

## Chapter V

### Offences against the Excise Laws

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#### SECTION XXIV - PREVENTION, DETENTION AND INVESTIGATION OF OFFENCES

##### I - General Instructions

**272. (1) Offences transferred from Dangerous Drugs Act to Narcotic Drugs and Psychotropic Substances Act, 1985** - The following classes of cases governed prior to 1985 by the Dangerous Drugs Act, 1930 are now tribal under the Narcotic Drugs and Psychotropic Substances Act, 1985.

- (a) All officers relating to cocaine and allied drugs;
- (b) All offences, relating to medicinal hemp, i.e, essences and tinctures of hemp other than in respect of manufacture; and
- (c) All offences relating to import into and export from India of hemp drugs.

Supplementary instructions regarding these offences will be for found in Volume III.

(2) Offences transferred from the Excise Act to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 - Cases governed prior to April, 1957 by the Excise Act, 1910, relating to the manufacture of medicinal and toilet preparations containing alcohol or Indian hemp are now tribal under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

**273. Preventive officers to have through local knowledge** - The main reasons for the appointment of officers on peripatetic duty are to ensure rigid observance of the conditions of their licenses by license-holders and to enable officers to acquire close local knowledge without which offences can neither be prevented not detected. The prevention and detection of offences from and integral part of the duties of Excise Inspectors on preventive work. Excise Inspectors on peripatetic duty must acquire a through personal

knowledge of (1) the habits of the local population, (2) the leading castes, individuals and officials, (3) principal consumers of their circles, (4) Excise convicts, Deputy Excise Commissioner should make searching tests of the local knowledge of Inspectors when examining their preventive and detective work. Severe action will be taken against Inspectors whose peripatetic work is found to consist of mere perfunctory inspection of shops and who fail to bring to book excise offenders and licenses indulging in serious malpractice.

**274. Excise constables to be trained** - Every effort should be made by and Excise Inspector incharge of a preventive circle to train excise constables under him in preventive and detective work. An excise constable is not a mere office of a personal peon but should perform duties analogous to those performed by constables of the police station. Deputy Excise Commissioner will see that this instruction is carried out and constables are properly trained in detection work. Inspectors may employ informers as their own discretion and risk.

**275. Information from the Police** - When a serious offence has been committed and the culprit resides for informations as to his antecedents, associates, movements and convictions. as to his antecedents, associates, movements and convictions. The officer incharge will often be able to supply much valuable information in the case of professional smugglers and similar offenders.

**276. Detection by an Excise Inspector outside his circle in urgent cases-** An Excise Inspector is not debarred from detecting cases in circles adjoining his own circle if the circumstances are such as to call for immediate action. Whenever it is possible, without risk of spoiling a case by delay, to inform the Inspector of the circle concerned should be informed and the investigation made by the Excise Inspector of the circle concerned or by both Inspectors together.

**277. Applicability of the Criminal Procedure Code-** Section 54 of the Excise Act makes provisions of the Criminal Procedure Code, 1973, applicable generally to arrests, searches, search warrants, production of persons arrested and investigations under the Excise Act. Every officer having power of search, arrest and investigation must, therefore, be thoroughly acquainted with Chapters V, VI, VII, XIV, XV, XVIII, XIX, XX, XXI, XXIV, XXIX, XXXIII, XXXIV, as amended up to date and with the Evidence Act. Attention is directed to the following sections of the Criminal Procedure Code generally.

**278. Arrests, searches, Challans and evidence-** Particular attention is drawn to the following points connected with investigation of offences:-

(a) All offences under the Excise Act are bailable.

(b) Any person arrested, if not released on bail, must be sent to an officer-in-charge of police station for custody as soon as possible along with article seized, if any, accompanied by a forwarding letter in Form D, 19-C.

(c) Search-warrant in Form D-18 should be obtained in all cases as provided for in section 52 of the Excise Act. In cases where a search-warrant cannot be obtained without affording the offender an opportunity to escape or of concealing evidence of the offence, search may be made without warrant, but the grounds of belief should be recorded in the form of a memorandum before entering the place to be searched.

(d) It is imperative that the provisions of section 103 of the Criminal procedure Code be strictly and carefully observed in respect of selection of search witnesses. Should an Excise Inspector, however, entertain apprehensions that witnesses of the locality, wherein he contemplates taking search, would be won over, he may take witnesses from elsewhere for witnessing search. Witnesses taken from other places must, however, be independent of him, respectable and fairly reponsible.

Whenever such witnesses are secured, the Excise Inspector should ,further, adduce evidence during trial of the case substantiating the grounds of his apprehension. Notwithstanding such witnesses, the Excise Inspector should invariably call witnesses of the locality, also, for witnessing search. Evidence of witnesses other than those residing in the locality searched is not debarred by section 103 of Criminal procedure Code, if otherwise trust-worthy, nor does this section expressly lay down that evidence of local witnesses must be led even if they are suspected of complicity with the accused.

(e) All articles recovered in the course of a search should be entered in the search list prepared on the spot under section 109 Criminal Procedure Code. This list shall ordinarily be in Form D. 19-A, but when a printed form is not available a list containing all the necessary particulars should be prepared in manuscript. All intoxicants so recovered must at once be carefully packed, labelled (in Form D. 19-B) and sealed, in the presence of the search witnesses who should, if literate, sign the lables affixed to each article. The seals should be shown to them and their signatred secured on the endorsement at the foot of search list, and during trial of the case they should be called upon to prove their signatures.

(f) Whenever an accused person intimates his desire to confess to his part in an offence, the confession should promptly be got recorded by a Magistrae of the first class under section 164 of the Criminal Procedure Code.

(g) Where there is reason to believe that witnesses in any prosecution may be own over or subjected to undue influence before their evidence can be heard, application should be made to a Magistrate of the first class for prompt record of their statement under section 164 of the Criminal procedure Code.

(h) As investigation in most Excise cases is usually completed at the time of detection, report regarding the case detected with normally be submitted in Form D. 22-A, D. 22-B or D. 22-C (whichever be applicable) within a week of detection.

**279. Analysis of and precaution as to intoxicants which be produced in evidence-** (1) When it appears necessary to the Excise Inspector or other officer prosecuting an Excise case that an intoxicant produced in the case should be analysed, he

should move the magistrate conducting the inquiry to have such an analysis carried out by the Chemical Examiner. Only the Magistrate in question can make a reference to the Chemical Examiner (vide paragraph 428 of the Manual of Government orders).

(2) In case in which samples have been sent to the Chemical Examiner it is necessary to prove that the intoxicant from which sample was drawn is the same as was recovered from the accused. This can be done by producing formal witnesses who handled the intoxicant at various stage from its recovery to exhibition in court.

(3) The fact that the Chemical Examiner's report is in respect of the intoxicant from which sample was sent can be similarly proved by the formal evidence of officials of the court concerned who handled the intoxicant in course of drawal and despatch of sample therefrom.

4. As attempts are sometimes made to tamper with such articles in transit or elsewhere, the Excise Officer incharge of an important case should request the trying Magistrate to retain, under his seal in his own possession a portion of the intoxicant. Should the Excise Officer incharge of the case subsequently have reason to suppose that the sample sent to the Chemical Examiner has been tampered with he should request the Magistrate to despatch in a sealed package that portion of the intoxicant which he had retained under his own seal, incharge of a responsible official, who should be required to produce it personally before the Chemical Examiner.

**Note-** All samples of intoxicants as defined in section 3(13) of the the Excise Act should be sent to the Chemical Examiner to Government. Agra who is the Chemical Examiner for Excise Department for the purposes of section 293 of the Criminal Procedure Code, 1973.

**280.** (1) All articles recovered to searches, with the exception of the article mentioned in clause (2) infra, should be deposited for safe custody in the nearest police station in accordance with the provision of section 58 of the Excise Act.

(2) Where cocaine and allied drugs in any quantity whatsoever and other contraband intoxicants (including opium) worth Rs. 150 or more have been seized, they should on no account be deposited in the malk-hana along with ordinary exhibits. In such cases the directions given in paragraphs 278 and 279 should be very carefully followed and the sealed packet containing the contraband should be produced with the least possible delay before the Excise Magistrate, who should, after taking samples and re-sealing with his own seal, send the articles to the Treasury officer for safe custody in the strong room of the treasury. The sealing of the packets or parcels of the contraband, intended for despatch to the Chemical Examiner, Uttar Pradesh should also be done in the presence of the Magistrate and certified by him.

## **II- Procedure in certain special cases**

**281.** (1) All case under section 61, 62, 64 and 68 of the Excise Act by whomsoever detected should be reported to the District Excise Officer.

(2) Special attention is drawn to the provisions of section 70 (1) It must be borne in mind (a) that under sub-clause (a) of that section a complaint in respect of an offence under sections 60, 63 or 65 can be made by any Excise Officer, i.e. any officer or person empowered under section 10 to the Act (King-Emperor versus Chitar Singh 21 A.L.V. 922, 1923); and (b) that under sub-clause (b) of that section a complaint in respect of an offence under sections 62, 64, 66, 67 or 68 must be made by the Collector or an officer empowered by him on that behalf.

(3) Cases of the following classes are treated by the department as major breaches of licence conditions (a) adulteration and dilution, (b) short weight or measure, (c) sale during prohibited hours, (d) tampering with sealed bottles, (e) shortage of stock, and (f) sale to minors. Other breaches are treated as minor breaches.

(4) Cases which come under the direct notice of officers empowered to compound offences and can suitably be compounded should be dealt with on the spot. The result of all such cases should be communicated to the District Excise Officer, if the officer compounding the case is not the District Excise Officer himself.

(5) When prosecution of an Excise licensee under section 64 of the Excise Act has been sanctioned and the case sent to court for trial, it can be withdrawn by the District Magistrate for being compounded, under section 74 of the Excise Act only after Government's approval therefor has been obtained. Valid reasons, as contemplated under Rule 263 of the Legal Remembrancer's Manual, will have to be furnished to Government while recommending withdrawal.

**282.** The prosecution of licensed vendors for default in the payment of licence fee is improper. The penalty for such default is forfeiture of the advance deposit and cancellation of the licence. Proceedings may also be taken against the defaulter as if the sum were an arrear of land revenue.

### **III- Excise Intelligence Bureau**

**283.** Excise Intelligence Bureau functions under a Joint Excise Commissioner at the head quarters of the Excise Commissioner, who works under the direction of the Excise Commissioner, he is assisted in his Executive and administrative functions by three Deputy Excise Commissioner. An Assistant Excise Commissioner and six Excise Inspectors are also posted to it. The jurisdiction of the officers and Excise Inspectors of the Bureau extends throughout the state and they exercise powers of joint Excise Commissioner, Deputy Excise Commissioner, Assistant Excise Commissioner, and Excise Inspectors respectively regarding inspection of Excise shops, searches, arrests and investigation under any of the Acts administered by the Excise Department. One of the Excise Inspectors is incharge of the office sector of the Bureau who besides carrying on

his own work, is charged with the duty of supervising the work of the Assistants posted to the Bureau. 13 Assistant Excise Commissioner (Enforcement), one each at the headquarters of the Deputy Excise Commissioners of the charges, are posted as incharge of an Enforcement Squad consisting of two Excise Inspectors and nine Excise Constables to undertake inspections and raid's on centres of illicit distillations and smuggling. Besides there are three Superintendents of Excise and 10 Excise Inspectors, engaged in checking smuggling of Ganja and Charas. The enforcement staff and Ganja squads function under the control of the Bureau.

**284. Function of the Bureau-** The objects of the Bureau include the collection, collection and dissemination of Excise statistics and information regarding smugglers and offences against laws administered by the Excise Department as between different districts of this State, between this state and other States or territories of the Indian Union, and between itself and the Narcotics Intelligence Bureau. For this purpose, a monthly excise supplement to the Criminal Intelligence Gazette is published by the Bureau and copy thereof supplied to all concerned.

The Bureau is also charged with the responsibility of tracking inter-State or wholesale smugglers of intoxicants, opium and dangerous drugs and with the detection and investigation of important cases. Field staff of the State is required to extend the fullest co-operation to the Staff of the Bureau in investigations and inquiries being conducted by them. This staff will also be available for detection of cases involving inter-State smugglers or investigations outside the State on requisition by any District Officer or Deputy Excise Commissioner.

The duties and functions with which the Excise Intelligence Bureau of this State is charged are more comprehensive in nature and scope than its counter-part in other States. For, besides maintaining and disseminating information and statistics regarding crime, this Bureau also maintains constant vigil over the trend of licit consumption of intoxicants, and by implication, therefore, over Excise Revenue in each 'wet preventive circle of the State. It keeps watch over the progress of enquires into complaints against the Departmental personnel that may be ordered by the Government or the Excise Commissioner, and through it are channelised, in general, various measures taken from time to time by the Excise Commissioner for liquidating leakages in Excise Revenue, for increasing efficiency and for toning up Excise Administration.

**285. Preliminary notice and commendation of quality cases-** The working of the Bureau, is by and large, conditioned by the aforementioned aims and objectives. Accordingly, the Excise Commissioner, with a view to affording encourage to the Field Staff, takes preliminary notice in Form E.I.B.- C to all quality cases on receipt of the monthly confidential report of Deputy Excise Commissioners or Superintendents of Police of districts or of a special report in respect thereof.

After the case is convicted in court the Excise Inspector or other Detecting Officer may submit proposal or commendation in Form E.I.B.-D.A. commendatory latter in Form E.I.B.- G. is issued by the Excise Commissioner in deserving cases.

**286. Maintenance of D. 3-B Register and statistics of crime and consumption in register in Form D-25-A** register in Form D. 3- B is maintained in the Bureau giving monthly figures of crime and consumption on the basis of figures furnished by Deputy Excise Commissioners in respect of each Excise Inspector on preventive duty. Circlewise monthly statistics of crime and consumption is consolidated in the Bureau in register in Form D-25 also on the basis of the D-25 statements appended by Deputy Excise Commissioners to their monthly confidential reports.

**287. Publication of the Excise Supplement to the Criminal Intelligence Gazette-** With a view to disseminating information regarding Excise matters the Bureau publishes, monthly, an Excise Supplement to the Criminal Intelligence Gazette. In Part I thereof are given details of all "Important" opium, Ganja, Charas, Bhang and cocaine cases, report in respect whereof must be submitted in Form E.I.B.-A by detecting officers within a week of detecting of such cases. Particulars of important cases detected outside the state involving residents of this State are published in Part II of the Supplement. Results of cases which must be furnished in duplicate within a week of decision of the case in Form E.I.B.-B by detecting officers (if not furnished along with report in Form E.I.B.-A, earlier), are published in Part III of the Supplement. Important orders issued by the Excise Commissioner from time to time regarding rules, administrative policy transfers, special rewards, etc. are published in part IV. In Part IV. In part V are given important High Court are published in Part IV. In part V are given important High Court Rulings bearing on Excise Cases, Part VI contains photograph of Important Excise Offenders. An yearly index to the Gazette will be published as soon after the close of the calender year as possible Departmental officers and Excise Inspectors should get the Supplement along with annual index bound in yearly volumes. " Two sets of yearly volumes" shall be got bound by the Bureau.

The Excise Inspector incharge of the office Section of the Bureau is responsible for correct and punctual publication of the supplement.

**288.** Reporting of prominent offenders in important cases and maintenance of personal Files- A report in respect of an Important Excise Case (as defined from time to time) should be promptly drawn up by the Detecting officer in form E.I.B.-A in duplicate or in triplicate if the offender apprehended resides outside the district). One Copy of E.I.B.- A report will be incorporated in the "personal File" (file covering to be in Form F.I.B.-H) of the offender to be opened by the Detecting Officer. In case the offender resides in the same district but with in the territorial jurisdiction of another Excise respect of him to the Excise Inspector incharge of the circle. All subsequent papers regarding the offender will be kept in his "personal File" so opened.

The Detecting Officer will submit the other copy (or two copies if the offender resides outside the district) of the E.I.B.- A report to the joint Excise Commissioner incharge. Excise Intelligence Bureau. When an E.I.B., - A report is received in duplicate the latter will have a copy sent to the appropriate authority (Deputy Excise Commissioner or Superintendent of Police) for getting the "personal File" of the offender opened. Details regarding the offender will be published in the Excise Supplement and personal File opened (in Form F.I.B-H) after entering his particulars in the pradeshic Register of

prominent. Excise offenders (in Form E.I.B.-I). Particulars of all prominent offenders apprehended outside the State but residents of State, intimation where of may be received from other State, will be entered in the "Register of Prominent Offenders of U.P. detected in other States" in Form E.I.B.-5. Reports regarding results of cases received in Form E.I.B. -B or otherwise will also be entered in E.I.B.-I or E.I.B. - B. -5 (which ever be applicable) register and deposited in the "Personal File" of the offender.

A list of all prominent offenders will be maintained by Excise Inspectors at the end of the village Registers (D-12).

**289. Opening of History sheets of notorious Excise offenders-** Notorious Excise offenders are history-sheeted with a view to keeping watch over their activities. Proposals for opening History sheet of such offenders should be submitted to the Bureau in duplicate in Form E.I.B.- E. Normally, proposal should not be made for history sheeting carriers other than professionals, persons of or over 70 years in age, or in cases in which the offence appears to be an isolated lapse on the part of the offender. Delinquent licensed vendors convicted for possession and sale of illicit intoxicants should, on the other hand, be invariably proposed for being history sheeted.

When the Excise Commissioner orders history-sheeting of an offender, the name of the History-sheeter should be entered promptly in the Bureau in the registers noted below:-

- (i) the Register of Excise History sheets (Form E.I.B.-2).
- (ii) the Alphabetical Index Register of History-sheets (form E.I.B.-3).
- (iii) the District Index Register of History-Sheets (form E.I.B.-4) regarding the district in which the History-sheeter resides.

A special number will be assigned to the History Sheeter in each of these registers and a true copy of the form E.I.B. - E with orders thereon of the Excise Commissioner returned to the Detecting Officer along with intimation in Form E.I.B.- E with orders thereon of the Excise Commissioner returned to the Detecting Officer along with intimation in Form E.I.B. - F for incorporation in the personal File of the Offender, thenceforth to be called his History sheet. Similarly, action will be taken in respect of the Personal File of the Offender maintained in the Bureau. The History sheet file will be kept separate from the personal File.

Every preventive excise Inspector will keep in red ink a list of History-sheeters residing in his circle at the end of the circle village Register (Form D-12).

Deputy Excise Commissioner will see at the time of his periodical inspection that personal and History-sheet files are properly maintained. He will see, further, if proposal for closing any such field if warranted, has been made. Report for closure of any such file should be submitted to the Bureau in duplicate along with form E.I.B. - F and the file weeded out after receipt of orders in accordance with standing instructions.



**290. Issue of Identity card and search authority to non-Gazetted Excise-staff-** Non- Gazetted Excise personnel is provided with identity cards with a view to enabling them to establish their identity in the execution of their lawful duties and minimising, chances of complaints against them. Application therefore by an Excise Inspector will be accompanied by his photograph 2" x 8" in size whereupon an identity card will be issued to him. With the same end in view as well as with a view to instil confidence in themselves, an identity card-cum search authority will be issued by the Deputy Excise Commissioners to each Excise constables serving under them. Identity cards should be kept carefully. A panalty of Rs. 2 will be levied before issue of a duplicate copy.

A Register of issue and return of Identity Cards will be maintained by Deputy Excise Commissioners in form D-23.

**291. Numbering of belts issued to constables-** With a view to further minimising chances of complaints against Excise constables, belts provided to them will be numbered. A register of belts for Excise constables will be maintained by Deputy Excise Commissioners in Form D-26.

**292. Issue of Railway platform permits-** Deputy Excise Commissioners will provide Excise staff on detective duty, wherever necessary, with railway platform permits in form E.I.B.- I to enable them to conduct searches in railway station premises and to examine relevant railway records. It should be clearly understood that these do not authorise the holder to travel without proper railway ticket. All such permits issued will be entered in a Register of Railway Platform permits (D-24).

A fine of Rs. 2 will be levied before a duplicate copy is issued during the currency of the original permit.

**293. Serutiny of quarterly and consumption reports-** The Bureau examines quarterly crime and consumption statements and submits comments thereon for Excise Commissioner's orders.

**294. Quarterly Review of the working of the Excise Intelligence Bureau-** The Excise Inspector incharge of the Office Section will submit to the Excise Commissioner a quarterly review of the working of the Bureau by the end of the month following each quarter.

## **SECTION XXV- TRIALS**

**295. Who may try excise and opium cases-** Only Magistrates of the first class or Magistrates of the second class specially empowered for the purpose may try offences under the Excise. Norcotic drugs and psychotrofric substances Acts, etc. So far as possible all such cases should be tried by one Magistrate only designed as Excise Magistrate, who should be an experienced stipendiary Magistrate of the first class.

It would be advisable if a first class Magistrate, who has experience as such of atleast two years and who is not over- burdened with other case work, or with duties

necessitating touring, is entrusted with the disposal of Excise cases. Cases should not be tried by the District Excise Officer, nor by an Honorary Magistrate; nor so far as possible, by any Magistrate of the second class in view of the inadequacy of powers exercised by such Magistrate for awarding deterrent sentences.

**296.** In all important cases the District Magistrate should be moved to direct the prosecuting Inspector or Sub-Inspector to conduct the case. In cases of extraordinary importance the Collector may, if it appears necessary, be requested to engage the services of a pleader to conduct the prosecution.

**297. Monthly report of prosecutions in Form G-22-** Every Excise Inspector incharge of a preventive circle will prepare a statement in form G-22 in triplicate in respect of all cases decided during a calender month on the basis of G-21 reports received from the District Excise Officer and submit two copies of the statement to the Deputy Excise Commissioner by the 10th of the following months.

A consolidated statement for each district will be prepared by the Deputy Excise Commissioner and submitted to the Excise Commissioner by the 15th of the month.

**298. Magistrate trying excise cases fill up prescribed form-** Every Magistrate trying an excise offence shall fill up a statement in form G-21 on the conclusion of the trial and send two copies of the same to the District Excise Officer, who shall forward one of them immediately to the Excise Inspector, concerned for preparation of the monthly report in form G-22. The other copy should be retained for record and use while sanctioning reward or expenses. G-21 statement in respect of cases challaned by the Police or other agencies shall also be forwarded to Excise Inspector of the circle concerned.

Similarly, the excise clerk shall fill up the form G-21 for cases disposed of under section 74 of the Excise Act or the relevant sections or rules of other Acts and promptly send one copy to the Excise Inspector concerned for inclusion in G-22 statement.

## **SECTION XXVI- (a) Rewards**

**299. Collector to grant rewards-** The United Provinces Excise Act, 1910, does not authorise a convicting Magistrate to grant rewards out of fines recovered under the Act. Rewards are paid out of a departmental grant placed at the disposal of the Collector. Magistrates may make recommendations, but the sole responsibility for the grant of rewards lies with the Collector.

**300. Rewards to whom to be granted-** The Collector is authorized to grant a reward to any person who has in any way contributed to grant a reward to any person who has in any way contributed to the prevention of crime, the detection of an offence or the arrest or conviction of an offender under the Excise Act. Rewards should not be granted in petty cases, such as minor irregularities and breaches of licence conditions.

**301. Rewards too be granted in quality cases-** Allotment under head "Reward" should be utilized for granting rewards in cases classified by the Excise Commissioner from time to time as "Quality" cases, or for reimbursing out-of-pocket expenses actually incurred in working out or detecting cases. Reward may, however, be granted in cases other than "Quality" cases, as may be governed by clause (2) of paragraph 312, infra.

Application for rewards and out of pocket expenses will be submitted to the District Excise Officer in duplicate in forms G-41-A and G-41-B, respectively. One copy in either case will be returned by him to the applicant immediately after sanction by the collector. A pay order in form G-41-C will be sent by the District Excise Officer to the Officer incharge, Nazarat, simultaneously. The Nazir will draw the amount sanctioned and forward the same to the applicant along with a letter in form G. 41-G to be returned to the Nazir after disbursement.

**302. Conviction not necessary for grant of rewards-** The grant of rewards is not restricted to cases in which convictions have been obtained. The decision of an appellate court need not be awaited before paying a reward, unless the collector has reason to believe that the case is false. Separate rewards need not be given in every case, a lump sum may be given for a group of detections in one village or one neighbourhood. It is essential that rewards should be promptly paid.

**303. Purpose of grant of reward -** Rewards are granted (1) to recoup officers for expenses incurred by them in paying informers or otherwise, (2) to reward conspicuous energy, intelligence or courage displayed in dealing with excise cases. The names of informers should never appear in the order sanctioning the reward.

**304. Limit of amount-** The Collector is authorized to grant rewards up to a total of Rs. 100 in each case, whether the sum is awarded to one individual or distributed amongst several. If he considers that in any particular case this sum is insufficient, he may with the previous sanction of the Excise Commissioner, grant a larger reward not exceeding Rs. 1,000 in amount.

The Excise Commissioner may grant rewards up to a limit of Rs. 1,000 in any case from the grant placed at his disposal.

**305. Officers eligible for rewards-** All revenue officers below the rank of Tahsildar, all Tahsildars in the Kumaun Division, all Police Officers up to and including inspectors, and all officials of the excise, railway and post office departments, except gazetted officers, are entitled to receive rewards.

**Note-** (1) With the previous sanction of the Excise Commissioner, gazetted officers may, subject to a maximum of Rs. 1,000 be compensated for expenses incurred by them in the detection of any case.

**Note-** (2) For Procedure as to how rewards are to be drawn and paid see Chapter III.

### **(b) Annual Special Rewards**

**306. Objectives of annual special rewards-** (1) It is essential in the interest of cleanliness of Excise Administration that its functionaries act not merely with zeal and efficiency but are also in the enjoyment of reputation for honesty as well to promoting zeal, industry and efficiency in general amongst the aforesaid functionaries, the Excise Commissioner, Uttar Pradesh, may, from the grant for Rewards at his disposal, sanction

Annual Special Rewards to such of the officers, eligible for rewards, as may have put in conspicuously good work during th year in connection with detection work and in safeguarding excise revenue in general.

**(2) Grant of annual Merit certificates-** With the same end in view the Excise Commissioner may also grant Annual Merit Certificates (instead of Annual Special Rewards) to such members of the staff whose duties during the year under review did not encompass actual detection work but whose work and conduct, nevertheless, deserved recognition.

**307. Guiding principles in granting special rewards-** No hard and fast rule in laid down as regards the number of Annual Special Rewards that may be sanctioned and the amount they carry: these shall be in accordance with such instructions as the Excise Commissioner, may, from time to time, consider necessary in the public interest. In keeping, however, with the recognized principal that excellence of reputation for honesty of the public servants in a democratic set-up is the sinequo non of its progressiveness, the emphasis in judging the eligibility of claim for Annual Special Rewards particularly the higher special rewards for all-round good work in the State, shall be the claimant's positive reputation for honesty. The basis of the claimant and his detection work (against licensees and the public, both)and its quality.

**308. Highest excise rewards - (i)** The reward under head "best all-round work in the State" shall be considered the highest reward.

**(ii) Pre-requisites for rewards for the charges-** The Srtress in granting rewards in the wet area for "Best all round work in the charge" shall be on "total revenue" secured during the year under review.

**Note-** With a view to providing incentive to the maximum possible number of persons, not more than two Annual Special Rewards for a year shall be granted to one and the same person.

## **SECTION XXVII- Affairs in Criminal Cases**

**309. Action by excise inspector in appeal or revision-** Excise Inspector incharge of a preventive circle shall submit to the Deputy Excise Commissioner a report in duplicate in form D-30 immediately after an excise case ends in acquittal or discharge or in which an enhancement of punishment is desired. The Deputy Excise Commissioner shall immediately examine the record of the case, if necessary. He shall move the District Magistrate concerned to take action for filling appeal or revision as the case may be. He shall send to the Excise Commissioner also the duplicate copy of the report in form D-30 along with his comments and particulars of the initial action taken by him in moving the District Magistrate.

**310. Principles to be observed in proposing appeal against acquittal or in filling revision-** The Deputy Excise Commissioner shall take the following facts into consideration while recommending preformert of an appeal or revision in a case:

(i) No recommendation for appeal or revision, in any case ending in acquittal or discharge, should be made unless there are clear grounds for suspecting micarriage of justice or unless the judgement of the court is so pervense or so hompelessly wrong or so apposed to the evidence on record as to suggest partiality or dishonesty.

(ii) In any case in which acquittal or discharge is based on wrong application of law, it is advisable to file an appeal or revision in order to obtain an authoritative interpretation of law.

(iii) No application for enhancement of sentence should be recommended unless the case is really important and the punishment awarded grossly incommensurate with the offence.

**311. Procedure to be adopted in appeal or revision-** (1) When the District Magistrate considers-

(a) that an appeal should be preferred by the Government under section 378 of the code of Criminal Procedure 1973, against an original or appellate judgement of acquittal passed by a Sessions Judge or a Magistrate, or

(b) that an application should be preferred for the revision of a judgment or order passed by a Sessions Judge or a Magistrate, he shall submit to the Excise Commissioner a brief narrative of the facts of the case with his reasons for considering the desirability of filling appeal or revision along with all the original records.

(2) In the case of a proposed appeal two certified copies of the judgment appealed against, and in the case of a proposed revision three certified copies of the Judgement of the Sessions Judge or the Magistrate must also be submitted.

(3) The District Magistrate should send his letter in duplicate and should also send two copies of the District Government Counsel's opinion and of other relevant papers, if any, which he considers necessary to be forwarded with the records.

**312. Action to be taken by Deputy Excise Commissioner-** (1) If the Deputy Excise Commissioner fails to convince the District Magistrate of the need for retrial of a discharged person or for filing appeal against acquittal of any person or filing revision for enhancement of sentence or on any other grounds, in any case in which he thinks such action is called for he should immediately address the Excise Commissioner on the Subject, giving his recommendations with reasons.

**(2) Procedure where the Excise Commissioner desires on appeal or revision-** If the Excise Commissioner agrees with the opinion of the Deputy Excise Commissioner

agrees with the opinion of the Deputy Excise Commissioner, he will move the District Magistrate concerned and give his reasons for taking action in the case. The District Magistrate shall, unless he is able to convince the Excise Commissioner to withdraw his proposal, take action as laid down in rule 311, even though he may not agree with the proposal. In the last mentioned eventuality the District Magistrate shall, in his letter forwarding the papers, state the grounds of his disagreement.

**(3) Recommendation to reach Government within one month-** When the Excise Commissioner receives a recommendation under rules 311 or 312(2) from a District Magistrate, he will submit the same along with connected records to the Government with his own opinion, so as to reach Government within one month from the date of judgement or order.

**313. Excise Staff to act promptly-** It has to be borne in mind that the time factor is all-important whenever administrative machinery for filing appeal or revision has to be set in motion. The Excise Inspector must, therefore, obtain two or three (as the case may be) certified copies of judgment, promptly, and see that his narrative along with the opinion of the District Government Counsel reaches the District Magistrate within 10 days of the decision of the case. A copy of the narrative should be sent to the Deputy Excise Commissioner, also, who should be kept informed of the orders of the District Magistrate. The Deputy Excise Commissioner should keep constant touch with the progress of the matter and see that the appeal or revision is not vitiated on account of delay at any stage.

**314.** Whenever a court ensures the conduct of an Excise Inspector or any other employee of the Excise Department of an inferior rank, the District Officer should bring such strictures to the notice of the Assistant Excise Commissioner through the District Officer and it will be the duty of the Deputy Excise Commissioner to enquire and decide whether any departmental or other action should be taken against the persons concerned or not. Deputy Excise Commissioner should submit clear reports embodying their recommendations to the Excise Commissioner in all cases in which the Excise Inspector are concerned. As regards other employees, the Deputy Excise Commissioner will report their findings to the Commissioner, only in cases on any seriousness or importance or, or where for any reason, the orders of the Excise Commissioner are required. Where the enquiry related to serious strictures passed against an Inspector, and in other important cases, the Deputy Excise Commissioner should communicate his finding to the District Magistrate.

procedure for defence of Excise Staff involved in Civil or Criminal Proceedings.

**315.** Relevant paragraphs in respect of the procedure regarding defence of Excise personnel involved in Civil or Criminal proceeding in the course of legitimate discharge of their official duties are reproduce below from the Manual of Government Orders for guidance of the Staff:

**(1) Report regarding public servants interested in judicial proceedings-** When in any suit- when in any suit or other judicial proceedings any person interested therein is

described as, or is ascertained to be, a public servant, the Presiding officer, should after giving his decision, inform the Chief Executive Officer in the district of the department to which such public servant belongs, of any circumstances in the case affecting personally the public servant mentioned.

(2) *Defence of Judicial proceedings involving Government servants*- Every Government servant against whom civil or criminal proceedings are instituted otherwise than by Government, in respect of any act purporting to have been done in his official capacity, will be defended at the expense of the State when he desires to be so defended at the expense of the State when he desires to be so defended, provided that Government are satisfied that such a course is necessary. Further reference on this subject should be made to the legal Remembrancer's Manual in regard to civil suits.

(3) *Prosecution of officers*- Before criminal proceedings are instituted against any person who is or was a judge or Magistrate or a public servant other than a Police Officer, not removable from his office save by or with the sanction of the Government for any offence alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, the provision of section 197 of the code of criminal procedure, 1973 must invariably be complied with.