Deputy Commissioner, 

No: Home/ISA/2013/177 Dated: 09.01.2014.

Subject: Guidelines for conducting Magisterial Enquiry in cases of death in custody or in course of Police action.

Sir,

The National Human Rights Commission has laid down broad guidelines to be followed by the Magistrate while holding a Magisterial enquiry in cases of death in custody or in course of police action.

I am accordingly directed to forward herewith a copy of these guidelines received from the General Administration Department vide their O.M. No. GAD (Legal)F-759/2013/1615 dated 09.12.2013 for information and compliance.

Yours faithfully,

(Sarib Sahran) KAS
Under Secretary to the Government
Home Department

Encls. ( ) Lvs.
Copy to the :-
1. Director General of Police, J&K, Jammu for information.
2. Secretary to the Government, General Administration Department for information. This is in reference to the aforementioned O.M.
Subject: Guidelines for conducting Magisterial Enquiry in cases of death in custody or custody of police.

Principal Secretary to Government, Home Department may kindly refer to the aforesaid subject matter. In this connection, the undersigned is directed to forward herewith copy of communication dated: 03.10.2013 alongwith its enclosures received from National Human Rights Commission, New Delhi for information and further necessary action under an intimation to this Department.

(Suhail Muzaffar)
Public Law Officer,
General Administration Department.

Principal Secretary to Government,
Home Department.

Encls: A/A.
To

The Chief Secretary,
Govt. of Jammu & Kashmir,
Srinagar – 190 023.

Subject: Guidelines for conducting Magisterial Enquiry in cases of death in custody or in course of police action.

Sir,

As you are aware, the National Human Rights Commission had vide its letter dated 03/01/2001 addressed to the Home Secretaries of the State Governments, emphasised upon the need for holding Magisterial Enquiry in all cases of death in custody within a period of two months from the date of incident. Separately, guidelines were issued vide letter dated 12/05/2010 addressed by the then Acting Chairperson to the Chief Secretaries/Administrators of the States for holding Magisterial Enquiry in all cases of death which occur in the course of police action.

It has been the experience of the Commission that on account of absence of guidelines, there is no uniformity in conduct of Magisterial Enquiry and adequate emphasis is not laid on vital aspects. The Magistrate do not care to visit the place of occurrence. In many cases, the family of the victim is not invited to join the enquiry. The evidence produced at the enquiry is not analysed in an objective manner.

The Commission has, therefore, laid down broad guidelines to be followed by the Magistrate which holding enquiry. I am accordingly forwarding to you, a copy of the guidelines for conducting Magisterial Enquiry in cases of death in custody or in course of police action with the request that the same may be forwarded to the concerned District Magistrates for compliance.

Encl: As above.

Yours faithfully,

(A.K. Garg)
Registrar (Law)
Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action.

I. Following guidelines should be followed while conducting the magisterial enquiry in case of custodial death or death in the course of police action.

i. Magisterial enquiry be conducted at the earliest without undue delay.

ii. The Enquiry magistrate should visit the place of occurrence to be acquaintance with the facts on ground. During the visit to the scene of crime, the Enquiry Officer should make an attempt to identify natural witnesses who are likely to have been present at the scene of crime. Enquiry Officer should take them into confidence and try to record their statements. Many a times members of the family of the deceased narrate the motive of the police officer who staged the encounter for killing the deceased. The motive so given should be thoroughly investigated for its veracity or otherwise.

iii. A public notice be issued through the vernacular newspapers to inform witnesses concerned with the enquiry. The enquiry magistrate should ensure that the information reaches all concerned particularly the close relatives of the victim. A free and fair opportunity should be given to the relatives of the victim while recording their statements.

iv. The magisterial enquiry should cover the following aspects:
   a) The circumstances of death.
   b) The manner and sequence of incidents leading to death
   c) The cause of death
   d) Any person found responsible for the death, or suspicion of foul play that emerges during the enquiry.
   e) Act of commission/omission on the part of public servants that contributed to the death.
   f) Adequacy of medical treatment provided to the deceased.

v. The enquiry magistrate should examine and verify the following records.
   a) Inquest Report
   b) Post Mortem Report: It is seen that the Enquiry Officer does analyze the Post Mortem report; no attempt is made to draw inference about the genuineness or otherwise of the encounter. Report should be thoroughly analyzed; if necessary, help of State should be taken.
   c) Viscera Analysis Report
   d) Histopathological Examination Report
   e) Final cause of death
i) MLC report/Initial Health Screening Report of the prisoner

g) Medical treatment records

h) Inquiry/Investigation report of the police.

i) FIR/General Diary (GD) entries/any other relevant police records.

j) Ballistic examination reports of weapon and cartridges, if any, alleged to be used in the incident by the deceased.

k) Forensic examination report of 'hand wash' of the deceased.

l) The fingerprint expert report on fingerprint impression available on weapon alleged to have been used by the deceased.

m) Any other relevant records and reports.

vi) The magistrate should examine family members and relatives of the deceased, eye witnesses having information of the circumstances leading to encounter, doctors who have conducted the post mortem/provided treatment to the deceased, concerned police/prison officials, independent witnesses, co-prisoners and other such relevant persons.

II Report Writing

The Magisterial Enquiry Report should contain the gist of statements recorded, documents examined, discussion on allegations proved/not proved and grounds on which conclusion has been arrived at. MER should also contain specific/definite opinion about circumstances leading to death, whether use of force was justified and action taken lawful. The act of commission/omission on the part of public servants should be specified and names of officials responsible for death/cause of death may also be indicated. The enquiry magistrate may also suggest any systemic changes or improvement that may need to be brought about to void any such incidents in the future.

III Annexure to be attached with the report:-

a) The statements of the family members/relatives of the deceased, concerned doctors who rendered medical treatment/conducted post mortem, concerned police/prison official, co-prisoners, independent witnesses and other such relevant persons.

b) All other external reports which have been referred to or relied upon by the enquiry magistrate in his/her magisterial enquiry.
Subject: Rehabilitation Policy


Sanction is hereby accorded to the approval and adoption of the new Rehabilitation Policy as per the guidelines given hereunder:-

Objective:
1. The objective of this Rehabilitation Policy is to offer facility to those terrorists who undergo a change of heart and eschew the path of violence and who also accept the integrity of India and Indian Constitution to encourage them join the mainstream and lead a normal life and contribute towards prosperity and progress of the State as well as the Nation.

CATEGORIES ELIGIBLE FOR REHABILITATION
2. The following categories of terrorists from amongst residents of Jammu and Kashmir who surrender after issue of this order would be rehabilitated under this scheme:
   a) Known Militants who surrender with weapons.
   b) Hardcore militants even without weapons.

The authority accepting the surrender shall have reason to believe that the terrorist concerned has undergone a change of heart and wants to renounce violence.

EXCEPTIONS
   i) the surrenderee involved in heinous crimes like murder, rape, abduction etc. will be entitled to benefits only when legal action has been completed, court cases decided and the person has been pronounced innocent.
ii) Surrenders without incentives will also be considered in cases of youth who went across for training but want to return and join the mainstream and against whom there are no heinous offence/s in consultation with MHA.

iii) The surrenderee should not be a recycled terrorist or one who has already surrendered under an earlier surrender policy.

PLACE OF SURRENDER

3. Following places/authorities are authorized for accepting surrenders:

   • Operational Units of Army/BSF/CRPF/ITBP throughout the State.
   • Zonal Inspectors General of Police,
   • Range Dy. Inspectors General of Police,
   • District Magistrates and District Superintendents of Police or Superintendent of Police, CID

   In case of surrender before the operational unit of Army, BSF, CRPF and ITBP, the authority for accepting surrender will be designated in advance and shall not be below the rank of Commandant of the Unit.

ACTION ON SURRENDER

4. a) As soon as the surrenderee reports to any of the designated authority, immediate intimation shall be sent to Addl. DGP (CID) J&K with particulars of the individual in the prescribed proforma (Annexure A). The rehabilitation package shall be released through Additional DGP, CID who shall keep a record of all the cases.
5. The following incentives will be provided for weapons etc.

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<thead>
<tr>
<th>S.NO</th>
<th>WEAPONS</th>
<th>INCENTIVE</th>
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<tbody>
<tr>
<td>1.</td>
<td>AK rifle</td>
<td>Rs. 15,000/- per weapon</td>
</tr>
<tr>
<td>2.</td>
<td>UMG/GPMG/Pika/RPG/ Sniper rifle</td>
<td>Rs. 25,000/- per weapon</td>
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<tr>
<td>3.</td>
<td>Pistol / Revolver</td>
<td>Rs. 3,000/- per weapon</td>
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<td>4.</td>
<td>Grenades / hand Grenade / stick grenade</td>
<td>Rs. 500/- per grenade</td>
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<td>5.</td>
<td>Rocket</td>
<td>Rs. 1000/- per rocket</td>
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<td>6.</td>
<td>Remote Control Device</td>
<td>Rs. 3000/- each device</td>
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<tr>
<td>7.</td>
<td>Ammunition of all types</td>
<td>Rs. 3/- per round</td>
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<tr>
<td>8.</td>
<td>IEDs</td>
<td>Rs. 1000/- each</td>
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<td>9.</td>
<td>Mines</td>
<td>Rs. 3000/-</td>
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<td>10.</td>
<td>Explosive material</td>
<td>Rs. 1000/- per Kg.</td>
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<td>11.</td>
<td>Wireless Set</td>
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<td></td>
<td>Short Range</td>
<td>Rs. 1000/-</td>
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<td>Long Range</td>
<td>Rs. 5000/-</td>
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<tr>
<td>12.</td>
<td>SAM Missiles</td>
<td>Rs. 20,000/-</td>
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<td>13.</td>
<td>Satellite Phones</td>
<td>Rs. 10,000/-</td>
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<td>14.</td>
<td>VHF/ HF communication set</td>
<td>Rs. 5,000/-</td>
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<td>15.</td>
<td>Electronic Detonators</td>
<td>Rs. 50/-</td>
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<tr>
<td></td>
<td>Other Detonators</td>
<td>Rs. 10/-</td>
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6. REHABILITATION INCENTIVE FOR SURRENDEREES.

Every surrenderee eligible for rehabilitation under this scheme will be entitled to :-

a) Immediate grant of Rs.1.50 Lakh to be kept in the shape of an FDR in a bank in the name of surrenderee for a period of three years which can be drawn by him only on completion of three year period and subject to good behaviour.

b) Rs. 2000/- as monthly stipend for three years after surrender.

A Committee of all agencies (Police, I.B., Army, BSF, CRPF, ITBP, etc.) to be convened by the District S.P. be hereby constituted in each district to examine
b) Addl. DGP (CID) J&K, will inform the authority accepting surrender as early as possible after receipt of intimation of surrender as to whether or not the individual is eligible for grant of rehabilitation package or is to be dealt with under the law.

c) The rehabilitation package of those eligible will be made available by Addl. DGP (CID) J&K to the following HQRS. who will act as a nodal point for distribution of the benefits as also care-takers for the surrenderee:-

- Respective Corp. Hqrs.
- HQRS of concerned IG BSF, CRPF or ITBP.
- District SPs for surrenders before the Zonal IsGP, Range DisG, District Magistrates, District SsP.

d) In the event of any dispute regarding eligibility of a surrenderee for rehabilitation package, following Apex Committee is empowered to take a final decision:-

- Financial Commissioner (Home) – Chairman
- Addl. DGP (CID) J&K
- Representative of HQRS 14, 15, 16 Corps. or PMFs as the case may be,
- Representative of Intelligence Bureau.

e) The ammunition and other war store received from surrenderee shall be deposited with the J&K Police regardless whether surrendered to Army or other authorities. The receipt of the deposit from District Police concerned will be made available alongwith the prescribed proforma of the surrenderee to the State CID for records.
all such cases of surrender every month with a view to prevent fake surrenders.

GOOD BEHAVIOUR
7. Good behaviour of a surrenderee will be certified by the authorities taking the surrender and the State CID. The authorities before the release of FDR of Rs. 1.50 Lakh will fill a form in Annexure “B” forwarding each case duly recommended to the State CID and release of the amount shall be subject to clearance by the State CID.

VOCATIONAL TRAINING
8. For a surrenderee who desires to undergo any vocational training for self-employment, the Government will facilitate such training free of cost at the centres to be decided on case to case basis. The existing scheme of self-employment linked to bank loans will be retained.

In the event of a surrenderee able to secure any Govt. job either in Central Government/PSUs/Army/State Government/Cooperatives where the Central/State Government has a share, the stipend will be discontinued forthwith.

9. This order shall supersede all previous orders regarding surrenders and rehabilitation of terrorists. The revised Policy will be effective from the date of issue of orders by the State Govt. of J&K.


Sd/-
(S.D. Singh),
Financial Commissioner Home
Copy to the:-
1. Financial Commissioner...............Deptt.
2. Principal Secretary to Govt......................
3. Principal Secretary to Hon’ble Chief Minister.
4. Principal Secretary to H.E. the Governor.
5. Commissioner/Secretary to Govt...............Deptt.
6. Director General of Police, J&K.
7. Additional Director General of Police, CID, J&K.
10. District Magistrate.
12. Headquarters 15 and 16 Corps, C/o 56 APO.
15. Pvt. Secretary to Chief Secretary.
16. Pvt. Secretary to Hon’ble Ministers/MOS.

31.1.04

Under Secretary to Govt.
Home Department