature indicated above which do not contain the required statement, should not be accepted, but should be returned for amendment or be rejected according as it may appear from the statement of the person presenting the plaint that notice has or has not been given.

4. Trials of case and persons to whom notice is to be given—The changes effected in Section 79 of the Civil Procedure Code by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, and Adaptation of Laws Order, 1950 as to the authority to be named as plaintiff or defendant in suit by or against the Government and in Section 80 of the Code by the Code of Civil Procedure (Amendment) Act, 1948 (No. VI of 1948) as to the person to whom notice is to be given in suits intended to be instituted against the Government or against a Public Officer should be borne in mind.

Now, in a suit by or against the Central Government the Union of India, should be named as the plaintiff or defendant, and in a suit by or against a State Government, the State should be named as plaintiff or defendant. A notice in writing under Section 80 C.P.C. has to be delivered to or left at the office of Secretary to the Government when the suit is against the Central Government but where it relates to a railway the notice has to be delivered or left at the office of the General Manager of that Railway. In the case of a suit against a State Government the notice has to be delivered to or left at the office of a Secretary to the Government or the Collector of the district.

5. Definition of Government and Government Pleader—The provision of Rule 8-B of Order XXVII, of the Code of Civil Procedure, which defines the terms, ‘Government’ and ‘Government Pleader’ for the purposes of that orders, may be carefully studied.

6. Hearing of suits etc. against the Government—To avoid delays in the disposal of suits and proceeding against the Government and to prevent inconvenience to the law Officers of the Government the following directions should be observed:—

(1) No suit against the Government or public officer as such should be heard by a Court away from the headquarters of the District.

(2) *Priority*—Suits and proceedings in which Government is a party should be given priority of hearing; and such cases should, when possible, be heard continuously until completion; and

(3) *Timely notice of adjournment*—If a date is fixed in a suit affecting the Government, and the Court is not prepared to hear the case on that date, timely notice if necessary by telegram, should be given to the Law Officer concerned by the Court.

7. Where in a suit by or against the Government or a public officer in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer (the execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such decrees). (For the execution of such decrees see Rule 7 of Chapter 12-C).

8. The following notifications issued by the various Government under the Code of Civil Procedure are published for information:—

**I. Punjab Government Notification No. 1-C, dated
the 1st January, 1909**

1. Government Pleader—With reference to the definition of the expression “Government Pleader” contained in Section 2(7) of the Code of Civil Procedure (V of 1908), the Lieutenant Governor is pleased to appoint the Legal Remembrancer to the Punjab Government, the Government Advocate, Punjab, and the Assistant Legal Remembrancer, Punjab, respectively, to perform all or any of the functions expressly imposed by the said Code on the Government pleader except the functions specified in Order XXXIII, Rule 6, and in Order XXVII, Rule 4 thereof.

2. The Deputy Commissioner for the time being of every district in the Punjab is appointed to be the Government Pleader for his district for the purposes of Order XXXIII, Rule 6, and of Order XXVII, Rule 4, of the Code of Civil Procedure.

3. Nothing in this notification shall be deemed to affect the provision No. I-H, dated the 1st January, 1909 (now superseded by Punjab Government Notification No. 1073-J-37/13015, dated the 1st April, 1937, given below), regarding the recognised agents of Government under Order XXVII, Rule 2, of the Code of Civil Procedure.

**II. Punjab Government Notification No. 1073-J-37/13015,
dated the 1st April, 1937**

1. Recognised Agents—In supersession of Punjab Government notification No. I-H, dated the 1st January, 1909, and in accordance with the provisions of Order XXVII, Rule 2 of the First Schedule of the Code of Civil Procedure, 1908, the Governor of the Punjab is pleased to authorise all Deputy Commissioners in the Punjab, in virtue of their office to act for the Government in respect of all Judicial proceedings in which the Punjab Government is concerned and in which they may receive instructions from the financial commissioners or the Legal Remembrancer to Government.

2. In the Absence of the Deputy Commissioner, from his headquarters, the Senior Assistant Commissioner, or Extra Assistant Commissioner there present is hereby authorised to exercise the power hereby conferred on the Deputy Commissioner.

III. Punjab Government Notification No. 22963—Judicial, dated the 10th December, 1917

Recognised Agents—It is hereby notified that all Government Pleaders are, under Order XXVII, Rule 2, of the First Schedule to the Code of Civil Procedure *ex-officio* authorised to act for the Government in respect of all Judicial proceedings in the Courts within the civil districts for which they are appointed.

**IV. Punjab Government Notification No. 1073-J-37/13017/H/
Judicial, dated the 1st April, 1937**

Verification and signing of pleadings—In supersession of Punjab Government notification No. 19798-Judicial, dated the 4th July, 1934, and in accordance with the provisions of Order XXVII, Rule 1, of the First Schedule of the Code of Civil Procedure, 1908, it is hereby ordered that in all suits by or against the Punjab Government Plaints or written statements on behalf of the Punjab Government, shall be signed and verified by the Deputy Commissioner for the time being of the district in which the cause of action in whole or in part arises or by any department concerned who is acquainted with the facts.

V. Government of India, Ministry of Law, New Delhi, the 8th April, 1953 (Published in Gazette of India, Part II, Section III, dated 18th April, 1953) (Notification No. S.R.O. 699 dated 8th April, 1953)

Delegation of function of the Central Government—In pursuance of clause (1) of Article 239 and clause (1) of Article 243 of the Constitution, and in supersession of the notification of the Government of India in the late Home Department No. 204/307, Judicial, dated the 5th May, 1938, in partial modification of the notification of the Government of India in the Ministry of States, No. S.R.O. 460, dated the 24th August, 1950, in so far as it relates to the Civil Procedure Code, 1908 (Act V of 1908) the President hereby directs that the functions assigned to the Central Government by Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), shall be discharged by the Lieutenant Governor or the Chief Commissioner, as the case may be, of every Part C State, except the State of Manipur, in respect of such Part C States, and by the Chief Commissioner of the Andaman and Nicobar Islands in respect of these Islands.

**VI. Delhi State Secretariat, Delhi
Notification No. F. 7(9)/55, Judicial (i), dated 27th June, 1956**

Verification and signing of plant in suit instituted in Delhi—In accordance with the provisions of Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, read with notification of the Government of India in the Ministry of Law No. S.R.O. 699, dated the 8th April, 1953, and in the supersession of this administrations' notification No. F. 233/38-General, dated the 24th December 1938, it is hereby ordered that in all suits instituted in Delhi by or against the Central or State Government, Plaints or written statements as the case may be, on behalf of the Government shall be signed and verified by the Government Pleader of the Delhi State Government or by the Deputy Commissioner, Delhi, or by any other Gazetted Officer of any Department concerned who is acquainted with the facts.

**VII. Delhi State Secretariat, Delhi
Notification No. F. 7(9)/55, Judicial (ii), dated the 27th June, 1956**

Agents of the Government in suits instituted in Delhi—In accordance with the provisions of Rule 2 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, read with the notification of the Government of India, in the Ministry of Law, No. S.R.O. 699, dated the 8th April, 1953, and in supersession of this administrations' notification No. 233/38, General, dated the 24th December, 1938, the Chief Commissioner, Delhi, is pleased to authorise:—

(a) The Deputy Commissioner, Delhi (or in his absence from the headquarters, the Senior Assistant or E.A.C. present) and the Government Pleader of the Delhi State, to act for and on behalf of the Government in respect of all civil judicial proceedings in the subordinate Courts at Delhi.

(b) The Advocate-General, Punjab any of his Assistants or the Standing Counsel of Delhi State to act for and on behalf of the Government in respect of all Judicial proceeding in the High Court of Judicature, Punjab, Chandigarh, and in its Circuit Bench at Delhi.

VIII. Ministry of Railway

(Railway Board)
New Delhi, the 7th September, 1951

S.R.O. No. 1399—In exercise of the powers conferred by Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908. (Act V of 1908), read with Section 141 of the said Code, the Central Government hereby authorises the General Manager and the Deputy General Manager of the Southern Railway to sign and verify plaints, written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the said Railway Administration.

IX. Ministry of Railway

(Railway Board)
New Delhi, the 8th March, 1952

S.R.O. No. 460—In exercise of the powers conferred by Rule 1 of Order XXVII of the first schedule to the Code of Civil Procedure 1908 (Act V of 1908) read with Section 141, of the said Code, the Central Government hereby authorises the General Manager and the Deputy General Manager of the Central Railway to sign and verify plaints, written statements, petitions, applications including application for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the said Railway Administration.

S.R.O. No. 461—In exercise of the powers conferred by Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure 1908 (Act V of 1908) read with Section 141, of the said Code, the **Central** Government hereby authorises the General Manager and the Deputy General Manager of the Western Railway to sign and verify plaints, written statements, petitions, **applications** including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the said Railway Administration.

XI. New Delhi, the 10th July, 1952

S.R.O. No. 1250—In exercise of the powers, conferred by Rule 1 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), read with Section 141 of the said Code, the Central Government hereby appoints each of the persons specified in column 2 of the Schedule annexed hereto to sign and verify plaints, written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the railway administration specified in the corresponding entry in column I of the said Schedule.

Schedule

Railway	Persons Appointed to Sign and
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Administration	Verify the Complaint, etc.
Northern Railway	General Manager and Deputy General Manager
Eastern Railway	General Manager and Deputy General Manager
North Eastern Railway	General Manager and Deputy General Manager

XII S.R.O. No. 1251—It is hereby notified for general information that the General Manager and Deputy General Manager of the Northern Eastern and North Eastern Railways are *ex-officio* authorised to act for and on behalf of the Central Government in respect of all Judicial proceedings in which the Northern, Eastern and North-Eastern Railway administration may respectively be concerned.

XIII. Ministry of Railways

New Delhi, the 18th June, 1953

S.R.O. No. 1266—In exercise of the powers, conferred by Rule 1, read with clause (a) of Rule 8-B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Central Government hereby appoints in addition to the persons already authorised in notifications of the Government of India in the Ministry of Railways (Railway Board) No. E51 LL2/14/3, dated the 7th September, 1951, No. E51LL2/14/3/I dated the 8th March, 1952, No. E51LL2/14/3/II, dated the 10th July 1952, each of the persons specified in column 2 of the Schedule annexed hereto to sign and verify written statements, petitions, applications, including applications for execution and any other pleadings or proceedings in any suit or other proceedings relating to compensation (claims) against the Central Government arising out of loss of or damage, to or deterioration of booked consignments in respect of the railway administration specified in the corresponding entry in column 1 of the said Schedule.

The Schedule

Railway Administration	Persons appointed to sign and verify written statements, petitions, etc.
Southern Railway	Chief Commercial Superintendent. Deputy Chief Commercial Superintendent
Central Railway	Chief Commercial Superintendent. Deputy Chief Commercial Superintendent

XIV. Ministry of Railway

(Railway Board)

New Delhi, the 24th December, 1953

S.R.O. No. 36—In exercise of the powers, conferred by Rule 1, read with clause (a) of Rule 8-B, of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) the Central Government hereby appoints the District Traffic Superintendent (Claims), North Eastern Railway, headquartered at Calcutta, in addition to the Chief Commercial Superintendent, Deputy Chief Commercial Superintendent, North-Eastern Railway, already authorised in the notification of Government of India in the Ministry of Railway (Railway Board) No. 52 LLI/19/3, dated the 18th June, 1953, to sign and verify written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings relating to compensation (claims) against the Central Government arising out of loss of or damage to or deterioration of booked consignments in respect of the North-Eastern Railway.

XV

S.R.O. No. 37—It is hereby notified for general information that the District Traffic Superintendent (Claims), North-Eastern Railway, Headquartered at Calcutta, is *ex-officio* authorised to act for and on behalf of the Central Government in respect of judicial proceedings relating to compensation (claims) against the Central Government, arising out of loss of or damage to or deterioration of booked consignments in respect of the North-Eastern Railway.

XVI. Ministry of Railways (Railway Board)

New Delhi, the 11th September, 1961

G.S.R. 1138—In exercise of the powers conferred by Rule 1 of Order XXVII of the First Schedule of the Code of Civil Procedure, 1908 (5 of 1908) and in supersession of all notifications on the subject, the Central Government hereby appoints:—

(i) the officers hereby specified in the Schedule annexed hereto as persons by whom plaints and written statements in suits in any Court of civil jurisdiction by or against the Central Government in respect of the Railway Administration shall be signed.

(ii) those of the officers referred to in sub-clause (i) who are acquainted with the facts of the case, as persons by whom such plaints and written-statements shall be verified.

Schedule

1. Ministers of Railways (Railway Board)

(i) Secretary

(ii) Deputy Secretary

(iii) Undersecretary

2. All Railway.

(i) General Manager

(ii) Deputy General Manager.

(iii) Chief Personnel Officer.

(iv) Deputy Chief Personnel Officer.

(v) Chief Commercial Superintendent.

(vi) Deputy Chief Commercial Superintendent.

(vii) In the case of the North East Frontier Railways also:—

(a) Chief Traffic Superintendent.

(b) Deputy Chief Traffic Superintendent.

3. The Chittaranjan Locomotive Works, Chittaranjan.

(i) General Manager.

(ii) Deputy General Manager.

4. The Integral Coach Factory, Perambur.

Chief Administrative Officer.

5. The Railway Electrification, Calcutta.

General Manager and Chief Engineer.

6. The Indian Railways Locomotive Competent Works, Varanasi. Chief Engineer.

7. The Dandakarnva-Bolandri-Kiriburu Railway Project, Waltiar. General Manager.

XVII. Ministry of Railways (Railway Board)

(New Delhi, the 7th October, 1961)

G.S.R. 1269—In pursuance of the provisions of Rule 2 of Order XXII in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), the Central Government hereby authorises the

officer specified in the Schedule annexed to the notification of the Government of India in the Ministry of Railway (Railway Board) No. G.S.R. 1138, dated 11th September, 1961, to act for and on behalf of the Central Government in respect of any judicial proceeding relating to a Railway Administration.

(G.S. No. 3 Rules/X.A. 19(a), dated the 16th January, 1963).

1. Substituted in view of Act No. 104 of 1976.