

# VIGILANCE COMPENDIUM

*(Compilation of circulars/documents on non-technical matters of CVC, DoPT, provisions of Indian Penal Code 1860, Prevention of Corruption Act 1988, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 applicable on public servants)*

**(Volume - 2 of 2)**

**October, 2014**



**NATIONAL FERTILIZERS LIMITED**  
(A Govt. of India Undertaking)

*Prepared by:*  
**VIGILANCE DIVISION**  
**Corporate Office**  
**A-11, SECTOR-24, NOIDA-201301(UP)**

# INDEX

## (Volume - 2 of 2)

### Chapter-I

#### DoPT's Instructions on Vigilance Matters

| S. No. | Circular Description                                                                                                                                                                                                                                                                  | Office Order/<br>Circular No. | File ref. No.            | Date       | Page No. |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------------------------|------------|----------|
| 1      | Grant of Honarium to Inquiry Officers (IO) / Presenting Officer                                                                                                                                                                                                                       | -                             | 142/15/2010-AVD-I        | 23/06/2014 | 1        |
| 2      | Amendment of GOI Resolution No. 89 published in the Gazette of India Part I Section I, Extraordinary dated 21 April, 2004 (read with corrigendum dated 29th April, 2004) commonly known as the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution - regarding. | -                             | 371/4/2013-AVD-III       | 16/06/2014 | 2-14     |
| 3      | Introduction of Single Window System in Department of Personnel & Training for receiving proposals for initiation of disciplinary proceedings against the Group A Officers of the Central Bureau of Investigation-Regarding.                                                          | -                             | 221/07/2014-AVD.II(B)    | 25/02/2014 | 15-17    |
| 4      | Comprehensive review of instructions pertaining to vigilance clearance for promotions -regarding                                                                                                                                                                                      | -                             | 22034/4/2014-Estt.(D-II) | 23/01/2014 | 18-19    |

| S. No. | Circular Description                                                                                                                                                                                                                                                                                | Office Order/<br>Circular No. | File ref. No.                | Date       | Page No. |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|------------------------------|------------|----------|
| 5      | Recommendations of the Committee of Experts on Disciplinary and Vigilance Inquiries (Hota Committee)-Para 31 of the Committees Report on amendments to the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972-Governments decision thereon-reg.  | -                             | 372/3/2007-AVD-III (Vol. 10) | 14/10/2013 | 20-21    |
| 6      | Recommendations of the Committee of Experts on Disciplinary and Vigilance Inquiries (Hota Committee) - Para 38 of the Committees Report regarding payment of TA-DA to retired government servants appearing as witnesses in proceedings before the CDI in CVC - Governments decision thereon - reg. | -                             | 372/3/2007-AVD-III (Vol.10)  | 14/10/2013 | 22       |
| 7      | Recommendations of the Committee of Experts on Disciplinary and Vigilance Inquiries (Hota Committee) - Para 135 of the Committees Report on submission of draft charge sheet while seeking first stage advice of CVC, etc. - Acceptance by Government-reg.                                          | -                             | 372/3/2007-AVD-III (Vol. 10) | 14/10/2013 | 23-24    |

| <b>S. No.</b> | <b>Circular Description</b>                                                                                                                                                                                                                       | <b>Office Order/<br/>Circular No.</b> | <b>File ref. No.</b>         | <b>Date</b>  | <b>Page No.</b> |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------------------|--------------|-----------------|
| 8             | Recommendations of the Committee of Experts on Disciplinary and Vigilance Inquiries (Hota Committee) - Para 48 of the Committees Report on conclusion of major penalty proceedings within a period of 18 months - Acceptance by Government - reg. | -                                     | 372/3/2007-AVD-III (Vol.10)  | 14/10/2013   | 25-26           |
| <b>S. No.</b> | <b>Circular Description</b>                                                                                                                                                                                                                       | <b>Office Order/<br/>Circular No.</b> | <b>File ref. No.</b>         | <b>Dated</b> | <b>Page No.</b> |
| 9             | Recommendations of the Committee of Experts on Disciplinary and Vigilance Inquiries (Hota Committee) - Para 35 of the Committee Report on conduct of hearings on a day to day basis - Acceptance by Government-reg.                               | -                                     | 372/3/2007-AVD-III (Vol. 10) | 14/10/2013   | 27              |
| 10            | Recommendations of the Committee of Experts on Disciplinary and Vigilance Inquiries (Hota Committee) - Para 36(a) of the Committees Report to designate CDIs in CVC in numerical/alphabetical order - Governments decision thereon - reg.         | -                                     | 372/3/2007-AVD-III (Vol. 10) | 14/10/2013   | 28-29           |
| 11            | Regulating parameters for exercise of discretionary powers enjoyed by Ministers at the Centre                                                                                                                                                     | -                                     | 372/38/2012-AVD-III          | 23/09/2013   | 30-34           |



| S. No. | Circular Description                                                                                                                                                                                                                                                       | Office Order/<br>Circular No. | File ref. No.         | Date       | Page No. |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-----------------------|------------|----------|
| 12     | Amendment of GOI of Resolution No. 89 published in the GOI Part I Section 1, Extraordinary dated 21st April, 2004 (read with corrigendum dated 29th April, 2004) commonly known as the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution-regarding | -                             | 371/4/2013-AVD-III    | 3/9/2013   | 35-42    |
| 13     | Strengthening of Vigilance set-up in Ministries/Departments - reg.                                                                                                                                                                                                         | -                             | 425/01/2012-AVD-IV(A) | 30/11/2012 | 43-44    |
| 14     | Guidelines for monitoring and expeditious disposal of the disciplinary proceeding cases - reg.                                                                                                                                                                             | -                             | 425/04/2012-AVD-IV(A) | 29/11/2012 | 45-47    |
| 15     | Comprehensive review of instructions pertaining to vigilance clearance for promotions -regarding                                                                                                                                                                           | -                             | 22034/4/2012-Estt.(D) | 2/11/2012  | 48-52    |
| 16     | FAQ in respect of AVD-I                                                                                                                                                                                                                                                    | -                             | NA                    | 31/08/2012 | 53-55    |
| 17     | Grant of Honorarium to Inquiry Officers (IO)/Presenting Officers (PO) - Consolidated instructions regarding                                                                                                                                                                | -                             | 142/15/2010-AVD-I     | 31/07/2012 | 56-62    |
| 18     | Guidelines for checking delays in grant of sanction of prosecution - strict compliance there of                                                                                                                                                                            | -                             | 420/01/2012-AVD-IV    | 20/07/2012 | 63-64    |
| 19     | Guidelines for checking delay in grant of sanction for prosecution                                                                                                                                                                                                         | -                             | 372/19/2012-AVD-III   | 3/5/2012   | 65-67    |
| 20     | Regulating parameters for exercise of discretionary powers enjoyed by Ministers at the Centre                                                                                                                                                                              | -                             | 372/14/2012-AVD-III   | 1/5/2012   | 68       |

| S. No. | Circular Description                                                                                                                                                                                                                                                                   | Office Order/<br>Circular No. | File ref. No.             | Date       | Page No. |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|---------------------------|------------|----------|
| 21     | Regulating parameters for exercise of discretionary powers enjoyed by Ministers at the Centre                                                                                                                                                                                          | -                             | 372/14/2012-AVD-III       | 16/04/2012 | 69       |
| 22     | Guidelines for checking delay in grant of sanction for prosecution                                                                                                                                                                                                                     | -                             | 118/2/2011-AVD-III        | 31/01/2012 | 70       |
| 23     | Authorization of the Central Government to file an application under Section 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property acquired by any person by means of the scheduled offence                                                        | -                             | 219/12/2009-AVD.II        | 19/01/2012 | 71-72    |
| 24     | Dispensing with second stage consultation with the CVC in disciplinary cases                                                                                                                                                                                                           | -                             | 372/19/2011-AVD-III(Pt.I) | 26/09/2011 | 73       |
| 25     | Permission to initiate investigation by the CBI in respect of officers of the rank of Joint Secretary and above serving the Central Government - Provisions of section 6A of the Delhi Special Police Establishment(DPSE) Act,1946-recommendations of the Group of Ministers-regarding | -                             | 372/19/2011-AVD-III(Pt.I) | 26/09/2011 | 74       |
| 26     | Appointment of Inquiry Officer (IOs) and Presenting Officer (POs) in disciplinary cases                                                                                                                                                                                                | -                             | 372/19/2011-AVD-III(Pt.1) | 26/09/2011 | 75       |
| 27     | Guidelines regarding grant of 'vigilance clearance' to AIS Officers                                                                                                                                                                                                                    | -                             | 104/33/2005-AVD.I         | 7/9/2011   | 76       |

| S. No. | Circular Description                                                                                                                                                                                                                                  | Office Order/ Circular No. | File ref. No.       | Date       | Page No. |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------|------------|----------|
| 28     | Allowing vigilance functionaries on deputation to CPSEs the option to draw pay either in the scale of pay of the CPSE concerned or pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any-Cabinet decision - reg. | -                          | 372/21/2009-AVD-III | 12/10/2010 | 77-78    |
| 29     | Committee of Experts regarding Disciplinary/Vigilance Proceedings                                                                                                                                                                                     | -                          | 372/3/2007-AVD.III  | 3/6/2010   | 79-86    |
| 30     | Disciplinary/Vigilance Proceedings(All CCAs)                                                                                                                                                                                                          | -                          | 372/3/2007-AVD.III  | 19/05/2010 | 87-94    |
| 31     | Questionnaire for Consultation with Stakeholders connected with AIS and Vigilance                                                                                                                                                                     | -                          | 372/11/2010-AVD.III | 19/04/2010 | 95-106   |
| 32     | Withdrawal of cases from prosecution under Section 321 of Cr.P.C. 1973-reg.                                                                                                                                                                           | -                          | 333/9/2009-AVD-II   | 23/10/2009 | 107      |
| 33     | Grant of Honorarium to Inquiry Officers/Presenting Officers                                                                                                                                                                                           | -                          | 142/20/2008-AVD-I   | 27/07/2009 | 108-109  |
| 34     | Authorization of the Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence                                               | -                          | 219/12/2009-AVD-II  | 13/05/2009 | 110-112  |
| 35     | Withdrawal/withholding/recovery of pension/gratuity in the case of minor penalty proceedings                                                                                                                                                          | -                          | 110/9/2003-AVD-I    | 13/04/2009 | 113-114  |



| S. No. | Circular Description                                                                                                       | Office Order/<br>Circular No. | File ref. No.       | Date       | Page No. |
|--------|----------------------------------------------------------------------------------------------------------------------------|-------------------------------|---------------------|------------|----------|
| 36     | Prosecution sanction-evidence of sanctioning/signing/authenticating authority                                              | -                             | 142/22/2007-AVD-I   | 10/11/2008 | 115-116  |
| 37     | Strengthening of vigilance mechanism - giving wide publicity to Government's anti-corruption policies                      | -                             | 372/3/2008-AVD-III  | 3/7/2008   | 117      |
| 38     | Sanction for prosecution u/s 19(1) of the P.C. Act                                                                         | -                             | 107/13/2007-AVD.I   | 27/06/2008 | 118-120  |
| 39     | Strengthening of vigilance mechanism - Systemic Reforms and the role of supervisory officers                               | -                             | 372/4/2008-AVD-III  | 24/06/2008 | 121      |
| 40     | Guidelines regarding grant of 'Vigilance Clearance' to AIS Officers                                                        | -                             | 104/33/2005-AVD.I   | 29/10/2007 | 122-124  |
| 41     | Permission under Rule 6(1)(b)(i) of All India Services (Death-cum-Retirement Benefit) Rules, 1958- Procedural requirements | -                             | 106/17/2007-AVD.I   | 11/9/2007  | 125-127  |
| 42     | Guidelines for checking delay in grant of sanction for prosecution                                                         | -                             | 399/33/2006-AVD.III | 20/12/2006 | 128      |
| 43     | Guidelines for checking delay in grant of sanction for prosecution                                                         | -                             | 399/33/2006-AVD-III | 6/11/2006  | 129-133  |



| S. No. | Circular Description                                                                                                         | Office Order/<br>Circular No. | File ref. No.      | Date       | Page No. |
|--------|------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------------------|------------|----------|
| 44     | Consultation with the Central Vigilance Commission in cases where action taken under Rule 19 (i) of the CCS(CCA) Rules, 1965 | -                             | 118/1/2005-AVD.III | 8/4/2005   | 134      |
| 45     | Grant of honorarium to part-time Inquiry Officers/Presenting Officers                                                        | -                             | 134/4/99-AVD.I     | 29/06/2001 | 135-137  |
| 46     | Consultation with the Central Vigilance Commission in cases where action taken under Rule 19 of the CCS(CCA) Rules, 1965     | -                             | 118/4/89-AVD-I     | 30/05/1991 | 138-139  |
| 47     | Disciplinary Proceedings-Expeditious disposal-Setting time limits for each stage                                             | -                             | NA                 | 2/4/1985   | 140-142  |

| <b>Chapter-II</b>                                                                                   |                                                                                                                                                        |                                   |                        |             |                 |
|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|------------------------|-------------|-----------------|
| <b>Circulars/ Guidelines from CVC regarding Specific Directions &amp; Guidelines regarding PSUs</b> |                                                                                                                                                        |                                   |                        |             |                 |
| <b>S.No.</b>                                                                                        | <b>Circular Description</b>                                                                                                                            | <b>Office Order/ Circular No.</b> | <b>File ref. No.</b>   | <b>Date</b> | <b>Page No.</b> |
| 1                                                                                                   | Amendment to CDA Rules of PSUs to enable imposition of penalty on Public Sector Employees after their retirement - reg.                                | 44/12/07                          | 007/VGL/74             | 28/12/2007  | 143-144         |
| 2                                                                                                   | Special Chapter on Vigilance Management in Public Sector Enterprises and the Role and Functions of the CVC - Amendment to para 32.3 thereof.           | 59/12/03                          | 98/VGL/51              | 9/12/2003   | 145             |
| 3                                                                                                   | Chief Vigilance Officers - status & perquisites in Public Sector Undertakings                                                                          | 45/9/03                           | 003/VGL/18             | 17/09/2003  | 146             |
| 4                                                                                                   | Commission's jurisdiction over the employees of Organisations which have 50% or less Government equity                                                 | 33/7/03                           | 000/VGL/66             | 24/07/2003  | 147             |
| 5                                                                                                   | Exchange of Information between PSBs & PSUs                                                                                                            | -----                             | 001/VGL/67             | 10/1/2002   | 148             |
| 6                                                                                                   | Voluntary Retirement Scheme/ Voluntary Separation Scheme for the employees of Public Enterprises                                                       | -----                             | 2(32)97-DPE(WC)GL-XXXV | 8/12/2000   | 149-152         |
| 7                                                                                                   | Voluntary Retirement Scheme/ Voluntary Separation Scheme for the employees of Public Enterprises                                                       | -----                             | 001/DSP/4              | 10/9/2001   | 153             |
| 8                                                                                                   | Special Chapter on Vigilance Management in Public Sector Enterprises and the Role and Functions of the CVC - Clarification of para 32.3 of the Chapter | -----                             | 98/VGL/51              | 21/06/2001  | 154             |

| S.No.                                                                                              | Circular Description                                                                                                                                                 | Office Order/ Circular No. | File ref. No.       | Date       | Page No. |
|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------|------------|----------|
| 9                                                                                                  | Special Chapter on Vigilance Management in Public Sector Enterprises and the Role and Functions of the CVC - Clarification of para 3.2 thereof                       | -----                      | 98/VGL/51           | 11/8/1999  | 155      |
| 10                                                                                                 | Uniformity in designation of Heads of Vigilance in Public Sector Enterprises (PSEs)                                                                                  | -----                      | 3(v)/99/5           | 29/07/1999 | 156-157  |
| 11                                                                                                 | Guidelines for obtaining vigilance clearance from the Commission in respect of candidate(s) recommended for Board Level appointment(s) in Public Sector Enterprises. | -----                      | 3(v)/99/4           | 12/7/1999  | 158-159  |
| 12                                                                                                 | Special Chapter on Vigilance Management in Public Sector Enterprises and the Role and Functions of the CVC                                                           | -----                      | 3(v)/99/3           | 7/7/1999   | 160-161  |
| 13                                                                                                 | Special Chapter on Vigilance Management in Public Sector Enterprises & the Role and Functions of the CVC (Booklet)                                                   | -----                      | 3(v)/99/3           | 7/7/1999   | 162-204  |
| <b>Circulars/ Guidelines from CVC regarding appointment of CVO in CPSEs/Organizations etc.reg.</b> |                                                                                                                                                                      |                            |                     |            |          |
| 14                                                                                                 | Appointment of CVO in CPSEs/Organizations,etc.- regarding                                                                                                            | -----                      | 325/15/2012-AVD-III | 7/11/2013  | 205-206  |
| 15                                                                                                 | Creation of post of Chief Vigilance Officers and status facilities,perks and prerequisites in CPSEs etc.-reg.                                                        | -----                      | 372/9/2012-AVD-III  | 12/7/2012  | 207-209  |
| 16                                                                                                 | Appointment of CVOs/VOs in Organizations other than Ministries/Deptts,PSUs,PSBs, Insurances Companies                                                                | ----                       | 6W-CVO-61           | 15/10/2009 | 210-211  |
| 17                                                                                                 | Vigilance Administration - Role of CVO - regarding                                                                                                                   | 25/7/06                    | 006/VGL/065         | 6/7/2006   | 212-214  |
| 18                                                                                                 | Role and functions of Chief Vigilance Officers                                                                                                                       | -----                      | 003/VGL/9           | 27/05/2003 | 215      |
| 19                                                                                                 | Chief Vigilance Officers- Appointment,Role and Functions                                                                                                             | Vigilance Manual Volume-I  |                     |            | 216-233  |



| <b>Chapter-III</b>                                                                                                                                                   |                                                                                                                        |                           |             |            |         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------|------------|---------|
| <b>Circulars/ Guidelines from CVC regarding Rotation of Employees</b>                                                                                                |                                                                                                                        |                           |             |            |         |
| 1                                                                                                                                                                    | Rotation of officials working in sensitive posts - reg.                                                                | 3/9/2013                  | 004/VGL/90  | 11/9/2013  | 234     |
| 2                                                                                                                                                                    | Rotation of officials working in sensitive posts - reg.                                                                | 2/1/2012                  | 004/VGL/90  | 4/1/2012   | 235     |
| 3                                                                                                                                                                    | Rotation of officials working in sensitive posts                                                                       | 17/4/08                   | 004/VGL/90  | 1/5/2008   | 236     |
| 4                                                                                                                                                                    | Rotation of officials working in sensitive posts                                                                       | -----                     | 98/VGL/60   | 2/11/2001  | 237     |
| 5                                                                                                                                                                    | Rotation of officials working in sensitive posts                                                                       | -----                     | 98/VGL/60   | 15/04/1999 | 238     |
| <b>Circulars/ Guidelines from CVC regarding Foreign Visits by Government Employees</b>                                                                               |                                                                                                                        |                           |             |            |         |
| 6                                                                                                                                                                    | Foreign Visits by Government Employees                                                                                 | 60/09/05                  | 004/VGL/87  | 27/09/2005 | 239-240 |
| 7                                                                                                                                                                    | Foreign Visits by Government Employees                                                                                 | 74/12/04                  | 004/VGL/87  | 8/12/2004  | 241     |
| 8                                                                                                                                                                    | Foreign Visits by Government Employees                                                                                 | 67/10/04                  | 004/VGL/87  | 25/10/04   | 242-243 |
| <b>Circulars/ Guidelines from CVC regarding protection against victimisation of officials of the Vigilance Units of various Ministries/Departments/organizations</b> |                                                                                                                        |                           |             |            |         |
| 9                                                                                                                                                                    | Protection against victimisation of officials of the Vigilance Units of various Ministries/ Departments/ organisations | 16/3/06                   | 006/VGL/022 | 28/03/2006 | 244-245 |
| <b>Circulars/ Guidelines from CVC regarding appointment of consultants in Vigilance Departments</b>                                                                  |                                                                                                                        |                           |             |            |         |
| 10                                                                                                                                                                   | Appointment of consultants in vigilance departments                                                                    | -----                     | 3(V)/99/12  | 14/08/2000 | 246-247 |
| <b>Circulars/ Guidelines from CVC regarding Vigilance angle</b>                                                                                                      |                                                                                                                        |                           |             |            |         |
| 11                                                                                                                                                                   | Vigilance angle-definition of (partial modification regarding)                                                         | 74/12/05                  | 004/VGL/18  | 21/12/2005 | 248     |
| 12                                                                                                                                                                   | Vigilance angle-definition of                                                                                          | 23/04/04                  | 004/VGL/18  | 13/04/2004 | 249-250 |
| 13                                                                                                                                                                   | Vigilance angle                                                                                                        | Vigilance Manual Volume-I |             |            | 251-252 |



## Chapter-IV

**Provisions of Indian Penal Code 1860, Section 197 CrPC vis-à-vis Public Servant under Section 21(Twelfth)(b) IPC, Prevention of Corruption Act 1988, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989**

| S.No. | Circular Description                                                             | Office Order/<br>Circular No. | File ref. No. | Date       | Page No. |
|-------|----------------------------------------------------------------------------------|-------------------------------|---------------|------------|----------|
| 1     | The Indian Penal Code,1860                                                       | Act No.45 of 1860             |               | 06/10/1860 | 253-279  |
| 2     | Section 197 CrPC vis-à-vis Public Servant under Section 21(Twelfth)(b) IPC       | -----                         |               |            | 280-282  |
| 3     | Prevention of Corruption Act,1988<br>Definition & Salient Features               | -----                         |               |            | 283-286  |
| 4     | The Prevention of Corruption Act,1988                                            | Act No.49 of 1988             |               | 9/9/1988   | 287-303  |
| 5     | The Scheduled Castes and the Scheduled Tribe (Prevention of Atrocities) Act,1989 | Act No.33 of 1989             |               | 11/9/1989  | 304-312  |

# Chapter-I

## **DOPT's Instructions on Vigilance Matters**

No. 142/15/2010-AVD.I  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel & Training

North Block, New Delhi

Dated 23<sup>rd</sup> June, 2014

**OFFICE MEMORANDUM**

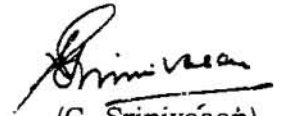
**Subject: Grant of Honorarium to Inquiry Officers (IO)/Presenting Officers (PO).**

The undersigned is directed to refer to this Department's OM of even number dated 31.7.2012 laying down the rates of honorarium payable to Inquiry Officer/Presenting Officer for holding departmental proceedings.

2. It has been brought to the notice of this Department that the condition mentioned in para 2.1 of the said OM, was in conflict with the provisions of FR 46 B which limits the maximum amount payable as honorarium to an individual in a financial year to Rs. 5,000/- creating confusion whether the same was within the delegated powers of the Ministry.

3. The matter has been considered and it is clarified that the honorarium payable to IO/Presenting Officer for conducting inquiry in departmental proceedings would be outside the purview of the general delegation under FR 46 B.

4. This issues with the concurrence of Department of Expenditure vide their I.D. No. 14/4/2009-E.II(B) dated 16.5.2014.

  
(G. Srinivasan)

Under Secretary to the Government of India

**All Ministries / Departments [as per Standard List]**

Copy to:-

1. The Comptroller and Auditor General of India, New Delhi.
2. UPSC.
3. Central Vigilance Commission.
4. Rajya Sabha Sectt, New Delhi.
5. Lok Sabha Sectt., New Delhi.
6. All attached / subordinate offices of the Ministry of Personnel, Public Grievances and Pensions.
7. Ministry of Finance, Department of Expenditure w.r.t. their I.D. No. 14/4/2009-E.II(B) dated 16.5.2014.
8. All Sections/Desks of DoP&T.
9. Department of ARP&G, for Civil Services News.
10. Institute of Training and Management, JNU, New Delhi.
11. AVD-I Section (150 spare copies).
12. ✓ NIC, DOP&T, North Block, New Delhi for uploading on this Department's website.



No. 371/4/2013-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

North Block New Delhi  
Dated the 16<sup>th</sup> June, 2014

**OFFICE MEMORANDUM**

Subject: Amendment of Government of India's Resolution No. 89 published in the Gazette of India Part I Section 1, Extraordinary dated 21<sup>st</sup> April, 2004(read with corrigendum dated 29<sup>th</sup> April, 2004) commonly known as the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution-regarding

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In continuation of this Department's OM of even No. dated 3<sup>rd</sup> September, 2013 on the above subject, the undersigned is directed to enclose herewith a copy of **Procedure for handling of complaints under Public Interest Disclosure and Protection of Informers (PIDPI) Resolution to be followed by the Chief Vigilance Officers of the Ministries/Departments of the Government of India** who have been authorized as the Designated Authority to receive written complaint or disclosure on any allegation of corruption or misuse of office by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or the Department.

2. The CVOs in the Ministries or Department, either on the application of the complainant or on the basis of the information gathered, is of the opinion that either the complainant or the witnesses need protection, they shall take up the matter with the Central Vigilance Commission(CVC), of issuing appropriate directions to the authorities concerned.

3. It is requested to give wide publicity to the Procedure for handling of complaints under PIDPI Resolution by placing it along with the name and designation of the designated authorities on the website of Ministries as well as of the organizations under the Ministries. A copy of the PIDPI Resolution No. 89 dated 21<sup>st</sup> April, 2004 and Amendment Resolution No. 190 dated 29.8.2013 is also enclosed

Encl: As above.

  
16/6/14

(M.M. Maurya)

Under Secretary to the Government of India  
Tel. No. 23094541

To,

CVOs in the Ministries/Departments of the Government of India.  
(By name as per enclosed list)

-----2/-

Copy for information to:

1. All the Ministries/ Departments of the Government of India.
2. The Cabinet Secretariat, New Delhi.
3. The Secretary, Central Vigilance Commission, Satarkata Bhavan, New Delhi. It is requested that the content of this OM may be uploaded on the website of the Commission and wide publicity may be given. The CVOs of the Ministries/Departments may also be addressed by the Commission.
4. PS to Hon'ble MOS(PP), PPS to Secretary(P)/EO&AS/AS(S&V), DOPT.
5. The CVO, Department of Personnel and Training, New Delhi.
6. NIC, DoP&T for uploading on DoP&T website.
7. Order folder/Guard file.

**Procedure for handling of complaints under the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution dated 21.4.2004 to be followed by the designation authority (CVOs or Ministries/Departments).**

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|    |                                                                                                                                                                                                                                                                                                                                                                                             |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | The 'Designated Authority' shall authorize an officer not below the level of Section Officer (SO) for receiving complaints under the PIDPI Resolution.                                                                                                                                                                                                                                      |
| 2. | All envelopes super-scribed with ' <i>Complaint under The Public Interest Disclosure</i> ' will be opened by the SO/In-charge, so authorized, in presence of the 'Designated Authority'.                                                                                                                                                                                                    |
| 3. | The identity of the complainant would be confirmed by the SO/In-charge by writing a letter to him/her. Sample of the letter is at Annexure-I.                                                                                                                                                                                                                                               |
| 4. | After the identity is confirmed, both, 'Designated Authority' and the SO/In-charge, will ensure that the identity of the complainant is removed from the body of the complaint and the dummy complaint given a number along with central registry diary number with which the original complaint can be traced back.                                                                        |
| 5. | The original complaint would be kept in a safe/almirah. The custody of the almirah will remain with the concerned Section Officer and at no time that complaint can be accessed without proper authority from the 'Designated Authority'.                                                                                                                                                   |
| 6. | The dummy complaint so made would be submitted to the 'Designated Authority' who would take the decision whether the matter requires to be looked into further and report is to be called in the matter from any quarters. <i>(Separate files may be open for each complaint)</i>                                                                                                           |
| 7. | While considering the complaints the 'Designated Authority' would take no action on complaints relating to administrative matters like recruitment, promotion transfers and other related issues. However, in case of serious complaints of irregularity in these matters, the same could be brought to the notice of the Secretary/Head of the organization for taking appropriate action. |
| 8. | In such cases where a decision has been taken to call for a report, a maximum time limit of 2 weeks may be given. In case no reply is received within two weeks, a reminder should be sent at the level of the "Designated Authority". If no reply is still received, the second reminder                                                                                                   |

|     |                                                                                                                                                                                                                                                                                                                                                                                |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | after 2 weeks should be sent at the level of the Secretary. If no reply is still received, the "Designated Authority" may call for an explanation and recommend administrative action for deliberate delay.                                                                                                                                                                    |
| 9.  | On receipt of the report, the concerned SO/In-charge will put up the matter to the 'Designated Authority' who shall investigate into the complaint and prepare an investigation report within two weeks.                                                                                                                                                                       |
| 10. | The "Designated Authority" would submit the investigation report along with his recommendation to the Central Vigilance Commission for further direction.                                                                                                                                                                                                                      |
| 11. | Meanwhile, the "Designated Authority" shall ensure that no punitive action is taken by any concerned Administrative authority against any person on perceived reasons/suspicion of being "whistle blower".                                                                                                                                                                     |
| 12. | Subsequent to the receipt of Commission's directions to undertake any disciplinary action based on such complaints, the CVO has to follow up and confirm compliance of further action by the DA and keep the Commission informed of delay, if any.                                                                                                                             |
| 13. | The Section Officer/In-charge should maintain a separate list for the complaints received under the 'PIDPI Resolution' and enter the information in the computer system and monitor their progress periodically and put up the same to the 'Designated Authority' every 2 weeks.                                                                                               |
| 14. | Wherever the complainant has alleged victimization/harassment the 'Designated Authority' should ensure that if the identity of the complainant somehow becomes known he/she should not be harassed/victimized by way of frequent transfers etc.                                                                                                                                |
| 15. | In case a complainant seeks protection and reports that his life is in danger, the 'Designated Authority' would examine the same and send his recommendation to the CVC to take up the matter with the Nodal Officers of respective States/UTs appointed by the Ministry of Home Affairs/State Governments for the purpose of providing security cover to the whistle blowers. |

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**ANNEXURE-I**

**CONFIDENTIAL**

Speed post/Registered post

F. No. Conf./ /...  
Government of India  
Ministry of .....

.....  
New Delhi the ..... 2014

To,

Sir,

Please refer to your complaint dated ..... received in this Ministry/Department on ..... under "Public Interest Disclosure & Protection of Informer Resolution (PIDPI)".

2. As per policy, a complainant is required to confirm that he/she has actually sent the said complaint to the Ministry/Department. You are, therefore, requested to confirm within 30 days of receipt of this letter, that you have sent the above-mentioned complaint.
3. You are also requested to furnish a certificate to the Ministry/Department as per format enclosed that you have not made similar/identical allegations of corruption/misuse of office to any other authorities to qualify as a 'Whistle Blower' complainant.
4. The reply may be addressed to the undersigned by name.

Yours faithfully.

Under Secretary

Encl: Certificate.

## CERTIFICATE

It is certified that I have not made similar/identical allegation of corruption/misuse of office to any other authorities to qualify as a Whistle Blower complainant.

Signature .....

Name of the Complainant .....

Address .....

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# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

भाग I—खण्ड 1

PART I—Section 1

प्राधिकार से प्रकाशित

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NEW DELHI, WEDNESDAY, APRIL 21, 2004/VAISHAKHA 1, 1926

कार्मिक, लोक-शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

संकल्प

नई दिल्ली, 21 अप्रैल, 2004

सं.-371/12/2002-ए.बी.डी.-III.—जबकि सर्वोच्च न्यायालय ने श्री सत्येन्द्र दुबे की हत्या के संबंध में रिट याचिका (सी.) संख्या-539/2003 को सुनवाई करते समय यह इच्छा व्यक्त की कि उपयुक्त विधान के बनावे जाने तक “पर्दाफाशों या भण्डाफोड़ों (विसल ब्लोअर्स)” से प्राप्त शिकायतों पर कार्रवाई किए जाने के लिए उपयुक्त तंत्र व्यवस्था तैयार की जाए।

और जबकि विधि आयोग द्वारा तैयार किए गए लोकहित प्रकटीकरण और मुखबिर संरक्षण विधेयक, 2002 की जांच-पड़ताल चल रही है।

अतः अब, केन्द्र सरकार एतद्वारा निम्नलिखित संकल्प लेती है :—

1. केन्द्रीय सतर्कता आयोग को केन्द्रीय सरकार अथवा किसी केन्द्रीय अधिनियम के द्वारा अथवा इसके अंतर्गत स्थापित किन्हीं निगमों, केन्द्र सरकार के स्वामित्व वाली अथवा इसके द्वारा नियंत्रित सरकारी कम्पनियों, सोसाइटियों अथवा स्थानीय प्राधिकरणों के किसी कर्मचारी पर भ्रष्टाचार के किसी आरोप अथवा पद के दुरुपयोग के सम्बन्ध में लिखित शिकायतें प्राप्त करने अथवा प्रकटीकरण सम्बन्धी दस्तावेज प्राप्त करने के लिए एतद्वारा मनोनीत अभिकरण के रूप में प्राधिकृत किया जाता है। प्रकटीकरण अथवा शिकायत में यथासंभव सभी विवरण होंगे और इसमें समर्थक दस्तावेज अथवा अन्य सामग्री शामिल होगी।

2. मनोनीत अभिकरण यदि ऐसा उचित समझे तो वह प्रकटीकरण करने वाले व्यक्तियों से और जानकारी अथवा विवरण मंगवा सकता है। यदि शिकायत बेनामी है तो मनोनीत अभिकरण इस मामले में कोई कार्रवाई नहीं करेगा।

3. शासकीय गुप्त अधिनियम, 1923 में विहित किसी बात के बावजूद भी संविधान के अनुच्छेद 33 के खण्ड (क) से (घ) में संदर्भित व्यक्तियों से भिन्न कोई लोक सेवक अथवा किसी गैर-सरकारी संगठन सहित कोई अन्य व्यक्ति मनोनीत अभिकरण को लिखित प्रकटीकरण भेज सकता है।

4. यदि शिकायत में शिकायतकर्ता का ब्यौरा भी दिया गया है तो मनोनीत अभिकरण निम्नलिखित कदम उठाएगा :—

(i) मनोनीत अभिकरण शिकायतकर्ता से यह पता लगाएगा कि क्या यह वही व्यक्ति है अथवा नहीं है जिसने शिकायत की है।

(ii) शिकायतकर्ता की पहचान उद्घाटित नहीं की जाएगी जब तक कि शिकायतकर्ता ने स्वयं शिकायत का ब्यौरा सार्वजनिक न कर दिया हो अथवा किसी अन्य कार्यालय अथवा प्राधिकारी को अपनी पहचान नहीं बता दी हो।

- (iii) शिकायतकर्ता की पहचान गुप्त रखने के पश्चात् मनोनीत अभिकरण प्रथमतः यह पता लगाने के लिए विवेकपूर्ण जांच-पड़ताल करेगा कि क्या इस शिकायत पर आगे कार्रवाई करने का कोई आधार बनता है। इस प्रयोजन हेतु मनोनीत अभिकरण एक समुचित तंत्र बनाएगा।
- (iv) शिकायत की विवेकपूर्ण जांच-पड़ताल करने के परिणामस्वरूप अथवा बिना जांच-पड़ताल के केवल शिकायत के आधार पर ही यदि मनोनीत अभिकरण का यह मत होता है कि मामले की और जांच-पड़ताल करवाई जानी अपेक्षित है तो मनोनीत अभिकरण सम्बन्धित संगठन अथवा कार्यालय के विभागाध्यक्ष से सरकारी तौर पर उनकी टिप्पणियाँ/अथवा उनके स्पष्टीकरण मांगेगा। ऐसा करते समय मनोनीत अभिकरण मुखबिर की पहचान प्रकट नहीं करेगा और सम्बन्धित संगठन के अध्यक्ष को यह भी अनुरोध करेगा कि यदि उन्हें किसी कारणवश मुखबिर की पहचान का पता चल जाता है तो वे मुखबिर की पहचान गुप्त रखेंगे।
- (v) सम्बन्धित संगठन का उत्तर प्राप्त होने के बाद यदि मनोनीत अभिकरण का यह मत होता है कि अन्वेषण से पद के दुरुपयोग अथवा भ्रष्टाचार के पुख्ता आरोपों का पता चलता है तो मनोनीत अभिकरण सम्बन्धित सरकारी विभाग अथवा संगठन को उपयुक्त कार्रवाई करने की संस्तुति करेगा। इनमें अन्य बातों के साथ-साथ निम्नलिखित शामिल होगा :—
- (क) सम्बन्धित सरकारी कर्मचारी के विरुद्ध उपयुक्त कार्यवाहियाँ शुरू किया जाना।
- (ख) भ्रष्टकृत्य अथवा पद के दुरुपयोग जैसी भी स्थिति हो, के परिणामस्वरूप सरकार को हुई हानि की पूर्ति के लिए उपयुक्त प्रशासनिक कदम उठाना।
- (ग) मामले के तथ्यों और परिस्थितियों को देखते हुए यदि ऐसा न्यायसंगत हो तो उपयुक्त मामलों में आपराधिक कार्यवाहियाँ शुरू किए जाने के बारे में उपयुक्त प्राधिकारी/अभिकरण को सिफारिश करना।
- (घ) भविष्य में ऐसी घटनाओं की पुनरावृत्ति रोकने के लिए सुधारात्मक उपाय किए जाने की सिफारिश करना।
5. पूर्ण जांच-पड़ताल करने अथवा सम्बन्धित संगठन से जानकारी प्राप्त करने के प्रयोजन से मनोनीत अभिकरण को प्राप्त शिकायत के अनुक्रम में जांच-पड़ताल को पूरी करने में सभी प्रकार की सहायता प्रदान करने के लिए यथावश्यक समझे जाने पर केन्द्रीय अन्वेषण ब्यूरो अथवा पुलिस अधिकारियों को सहायता देने के लिए प्राधिकृत किया जाएगा।
6. यदि कोई व्यक्ति किसी कार्रवाई से इस आधार पर व्यथित होता है कि उसे इस तथ्य के आधार पर पीड़ित किया जा रहा है कि उसने शिकायत दायर की है अथवा प्रकटीकरण किया है तो वह इस मामले के निवारण की प्रार्थना करते हुए मनोनीत अभिकरण के समक्ष एक आवेदन दायर कर सकता है जो यथावश्यक उपयुक्त समझी जाने वाली कार्रवाई करेगा। मनोनीत अभिकरण सम्बन्धित सरकारी सेवक अथवा सरकारी प्राधिकारी को जैसी भी स्थिति हो, उपयुक्त निर्देश दे दे।
7. शिकायतकर्ता के आवेदन पर अथवा एकत्रित की गई जानकारी के आधार पर यदि मनोनीत अभिकरण का यह मत होता है कि शिकायतकर्ता अथवा गवाहों को संरक्षण दिए जाने की आवश्यकता है तो मनोनीत अभिकरण सम्बन्धित सरकारी प्राधिकारियों को उपयुक्त निर्देश जारी करेगा।
8. इस कार्य में प्रयुक्त तंत्र, मौजूदा कार्य तंत्र के अतिरिक्त होगा। तथापि, यदि शिकायत इस तंत्र के अन्तर्गत प्राप्त होती है तो पहचान को गुप्त रखा जाएगा।
9. यदि मनोनीत अभिकरण शिकायत को अभिप्रेरित अथवा कष्टप्रद स्वरूप की पाता है तो मनोनीत अभिकरण उपयुक्त कदम उठाने के लिए स्वतंत्र है।
10. मनोनीत अभिकरण निम्नलिखित स्वरूप के प्रकटीकरण पर कार्रवाई अथवा उसकी जांच-पड़ताल नहीं करेगा :—
- (क) ऐसे किसी मामले जिसमें लोक सेवक जांच अधिनियम, 1850 के अन्तर्गत एक औपचारिक और सार्वजनिक जांच का आदेश दे दिया गया हो; अथवा
- (ख) ऐसा कोई मामला जिसे जांच आयोग अधिनियम, 1952 के तहत जांच के लिए भेजा गया है।
11. मनोनीत अभिकरण के निर्देशों के विपरीत मुखबिर की पहचान उद्घाटित हो जाने पर मनोनीत अभिकरण ऐसा प्रकटीकरण करने वाले किसी व्यक्ति अथवा अभिकरण के विरुद्ध मौजूदा विनियमों के अनुसार उपयुक्त कार्रवाई शुरू किए जाने के लिए प्राधिकृत है।
12. इस कार्य हेतु सृजित तंत्र, संसद द्वारा इस विषय में कानून बनाए जाने तक लागू रहेगा।

श्रीमती मंजुलिका गौतम, अपर सचिव



# MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

## RESOLUTION

New Delhi, the 21st April, 2004

No. 371/12/2002-AVD-III.—Whereas while hearing Writ Petition (C) No. 539/2003 regarding the murder of Shri Satyendra Dubey, the Supreme Court desired that pending enactment of a suitable legislation, suitable machinery should be put in place for acting on complaints from "whistle-blowers".

And whereas the 'The Public Interest Disclosure and Protection of Informers' Bill, 2002, drafted by the Law Commission is under examination.

Now, therefore, the Central Government hereby resolves as under :

1. The Central Vigilance Commission (CVC) is hereby authorized, as the Designated Agency, to receive written complaints or disclosure on any allegation of corruption or of mis-use of office by any employee of the Central Government or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government. The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other material.
2. The designated agency may, if it deems fit call for further information or particulars from the persons making the disclosure. If the complaint is anonymous, the designated agency shall not take any action in the matter.
3. Notwithstanding anything contained in the Official Secrets Act, 1923, any public servant other than those referred to clauses (a) to (d) of Article 33 of the Constitution or any other person including any non-governmental organisation, may make a written disclosure to the designated agency.
4. If the complaint is accompanied by particulars of the person making the complaint, the designated agency shall take the following steps :
  - (i) The designated agency will ascertain from the complainant whether he was the person who made the complaint or not.
  - (ii) The identity of the complainant will not be revealed unless the complainant himself has made the details of the complaint either public or disclosed his identity to any other office or authority.
  - (iii) After concealing the identity of the complainant, the designated agency shall make, in the first instance, discreet inquiries to ascertain if there is any basis of proceeding further with the complaint. For this purpose, the designated agency shall devise an appropriate machinery.
  - (iv) Either as a result of the discreet inquiry, or on the basis of the complaint itself without any inquiry, if the designated agency is of the opinion that the matter requires to be investigated further, the designated agency shall officially seek comments/or explanation from the Head of the Department of the concerned organisation or office. While doing so, the designated agency shall not disclose the identity of the informant and also shall request the concerned Head of the organisation to keep the identity of the informant secret, if for any reason, the concerned Head comes to know the identity.
  - (v) After obtaining the response of the concerned organisation, if the designated agency is of the opinion that the investigations reveal either mis-use of office or substantiate allegations of corruption, the designated agency shall recommend appropriate action to the concerned Government Department or Organization. These shall, *inter alia*, include following :
    - (a) Appropriate proceedings to be initiated against the concerned Government servant.
    - (b) Appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt act or mis-use of office, as the case may be.
    - (c) Recommend to the appropriate authority/agency initiation of criminal proceedings in suitable cases, if warranted by the facts and circumstances of the case.
    - (d) Recommend taking of corrective measures to prevent recurrence of such events in future.

5. For the purpose of making discreet inquiry or obtaining information from the concerned organisation, the designated agency shall be authorized to call upon the CBI or the police authorities, as considered necessary, to render all assistance to complete the investigation pursuant to the complaint received.
6. If any person is aggrieved by any action on the ground that he is being victimized due to the fact that he had filed a complaint or disclosure, he may file an application before the designated agency seeking redress in the matter, who shall take such action, as deemed fit. The designated agency may give suitable directions to the concerned public servant or the public authority as the case may be.
7. Either on the application of the complainant, or on the basis of the information gathered, if the designated agency is of the opinion that either the complainant or the witnesses need protection, the designated agency shall issue appropriate directions to the concerned Government authorities.
8. The machinery evolved herein shall be in addition to the existing mechanisms in place. However, secrecy of identity shall be observed, only if the complaint is received under this machinery.
9. In case the designated agency finds the complaint to be motivated or vexatious, the designated agency shall be at liberty to take appropriate steps.
10. The designated agency shall not entertain or inquire into any disclosure :
  - (a) in respect of which a formal and public inquiry has been ordered under the Public Servants Inquiries Act, 1850; or
  - (b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952.
11. In the event of the identity of the informant being disclosed in spite of the designated agency's directions to the contrary, the designated agency is authorized to initiate appropriate action as per extant regulations against the person or agency making such disclosure.
12. The machinery created herein shall operate till Parliament passes a law on the subject.

SMT. MANJULIKA GAUTAM, Addl. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

भाग I—खण्ड 1  
PART I—Section 1

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 98/  
No. 98

नई दिल्ली, बृहस्पतिवार, अप्रैल 29, 2004/वैशाख 9, 1926  
NEW DELHI, THURSDAY, APRIL 29, 2004/VAISAKHA 9, 1926

कार्मिक, लोक-शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

शुद्धिपत्र

नई दिल्ली, 29 अप्रैल, 2004

सं. 371/12/2002-ए.वी.डी.-III.—भारत के असाधारण राजपत्र भाग-I, खण्ड 1 में दिनांक 21 अप्रैल, 2004 को प्रकाशित भारत सरकार के संकल्प संख्या 89 का आंशिक संशोधन करते हुए, उक्त संकल्प के प्रारंभिक पैरा तथा पैरा-2 में निम्नलिखित संशोधन किए जाते हैं :

(i) संकल्प के प्रारंभिक पैरा को निम्न प्रकार से प्रतिस्थापित किया जाता है :

“जबकि श्री सत्येन्द्र दुबे की हत्या के सम्बन्ध में रिट याचिका (सी.) संख्या 539/2003 की सुनवाई करते समय, ‘पर्दाफाशों या भण्डाफोड़ों (विसल ब्लोअर्स)’ से प्राप्त शिकायतों पर कार्रवाई किए जाने के लिए उपयुक्त तंत्र का प्रश्न उठा”।

(ii) संकल्प के अंग्रेजी पाठ के पैरा 2 में शब्द ‘designateed’ (डेजिगनेटीड) को शब्द ‘designated’ (डेजिगनेटेड) से प्रतिस्थापित किया जाता है।

श्रीमती मंजुलिका गौतम, अपर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

CORRIGENDUM

New Delhi, the 29th April, 2004

No. 371/12/2002-AVD.III.—In partial modification of the Government of India's Resolution No. 89, published in the Gazette of India Part I Section 1, Extraordinary dated 21st April, 2004, the following modifications are made in the opening para and para-2 of the said Resolution :

(i) The opening para of the Resolution is substituted as :

“Whereas while hearing Writ Petition (C) No. 539/2003 regarding the murder of Shri Satyendra Dubey, the question of a suitable machinery for acting on complaints from ‘whistle-blowers’ arose.”

(ii) In para 2 the word “designateed” is substituted as “designated”.

Smt. MANJULIKA GAUTAM, Addl. Secy.

1396 GI/2004

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# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग I—खण्ड 1

PART I—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 190]

नई दिल्ली, बृहस्पतिवार, अगस्त 29, 2013/भाद्र 7, 1935

No. 190]

NEW DELHI, THURSDAY, AUGUST 29, 2013/BHADRA 7, 1935

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

( कार्मिक और प्रशिक्षण विभाग )

संकल्प

नई दिल्ली, 14 अगस्त, 2013

सं. 371/4/2013/एवीडी-III.—भारत के असाधारण राजपत्र, भाग I, खण्ड 1 में प्रकाशित लोकहित प्रकटन तथा मुखबिरों की सुरक्षा के अंतर्गत शिकायत प्रबंधन हेतु केन्द्रीय सतर्कता आयोग (सीवीसी) को मनोनीत अधिकरण के रूप में प्राधिकृत करने वाले, इस मंत्रालय के संकल्प संख्या 371/12/2002/एवीडी-III दिनांक 21 अप्रैल, 2004 में निम्नलिखित संशोधन किए जाते हैं, अर्थात्:—

उक्त संकल्प में,—

- (i) पैरा 2, 3, 4, 5, 6, 8, 9, 10 एवं 11 शब्द “मनोनीत अधिकरण” जहां कहीं भी प्रयोग में आए हों, को क्रमशः “मनोनीत अधिकरण अथवा मनोनीत प्राधिकरण” शब्दों से प्रतिस्थापित किया जाएगा;
- (ii) पैरा 1 में शब्द “प्रकटीकरण अथवा शिकायत में यथासंभव सभी विवरण होंगे और इसमें समर्थक दस्तावेज अथवा अन्य सामग्री शामिल होगी” का लोप किया जाएगा;
- (iii) पैरा 1 के बाद निम्नलिखित पैरा जोड़े जाएंगे, अर्थात्:—

“1क. भारत सरकार के मंत्रालय अथवा विभागों के मुख्य सतर्कता अधिकारियों को, उस मंत्रालय या विभाग, किसी

केन्द्रीय अधिनियम के द्वारा या इसके अंतर्गत स्थापित किसी निगम अथवा केन्द्र सरकार के स्वामित्व या नियंत्रणाधीन सरकारी कंपनियों, संस्थाओं अथवा स्थानीय प्राधिकरणों जो उस मंत्रालय या विभाग के अधिकार क्षेत्र में आते हों, के किसी कर्मचारी पर भ्रष्टाचार अथवा पद के दुरुपयोग के किसी आरोप के संबंध में लिखित शिकायत या प्रकटन संबंधी शिकायत प्राप्त करने के लिए मनोनीत प्राधिकारी के रूप में भी प्राधिकृत किया गया है।

1ख : प्रकटन या शिकायत में जितना संभव हो सम्पूर्ण विवरण समाहित होगा एवं इसके साथ समर्थित दस्तावेज या अन्य सामग्री होगी।”

(iv) पैरा 7 के बाद, निम्नलिखित पैरा जोड़ा जाएगा, अर्थात्:—

“7क. या तो शिकायतकर्ता के आवेदन पर या संग्रहित सूचना के आधार पर, यदि मनोनीत प्राधिकारी का मत हो कि शिकायतकर्ता या गवाह को संरक्षण की आवश्यकता है तो मनोनीत प्राधिकारी, संबंधित सरकारी प्राधिकारियों को समुचित दिशानिर्देश जारी करने के लिए इस मामले को केन्द्रीय सतर्कता आयोग के साथ उठाएगा।”

(v) पैरा 11 के बाद, निम्नलिखित पैरा जोड़ा जाएगा, अर्थात्:—

“11क. केन्द्रीय सतर्कता आयोग (सीवीसी) मनोनीत प्राधिकारी को प्राप्त शिकायतों का पर्यवेक्षण एवं निगरानी करेगा।”

दीप्ति उमाशंकर, संयुक्त सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS**

**(Department of Personnel and Training)**

**RESOLUTION**

New Delhi, the 14th August, 2013.

No.371/4/2013-AVD-III – In this Ministry's Resolution No.371/12/2002-AVD-III dated 21st April, 2004, published in the Gazette of India, Extraordinary, Part I, Section 1, authorising the Central Vigilance Commission (CVC) as the Designated Agency for handling of complaints under the Public Interest Disclosure and Protection of Informers, the following amendments are hereby made, namely:-

In the said Resolution,-

- (i) in paragraphs 2, 3, 4, 5, 6, 8, 9, 10 and 11, for the words "the designated agency" wherever they occur, the words "the designated agency or the designated authority" shall respectively be substituted;
- (ii) in paragraph 1, the words "The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other material." shall be omitted;
- (iii) after paragraph 1, the following paragraphs shall be inserted, namely:-  

"1A. The Chief Vigilance Officers of the Ministries or Departments of the Government of India are also authorised as the designated authority to receive written complaint or

disclosure on any allegation of corruption or misuse of office by any employee of that Ministry or Department or of any corporation established by or under any Central Act. Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or the Department.

1B. The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other materials."

- (iv) after paragraph 7, the following paragraph shall be inserted, namely:-

"7A. Either on the application of the complainant, or on the basis of the information gathered, if the designated authority is of the opinion that either the complainant or the witnesses need protection, the designated authority, shall take up the matter with the Central Vigilance Commission, for issuing appropriate directions to the Government authorities concerned."

- (v) after paragraph 11, the following paragraph shall be inserted, namely:-

"11A The Central Vigilance Commission (CVC) shall supervise and monitor the complaints received by the designated authority."

DEEPTI UMASHANKAR, Jt. Secy.



**No.221/07/2014-AVD.II(B)**  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel & Training

North Block, New Delhi  
Dated 25<sup>th</sup> February, 2014

**Office Memorandum**

**25 FEB 2014**

**Subject:** Introduction of Single Window System In Department of Personnel & Training for receiving proposals for initiation of disciplinary proceedings against the Group A Officers of the Central Bureau of Investigation - Regarding.

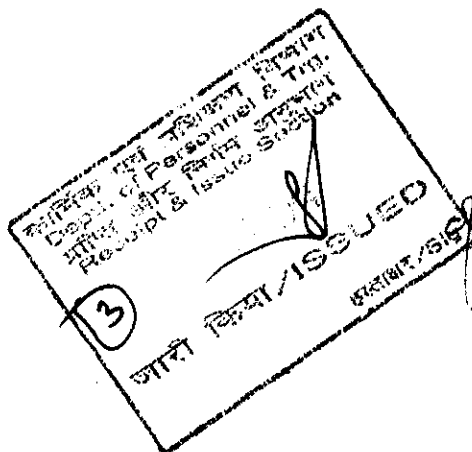
The undersigned is directed to say that in order to avoid delay in processing of the proposals due to procedural infirmities/shortcomings/discrepancies in the proposals referred to this Department for initiation of disciplinary proceedings against Group "A" officers of the Central Bureau of Investigation, DoP&T has decided to switch over to Single Window System for accepting the proposals as per Check List enclosed, with effect from 1<sup>st</sup> March, 2014.

2. Henceforth, CBI is required to come to DOP&T's office in person for handing over the proposal for initiation of disciplinary proceedings, complete in all respects, with all the relevant documents/records through an authorized representative after obtaining the First Stage advice of CVC wherever required as per prescribed norms. In the DoP&T, Under Secretary (AVD-II-B), Room No. 215-C, North Block (through Gate No. 4) will receive the disciplinary cases referred by CBI between 11.00 AM to 1 PM on all working days. The proposals received would initially be scrutinized in terms of information sought and in consonance with the prescribed Check-list. Incomplete cases would be returned after pointing out deficiencies. Cases, which are complete in all respects as per the Check-list, would only be accepted for further detailed scrutiny and examination.

3. CBI is requested to take note of the above new system being introduced by the DoP&T and bring the same to the notice of all concerned zonal offices etc under them. It may also be ensured that the Check-list be countersigned by an officer not below the level of Deputy Director in CBI.

Encls: Check-list

To  
The Joint Director (Administration)  
Central Bureau of Investigation  
Head office, CGO Complex  
Lodhi Road, New Delhi



(Archana Varma)  
Director (V.II)

Copy for information to:

1. UPSC/CVC
2. NIC/DOP&T, North Block, New Delhi to upload on the website under 'Circulars pertaining to Vigilance Division'.

**Check list for submission of proposals to DoP&T for initiation of Disciplinary Proceedings through Single window system in respect of Group A officers of CBI**

| Sl No | Parameters                                                                                                                             | Yes/No, If No, reasons therefor |
|-------|----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 1     | Name of the Officer & Designation                                                                                                      |                                 |
| 2     | Date of Birth / date of Superannuation                                                                                                 |                                 |
| 3     | Division and Place of present posting                                                                                                  |                                 |
| 4     | The office/place of posting of the officer where the alleged misconduct took place                                                     |                                 |
| 5     | Whether any Preliminary Enquiry was conducted                                                                                          |                                 |
| 6     | If so, a copy of the Report to be enclosed                                                                                             |                                 |
| 7     | Whether a show-cause notice was issued to the officer? If so, a copy of the show cause notice to be attached                           |                                 |
| 8     | Explanation obtained from the officer to the show-cause notice issued vide (7) above to be attached                                    |                                 |
| 9     | Self contained note along with the comments of the Administrative Division of CBI on the reply of the officer to the show cause notice |                                 |
| 10    | Whether approval of CVO of CBI obtained? If so, copy of the same to be enclosed.                                                       |                                 |
| 11    | Copy of approval of Director/CBI to be enclosed.                                                                                       |                                 |
| 12    | Draft Charge Sheet containing Article(s) of Charge in clear                                                                            |                                 |

|    |                                                                                                                          |  |
|----|--------------------------------------------------------------------------------------------------------------------------|--|
|    | and definite terms along with                                                                                            |  |
|    | (i) Statement of Imputations of Charges                                                                                  |  |
|    | (ii) List of copies of relied upon documents-duly certified<br>in blue ink only, page numbered and indexed (2<br>copies) |  |
|    | (iii) List of witnesses, if any                                                                                          |  |
| 13 | Whether case involves vigilance Angle?                                                                                   |  |
| 14 | If answer to Sl.No.13 is yes, please attach copy of the First<br>Stage advice of the Central Vigilance Commission        |  |
| 15 | List and status of disciplinary cases, initiated/concluded<br>earlier against the said officer, if any                   |  |

**Please attach the following also:**

- (i) Extracts of relevant rules, Codes, Manuals, Acts, Judgements etc
- (ii) Information/position of disciplinary proceedings against other co-accused (if any)

Name of the officer signing this statement (in block letters)

\*Signature:

Designation

Telephone No.

Date

*\*To be signed by an officer not below the rank of Deputy Director in the CBI*

**No. 22034/4/2012-Estt (D-II)**  
**Government of India**  
**Ministry of Personnel, Public Grievances and Pensions**  
**(Department of Personnel and Training)**

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North Block, New Delhi  
Dated the 23<sup>rd</sup> January, 2014

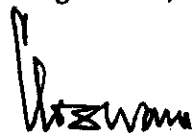
**OFFICE MEMORANDUM**

**Subject: Comprehensive review of instructions pertaining to vigilance clearance for promotion—clarifications - regarding**

The undersigned is directed to refer to the Department of Personnel & Training O.M. of even number dated 2.11.2012 on 'Comprehensive review of instructions pertaining to vigilance clearance for promotion', wherein, inter alia, it has been laid down in Para 9, as under:

"For the purpose of vigilance clearance for Review DPC, instructions exist in O.M. No.22011/2/99-Estt(A) dated 21.11.2002 that review DPC will take into consideration the circumstances obtaining at the time of original DPC and any subsequent situation arising thereafter will not stand in the way of vigilance clearance for review DPC. However, before the officer is actually promoted it needs to be ensured that he/she is clear from vigilance angle and the provision of para 7 of O.M. No.22011/4/91-Estt.(A) dated 14.09.1992 are not attracted".

2. This Department has been receiving references seeking clarification on grant of promotion in case of review DPC with regard to the official who is clear from vigilance angle on the date of promotion of the junior in the original DPC but subsequently attracts the provisions contained in para 2 of DoPT OM dated 14.09.92.
3. The matter has been examined in consultation with the Department of Legal Affairs and it is further clarified that, in the case of a review DPC, where a junior has been promoted on the recommendations of the original DPC, the official would be considered for promotion if he/she is clear from vigilance angle on the date of promotion of the junior, even if the provisions of para 2 of DoPT OM dated 14.9.92 get attracted on the date the actual promotion is considered, as provided in DoPT O.M. No.22011/2/99-Estt (A) dated 21.11.2002.
4. In cases, where the junior is not promoted, it is to be ensured that the provisions of para 7 of OM dated 14.9.1992 are not attracted on the date the official is being actually promoted.

  
(Arunoday Goswami)

Under Secretary to the Govt. of India  
Tele: No. 23040339

All Ministries/Departments of the Government of India

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Vice President's Sectt, New Delhi
3. The Prime Minister's Office, New Delhi
4. The Cabinet Secretariat, New Delhi.
5. The Rajya Sabha Secretariat, New Delhi.
6. The Lok Sabha Secretariat, New Delhi.
7. The Comptroller and Audit General of India, New Delhi.
8. The Secy, Union Public Service Commission, New Delhi.
9. The Staff Selection Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. All Officers and Sections in the Department of Personnel and Training.
12. Establishment(D) Section, DoP&T (10 copies)
13. NIC for updation on the website.



(Arunoday Goswami)

Under Secretary to the Govt. of India

Tele: No. 23040339

372/3/2007-AVD-III (Vol. 10)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training  
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North Block, New Delhi  
Dated: 14<sup>th</sup> October, 2013

**Office Memorandum**

**Subject: Recommendations of the Committee of Experts on Disciplinary & Vigilance Inquiries (Hota Committee) - Para 31 of the Committee's Report on amendments to the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 - Government's decision thereon - reg .**

\*\*\*

The undersigned is directed to say that the Government had appointed a Committee of Experts to review the procedure for Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal. The Committee comprised the following:

- |       |                                           |                |
|-------|-------------------------------------------|----------------|
| (i)   | Shri P.C. Hota, Former Chairman, UPSC     | ----- Chairman |
| (ii)  | Shri Arvind Varma, Former Secretary, DoPT | ----- Member   |
| (iii) | Shri P. Shankar, former CVC               | ----- Member.  |

2. The Expert Committee has, in para 31 of its Report, observed that, at present, for each Departmental Inquiry, the Central Government has only powers to issue a notification under the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 (Act of 1972), empowering an Inquiry Officer to enforce attendance of witnesses or ensure production of documents. The Committee has opined that a separate notification in each case of a Departmental Inquiry empowering an Inquiry Officer under the Act of 1972 is a time-taking process and does not serve any useful purpose. The Hota Committee has accordingly recommended that the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 may be amended to confer powers on all Inquiry Officers to exercise powers of a Civil Court for enforcement of attendance of witnesses and production of documents.

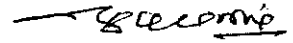
3. The aforesaid recommendation of the Hota Committee has been considered by a Committee of Secretaries (CoS) under the chairmanship of Cabinet Secretary. The CoS has observed that the need to enforce attendance arises only in a few cases and hence there may not be any need to amend the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 to confer powers on all Inquiry Officers to exercise powers of a Civil Court for enforcement of attendance of witnesses and production of documents and that the purpose may be served by issue of administrative instructions laying down specific time lines for consideration of requests for issuance of notifications under the said Act. The above recommendation of the CoS has been accepted by the Government.

4. Accordingly, it has been decided that every reference from an inquiring authority, seeking the issuance of a notification by the Central Government/competent authority under section 4 of the Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972, to confer powers on an Inquiring



Authority to exercise powers of Civil Court for enforcement of attendance of witnesses and production of documents, shall be decided within 30 days from the date of receipt of such reference.

5. The above decision of the Government is brought to the notice of all Ministries/Departments for strict compliance.



(V.M. Rathnam)

Deputy Secretary to the Govt. of India

Tel: 23094637

All Ministries/Departments of the Government of India

✓ Copy to:

Sr. Tech. Director, NIC, DoPT- for uploading on the website of DoPT

372/3/2007-AVD-III (Vol. 10)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

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North Block, New Delhi  
Dated: 14<sup>th</sup> October, 2013

**Office Memorandum**

**Subject: Recommendations of the Committee of Experts on Disciplinary & Vigilance Inquiries (Hota Committee) - Para 38 of the Committee's Report regarding payment of TA/DA to retired government servants appearing as witnesses in proceedings before the CDI in CVC - Government's decision thereon - reg .**

\*\*\*

The undersigned is directed to say that the Government had appointed a Committee of Experts to review the procedure for Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal. The Committee comprised the following:

- |       |                                           |                |
|-------|-------------------------------------------|----------------|
| (i)   | Shri P.C. Hota, Former Chairman, UPSC     | ----- Chairman |
| (ii)  | Shri Arvind Varma, Former Secretary, DoPT | ----- Member   |
| (iii) | Shri P. Shankar, former CVC               | ----- Member.  |

2. The Expert Committee has, in para 38 of its Report, inter alia, recommended that "In case the witness is a retired Government Servant and is appearing before the CDI in a Departmental Inquiry, the expenses would be borne, in the first instance, by the CVC and subsequently be adjusted with the Department/Organisation concerned."

3. The aforesaid recommendation of the Hota Committee has been considered by a Committee of Secretaries (CoS) under the chairmanship of Cabinet Secretary and the CoS has recommended acceptance of this recommendation. Government has accepted the recommendation of the Hota Committee as endorsed by the CoS.

4. Accordingly, it has been decided that in cases where any of the witnesses in a departmental inquiry is a retired Government Servant and is appearing before the CDI in the Central Vigilance Commission in the Departmental Inquiry, the expenses on payment of admissible TA/DA to such witness would be borne, in the first instance, by the Central Vigilance Commission and subsequently be adjusted with the Department/Organisation concerned.

5. The above decision of the Government is brought to the notice of all Ministries/Departments for information and compliance.



(V.M. Rathnam)  
Deputy Secretary to the Govt. of India  
Tel: 23094637

1. All Ministries/Departments of the Government of India
2. Secretary, Central Vigilance Commission, New Delhi

✓ Copy to Sr. Tech. Director, NIC, DoPT for uploading on the website of DoPT

372/3/2007-AVD-III (Vol. 10)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

\*\*\*

North Block, New Delhi  
Dated: 14<sup>th</sup> October, 2013

Office Memorandum

**Subject: Recommendations of the Committee of Experts on Disciplinary & Vigilance Inquiries (Hota Committee) - Para 135 of the Committee's Report on submission of draft charge sheet while seeking first stage advice of CVC, etc. - Acceptance by Government - reg .**

\*\*\*

The undersigned is directed to say that the Government had appointed a Committee of Experts to review the procedure for Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal. The Committee comprised the following:

- |       |                                           |                |
|-------|-------------------------------------------|----------------|
| (i)   | Shri P.C. Hota, Former Chairman, UPSC     | ----- Chairman |
| (ii)  | Shri Arvind Varma, Former Secretary, DoPT | ----- Member   |
| (iii) | Shri P. Shankar, former CVC               | ----- Member.  |

2. The Expert Committee has, in para 135 of its Report, made the following recommendation:-

“135.(a) We have noted that even after approval of the Disciplinary Authority to initiate a Disciplinary Inquiry, a lot of time is taken by the Department/Ministry to frame the Articles of Charge against a delinquent Government Servant.

(b) We recommend that to eliminate delays in framing the Articles of Charge, the official file submitted to the Disciplinary Authority to initiate a Departmental Inquiry must have a copy of the draft Articles of Charge along with the imputations in support and a list of witnesses and documents. Such action before approval of the Disciplinary Authority is obtained to initiate a Departmental Inquiry against a delinquent Government Servant, would ensure timely framing and service of the Articles of Charge. We also recommend that when a case is sent to the CVC for its first stage advice, the Articles of Charge, complete in all respects, must be submitted to the CVC.

3. The aforesaid recommendation of the Hota Committee was considered by a Committee of Secretaries (CoS) under the chairmanship of Cabinet Secretary. The CoS has recommended acceptance of the aforesaid recommendation. Accordingly, the above recommendation of the Hota Committee has been accepted by the Government and it has been decided that all Ministries/Departments shall henceforth ensure that whenever a disciplinary case file is submitted to the Disciplinary Authority, seeking the approval of the Disciplinary Authority for initiation of departmental proceedings against a government servant, a draft of the articles of charge, complete in all respects, along with the imputations in support and the list of witnesses and documents, shall be submitted to the Disciplinary Authority for its consideration. Similarly, whenever a case is referred to the Central Vigilance Commission for its first stage advice, a draft of

the articles of charge, complete in all respects, as proposed by the Ministry/Department, shall be submitted to the CVC for its consideration.

4. The above decision of the Government is brought to the notice of all Ministries/Departments for strict compliance.



(V.M. Rathnam)

Deputy Secretary to the Govt. of India

Tel: 23094637

**All Ministries/Departments of the Government of India**  
**Secretary, Central Vigilance Commission, New Delhi**

✓ Copy to Sr. Tech. Director, NIC, DoPT for uploading on the website of DoPT.

372/3/2007-AVD-III (Vol. 10)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training  
\*\*\*

North Block, New Delhi  
Dated: 14<sup>th</sup> October, 2013

**Office Memorandum**

**Subject: Recommendations of the Committee of Experts on Disciplinary & Vigilance Inquiries (Hota Committee) - Para 48 of the Committee's Report on conclusion of major penalty proceedings within a period of 18 months - Acceptance by Government - reg .**

\*\*\*

The undersigned is directed to say that the Government had appointed a Committee of Experts to review the procedure for Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal. The Committee comprised the following:

- |       |                                           |                |
|-------|-------------------------------------------|----------------|
| (i)   | Shri P.C. Hota, Former Chairman, UPSC     | ----- Chairman |
| (ii)  | Shri Arvind Varma, Former Secretary, DoPT | ----- Member   |
| (iii) | Shri P. Shankar, former CVC               | ----- Member.  |

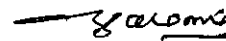
2. The Expert Committee has, in para 48 of its Report, made the following recommendation:-

“48. For major penalty Inquiries as envisaged in Article 311(2) of the Constitution, where the Inquiry Officer has to do a detailed inquiry into the Articles of Charge by examination of witnesses both of the Presenting Officer and of the delinquent Government Servant and where relevant documents have to be examined/exhibited for a just decision in the case, the maximum time could be twelve months from the date of service of the Articles of Charge before the case records are referred to the UPSC for advice under Article 320(3)(c) of the Constitution. Hopefully, if the UPSC takes a maximum period of five to six months to give its considered advice, the Disciplinary Inquiry for a major penalty can be concluded within a maximum period of eighteen months from the date of service of Articles of Charge on the delinquent Government Servant till the date of the final order by the Disciplinary Authority, after consultation with the UPSC. (Elsewhere in this Report, we have recommended that the CVC's second stage advice may be dispensed with because of reasons mentioned by us. We would like to leave it to the best judgment of the UPSC to devise methods for reducing the time taken by it in rendering its advice under Article 320(3) (c) of the Constitution.)”.

3. The aforesaid recommendation of the Hota Committee was considered by a Committee of Secretaries (CoS) under the chairmanship of Cabinet Secretary. The CoS has, inter alia, taken note of the fact that, vide DoPT's O.M.No.372/19/2011-AVD-III(Pt.I) dated 26<sup>th</sup> September, 2011, the second stage consultation with the Central Vigilance Commission has already been dispensed with and that it is only in cases where consultation with UPSC is not required as per extant rules/instructions, the second stage consultation with CVC is now necessary. The CoS also took note of the fact that the introduction of a single window system in the UPSC to accept files regarding major penalty proceedings has led to considerable

reduction in time taken to conclude major penalty proceedings. The CoS has accordingly recommended that the recommendation of the Hota Committee in para 48 of its report as referred to above may be accepted. The recommendation has accordingly been accepted by the Government and it has been decided that all Ministries/Departments shall ensure that all major penalty proceedings against government servants under their control are completed and final orders are passed by the concerned Disciplinary Authority within 18 months from the date of delivery of charge-sheet on the delinquent government servant.

4. The above decision of the Government is brought to the notice of all Ministries/Departments for strict compliance.



(V.M. Rathnam)

Deputy Secretary to the Govt. of India

Tel: 23094637

**All Ministries/Departments of the Government of India**

✓ Copy to Sr. Tech. Director, NIC, DoPT for uploading on the website of DoPT.

372/3/2007-AVD-III (Vol. 10)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

\*\*\*

North Block, New Delhi  
Dated: 14<sup>th</sup> October, 2013

**Office Memorandum**

**Subject: Recommendations of the Committee of Experts on Disciplinary & Vigilance Inquiries (Hota Committee) - Para 35 of the Committee's Report on conduct of hearings on a day to day basis - Acceptance by Government - reg .**

\*\*\*

The undersigned is directed to say that the Government had appointed a Committee of Experts to review the procedure for Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal. The Committee comprised the following:

- |       |                                           |                |
|-------|-------------------------------------------|----------------|
| (i)   | Shri P.C. Hota, Former Chairman, UPSC     | ----- Chairman |
| (ii)  | Shri Arvind Varma, Former Secretary, DoPT | ----- Member   |
| (iii) | Shri P. Shankar, former CVC               | ----- Member.  |

2. The Expert Committee has, in para 35 of its Report, recommended that “**as far as practicable, an Inquiry Officer should conduct the hearing on a day-to-day basis to complete the Inquiry expeditiously.** Each Inquiry Officer should be required to maintain an order sheet to record proceedings of the Inquiry on the day of Inquiry and other relevant matters. If the Inquiry cannot be conducted on a day-to-day basis, the Inquiry Officer should record in the order sheet the reasons why the Inquiry could not be held on a day-to-day basis.”

3. The aforesaid recommendation of the Hota Committee has been considered by a Committee of Secretaries (CoS) under the chairmanship of Cabinet Secretary and, as recommended by the CoS, the recommendation has been accepted by the Government.

4. Accordingly, it has been decided that once a regular hearing in a departmental proceeding is started, such hearing should, as far as practicable, be continued on a day to day basis, unless in the opinion of the IO, for the reasons to be recorded in writing, an adjournment is unavoidable in the interest of justice.

5. The above decision of the Government is brought to the notice of all Ministries/Departments for strict compliance.

  
(V.M. Rathnam)  
Deputy Secretary to the Govt. of India  
Tel: 23094637

**All Ministries/Departments of the Government of India**

✓ Copy to Sr. Tech. Director, NIC, DoPT for uploading on the website of DoPT



**372/3/2007-AVD-III (Vol. 10)**  
**Government of India**  
**Ministry of Personnel, Public Grievances & Pensions**  
**Department of Personnel & Training**

\*\*\*

North Block, New Delhi  
Dated: 14<sup>th</sup> October, 2013

**Office Memorandum**

**Subject: Recommendations of the Committee of Experts on Disciplinary & Vigilance Inquiries (Hota Committee) - Para 36(a) of the Committee's Report to designate CDIs in CVC in numerical/alphabetical order - Government's decision thereon - reg .**

\*\*\*

The undersigned is directed to say that the Government had appointed a Committee of Experts to review the procedure for Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal. The Committee comprised the following:

- |       |                                           |                |
|-------|-------------------------------------------|----------------|
| (i)   | Shri P.C. Hota, Former Chairman, UPSC     | ----- Chairman |
| (ii)  | Shri Arvind Varma, Former Secretary, DoPT | ----- Member   |
| (iii) | Shri P. Shankar, former CVC               | ----- Member.  |

2. The Expert Committee has, in para 36(a) of its Report, recommended that "it would be expedient to designate CDIs under the CVC in a numerical or alphabetical manner, viz., CDI-I, CDI-II or CDI-A, CDI-B and so on. Under such an arrangement, Departmental Inquiries could be entrusted to CDI-I or CDI-II with the stipulation that CDI-II will take over if CDI-I is no longer available to conduct the Inquiry due to his transfer or other reasons. If such an innovative practice is introduced in the order of appointment of CDIs as Inquiry Officer in a particular Inquiry, there would be no need for fresh order of the Disciplinary Authority for appointment of the successor CDI as the Inquiry Officer in the same Inquiry."

3. The aforesaid recommendation of the Hota Committee was considered by a Committee of Secretaries (CoS) under the chairmanship of Cabinet Secretary. The CoS, in this context, took note of the CVC's view that since there are only 4-5 CDIs available in CVC and their primary role is to give vigilance advice and hence it may not be possible to designate them as IO automatically. The CoS also took note of the fact that even after a CDI is designated as IO for a case, the Ministry/Department concerned takes a lot of time in issuing orders appointing the IO. Considering the above facts, the CoS has recommended that whenever a particular CDI in CVC becomes unavailable to conduct an inquiry on account of transfer, etc., CVC shall nominate an IO within 15 days and disciplinary authorities shall issue orders appointing the IO, within another 15 days. The above recommendation of the CoS

has been considered by the Government and the Government has taken the following decision:-

**Whenever a particular CDI in CVC becomes unavailable to conduct an inquiry on account of transfer, etc., CVC shall nominate an IO in his/her place within 15 days and the concerned disciplinary authority shall issue orders appointing the IO, within another 15 days. However, CVC may also designate CDIs in numerical/alphabetical order. If a successor CDI is not appointed within 15 days as prescribed, the case will be automatically assigned to the next CDI in numerical/alphabetical order on the 16<sup>th</sup> day.**

4. The above decision of the Government is brought to the notice of Central Vigilance Commission and all Ministries/Departments for strict compliance.



(V.M. Rathnam)

Deputy Secretary to the Govt. of India

Tel: 23094637

1. All Ministries/Departments of the Government of India
2. Secretary, Central Vigilance Commission, New Delhi.

 Copy to Senior Tech. Director, NIC, DoPT for uploading on the website of DoPT.

No.372/38/2012-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

.....

North Block, New Delhi  
23<sup>rd</sup> September, 2013

**OFFICE MEMORANDUM**

**Subject: Regulating parameters for exercise of discretionary powers enjoyed by Ministers at the Centre.**

The undersigned is directed to refer this Department's O.M. No.372/14/2012-AVD-III dated 16<sup>th</sup> April, 2012 and 1<sup>st</sup> May, 2012 wherein all Ministries/Departments were requested to put in place regulatory parameters for exercise of discretionary powers of Ministers and to put them in public domain so as to minimize arbitrariness in exercise of such powers and to send a copy of the guidelines, if already framed, within 15 days. The Ministries/Departments which were yet to prepare appropriate guidelines in the matter were asked to do so within three months from the date of issue of the said OM dated 1<sup>st</sup> May, 2012 and to indicate the reason for delay in finalization of appropriate guidelines to this Department.

2. In this regard, several reminders have already been issued and the latest reminder was sent vide this Department's D.O. of even number dated 7<sup>th</sup> August, 2013 (copy enclosed). However, the requisite information in respect of your Ministry/Department has not been received till date.

3. It is therefore requested to kindly expedite the requisite information to this Department urgently.

Encl: As above



(V.M.Rathnam)

Deputy Secretary to the Government of India  
Tel. No. 23094637

To,

Secretary, Ministries/Departments (as per list attached).

Copy to:

1. Prime Minister's Office, South Block, New Delhi.

✓ 2. NIC, DOP&T for uploading on the website of the Department.

**DEEPTI UMASHANKAR**

Joint Secretary (S&amp;V-II)

Phone: 2309 3591

Fax : 2309 3591



सत्यमेव जयते

भारत सरकार  
कार्मिक और प्रशिक्षण विभाग  
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय  
नोर्थ ब्लॉक, नई दिल्ली-110001  
GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL & TRAINING  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
NORTH BLOCK, NEW DELHI-110001

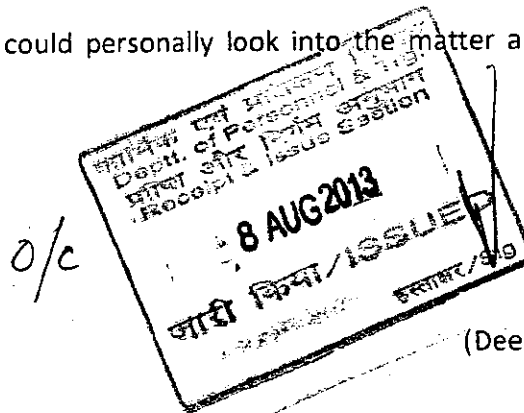
D.O.No.372/38/2012-AVD-III

7<sup>th</sup> August, 2013

Dear

Kindly refer to this Department's O.M. No.372/14/2012-AVD-III dated 16<sup>th</sup> April, 2012 and 1<sup>st</sup> May, 2012 (copies enclosed) wherein all Ministries/Departments were requested to put in place regulatory parameters for exercise of discretionary powers of Ministers and to put them in public domain so as to minimize arbitrariness in exercise of such powers and to send a copy of the guidelines, if already framed, within 15 days. The Ministries/Departments which were yet to prepare appropriate guidelines in the matter were asked to do so within three months from the date of issue of the said OM dated 1<sup>st</sup> May, 2012 and to indicate the reason for delay in finalization of appropriate guidelines to this Department. Reminders of even number dated 1<sup>st</sup> April, 2013 and 11<sup>th</sup> July, 2013 have also been issued in this regard. However, the requisite information in respect of your Ministry/Department has not been received till date.

2. I shall be grateful if you could personally look into the matter and expedite the requisite information.



Yours sincerely,

*Deepti*  
(Deepti Umashankar)

✓ Secretary, Ministries/Departments (as per list enclosed).

Copy to:

- ✓ 1. Prime Minister's Office, South Block, New Delhi.
2. NIC, DoPT for uploading on the website of the Department.



सूचना का  
अधिकार

<http://persmin.gov.in>

|     |                                                                                                                          |
|-----|--------------------------------------------------------------------------------------------------------------------------|
| 1.  | Secretary,<br>D/o Animal Husbandry, Dairying And Fisheries,<br>Krishi Bhawan, New Delhi- 110001.                         |
| 2.  | Secretary,<br>D/o Chemicals and Petro Chemicals,<br>Shastri Bhawan, New Delhi-110001.                                    |
| 3.  | Secretary,<br>D/o Fertilizers,<br>Shastri Bhawan, New Delhi-110001                                                       |
| 4.  | Secretary,<br>D/o Pharmaceuticals,<br>Shastri Bhawan, New Delhi-110001.                                                  |
| 5.  | Secretary,<br>Ministry of Coal,<br>Shastri Bhawan, New Delhi-110001.                                                     |
| 6.  | Secretary,<br>D/o Industrial Policy and Promotion,<br>Udyog Bhawan, New Delhi 110011.                                    |
| 7.  | Secretary,<br>D/o Consumer Affairs,<br>Krishi Bhawan, New Delhi-110001.                                                  |
| 8.  | Secretary,<br>Ministry of Culture,<br>Shastri Bhawan, New Delhi-110001.                                                  |
| 9.  | Secretary,<br>D/o Defence,<br>South Block, New Delhi                                                                     |
| 10. | Secretary,<br>D/o Defence Production,<br>South Block, New Delhi.                                                         |
| 11. | Secretary,<br>M/o Earth Sciences,<br>Prithvi Bhawan, Lodi Road,<br>New Delhi- 110003.                                    |
| 12. | Secretary,<br>M/o Environment & Forests,<br>Paryavaran Bhawan, CGO Complex,<br>New Delhi-110003                          |
| 13. | Foreign Secretary,<br>Ministry of External Affairs,<br>South Block, New Delhi-110011.                                    |
| 14. | Secretary,<br>D/o Economic Affairs,<br>North Block, New Delhi-110001.                                                    |
| 15. | Finance Secretary & Secretary,<br>D/o Expenditure,<br>North Block, New Delhi- 110001.                                    |
| 16. | Secretary,<br>D/o Disinvestment,<br>Room No. 407, 4th Floor, Block No. 14<br>CGO Complex, Lodhi Road, New Delhi – 110003 |

|     |                                                                                                                                                               |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17. | Secretary,<br>D/o Border Management,<br>North Block, New Delhi-110001                                                                                         |
| 18. | Secretary,<br>D/o School Education & Literacy,<br>Shastri Bhawan, New Delhi- 110001.                                                                          |
| 19. | Secretary,<br>D/o Higher Education,<br>Shastri Bhawan, New Delhi- 110001.                                                                                     |
| 20. | Secretary,<br>M/o Housing & Urban Poverty Alleviation,<br>Nirman Bhawan,<br>Maulana Azad Road, New Delhi-110011.                                              |
| 21. | Secretary,<br>M/o Information & Broadcasting,<br>Shastri Bhawan, New Delhi-110001                                                                             |
| 22. | Secretary,<br>Deptt. of Legal Affairs,<br>Shastri Bhawan, A-Wing,<br>Dr. Rajendra Prasad Road, New Delhi-110 001                                              |
| 23. | Secretary,<br>Deptt. of Justice,<br>Shastri Bhawan, A-Wing,<br>Dr. Rajendra Prasad Road, New Delhi-110 001                                                    |
| 24. | Secretary,<br>M/o Mines,<br>Shastri Bhawan, C-Wing, Dr. Rajendra Prasad Road, New Delhi-110 001                                                               |
| 25. | Secretary,<br>M/o Minority Affairs,<br>11 <sup>th</sup> Floor, Paryavaran Bhawan,<br>CGO Complex, New Delhi-110 003                                           |
| 26. | Secretary,<br>M/o Micro, Small & Medium Enterprises,<br>Udyog Bhawan,<br>Dr. Maulana Azad Road,<br>New Delhi-110 011                                          |
| 27. | Secretary,<br>M/o Overseas Indian Affairs,<br>Akbar Bhawan, Chanakyapuri,<br>New Delhi-110 021                                                                |
| 28. | Secretary,<br>M/o Personnel, Public Grievances & Pensions,<br>Deptt. of Pension & Pensioners' Welfare,<br>Sardar Patel Bhawan, Sansad Marg, New Delhi-110 001 |
| 29. | Secretary,<br>Planning Commission,<br>Yojna Bhawan, New Delhi-110 001                                                                                         |
| 30. | Secretary,<br>M/o Road Transport & Highways,<br>Transport Bhawan,<br>Sansad Marg, New Delhi-110 001                                                           |

|     |                                                                                                                                                                      |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 31. | Secretary,<br>M/o Rural Development,<br>Deptt. of Land Resources,<br>Krishi Bhawan,<br>Dr. Rajendra Prasad Road, New Delhi-110 001                                   |
| 32. | Secretary,<br>M/o Shipping,<br>Room No.401, Transport Bhawan,<br>Sansad Marg, New Delhi-110 001                                                                      |
| 33. | Secretary,<br>M/o Science & Technology,<br>Deptt. of Science & Technology,<br>Technology Bhawan,<br>New Mehrauli Road, New Delhi-110 016                             |
| 34. | Secretary,<br>M/o Social Justice & Empowerment,<br>Deptt. of Social Justice & Empowerment,<br>Shastri Bhawan, C-Wing,<br>Dr. Rajendra Prasad Road, New Delhi-110 001 |
| 35. | Secretary,<br>M/o Social Justice & Empowerment,<br>Deptt. of Disability Affairs,<br>Shastri Bhawan, C-Wing, Dr. Rajendra Prasad Road, New Delhi-110 001              |
| 36. | Secretary,<br>M/o Statistics & Programme Implementation,<br>Sardar Patel Bhawan,<br>Sansad Marg, New Delhi-110 001                                                   |
| 37. | Secretary,<br>M/o Textiles,<br>Udyog Bhawan,<br>Dr. Maulana Azad Road, New Delhi-110 011                                                                             |
| 38. | Secretary,<br>M/o Tourism,<br>Transport Bhawan,<br>Sansad Marg, New Delhi-110 001                                                                                    |
| 39. | Secretary,<br>M/o Urban Development,<br>Nirman Bhawan, C-Wing,<br>Dr. Maulana Azad Road, New Delhi-110 011                                                           |
| 40. | Secretary,<br>M/o Women & Child Development,<br>Shastri Bhawan, A-Wing,<br>Dr. Rajendra Prasad Road, New Delhi-110 001                                               |
| 41. | Secretary,<br>M/o Youth Affairs & Sports,<br>Deptt. of Sports,<br>Shastri Bhawan, C-Wing,<br>Dr. Rajendra Prasad Road, New Delhi-110 001                             |

No. 371/4/2013-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

North Block New Delhi  
Dated the 3<sup>rd</sup> September, 2013

**OFFICE MEMORANDUM**

Subject: Amendment of Government of India's Resolution No. 89 published in the Gazette of India Part I Section 1, Extraordinary dated 21<sup>st</sup> April, 2004(read with corrigendum dated 29<sup>th</sup> April, 2004) commonly known as the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution-regarding

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In continuation of this Department's OM of even No. dated 14<sup>th</sup> August, 2013, the undersigned is directed to enclose herewith a copy of printed version of Extraordinary Gazette Notification on the above subject for information and necessary action.

Encl: As above.



(M.M. Maurya)

Under Secretary to the Government of India  
Tel. No. 23094541

To,

All the Ministries/ Departments of the Government of India.

Copy to:

1. PMO, South Block, New Delhi.
2. The Secretary, Central Vigilance Commission, Satarkata Bhavan, New Delhi.
3. The Cabinet Secretariat, New Delhi, w.r.t. their I.D. No. 28/CM/2013(i) dated 8<sup>th</sup> August, 2013
4. PS to Hon'ble MOS(PP), PPS to Secretary(P)/EO&AS/AS(S&V), DOPT.
5. The CVO, Department of Personnel and Training, New Delhi.
6. Order Bundle/Guard file.





# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग I—खण्ड 1

PART I—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 190]

नई दिल्ली, बृहस्पतिवार, अगस्त 29, 2013/भाद्र 7, 1935

No. 190]

NEW DELHI, THURSDAY, AUGUST 29, 2013/BHADRA 7, 1935

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

( कार्मिक और प्रशिक्षण विभाग )

संकल्प

नई दिल्ली, 14 अगस्त, 2013

सं. 371/4/2013/एवीडी-III.—भारत के असाधारण राजपत्र, भाग I, खण्ड 1 में प्रकाशित लोकहित प्रकटन तथा मुखबिरो की सुरक्षा के अंतर्गत शिकायत प्रबंधन हेतु केन्द्रीय सतर्कता आयोग (सीवीसी) को मनोनीत अधिकरण के रूप में प्राधिकृत करने वाले, इस मंत्रालय के संकल्प संख्या 371/12/2002/एवीडी-III दिनांक 21 अप्रैल, 2004 में निम्नलिखित संशोधन किए जाते हैं, अर्थात्:—

उक्त संकल्प में,—

- (i) पैरा 2, 3, 4, 5, 6, 8, 9, 10 एवं 11 शब्द “मनोनीत अधिकरण” जहां कहीं भी प्रयोग में आए हों, को क्रमशः “मनोनीत अधिकरण अथवा मनोनीत प्राधिकरण” शब्दों से प्रतिस्थापित किया जाएगा;
- (ii) पैरा 1 में शब्द “प्रकटीकरण अथवा शिकायत में यथासंभव सभी विवरण होंगे और इसमें समर्थक दस्तावेज अथवा अन्य सामग्री शामिल होगी” का लोप किया जाएगा;
- (iii) पैरा 1 के बाद निम्नलिखित पैरा जोड़े जाएंगे, अर्थात्:—

“1क. भारत सरकार के मंत्रालय अथवा विभागों के मुख्य सतर्कता अधिकारियों को, उस मंत्रालय या विभाग, किसी

केन्द्रीय अधिनियम के द्वारा या इसके अंतर्गत स्थापित किसी निगम अथवा केन्द्र सरकार के स्वामित्व या नियंत्रणाधीन सरकारी कंपनियों, संस्थाओं अथवा स्थानीय प्राधिकरणों जो उस मंत्रालय या विभाग के अधिकार क्षेत्र में आते हों, के किसी कर्मचारी पर भ्रष्टाचार अथवा पद के दुरुपयोग के किसी आरोप के संबंध में लिखित शिकायत या प्रकटन संबंधी शिकायत प्राप्त करने के लिए मनोनीत प्राधिकारी के रूप में भी प्राधिकृत किया गया है।

।ख : प्रकटन या शिकायत में जितना संभव हो सम्पूर्ण विवरण समाहित होगा एवं इसके साथ समर्थित दस्तावेज या अन्य सामग्री होगी।”

(iv) पैरा 7 के बाद, निम्नलिखित पैरा जोड़ा जाएगा, अर्थात्:—

“7क. या तो शिकायतकर्ता के आवेदन पर या संग्रहित सूचना के आधार पर, यदि मनोनीत प्राधिकारी का मत हो कि शिकायतकर्ता या गवाह को संरक्षण की आवश्यकता है तो मनोनीत प्राधिकारी, संबंधित सरकारी प्राधिकारियों को समुचित दिशानिर्देश जारी करने के लिए इस मामले को केन्द्रीय सतर्कता आयोग के साथ उठाएगा।”

(v) पैरा 11 के बाद, निम्नलिखित पैरा जोड़ा जाएगा, अर्थात्:—

“11क. केन्द्रीय सतर्कता आयोग (सीवीसी) मनोनीत प्राधिकारी को प्राप्त शिकायतों का पर्यवेक्षण एवं निगरानी करेगा।”

दीप्ति उमाशंकर, संयुक्त सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS**

**(Department of Personnel and Training)**

**RESOLUTION**

New Delhi, the 14th August, 2013.

No.371/4/2013-AVD-III – In this Ministry's Resolution No.371/12/2002-AVD-III dated 21st April, 2004, published in the Gazette of India, Extraordinary, Part I, Section 1, authorising the Central Vigilance Commission (CVC) as the Designated Agency for handling of complaints under the Public Interest Disclosure and Protection of Informers, the following amendments are hereby made, namely:-

In the said Resolution,-

- (i) in paragraphs 2, 3, 4, 5, 6, 8, 9, 10 and 11, for the words "the designated agency" wherever they occur, the words "the designated agency or the designated authority" shall respectively be substituted;
- (ii) in paragraph 1, the words "The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other material." shall be omitted;
- (iii) after paragraph 1, the following paragraphs shall be inserted, namely:-  
"1A. The Chief Vigilance Officers of the Ministries or Departments of the Government of India are also authorised as the designated authority to receive written complaint or

disclosure on any allegation of corruption or misuse of office by any employee of that Ministry or Department or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or the Department.

1B. The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other materials.";

- (iv) after paragraph 7, the following paragraph shall be inserted, namely:-

"7A. Either on the application of the complainant, or on the basis of the information gathered, if the designated authority is of the opinion that either the complainant or the witnesses need protection, the designated authority, shall take up the matter with the Central Vigilance Commission, for issuing appropriate directions to the Government authorities concerned.";

- (v) after paragraph 11, the following paragraph shall be inserted, namely:-

"11A The Central Vigilance Commission (CVC) shall supervise and monitor the complaints received by the designated authority.".

DEEPTI UMASHANKAR, Jt. Secy.



# भारत का राजपत्र The Gazette of India

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कार्मिक, लोक-शिकायत तथा पेंशन मंत्रालय  
(कार्मिक और प्रशिक्षण विभाग)

संकल्प

नई दिल्ली, 21 अप्रैल, 2004

सं.-371/12/2002-ए.पी.डी.-III.—जबकि सर्वोच्च न्यायालय ने श्री सत्येन्द्र दुबे की हत्या के संबंध में रिट याचिका (सी.) संख्या-539/2003 का सुनवाई करते समय यह इच्छा व्यक्त की कि उपयुक्त विधान के बनाए जाने तक “पर्दाफाशों या भण्डाफोड़ों (विसल ब्लोअर्स)” से प्राप्त शिकायतों पर कार्रवाई किए जाने के लिए उपयुक्त तंत्र व्यवस्था तैयार की जाए।

और जबकि विधि आयोग द्वारा तैयार किए गए लोकहित प्रकटीकरण और मुखबिर संरक्षण विधेयक, 2002 की जांच-पड़ताल चल रही है।

अतः अब, केन्द्र सरकार एतद्वारा निम्नलिखित संकल्प लेती है :—

1. केन्द्रीय सतर्कता आयोग को केन्द्रीय सरकार अथवा किसी केन्द्रीय अधिनियम के द्वारा अथवा इसके अंतर्गत स्थापित किन्हीं निगमों, केन्द्र सरकार के स्वामित्व वाली अथवा इसके द्वारा नियंत्रित सरकारी कम्पनियों, सोसाइटियों अथवा स्थानीय प्राधिकरणों के किसी कर्मचारी पर भ्रष्टाचार के किसी आरोप अथवा पद के दुरुपयोग के सम्बन्ध में लिखित शिकायतें प्राप्त करने अथवा प्रकटीकरण सम्बन्धी दस्तावेज प्राप्त करने के लिए एतद्वारा मनोनीत अभिकरण के रूप में प्राधिकृत किया जाता है। प्रकटीकरण अथवा शिकायत में यथासंभव सभी विवरण होंगे और इसमें समर्थक दस्तावेज अथवा अन्य सामग्री शामिल होगी।
2. मनोनीत अभिकरण यदि ऐसा उचित समझे तो वह प्रकटीकरण करने वाले व्यक्तियों से और जानकारी अथवा विवरण मंगवा सकता है। यदि शिकायत बेनामी है तो मनोनीत अभिकरण इस मामले में कोई कार्रवाई नहीं करेगा।
3. शासकीय गुप्त अधिनियम, 1923 में विहित किसी बात के बावजूद भी संविधान के अनुच्छेद 33 के खण्ड (क) से (घ) में संदर्भित व्यक्तियों से भिन्न कोई लोक सेवक अथवा किसी गैर-सरकारी संगठन सहित कोई अन्य व्यक्ति मनोनीत अभिकरण को लिखित प्रकटीकरण भेज सकता है।
4. यदि शिकायत में शिकायतकर्ता का ब्यौरा भी दिया गया है तो मनोनीत अभिकरण निम्नलिखित कदम उठाएगा :—
  - (i) मनोनीत अभिकरण शिकायतकर्ता से यह पता लगाएगा कि क्या यह वही व्यक्ति है अथवा नहीं है जिसने शिकायत की है।
  - (ii) शिकायतकर्ता की पहचान उद्घाटित नहीं की जाएगी जब तक कि शिकायतकर्ता ने स्वयं शिकायत का ब्यौरा सार्वजनिक न कर दिया हो अथवा किसी अन्य कार्यालय अथवा प्राधिकारी को अपनी पहचान नहीं बता दी हो।

- (iii) शिकायतकर्ता की पहचान गुप्त रखने के पश्चात् मनोनीत अभिकरण प्रथमतः यह पता लगाने के लिए विवेकपूर्ण जांच-पड़ताल करेगा कि क्या इस शिकायत पर आगे कार्रवाई करने का कोई आधार बनता है। इस प्रयोजन हेतु मनोनीत अभिकरण एक समुचित तंत्र बनाएगा।
- (iv) शिकायत की विवेकपूर्ण जांच-पड़ताल करने के परिणामस्वरूप अथवा बिना जांच-पड़ताल के केवल शिकायत के आधार पर ही यदि मनोनीत अभिकरण का यह मत होता है कि मामले की और जांच-पड़ताल करवाई जानी अपेक्षित है तो मनोनीत अभिकरण सम्बन्धित संगठन अथवा कार्यालय के विभागाध्यक्ष से सरकारी तौर पर उनकी टिप्पणियाँ/अथवा उनके स्पष्टीकरण माँगेगा। ऐसा करते समय मनोनीत अभिकरण मुखबिर की पहचान प्रकट नहीं करेगा और सम्बन्धित संगठन के अध्यक्ष को यह भी अनुरोध करेगा कि यदि उन्हें किसी कारणवश मुखबिर की पहचान का पता चल जाता है तो वे मुखबिर की पहचान गुप्त रखेंगे।
- (v) सम्बन्धित संगठन का उत्तर प्राप्त होने के बाद यदि मनोनीत अभिकरण का यह मत होता है कि अन्वेषण से पद के दुरुपयोग अथवा भ्रष्टाचार के पुख्ता आरोपों का पता चलता है तो मनोनीत अभिकरण सम्बन्धित सरकारी विभाग अथवा संगठन को उपयुक्त कार्रवाई करने की संस्तुति करेगा। इनमें अन्य बातों के साथ-साथ निम्नलिखित शामिल होगा :—
- (क) सम्बन्धित सरकारी कर्मचारी के विरुद्ध उपयुक्त कार्यवाहियाँ शुरू किया जाना।
- (ख) भ्रष्टाचार अथवा पद के दुरुपयोग जैसी भी स्थिति हो, के परिणामस्वरूप सरकार को हुई हानि की पूर्ति के लिए उपयुक्त प्रशासनिक कदम उठाना।
- (ग) मामले के तथ्यों और परिस्थितियों को देखते हुए यदि ऐसा न्यायसंगत हो तो उपयुक्त मामलों में आपराधिक कार्यवाहियाँ शुरू किए जाने के बारे में उपयुक्त प्राधिकारी/अभिकरण को सिफारिश करना।
- (घ) भविष्य में ऐसी घटनाओं की पुनरावृत्ति रोकने के लिए सुधारात्मक उपाय किए जाने की सिफारिश करना।
5. पूर्ण जांच-पड़ताल करने अथवा सम्बन्धित संगठन से जानकारी प्राप्त करने के प्रयोजन से मनोनीत अभिकरण को प्राप्त शिकायत के अनुक्रम में जांच-पड़ताल को पूरी करने में सभी प्रकार की सहायता प्रदान करने के लिए यथावश्यक समझे जाने पर केन्द्रीय अन्वेषण ब्यूरो अथवा पुलिस अधिकारियों को सहायता देने के लिए प्राधिकृत किया जाएगा।
6. यदि कोई व्यक्ति किसी कार्रवाई से इस आधार पर व्यथित होता है कि उसे इस तथ्य के आधार पर पीड़ित किया जा रहा है कि उसने शिकायत दायर की है अथवा प्रकटीकरण किया है तो वह इस मामले के निवारण की प्रार्थना करते हुए मनोनीत अभिकरण के समक्ष एक आवेदन दायर कर सकता है जो यथावश्यक उपयुक्त समझी जाने वाली कार्रवाई करेगा। मनोनीत अभिकरण सम्बन्धित सरकारी सेवक अथवा सरकारी प्राधिकारी को जैसी भी स्थिति हो, उपयुक्त निदेश दे दे।
7. शिकायतकर्ता के आवेदन पर अथवा एकत्रित की गई जानकारी के आधार पर यदि मनोनीत अभिकरण का यह मत होता है कि शिकायतकर्ता अथवा गवाहों को संरक्षण दिए जाने की आवश्यकता है तो मनोनीत अभिकरण सम्बन्धित सरकारी प्राधिकारियों को उपयुक्त निर्देश जारी करेगा।
8. इस कार्य में प्रयुक्त तंत्र, मौजूदा कार्य तंत्र के अतिरिक्त होगा। तथापि, यदि शिकायत इस तंत्र के अन्तर्गत प्राप्त होती है तो पहचान को गुप्त रखा जाएगा।
9. यदि मनोनीत अभिकरण शिकायत को अभिप्रेरित अथवा कष्टप्रद स्वरूप की पाता है तो मनोनीत अभिकरण उपयुक्त कदम उठाने के लिए स्वतंत्र है।
10. मनोनीत अभिकरण निम्नलिखित स्वरूप के प्रकटीकरण पर कार्रवाई अथवा उसकी जांच-पड़ताल नहीं करेगा :—
- (क) ऐसे किसी मामले जिसमें लोक सेवक जांच अधिनियम, 1850 के अन्तर्गत एक औपचारिक और सार्वजनिक जांच का आदेश दे दिया गया हो; अथवा
- (ख) ऐसा कोई मामला जिसे जांच आयोग अधिनियम, 1952 के तहत जांच के लिए भेजा गया है।
11. मनोनीत अभिकरण के निर्देशों के विपरीत मुखबिर की पहचान उद्घाटित हो जाने पर मनोनीत अभिकरण ऐसा प्रकटीकरण करने वाले किसी व्यक्ति अथवा अभिकरण के विरुद्ध मौजूदा विनियमों के अनुसार उपयुक्त कार्रवाई शुरू किए जाने के लिए प्राधिकृत है।
12. इस कार्य हेतु सृजित तंत्र, संसद द्वारा इस विषय में कानून बनाए जाने तक लागू रहेगा।

श्रीमती मंजुलिका गौतम, अपर सचिव

## MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

## RESOLUTION

New Delhi, the 21st April, 2004

No. 371/12/2002-AVD-III.—Whereas while hearing Writ Petition (C) No. 539/2003 regarding the murder of Shri Satyendra Dubey, the Supreme Court desired that pending enactment of a suitable legislation, suitable machinery should be put in place for acting on complaints from "whistle-blowers".

And whereas the 'The Public Interest Disclosure and Protection of Informers' Bill, 2002, drafted by the Law Commission is under examination.

Now, therefore, the Central Government hereby resolves as under :

1. The Central Vigilance Commission (CVC) is hereby authorized, as the Designated Agency, to receive written complaints or disclosure on any allegation of corruption or of mis-use of office by any employee of the Central Government or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government. The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other material.
2. The designated agency may, if it deems fit call for further information or particulars from the persons making the disclosure. If the complaint is anonymous, the designated agency shall not take any action in the matter.
3. Notwithstanding anything contained in the Official Secrets Act, 1923, any public servant other than those referred to clauses (a) to (d) of Article 33 of the Constitution or any other person including any non-governmental organisation, may make a written disclosure to the designated agency.
4. If the complaint is accompanied by particulars of the person making the complaint, the designated agency shall take the following steps :
  - (i) The designated agency will ascertain from the complainant whether he was the person who made the complaint or not.
  - (ii) The identity of the complainant will not be revealed unless the complainant himself has made the details of the complaint either public or disclosed his identity to any other office or authority.
  - (iii) After concealing the identity of the complainant, the designated agency shall make, in the first instance, discreet inquiries to ascertain if there is any basis of proceeding further with the complaint. For this purpose, the designated agency shall devise an appropriate machinery.
  - (iv) Either as a result of the discreet inquiry, or on the basis of the complaint itself without any inquiry, if the designated agency is of the opinion that the matter requires to be investigated further, the designated agency shall officially seek comments/or explanation from the Head of the Department of the concerned organisation or office. While doing so, the designated agency shall not disclose the identity of the informant and also shall request the concerned Head of the organisation to keep the identity of the informant secret, if for any reason, the concerned Head comes to know the identity.
  - (v) After obtaining the response of the concerned organisation, if the designated agency is of the opinion that the investigations reveal either mis-use of office or substantiate allegations of corruption, the designated agency shall recommend appropriate action to the concerned Government Department or Organization. These shall, *inter alia*, include following :
    - (a) Appropriate proceedings to be initiated against the concerned Government servant.
    - (b) Appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt act or mis-use of office, as the case may be.
    - (c) Recommend to the appropriate authority/agency initiation of criminal proceedings in suitable cases, if warranted by the facts and circumstances of the case.
    - (d) Recommend taking of corrective measures to prevent recurrence of such events in future.

5. For the purpose of making discreet inquiry or obtaining information from the concerned organisation, the designated agency shall be authorized to call upon the CBI or the police authorities, as considered necessary, to render all assistance to complete the investigation pursuant to the complaint received.
6. If any person is aggrieved by any action on the ground that he is being victimized due to the fact that he had filed a complaint or disclosure, he may file an application before the designated agency seeking redress in the matter, who shall take such action, as deemed fit. The designated agency may give suitable directions to the concerned public servant or the public authority as the case may be.
7. Either on the application of the complainant, or on the basis of the information gathered, if the designated agency is of the opinion that either the complainant or the witnesses need protection, the designated agency shall issue appropriate directions to the concerned Government authorities.
8. The machinery evolved herein shall be in addition to the existing mechanisms in place. However, secrecy of identity shall be observed, only if the complaint is received under this machinery.
9. In case the designated agency finds the complaint to be motivated or vexatious, the designated agency shall be at liberty to take appropriate steps.
10. The designated agency shall not entertain or inquire into any disclosure :
  - (a) in respect of which a formal and public inquiry has been ordered under the Public Servants' Inquiries Act, 1850; or
  - (b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952.
11. In the event of the identity of the informant being disclosed in spite of the designated agency's directions to the contrary, the designated agency is authorized to initiate appropriate action as per extant regulations against the person or agency making such disclosure.
12. The machinery created herein shall operate till Parliament passes a law on the subject.

SMT. MANJULIKA GAUTAM, Addl. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

भाग I—खण्ड 1

PART I—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 98/  
No. 98

नई दिल्ली, बृहस्पतिवार, अप्रैल 29, 2004/वैशाख 9, 1926  
NEW DELHI, THURSDAY, APRIL 29, 2004/VAISAKHA 9, 1926

कार्मिक, लोक-शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

सूचनापत्र

नई दिल्ली, 29 अप्रैल, 2004

सं. 371/12/2002-ए.वी.डी.-III.—भारत के असाधारण राजपत्र भाग-I, खण्ड 1 में दिनांक 21 अप्रैल, 2004 को प्रकाशित भारत सरकार के संकल्प संख्या 89 का आंशिक संशोधन करते हुए, उक्त संकल्प के प्रारंभिक पैरा तथा पैरा-2 में निम्नलिखित संशोधन किए जाते हैं :

(i) संकल्प के प्रारंभिक पैरा को निम्न प्रकार से प्रतिस्थापित किया जाता है :

“जबकि श्री सत्येन्द्र दुबे की हत्या के सम्बन्ध में रिट याचिका (सी.) संख्या 539/2003 की सुनवाई करते समय, ‘पर्दाफाशों या भण्डाफोड़ों (विसल ब्लोअर्स)’ से प्राप्त शिकायतों पर कार्रवाई किए जाने के लिए उपयुक्त तंत्र का प्रश्न उठा’।

(ii) संकल्प के अंग्रेजी पाठ के पैरा 2 में शब्द ‘designateed’ (डेजिगनेटीड) को शब्द ‘designated’ (डेजिगनेटेड) से प्रतिस्थापित किया जाता है।

श्रीमती मंजुलिका गौतम, अपर सचिव

## MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

### CORRIGENDUM

New Delhi, the 29th April, 2004

No. 371/12/2002-AVD.III.—In partial modification of the Government of India's Resolution No. 89, published in the Gazette of India Part I Section 1, Extraordinary dated 21st April, 2004, the following modifications are made in the opening para and para-2 of the said Resolution :

(i) The opening para of the Resolution is substituted as :

“Whereas while hearing Writ Petition (C) No. 539/2003 regarding the murder of Shri Satyendra Dubey, the question of a suitable machinery for acting on complaints from ‘whistle-blowers’ arose.”

(ii) In para 2 the word “designateed” is substituted as “designated”.

Smt. MANJULIKA GAUTAM, Addl. Secy.

1396 GI/2004

No. 425/01/2012-AVD-IV(A)  
Ministry of Personnel, Public Grievances & Pension  
Department of Personnel & Training

North Block, New Delhi  
30<sup>th</sup> November, 2012

**OFFICE MEMORANDUM**

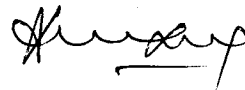
**Subject:** Strengthening of Vigilance set-up in Ministries/Departments- reg.

The undersigned is directed to refer to Department's Office Memorandum No. 372/19/2011-AVD-III(Pt.I) dated 26<sup>th</sup> September, 2011 regarding strengthening of vigilance set-up in Ministries/Departments, wherein, on the basis of a recommendation made by the Group of Ministers to tackle Corruption, which was accepted by the Government, all the Ministries/Departments were advised to strengthen their vigilance administration with requisite manpower with a view to ensuring expeditious disposal of disciplinary cases. It was also advised therein to consider, where appropriate, setting up of a monitoring cell in each Ministry/Department to review and monitor the progress of all pending disciplinary cases on a day-to-day basis, with a view to ensuring their timely conclusion.

2. Further, in order to assess the work load relating to vigilance administration and the adequacy of present vigilance set-up to handle such volume of work in various Ministries/Departments to meet the challenges posed by the ever increasing volume of vigilance related work, information was called for from all Ministries/Departments vide this Department's D.O. of even number dated 17<sup>th</sup> July, 2012.

3. On the basis of an analysis of statistics received from various Ministries/Departments, the following guidelines are issued for strengthening of vigilance set up in the Ministries/Departments.

- i. It should be ensured that the Administration and Vigilance Wing are exclusively separate from each other in each Ministry/Department. Para 2.9 of vigilance manual issued by CVC indicates that participation in decision making or close association of vigilance staff in such matters over which they might be required, at a later stage, to sit in judgment from vigilance point of view, should be avoided. Therefore, vigilance functionaries should not be a party to processing and decision-making processes or in other similar administrative transactions of such nature, which are likely to have clear vigilance sensitivity. While it may not be difficult for full-time vigilance functionaries to comply with this requirement, the compliance of these instructions could be achieved in respect of part-time vigilance functionaries by confining their duties, other than those connected with vigilance work, as far as possible, to such items of work that are either free from vigilance angle or serve as input to vigilance activities such as inspection, audit, etc. These instructions should be adhered to strictly.
- ii. Secretary of the Ministry/Department should review the pending disciplinary proceeding cases and sanction of prosecution cases each month like monitoring of VIP references/RTI cases.





- iii. Some Ministries/Departments are not sending the quarterly report on action plan on anti-corruption measures in the prescribed proforma as per DoP&T's D.O. No. 321/1/2005-AVD-III dated 9<sup>th</sup> May, 2005. Each Ministry/Department should send this quarterly report regularly.
- iv. From the inputs received from the Ministries/Departments, it has been observed that in some Ministries/Departments where the numbers of complaints/DP cases are very high but the CVO is part time and the officers/staff in the vigilance unit are not sufficient. Therefore, each Ministry/Department should conduct an SIU study of its Vigilance Division so that officers/staff may be posted as per requirement vis-à-vis volume of work.
- v. Vide DoPT's OM No. 372/19/2011-AVD-III(Pt.I) dated 26.09.2011, all the Ministries/Departments were requested that they may, where appropriate, consider setting up of a monitoring cell to review and monitor the progress of all pending disciplinary inquiries on a day-to-day basis, with a view to ensuring their timely conclusion. However, it has been observed that barring a few Ministries/Departments, such monitoring cell is yet to be set up by the Ministries/Departments. All Ministries/Departments may send an action taken report on setting up of a monitoring cell, to this department within a month from the receipt of these guidelines.

4. All the Ministries/Departments are requested to follow the above guidelines in letter and spirit to strengthen their vigilance set up.

  
(Amarjit Singh)

Deputy Secretary to the Govt. of India

To,

1. Secretary, all Ministries/Departments (As per standard list)

Copy to:

1. Secretary, Central Vigilance Commission, New Delhi.
2. Prime Minister's Office, South Block, New Delhi.
3. Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
4. NIC, DoP&T for uploading on the website of the Department.

No. 425/04/2012-AVD-IV(A)  
Ministry of Personnel, Public Grievances & Pension  
Department of Personnel & Training

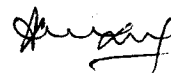
North Block, New Delhi  
29<sup>th</sup> November, 2012

**OFFICE MEMORANDUM**

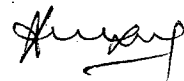
**Subject:** Guidelines for monitoring and expeditious disposal of the disciplinary proceeding cases – reg.

Instructions have been issued in the past for expeditious disposal of disciplinary proceedings against delinquent government servants. However, it has been observed that disciplinary proceedings are generally taking a long time which defeats the very purpose of initiating the said proceedings. Therefore, it has been considered necessary to issue the following guidelines for monitoring and expeditious disposal of disciplinary proceedings:-

- i. There are a number of instances where the Courts have set aside the order of penalty due to inordinate delay in initiating action. Therefore, it has to be ensured that disciplinary proceedings are initiated without undue delay.
- ii. The Administrative Department/Competent Authority should study the allegations more carefully and resort to minor penalty proceedings instead of initiating major penalty proceedings, where the circumstances involve minor infringements or cases of procedural irregularities. It has to be kept in mind that a minor penalty swiftly but judiciously imposed by a Disciplinary Authority is much more effective than a major penalty imposed after years spent on a protracted enquiry.
- iii. There is undue delay due to repeated requests of the charged officer for time to give his written statement in reply to the charge sheet. As per existing instructions, the charged officer is allowed 10 days to submit his written statement. The charged officer may be allowed 3 – 4 days absence by the Controlling Officer for preparing his written statement in which case, no extension of time should be allowed beyond the stipulated period of 10 days. (DoP&T's OM No.142/5/2003-AVD.I dated 6<sup>th</sup> April, 2004)
- iv. If vigilance angle is involved in a complaint, the case should be referred to CVC for their 1<sup>st</sup> stage advice within one month from the date of receipt of investigation report. If vigilance angle is not involved, case should be put up to the disciplinary authority for taking decision to initiate disciplinary action for major or minor penalty against delinquent officer under CCS(CCA) Rules within one month from the date of receipt of investigation report.
- v. After receipt of first stage advice of CVC, the case should be put up to the disciplinary authority for taking decision to initiate disciplinary action for major or minor penalty against delinquent officer under CCS(CCA) Rules within one month from the date of receipt of 1<sup>st</sup> stage advice of CVC.

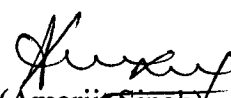


- vi. The chargesheet should be issued to the charged officer within a week from the date of receipt of decision of the disciplinary authority to initiate major or minor penalty proceedings against him. In any case, it should be ensured that the chargesheet is issued within one month from the date of receipt of the 1<sup>st</sup> stage advice of CVC.
- vii. Simultaneously with the issuance of chargesheet, names of suitable officer to be appointed as IO & PO may be selected tentatively. If the charged officer, in his written statement of defence, denies the charges leveled against him, orders regarding appointment of IO & PO should be issued immediately after receipt and consideration of defence statement. Copies of all the relevant papers/documents should also be provided to IO/PO along with the order.
- viii. The charge sheet should be drafted with utmost accuracy and precision based on the facts revealed during the investigation or otherwise and the misconduct involved. It should be ensured that no relevant material is left out and at the same time no irrelevant material or witnesses are included. (DoP&T's DO No.134/2/83-AVD.I dated 2<sup>nd</sup> May, 1985)
- ix. As far as possible, copies of all the documents relied upon and the statements of witnesses cited on behalf of the Disciplinary Authority should be supplied to the Government servant along with the charge sheet, so that the time taken by the charged officer to submit his written statement of defense is reduced. (DoP&T's DO No.134/2/83-AVD.I dated 2<sup>nd</sup> May, 1985)
- x. IO should submit his report within six months from the date of receipt of order of his appointment as IO. Where it is not possible to adhere to this time limit, the IO should submit reasons for delay to the disciplinary authority in writing.
- xi. A copy of the inquiry report and also disagreement of the disciplinary authority, if any, on it should be provided to the Charged Officer within 15 days from the date of receipt of Inquiry Report alongwith reasons for disagreement of the Disciplinary Authority with IO's findings, if any. (CVC Circular No. 000/VGL/18 dated 23<sup>rd</sup> May, 2000). The Charged Officer may be allowed 15 days to submit, if he so desires, his written representation or submission to the disciplinary authority irrespective of whether the report is favourable or not to the government servant (DoP&T's O.M. No.11012/13/85-Estt. dated 26<sup>th</sup> June, 1989)
- xii. After the receipt of the representation of charged officer on Inquiry Report, the case may be sent to CVC, wherever required, for their second stage advice, or to UPSC for their advice, as the case may be, within one month. (CVC's Circular No 000/VGL/18 dated 23<sup>rd</sup> May, 2000)
- xiii. Penalty order should be issued within a month from the date of advice of UPSC. (DoP&T's DO No 134/2/83-AVD.I dated 2<sup>nd</sup> May, 1985)
- xiv. The time-limits indicated above should be strictly adhered to. The CVO concerned would be directly responsible to adhere to these time limits.



- xv. Each Ministry/Department may keep ready a panel of IO/PO from their retired government officers which may be used when no serving government servant is available for appointment of IO/PO. The services of IOs/POs who would be available on the panel maintained by CVC may also be utilized in consultation with CVC.
- xvi. In some Departments a large number of oral inquiries are pending. In order to expedite completion of inquiries within a specified time limit, some officers on a full time basis may be earmarked by the concerned Department to act as IO/PO.
- xvii. In order to ensure expeditious disposal of disciplinary proceedings, vide DoP&T's OM No.372/19/2011-AVD-III (Pt.1) dated 26.09.2011, the second stage consultation with CVC in disciplinary matters has been dispensed with except in those cases where consultation with UPSC is not required as per extant rules/instructions. This may be followed. Since there will be only one consultation after receipt of IO's report (either with CVC or the UPSC, as the case may be), it is expected that the new procedure would substantially reduce the time taken in finalizing disciplinary proceedings after receipt of the IO's report.
- xviii. Wherever a Departmental officer is appointed as the IO in Departmental Proceedings, the officer concerned may be relieved from his normal duties for a period up to 20 days in two spells during which he should complete the inquiry and submit the report. During this period so allowed, he will attend to the inquiry on full time basis. These time spells may depend on the need and the feasibility of conducting full-time hearings on a day to day basis. (DoP&T's OM No.142/5/2003-AVD.I dated 6<sup>th</sup> April, 2004)
- xix. For effective monitoring of the disciplinary proceedings cases, the Vigilance set up must be strengthened in every Ministry/Department. Instructions issued vide DOPT OM No. 372/19/2011-AVD-III (Pt.1) dated 26.09.2011 are hereby reiterated. All Ministries/Departments are requested to take appropriate action in the matter.

All the Ministries/Departments are requested to follow the above guidelines in letter and spirit so that disciplinary proceedings are concluded expeditiously.

  
(Amarjit Singh)

Deputy Secretary to the Govt. of India

To,

1. Secretary, all Ministry/Department (As per standard list)

Copy to:

1. Secretary, Central Vigilance Commission, New Delhi.
2. Prime Minister's Office, South Block, New Delhi.
3. Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
- ✓4. NIC, DoP&T for uploading on the website of the Department.

F.No.22034/4/2012 -Estt. (D)  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel & Training)

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North Block,  
New Delhi

Dated the 2<sup>nd</sup> November, 2012

**OFFICE MEMORANDUM**

Subject : **Comprehensive review of instructions pertaining to vigilance clearance for promotion-regarding.**

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Instructions issued vide O.M. No. 22012/1/99-Estt. (D) dated 25.10.2004 based on the O.M. No. 22011/4/1991-Estt. (A) dated 14.09.1992 (issued on the basis of procedure laid down by Supreme Court in K.V. Jankiraman case AIR 1991 SC 2010) makes it clear that vigilance clearance for promotion may be denied only in the following three circumstances:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

Withholding of vigilance clearance to a Government servant who is not under suspension or who has not been issued a charge sheet and the disciplinary proceedings are pending or against whom prosecution for criminal charge is not pending may not be legally tenable in view of the procedure laid down in the aforesaid O.Ms.

2. Existing instructions provide for processing the cases of disciplinary proceedings in a time bound manner. A number of cases have however, come to notice where initiation of disciplinary proceedings/issue of chargesheet/processing of the case is considerably delayed by the administrative Ministries/Departments. Such delays allow an officer whose conduct is under cloud, to be considered for promotion. It becomes essential in respect of officer(s) in whose case disciplinary proceedings are contemplated or pending and are included in consideration zone for promotion, necessary action be taken for placing the proposal before the DPC so that vigilance clearance is not allowed as per conditions mentioned in para 1 above.

3. The Hon'ble Supreme Court in its judgment dated 27.08.1991 in Union of India Vs. K.V. Jankiraman etc.(AIR 1991 SC 2010) has held

"5. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently".

4. The issue of promotion of an officer who may be technically cleared from vigilance angle but in whose case it may not be appropriate to promote him/her in view of doubtful integrity or where a charge-sheet is under consideration etc. has been under examination in this Department.

5. The O.M No. 22012/1/99-Estt. (D) dated 25<sup>th</sup> October, 2004 further provides that a DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum No. 22011/4/91-Estt.(A) dated 14.09.1992, alongwith other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. No promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/dereliction of duty etc., there is a serious complaint and the matter is still under investigation, the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover.

6. When a Government servant comes under a cloud, he may pass through three stages, namely, investigation, issue of charge sheet in Departmental Proceedings and/or prosecution for a criminal charge followed by either penalty/conviction or exoneration/acquittal. During the stage of investigation prior to issue of charge sheet in disciplinary proceedings or prosecution, if the Government is of the view that the charges are serious and the officer should not be promoted, it is open to the Government to suspend the officer which will lead to the DPC recommendation to be kept in sealed cover. The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued or the officer is

placed under suspension. The pendency of preliminary investigations prior to that stage is not sufficient to adopt the sealed cover procedure.

7. The law on sealed cover based on the judgment of the Apex Court in Union of India vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), is by now well settled. The O.M. dated 14.9.92 confined the circumstances for adopting sealed cover to the three situations mentioned in para 2 of the said O.M. Even after recommendation of the DPC, but before appointment of the officer if any of the three situations arise, the case is deemed to have been kept in sealed cover by virtue of para 7 of the O.M. dated 14.9.92.

8. As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 provides as under :-

“(b) judicial proceedings shall be deemed to be instituted –  
(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made”.

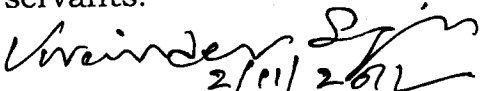
9. For the purpose of vigilance clearance for review DPC, instructions exist in O.M. No. 22011/2/99-Estt.(A) dated 21.11.2002 that review DPC will take into consideration the circumstances obtaining at the time of original DPC and any subsequent situation arising thereafter will not stand in the way of vigilance clearance for review DPC. However, before the officer is actually promoted it needs to be ensured that he/she is clear from vigilance angle and the provision of para 7 of O.M. No. 22011/4/91-Estt.(A) dated 14.09.1992 are not attracted.

10. Opening of sealed cover on conclusion of proceedings, is covered in the instructions in para 3 of the O.M. dated 14.9.92. In cases where by the time the Departmental Proceedings are concluded and the officer is fully exonerated but another charge sheet has been issued, the second charge sheet will not come in the way of opening of sealed cover and granting promotion notionally from the date of promotion of the junior and para 7 of O.M. dated 14.9.92 will not apply as clarified in the O.M. No. 22011/2/2002-Estt.(A) dated 24.2.2003. After the disciplinary proceedings are concluded and penalty is imposed, vigilance clearance will not be denied. The details of the penalty imposed are to be conveyed to the DPC.

11. This Department has issued separate instructions for accordance of vigilance clearance to a member of Central Civil Services/holder of Central Civil post with respect to (a) empanelment (b) deputation (c) appointments to sensitive posts and assignments to training programmes (except mandatory training) vide O.M. No. 11012/11/2007-(Estt. A) dated 14.12.2007. It has been further clarified in the O.M. No. 11012/6/2008-Estt. (A) dated 07.07.2008 that these instructions do not apply to promotions. While consideration for promotion is a right of an employee but empanelment, deputation, posting and assignment for training (except mandatory training) is not a right of an employee and is decided keeping in view the suitability of the officer and administrative exigencies.

12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/criminal/court case against a Government servant, if the three conditions mentioned in para 2 of this Department's O.M. dated 14.09.1992 are not satisfied. The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. If the charges against a Government servant are grave enough and whom Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings.

13. All Ministries/Departments are, therefore, requested to keep in view the above guidelines while dealing with cases of vigilance clearance for promotion of the Government servants.

  
2/11/2011  
(Virender Singh)

Under Secretary to the Government of India  
Tel. No. 2309 3804

To,

All Ministries/Departments of the Government of India

Copy to:

1. President's Secretariat, New Delhi
2. Vice-President's Secretariat, New Delhi
3. The Prime Minister's Office, New Delhi
4. Cabinet Secretariat, New Delhi
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi



6. The Registrar General, the Supreme Court of India, New Delhi.
7. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
8. The Comptroller and Auditor General of India, New Delhi
9. The Secretary, Union Public Service Commission, New Delhi
10. The Secretary, Staff Selection Commission, New Delhi
11. All attached offices under the Ministry of Personnel, Public Grievances and Pensions
12. National Commission for Scheduled Castes, New Delhi
13. National Commission for Scheduled Tribes, New Delhi
14. National Commission for OBCs, New Delhi
15. Secretary, National Council (JCM), 13, Ferozeshah Road, New Delhi.
16. Establishment Officer & A.S.
17. All Officers and Sections in the Department of Personnel and Training.
18. Facilitation Center, DOP&T (20 copies)
19. NIC (DOP&T) for placing this Office Memorandum on the Website of DOP&T.
20. Establishment Section (200 copies).

## Frequently Asked Questions (FAQs) in respect of AVD-I

| <b>S.No.</b> | <b>FAQs</b> | <b>Answers</b> |
|--------------|-------------|----------------|
|--------------|-------------|----------------|

### **I - Disciplinary matters**

- |      |                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                   |
|------|----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q.1. | Who is competent to suspend an IAS officer?                                                                                            | The Government in connection with whose affairs the officer is serving.                                                                                                                                                                                                                                                                           |
| Q.2. | Who is competent to institute departmental proceedings against an IAS officer?                                                         | The Government in connection with whose affairs, the officer was serving at the time of alleged misconduct.                                                                                                                                                                                                                                       |
| Q.3. | Whether Central Government/Ministries/ Departments are competent to suspend/institute departmental proceedings against an IAS officer? | No. However a determination to institute the proceedings has to be made by the administrative ministry/department concerned on the basis of preliminary explanation of the officer and advice of CVC(if vigilance angle is involved) at the level of their Minister-in-charge, before sending the proposal to Department of Personnel & Training. |
| Q.4. | To whom an appeal against an order of suspension lies?                                                                                 | An appeal against order of suspension issued by the State Government lies with the Central Government. However, no appeal lies against an order of suspension issued by the President/Central Government.                                                                                                                                         |
| Q.5. | Whether an appeal, review, revision, memorial lies against a charge sheet?                                                             | No.                                                                                                                                                                                                                                                                                                                                               |

### **II - Prosecution sanction**

- |      |                                                                                                          |                                                                                                                                       |
|------|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Q.1. | Who is competent to grant sanction for prosecution against an IAS officer for offences under the IPC?    | The Government in connection with whose affairs the officer is serving.                                                               |
| Q.2. | Who is competent to grant sanction for prosecution against an IAS officer for offences under the PC Act, | Central Government alone is competent to take a view. However, if the criminal misconduct pertains to the period when the officer was |

1988?

working in connection with affairs of State, a recommendation has to come from the State Government.

Q.3. What is the time period for grant of sanction for prosecution against IAS officers?

As per Supreme Court's verdict in Vineet Narain's case, sanction for prosecution is to be issued within a period of three months.

Q.4. Whether sanction for prosecution can be granted at a private complaint?

Yes, if a prima facie case is made out for grant of sanction for prosecution.

### III-Sanction for investigation under section 6A of DSPE Act, 1946

Q.1 Who is competent to grant previous sanction of the Central Government u/s 6A of the DSPE Act, 1946?

Central Government Ministries/Departments where the officer is working [unlike section 19(1) of the PC Act, 1988, there is no concept of "who so ever is competent to remove/dismiss" in determining the competent authority]

Q.2 Whether previous sanction of the Central Government u/s 6A of DSPE Act, 1946 is required for arrest of a person on the spot accepting or attempting to accept bribe?

No.

### IV- Vigilance clearance

Q.1. Whether guidelines contained in DoPT's OM No. 104/33/2005-AVD-I dated 29/10/2007 are applicable to promotion?

No. The scope of application of OM dated 29/10/2007 is given in para 1 of the said OM. [Sealed Cover Procedure laid down pursuant to Hon'ble Supreme Court's judgement in K.V. Janakiraman's case is to be followed in case of grant of vigilance clearance for promotion.]

Q.2. Whether vigilance clearance can be denied on a complaint?

No, unless a prima facie case of (i) corruption, (ii) disproportionate assets, (ii) moral turpitude or (iv) violation of conduct rules, is made out.

Q.3. Whether vigilance clearance can be denied during

Vigilance clearance on a preliminary inquiry can be denied for a period of

preliminary inquiry?

three months only.

Q.4. Who is competent to grant vigilance clearance in respect of IAS officer?

DOP&T with the approval of AS(S&V)/Secretary(P).

#### **V- Complaints against IAS officers**

Q.1. To whom a complaint against an IAS officer can be addressed?

If an IAS officer is serving in connection with the State Government, the complaints should ordinarily be addressed to the Chief Secretary, Principal Secretary (General Administration Department) in the State Government, the State Government being the authority competent to take action against him. In respect of IAS officers serving at the Centre, the complaint can be addressed to Secretary(P)/Additional Secretary(S&V)/Joint Secretary(V).

Q.2. Whether any action is to be taken on anonymous/pseudonymous complaints?

As per CVC's instructions, no action is to be taken on anonymous/pseudonymous complaints and such complaints need to be filed. However, if an anonymous/pseudonymous complaint contains allegations of verifiable nature, the existing instructions issued by Department of Personnel & Training permit action on such complaint with the approval of head of department.

Q.3. To whom a whistleblower complaint should be filed?

The complaint under PIDPIR are to be filed with the designated authority for receiving such complaints i.e. the Central Vigilance Commission.

**No.142/15/2010-AVD-I**  
**Government of India**  
**Ministry of Personnel, Public Grievances and Pensions**  
**(Department of Personnel and Training)**

North Block, New Delhi  
Dated 31<sup>st</sup> July, 2012

**Office Memorandum**

**Subject :** Grant of Honorarium to Inquiry Officers (IO)/Presenting Officers (PO) -  
Consolidated instructions regarding

.....

The undersigned is directed to say that the Department of Personnel and Training have issued instructions vide NO 1344/99-AVD-I dated 29<sup>th</sup> June 2001 and 7<sup>th</sup> April 2003 on the subject of honorarium to the Inquiry Officers and Presenting Officers covering the aspects of rates of honorarium, appointment of retired officers as Inquiry Officer, terms and conditions for payment of honorarium etc from time to time. The rates of honorarium payable to IO/PO were last revised vide this Department's OM no 142/20/2008-AVD-I dated 27th July 2009. [copy attached].

2. A Committee of Experts set up to review the procedure of Disciplinary /Vigilance inquiries and to recommend measures for their expeditious disposal under the chairmanship of P.C Hota, former Chairman of UPSC in May 2010 had made a series of recommendations in July 2010 including the rates of honorarium. The detailed recommendation of the expert committee is available on the website of this Department. It can be accessed through the Link. <http://persmin.nic.in/DOPT/Publication/CommitteeReport/HotaCommitteeReport/HotaCommitteeReport.pdf> . The Committee had made specific recommendations as regards the rates of honorarium to IO/PO. The Recommendations of the Committee on the proposed increases in Honorarium relating to IO/PO are contained in paras 37, 42-44 of the report of the Committee.

3. The recommendations of the Expert Committee on the aspect of revision of rates of honorarium along with some other related measures were examined in the Department and was placed before the Group of Ministers on Corruption, set up for examining measures, including legislative and administrative, to tackle corruption and improve transparency. The Group of Ministers while considering the Terms of Reference also considered the recommendations of the HOTA Committee and recommended that the remuneration of the IOs and POs may be fixed, keeping in mind the recommendations of the HOTA Committee. These recommendations of the GOM have been accepted by the Government.

4. It has therefore been decided to revise the existing rates of honorarium payable to IO/PO in line with the recommendations of the Expert Committee. The revised rates of Honorarium and other allowances payable to IO both serving and retired officers and PO(serving) and the terms and conditions governing the same is indicated in Annexure -1 to this OM. The rates of Honorarium stated therein are ceilings and the concerned ministry/department where the misconduct was committed may decide the exact quantum of

honorarium to be paid keeping in mind the volume of work involved in specific cases and the terms and conditions indicated in the Annexure -1.

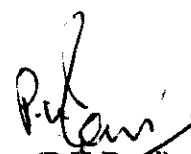
5. The revised structure of rates of honorarium and allowances as indicated in Annexure-I are intended to be made applicable to Departmental Proceedings including inquiry proceedings undertaken by the committee on Sexual Harassment, by Ministries /Department in respect of officials /officers serving under different cadres of services under their administrative control. However, in case a cadre of a service or organisations such as autonomous bodies have a separate set of rules and instructions for regulating honorarium to IO/PO in existence they may choose to continue with their own set of instructions. Fully or partially funded autonomous bodies may retain their own provisions so long as they are not more beneficial than what has been proposed in this OM.

6. This orders will take effect from the date of issue of this OM and will also apply to all inquiries in progress.

7. The services of serving officers may be used as IO and PO to the extent possible in the conduct of departmental inquiries. However, Central Vigilance Commission has been requested to create and maintain a panel of retired officers/officials willing to serve as IO for conducting departmental inquiries and for this purpose also design a procedure for inviting applications from the retired Government Servants to be followed by the Ministries and Departments. Till such time such a panel of retired officers become available from CVC, the concerned ministries /departments may, where it is not possible to use the services of a serving officer as Inquiry Officer for conducting departmental inquiries, use the services of officers who have retired from Ministries/Departments, for conducting such departmental inquiries.

8. This issues with the concurrence of Ministry of Finance, Department of Expenditure vide their UO no.14(4)/2009-E-II(B) dated 26.3.2012 and 5.6.2012.

9. Hindi Version will follow.

  
(P.K. Ravi)

Under Secretary to the Government of India  
Tel : 23094799

All Ministries/Departments [As per Standard List]

Copy to :

- a) The Comptroller and Auditor General of India, New Delhi
- b) UPSC
- c) CVC
- d) Rajya Sabha Sectt, New Delhi
- e) Lok Sabha Sectt, New Delhi

- f) All attached /subordinate officers of the Ministry of Personnel Public Greivances and Pensions
- g) Ministry of Finance , Department of Expenditure wrt to their UO no.14(4)/2009-E-II(B) dated 26.3.2012
- h) All sections /desks of DOP&T
  - i) Department of ARP&G, for civil service news
  - j) Institute of Training and Management, JNU , New Delhi
  - k) AVD-I Section (150 spare copies)
- l) NIC, DOP&T, North Block, New Delhi for placing the above circular alongwith annexures on the Department's website.

**Revised Rates of Honorarium and other allowances payable to Inquiry Officer and Presenting Officers in Departmental Proceedings and Terms and conditions of grant of honorarium.**

1. The revised rates of honorarium payable in cases of departmental proceedings will be regulated within the range of rates indicated in the table below:

| Particulars/Details    |                           | Range of Rate per case Recommended by the Committee and Accepted by the Government (Rs per case)<br>(2) |                |
|------------------------|---------------------------|---------------------------------------------------------------------------------------------------------|----------------|
| I(a)                   | I(b)                      | Minimum<br>(a)                                                                                          | Maximum<br>(b) |
| Honorarium             | i)IO( serving –Pt time)   | i) 5000                                                                                                 | 10000          |
|                        | ii)IO (retired)           | ii)15000                                                                                                | 75000          |
|                        | iii)PO(serving – Pt time) | iii) 5000                                                                                               | 10000          |
| Transport Allowance    | i)IO (retired)            | i) 15000                                                                                                | 40000          |
| Secretarial Assistance | i)IO (retired)            | i) 30000 per case if no assistance is provided by department.                                           |                |

2. The grant of Honorarium in the case of serving Government servants who are appointed as part time Inquiry Officer/ Presenting Officer and retired Governments appointed as Inquiry Officers will be subject to the following conditions:-

- i. The honorarium will normally be regulated under the financial powers delegated to the Ministries/Departments and taking into account the quantum of work involved in individual disciplinary cases.
- ii. In the case where serving officers are appointed as IO/PO , the controlling department or the administrative department should make all efforts to relieve the IO/PO of his normal duties to enable him/her to complete the proceedings expeditiously.
- iii. Before the payment is received by Inquiry Officer/Presenting Officer, whether serving or retired, it will be the responsibility of the IO/PO to ensure that
  - a. All case records and inquiry report (two ink signed copies) properly documented and arranged is handed over to the Disciplinary Authority by the Inquiry Officer/Presenting Officer.



- b. The report returns findings on each of the Article of Charge which has been enquired into and should specifically deal and address each of the procedural objections, if any, raised by the charged officers as per the extant rules and instructions.
- c. In deciding the exact quantum of honorarium within the indicated range in the table above, the quantum and nature of work involved, rank of the Inquiry Officer, the complexity of the case, time taken for completion of the inquiry etc will have to be kept in view and the decision in this regard of the department disbursing the honorarium will be final. It may particularly be ensured that the full amount of honorarium pre decided to be paid as per the slab is not paid if the inquiry has not been completed within a period of six months. If there is a delay in completion of the inquiry which is not due to non-cooperation of the charged officer or due to stay orders, etc., the honorarium should be reduced by 50%.
- iv. The number of disciplinary cases may be restricted to 10 cases in a year, with not more than 2 cases at a time for serving Government servants and 20 cases with not more than 4 cases at a time for retired Government servants.
3. In addition to the terms and conditions indicated in para 2 above, the retired government servants appointed as IO shall maintain strict secrecy in relation to the documents he/she receives or information/data collected by him/her in connection with the Inquiry and utilise the same only for the purpose of Inquiry in the case entrusted to him/her. No such documents/information or data are to be divulged to any one during the Inquiry or after presentation of the Inquiry Report. The I.O. entrusted with the Inquiries will be required to furnish an undertaking to maintain strict secrecy and confidentiality of all records/documents/proceedings etc.

\*\*\*\*\*

No. 142/20/2008- AVD I  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel and Training)

\*\*\*\*\*

New Delhi, Dated the 27<sup>th</sup> July 2009

**OFFICE MEMORANDUM**

**Subject: Grant of Honorarium to Inquiry Officers/ Presenting Officers**

The undersigned is directed to refer to this department's OM no 134/4/99-AVD I dated 29<sup>th</sup> June 2001 and 7<sup>th</sup> April 2003 on the subject mentioned above and to say that the rates of honorarium payable to the IO /PO in the case of departmental inquiries were last revised vide OM dated 29<sup>th</sup> June 2001 in the case of serving Government Servants functioning as part time IO/PO and vide OM dated 7<sup>th</sup> April 2003 in the case of retired Govt Servants functioning as IO. :

2. The existing rates of honorarium as prescribed in the aforesaid OMs was reviewed in consultation with the Ministry of Finance. As a result of review, it has been decided to revise the existing rates of the honorarium, payable, to IO/PO. The rates of honorarium as revised are indicated in the table below:-

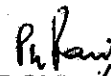
| Particulars                                             | Revised Rates ( per inquiry)                                             |
|---------------------------------------------------------|--------------------------------------------------------------------------|
| a) Inquiry Officer (Part time Serving Govt Servants)    | Rs. 3000/- Maximum<br>Rs.1500/- Minimum                                  |
| b) Presenting Officer (Part time Serving Govt Servants) | Rs.1500/- Maximum<br>Rs.750/- Minimum                                    |
| c) Retired Govt Servants as Inquiry Officers            | Rs.9750/ (lumpsum) Plus Rs. 1500/- for every additional charged officer. |

3 The grant of revised rates of honorarium as above will be subject to the same conditions stipulated vide para 4 of this Department's OM no 134/4/99-AVD-I dated 29<sup>th</sup> June 2001.

4. These orders will take effect from the date of issue and will also apply to inquiries in progress.

5. This issues with the concurrence of Ministry of Finance, Department of Expenditure, vide their ID no14(4)/2009-EII(B) 14.7.2009.

6. Hindi Version will follow.

  
(P.K Ravi)

Under Secretary to the Government of India  
Tel No 2309 4799.

To,

All Ministries/Departments [ As per Standard List]

Copy to:-

1. The Comptroller and Auditor General of India, New Delhi.
2. The Union Public Service Commission, New Delhi.
3. The Central Vigilance Commission, New Delhi.
4. Rajya Sabha Secretariat, New Delhi.
5. The Lok Sabha Secretariat, New Delhi.
6. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.
7. Ministry of Finance and Company Affairs, Department of Expenditure, E-II.(B) Branch with reference to their I.D. No. 14(4)/2009-E.II(B) dated 14<sup>th</sup> July. 2009.
8. All Sections of the Ministry of Personnel, Public Grievances and Pensions.
9. Department of Administrative Reforms and Public Grievances- for Civil Services News.
10. AVD.I Section, DOP&T, New Delhi (200 spare copies).
11. Computer Centre (NIC), DOPT, North Block with the request for putting it on the web.

*P.K. Ravi*

(P.K Ravi)

Under Secretary to the Government of India  
Tel No 2309 4799.

No. 420/01/2012-AVD-IV  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

North Block, New Delhi-110001.

Dated the 20<sup>th</sup> July, 2012.

**OFFICE-MEMORANDUM**

**Subject:-** Guidelines for checking delays in grant of sanction of prosecution – strict compliance thereof.

Attention is invited to this Department's O.M. Nos. 399/33/2006-AVD.III dated 06.11.2006 & 20.12.2006 and O.M. No. 372/19/2012-AVD.III dated 03.05.2012 on the subject cited above.

2. In a recent meeting taken by Secretary (Personnel) to review the cases for sanction of prosecution against public servants pending with various Ministries / Departments, the following issues emerged:-

(a) It was noted that in a significant no. of cases pertaining to banks and PSUs etc., the Disciplinary Authorities first decline the sanction and thereafter seek advice of CVC. This is in clear violation of DOP&T's instructions issued vide O.M. 399/33/2006-AVD.III dated 06.11.2006 wherein it is stipulated that the competent authority shall take a tentative view regarding the action to be taken and seek advice of CVC in the matter and on receipt of the advice from the CVC, the concerned Ministry / Department shall finalise its views. It is reiterated that before passing orders on requests for sanction for prosecution, the instructions issued by this Department are strictly adhered to.

(b) It was also noticed that various Ministries / Departments do not adhere to the stipulated time limit. It is imperative that the stipulated time limit must be strictly adhered to. The guidelines issued by DOPT vide O.M. No. 399/33/2006-AVD-III dated 06.11.2006 & 20.12.2006, have recently been modified vide O.M. No. 372/19/2012-AVD.III dated 03.05.2012 to empower the disciplinary authority to take final view in such matters within three months and that in disagreement cases DOPT's advice would be taken into account before passing final orders.

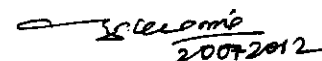
(c) Protracted correspondence made by the Administrative Ministries with the CBI/CVC for clarifications/reconsideration, etc. are strictly not necessary and disciplinary authority can, in most cases, take a decision on the basis of records which are available with it. As per the extant instructions, the Disciplinary Authority should not entertain representations from individuals themselves as this would be an endless process which often delays the matter and results in non-adherence to the prescribed time lines for processing such cases. **This Department's instruction dated 6<sup>th</sup> November, 2006 has clearly stated that the concerned Ministry/Department shall refer the case to CVC for reconsideration only in exceptional cases when new facts come to light.**



Cont'd...02

(d) The administrative Departments should avoid making repeated references to the CVC for reconsideration of their advice and, in all cases where they propose to disagree with the advice given by CVC, the matter should be promptly referred to the DoP&T (as a disagreement case), seeking DoP&T's views in the matter.

(e) Wherever, the disagreement cases are referred to DoP&T for views/ advice and once DoP&T gives its views, the Disciplinary Authority may have to take a considered final decision, keeping in view the advice given by DoP&T. The instructions contained in this Department's O.Ms dated 06.11.2006 and 20.12.2006, as modified O.M. dated 03.05.2012 in this regard shall be compiled with strictly by all Ministries/Departments.

  
2007-2012

(V.M. Rathnam)

Deputy Secretary(V-IV)

Tel.No. 23094637

1. All the Ministries / Departments of Government of India as per standard list.
2. Prime Minister's Office, South Block, New Delhi.
- ✓ 3. NIC, DoP&T for uploading on the website of the Department.

Copy to:

1. Secretary, Central Vigilance Commission, Satarkata Bhawan, New Delhi
2. Director, Central Bureau of Investigation, North Block, New Delhi
3. Others as per standard list.

No.372/19/2012-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

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North Block,  
New Delhi the 3<sup>rd</sup> May, 2012.

**OFFICE MEMORANDUM**

Subject: Guidelines for checking delay in grant of sanction for prosecution.

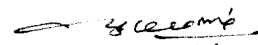
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Attention is invited to this Department's OMs No. 399/33/2006-AVD-III dated 6<sup>th</sup> November, 2006 and 20<sup>th</sup> December, 2006 on the subject mentioned above.

2. In terms of above instructions, the Competent Authority has to formulate its tentative views regarding the action to be taken on the request of the Investigating Agency and seek the advice of the CVC in the matter. The instructions further lay down that CVC would tender its advice within 10 days to the concerned administrative Ministry/Department, which shall finalise its view in the matter and issue orders accordingly. The instructions also lay down that the administrative Ministry/Department shall refer the case to CVC for reconsideration only in exceptional cases when new facts come to light and that CVC would render appropriate advice to the competent authority based on the findings of the expert committee, within a fortnight and that if the CVC on reconsideration advises for grant of sanction, the concerned Ministry/Department will issue the requisite orders immediately. The instructions further lay down that if the concerned administrative Ministry/Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to DoP&T for final decision and that the DoP&T shall decide the case within 3 weeks and convey its decision to the concerned Ministry/Department.

3. Government constituted a Group of Ministers (GoM), on 6<sup>th</sup> January, 2011 with the approval of the Prime Minister, to consider measures that can be taken by the Government to tackle corruption. One of the terms of reference (ToR) of the GoM was to consider and advise on "Fast tracking of all cases of public servants accused of corruption". The Group of Ministers, while considering this ToR, observed that it is imperative that cases of sanction for prosecution should be decided expeditiously and within the timeframe of 3 months. **The GoM, therefore, recommended that:-**

(a) In all cases where the Investigating Agency has requested sanction for prosecution and also submitted a draft



charge sheet and related documents along with the request, it will be mandatory for the competent authority to take a decision within a period of 3 months from receipt of request, and pass a Speaking Order, giving reasons for this decision.

(b) In the event that the competent authority refuses permission for sanction to prosecute, it will have to submit its order including reasons for refusal, to the next higher authority for information within 7 days.

Wherever the Minister-in-charge of the Department is the competent authority and he decides to deny the permission, it would be incumbent on the Minister to submit, within 7 days of passing such order denying the permission, to the Prime Minister for information.

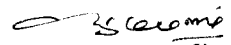
(c) It will be the responsibility of the Secretary of each Department/Ministry to monitor all cases where a request has been made for permission to prosecute. Secretaries may also submit a certificate every month to the Cabinet Secretary to the effect that no case is pending for more than 3 months, the reasons for such pendency and the level where it is pending may also be explained.

4. The said recommendation of the GoM has been accepted by Government with the approval of the Prime Minister. The Prime Minister has also directed that in cases of disagreement where the competent authority proposes to disagree with the investigating agency/CVC, the matter shall be referred to DoP&T and DoP&T's views in such cases must be communicated to the Competent Authority within such time as would enable the competent authority to pass the final speaking order within a period of three months.

5. As mentioned in para 2 above, the extant instructions have specified clear timelines for each stage of processing of such requests which also includes a period of three weeks for the DoP&T to finalise its views in cases of disagreement referred to it.

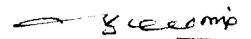
6. Accordingly, the above recommendations of the GoM as accepted by the Government and the instructions of the Prime Minister regarding timely communication of DoP&T's views in disagreement cases are brought to the notice of all Ministries/Departments for strict compliance.

7. As already pointed out in para 2(v) of this Department's OM dated 6<sup>th</sup> November, 2006, the responsibility of processing cases for sanction for



prosecution within the time limits laid down shall continue to remain with the administrative Ministries/Departments.

8. All Ministries/Departments shall henceforth ensure -
- (a) Strict compliance with the above procedure and timelines for sanctioning prosecution of public servants;
  - (b) Submission of a certificate every month by the Secretary of each Ministry/Department to the Cabinet Secretary to the effect that no case is pending for more than 3 months and wherever a case is pending for more than 3 months, the reasons for such pendency and the level where it is pending;
  - (c) Submission of disagreement cases, where the competent authority proposes to disagree with CVC, to the DoP&T giving at least three weeks time for DoP&T to finalise its views and communicate the same to the competent authority; and
  - (d) Submission of copies of orders refusing sanction to prosecute to the next higher authority (Prime Minister, in case of an order passed by a Minister-in-charge of a Ministry/Department), within seven days.



(V.M. Rathnam)

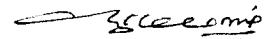
Deputy Secretary to the Government of India

Tel. No. 23094637

- 1. All Ministries/Departments of Government of India as per standard list.
- 2. Prime Minister's Office, South Block, New Delhi.
- 3. NIC, DoP&T for uploading on the website of the Department.

Copy to:-

- (i) Secretary, Central Vigilance Commission, Satarkata Bhawan, New Delhi.
- (ii) Director, Central Bureau of Investigation, North Block, New Delhi.
- (iii) Others as per standard list.



(V.M. Rathnam)

Deputy Secretary to the Government of India



No.372/14/2012-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

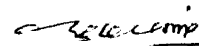
North Block,  
New Delhi the 1<sup>st</sup> May, 2012.

**OFFICE MEMORANDUM**

**Subject: Regulating parameters for exercise of discretionary powers  
enjoyed by Ministers at the Centre.**

Attention is invited to this Department's O.M. of even number dated 16<sup>th</sup> April, 2012 (copy enclosed) on the above subject, by which all Ministries/ Departments were requested to carry out an exercise for putting in place regulatory parameters for exercise of discretionary powers of Ministers and putting them in public domain so as to minimise arbitrariness in exercise of such powers.

- 2.(i) Wherever such guidelines have already been framed by the concerned Ministry/Department, a copy of the guidelines may be sent to this Department within 15 days.
- (ii) All Ministries/Departments which are yet to prepare appropriate guidelines in this regard are requested to do so within three months from the date of issue of this Office Memorandum.
- (iii) A confirmation to the effect that necessary exercise in this regard has been carried out and necessary guidelines have been framed and put in public domain may be sent to this Department within the said period.
- (iv) In case there is delay in finalisation of appropriate guidelines in this regard, the reasons for the delay may be indicated to this Department.



(V.M. Rathnam)

Deputy Secretary to the Government of India  
Tel. No. 23094637

1. All Ministries/Departments of Government of India as per standard list.
2. Prime Minister's Office, South Block, New Delhi.
3. NIC, DoP&T for uploading on the website of the Department.

No.372/14/2012-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

-----  
New Delhi, dated 16<sup>th</sup> April, 2012.

OFFICE MEMORANDUM

**Subject: Regulating parameters for exercise of discretionary powers enjoyed by Ministers at the Centre"**

The Government had constituted a Group of Ministers (GoM), on 6<sup>th</sup> January, 2011 with the approval of the Prime Minister to consider measures that can be taken by the Government to tackle corruption. One of the terms of reference (ToR) of the GoM was to consider and advise on "*Relinquishing discretionary powers enjoyed by Ministers at the Centre*".

2. The GoM reviewed information received from all Ministries/Departments as regards the discretionary powers enjoyed by the respective Ministries and, on the basis of the review has recommended that all *Ministries/Departments may carry out an exercise for putting in place regulating parameters for exercise of discretionary powers and putting them in public domain so as to minimize arbitrariness in exercise of such powers.*

3. The above recommendations of the GoM have been accepted by the Government and accordingly all Ministries are advised to put in place regulating parameters for exercise of discretionary powers, wherever such guidelines do not exist, and place them in public domain.

(N. Raja)

Deputy Secretary to the Government of India  
Tel No.011-23094542

1. All Ministries/Departments as per standard list.
2. Prime Minister's Office, South Block, New Delhi.
3. ✓ NIC, DOP&T for uploading on the website of the Department.

No.118/2/2011-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training  
---

North Block, New Delhi  
Dated, 31<sup>st</sup> January, 2012

OFFICE-MEMORANDUM

Subject: **Guidelines for checking delay in grant of sanction for prosecution.**

The Department of Personnel & Training had formulated guidelines for checking delay in grant of sanction for prosecution and issued the same under this Department's O.M. No. 399/33/2006-AVD-III dated 6<sup>th</sup> November, 2006. The guidelines lay down specific time limit at each stage of consideration/decision.

2. Para 2(i) of the guidelines clearly prescribe that the CBI would forward its final report of investigation to the CVC and also simultaneously endorse a copy of the report to the Administrative Ministry/Department concerned and the competent authority shall within three weeks formulate its tentative view regarding the action to be taken and seek the advice of the CVC in the matter.

3. It has come to the notice that some Ministries/Departments specially the Banking Sector are not following the said guidelines/instructions in true spirit. It has been observed that in few cases the competent authorities formally decline the sanction for prosecution and then refer the matter to the CVC for advice. It may be worth mentioning that once the competent authority takes a decision and communicates it to the CBI, the matter cannot be reviewed. Hence, it is important that the requisite consultation with CVC, etc. is completed before the Competent Authority takes a decision in the matter.

4. All Ministries/Departments are, therefore, advised to strictly adhere to the procedure laid down in the above mentioned OM and in para 3 above.

(N. Raja)

Deputy Secretary to the Govt. of India  
Tel. No. 23094542

To

All Ministries/Departments of Government of India as per standard list.

Copy to:

- (i) Secretary, CVC, Satarkata Bhawan, New Delhi.
- (ii) Director, CBI, CGO Complex, New Delhi
- ✓ (iii) NIC, DoP&T for uploading on the website of the Department.

Most Immediate

F. No. 219/12/2009-AVD.II  
Government of India  
Ministry of Personnel, P.G. & Pensions  
Department of Personnel & Training  
(AVD.II Desk)  
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**Dated: 19.01.2012**

Office Memorandum

Subject:- Authorization of the Central Government to file an application under Section 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property acquired by any person by means of the scheduled offence.

\*\*\*\*

The undersigned is directed to refer to this office OM of even number dated 13.05.2009 whereby instructions were issued regarding authorization of the Central Government to file an application under Section 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence by the person, who is employed in connection with affairs of the Union and is not removable from his office save by or with the sanction of the Central Government.

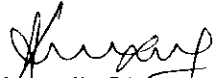
2. References have been received in this office pointing out the difficulties in the matter of authorization of the Central Government to file Authorization of the Central Government to file an application under Section 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence in respect of persons who retired before filing the charge sheet, or in the cases where the competent authority cannot be equated with the Central Government.

3. The matter has been examined in consultation with Ministry of Law & Justice (Deptt. of Legal Affairs) and position is clarified as below:-

- (i) In the case of retired public servants, even though the charge sheets are filed without obtaining sanction for prosecution under section 19(1) of the PC Act, 1988, the Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed should be competent to give authorization of the Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of money or property procured by means of scheduled offences.

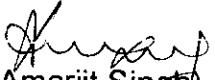
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- (ii) In the cases where the competent authority cannot be equated with the Central Government, the administrative Ministries of the concerned competent authorities should be competent to give authorization of the Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of money or property procured by means of scheduled offences.
- (iii) The cases, which are not covered by the above dispensation or under the instructions issued vide OM dated 13<sup>th</sup> May, 2009, may continue to be processed as per the practice prevalent before the issue of OM dated 13<sup>th</sup> May, 2009.

  
(Amarjit Singh)

Under Secretary (AVD-II)

1. All Ministries/Departments of the Government of India.
2. Director, CBI, CGO Complex, New Delhi.
3. Joint Director (Policy), CBI, Room No.27, North Block, New Delhi.
4. All Directors/Deputy Secretaries/Under Secretaries/Section Officers of the Vigilance Division, Deptt. of Personnel & Training, New Delhi.
5. Director, NIC, North Block, New Delhi with the request to put the OM on the website of DOPT under "Circulars" head of the Vigilance Division.
6. 100 Spare copies.

  
(Amarjit Singh)

Under Secretary (AVD-II)

No.372/19/2011-AVD-III(Pt.I)  
 Government of India  
 Ministry of Personnel, Public Grievances & Pensions  
 Department of Personnel & Training

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 New Delhi the 26<sup>th</sup> September, 2011.

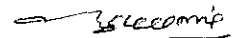
**OFFICE MEMORANDUM**

Subject: **Dispensing with second stage consultation with the CVC in disciplinary cases.**

The Government had constituted a Group of Ministers (GoM), on 6<sup>th</sup> January, 2011 with the approval of the Prime Minister to consider measures that can be taken by the Government to tackle corruption. One of the terms of reference (ToR) of the GoM was to consider and advise on "*Fast tracking of all cases of public servants accused of corruption*". The GoM, while considering this (ToR) also considered certain important recommendations of the Hota Committee (*Committee of Experts to review the procedure of Disciplinary/Vigilance Inquiries and recommended measures for their expeditious disposal*) and decided that second stage consultation with CVC in disciplinary matters may be dispensed with. However, in those cases where consultation with UPSC is not required as per extant rules/instructions, the second stage consultation with CVC should continue.

The above recommendation of the GoM has been accepted by the Government with the approval of the Prime Minister. All Ministries/Departments are, therefore, advised to strictly adhere to the new procedure with immediate effect.

The Central Vigilance Commission has been separately requested to amend its Vigilance Manual and other relevant instructions accordingly.

  
 (V.M. Rathnam)

Deputy Secretary to the Government of India  
 Tel. No. 011-23094637

To

1. All Ministries/Departments as per standard list.
2. Central Bureau of Investigation, CGO Complex, New Delhi.
3. Prime Minister's Office, South Block, New Delhi.
4. ✓ NIC, DoP&T for uploading on the website of the Department.

Copy to:-

1. Central Vigilance Commission, Satarkata Bhawan, New Delhi.

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No. 372/19/2011-AVD-III(Pt.I)  
Government of India  
Ministry of Personnel, Public Grievances and Pension  
Department of Personnel and Training

New Delhi, the 26<sup>th</sup> September, 2011

**OFFICE MEMORANDUM**

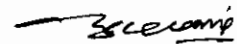
**Subject: Permission to initiate investigation by the CBI in respect of officers of the rank of Joint Secretary and above serving the Central Government – Provisions of section 6A of the Delhi Special Police Establishment (DSPE) Act, 1946 – recommendations of the Group of Ministers – regarding**

The undersigned is directed to state that the provision of section 6A of the DSPE Act, 1946 provides for safeguarding senior public officials against undue and vexatious harassment by the investigating agency. It had been observed that the requests being made by the investigating agency under said provision were not being accorded due priority and the examination of such proposals at times lacked objectivity. The matter was under consideration of the Group of Ministers constituted to consider measures that can be taken by the Government to tackle Corruption.

The Government has accepted the following recommendation of the Group of Ministers, as reflected in para 25 of the First Report of the Group of Ministers:-

- (a) The competent authority shall decide the matter within three months of receipt of request accompanied with relevant documents
- (b) The competent authority will give a Speaking Order, giving reasons for its decision
- (c) In the event a decision is taken to refuse permission, the reasons thereof shall be put up to the next higher authority for information within one week of taking the decision
- (d) Since section 6A specifically covers officers of the Central Government, above the rank of Joint Secretary, the competent authority in these cases will be the Minister in charge in the Government of India. In such cases, intimation of refusal to grant permission along with reasons thereof, will have to be put up to the Prime Minister.

The above decision of the Government is brought to the notice of all Ministries/Departments for due adherence and strict compliance.



(V.M. Rathnam)

Deputy Secretary to the Government of India

Tel. No. 23094637

1. Secretaries, all Ministries/Departments – as per standard Mailing list
2. Secretary, Central Vigilance Commission, Satarkata Bhawan, INA, New Delhi
3. Joint Director, CBI, North Block New Delhi
4. CVOs of all Ministries/Departments.
5. NIC, DoP&T for uploading on the website of the Department.

...

No.372/19/2011-AVD-III(Pt.I)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

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New Delhi the 26<sup>th</sup> September, 2011.

**Subject: Appointment of Inquiry Officers (IOs) and Presenting Officer (POs) in disciplinary cases.**

The Government had constituted a Group of Ministers (GoM), on 6<sup>th</sup> January, 2011 with the approval of the Prime Minister to consider measures that can be taken by the Government to tackle corruption. One of the terms of reference (ToR) of the GoM was to consider and advise on "*Fast tracking of all cases of public servants accused of corruption*". The GoM, while considering this ToR also considered certain important recommendations of the Hota Committee (*Committee of Experts to review the procedure of Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal*) and recommended that Departments/Ministries should primarily use serving officers as IOs & POs and that in important cases, they may request CVC to appoint their CDI as IO. The GoM has also recommended that the CVC may also maintain a panel of IOs/POs from amongst retired officers, whose services can also be utilized by various Ministries/Departments.

The above recommendations of the GoM have been accepted by the Government and accordingly all Ministries/Departments are advised to use serving officers as IOs & POs and in important cases, request the CVC to appoint their CDI as IO. They may also, in appropriate cases, utilize the services of IOs/POs who would be available on the panel to be maintained by CVC, in consultation with CVC.



(V.M. Rathnam)

Deputy Secretary to the Government of India  
Tel. No. 011-23094637

To

1. All Ministries/Departments as per standard list.
2. Central Vigilance Commission, Satarkata Bhawan, New Delhi.
3. Central Bureau of Investigation, CGO Complex, New Delhi.
4. Prime Minister's Office, South Block, New Delhi.
5. NIC, DoP&T for uploading on the website of the Department.

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Most Immediate

No.104/33/2005-AVD.I  
Government of India  
Ministry of Personnel & Public Grievances & Pensions  
(Department of Personnel & Training)

New Delhi, Dated September 7 , 2011

OFFICE MEMORANDUM

Subject:- Guidelines regarding grant of 'Vigilance Clearance' to AIS Officers.

The undersigned is directed to say that it has been decided by the Government that officers who have not submitted the annual property returns in time would be denied vigilance clearance and will not be considered for empanelment for senior level posts in Government of India. Accordingly, this Department's OM No. 104/33/2005-AVD.I, dated 29/10/2007, laying down guidelines regarding grant of vigilance clearance to AIS officers, is hereby amended as under:

In para 2 of DOP&T OM No. 104/33/2005-AVD.I, dated 29/10/2007, a new sub-para (f) will be inserted as under:

(f) Vigilance clearance shall be denied to an officer if he fails to submit his annual immovable property return of the previous year latest by 31<sup>st</sup> January of the following year, as required under Government of India decisions under Rule 16 of the All India Services (Conduct) Rule, 1968.

  
(Kabindra Joshi)  
Under Secretary

Prime Minister's Office (W.r.t. their I.D. No. 600/31/C/33/2011-ES2,  
dated 15.03.2011)

Cabinet Secretariat  
Ministry of Home Affairs  
Ministry of Environment & Forests  
Secretary, Central Vigilance Commission

Copy to:

- (i) PS to MOS(PP)
- (ii) Secretary(P)
- (iii) AS(S&V)
- (iv) EO & AS
- (v) JS(V)

No.372/21/2009-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & pensions  
Department of Personnel & Training

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North Block,  
New Delhi, dated 12<sup>th</sup> October, 2010

**OFFICE MEMORANDUM**

**Subject: Allowing vigilance functionaries on deputation to CPSEs the option to draw pay either in the scale of pay of the CPSE concerned or pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any – Cabinet decision - reg.**

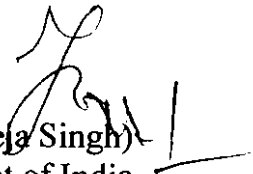
The Government had set up a Committee (2<sup>nd</sup> Pay Revision Committee) to examine and recommend changes in the pay structure, allowances, perks and benefits of the Central Public Sector Enterprises (CPSE) employees. The recommendations of the Committee were considered by the Department of Public Enterprises (DPE) and also by the Cabinet. Based on the decision of the Cabinet, the DPE had issued an O.M. No. 2(70)/08-DPE(WC) on 26<sup>th</sup> November, 2008, proclaiming the revised pay structure in CPSEs.

2. As per para 12 read with para (iv) of Annex. -IV of the above O.M., only those Government officers who come on permanent absorption basis, will get the CPSE scales, perks and benefits. However, as per guidelines for appointment of CVOs in CPSEs etc issued by DoP&T vide their OM No. 372/8/99-AVD-III dated 18<sup>th</sup> January, 2001, the CVOs are allowed to exercise their options to draw the pay of the post in the CPSE or their grade pay. This provision is based on the policy that the CVOs are to be posted on deputation from outside the organisation and they are not allowed to be permanently absorbed in that CPSE.

3. This issue was considered by the Cabinet in its meeting held on 5<sup>th</sup> October, 2010, which decided that **the Department of Public Enterprises's O.M. No. 2(70)/08-DPE(WC) dated 26.11.2008 stand amended to the effect that -**

- (i) **CVOs and other officers on deputation to the Vigilance Departments of CPSEs may be allowed the option of electing to draw either the pay of the post in the scale of pay of the CPSE concerned or pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any.**

- (ii) **The CVOs and other officers on deputation to the Vigilance Departments in CPSEs may also be allowed all the perks, benefits & perquisites applicable to equivalent level of officers in concerned CPSEs.**

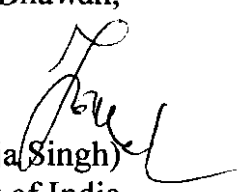
  
(Teja Singh)

Under Secretary to the Government of India  
Tel. No. 23093846

1. Shri Bhaskar Chatterjee, Secretary, Department of Public Enterprises, CGO Complex, Lodhi Road, New Delhi.
2. All Ministries/Departments of the Government of India.
3. Secretary, Central Vigilance Commission, Satarkata Bhawan, New Delhi.
4. NIC Cell with the request to upload the same on the Website of the Ministry.

Copy also to:-

1. Prime Minister's Office (Ms. V. Vidyavathi, Director) South Block, New Delhi.
2. Cabinet Secretariat, (Shri K.L. Sharma, Director), Rashtrapati Bhawan, New Delhi.

  
(Teja Singh)

Under Secretary to the Government of India

**F.No. 372/3/2007-AVD.IH**  
**Government of India**  
**Ministry of Personnel, PG & Pensions**  
**Department of Personnel & Treaining**

**Dated the 3<sup>rd</sup> June, 2010**

**NOTICE**

**In pursuance of the 2<sup>nd</sup> Administrative Reforms Commission's 4<sup>th</sup> Report titled "Ethics in Governance", the Government has set up a Committee of Experts under the Chairmanship of Shri P.C. Hota, former Chairman, UPSC, with Shri Arvind Varma, former Secretary(Personnel) and Shri P. Shanker, former Central Vigilance Commissioner as its Members, to examine and suggest measures to expedite the process involved in Disciplinary/Vigilance Proceedings. A background note on the subject matter is attached. Interested parties are welcome to offer their suggestions/comments, if any, latest by 20<sup>th</sup> June, 2010, for consideration of the Committee. The response may be sent to :**

**Shri V.K. Velukutty**  
**Deputy Secretary(V.III), DOPT,**  
**Room No.10-B/II, North Block,**  
**New Delhi-110001.**  
**([www.persmin.nic.in](http://www.persmin.nic.in)).**

**(Dr. S.K. Sarkar)**  
**Additional Secretary(S&V)**  
**Tel. No. 23094010**

## **Background Note on need for Review of Disciplinary Proceedings.**

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The Government has set up a Committee of Experts on May 12, 2010 to examine and suggest measures to expedite the process involved in Disciplinary/Vigilance Proceedings.

### **Disciplinary proceedings, time frame and reality**

2.. The detailed procedure for imposing penalties has been laid down in CCA(CSS) Rule, 1965 in the case of Central Government employees and in the All India Services (Discipline & Appeal) Rules, 1969 in the case of All India Services. These procedures do not, however, prescribe any time limit for completion of the process for imposing penalty.

3. Nevertheless, the DOPT have prescribed a time frame of 14 months for imposing such penalties as indicated below :

- a) Issue of Charge Sheet where CVC is required to be consulted - 3 months.
- b) Issue of Charge Sheet where CVC is not required to be consulted - 2 months.
- c) Appointment of IO/PO - Immediately after receipt of Written Statement of Defence.
- d) Completion of Inquiry and submission of Report by the Inquiry Officer - 6 months.
- e) Issue of final orders where UPSC is not required to be consulted - 2 months.
- f) Issue of final orders where UPSC is to be consulted - 1 month from the date of receipt of advice.

4. In contrast, the CVC manual prescribed a realistic time schedule of nearly 25 months for completion of the Disciplinary Proceedings (DP). In January 2009 the CVC has also suggested that in the normal circumstances, the conclusion of disciplinary proceedings should be reached within a time frame of two years from the date of inception to the stage of issuance of final orders. This time frame does not exactly take into account the time to be taken by the UPSC in rendering its advice on a reference made to it.

5. In practice, the time taken for completion of disciplinary proceedings is more than what has been prescribed. In its 4<sup>th</sup> Report on Ethics in Governance, the Second ARC, commented adversely on the enormous time taken in concluding the DP. It has also quoted a study conducted by IIPA whose findings are:

- In 116 cases studied, the average time taken between reference to CVC for the “first stage advice” and receipt of the advice in cases studied was 170 days (three cases apparently involved imposition of minor penalty).
- In 234 cases involving proceedings for a major penalty the average time taken between appointment of the Inquiry Officer and completion of inquiry was 584 days.
- In 56 cases the average time taken from receipt of the inquiry report to sending the case to the CVC for “second stage advice” was 288 days.
- In 33 cases the average time taken between the date of occurrence of misconduct and sending the cases to the CVC for “first stage advice” was 1284 days.
- Analysis of certain completed cases revealed the following break-up of time taken by various agencies :
 

|                           |   |     |
|---------------------------|---|-----|
| Administrative Department | - | 69% |
| Inquiry Officer           | - | 17% |
| CVC                       | - | 9%  |
| UPSC                      | - | 5%  |

### **Areas where time reduction is possible**

6. In consultation with CVC/UPSC, the DOPT has identified some areas where reduction of time is possible, which are discussed below :

- The present requirement of consultations with the CVC could be reduced to a Single-Stage Consultation. The single-stage consultation with CVC could be at the initial stage itself, where the DA after conducting a preliminary inquiry at his level or after collecting the facts of the case should approach the CVC. Considering the preliminary inquiry report or the facts of the case before it, as may have been submitted by the DA, the CVC should be in a position to firm up its advice to the DA in a holistic manner, i.e., whether the particular case needs to be pursued or dropped by simply issuing a recordable warning, or the DA should go ahead with the disciplinary proceedings for imposing a minor penalty or major penalty. This will ensure that the Government servant concerned is not unnecessarily victimized by the Department by initiating a disciplinary proceeding even in a weak case and simultaneously, guiding the DA appropriately from vigilance angle. Thereafter, wherever, the DA wants to disagree with the advice of CVC, on the basis of the outcome of Inquiry conducted by him, only in such cases he should again consult the CVC for reconsideration of its earlier advice.
- At present there are four types of penalties causing reduction in pay one way or the other, i.e., 2 under the classification of “Minor Penalties” and 2 under the classification of “Major Penalties”. Out of these, one penalty is “Withholding of increment of pay”. If the intention of these four penalties is to cause pecuniary loss to the charged officer, as a punishment, the purpose can be served by imposing the existing penalty of “Withholding of increment” alone

under the classification of "Minor Penalties". There appears to be no need for retaining the other three forms of penalty causing reduction in pay (i.e. one under "Minor Penalties" and 2 under "Major Penalties"). In such a situation, if the DA feels that there is a need for imposing a harsher penalty on the charged officer, even under the classification of "Minor Penalties", then he may consider imposing the penalty of "Withholding of increments" for more number of years in a graded form, depending on the gravity of the charges. At present there is no limit prescribed for the penalty of "Withholding of increments". It is suggested that if the other three forms of penalty of causing reduction in pay are to be deleted, then we may consider fixing the Penalty of "Withholding of increments" for a maximum period of 3 years. There is no need for any Penalty like "Withholding of increments with cumulative effect."

Compulsory Retirement is a penalty under the classification of "Major Penalties". Article 311 of the Constitution states about the need for consultation with UPSC only in the case of demotion, removal and dismissal of civil servants. There appears to be no need for retaining "Compulsory Retirement" as a form of penalty. This is so because, a Government servant who is compulsorily retired as a major penalty, will get all his retirement benefits. Therefore, it has very little or no deterrent effect on the charged officer and also not serving the original purpose of awarding punishment for a major misconduct. In other words, it is as if Government is sending home a disgraced Government servant almost in an honourable way even while awarding him major punishment. In this way, such Government servants may feel a sense of comfort and security even while indulging in wrong doings with malafide intention because they know that even if they are Compulsorily Retired from service, they would get full pensionary benefits. It is, therefore, felt it should be deleted from the CCA(CCS) Rule because the penalty of "Compulsory Retirement" does not actually work as a deterrent. If the DA considers that a major penalty has to be imposed on the charged officer for a major misconduct, then he should take recourse to imposing penalty of Demotion or Removal or Dismissal from service. This would also give out a clear message to all the Government servants the severe consequence of their wrong doings with deliberate intention. As for dealing with the inefficient employees, there is already a provision under FR 56(j) vide which the central Government can retire such employees compulsorily.

- The present need for consultation with UPSC in case of imposition of Minor Penalty can be done away with by suitably amending the Union Public Service Commission(Exemption from Consultation) Regulations, 1958.
- The Penalties mentioned under Rule 11 of CCS(CCA) Rules, 1965 should be reclassified as under :

## Minor Penalties -

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders; and
- (iv) Withholding of increment of pay upto a period maximum of five years.

*Note : As has been mentioned in para 13(e), the UPSC is not in favour of altering the existing list of penalties. However, the DOPT's view is that in order to ensure equity of justice in all disciplinary cases in the Central Government, uniformly, it is necessary to prescribe certain yardstick in the matter of awarding penalties by the DA - rather than giving full discretion to the DA in this regard in the garb of application of mind. This is so because experience show that different DAs have imposed in the past different types of punishment for the same misconduct or offence - e.g. while one DA in one Department had imposed Major penalty on the accused found guilty in a forged LTC claim, the DA in another had dropped the charges against the accused found guilty of a forged TA claim on the ground that the charged officer had refunded the unutilized amount of TA advance. In order to avoid such aberrations, deliberately caused by some DAs, it is felt necessary that at least in the case of minor penalty of stoppage of increments, we may prescribe the following limitations:*

### *"Stoppage of increments*

- (a) upto a maximum of one year on charges of insubordination;*
- (b) upto two years on charges of lack of devotion to duty; and*
- (c) upto three years on charges of inability to maintain absolute integrity but not causing pecuniary loss to public exchequer and embarrassment to Government."*

## Major Penalties -

- (v) Demotion to a lower grade with or without cumulative effect.
- (vi) Removal from service which shall not be a disqualification for future employment under the Government;
- (vii) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which the charge of possession of assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or



forbearing to do any official act is established, the penalty mentioned in Clauses (v) or (vi) shall be imposed.

- The Inquiry Officers are usually the serving Government officers or the retired Government servants. In the case of serving officers, they have to do the job as additional work. Some of them being very busy with their own routine work, may not be in apposition to devote adequate time for completing the assignment on time. At the same time, there are some other officers who are comparatively not all that busy and willing to take up such challenging assignments. So, also is the case in respect of Defence Assistants. If the DA receives adequate attention from the IO and the Defence Assistant, it is possible to reduce the present time lag to some extent by fast tracking the inquiry. However, the present instructions of DOPT restricts the number of cases which can be taken up by a Government servant as an Inquiry Officer. In the case of a serving officer, he can take up only two cases at a time and a total of 10 cases in a year; and a retired officer can take up only 4 cases at a time and 20 cases in a year. In the case of Defence Assistant the Government servant can take up such assignments only upto 4 at a given time. Similarly, in the case of a retired Government servant, he cannot act as Defence Assistant in more than 7 cases at a time. If some one is willing to do more work in this area, this should be encouraged, and consequently the disciplinary cases could be finalized expeditiously.
- As per DOPT's OM No.142/20/2008-AVD.I dated 27.7.2009 regarding payment of honorarium for completion of a departmental inquiry, an Inquiry Officer (who is a serving Government servant) gets Rs.3000/-; a Presenting Officer (who is a serving Govt. Servant) gets Rs.1500/- and a Retired Govt. servant functioning as Inquiry Officer gets Rs.9750/- (plus Rs.1500/- for every additional charged officer). Except the above standard rate, there is no other special incentive for completion of the inquiry expeditiously. In order to encourage the above officers to complete the inquiry within a time frame, it is suggested that those who complete their job on time, may be considered for grant of additional payment in the form of incentive, i.e., up to an amount equivalent to the above rates in each case.
- The Disciplinary Authority normally begins the search for a suitable officer for appointment as Inquiry Officer in a particular case only after a specific case has been brought to his notice. The scouting for such officer and his subsequent appointment as Inquiry Officer also involves a substantial amount of time. If a system is built up, whereby the information about availability of a willing officer for taking up the assignment of inquiries is known ex ante, by maintaining a centralized data base which is accessible to the all the Disciplinary Authorities, the delay in getting suitable officer may be minimized.

Some of the accused employees deliberately delay the inquiry proceedings by seeking extension of time/adjournment of hearings

quoting various reasons including on medical grounds. At present, there are no restrictions on grant of the total number of such extensions/adjournments. The Government may consider putting some restrictions on the number of extensions in this regard. The Inquiry Officer shall entertain requests for extension of time/adjournments only in cases of unforeseen circumstances like hospitalization of the accused employee for indoor treatment in CGHS approved hospitals. Even in those cases also, number of extensions including adjournments should be normally limited to a maximum of three in total in the entire life of an inquiry and the interval between two extensions should not be more than one month.. Any request beyond this limit should be deemed to be a non-cooperative attitude of the accused employee, and the Inquiry Officer may feel free (unless there is no extraneous situation due to act of God) to conduct the inquiry ex-parte after informing the accused employee of the same.

- On the line of proceedings under Cr.P.C., where some of the accused persons are allowed to become prosecution witnesses for facilitating smooth and correct conclusion of the inquiry proceedings, whereby they become eligible for lesser punishment, we should also consider introducing a system of "plea bargaining" with the charged officer, under the CCA(CCS) Rules. Under such a system, if the charged officer accepts the charge, he can be punished by the DA straightaway, without entering into any lengthy disciplinary proceedings, thus saving a lot of financial resources to the public exchequer. In return of this help, Government should consider awarding to such persons only a lesser punishment than otherwise warranted. This way, many disciplinary cases can be concluded and disposed of expeditiously.
- To prevent repetitive and avoidable movement of files for higher approvals (as of the Minister in-charge), in the initial stage itself, clearance be sought for proceeding with the disciplinary action and appointment of X, Y or Z as Inquiry Officer in the event of the employee not admitting the charge(s) against him.
- The Union Public Service Commission (Exemption from Consultation) Regulations, 1958 should be suitably amended in order that the requirement of consultation with UPSC in case of imposing Minor Penalties, is done away with.
- The DA may consider issuing appropriate instructions to the Inquiry Officer about the need for conducting disciplinary inquiry on day-to-day basis in important cases of urgent nature involving substantial financial loss to the Government.
- At present, there is no regular practice of giving in the ACRs any special credit for the efforts made by the Inquiry Officers/Defence

Assistants/Presenting Officers in completion of disciplinary proceedings. This is because in many cases, the Reporting Officers/Reviewing Officers may not be even informed of the correct position. It is, therefore, suggested that an additional column should be provided in the existing ACR form for enabling the Reporting Officer to specifically make some remarks/comments on the efforts made by the officer reported upon, in helping the Government in completion of inquiry proceedings.

The DOPT's instructions contained in OM No. 2/6/2009-Estt.(Pay.II) dated 25.2.2009 restricts the total deputation period upto 5 years. It may be mentioned that such instructions are meant for compliance by the normal Departments/Ministries of Government of India in order to maintain uniformity on deputation tenure. However, the work of CVC being a typically investigative in nature, there is need for continuity to a greater extent; otherwise it will adversely hamper the functioning of the Commission. It is, therefore, felt that essential the above restrictions on total tenure of deputation for general application, should not be made applicable to the Commission so that the Government's larger interest of carrying out its vigilance administration work by CVC is not adversely affected. In other words, the CVC should be exempted from the purview of DOPT's OM dated 25.2.2009 regarding ceiling of deputation period.

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डा. एस. के. सरकार  
Dr. S.K. Sarkar

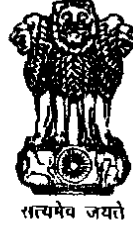
अपर सचिव

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DEPARTMENT OF PERSONNEL & TRAINING  
MINISTRY OF PERSONNEL  
PUBLIC GRIEVANCES AND PENSIONS  
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<http://www.persmin.nic.in>

Dated the 19<sup>th</sup> May, 2010

**D.O. No. 372/3/2007-AVD-III**

Dear Chief Secretary,

While considering the various recommendations contained in the 2<sup>nd</sup> Administrative Reforms Commission's 4<sup>th</sup> Report titled "Ethics in Governance, the Core Group on Administrative Reforms (CGAR) suggested that "disciplinary action should be completed within one year time frame, and that the DOPT will suitably put up a note on Disciplinary Proceedings on how to reduce the time frame to one year". Pursuant to this, on May 12, 2010, the Government has set up a Committee of Experts under the chairmanship of Shri P.C. Hota, former Chairman, UPSC with Shri Arvind Varma, former Secretary(Personnel) and Shri P. Shankar, former Central Vigilance Commissioner as its Members, to examine and suggest measures to expedite the process involved in Disciplinary/Vigilance Proceedings.

2. In this regard, I am to request you to kindly furnish your suggestions/comments, if any, latest by 5<sup>th</sup> June, 2010 so that the same could be consolidated by us, and submitted for consideration of the Committee of Experts. A background note is annexed for consideration. You may send your response at the following address:-

Shri V.K. Velukutty,  
Deputy Secretary(V-III), DOPT,  
Room No. 10-B/II, North Block  
New Delhi-110001.  
E-mail : [vkvkutty@nic.in](mailto:vkvkutty@nic.in)

With regards,

Yours sincerely,

  
(Dr. S.K. Sarkar)

To

(1) All Cadre Controlling Authorities/Ministries/Departments.

✓(2) Chief Secretaries of State Govts./UTs.

## **Background Note on need for Review of Disciplinary Proceedings.**

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The Government has set up a Committee of Experts on May 12, 2010 to examine and suggest measures to expedite the process involved in Disciplinary/Vigilance Proceedings.

### **Disciplinary proceedings, time frame and reality**

2.. The detailed procedure for imposing penalties has been laid down in CCA(CSS) Rule, 1965 in the case of Central Government employees and in the All India Services (Discipline & Appeal) Rules, 1969 in the case of All India Services. These procedures do not, however, prescribe any time limit for completion of the process for imposing penalty.

3. Nevertheless, the DOPT have prescribed a time frame of 14 months for imposing such penalties as indicated below :

- a) Issue of Charge Sheet where CVC is required to be consulted - 3 months.
- b) Issue of Charge Sheet where CVC is not required to be consulted - 2 months.
- c) Appointment of IO/PO - Immediately after receipt of Written Statement of Defence.
- d) Completion of Inquiry and submission of Report by the Inquiry Officer - 6 months.
- e) Issue of final orders where UPSC is not required to be consulted - 2 months.
- f) Issue of final orders where UPSC is to be consulted - 1 month from the date of receipt of advice.

4. In contrast, the CVC manual prescribed a realistic time schedule of nearly 25 months for completion of the Disciplinary Proceedings (DP). In January 2009 the CVC has also suggested that in the normal circumstances, the conclusion of disciplinary proceedings should be reached within a time frame of two years from the date of inception to the stage of issuance of final orders. This time frame does not exactly take into account the time to be taken by the UPSC in rendering its advice on a reference made to it.

5. In practice, the time taken for completion of disciplinary proceedings is more than what has been prescribed. In its 4<sup>th</sup> Report on Ethics in Governance, the Second ARC, commented adversely on the enormous time taken in concluding the DP. It has also quoted a study conducted by IIPA whose findings are:

- In 116 cases studied, the average time taken between reference to CVC for the "first stage advice" and receipt of the advice in cases studied was 170 days (three cases apparently involved imposition of minor penalty).
- In 234 cases involving proceedings for a major penalty the average time taken between appointment of the Inquiry Officer and completion of inquiry was 584 days.
- In 56 cases the average time taken from receipt of the inquiry report to sending the case to the CVC for "second stage advice" was 288 days.
- In 33 cases the average time taken between the date of occurrence of misconduct and sending the cases to the CVC for "first stage advice" was 1284 days.
- Analysis of certain completed cases revealed the following break-up of time taken by various agencies :
 

|                           |   |     |
|---------------------------|---|-----|
| Administrative Department | - | 69% |
| Inquiry Officer           | - | 17% |
| CVC                       | - | 9%  |
| UPSC                      | - | 5%  |

#### **Areas where time reduction is possible**

6. In consultation with CVC/UPSC, the DOPT has identified some areas where reduction of time is possible, which are discussed below :

- The present requirement of consultations with the CVC could be reduced to a Single-Stage Consultation. The single-stage consultation with CVC could be at the initial stage itself, where the DA after conducting a preliminary inquiry at his level or after collecting the facts of the case should approach the CVC. Considering the preliminary inquiry report or the facts of the case before it, as may have been submitted by the DA, the CVC should be in a position to firm up its advice to the DA in a holistic manner, i.e., whether the particular case needs to be pursued or dropped by simply issuing a recordable warning, or the DA should go ahead with the disciplinary proceedings for imposing a minor penalty or major penalty. This will ensure that the Government servant concerned is not unnecessarily victimized by the Department by initiating a disciplinary proceeding even in a weak case and simultaneously, guiding the DA appropriately from vigilance angle. Thereafter, wherever, the DA wants to disagree with the advice of CVC, on the basis of the outcome of Inquiry conducted by him, only in such cases he should again consult the CVC for reconsideration of its earlier advice.
- At present there are four types of penalties causing reduction in pay one way or the other, i.e., 2 under the classification of "Minor Penalties" and 2 under the classification of "Major Penalties". Out of these, one penalty is "Withholding of increment of pay". If the intention of these four penalties is to cause pecuniary loss to the charged officer, as a punishment, the purpose can be served by imposing the existing penalty of "Withholding of increment" alone under the classification of "Minor Penalties". There appears to be no

need for retaining the other three forms of penalty causing reduction in pay (i.e. one under "Minor Penalties" and 2 under "Major Penalties"). In such a situation, if the DA feels that there is a need for imposing a harsher penalty on the charged officer, even under the classification of "Minor Penalties", then he may consider imposing the penalty of "Withholding of increments" for more number of years in a graded form, depending on the gravity of the charges. At present there is no limit prescribed for the penalty of "Withholding of increments". It is suggested that if the other three forms of penalty of causing reduction in pay are to be deleted, then we may consider fixing the Penalty of "Withholding of increments" for a maximum period of 3 years. There is no need for any Penalty like "Withholding of increments with cumulative effect."

- Compulsory Retirement is a penalty under the classification of "Major Penalties". Article 311 of the Constitution states about the need for consultation with UPSC only in the case of demotion, removal and dismissal of civil servants. There appears to be no need for retaining "Compulsory Retirement" as a form of penalty. This is so because, a Government servant who is compulsorily retired as a major penalty, will get all his retirement benefits. Therefore, it has very little or no deterrent effect on the charged officer and also not serving the original purpose of awarding punishment for a major misconduct. In other words, it is as if Government is sending home a disgraced Government servant almost in an honourable way even while awarding him major punishment. In this way, such Government servants may feel a sense of comfort and security even while indulging in wrong doings with malafide intention because they know that even if they are Compulsorily Retired from service, they would get full pensionary benefits. It is, therefore, felt it should be deleted from the CCA(CCS) Rule because the penalty of "Compulsory Retirement" does not actually work as a deterrent. If the DA considers that a major penalty has to be imposed on the charged officer for a major misconduct, then he should take recourse to imposing penalty of Demotion or Removal or Dismissal from service. This would also give out a clear message to all the Government servants the severe consequence of their wrong doings with deliberate intention. As for dealing with the inefficient employees, there is already a provision under FR 56(j) vide which the central Government can retire such employees compulsorily.
- The present need for consultation with UPSC in case of imposition of Minor Penalty can be done away with by suitably amending the Union Public Service Commission(Exemption from Consultation) Regulations, 1958.
- The Penalties mentioned under Rule 11 of CCS(CCA) Rules, 1965 should be reclassified as under :

## Minor Penalties -

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders; and
- (iv) Withholding of increment of pay upto a period maximum of five years.

*Note : As has been mentioned in para 13(e), the UPSC is not in favour of altering the existing list of penalties. However, the DOPT's view is that in order to ensure equity of justice in all disciplinary cases in the Central Government, uniformly, it is necessary to prescribe certain yardstick in the matter of awarding penalties by the DA - rather than giving full discretion to the DA in this regard in the garb of application of mind. This is so because experience show that different DAs have imposed in the past different types of punishment for the same misconduct or offence - e.g. while one DA in one Department had imposed Major penalty on the accused found guilty in a forged LTC claim, the DA in another had dropped the charges against the accused found guilty of a forged TA claim on the ground that the charged officer had refunded the unutilized amount of TA advance. In order to avoid such aberrations, deliberately caused by some DAs, it is felt necessary that at least in the case of minor penalty of stoppage of increments, we may prescribe the following limitations:*

### *"Stoppage of increments*

- (a) upto a maximum of one year on charges of insubordination;*
- (b) upto two years on charges of lack of devotion to duty; and*
- (c) upto three years on charges of inability to maintain absolute integrity but not causing pecuniary loss to public exchequer and embarrassment to Government."*

## Major Penalties -

- (v) Demotion to a lower grade with or without cumulative effect.
- (vi) Removal from service which shall not be a disqualification for future employment under the Government;
- (vii) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which the charge of possession of assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in Clauses (v) or (vi) shall be imposed.



- The Inquiry Officers are usually the serving Government officers or the retired Government servants. In the case of serving officers, they have to do the job as additional work. Some of them being very busy with their own routine work, may not be in apposition to devote adequate time for completing the assignment on time. At the same time, there are some other officers who are comparatively not all that busy and willing to take up such challenging assignments. So, also is the case in respect of Defence Assistants. If the DA receives adequate attention from the IO and the Defence Assistant, it is possible to reduce the present time lag to some extent by fast tracking the inquiry. However, the present instructions of DOPT restricts the number of cases which can be taken up by a Government servant as an Inquiry Officer. In the case of a serving officer, he can take up only two cases at a time and a total of 10 cases in a year; and a retired officer can take up only 4 cases at a time and 20 cases in a year. In the case of Defence Assistant the Government servant can take up such assignments only upto 4 at a given time. Similarly, in the case of a retired Government servant, he cannot act as Defence Assistant in more than 7 cases at a time. If some one is willing to do more work in this area, this should be encouraged, and consequently the disciplinary cases could be finalized expeditiously.
- As per DOPT's OM No.142/20/2008-AVD.I dated 27.7.2009 regarding payment of honorarium for completion of a departmental inquiry, an Inquiry Officer (who is a serving Government servant) gets Rs.3000/- ; a Presenting Officer (who is a serving Govt. Servant) gets Rs.1500/- and a Retired Govt. servant functioning as Inquiry Officer gets Rs.9750/- (plus Rs.1500/- for every additional charged officer). Except the above standard rate, there is no other special incentive for completion of the inquiry expeditiously. In order to encourage the above officers to complete the inquiry within a time frame, it is suggested that those who complete their job on time, may be considered for grant of additional payment in the form of incentive , i.e., up to an amount equivalent to the above rates in each case.
- The Disciplinary Authority normally begins the search for a suitable officer for appointment as Inquiry Officer in a particular case only after a specific case has been brought to his notice. The scouting for such officer and his subsequent appointment as Inquiry Officer also involves a substantial amount of time. If a system is built up, whereby the information about availability of a willing officer for taking up the assignment of inquiries is known ex ante, by maintaining a centralized data base which is accessible to the all the Disciplinary Authorities, the delay in getting suitable officer may be minimized.
- Some of the accused employees deliberately delay the inquiry proceedings by seeking extension of time/adjournment of hearings quoting various reasons including on medical grounds. At present, there are no restrictions on grant of the total number of such extensions/adjournments. The Government may consider putting

some restrictions on the number of extensions in this regard. The Inquiry Officer shall entertain requests for extension of time/adjourments only in cases of unforeseen circumstances like hospitalization of the accused employee for indoor treatment in CGHS approved hospitals. Even in those cases also, number of extensions including adjourments should be normally limited to a maximum of three in total in the entire life of an inquiry and the interval between two extensions should not be more than one month.. Any request beyond this limit should be deemed to be a non-cooperative attitude of the accused employee, and the Inquiry Officer may feel free (unless there is no extraneous situation due to act of God) to conduct the inquiry ex-parte after informing the accused employee of the same.

- On the line of proceedings under Cr.P.C., where some of the accused persons are allowed to become prosecution witnesses for facilitating smooth and correct conclusion of the inquiry proceedings, whereby they become eligible for lesser punishment, we should also consider introducing a system of "plea bargaining" with the charged officer, under the CCA(CCS) Rules. Under such a system, if the charged officer accepts the charge, he can be punished by the DA straightaway, without entering into any lengthy disciplinary proceedings, thus saving a lot of financial resources to the public exchequer. In return of this help, Government should consider awarding to such persons only a lesser punishment than otherwise warranted. This way, many disciplinary cases can be concluded and disposed of expeditiously.
- To prevent repetitive and avoidable movement of files for higher approvals (as of the Minister in-charge), in the initial stage itself, clearance be sought for proceeding with the disciplinary action and appointment of X, Y or Z as Inquiry Officer in the event of the employee not admitting the charge(s) against him.
- The Union Public Service Commission (Exemption from Consultation) Regulations, 1958 should be suitably amended in order that the requirement of consultation with UPSC in case of imposing Minor Penalties, is done away with.
- The DA may consider issuing appropriate instructions to the Inquiry Officer about the need for conducting disciplinary inquiry on day-to-day basis in important cases of urgent nature involving substantial financial loss to the Government.
- At present, there is no regular practice of giving in the ACRs any special credit for the efforts made by the Inquiry Officers/Defence Assistants/Presenting Officers in completion of disciplinary proceedings. This is because in many cases, the Reporting Officers/Reviewing Officers may not be even informed of the correct

position. It is, therefore, suggested that an additional column should be provided in the existing ACR form for enabling the Reporting Officer to specifically make some remarks/comments on the efforts made by the officer reported upon, in helping the Government in completion of inquiry proceedings.

- The DOPT's instructions contained in OM No. 2/6/2009-Estt.(Pay.II) dated 25.2.2009 restricts the total deputation period upto 5 years. It may be mentioned that such instructions are meant for compliance by the normal Departments/Ministries of Government of India in order to maintain uniformity on deputation tenure. However, the work of CVC being a typically investigative in nature, there is need for continuity to a greater extent; otherwise it will adversely hamper the functioning of the Commission. It is, therefore, felt that essential the above restrictions on total tenure of deputation for general application, should not be made applicable to the Commission so that the Government's larger interest of carrying out its vigilance administration work by CVC is not adversely affected. In other words, the CVC should be exempted from the purview of DOPT's OM dated 25.2.2009 regarding ceiling of deputation period.

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डा. एस. के. सरकार

Dr. S.K. Sarkar

अपर सचिव

Additional Secretary

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सत्यमेव जयते

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MINISTRY OF PERSONNEL  
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NORTH BLOCK, NEW DELHI-11001  
<http://www.persmin.nic.in>

D.O.No.372/11/2010-AVD.III

Dated: 19<sup>th</sup> April, 2010

Dear Sir/Madam,

As part of the Strategy formulation for the purpose of Performance Management System and Evaluation for the Department of Personnel & Training, it has been decided to have the feedback from the various stakeholders connected with All India Services and Vigilance against Corruption. Accordingly a Questionnaire has been designed and attached. The inputs received from the stakeholders would be valuable in the effective management of the AIS and vigilance set up.

2. It is requested that response to the Questionnaire may kindly be sent latest by 30<sup>th</sup> April, 2010. The responses may be mailed at [vkvkutty@nic.in](mailto:vkvkutty@nic.in) or sent by post to Shri V.K. Velukutty, Deputy Secretary(V.III), DOPT, Room No.10-B/II, North Block, New Delhi or faxed at 23094637.

With regards,

Yours sincerely,

(Dr. S.K. Sarkar)

To  
All Cadre Controlling Authorities/  
Ministries/Departments/  
State Governments.

QUESTIONNAIRE\* FOR CONSULTATION WITH STAKEHOLDERS  
connected with AIS and Vigilance against Corruption.

This questionnaire contains questions pertaining to various policies framed by the Department of Personnel and Training for regulating service conditions of the All India Services officers under the All India Services Act, 1951 and policies relating to combating corruption.

Contact information about the respondent

( a) Name and designation of the Respondents:

(b) Name of the state cadre:

(c) Any other relevant information:

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(\*) Please send the information/comments to Shri V,.K. Velukutty, DS(V.III)  
(Telefax No. 23094637; and email - [vkvkutty@nic.in](mailto:vkvkutty@nic.in);) North Block,  
New Delhi-110001.

**Questionnaire for State Cadres, MHA and MOEF**

The Department of Personnel and Training is the nodal Department on the personnel matters of the Government of India. The All India Services Act, 1951 is administered by this Department. Under Section 3 of the aforesaid Act, this Department has been framing the rules and regulation to regulate the service conditions of the Members of the All India Services with the aim objective to bring uniformity in the service conditions of these services, to provide a congenial atmosphere to the members of the service to perform their duty with utmost honesty, devotion, sincerity and fearlessly both in the State Governments and at the Centre.

In this context:

1. (a) Do you think that the rules framed so far under the All India Services Act, 1951, are taking care of all the service aspects of the All India Services officers?

- Yes
- No

- (b) If the answer is no, please suggest the areas/gaps where there is need to make more rules. [ The response should not be more than 15 lines].

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2. (a) Are Grievances redressal measures provided under the existing rules, referred to above, sufficient or are some more mechanisms required to be brought in for quick and fair settlement of grievances of the members of the service that arise while performing their duty?

- Yes
- No

(b) If No, please suggest the new mechanism for speedy settlement of the bonafide grievances of the Members of the Service.

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3. (a) Are the updated version of rules, framed for regulation of service conditions of the All India Services officers implemented by the state Governments in letter and spirit ?

- Yes
- No

(b) If No, the reason for not implementing the updated version of the rules in letter and spirit and further suggestion to the Government of India to take steps in this regard to remove the shortcomings in this regard, if any.

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4. The Department of Personnel and Training have been issuing instructions under the various All India Services Rules for regulation of service conditions of the members of the All India Services from time to time

(a) Are the state Governments/ cadre controlling authorities receiving these instructions invariably and maintaining guard files of these instructions?

- Yes
- No

(b) If no the reasons for not receiving these instructions and the suggestions to make sure that these instructions are received by them in a definite manner.

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5. The State Governments/cadre controlling authorities have been referring the various service matters related to AIS officers, seeking clarifications from the Department of Personnel and Training.

(a) Are the state Governments satisfied with the clarifications given by the DOP&T?

- Always
- Most of the time
- Sometimes
- Occasionally
- Never

(b) If never, please suggest the ways and areas under which the clarifications given by the Department will have more clarity.

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6. (a) Do you think that prescribing format or checklists for sending proposal for various purposes such as confirmation, grant of study leave abroad, determination of vacancies, cadre reviews etc. are helpful in reducing correspondence between this Department and the State Government?

- to a large extent
- to some extent
- not at all.

(b) If not at all, please suggest the ways by which the quick decision could be arrived without making back reference to the state Government.

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## Section I(b)

7. The present scheme of medical examination for Civil Services Examination Recruits is as under:-

*“The medical examination shall be conducted in two parts, i.e. Part I which shall consist of entire medical examination which the medical board may prescribe for a candidate, except the Radiographic Examination of the chest (X-ray test) and Part-II which shall consist of Radiographic Examination (X-ray test of the chest). The Part II shall be conducted only in respect of candidates who have been declared finally successful on the basis of the examination.*

*The classification of various Services under the two categories, namely “Technical” and “Non-Technical” will be as under:-*

### *A. Technical*

- (i) Indian Railway Traffic Service*
- (ii) Indian Police Service and other Central Police Services Group ‘A’ and ‘B’*
- (iii) Group ‘A’ Posts in the Railway Protection Force.*

### *B. Non-Technical*

*IAS, IFS, IA and AS, IRS (Customs and Central Excise), Indian Civil Accounts Service, Indian Railway Accounts Service, Indian Railway Personnel Service, Indian Defence Accounts Service, Indian Revenue Service (IT), Indian Ordnance Factories Services, Group A, Indian Postal Service, Indian Defence Estates Service Group A, Indian P&T Accounts and Finance Service, Group A and other Central Civil Services Group A and B.*

*To be passed as fit for appointment, a candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties of his appointment.”*

Q. Whether the present scheme of medical examination which is conducted at the time of interview for Civil Service Examination is satisfactory?

- ☐ Yes.
- ☐ No.

a) Does the procedure for conduct need change?

- ☐ Yes.
- ☐ No.

What changes should be made for improving the system of medical examination for Civil Service Recruits? (The answer should not exceed 75 words)

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8. Steps for promotion of SCS officers into IAS are indicated in the existing promotion Regulations.

(i) Whether there is a need to effect any changes in the present system of induction of SCS officers into IAS. Please indicate specifically as to what steps out of the following should be added or deleted and why?. (The answer should not exceed more than 75 words)

[illegible]

- (a) *Determination of vacancy by Central Government in consultation with State Government;*
- (b) *Nomination of two Joint Secretary level officers;*
- (c) *Views of State Government and Central Government on the recommendations of the Selection Committee;*
- (d) *Approval of the Select List prepared by the Selection Committee, by the UPSC;*
- (e) *Notifying the Select List and appointment of the officers unconditionally included in the Select List of IAS.*

(ii) Do You think there is a need to simplify the above steps-

- ☐ Yes
- ☐ No

If Yes: Give the reasons

**If No:** Give the reasons

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Discussion**  
 6. **Conclusion**  
 7. **References**  
 8. **Appendix**  
 9. **Figure 1**  
 10. **Figure 2**  
 11. **Figure 3**  
 12. **Figure 4**  
 13. **Figure 5**  
 14. **Figure 6**  
 15. **Figure 7**  
 16. **Figure 8**  
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9 A new Cadre Allocation Policy has been announced on 10<sup>th</sup> April, 2008 wherein candidates have a choice of expressing their preference for allocation of cadre to IAS / IPS and IFoS selected on the basis of Civil Service Examination and Indian Forest Service Examination. The candidate can give his / her preference for all 24 cadres in the country. The cadre is allocated on the basis of vacancies available in insider / outsider quota in various categories, rank and preference for the cadre expressed by the candidate. Cadre Allocation Policy is available at our website [persmin.nic.in/IAS/Cadre Allocation/New Cadre Allocation Policy](http://persmin.nic.in/IAS/Cadre%20Allocation/New%20Cadre%20Allocation%20Policy).

Q. Please give your suggestions indicating para number of the policy, changes suggested and reason for the change. (The answer should not exceed more than 75 words)

[illegible]

## Section II(a)

(Questionnaire for State Cadres and anti-corruption machinery)

**DOPT examines Disciplinary Cases against IAS and CSS Officers (Under Secretary and above) as well as vigilance matters including issuance of Sanction for Prosecution/vigilance clearance.**

10. Are you satisfied with the existing procedure of processing of disciplinary cases?

- ☐ Yes
- ☐ No

If no, which of the following procedure would need improvement (please tick mark)

- Procedure of appointment of IO/PO
- Strict implementation of time lines given to the charged officer for his reply
- Need for more transparency
- Reference to the Central Vigilance Commission/UPSC

11. Do you think that prescribing of a format/checklist for submission of proposals for seeking approval of Central Government for sanction for prosecution; in disciplinary matters; for seeking of vigilance clearance, will provide an avenue for more focused approach in consideration of such matters

- ☐ Yes
- ☐ No

If so what parameters would you suggest to be included

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12. Would it be appropriate to allow an option to the Charged officer for proceeding against him summarily, if he so chooses

- ☐ Yes
- ☐ No.

Please spell out the circumstances where he can be provided such option

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## Section II(b)

Department of Personnel & Training is the nodal agency in the field of preventive Vigilance and Anti-corruption. Its main tasks, inter-alia, are to oversee and provide necessary directions to the Government's programme of maintaining discipline and eradication of corruption from public services.

13 (a) Do you think the policies/measures made by DoP&T to check corruption and preventive vigilance are effective?

- Yes
- No

(i) If the answer is no, what are your views on the area of deficiency? Can you also suggest the policies which would require changes and what more should be done?

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14. As part of its policy on 'preventive vigilance', Department of Personnel & Training appoints full-time CVOs in major CPSEs etc from outside the PSU.

(i) Do you think this arrangement has been effective and the process of posting of CVOs is transparent and fair?

- Yes
- No

(ii) Do you think the existing procedure of selection of such CVOs through a committee after initial screening by the CVC is sufficient?

- Yes
- No

(iii) Do you think that the outsider CVOs appointed in PSUs by the above process are actually performing their duties in a transparent and unbiased manner for ensure effective vigilance administration?

- Yes
- No

(iv) If there is anything lagging in the above, your suggestion in this regard are :

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15. Do you think the Resolution for acting on complaints from 'whistle-blowers' (No.371/12/2002-AVD-III dated 21<sup>st</sup> April, 2004) has been effective? If yes, to what extent and if no what more can be done on this.

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16. The Central Vigilance Commission is entrusted to check corruption?

(i) What do you suggest the Government should do for eliminating corruption?

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(ii) What more do you expect from the Central Vigilance Commission?

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**Section II(c)**

(This questionnaire is meant for our stakeholders namely CBI, Integrated Finance Division, Establishment Division and Department of Legal Affairs)

17. CBI is an attached office of DoP&T. As such, all administrative and financial matters requiring approval of government are processed by DOPT.

a) Are you satisfied with the functioning of the existing system.

- Yes
- No

b) If No, Can you suggest the areas which require changes?

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18. (a) Is the present level of delegation of powers to the Director, CBI adequate?

- To a large extent
- To some extent
- Not adequate at all

(b) Please suggest the areas where more delegation is possible.

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**No.333/9/2009-AVD-II**  
**Government of India**  
**Ministry of Personnel, Public Grievances and Pensions**  
**(Department of Personnel and Training)**

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New Delhi, Dated 23 October 2009

**Office Memorandum**

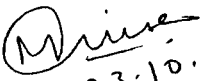
**Subject:** -Withdrawal of cases from prosecution under Section 321 of Cr.P.C., 1973-reg.

The undersigned is directed to say that as per the existing practice the Central Bureau of Investigation (CBI) approaches Department of Personnel and Training seeking permission to move the competent Court for withdrawal of cases from prosecution under section 321 of Cr.P.C., 1973.

2. Sanction of prosecution under the Prevention of Corruption Act, 1988 in respect of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, is accorded by an authority under whom he is employed or is under the administrative control of that authority. Since the sanction for prosecution by the competent authority is after satisfying itself regarding the misconduct of a person under PC Act, the natural conclusion would be that in case any prosecution is to be withdrawn in respect of such person in that case again the same competent authority may have to satisfy himself regarding the feasibility of withdrawing the prosecution against that person.

3. The matter was considered in this Department in consultation with the Ministry of Law and Justice, Department of Legal Affairs who have advised that the withdrawal of prosecution under section 321 of Cr.P.C. may be approved by such authority which has accorded the sanction for prosecution in respect of the person.

4. Accordingly, it has been decided that henceforth, all references seeking withdrawal of cases from prosecution under section 321 of Cr.P.C. against a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government shall be addressed to the competent authority which accorded sanction of prosecution under PC Act, 1988.

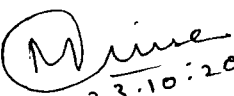
  
23.10.2009

(Manisha Saxena)

Deputy Secretary to the Government of India

To

1. All the Ministries/Departments of the Government of India.
2. Central Vigilance Commission, Starkata Bhawan, INA, New Delhi.
3. Director, CBI, CGO Complex, New Delhi.
4. Director of Prosecution, CBI, CGO Complex, New Delhi.
- ✓ 5. Director, NIC, North Block, New Delhi with the request to put the OM on the website of DOPT under 'Circulars' head of the Vigilance Division.
6. 100 Spare copies.

  
23.10.2009  
(Manisha Saxena)

Deputy Secretary to the Government of India



No. 142/20/2008- AVD I  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel and Training)

\*\*\*\*\*

New Delhi, Dated the 27<sup>th</sup> July 2009

**OFFICE MEMORANDUM**

Subject: Grant of Honorarium to Inquiry Officers/ Presenting Officers

The undersigned is directed to refer to this department's OM no 134/4/99-AVD I dated 29<sup>th</sup> June 2001 and 7<sup>th</sup> April 2003 on the subject mentioned above and to say that the rates of honorarium payable to the IO /PO in the case of departmental inquiries were last revised vide OM dated 29<sup>th</sup> June 2001 in the case of serving Government Servants functioning as part time IO/PO and vide OM dated 7<sup>th</sup> April 2003 in the case of retired Govt Servants functioning as IO. :

2. The existing rates of honorarium as prescribed in the aforesaid OMs was reviewed in consultation with the Ministry of Finance. As a result of review, it has been decided to revise the existing rates of the honorarium, payable, to IO/PO. The rates of honorarium as revised are indicated in the table below:-

| Particulars                                             | Revised Rates ( per inquiry)                                             |
|---------------------------------------------------------|--------------------------------------------------------------------------|
| a) Inquiry Officer (Part time Serving Govt Servants)    | Rs. 3000/- Maximum<br>Rs.1500/- Minimum                                  |
| b) Presenting Officer (Part time Serving Govt Servants) | Rs.1500/- Maximum<br>Rs.750/- Minimum                                    |
| c) Retired Govt Servants as Inquiry Officers            | Rs.9750/ (lumpsum) Plus Rs. 1500/- for every additional charged officer. |

3 The grant of revised rates of honorarium as above will be subject to the same conditions stipulated vide para 4 of this Department's OM no 134/4/99-AVD-I dated 29<sup>th</sup> June 2001.

4. These orders will take effect from the date of issue and will also apply to inquiries in progress.

5. This issues with the concurrence of Ministry of Finance, Department of Expenditure, vide their ID no14(4)/2009-EII(B) 14.7.2009.

6. Hindi Version will follow.

  
(P.K Ravi)

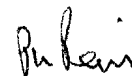
Under Secretary to the Government of India  
Tel No 2309 4799.

To,

All Ministries/Departments [ As per Standard List]

Copy to:-

1. The Comptroller and Auditor General of India, New Delhi.
2. The Union Public Service Commission, New Delhi.
3. The Central Vigilance Commission, New Delhi.
4. Rajya Sabha Secretariat, New Delhi.
5. The Lok Sabha Secretariat, New Delhi.
6. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.
7. Ministry of Finance and Company Affairs , Department of Expenditure, E-II.(B) Branch with reference to their I.D. No. 14(4)/2009-E.II(B) dated 14<sup>th</sup> July. 2009.
8. All Sections of the Ministry of Personnel, Public Grievances and Pensions.
9. Department of Administrative Reforms and Public Grievances- for Civil Services News.
10. AVD.I Section, DOP&T, New Delhi (200 spare copies).
11. Computer Centre (NIC), DOPT, North Block with the request for putting it on the web.



(P.K Ravi)

Under Secretary to the Government of India  
Tel No 2309 4799.

No.219/12/2009-AVD-II  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel and Training)

New Delhi dated the 13<sup>th</sup> May, 2009.

**OFFICE MEMORANDUM**

Subject: - Authorization of the Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence.

The undersigned is directed to say that for attachment and forfeiture of illegally acquired property of public servants, the CBI/Prosecution Agency is presently invoking the provisions of the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. 38 of 1944).

2. It has been observed that although, "Central Government" has not been defined in the said Ordinance, the Central Bureau of Investigation (CBI) has been requesting the Department of Personnel & Training seeking authorization of the Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence, in the cases investigated by the CBI. It has now been decided to issue these instructions to clarify and settle the definition of Central Government for the purpose of the Prevention of Corruption Act, 1988 and Criminal Law (Amendment) Ordinance, 1944.

3. Under Section 5(6) of the Prevention of Corruption Act, 1988, a Special Judge while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance, 1944 (Ordinance 38

of 1944). As per Section 19 of the P.C. Act, 1988 previous sanction is necessary -

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

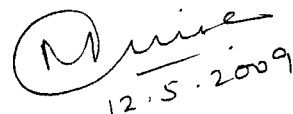
(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

4. Under Section 3 of the Criminal Law (Amendment) Ordinance, 1944, if the State Government or the Central Government, as the case may be, has reason to believe that any person has committed (whether after commencement of this ordinance or not) any scheduled offence, the State Government or the Central Government, as the case may be, may whether or not any court has taken cognizance of the offence, authorize for making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment under this ordinance of the money or other property which the State Government or the Central Government believes the said person to have procured by means, of the offence, or if such money or property cannot for any reason, be attached or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

5. The matter has been considered in consultation with the Ministry of Law and Justice, as to which Ministry/Department/Authority may be considered the "Central Government" for the purpose of Section 3 of Criminal Law (Amendment) Ordinance, 1944. In the light of the said provisions of the PC Act, 1988, admittedly the sanction for prosecution in respect of a public servant under PC Act has to be given by such Government or authority which would be competent to remove the

public servant from his office. Since the properties referred to in Section 3 would have a correlation with the offence committed under the PC Act, the obvious conclusion would be that the authorization u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. 38 of 1944) would also have to be given by such authority who would be competent to accord sanction u/s 19 of PC Act, in a given case.

6. In accordance with the above, it has been decided that henceforth, all references seeking authorization of Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence by the person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, shall be addressed to the competent authority who accorded sanction of prosecution under section 19(1) of the PC Act, 1988.

  
12.5.2009

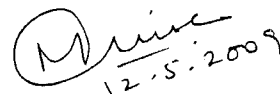
(Manisha Saxena)

Deputy Secretary to the Govt. of India

Tele:23094319

To

1. All Ministries/Departments of the Government of India.
2. Director, CBI, CGO Complex, New Delhi.
3. Joint Director (Policy), CBI, Room No.27, North Block, New Delhi.
4. All Directors/Deputy Secretaries/Under Secretaries/Section Officers of the Vigilance Division, Deptt. of Personnel & Training, New Delhi.
- ✓ 5. Director, NIC, North Block, New Delhi with the request to put the OM on the website of DOPT under "Circulars" head of the Vigilance Division.
6. 100 Spare copies.

  
12.5.2009

(Manisha Saxena)

Deputy Secretary to the Govt. of India

No.110/9/2003- AVD-I  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel and Training)

New Delhi Dated the 13<sup>th</sup> April, 2009

Office Memorandum

Subject: Withdrawal/withholding/recovery of pension/gratuity in the case of minor penalty proceedings.

The undersigned is directed to refer to this Department's OM no 134/9/86-AVD-I dated 31<sup>st</sup> July 1987 wherein it was clarified that the Central Government has the power to withhold or withdraw pension even as a result of minor penalty proceedings instituted against a charged officer during his service and which had continued after his retirement provided grave misconduct or negligence is established. The underlying basis for this OM was that there can be circumstances wherein proceedings initiated for minor penalty could result in establishment of grave misconduct or negligence on conclusion of the proceedings warranting a cut or withholding of pension or recovery of pecuniary loss. The OM of 31<sup>st</sup> July 1987 was issued in cancellation of the earlier OM no 134/10/80 -AVD-I dated 28<sup>th</sup> Feb 1981 which inter alia, stated that 'grave misconduct or negligence' cannot be established as a result of minor penalty proceedings.

2. The OM of 31.7.1987 came for scrutiny before the Central Administrative Tribunal (CAT), Principal Bench, Delhi in OA no 2068 of 2002 (R.S Sagar, NOIDA,UP Vs Union of India), pertaining to the Ministry of Urban Development and Poverty Alleviation. The Hon'ble Tribunal was considering an application against the order of withholding of gratuity of a charged officer who had retired from service. The Tribunal, while considering the said case set aside the said OM of 31<sup>st</sup> July 1987 of this Department holding it ultra vires the CCS(Pension) Rules 1972. The ratio of the decision in this OA was applied to OA no 132 of 2003 (I.K Rastogi Vs Union of India) by Principal Bench, Delhi. This Department was neither a party nor impleaded in the said OAs at any stage.

3. The implication of the judgement of Hon'ble CAT on this Division's O.M. of 31.7.87 was considered in consultation with Department of Pension & Pensioners' Welfare and Department of Legal Affairs and it was noted that the matter has attained legal finality.

4. In view of the above and in the light of said order of Hon'ble CAT Principal Bench setting aside the OM of 31<sup>st</sup> July 1987 this Department's OM no 134/10/80 –AVD-1 dated 28<sup>th</sup> Feb 1981 stands restored and the OM of 31<sup>st</sup> July 1987 stands withdrawn.

Hindi version will follow.



(P.K Ravi)

Under Secretary to the Government of India

To  
All Ministries /Departments  
(As per list attached)

No. 110/9/2003-AVD-1

Dated the 13<sup>th</sup> April, 2009

Copy forwarded to:-

1. The Secretary, Central Vigilance Commission, Satarkta Bhawan, INA, GPO Complex, Lodhi Road, New Delhi.
2. The Secretary, Union Public Service Commission, Shahajahan Road, Dholpur House, New Delhi.
3. All Sections/Desk of DOPT.

No. 142/22/2007-AVD.I  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

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New Delhi, North Block  
Dated, the 10 November, 2008

OFFICE MEMORANDUM

Subject: Prosecution sanction – evidence of sanctioning/signing/authenticating authority.

The undersigned is directed to say that investigating agencies generally include the name of the sanctioning authority/signing/authenticating authority in the list of prosecution witnesses for the purposes of proving the validity of the sanction accorded under Section 19(1) of the Prevention of Corruption Act, 1988 or under Section 197(1) of the Criminal Procedure Code, 1973 for prosecution of government servants. It is observed that summons for recording of evidence for proving the sanction are usually received long after the concerned officer has vacated the post and, many a times, long after the said officer has retired from Service. The process of recording of evidence/cross examination also involves a number of visits to the Courts. The officers who have retired have to make their own arrangements for travel /stay and then are required to claim reimbursements from the concerned Departments/organizations subsequently. This puts the sanctioning/signing/authenticating authority to a considerable inconvenience. A question has been raised whether personal evidence of sanctioning/signing/authenticating authority is a legal requirement for proving the sanction or whether the same can be proved otherwise.

2. The question whether a personal evidence of sanctioning/signing/ authenticating authority is a legal necessity to prove the validity of the sanction accorded u/s 19(1) of the Prevention of Corruption Act, 1988 or under Section 197(1), CrPC has been examined in consultation with the Ministry of Law & Justice (Department of Legal Affairs).

3. The Hon'ble Supreme Court in the case of Md. Iqbal Ahmed vs. State of AP 1979 Cr LJ 633 (SC) and in the case of State of Rajasthan Vs. Dr. A.K. Dutta AIR 1981 SC has held that the requirement of proving the sanction can be done in any two ways- either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or by adducing evidence aliunde to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. In the case of CBI, Hyderabad vs. P. Muthuraman 1996 Cr LJ 3638, it was held that signature on the sanction should be proved either by the sanctioning authority or by his subordinate officer or clerk who has seen the sanctioning authority or who is acquainted with the signature of the sanctioning authority. Once the signature is proved and if the sanction order is a speaking order, then the matter ends there; otherwise evidence should be adduced to prove that the sanctioning authority had perused the material before according sanction which may not be in a particular form. In the case of Babarali Ahmedali Sayed V. State of Gujarat 1991 Cr.LJ 1269 (Guj) it was held that if facts appear on the face of sanction then there is no question of proving it by leading evidence of authority who has accorded sanction to prosecute. No separate evidence is required to be led to show that relevant facts were placed before the authority. If the facts are not appearing on the face of the sanction, then it can be proved by independent evidence that sanction was accorded after those facts had been placed before the sanctioning authority.



In the case of State Vs K. Narasimhachary (2006 Cr.LJ 518 SC ) , the Apex Court has held that the prosecution sanction order being a public document, there may not be a need to summon sanctioning authority as prosecution witness provided the prosecution proves that all the relevant material was placed before the sanctioning authority and the sanction was accorded thereafter. There are several other judgements of the Hon'ble Supreme Court and other High Courts reiterating the above legal position.

4. Therefore, in the light of the catena of judgements on the subject, it is evident that if the sanction is accorded by the competent sanctioning authority and it contains the facts constituting the offence and the grounds of satisfaction , there is no requirement for the prosecution to summon the sanctioning/signing/authenticating authority for their personal evidence to prove the validity of the sanction. If at all necessary, the same can be corroborated by producing the original sanction and by examining the person conversant with the signature of the sanctioning authority/signing/authenticated authority . Accordingly, there is no requirement for the prosecution to insist on personal evidence of sanctioning/signing/authenticating authority for proving the validity of sanction as the same can be proved adequately otherwise.

5. However, if the prosecution sanction is challenged by the defence on the grounds of competence of the sanctioning authority or non- application of mind and if a prima-facie case for doubting the validity of the sanction is made out by the accused, the trial court would be within its powers under the provisions of section 311 of the Cr.P.C. to summon the sanctioning/signing/authenticating authority

6. All the concerned authorities/investigating agencies may keep the above settled legal position in view while taking steps for proving the validity of the sanction and ensure that the Sanctioning/signing/authenticating authority may not be routinely included in the list of witnesses for the Prosecution.



(Vijay Kumar)

Under Secretary to the Government of India

To

1. All Ministries/Departments of the Government of India.
2. All State Governments/Union Territory Administrations.
3. Copies to all concerned authorities as per standard list.
4. CBI , Policy Division, 27, North Block .
5. Director, NIC, North Block with the request to put this O.M. on the website under head ' circulars' vigilance
6. 100 spare copies.



(Vijay Kumar)

Under Secretary to the Government of India

No.372/3/2008-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions,  
Department of Personnel & Training

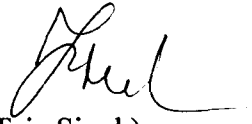
North Block,  
New Delhi the 3<sup>rd</sup> July, 2008.

**OFFICE MEMORANDUM**

Subject: Strengthening of vigilance mechanism – giving wide publicity to Government's anti-corruption policies.

It is the endeavour of the Government to eradicate corruption from public life in a progressive manner. In pursuance of this goal, the Government of India as well as the Central Vigilance Commission take various measures from time to time to effectively tackle the menace of corruption. However, in order to make such effort more result oriented concerted efforts are required, and the vigilance units in the Ministries/Departments/PSUs/Organisations have to act as a focal point in curbing corruption. The Second Administrative Reforms Commission in its report "Ethics in Governance" has recommended that the Government agencies can help the media in the fight against corruption by disclosing details about corruption cases regularly.

2. All Ministries/Departments are, therefore, requested to continue giving emphasis on anti-corruption mechanisms and give due publicity to various anti-corruption measures taken, through both electronic and print media. Special emphasis may, in particular, be laid on publicizing systemic reforms for reducing opportunity for corruption, minimizing scope for discretion, streamlining procedures and bringing about improvement in transparency using web based technology etc. Cases of deterrent punitive action which have reached finality both in regard to conviction and major penalties of dismissal, removal from service and compulsory retirement may also be appropriately publicized on a periodic basis. However, it will also be necessary to notify the change in status, if any, on account of any further orders including those passed in Appeal/Revision/Review or by the CAT/Courts in regard to these cases. It will also be necessary to ensure that the details regarding individuals may not be divulged till the cases have reached finality keeping the due sensitivities involved in the matter in view.

  
(Teja Singh)

Under Secretary to the Government of India

To

1. All Ministries/Departments in the Government of India.
2. Director, Central Bureau of Investigation. New Delhi.
3. Secretary, Central Vigilance Commission, New Delhi.

No.107/13/2007-AVD.I  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training  
\*\*\*\*

North Block, New Delhi

Dated: June 27, 2008

OFFICE MEMORANDUM

Sub: Sanction for prosecution u/s 19 (1) of the P.C. Act

Section 19 of the Prevention of Corruption Act, 1988, regulating the requirement of taking prior sanction of the competent authority before prosecution of a public servant provides as under :

" 19 (1) No court shall take cognizance of an offence punishable under sections 7,10,11,13 and 15 alleged to have been committed by a public servant except with the previous sanction -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government , of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

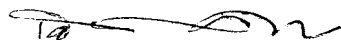
2. Hon'ble Supreme Court , in the case of R.S. Nayak vs A.R. Antulay (1984) 2 SCC 183, while interpreting the corresponding provisions of Prevention of Corruption Act, 1947, in regard to requirement of a sanction in a case where the accused public servant had ceased to hold the office which he is alleged to have misused or abused , though holding another office at the time when the Court is called upon to take cognizance of an offence, held that upon a true construction of Section 6 of P.C.Act, 1947, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have been misused or abused for corrupt motive and for which a prosecution is intended to be launched against him. It held that if the accused has ceased to hold that office by the date the Court is called upon to take cognizance of the offences alleged to have been committed by such public servant, no sanction under Section 6 would be necessary despite the fact that he may be holding any other office on the relevant date which may make him a public servant as understood in Section 21. The Hon'ble Court further held that some earlier judgements to the effect that if a public servant ceases to hold the earlier office abused by him but continuous to be a public servant by holding another office, sanction of the competent authority to remove him from latter office is required, as not laying down correct law and cannot be accepted as making a correct interpretation of Section 6 of the Prevention of Corruption Act, 1947 (corresponding to Sec. 19 of Prevention of Corruption Act, 1988).

3. These issues again came up before the Hon'ble Supreme Court in the cases of Parkash Singh Badal and Another vs State of Punjab 2006(13) SCALE 54, K. Karunakaran Vs. State of Kerala 2006 (13) SCALE 88 and in the case of Lalu Prasad Yadav Vs. State of Bihar 2006 (13) SCALE 91. The Hon'ble Supreme Court endorsed the above propositions in the R.S. Nayak case and did not agree that the views expressed in R.S. Nayak vs. A.R. Antulay case are not correct or that the said decision should be taken as per incuriam or that it was a case of "causis omissus".

4. A question has been raised whether the ratio of above cited judgements is applicable to civil servants who, while being member of a service or cadre, hold different posts on transfer or promotion etc. at different points of time in the course of their service. A perusal of the various judgements shows that in these cases, the litigating parties were political personalities who held offices like Chief Minister or MP or MLA etc. at different points of time and, therefore, though they were public servants

in terms of section 21 of the IPC while holding such offices, they were treated as holding different 'offices' at the time of taking of cognizance of the offence than one held and allegedly abused by them in respect of which the prosecution is sought to be launched. It is in the context of the nature of public offices held by the public figures involved in the above cases that the issues relating to public servant holding plurality of offices, or holding another office as a public servant etc. arose. These judgements did not discuss the case of a civil servant, who as a member of service/cadre holds different positions/posts on transfer or promotion in the course of his career in Government service. The issue whether holding of these different posts amounts to holding different 'offices' within the meaning of the relevant Sections of Prevention of Corruption Act was also not before the Hon'ble Court in the above cited cases.

5. The question raised has been examined in consultation with the Ministry of Law & Justice. It is, hereby clarified that while holding different posts on transfer or promotion, a civil servant can not be treated as holding different 'offices' within the meaning of the relevant Sections of the said Act. The only office held by him is that of the member of the service to which he belongs as a civil servant, irrespective of the post held on transfer/promotion etc. Therefore, the requirements of seeking sanction of the competent authority under Section 19 of the Prevention of Corruption Act continues to be applicable so long as the officer continues to be a member of civil service and the protection under Section 19 (1) of Prevention of Corruption Act cannot be said to have been taken away only on the consideration that at the time the officer holds charge of another post on transfer or promotion, than one alleged to have been abused. All the investigating agencies may, therefore, ensure that for seeking prosecution of a civil servant, they obtain sanction of the competent authority under Section 19 (1) of Prevention of Corruption Act before the Court is called upon to take cognizance of an offence under Section 7,10,11,13 and 15 of Prevention of Corruption Act.

  
(Vijay Kumar)

Under Secretary to the Government of India

To,

1. All Ministries/Departments
2. All State Governments/Union Territories

Copy to:

As per standard list.

No.372/4/2008-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions,  
Department of Personnel & Training

North Block,  
New Delhi the 24<sup>th</sup> June 2008.

**OFFICE MEMORANDUM**

**Subject:** Strengthening of vigilance mechanism – Systemic Reforms and the role of supervisory officers.

A holistic approach for combating corruption would require an optimum mix of punitive and preventive measures. While punitive measures act as a deterrent, the preventive measures reduce opportunities for corruption by making systems transparent, increasing accountability, reducing discretion, and rationalizing procedures etc. Improvement in preventive measures is a part of “Systemic Reforms” seeking to improve systems and processes.

2. As recommended by the Second Administrative Reforms Commission in its report entitled “Ethics in Governance”, and as a step towards strengthening the preventive vigilance, all Chief Vigilance Officers/Vigilance Units of Ministries/Departments/PSUs/Organisations are requested to carefully analyze the activities in their organization/office, identify the activities which are vulnerable to corruption and then build up suitable preventive and vigilance mechanism. Further, in order to ensure that the punitive regime acts as a deterrent, all major instances of loss caused to the exchequer, by officials by their acts of omission or commission should be enquired into and erring officers should be sternly dealt with within a timeframe. It would be desirable if each supervisory officer is associated with this process of identifying areas vulnerable to corruption and building suitable preventive vigilance measures.

3. A compliance report to this effect may be provided to the Central Vigilance Commission on a quarterly basis.

  
(Teja Singh)

Under Secretary to the Government of India

To  
All Ministries/Departments in the Government of India.  
All CVOs of Ministries/Departments/PSUs/Organisation.  
Secretary, Central Vigilance Commission, New Delhi.  
Cabinet Secretariat.

No. 104/33/2005-AVD.I  
Government of India  
Ministry of Personnel & Public Grievances & Pensions  
(Department of Personnel & Training)

New Delhi, Dated October 29, 2007

OFFICE MEMORANDUM

Subject:- Guidelines regarding grant of 'Vigilance Clearance' to AIS Officers.

The undersigned is directed to say that the matter regarding guidelines for giving vigilance clearance to All India Services officers has been under consideration of the Department of Personnel & Training in consultation with the Central Vigilance Commission. The Competent Authority has approved the following guidelines for the grant of vigilance clearance in respect of All India Services officers with immediate effect:

1. These orders regarding accordance of vigilance clearance to AIS officers shall be applicable with respect to (a) inclusion in the offer list (b) empanelment (c) any deputation for which Central Government clearance is necessary, including deputation under Rule 6(1) and 6(2)(ii) of the AIS (Cadre) Rules (d) appointments to sensitive posts (e) assignments to training programmes (except mandatory training) (f) premature repatriation to the cadre. In all these cases, the vigilance status may be placed before and considered by the Competent Authority before a decision is taken.

2. The circumstances under which vigilance clearance shall not be withheld shall be as under:

- a) Vigilance clearance shall not be withheld due to the filing of a complaint, unless it is established on the basis of at least a preliminary inquiry or on the basis of any information that the concerned Government may already have in its possession, that there is, prima facie, substance to verifiable allegations regarding (i) **Corruption** (ii) Possession of assets disproportionate to known sources of income (iii) Moral turpitude (iv) violation of AIS Conduct Rules.
- b) Vigilance clearance shall not be withheld if a preliminary inquiry mentioned in 2(a) above takes more than three months to be completed.

- (7)
- c) Vigilance clearance shall not be withheld unless (i) the officer is under suspension (ii) the officer is on the Agreed List, provided that in all such cases the position shall be mandatorily revisited after a period of one year (iii) a chargesheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending (iv) orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of passing such order (v) chargesheet has been filed in a Court by the Investigating Agency in a criminal case and the case is pending (vi) orders for instituting a criminal case against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of initiating proceedings (vii) sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (viii) an FIR has been filed or a case registered by the concerned Government against the officer provided that the charge sheet is served within three months from the date of filing/registering the FIR/case. (i) The officer is involved in a trap/raid case on charges of corruption and investigation is pending.
  - d) Vigilance clearance shall not be withheld due to an FIR filed on the basis of a private complaint unless a chargesheet has been filed by the investigating agency provided that there are no directions to the contrary by a competent court of law.
  - e) Vigilance clearance shall not be withheld even after sanction for prosecution if the investigating agency has not been able to complete its investigations and file charges even after a period of two years. However, such vigilance clearance will entitle the officer to be considered only to be appointed to non-sensitive posts and premature repatriation to the cadre and not for any other dispensation listed in Para 1 above.

3. In cases where complaints have been referred to the State, and no substantive response has been received from the State within three months from the date on which the reference was made, the Cadre Controlling Authority may provide a copy of the complaint to the officer concerned to seek his comments. If the comments are found to be prima facie satisfactory by the Competent Authority, vigilance clearance shall be accorded.

4. Vigilance clearance shall be decided on a case-by-case basis by the Competent Authority keeping in view the sensitivity of the purpose, the gravity of the charges and the facts and circumstances, in the following situations:



72

- a) Where the investigating agency has found no substance in the allegation but the Court **refuses** to permit closure of the FIR.
- b) Where the Investigating **Agency/IO** holds the charges as proved but the **State Government** differs on the converse.

5. While considering cases for grant of vigilance clearance for the purpose of empanelment of **AIS** officers of a particular batch, the vigilance **clearance/status** will continue to **be** ascertained from the respective State Government. In respect of officers serving in connection with the affairs of the Central Government, the vigilance **status/clearance** will be obtained from the respective Ministry. In all cases, the comments of the CVC will also **be** obtained. However, if no comments are received within a period of three months, it will be presumed that there is nothing adverse **against** the officer on the records of the body concerned.

6. Vigilance clearance will be issued in all cases with the approval of the Head of Vigilance Division for officers **upto** one level below their seniority in service. In the case of officers of the level of **AS/Secretary**, this will be issued with the approval of **the** Secretary. In case of doubt, order of Secretary will be **obtained** keeping in view the purpose for which the 'vigilance clearance' is required by the indenting authority.

7. Vigilance clearance will not normally be granted for a period of three years after the currency of the punishment, if a minor penalty has been imposed on an officer. In case of imposition of a major penalty, vigilance clearance will not normally be granted for a period of five years, after the currency of punishment. During the period, the performance of the officer should be closely watched.

  
( Kabindra Joshi )

Under Secretary to the Govt. of India

✓ Prime Minister's Office (W.r.t. their I.D. No. 600/68/13/07-ESII, dated 24.10.2007)

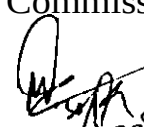
✓ Cabinet Secretariat

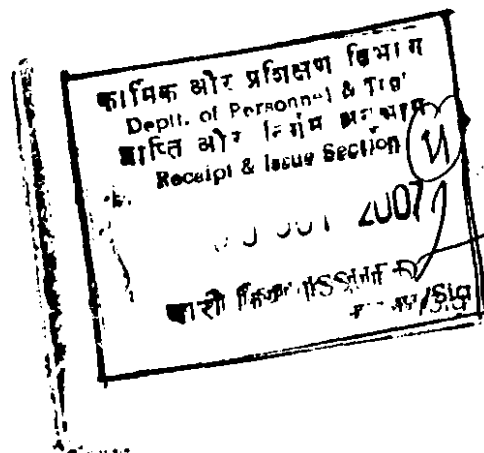
✓ Ministry of Home Affairs — PS to Secy 20/10/07

✓ Ministry of Environment & Forests

✓ Secretary, Central Vigilance Commission

Copy to:

- (i) PS to MOS(PP) 
- (ii) PPS to Secretary(P) — 20/10/07
- (iii) PPS to AS(S&V) — 20/10/07
- (iv) EO & AS, DOP&T — 20/10/07
- (v) PS to JS(V) — 20/10/07



No. 106/17/2007-AVD.I  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

\*\*

North Block, New Delhi  
Dated 11<sup>th</sup> September, 2007

To

The Chief Secretaries of  
all State Governments and  
Union Territory Administrations.

Sub: Permission under Rule 6(1)(b)(i) of All India Services (Death-cum-Retirement Benefit) Rules, 1958- Procedural requirements

Sir,

I am directed to draw attention to the provisions of Rule 6(1)(b)(i) of All India Services (Death-cum-Retirement Benefit) Rules, 1958, in terms of which a departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during re employment

- (i) shall not be instituted save with the sanction of the Central Government;
- (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
- (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made.

2. In terms of the above provisions, the State Governments make reference to the Central Government for accord of sanction for

instituting disciplinary proceedings against a retired member of an All India Service. However, it is noted that in many cases, the reference is not accompanied with the required documents and consequently, the Central Government is not able to formulate a view whether or not, a prima facie case of a grave misconduct on the part of the retired member of the Service has been made out. Further, the reference is often made very close to the date of expiry of the 4 year limitation period and the Central Government is not left with sufficient time to process the case on merits.

3. Therefore, it is emphasized upon the State Governments that any proposal for accord of sanction u/r 6(1)(b)(i) of All India Services (Death-cum-Retirement Benefit) Rules, 1958 should be made by way of a self contained note and it should be accompanied with all relevant documents viz. authenticated copies of (i) documents relied upon to prove the charge(s) against the member of the Service (ii) preliminary inquiry report, if such an inquiry has been conducted (iii) statement of witnesses recorded during the preliminary inquiry (iv) preliminary explanation of the retired member of Service and (v) draft article of charge(s) and statement of imputation of misconduct. Such documents should be duly indexed and referenced and relevance of each document in support of the charges should be clearly brought out in the self contained note. The State Governments are also advised to ensure that preliminary explanation of the retired member of service is invariably obtained before the State Government firms up its view for initiation of disciplinary proceedings against the officer.

4. The State Governments are also advised to ensure that all such references, complete in all respect, should reach the Central Government at least two months before the date on which the 4 year limitation period expires, which is the minimum time required for processing of the case in the Central Government.

5. Above procedural requirements may kindly be ensured while referring cases of retired members of the All India Services for accord of sanction u/r 6(1)(b)(i) of All India Services (Death-cum-Retirement Benefit) Rules, 1958 to the cadre controlling Ministries namely, Department of Personnel and Training, Ministry of Home Affairs and

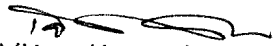
Ministry of Environment and Forests respectively . It will not be possible to process incomplete or belated references and these shall be returned to the State Governments.

  
(Vijay Kumar)

Under Secretary to the Government of India

Copy to

- i) Ministry of Home Affairs, IPS Division
- ii) Ministry of Environment and Forests IFS Desk
- iii) MHA, Delhi Desk
- iv) Secretary, CVC
- ✓ v) Guard File

  
(Vijay Kumar)

Under Secretary to the Government of India

No.399/33/2006-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

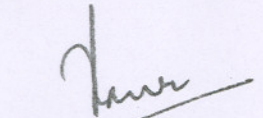
New Delhi, the 20<sup>th</sup> December 2006.

OFFICE MEMORANDUM

Subject: Guidelines for checking delay in grant of sanction for prosecution.

In continuation of this Department's O.M. of even number dated 6<sup>th</sup> November 2006 on the subject mentioned above, it has been decided to amend para 2 (iv) of the O.M. dated 6<sup>th</sup> November 2006 which shall now be read as under:-

"2. (iv) If the CVC on reconsideration advises for grant of sanction, the concerned Ministry/Department will issue the requisite orders immediate. However, if the concerned Ministry/Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to the Department of Personnel and Training for a final decision, as per the DOP&T O.M. No.134/2/85-AVD-I dated 17.10.1986. The Department of Personnel & training shall decide the case within three weeks and convey its decision to the concerned Ministry/Department."



(Harjot Kaur)  
Director (Vigilance)

To  
(Secretary, by name), All Ministries/Departments of Government of India.

Copy to: (i) Secretary, Central Vigilance Commission (CVC), New Delhi.  
(ii) Director, Central Bureau of Investigation (CBI), New Delhi.  
(iii) Others as per standard list.



New Delhi, dated the 6th November, 2006

OFFICE MEMORANDUM

Subject: Guidelines for checking delay in grant of sanction for prosecution.

The Hon'ble Delhi High Court on its own motion has taken suo moto cognizance of a newspaper report, relating to long delays in grant of sanction for prosecution cases. The Hon'ble Court has expressed its concern over the non-action on the part of competent authorities in granting sanction for prosecution, despite the fact that the Hon'ble Supreme court in Vineet Narain Vs Union of India had directed that " time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any Law Officer in the AG's office".

2. Delay in the disposal of sanction of prosecution cases is not in the interest of the Government. The Government is keen that innocent officers should not needlessly face harassment through prosecution while at the same time the really culpable and guilty officers should not escape prosecution on account of failure of the competent authority to appreciate properly the fact brought out in the CBI investigation reports. In order to ensure that cases for grant of sanction for prosecution are disposed of quickly, it has been decided that the following measures should be adopted with immediate effect: -

(i) In cases investigated by the Central Bureau of Investigation against any public servant who is not removable from his office except with the sanction of the President, the CBI forwards its final report of investigation to the CVC and also simultaneously endorses a copy of the report to the administrative Ministry/Department concerned, the competent authority shall within three weeks formulate its tentative view



regarding the action to be taken and seek the advice of the CVC in the matter.

(ii) The CVC would tender its advice within ten days to the concerned administrative Ministry/Department, which shall finalize its view in the matter within a week and issue orders for sanction for prosecution accordingly.

(iii) The concerned Ministry/Department shall refer the case to CVC for reconsideration only in exceptional cases when new facts come to light. The Committee of experts proposed to be set up by the CVC, with experts drawn from the civil services, public sector undertakings and banks shall examine the CBI's recommendation and the tentative view of the concerned Ministry/Department in greater detail and CVC would render appropriate advice to the competent authority based on the findings of the expert committee, within a fortnight.

(iv) If the CVC on reconsideration advises for grant of sanction, the concerned Ministry/Department will issue the requisite orders immediately. However, if the concerned Ministry/Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to the Department of Personnel and Training for a final decision, as per the DOP&T O.M. No/ 134/2/85-AVD-I dated 17.10.1986.

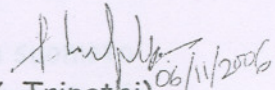
(v) The responsibility of processing cases for sanction of prosecution within the time limits laid down shall continue to remain with the Administrative Ministries/Departments. All pending cases for sanction of prosecution would be reviewed every month by the concerned Secretary to ensure that a decision in a case for grant of sanction for prosecution is taken within the given time frame.

(vi) The Central Vigilance Commission will call (as proposed by it) a meeting of Secretaries of such Departments, where there are delays in according sanction for prosecution, for a review from time to time and draw DOP&T's attention on such delays.

(vii) In case a decision is not taken by the Administrative Ministry/Department within the time limit laid down, the concerned

Secretary of the Department shall mandatorily forward a written explanation to the Cabinet Secretary for appropriate examination by the competent authority.

(ix) All such delayed cases will be placed before a Committee to be chaired by Secretary (Personnel) and comprising the Secretary of the Administrative Ministry/Department, Law Secretary and Director, CBI for scrutiny and recommendation. A copy of the explanation furnished by the Secretary of the Administrative Ministry/Department shall also be placed before the Committee. The recommendations of the Committee shall be forwarded to the Cabinet Secretary for orders of the competent authority.

  
(P. K. Tripathi)  
Director (Vigilance)

To  
(Secretary, by name), All Ministries/Departments of Government of India.

Copy to: (i) Secretary, CVC  
(ii) Director, CBI  
(iii) others as per standard list



Central Vigilance Commission will advise the Ministry/Department concerned and it would be for that Ministry/Department to consider the advice of the CVC and to take a decision as to whether or not the prosecution should be sanctioned;

- (ii) In cases in which an authority other than the President is competent to sanction prosecution, and that authority does not propose to accord such sanction, it is required to report the case to the Central Vigilance Commission and take further action after considering the Central Vigilance Commission's advice, vide para 2(v.i)(b) of the Government Resolution by which the Central Vigilance Commission was set up and the Central Vigilance Commission's letter No. 9/1/64-DP, dated 13th April, 1984;
- (iii) In a case falling under (i) above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to this Department for a final decision;
- (iv) In a case falling under (ii) above, if the Central Bureau of Investigation has sought sanction for prosecution and the Central Vigilance Commission has recommended grant of sanction and yet, the competent authority proposes not to grant sanction, the case should be referred to this Department for a final decision;
- (v) Where two or more Government servants belonging to different Ministries/Departments, or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments or the respective competent authorities in accordance with the procedure laid down in the above paragraphs. Where sanction is granted in the case of one of the Govt. servants but sanction is refused in the case of the other or others, the CBI will refer the case to this Department for resolution of the conflict, if any, and for a final decision.

4-1 CVC/ND/87

(137)

Department of Personnel & Training O.M. No. 134/2/85-AVD-I dated 15/17-10-1986.

The work relating to accord of Central Government's sanction for the prosecution of any person in a case investigated by the Central Bureau of Investigation which was centralised in the Department of Personnel & Training, has since been decentralised and vested in the Ministry/Department concerned *vide* Cabinet Secretariat's Notification No. CD-828/86, dated the 30th September, 1986 (annexed).

2.1 The Central Bureau of Investigation recommend prosecution of persons only in those cases in which they find sufficient justification for the same as a result of the investigation conducted by them. There are adequate internal controls within the CBI to ensure that a recommendation to prosecute is taken only after a very careful examination of all the facts and circumstances of the case. Hence, any decision not to accord sanction for prosecution in such cases should, therefore, be for very valid reasons.

2.2 The following guidelines may be kept in view while dealing with cases of sanction of prosecution.

- (i) In cases in which the sanction for prosecution is required to be accorded in the name of the President, the



ANNEXURE TO DEPARTMENT OF PERSONNEL & TRAINING O.M.  
No. 134/2/85-AVD-I DATED 15/17-10-86.

RASHTRAPATHI BHAVAN NEW DELHI

Dep. No. CD--828/86

New Delhi, the 30th September, 1986.

### NOTIFICATION

In exercise of the powers conferred by clause (3) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Government of India (Allocation of Business) Rules, 1961, namely:—

1. (1) These rules may be called the Government of India (Allocation of Business) (One hundred and eighty seventh Amendment) Rules, 1986.

(2) They shall come into force at once.

2. In the Government of India (Allocation of Business) Rules, 1961,—

(1) In rule 3—

(i) In sub-rule (1), for the word, brackets and figure, "sub-rule (2)", the words, brackets and figures "sub-rules (2) (3) and (4)" shall be substituted;

(ii) After sub-rule (2), the following sub-rules shall be inserted, namely:—

“(3) Where sanction for the prosecution of any person for any offence is required to be accorded—

(a) If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence;

(b) If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organisation in which he was working at the time of commission of the alleged offence, and

(c) In any other case by the Department which administers the Act under which the alleged offence is committed:

Provided that where, for, offences alleged to have been committed, sanction is required under more than one Act, it shall be competent for the Department which administers any of such Acts to accord sanction under all such Acts.

(4) Notwithstanding anything contained in sub-rule (3), the President may, by general or special order, direct that in any case or class of cases the sanction shall be accorded by the Department of Personnel and Training”.

(II) In the second schedule—

(i) Under the heading “MINISTRY OF FOOD AND CIVIL SUPPLIES (KHADYA AUR NAGRIK POORTI MANTRALAYA)” under the sub-reading “A. DEPARTMENT OF FOOD (KHADYA VIBHAG)”, for entry 1, the following shall be substituted, namely:—

“1. Purchase of food stuffs for civil requirements and their disposal and also for military requirements of sugar, rice and wheat”;

(ii) under the heading “MINISTRY OF HUMAN RESOURCE DEVELOPMENT (MANAV SANSA-DHAN VIKAS MANTRALAYA)”, under the sub-heading “D. DEPARTMENT OF CULTURE (SANSKRITI VIBHAG)”, after entry 13, the following shall be inserted, namely:—

“13.A, Museum of Gems and Jewellery.”;

(iii) under the heading “MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (KARMIK, LOK SHIKAYAT TATHA PENSION MANTRALAYA)”, under the sub-heading “A. DEPARTMENT OF PERSONNEL AND TRAINING (KARMIK AUR PRASHIKSHAN VIBHAG)”, in Part III “VIGILANCE AND DISCIPLINE”, in entry 20, sub-entry (b) and the “Note” thereunder shall be omitted.

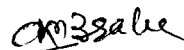
5—1 CVC/ND/87

**OFFICE MEMORANDUM**

Subject: Consultation with the Central Vigilance Commission in cases where action taken under Rule 19 (i) of the CCS(CCA) Rules, 1965.

The undersigned is directed to invite a reference to the instructions contained in this Department's O.M. No. 118/4/89-AVD.I dated the 30<sup>th</sup> May, 1991 on the above mentioned subject requiring, *inter alia*, the Disciplinary Authorities to take a final decision in consultation with the Central Vigilance Commission (CVC) in the cases falling under Rule 19(i) of the CCS (CCA) Rules, 1965, where a penalty is proposed to be imposed on a Government servant on account of his conviction on a criminal charge. The CVC has considered the matter and is of the view that consultation with the Commission is not necessary in the cases falling under Rule 19(i) of the CCS (CCA) Rules as the Government servant already stands convicted by the Court of Law.

2. The advice/view of the CVC has been considered in this Department. The suggestion made by the CVC will help cut in avoidable delays in concluding the disciplinary proceedings. In view of the proviso to Rule 19 of the CCS (CCA) Rules, 1965, consultation with the CVC in the disciplinary cases under Rule 19 (i) of the CCS (CCA) Rules, 1965 can be dispensed with. Therefore, it has been decided that consultation with the CVC is not necessary/required in such cases where Government servants are convicted by Courts of Law on a criminal charge.
3. The Ministries/Departments are requested that the above modification may please be brought to the notice of all Disciplinary Authorities for their guidance.

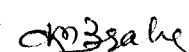
  
( K.M. Brahme )

Under Secretary to the Government of India  
2309 3846

1. Chief Vigilance Officers of all Ministries/Departments of Government of India
2. Secretary, Central Vigilance Commission w.r.t. their letter No. 004/VGL/23 dated 3<sup>rd</sup> June, 2004
3. Secretary, Union Public Service Commission, New Delhi.
4. Director, Central Bureau of Investigation.
5. Chief Secretaries of all Union Territories of Administration.
6. All attached and Subordinate Offices of Department of Personnel & Training
7. Comptroller & Auditor General of India, New Delhi.
8. Commission for Linguistic Minority, Hyderabad.
9. Lok Sabha/Rajya Sabha.

Copy to:

- (1) All Desks/Sections of the Department of Personnel & Training.
- (2) NIC with the request to post the OM on the Department's website.

  
( K.M. Brahme )

Under Secretary to the Government of India



**No.134/4/99-AVD.I**  
**Government of India**  
**Ministry of Personnel, Public Grievances & Pensions**  
**(Department of Personnel and Training)**

New Delhi, dated the 29<sup>th</sup> June, 2001.

**OFFICE MEMORANDUM**

**Subject:-Grant of honorarium to part-time Inquiry Officers/Presenting Officers.**

.....

The undersigned is directed to refer to this Department's O.M.No.134/5/85-AVD.I dated 11.7.88 and No.134/1/91-AVD.I dated 13.5.1992 on the above subject and to say that the existing rates of honorarium to the serving Government servants who are appointed as part-time Inquiry Officer and Presenting Officer have been reviewed in view of the difficulties experienced in obtaining the services of competent officers.

2. As a result of review, it has been decided that the existing rates of honorarium in respect of serving Government servants who are appointed as part-time Inquiry Officer and Presenting Officer may be revised as under:-

| <b><u>Existing Rates</u></b>                                                                     | <b><u>Revised Rates</u></b>                                    |
|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <b><u>Inquiry Officers</u></b> – a minimum of Rs.250/- and a maximum of Rs.500/- per inquiry.    | A minimum of Rs.1000/- and a maximum of Rs.2000/- per inquiry. |
| <b><u>Presenting Officers</u></b> – a minimum of Rs.100/- and a maximum of Rs.300/- per inquiry. | A minimum of Rs.500/- and a maximum of Rs.1000/- per inquiry.  |

3. Attention is also invited to this Department's O.M.No.134/1/87-AVD.I dated 15.5.1987 wherein the Ministries/Departments have been allowed to engage retired Government servants of proven integrity as Inquiry Officer in individual disciplinary cases on a fixed honorarium, wherever it is not possible to have full-time Inquiry Officer and there is no suitable officer among the existing staff to conduct a disciplinary inquiry. The matter has been examined and it has now been decided that the retired Government servants who are appointed as Inquiry Officer may be paid a lumpsum remuneration of Rs.5,000/- per inquiry report with an additional Rs.1000/- for every additional charged officer where more than one charged officer is involved.

4. The grant of honorarium in the case of serving Government servants who are appointed as Inquiry Officer and Presenting Officer and lumpsum remuneration to retired Governments appointed as Inquiry Officers as mentioned above will be further subject to the following conditions:-

- i. The competent authority should exercise its utmost care in the matter of grant of honorarium and may do so only in absolutely deserving cases. The honorarium in such cases may normally be regulated under the financial powers delegated to the Ministries/Departments and taking into account the quantum of work involved in individual disciplinary cases.
- ii. The number of disciplinary cases may be restricted to 10 cases in a year, with not more than 2 cases at a time for serving Government servants and 20 cases with not more than 4 cases at a time for retired Government servants.
- iii. The full amount of honorarium should be paid only when the inquiry is completed within a period of six months . If there is a delay in completion of the inquiry which is not due to non-cooperation of the charged officer or due to stay orders, etc., the honorarium should be reduced by 50%.
- iv. Before the honorarium payment is made to Inquiry Officer/Presenting Officer, all case records and inquiry report may be handed over to the Disciplinary Authority by the Inquiry Officer/Presenting Officer.

5. These orders will take effect from the date of issue and will also apply to inquiries in progress.

6. Hindi version will follow.

Sd/-

**(C.O. RAJAN)**

Under Secretary to the Govt. of India

Tele:3794799

To

All Ministries/Departments of the Government of India.

(As per standard list)

Copy to:

1. The Comptroller and Auditor General of India, New Delhi.
2. The Union Public Service Commission, New Delhi.
3. The Central Vigilance Commission, New Delhi.
4. The Rajya Sabha Secretariat, New Delhi.
5. The Lok Sabha Secretariat, New Delhi.
6. All attached/subordinate offices of the Ministry of Personnel, Public Grievances & Pensions and the Ministry of Home Affairs.
7. Ministry of Finance, Department of Expenditure, E-II.(B) Branch with reference to their

I.D.No.461/2001-E.II(B) dated 6.6.2001 and No.626-E.II(B)/01 dated 28.6.2001.

8. All Sections in the Ministry of Personnel, Public Grievances & Pensions.
9. Department of Administrative Reforms and Public Grievances – for Civil Services News.
10. AVD.I Section, DOP&T, New Delhi (200 spare copies).

Sd/-

**(C.O. RAJAN)**

Under Secretary to the Govt. of India

Tele:3794799

No.118/4/89-AVD-I  
Government of India  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS  
(Department of Personnel & Training)

....  
New Delhi, the 30 May, 1991.

OFFICE MEMORANDUM

Subject: Consultation with the Central Vigilance Commission  
i in cases where action taken under Rule 19 of the  
CCS(CC&A) Rules, 1965.

The question whether the advice of the Central F  
Vigilance Commission is required to be sought in disciplinary  
proceedings involving special procedure under rule 19 of the  
Central Civil Services (Classification, Control & Appeal)  
Rules, 1965 has been examined by the Government. It is  
reiterated that the Government of India's Resolution No.24/7/64-  
AVB, dated the 11th February, 1964 requires the Disciplinary  
Authorities to consult the Central Vigilance Commission in  
cases having a vigilance angle irrespective of the fact whether  
the procedure laid down in Rule 14 or Rule 19 is followed.  
Accordingly, the cases falling under Rule 19(1) of the CCS(CC&A)  
Rules, 1965 where a penalty is proposed to be imposed on a  
Government servant on account of his conviction on a criminal  
charge, the disciplinary authorities are required to take  
a final decision in consultation with the Central Vigilance  
Commission. In cases under Rule 19(ii) ibid there would be  
no occasion to consult the CVC a second time since there would  
be no inquiry report as in the case of proceedings under rule  
14. ibid. This, however, would not be applicable to cases  
(i) where the disciplinary authorities take a view which is  
not in conformity with the first stage advice of the Commission  
and; (ii) Where the disciplinary authority is competent to  
impose a penalty without consulting the UPSC.

2. The Ministries/Departments are requested to bring  
the above instructions to the notice of all disciplinary  
authorities under their control for compliance.

*C. P. Singh*  
(C.P. SINGH) 9/

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA.

To

All Ministries/Departments of the Government of India,  
with usual number of spare copies.

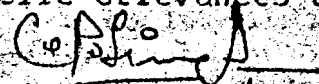
No.118/4/89-AVD-I

Dated

30-5-91

Copy forwarded with usual number of spare copies for inform to:-

- (i) Controller & Auditor General of India, New Delhi.
- (ii) UPSC, New Delhi.
- (iii) Central Vigilance Commission, New Delhi.
- (iv) Central Bureau of Investigation, New Delhi.
- (v) All Union Territories Administration,
- (vi) Commission for Linguistic Minority, Hyderabad.
- (vii) Lok Sabha/Rajya Sabha.
- (viii) All attached and Subordinate Office of the MHA and the Ministry of Personnel, Public Grievances & Pensions.
- (ix) All Officers and Sections of the Ministry of Home Affairs and the Ministry of Personnel, Public Grievances & Pensions,



(C.P.SINGH)

29/5/91

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA

\*\*\*\*\*



## **Guidelines for Expeditious disposal of Disciplinary Proceedings**

### **1. D.O. letter No. 134/2/83-AVD.I dated 2-4-1985 of Secretary, Department of Personnel & Training Secretary (Personnel)**

Delay in the disposal of disciplinary cases is neither in the interest of the Government nor in that of the Government servant. Undue delay in the disposal of the disciplinary cases also affects the morale of the Government servant. In order to ensure that disciplinary cases are disposed of quickly, it has been decided that the following measures should be adopted:-

- (i) Wherever the allegations are investigated by the CBI and the CVC is required to be consulted about the action to be taken on the investigation report, the Department should furnish their comments to the CVC within a month of the receipt of the investigation report. In case of disagreement with the advice of the CVC, the matter should be referred to the CVC for reconsideration of its advice only once. (It has come to our notice that sometimes Departments make more than one reference to CVC for reconsideration of its advice. There should be only one such reference to CVC for reconsideration.
- (ii) In cases investigated by the CBI as well as in other cases, the charge sheet should be issued within 1 month of the receipt of the CVC's advice. If this time-limit and that in Item (i) are strictly adhered to, it should be possible for the Department to issue the charge sheet within 3 months of the receipt of an investigation report, including the time taken in consulting the CVC.
- (iii) Wherever the CVC is not required to be consulted, the charge sheet should be issued within 2 months of the receipt of the investigation report. Where there is no preliminary investigation report, a charge sheet should be issued within 1 month of taking a decision in the matter.
- (iii) Whenever the CVC is not required to be consulted, the charge sheet should be issued within 2 months of the receipt of the investigation report. Where there is no preliminary investigation report, a charge sheet should be issued within 1 month of taking a decision in the matter.

- (iv) A properly drafted charge sheet is the sheet – anchors of a disciplinary case. Therefore, the charge sheet should be drafted with utmost accuracy and precision based on the facts revealed during the investigation or otherwise and the misconduct involved. It should be ensured that no relevant material is left out and at the same time no irrelevant material or witnesses are included.
- (v) With a view to reducing the time taken by the Government servant for inspection of documents before submission of his written statement of defence in reply to the charge sheet, copies of all the documents relied upon and the statements of witnesses cited on behalf of the Disciplinary Authority should be supplied to the Government servant along with the charge sheet, wherever possible.
- (vi) In all cases which are presently pending for appointment of Inquiry Officer and Presenting Officer, such appointment should be made within 1 month. In all other cases, the Inquiry Officer and the Presenting Officer should be appointed, wherever necessary, immediately after the receipt of the Government servant's written statement of defence denying the charges.
- (vii) Wherever a large number of oral inquiries are pending, the Department should earmark some officers on a full time basis to complete these inquiries within a specified time limit to be indicated by the Disciplinary Authority. The time limit shall be indicated as an administrative instructions, having regard to the nature of the charges and the evidence involved. Similarly, where part time inquiry officers are appointed, the Disciplinary Authority could, having regard to the nature of the charges and the evidence involved, specify time limits for the completion of the inquiry as an administrative instructions.
- (viii) The oral inquiry, including the submission of the Inquiry Officer's report, should normally be completed within a period of 6 months from the date of appointment of the Inquiry officer. In the preliminary inquiry, in the beginning, requiring the first appearance of the charged Government servant and the Presenting Officer, the Inquiry Officer should lay down a definite time bound programme for inspection of the listed documents before the regular hearing is taken

up. The regular hearing, once started, should be conducted on day-to-day basis until completed and adjournment should not be granted on frivolous grounds.

- (ix) After the receipt of the Inquiry Officer's report and obtaining the advice of the CVC wherever required, the final decision in the matter should be taken by the Departments within a period of 2 months except in cases where the UPSC is required to be consulted. Wherever the reconsideration of the advice of the CVC is sought, such reference should be once only at this stage. In cases in which UPSC is to be consulted, the final decision in the matter should be taken within 1 month of the receipt of their advice.
- (x) The statutory rules lay down certain time limits or require the Disciplinary Authority to specify time limits for some stages of the disciplinary proceedings. These time limits should be adhered to strictly. If ever some extension of time is granted, it should be done keeping in view the need for expeditious conclusion of the proceedings and to discourage the dilatory tactics sometimes adopted by Government servants.

## Chapter-II

**Circulars/ Guidelines from CVC regarding “Specific Directions & Guidelines regarding PSUs” and “appointment of CVO in CPSEs / Organizations etc.reg”.**

No.007/VGL/074  
**Government of India**  
Central Vigilance Commission

....

Satarkata Bhavan,  
Block A, GPO Complex,  
INA, New Delhi-110023  
Dated the 28<sup>th</sup> Dec. 2007

Circular No. 44 /12/07

**Subject :-Amendment to CDA Rules of PSUs to enable imposition of penalty on Public Sector Employees after their retirement – reg.**

The Commission has been seriously concerned that as Public Sector Undertakings (PSUs) are non-pensionable establishments, there is no possibility of imposing any penalty on such deviant employees after their retirement, who might have committed serious lapses while in service, just before their retirement. The gratuity amount also could not be withheld unless the person had been terminated consequent to disciplinary proceedings and the question of terminating an employee or imposing a penalty retrospectively, after retirement is not legally tenable. There was a situation that even disciplinary proceedings could not be continued against them beyond the retirement.

2. The Commission had earlier advised Public Sector Enterprises to make a provision in their CDA Rules to allow continuation of departmental proceedings after retirement of an employee. There is a need to incorporate a suitable provision to enable the imposition of penalty on delinquent employees on conclusion of such departmental proceedings continued beyond the date of their superannuation.

3. It is observed that the Public Sector Banks have incorporated a provision in their CDA Rules for deemed continuation of service for this purpose. The said provision reads as under:

“The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF.”

4. The Hon'ble Supreme Court of India has recently upheld the punishment of dismissal on a retired Bank employee on conclusion of departmental proceedings after his retirement, on the basis of the above provision, thus validating its legality. In its judgement dated 18.5.07 in the case of Shri Ramesh Chandra Sharma Vs Punjab National Bank, it has further noted that -

“.....it may be true that the question of imposition of dismissal of the delinquent officer from service when he has already reached the age of superannuation

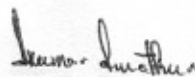
would not ordinarily arise. However, as the consequences of such an order is provided for in the service rule, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law."

5. The Supreme Court has further held that –

"The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect."

"The effect of a legal fiction is well-known. When a legal fiction is created under a statute, it must be given its full effect, as has been observed in East End Dwellings Co. Ltd. v. Finsbury Borough Council 1951 (2) All E.R. 587 as under...."

6. As the legality of the above provision has been upheld by the Supreme Court, all Public Sector Undertakings are advised to amend their CDA Rules in order to incorporate a similar provision. The receipt of this circular may be acknowledged and action taken to amend the CDA Rules along with a copy of the amended rules, may be sent to the Commission by 20.01.2008.



28/12/2007 (Vineet Mathur)  
Deputy Secretary

To

1. The Secretary, Department of Personnel & Training
2. The Secretary, Department of Public Enterprises
3. The Secretary, Department of Administrative Reforms & Public Grievances
4. All Secretaries to the Ministries/Departments of the Government of India
5. The Chairman, SCOPE
6. All Chief Executives of Public Sector Enterprises
7. All CVOs of Ministers/Departments/PSEs

No.98/VGL/51  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhavan, Block 'A',  
G.P.O. Complex, I.N.A.,  
New Delhi- 110 023  
Dated the 9<sup>th</sup> December, 2003

**Office Order No.59/12/03**

To

- (i) The Secretary, Department of Personnel & Training
- (ii) The Secretary, Department of Public Enterprises
- (iii) The Secretary, Department of Administrative Reforms & Public Grievances
- (iv) All Secretaries to the Ministries/Departments of the Govt. of India
- (v) The Director, CBI
- (vi) The Chairman, SCOPE
- (vii) All Chief Executives of Public Sector Enterprises
- (viii) All CVOs of Ministries/Departments/PSEs

**Subject: Special Chapter on Vigilance Management in Public Sector Enterprises and the Role and Functions of the CVC-Amendment to Para 32.3 thereof.**

Sir/Madam,

Special Chapter on Vigilance Management in Public Sector Enterprises, notified by the Commission vide No. 3(v)/99/3 dated 7.7.1999 provide for review of vigilance matters in PSEs by Board of Directors. The provision for review of progress of vigilance work by the Board of Directors of PSEs was withdrawn by the Commission vide circular letter No. 98/VGL/51 dated the 28<sup>th</sup> March, 2002 because too many reviews were felt uncalled for.

2. The matter has been once again reviewed and the Commission has decided that the Board of Directors should review the vigilance work once in six months and CVO will send a copy of the review done by the Board to the Commission. Necessary provision of Special Chapter on Vigilance Management in PSEs relating to review of vigilance matters stands amended to that extent.

3. The report sent by the Chief Vigilance Officer to the Commission would be in the following format. A copy of the Memorandum put up to the Board reviewing vigilance cases should also be endorsed to the report of the CVO.

| Name of the PSU | Period of Review | No. of cases reviewed | Specific remarks, if any |
|-----------------|------------------|-----------------------|--------------------------|
|                 |                  |                       |                          |

Yours faithfully,  
Sd/-  
(Anjana Dube)  
Deputy Secretary

No.003/VGL/18  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkata Bhawan,Block 'A',  
GPO Complex, INA,s  
New Delhi- 110 023  
Dated the 17<sup>th</sup> September 2003

**Officer Order No.45/9/03**

To

All Chief Executives of PSUs

**Subject:- Chief Vigilance Officers - status & perquisites in Public Sector Undertakings.**

Reference:- Commission's letter No. 3(V)/99/5 dated 29.07.1999.

Sir/Madam,

The Commission in the past had examined the role and functions of Chief Vigilance Officers in PSUs and to ensure their authority and functional independence, had issued instructions regarding their status and perquisites. It was envisaged that officers of Joint Secretary level joining as CVO would be accorded the status and perks of a functional director of board and officers of Director/Deputy Secretary level joining as CVO would be provided the status and perks of Executive Director.

2. Recently some CVOs have brought it to the notice of the Commission that the instructions of the Commission on the status and perks are not being implemented by PSUs for one reason or another. The Commission has considered the matter in detail and has observed that the basic reason for the problem is absence of categorization of CVO's post at the requisite level. Therefore as a first step towards implementation of its instructions, the post of CVO may be created at the functional director level in schedule "A" PSUs and at one level below the board in schedule "B", "C", and "D" PSUs. Once the posts are created at the requisite level, the status and perks will be automatically available to the incumbent joining as CVO.

3. The Commission desires that PSUs may take suitable action along the above lines at the earliest while keeping it advised of the progress.

4. The above instructions will not apply in the case of CVOs of public sector banks where the post of the CVO has already been appropriately categorized.

5. Kindly acknowledge receipt.

Yours faithfully,

Sd/-  
(Mange Lal)  
Deputy Secretary  
Telefax- 24651010



No.000/VGL/66  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 24<sup>th</sup> July 2003

Office Order No. 33/7/03

All Chief Vigilance Officers  
All Chief Executives of PSEs/PSBs/FIs

**Subject: Commission's jurisdiction over the employees of Organizations which have 50% or less Government's equity.**

Sir/Madam,

The Commission has received a number of queries from different Ministries/ Departments regarding question of CVC's jurisdiction as well as purview over the employees of the organizations in which the Central Government (including entities owned by Central Government) has 50% or less equity.

2. The jurisdiction of the Commission extends to the Central Government, Corporations established by or under any Central Act, Government companies, Societies and local authorities owned or controlled by the Central Government. Accordingly, the Commission has considered the issue and **has decided that its jurisdiction will continue over any organization, irrespective of the shareholding pattern, so long as the administrative Ministry/Department of the Central Government continues to exercise administrative control over these organizations including appointment of Chief Executives, board members, etc.** The Chief Vigilance Officers may accordingly review the situation and report to the Commission the organizations which will come under the purview of the Commission and those which will not.

Yours faithfully,

Sd/-  
(Anjana Dube)  
Deputy Secretary

**MOST IMMEDIATE**  
**CONFIDENTIAL**

001/VGL/67  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi – 110 023.  
Dated: 10.01.2002

**OFFICE MEMORANDUM**

**Sub: Exchange of information between PSBs and PSUs.**

\*\*\*\*\*

During the institutional coordination committee meeting as envisaged in the Special Chapter on Vigilance Management in Public Sector Banks held on 10.10.2001, the issue of exchange of information and documents between PSU/PSB where such information was required to facilitate investigations into cases of financial irregularities/frauds was discussed. It was agreed that such information may be parted within strict confidence after a written request from the concerned CVO is received and the Commission may issue suitable instructions in this regard.

2. Now, therefore, the Commission directs that all the Public Sector Undertaking and the Public Sector Banks may, henceforth, mutually or severally exchange, in strict confidence, any information or documents as may be required to facilitate investigation into financial irregularities/frauds. Such exchange may be made only after a written request from the concerned CVO is made.

**(C.J. Mathew)**

**Deputy Secretary**

To

1. All CVOs and CMDs of PSUs/PSEs/PSBs
2. RBI
3. Banking Division

No. 2(32)/97-DPE(WC) GL-XXXV  
Government of India  
Ministry of Heavy Industries & Public Enterprises  
Department of Public Enterprises

Block No.14, CGO Complex,  
Lodi Road, New Delhi –110003.  
Dated the 8<sup>th</sup> December, 2000.

**OFFICE MEMORANDUM**

Subject: Voluntary Retirement Scheme/Voluntary Separation Scheme for the employees of Public Enterprises.

The parameters on the basis of which the VRS could be formulated by the PSUs for their employees have been spelt out in this Department's OM of even number dated 5.5.2000. However, there are certain points on which clarifications have been solicited by the PSEs as well as the administrative Ministries/Departments. These points have been examined in the Government. The Points as well as the clarifications are given hereunder.

|                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Whether allowances like Personal Pay, HRA, NPA, Family Planning increment are to be included for computation of ex-gratia?                        | Basis pay plus Disciplinary Authority only is to be taken into account for computation of ex-gratia under VRS.                                                                                                                                                                                                                                                                                                 |
| 2. Whether the post of the employee who has taken VRS is to be abolished?                                                                            | There shall be no recruitment against vacancies arising out of VRS.                                                                                                                                                                                                                                                                                                                                            |
| 3. Whether any arrears of ex-gratia are to be paid in the even of pay revision being sanctioned subsequent to voluntary separation?                  | Ex-gratia will be re-calculated on the basis of revised pay scale and the difference be paid.                                                                                                                                                                                                                                                                                                                  |
| 4. Can notice pay in lieu of notice and TA for settling in the Home Town or elsewhere be paid to the employees who are to opt or have opted for VRS? | One month/three months notice pay (as per service conditions application to the employees) may be paid. TA for the employee and family would also be admissible to the place where he intends to settle down after taking VRS. For this purpose, the entitlement will include transportation cost of personal effects and traveling cost of self and family members, as admissible under the entitled classes. |
| 5. Under the Gujarat pattern, will the compensation for the balance service be calculated @ 25 days for every year of service left?                  | Compensation under VRS modeled on the Gujarat pattern will consist of salary of 35 days for every year of service completed and 25 days for every year of service left until superannuation.                                                                                                                                                                                                                   |
| 6. Under VSS, will the employee be entitled for 60 months salary even if he has not completed 30 years of service?                                   | No                                                                                                                                                                                                                                                                                                                                                                                                             |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                      |
| 7. 60 months salary as ex-gratia is permissible under VSS scheme of Deptt. of Heavy Industry. If the VSS scheme is modeled on Gujarat pattern (para 5 of OM dated 5.5.2000), will the employee be still entitled for 60 months salary if he has completed 30 years or more service?                                                                                                                                                                                      | Sixty months salary as compensation is attached to VSS package of the Department of Heavy Industry only and not under the Gujarat model.                                                                                                             |
| 8. Whether PF, leave encashment, gratuity, notice pay, LTC are payable to employees in case of Voluntary retirement?                                                                                                                                                                                                                                                                                                                                                     | There are to be paid to the employees opting for VRS as per the provisions of the relevant statutes and the service conditions. These are outside the computation of ex-gratia on voluntary retirement.                                              |
| 9. Is any minimum qualifying service necessary for opting for VRS?                                                                                                                                                                                                                                                                                                                                                                                                       | No age bar or minimum qualifying service is prescribed.                                                                                                                                                                                              |
| 10. Do the companies have the choice to opt for either the Gujarat model or VSS on DHI model for the sick and unviable units?                                                                                                                                                                                                                                                                                                                                            | The Boards of the sick and unviable PSUs are obliged to offer VSS on DHI pattern to the employees. The Board have the option to offer, in addition, VRS on Gujarat pattern, in which event the employees will have a choice between the two schemes. |
| 11. The managements have the right to reject the VR application of certain employees as they have to ensure that the company is not denuded of talents. In that case, what would be the treatment given to such employees who have been retained by the management in case of PSU is closed. Will they be offered VSS in case of PSU is closed. Will they be offered VSS even after a lapse of three months or will they be paid retrenchment compensation under ID Act? | The cases of such employees will be covered under the final settlement on closure of the unit. If the benefit of VSS is extended on closure, such employees will also receive it.                                                                    |
| 12. Whether Casual Leave may be encashed up to the date of notification of VRS or actual date of relief of employee?                                                                                                                                                                                                                                                                                                                                                     | CL may be encashed on pro-rate basis up to the date of relief of employee.                                                                                                                                                                           |
| 13. What would be the compensation payable in case where the balance of service left under superannuation is less than 250 days and sum of the salary for the balance period is less than Rs. 25000/-.                                                                                                                                                                                                                                                                   | The computation is explained in the enclosure.                                                                                                                                                                                                       |
| 14. Whether the notice period pay is to be paid in addition to                                                                                                                                                                                                                                                                                                                                                                                                           | If the application of an employee for voluntary retirement is accepted instantaneously and payment is                                                                                                                                                |

|                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 60 months salary as compensation in case an employee has completed 30 years of service and the remaining period of service is 75 months.                                                                              | <p>arranged by the management on the same day, the concerned individual would be entitled to payment of ex-gratia along with the notice period pay. It is, however, clarified that payment of ex-gratia for service rendered or left over service before superannuation as well as the amount payable for the notice period should not exceed the basic pay plus D.A. that would have been paid to the employee who has opted for voluntary retirement till the date of is superannuation. For example, if an employee opts for voluntary retirement a few months before the date of superannuation, say at 57 years and 10 months, the payment should be restricted to 2 months basic pay plus Dearness Allowance.</p> <p>In circumstances where the management takes time to take a decision about the acceptance of an application submitted by the employee for voluntary retirement and allows the notice period to lapse or the individual concerned has drawn full salary during the notice period served by him, in these cases notice period pay would not be admissible as the individual has already drawn the salary during the notice period.</p> |
| 15. Whether it is mandatory to introduce new VR Scheme or continue with the existing scheme?                                                                                                                          | The new scheme has been introduced in supersession of the old scheme.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 16.If the VRS is implemented in the middle of any particular month, whether full months salary is to be computed for VRS purpose?                                                                                     | An employee is entitled o payment of salary till the date of voluntary retirement, regardless of the date of implementation of the VRS. As for computing the completed years and months of service for the purpose of ex-gratia, the datum will be the date on which the employee in question had joined service.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 17. If the employee has completed 20 years service whether he will be paid compensation for 20 years service or compensation for 20 years of service plus proportionate days salary for the nine months service also? | The calculation would have to be based on every completed year of service or part thereof. The part of the complete year served shall be entitled for ex-gratia on pro-rata basis.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 18. Whether service rendered in other PSEs would be taken into account for purpose of computation of VRS from the latter employing organization.                                                                      | This would be taken into account only on transfer of cash equivalent of Earned Leave and Provident Fund. Gratuity would be as per the provisions of the Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 19.Will notional pay revision from 1992 and 1997 be taken for computation of VRS/VSS benefits?                                                                                                                        | In the new VRS/VSS scheme, there is no scope for computation of the ex-gratia on notional salary revision.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 20. Will encashment of sick leave at the time of taking VRS/VSS be permissible?                                                                                                                                       | Encashment of sick leave has nothing to do with VRS/VSS. Its encashment will depend on the management decision, based on the service conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 21. Will the casual workers be                                                                                                                                                                                        | Casual workers will not be entitled for VRS/VSS.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|                                                                                                                                                                                 |                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| included for the purpose of VRS/VSS who have completed more than 20 years of service?                                                                                           | Refer to para 9 of OM dated 5.5.2000.              |
| 22. Whether the contract employees appointed on contract basis can be considered as temporary employees for purposes of VRS? If yes, how the compensations would be calculated? | Contract employees are outside the purview of VRS. |
| 23. How would the computation of ex-gratia (VRS) under Gujarat pattern be done?                                                                                                 | As per enclosure.                                  |

All the administrative Ministries/Departments of Government of India are requested to bring the foregoing clarifications to the notice of the Public Enterprises under the administrative control for their information and necessary action.

Sd/-  
(A.K. Rath)  
Joint Secretary to the Govt. of India

No.001/DSP/4  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block "A"  
GPO Complex, I.N.A.,  
New Delhi –110023  
Dated the 10<sup>th</sup> September 2001.

To

All Chief Vigilance Officers,  
Public Sector Undertakings,

**Subject:- Voluntary Retirement Scheme/Voluntary Separation Scheme for the employees of Public Enterprises.**

The undersigned is directed to forward herewith the copies of the following OMs of the Department of Public Sector Undertaking on the aforesaid subject: for information and further necessary action.

- i) Ministry of Heavy Industry & Public Enterprises, Deptt. of Public Enterprises O.M. No. 2(32)-97-DPE(WC)GL-XXXV dated 8.12.2000.
- ii) Ministry of Heavy Industry & Public Enterprises, Deptt. of Public Enterprises O.M.No.2(32)97-DPE9WC)-GL-XXXXIV dated 3.5.2001.

Yours faithfully,

Sd/-  
(C.J. Mathew)  
Deputy Secretary

Encl: As above.

No.98/VGL/51  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 21<sup>st</sup> June 2001

To

- (1) The Secretary, Department of Personnel & Training
- (2) The Secretary, Department of Public Enterprises
- (3) The Secretary, Department of Administrative Reforms & PG
- (4) The Secretaries of the Ministries/Departments of Government of India
- (5) The Director, CBI
- (6) The Chairman, SCOPE
- (7) All Chief Executives of Public Sector Enterprises
- (8) All CVOs of Ministries/Departments/PSEs

**Subject: Special Chapter on Vigilance Management in Public Sector Enterprises and the Role and Functions of the CVC - Clarification on para 32.3 of the Chapter.**

Sir/Madam,

The undersigned has been directed to refer to the Commission's letter No.3(v)/99/3 dated 07.07.1999, notifying the Special Chapter on Vigilance Management in public sector enterprises, and to say that a clarification has been sought from the Commission as to whether, in terms of para 32.3 of the Special Chapter, the vigilance work/disciplinary cases involving Board level appointees of the PSEs, should be reviewed in the vigilance review to be undertaken by the Board of Directors of the concerned PSE. In this regard, kind attention is invited to para 15 of the Special Chapter, which stipulates that the complaints involving Board-level appointees of the PSEs are to be handled by the CVOs of the concerned administrative Ministries/Departments. Moreover, it would be quite embarrassing for the Directors to find one or more of themselves being discussed in a meeting in which they are participating. It is thus clarified that the Board of Directors level vigilance review, envisaged in para 32.3 of the Special Chapter, would relate to the complaints/cases involving the employees who are below the Board level. So far as complaints/cases involving Board level appointees are concerned, it would be for the administrative Ministry to do such reviews periodically.

Yours faithfully,

Sd/-  
**(K.L. Ahuja)**  
**Officer on Special Duty**



**MOST IMMEDIATE**

**No.98/VGL/51  
Government of India  
Central Vigilance Commission**

\*\*\*\*\*

**Satarkta Bhawan, Block "A"  
GPO Complex, I.N.A.,  
New Delhi- 110 023  
Dated the 11<sup>th</sup> August 1999**

**To**

1. **The Secretary, Department of Personnel & Training**
2. **The Secretary, Department of Public Enterprises**
3. **The Secretary, Department of Administrative Reforms & Public Grievances**
4. **All Secretaries to the Ministries/Departments of the Government of India**
5. **The Director, CBI**
6. **The Chairman, SCOPE**
7. **All Chief Executives of Public Sector Enterprises**
8. **All CVOs of Ministries/Departments/PSEs**

**Subject:- Special Chapter on Vigilance Management in Public Sector Enterprises  
and the Role and Functions of the CVC- Clarification of para 3.2 thereof.**

\*\*\*\*\*

The Commission has notified the Special Chapter on Vigilance Management in Public Sector Enterprises vide letter No.3(v)/99/3 dated 7/7/99. In Para 3.2 of the Chapter, the jurisdiction of the Commission over the officers of PSEs has been mentioned.

2. It is clarified that the existing jurisdiction of the Commission over the Board level appointees of PSEs has been extended to two levels below the Board level as per Para 3.2 of the Chapter. Therefore, from the date the Special Chapter has come into force i.e. 15/7/99, all cases involving vigilance angle in respect of all officials of Board level as well as two levels below the Board level will have to be referred to the Commission for its advice.

3. A doubt has arisen with regard to the last sentence of Para 3.2 of the Chapter which prescribes that "cases involving vigilance angle in respect of all employees two levels below the Board level may not ordinarily be referred to the Commission". It is clarified that cases involving vigilance angle in respect of all employees other than three categories namely, Board level, First and second levels below the Board level, may not ordinarily be referred to the Commission unless due to special reasons the Commission has called for a report or in cases where the PSE may like to seek the advice of the Commission.

4. This issues with the approval of Central Vigilance Commissioner.

**Yours faithfully,**

  
**(P.S. Fatehullah)**  
**Director**

**No. 3(v)/99/5**  
**Central Vigilance Commission**

\*\*\*\*\*

**Satarkta Bhavan, Block "A"**  
**GPO Complex, I.N.A.,**  
**New Delhi-110 023**  
**Dated the 29<sup>th</sup> July,1999.**

**Subject:- Uniformity in designation of Heads of Vigilance in Public Sector Enterprises(PSEs).**

Uniformity in the work culture is one of the factors, which affects the overall functioning of any organisation. The nomenclature of the Heads of Vigilance in PSEs is one of the areas which lacks uniformity at present. Officers who are of same and equivalent rank are designated as Director (Vigilance) in some PSEs and as Executive Director (Vigilance) in others. This anomaly has caused a lot of heartburning and misunderstanding between the CVOs and in the PSEs itself.

2. In order to promote uniformity in the work culture, in exercise of powers conferred on CVC vide para 3(v) of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training Resolution No.371/20/99-AVD.III dated 4<sup>th</sup> April 1999, the Commission has decided that with immediate effect that all Heads of Vigilance Divisions in the PSEs will be designated only as "Chief Vigilance Officer" irrespective of their status in the parent organisation. However, those Chief Vigilance Officers who are of the level of Joint Secretary to the Government of India and above would be given a status, facilities and perquisites equivalent to that of a functional director in that PSE as has been provided in the DPE's O.M.No. 16(48)87-GM dated 2/8/96. The Chief Vigilance Officers, who are below the level of Joint Secretary to the Govt. of India will get status, facilities and perquisites as that of Executive Director in the concerned PSEs.

3. All the Administrative Ministries/Department concerned with the PSEs may take necessary action to implement the above decisions of the Commission and also advise all the PSEs under their administrative control accordingly.

4. This order is also available on web site of the CVC at <http://cvc.nic.in>



(N. VITTAL)

29.7.99

**CENTRAL VIGILANCE COMMISSIONER**

1. The Secretaries of All the Administrative Ministries/Departments
2. The Secretary, Department of Public Enterprises, Enterprises Bhavan, CGO Complex, Lodhi Road, New Delhi
3. All Chief Executive of Central PSEs
4. All CVOs of Central PSEs
5. Shri D.C. Gupta, Additional Secretary (S&V), Department of Personnel and Training, North Block, New Delhi
6. The Establishment Officer, Department of Personnel and Training, North Block, New Delhi. He is requested that in all future appointments, the designation in the appointment orders may be made only as CVO and not as Executive Director (Vigilance) etc. while getting the approval of ACC.

**No. 3(v)/99/4**  
**Central Vigilance Commission**

\*\*\*\*\*

Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 12<sup>th</sup> July 1999

**Subject: Guidelines for obtaining vigilance clearance from the Commission in respect of candidate(s) recommended for Board Level appointment(s) in Public Sector Enterprises.**

.....

The Central Vigilance Commission is empowered to exercise superintendence over the vigilance administration of the various Ministries of the Central Government or Corporations established under any Central Act, Government Companies, Societies and local authorities owned or controlled by that Government in terms of the powers invested in it under para (3)(v) of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training Resolution No.371/20/99-AVD.III dated 4<sup>th</sup> April 1999.

2. By virtue of these powers, the Commission has been taking various measures to improve the vigilance administration in the Organisations/Departments under its purview. One of the ways which the Commission considers appropriate for achieving this objective is ensure that the top level posts in the PSEs are occupied by persons with exemplary service records and clean vigilance track records. It is in this context, that a system has been evolved for according vigilance clearance, in particular, after the instructions of DOPT's OM No. 27(5)-EO/88(ACC) dated 4<sup>th</sup> August 1988. In keeping with this instruction, the Commission is consulted for vigilance clearance in respect of those officers, who are already holding board level posts and are being considered for some other board/higher board level posts. In respect of those candidates, who are holding posts below the board level and are recommended by PESB for board level post, vigilance clearance from the Commission is not being obtained. There are many instances, in which officers with adverse vigilance history have managed to occupy Board level positions in PSEs without obtaining vigilance clearance from the Commission, merely because of the fact that they were holding a post below the board level.

3. In order to remedy the defects arising from the existing procedure it has been decided that vigilance clearance should be obtained from the Commission in respect of all candidates/officers recommended by the PESB for appointment to any Board level position in PSEs, irrespective of their holding a board level or below board level post at that point of time.

4. CVOs of all Ministries/Departments must ensure strict compliance of these instructions with immediate effect.

5. This order is also available on web site of the CVC at <http://cvc.nic.in>



(N. Vittal)

12.7.59

**Central Vigilance Commissioner**

To

- i) The Secretaries of All Ministries/Departments of Government of India
- ii) All Chief Vigilance Officers in the Ministries/Departments/PSEs
- iii) Establishment Officer, O/o Establishment Officer, DOPT, New Delhi
- iv) Secretary, PESB, New Delhi
- v) President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO

**No.3(v)/99/3**  
**Central Vigilance Commission**

\*\*\*\*\*

Satarkata Bhawan, Block 'A'  
G.P.O. Complex, INA,  
New Delhi -110023.  
Dated the 7<sup>th</sup> July, 1999

**Subject:- Special Chapter on Vigilance Management in Public Sector Enterprises and the Role and Functions of the CVC.**

.....

Current wisdom emphasises the importance of Public Sector Enterprises (PSEs) functioning as self-reliant and profitable units, building themselves around their competitive strengths so as to meet challenges from the private sector. In the achievement of this objective, however, there has to be greater transparency and accountability within the functioning of these enterprises.

2. In the changed and liberalised scenario, vigilance functions have to be organised along proactive, rather than negative lines: their performance should not detract from, impair or inhibit commercial decision making. On the contrary, it must assist the management in the achievement of its organisational goals and objectives.

3. The present Special Chapter on Vigilance Management in PSEs has been prepared, keeping these objectives in view. It takes into account the special micro-level needs of managers in PSEs and addresses the complex problems faced by them in their day-to-day functioning. Since the rules governing vigilance have now been made transparent, managers need only to shed their inhibitions and contribute their best to the organisations they work for.

4. The Special Chapter has been prepared in consultation with the CBI, DPE and CMDs and CVOs of PSEs. Special care has been taken to ensure that the provisions of this Chapter are in conformity with the other Chapters of the Vigilance Manual. However, if there is any inconsistency

between the provisions of this Chapter and the provisions of the extant Vigilance Manual, the matter should be referred to the CVC for decision.

5. In terms of the powers conferred under para 3(v) of the Government's Resolution dated 4.4.1999 and the Order of the Supreme Court dated 18.12.1997 in the case of Vineet Narain and others v. Union of India (Criminal Writ Petition Nos. 340-343 of 1993) the Commission is pleased to notify the enclosed Special Chapter on Vigilance Management in Public Sector Enterprises. The provisions of this Chapter will come into force w.e.f. 15.7.99 and will be deemed to form an integral part of the Vigilance Manual, Volume-I.

6. This order as well as the enclosed Special Chapter is available on web site of the CVC at <http://cvc.nic.in>

7. Hindi version will follow.



7.7.99

(N. VITTAL)

CENTRAL VIGILANCE COMMISSIONER

To

- (i) The Secretary, Department of Personnel & Training
- (ii) The Secretary, Department of Public Enterprises.
- (iii) The Secretary, Department of Administrative Reforms & Public Grievances
- (iv) All Secretaries to the Ministries/Departments of the Government of India.
- (v) The Director, CBI,
- (vi) The Chairman, SCOPE
- (vii) All Chief Executives of Public Sector Enterprises
- (viii) All CVOs of Ministries/Departments/PSEs

**SPECIAL CHAPTER**  
**ON**  
**VIGILANCE MANAGEMENT IN**  
**PUBLIC SECTOR ENTERPRISES**  
**AND**  
**THE ROLE AND FUNCTIONS**  
**OF THE CVC**



Government of India  
CENTRAL VIGILANCE COMMISSION  
JULY, 1999



## **INDEX**

| <b>Sl. No.</b> | <b>Para No.</b> | <b>Contents</b>                                                         | <b>Page No.</b> |
|----------------|-----------------|-------------------------------------------------------------------------|-----------------|
| 1.             | 1               | Introduction                                                            | 1               |
| 2.             | 2               | Central Vigilance Commission                                            | 1               |
| 3.             | 3               | Jurisdiction of CVC                                                     | 1               |
| 4.             | 4               | Objectives and Functioning of PSEs                                      | 2               |
| 5.             | 5               | What is a Vigilance Angle                                               | 3               |
| 6.             | 6               | Vigilance cases in PSEs                                                 | 4               |
| 7.             | 7               | Advisory Board                                                          | 5               |
| 8.             | 8               | Investigation by CBI                                                    | 5               |
| 9.             | 9               | Interaction/Cooperation with CBI.                                       | 6               |
| 10.            | 10              | Investigation reports received from CBI                                 | 7               |
| 11.            | 11              | Action on complaints.                                                   | 9               |
| 12.            | 12              | Investigation of Complaints by CVO                                      | 10              |
| 13.            | 13              | Investigation/Inquiry Report                                            | 12              |
| 14.            | 14              | Investigation of complaints against Vigilance personnel in PSEs.        | 14              |
| 15.            | 15              | Examination/investigation of complaints against Board-level appointees. | 14              |
| 16.            | 16              | Action on investigation report                                          | 15              |
| 17.            | 17              | Reference to CVC                                                        | 16              |
| 18.            | 18              | Categorisation of cases                                                 | 17              |
| 19.            | 19              | Reconsideration of the Commission's advice                              | 18              |

|     |         |                                                                                 |       |
|-----|---------|---------------------------------------------------------------------------------|-------|
| 20. | 20 - 23 | Procedure for imposing major penalty                                            | 19-30 |
| 21. | 24      | Procedure for imposing minor penalties.                                         | 30    |
| 22. | 25      | Appeal and Review                                                               | 31    |
| 23. | 26      | Action against persons making false complaints                                  | 32    |
| 24. | 27      | Difference of opinion between the CVO and the CMD                               | 33    |
| 25. | 28      | Grant of immunity to 'Approvers' in departmental inquiries.                     | 33    |
| 26. | 29      | Supervision over vigilance activities.                                          | 34    |
| 27. | 30      | Vigilance Staffing Structure in PSEs.                                           | 34    |
| 28. | 31      | Deputation tenure of CVOs in PSEs                                               | 35    |
| 29. | 32      | Review of vigilance matters in PSEs.                                            | 36    |
| 30. | 33      | Access to documents/information by the Vigilance Executives                     | 36    |
| 31. | 34      | Sanction for prosecution                                                        | 37    |
| 32. | 35      | Documents held up in Courts                                                     | 37    |
| 33. | 36      | TA/DA to the PO/DA/Witnesses                                                    | 38    |
| 34. | 37      | Past Misconduct                                                                 | 38    |
| 35. | 38      | Disciplinary provision for retired employees                                    | 39    |
| 36. | 39      | Rotation of Staff in sensitive posts/<br>Citizen's Charter                      | 39    |
| 37. | 40      | Interpretation                                                                  | 39    |
| 38. | 41      | Schedule of time limits in conducting investigations and departmental inquiries | 39    |

# **VIGILANCE MANAGEMENT IN PUBLIC SECTOR ENTERPRISES AND THE ROLE AND FUNCTIONS OF THE CVC**

## **1. INTRODUCTION**

1.1 This Chapter deals with the application of the principles of vigilance to Public Sector Enterprises (PSEs). Its objective is to apply and supplement rather than substitute the material contained in the earlier chapters of the Vigilance Manual (Vol. I) (Fifth Edition). To that extent, it is not and should not be construed as a self-sufficient code. This Chapter is therefore a part of the Vigilance Manual. If there is any inconsistency between the provisions of this Chapter and the provisions of the Vigilance Manual, the matter should be referred to the CVC for decision.

## **2. CENTRAL VIGILANCE COMMISSION**

2.1 The Central Vigilance Commission (hereinafter referred to as the Commission) was set up by the Government of India by its Resolution dated 11.2.1964 in pursuance of the recommendation made by the Committee on Prevention of Corruption (popularly known as the Santhanam Committee). The Commission acts as the apex body for exercising general superintendence and control over vigilance matters in administration and probity in public life. In compliance with the judgement of the Hon'ble Supreme Court of India in CWP 340-343 of 1993-Vineet Narain and others Vs. Union of India, the Commission was accorded statutory status with effect from 25.8.1998 through "The Central Vigilance Commission Ordinance, 1998". Since the CVC Bill was passed by the House of the People and was pending before the Council of States and since the CVC Ordinance, 1999 was to expire on 5th April, 1999, the Government of India (Department of Personnel & Training) passed a Resolution (dated 4th April, 1999) to continue the Commission beyond 5th April, 1999. Thus, the Commission would continue to discharge its duties and exercise its powers under this Resolution.

## **3. JURISDICTION OF CVC**

3.1 The Commission's jurisdiction is co-terminus with the executive powers of the Union. It can undertake any inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper or corrupt purpose; or cause such an inquiry or investigation to be made into any complaint of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of mal-practices

or misdemeanours on the part of a public servant. The Commission tenders appropriate advice to the concerned disciplinary authorities in all such matters.

3.2 Prior to 27th October, 1986, the CVC had the jurisdiction over employees of PSEs who were then placed in pay scales whose minimum was not less than Rs. 1800/- p.m. The Government decided on 27.10.86 that vigilance cases of only Board-level appointees of PSEs need be referred to the CVC for advice as they were appointed by the Government. As regards others, no reference ordinarily need be made to the CVC as the responsibility for initiating disciplinary proceedings against them rests either with the Board of Directors or an authority subordinate to it. This position was reviewed in consultation with PSEs and it was decided that as decision-making in most of the PSEs is related to two levels - below the Board level, the CVC's jurisdiction may be restricted, to begin with, only to that level. Therefore, cases involving vigilance angle in respect of all employees two levels below the Board level may not ordinarily be referred to the Commission.

#### **4. OBJECTIVES AND FUNCTIONING OF PSEs**

4.1 Currently, PSEs account for a public investment of Rs. 2,04,054/- crores, spread over 240 Enterprises. The original purposes, for which these Enterprises were set up, varied and included such objectives as:

- (a) setting up of an infrastructure for rapid industrial growth;
- (b) creation of additional employment opportunities;
- (c) facilitation of balanced regional development;
- (d) generation of surplus funds for further investment for economic development; and
- (e) reduction in disparities in income and wealth through prevention of concentration of economic power in private hands.

4.2 Over the years, the focus has shifted towards providing greater autonomy and ensuring greater transparency within the functioning of these enterprises. Current thinking stresses the importance of these Units becoming self-reliant and profitable ventures and building themselves around their strengths to face competitive challenges from the private sector.

4.3 In the ultimate analysis, the vigilance function should not be organised so as to detract from, impair, or inhibit commercial decision-making within these Enterprises.

4.4 In the changed economic scenario, the vigilance function itself has thus become complex. The Commission has, as part of its proactive role, been urging PSEs to codify their systems and procedures. It is noticed, however, that in many PSEs adhocism still continues to characterise management decision-making and the style of functioning lends itself to charges of lack of transparency and accountability. Questions are often raised with regard to consistency and credibility of decisions. In this context, it is important that all PSEs should codify their rules, procedures, norms and systems in key areas such as purchases, stores, operations, finance, award of contracts and personnel management.

4.5 Vigilance is basically and admittedly a managerial function and, therefore, it is an integral part of the duties of an executive. Vigilance departments of PSEs should work in cooperation with other Divisions/Units of the Corporation at all levels. Besides, the vigilance departments of PSEs should also work in coordination with the CVC, the administrative ministry and the CBI. The role of CVOs has been fully explained in Chapter XVIII of Vigilance Manual (Vol. I). The primary responsibility for the maintenance of purity, integrity and efficiency in a PSE vests in the CMDs/MDs/Head of the PSEs. The CVO would act as his special adviser in all matters pertaining to vigilance. He would provide a link between the administrative Ministry/Department and the CVC. CVC's interface with the PSE would be through the CVO.

## **5. WHAT IS A VIGILANCE ANGLE?**

5.1 The Chief Vigilance Officers (CVOs) in the organisations have been authorised to decide upon the existence of a vigilance angle in a particular case, at the time of registration of the complaint. Once a complaint has been registered as a vigilance case, it will have to be treated as such till its conclusion, irrespective of the outcome of the investigation. Although formulation of a precise definition is not possible, generally such an angle could be perceptible in cases characterised by:

- (i) commission of criminal offences like demand and acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, abuse of official position with a view to obtaining pecuniary advantage for self or for any other person; or

- (ii) irregularities reflecting adversely on the integrity of the public servant; or
- (iii) lapses involving any of the following ;
  - (a) gross negligence;
  - (b) recklessness;
  - (c) failure to report to competent authorities, exercise of discretion/powers without or in excess of powers/jurisdiction;
  - (d) cause of **undue** loss or a concomitant gain to an individual or a set of individuals/a party or parties; and
  - (e) flagrant violation of systems and procedures.

## 6. VIGILANCE CASES IN PSEs

6.1 As in other organisations, vigilance activity in PSEs should form an integral part of the managerial function. The *raison d'être* of such activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organisation. Commercial risk taking forms part of business. Therefore, every loss caused to the organisation, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. It would be quite unfair to use the benefit of hind-sight to question the technical merits of managerial decisions from the vigilance point of view. At the same time, it would be unfair to ignore motivated or reckless decisions, which have caused damage to the interests of the organisation. Therefore, a distinction has to be drawn between a business loss which has arisen as a consequence of a bona-fide commercial/operational decision, and an extraordinary loss which has occurred due to any mala fide, motivated or reckless performance of duties. While the former has to be accepted as a normal part of business and ignored from the vigilance point of view, the latter has to be viewed adversely and dealt with under the extant disciplinary procedures.

6.2 Whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organisation is one possible criterion for determining the bona fides of the case. A positive response to this question may indicate the existence of bona fides. A negative reply, on the other hand, might indicate their absence. It follows that vigilance investigation on a complaint would not be called for on the basis of a mere difference of opinion/ perception or an error of judgement simpliciter or lack of efficiency or failure to attain exemplary devotion in the performance of duties. (Union of India vs. J. Ahmed AIR 1979 SC 1022). Such failures

may be a matter of serious concern to the organisation but **not** from the vigilance point of view. They have to be dealt with separately.

6.3 Administrative misconduct, such as, unpunctuality, drunken behaviour at work, insubordination etc. would again be left to the disciplinary authority to deal with in an appropriate manner. If the lapse is without a vigilance angle, the disciplinary authority would be within its right to initiate appropriate penalty proceedings against such erring employees.

6.4 However, once a vigilance angle is evident, it becomes necessary to determine through an impartial investigation as to what went wrong and who is accountable.

## **7. ADVISORY BOARD**

7.1 Considering the complexities involved in commercial decisions of the PSE, the CBI may find it worthwhile to obtain the benefit of expert advice from various disciplines before registration of PE/RC. A Central Advisory Board may be constituted to assist CBI for this purpose. Appointments on the Board would be made from the panel of names approved by the CVC. The Board would give its considered opinion within one month from the date of reference before registration of PE/RC, failing which the CBI would be competent to decide the matter without advice. Advice of the Board will not be binding on the CBI.

## **8. INVESTIGATION BY THE CBI**

8.1 The Special Police Establishment, Central Bureau of Investigation, was constituted by the Government of India, under the DSPE Act, 1946. It inquires and investigates into offences pertaining to corruption and other malpractices involving public servants. The SPE takes up cases for investigation on the basis of the information collected by them from their own sources or received from members of the public. It also investigates cases referred to them by the Commission and the administrative authorities. If the information discloses, prima - facie, commission of a cognizable offence, a regular case (RC) is registered u/s 154 Cr.P.C. But if the information prima facie discloses commission of irregularities, which call for further enquiry, a preliminary enquiry (PE) is first registered. If the PE reveals commission of a cognizable offence, a regular case is registered for further investigation. As soon as a PE or a RC is registered, a copy thereof is sent to the Head of Department and/or the administrative ministry. A copy of PE/RC (i.e. FIR/Registration Report) is also sent to the Commission if the public servant concerned comes within

the advisory jurisdiction of the Commission. The SPE generally does not take up inquiries into or register a case where minor procedural flaws are involved. They are also expected to take note of an individual officer's positive achievements while recommending RDA so that a single procedural error does not cancel out a life time's good work.

## **9. INTERACTION/ COOPERATION WITH THE CBI**

9.1 The CVOs in PSEs and the concerned officer in the CBI should interact as frequently as possible with reference to exigencies of work. However, there should be a quarterly meeting between the CBI and CVO at the level of Zonal Joint Director of CBI to monitor and to take stock of the cases and exchange information for expeditious investigation and preparation of the 'Agreed List'.

9.2 Standard tender procedure, policy guidelines and manuals may be supplied to the CBI so that transactions under investigation/inquiry could be examined to find out whether criminal or departmental misconduct is made out or not. Such standardised procedures and guidelines should also be updated periodically as compilations of extant procedures make it easier to form a view about criminal liability, misconduct or innocence of an official in a particular case.

9.3 The CVO should screen all the complaints before sending the same to the CBI - whether the complaint should be forwarded to CBI or be dealt with departmentally, as per provisions contained in paras 11.2 and 11.3 (a) infra.

9.4 CBI should ordinarily be sent only cases involving transactions not less than Rs. 25 lakhs or otherwise possessing national or international ramifications. Other cases may be sent to the local police.

9.5 Full cooperation and facilities should be extended by the Public Sector Enterprises to the CBI during the course of investigation. This would include making available to them the requisite documents with the least possible delay, directing such employees as are to be examined to appear before the investigating officer and making suitable transport/accommodation in the PSE's guest houses, available to touring officers (subject to availability), in accordance with their entitlement and on payment of the prescribed charges. Assistance of technical experts to the Investigating Officer, if considered necessary, may also be provided to the extent possible in accordance with extant instructions on the subject.



9.6 When PSEs make reference to the CBI for investigation, they should also make available duly certified photocopies of all relevant documents along with the complaint so that there is no delay in initiating action on the part of the CBI. The originals may be handed over to them only at the time of the actual registration of the case. Similarly, when CBI seizes documents, authenticated copies of all the documents, should within four days of the seizure, be made available to the CVO of the PSE.

## 10. INVESTIGATION REPORTS RECEIVED FROM THE CBI

10.1 On completion of their investigation, the CBI forwards a copy of the SP's report to the concerned CVO for further action. A copy of the SP's report is also endorsed to the Commission in cases in which the Commission's advice is necessary.

10.2 The CBI generally recommends prosecution in cases of bribery, corruption or other criminal misconduct; it also considers making similar recommendations in cases involving a substantial loss to the Government or a public body. The Commission's advice for prosecution, however, is required only if the sanction for prosecution is necessary under any law promulgated in the name of the President. In such cases, CVOs should furnish the department's comments within a month of the receipt of the CBI report by the competent authority. In other cases, as directed by the Supreme Court, the matter should be processed expeditiously to ensure that the required sanction is issued within a period of three months (the instructions issued by the Department of Personnel & Training vide O.M. No. 142/10/97-AVD.I dated 14.01.1998 also refer). However, in case of difference of opinion between the CBI and the competent authority in the PSE, the matter may be referred to the Commission for its advice irrespective of the level of the official involved.

10.3 Prosecution proposals should be able to meet the legal and technical requirements laid down by the Courts. Apart from adequate evidence to establish that an offence has been committed under the relevant provision of the law, there should be some facts on record from which it should be possible to infer or presume a criminal or guilty intention behind the omission or commission. In the absence of mens rea violation of rules or codal formalities could at worst be considered as transgressions of systems and procedures of the organisation and the same would, as such, be more suitable as the subject matter of regular departmental action (RDA) rather than criminal prosecution.

10.4 In cases, where the CBI recommends RDA for major/minor penalty action or 'such action as deemed fit' against the officials and the Commission is to be consulted, the CVO should ensure that the comments of the department/PSE on the CBI report are furnished to the Commission within one month of the receipt of the CBI's investigation report, failing which the CVC will proceed to examine the case and tender advice. Further action in such cases may be taken as per the Commission's advice. In other cases, the CVO should take expeditious action to ensure that charge-sheets, if necessary, are issued within two months of the receipt of the investigation report from the CBI. It would not be necessary for the CBI to follow up the matter in such cases after the disciplinary authority has initiated action for RDA against the concerned officials in accordance with their recommendations. However, in case of difference of opinion between the CBI and administrative authorities, the matter would be referred to the Commission for advice irrespective of the level of the official involved. The organisation would take further action in accordance therewith.

10.5 The law of the land permits prosecution as well as RDA to proceed simultaneously (Jang Bahadur Singh v/s Baijnath Tewari, 1969 SCR, 134).

10.6 Where the suspect officer is primarily accountable for conduct which legitimately lends itself to both criminal prosecution in a court of law as well as RDA, as a general rule, both should be launched simultaneously after consultation with the CBI or other investigating agencies charged with conducting the prosecution. Such simultaneous conduct of RDA and criminal prosecution should be resorted to especially if the prosecution case is not likely to be adversely affected by the simultaneous conduct of RDA. Keeping RDA in abeyance should be an exception rather than rule. Copies of all the relevant documents authenticated by the competent authority may be retained, for the purpose of RDA, before the original documents are sent to the Court. If the documents have already been sent to a Court of Law for the purpose of criminal proceedings, certified copies may be procured for the purpose of RDA. Care, however, should be taken to draft the charge-sheet for the purpose of RDA in such a manner that it makes the suspect official accountable for violation of various provisions of CDA Rules without reference to criminal misconduct.

## **11. ACTION ON COMPLAINTS**

11.1 Information about corruption, malpractices or misconduct on the part of public servants may come to the CVO's notice through various sources, such as, (i) the complaints received from the public, or through the administrative Ministry, CBI and the CVC; (ii) departmental inspection

reports and stock verification surveys, (iii) scrutiny of property returns and the transactions reported by the concerned employee under the CDA Rules, (iv) audit reports, (v) reports of parliamentary committees, etc. Information received verbally should be reduced to writing and dealt with similarly.

11.2 In the first instance, the decision with regard to the existence of a vigilance angle in a case may be taken by the CVO. The CMD or his nominee, may, if there are valid reasons, within a period of 15 days, differ from the CVO. In case of difference between CVO and CMD, the matter may be referred to the Commission. After registering the information as a complaint in the Vigilance Complaint Register, he would then process the matter further to decide as to whether the allegations are general or vague and deserve to be filed/ or the matter requires further investigation. In the latter case, he would also have to decide as to whether the investigation into the allegations should be entrusted to the CBI or local police or taken up departmentally.

11.3.1 The case may, with the approval of the CMD, be entrusted to the CBI, if the allegations:

- (i) are criminal in nature (e.g. bribery, corruption, forgery, criminal breach of trust, possession of assets disproportionate to known sources of income, cheating, etc.; or
- (ii) require inquiries to be made from non-official persons; or
- (iii) involve examination of private records; or
- (iv) need expert police investigation for arriving at a conclusion; or
- (v) need investigation abroad.

11.3.2 A decision in this regard may be taken by the CMD within 15 days from the date on which papers are received by him for consideration and decision.

11.4 In exercise of its extraordinary jurisdiction, the Commission has the power to call for a report in respect of any case with a vigilance angle in so far as it relates to any public servant belonging to an organisation falling within its jurisdiction.

11.5 A complaint involving a Board-level appointee, alone or with others, may be forwarded to the CVO of the administrative ministry, who, in the first instance, would decide whether the information involves a vigilance angle or not. If so, he would register that as a complaint in the

Vigilance Complaint Register and would process the matter further to decide whether the allegations are general in nature or vague and deserve to be filed, or the matter requires further investigation. In the latter case, he would also decide as to whether the investigation into the allegations should be entrusted to the CBI or taken up departmentally.

## **12. INVESTIGATION BY CVO**

### **12.1 ANONYMOUS/PSEUDONYMOUS COMPLAINTS**

12.1.1 It has been ordered under powers vested in the CVC under para 3 (v) of the DOPT Resolution No. 371/20/99-AVD.III dated 4th April, 1999 that with immediate effect no action should be taken on any anonymous or pseudonymous complaints. They must be filed. (Ref: CVC's Order No. 3 (v)/99/2 dated 29<sup>th</sup> June, 1999.

### **12.2 OTHER COMPLAINTS**

12.2.1 After it has been decided that the allegations contained in a complaint should be looked into departmentally, the CVO should proceed to make a preliminary enquiry (generally termed as investigation). He may conduct the preliminary enquiry himself or entrust it to one of the Vigilance Officers. He may also suggest to the administrative authority to entrust the investigation to any other officer considered suitable for the purpose in the particular circumstances. The purpose of such an enquiry is to determine whether, prima-facie, there is some substance in the allegations.

12.2.2 The preliminary enquiry may be made in several ways depending upon the nature of allegations and the judgment of the investigating officer, e.g.

- (a) If the allegation contain information, which can be verified from documents, files or other departmental records, the investigating officer should, without loss of time, secure such records etc. for personal inspection. If any paper is found to contain evidence supporting the allegations, it should be taken over by him for retention in his personal custody to guard against the possibility of the available evidence being tampered with later on. If the papers in question are required for any current action, it may be considered whether the purpose would be served by substituting authenticated copies of the relevant portions of the record, the originals being retained by the investigating officer in his custody. If

that is not feasible, the officer requiring the documents or papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of enquiry.

- (b) In cases where the alleged facts are likely to be known to any other employee of the department, the investigating officer should interrogate them orally or ask for their written statement. In case of oral interrogation, a full record of interrogation may be kept and the person interrogated may be asked to sign as a token of his confirmation of his statement.
- (c) Wherever necessary, important facts disclosed during oral interrogation or in written statements should be sought to be corroborated.
- (d) If it is necessary to make enquiries from the employees of any other government department or organisation or PSE or Bank, the investigating officer should seek the assistance of the CVO/nodal authority concerned for providing the necessary facilities.

12.2.3 During the course of preliminary enquiry, the concerned employee may as a fundamental administrative requirement also be given an opportunity to tender his version of the facts so as to find out if he has any plausible explanation. In the absence of such an explanation, the concerned employee may be proceeded against unjustifiably. There is, however, no question of making available to him any document at this stage. Such an opportunity need not be given in cases in which a decision to institute department proceedings is to be taken without any loss of time, e.g. in cases in which the public servant is due to superannuate soon and it is necessary to issue the charge-sheet to him before his retirement.

12.2.4 After the preliminary enquiry has been completed, the investigating officer should prepare a self-contained report, containing **inter alia** the material to controvert the defence, and his own recommendations.

12.2.5 Where a case involves both criminal misconduct as well as flagrant violation of systems and procedures of the organisation, further investigation into the former should be left to the CBI. The PSE concerned however may simultaneously consider the latter and initiate appropriate disciplinary proceedings, in accordance with the prescribed procedure, if required. The CVO of the PSE and the DIG concerned of the CBI should

coordinate their efforts to ensure that violation of rules, regulations and PSE norms which are best covered under RDA are left to the disciplinary authority to deal with; the CBI on the other hand should focus their investigation on the criminal aspects of the case.

12.2.6 CVOs of the subsidiary companies should keep CVOs of the holding companies informed of the position of vigilance cases. CVOs of the holding companies will accord their approval within 15 days from the date of receipt of reference from the subsidiary company.

### **13. INVESTIGATION/INQUIRY REPORT**

13.1 The Investigating Officer (IO) should indicate the allegations contained in the complaint in the first paragraph of his report. The next paragraph should contain the gist of the investigation carried out by him as well as documentary and oral evidence that he has relied upon. The IO should then detail the procedure and guidelines which the Suspected Public Servant (SPS) was required to follow/comply with. After reporting the SPS's explanation, the same along with evidence on record should be discussed and assessed by the IO. Finally, he should give his findings in the last paragraph of the report clearly bringing out the accountabilities of the officials. Seized documents and statements of the witnesses and the SPS recorded during the investigation should accompany the investigation report.

13.2 The report of the IO should thus be comprehensive, and completely documented so as to enable the CVO and DA to form an opinion whether any disciplinary or any other action is called for or not.

13.3 The report should be forwarded to the disciplinary authority through the CVO. The disciplinary authority/CVO should make a meticulous evaluation of the actions of various officials with reference to the nature of their duties. They are also required to assess the gap between what the managers at different levels of the decision-making hierarchy actually did and what they were required to do in accordance with manuals/guidelines/orders. They may follow the following criteria for the purpose and highlight in their reports if the answer to any of the questions is in the affirmative:-

- (a) Can mala fide be inferred or presumed from the actions of any of the concerned officials?
- (b) Could any of the officials be said to have engaged in a misconduct or misdemeanour?

- (c) Was the conduct of any of the officials reflective of lack of integrity?
- (d) Did the official(s) act in excess of their delegated powers/jurisdiction and failed to report the same to the competent authority?
- (e) Did they or any of them show any gross neglect of their official functions?
- (f) Is there any material to indicate that any of them acted recklessly?
- (g) Has the impugned decision caused any undue loss to the organisation?
- (h) Has any person/party or a set of persons/parties either within the organisation or outside it been caused any undue benefit?
- (i) Have the norms or systems and procedures of the organisation been flagrantly violated?

13.4 Timeliness in the conduct of the preliminary inquiry cannot be over-emphasised. Both the courts as well as administrative instructions have indicated that there should not be an inordinate delay between the occurrence of the impugned events and the issue of the charge-sheet. The current instructions of the Government are that the preliminary inquiry should be completed within three months. In the State of M.P. Vs. Bani Singh, 1990 Suppl. S.C.C. 738 it was held that an inordinate and inexplicable delay in finalisation of the charge sheet can itself be a ground for quashing of the same on the ground of denial of reasonable opportunity. Similarly, delayed charge sheets can also be legally challenged on grounds of staleness. Further, in State of Punjab Vs. Chaman Lal Goyal SLR (1995) (1) 700 S.C. it was held that in the case of inordinate delay the burden of proving that the delay was due to a reasonable cause would be on the department. Thus, although it may not be desirable to indicate a time limit for staff accountability, the need to ensure that the same is done at the earliest, needs to be reiterated.

## 14. **INVESTIGATION OF COMPLAINTS AGAINST VIGILANCE PERSONNEL IN PSEs**

14.1 Complaints against the CVO in a PSE may be examined/investigated by the CVO of the administrative ministry. A report along with the original record together with comments of the Secretary of the Ministry/Department may be referred to the CVC for proper and independent examination of the case.

14.2 Complaints against vigilance executives other than the CVO of the PSE may be examined/investigated by the CVO of the PSE and a final decision may be taken with the approval of the CMD.

14.3 If the allegations are prima facie established against such vigilance functionaries, they should be shifted to non-sensitive positions and in case they are on deputation from some other organisations, they may be repatriated to their parent organisations with appropriate recommendation to their disciplinary authorities with regard to the disciplinary action to be initiated against them.

## 15. **EXAMINATION/INVESTIGATION OF COMPLAINTS AGAINST BOARD-LEVEL APPOINTEES**

15.1 If the CVO of an administrative ministry asks for a factual report against a Board-level appointee from the CVO of the PSE, the latter will send the same to the CVO of the ministry, after endorsing a copy of the report to the CMD to keep him informed of the developments. The CVO of the ministry may make a reference to the CVC after collecting all the relevant facts and following the prescribed procedure.

15.2 If a complaint against a Board-level appointee is directly received by the PSE, the CVO shall send the same to the CVO of the ministry for consideration. If the ministry directs the CVO of the PSE for investigation and factual report, the procedure indicated in Para 15.1 above may be followed.

15.3 In cases where CVC calls for investigation and report against a Board-level appointee, the CVO of the ministry shall initiate inquiries and may in this regard obtain factual information from the CVO of the PSE. Thus, CVO of the PSE under no circumstances should initiate action against the Board-level appointee on his own initiative.

## 16. **ACTION ON INVESTIGATION REPORT**

16.1 The disciplinary authority would consider the investigation report and the first stage advice of the CVO and decide, on the basis of the facts disclosed in the preliminary enquiry, whether the complaint should be dropped or warning/caution etc. administered or regular departmental proceedings launched. The test to be applied at this juncture relates to whether a prima-facie case has been built up on the basis of the evidence collected during the course of preliminary enquiry. Generally, if any of the criteria indicated in the paragraph 13.3 above is satisfied, a prima-facie case



for instituting regular departmental proceedings could be said to exist. If on the other hand the evidence on record falls short of establishing such a prima facie case, the disciplinary authority may either close the matter, or may take recourse to other forms of disapproval, such as reprimanding the concerned employee, issuing him an advisory memo or warning, or communicating the Organisation's displeasure etc., as per rules of the PSE. While taking such a decision, the disciplinary authority should bear in mind that a departmental proceeding is not a criminal trial, and that the standard of proof required is based on the principle of 'preponderance of probabilities' rather than 'proof beyond reasonable doubt'.

16.2 If any of the employees involved in the case falls within the Commission's jurisdiction, the latter's advice would be required and any decision of the disciplinary authority at this juncture may be treated as "tentative". Such a reference would be required to be made even in respect of an officer/staff who are not within the Commission's jurisdiction if they are involved along with other officers who are within the jurisdiction of the Commission, as the case would then become composite and fall within the Commission's jurisdiction. The matter may be referred to the Commission, through the CVO, for its advice. However, if an administrative authority investigates into an anonymous or pseudonymous complaint under the impression that it is a genuine signed complaint, or for any other reason, the Commission need not be consulted if it is found that the allegations are without any substance. Further action in the matter should be taken on receipt of the Commission's advice, wherever the same has been sought. Certain types of vigilance cases where it is desirable to initiate major penalty proceedings have been mentioned in para 11.4 of Chapter X of the Vigilance Manual (Vol.I) by way of illustrative guidelines. Besides, lapses/irregularities in a PSE would depend upon the functions which the PSE is performing. However, misconduct, lack of devotion to duty or integrity, as the case may be, could be inferred illustratively in the following circumstances, where the employee concerned :

- (a) has not acted in accordance with rules and his recommendations are not in the public interest; or
- (b) has failed to conduct himself in such a manner that his decisions or recommendations do not appear objective and transparent and seem to be calculated to promote improper gains for himself or for any one else; or
- (c) has acted in a manner to frustrate or undermine the policies of the organisation or decisions taken in the public interest by the management; or

- (d) seems to have complied with unauthorised and unlawful oral instructions of his seniors without bringing them to the notice of the CMD;
- (e) has exceeded his discretionary powers and his actions do not appear justifiable or to serve any organisational interests; or
- (f) has abused or misused his official position to obtain benefit for himself or for another ; or
- (g) has not reflected intellectual honesty in his decisions and recommendations.

## 17. **REFERENCE TO CVC**

17.1 The CVC is consulted at two stages of departmental proceedings as explained in para 19.1 infra. The Commission has noticed that references made to it both at the first as well as second stage are incomplete, resulting in back references to the PSE. It has therefore become necessary for the Commission to reiterate the extant procedure to be followed in this regard.

17.2 On completion of the preliminary investigation of the case, the disciplinary authority shall be required to forward:-

- (i) The preliminary investigation report;
- (ii) The relevant documents and records/files connected with the case;
- (iii) A self-contained note clearly indicating the facts on which the Commission's advice is sought;
- (iv) The disciplinary authority's own tentative recommendations;
- (v) In cases investigated by the Central Bureau of Investigation under the Special Police Establishment Act, 1946, the comments of the disciplinary authority on the recommendations of the CBI;
- (vi) A neatly typed tabular statement clearly indicating the allegations against the officer proposed to be included in the charge-sheet, his defence in respect thereof, and the disciplinary authority's and CVO's comments;
- (vii) A panel of employees to be nominated as Presenting Officers; and
- (viii) The bio-data of the officials concerned.

17.3 Since CVOs in PSEs are also experts in their respective fields, they should invariably provide their own analysis and assessment of the

facts of the case so that the Commission can have the benefit of their expertise.

17.4 It is necessary that before a case is referred to the CVC for advice, it receives due consideration at the appropriate level in the organisation. In order to ensure this, reference to the CVC may be made as follows:

- (a) At the level of CVO concerned, in cases seeking 1st stage/2nd stage advice on the first occasion.
- (b) At the level of CMD/Secretary of the ministry, in proposals for reconsideration of advice.

## 18. **CATEGORISATION OF CASES**

18.1 Before making references to the Commission, the CVO may classify references into Vigilance A and B. Vigilance-A would comprise cases where the lapses committed/irregularities noticed are serious and a prima-facie case for initiation of RDA for major penalty proceedings has been made out; Vigilance-B, on the other hand, would comprise less serious cases of procedural lapses, which in the opinion of the CVO, do not reflect adversely on the integrity of the official concerned. Vigilance-B cases ordinarily will not invite any administrative disabilities normally associated with the registration of a vigilance case against an official. These cases will continue to be monitored through the Vigilance Complaints Register till their disposal but only because they technically fall within the ambit of the term 'vigilance' and not because the official is accountable for a serious misdemeanour/misconduct or equivalent negligence. It follows then that an official can be proceeded against for a minor penalty but may not suffer any disability by way of posting, training, placement on 'Agreed List' etc., during the pendency of the disciplinary proceedings. If he is found accountable in the disciplinary proceedings, he will be duly punished but for all other purposes (except promotion, for which a separate sealed cover procedure exists) he will be treated at par with other equally/comparably placed employees facing minor penalty proceedings in a non-vigilance case.

## 19. **RECONSIDERATION OF THE COMMISSION'S ADVICE**

19.1 Para 5.16 of Chapter I and Para 22 of Chapter X of Vigilance Manual (Vol. I) contain provisions regarding reconsideration of the

Commission's advice. The scheme of consultation with the Commission envisages consultation at two stages. First stage advice is required at the time of initiation of disciplinary proceedings on the basis of investigation carried out by the CBI or the Department or PSE. Second stage advice on the other hand is required before a final decision is taken on the conclusion of the departmental proceedings. There is provision for another reference to the Commission requesting for reconsideration of its advice if the disciplinary authority disagrees with the Commission's perception of the case. Requests should be made soon after the receipt of the Commission's advice.

19.2 Reconsideration of the Commission's advice is necessary regardless of whether the disciplinary authority proposes to take "severer" or "lighter" action than that recommended by the Commission. Decisions taken in a manner, other than that mentioned above, would be treated as cases of non-acceptance of the Commission's advice and may be reported in the Commission's annual report to be placed on the Table of both the Houses of Parliament. Ordinarily, the Commission does not entertain more than one request for reconsideration and that too, if new facts not within its knowledge earlier are brought to light.

19.3 Compliance of CVC's first stage advice and second stage advice may be ensured within periods of one month and two months respectively.

## **20. PROCEDURE FOR IMPOSING MAJOR PENALTY**

### **20.1 CHARGE-SHEET**

20.1.1 Once the disciplinary authority decides to initiate major penalty proceedings against an employee, on the basis of the Commission's advice or otherwise, it should take immediate steps to issue the charge-sheet. A properly drafted charge-sheet is the sheet anchor of a disciplinary case. Therefore, the charge-sheet should be drafted with utmost accuracy and precision based on the facts gathered during the investigation (or otherwise) of the misconduct involved. It should be ensured that no relevant material and witnesses are left out and at the same time, no irrelevant material or witnesses are included.

20.1.2 The charge-sheet comprises the memorandum, informing the concerned employee about initiation of proceedings against him and giving him an opportunity to admit or deny the charge(s) within a period not

exceeding 15 days. The memorandum is to be signed by the disciplinary authority himself. In case, the disciplinary authority is the President, an officer, who is authorised to authenticate the orders on behalf of the President, may sign the memorandum. The Memorandum should be supported by annexures, namely, (i) article(s) of charge, (ii) statement of imputations of misconduct or misbehaviour in support of each article of charge, (iii) list of documents and (iv) list of witnesses. Lists of documents and witnesses should form an integral part of the charge-sheet even if the disciplinary rules applicable to the concerned employee do not contain such a provision. Guidelines in this regard contained in Para 14-17 of Chapter X of Vigilance Manual (Vol. I) may be kept in view.

20.1.3 Special care has to be taken while drafting a charge-sheet. A charge of lack of devotion to duty or integrity or unbecoming conduct should be clearly spelt out and summarised in the articles of charge. It should be remembered that ultimately the IO would be required to give his specific findings only on the articles as they appear in the charge-sheet. The Courts have struck down charge-sheets on account of the charges framed being general or vague ( S.K. Raheman Vs State of Orissa 60 CLT 419 .) If the charge is that the employee acted out of an ulterior motive that motive must be specified (Uttar Pradesh Vs Salig Ram AIR 1960 All 543). It is also equally important that while drafting a charge-sheet, special care should be taken in the use of language to ensure that the guilt of the charged official is not pre-judged or pronounced upon in categorical terms in advance (Meena Jahan Vs Deputy Director, Tourism 1974 2 SLR 466 Cal). However, the statement merely of a hypothetical or tentative conclusion of guilt in the charge, will not vitiate the charge-sheet (Dinabandhu Rath Vs State of Orissa AIR 1960 Orissa 26 cf. also Powari Tea Estate Vs Barkataki (M.K.) 1965: Lab LJ 102). Guidelines in this regard contained in Para 14.3 of Chapter X of Vigilance Manual (Vol.I) may be followed.

20.1.4 All relevant details supporting the charges should be separately indicated in the statement of imputations.

20.1.5 The concerned employee is not expected to furnish a detailed reply to the charge-sheet. He is required only to admit or deny the charge(s). Therefore, the rules do not provide for making available the relevant documents to the concerned employee for submission of his defence statement. However, notwithstanding the legal position, copies of the documents and the statements of witnesses relied upon, as far as possible, may be supplied to him along with the charge-sheet. If the documents are bulky and copies cannot be given, he may be given an opportunity to inspect those documents and submit his reply within 15 days' time.

## **21. DEFENCE STATEMENT**

### **21.1 ADMISSION OF CHARGE**

If the charged employee admits all the charges unconditionally, the disciplinary authority shall record its finding on each charge. Where the advice of the Commission is required, the case may be referred to the Commission, along with the comments of the disciplinary authority, for second stage advice. In other cases, the disciplinary authority should proceed to pass a self-contained and reasoned speaking order of punishment, defining the scope of punishment to be imposed in clear terms, in accordance with the relevant rules.

### **21.2 ACCEPTING DEFENCE STATEMENT OR MODIFYING CHARGES**

The disciplinary authority has the inherent power to review and modify the articles of the charge, or drop some or all of the charges, after the receipt and examination of the written statement of defence. It is not bound to appoint an inquiring authority to inquire into such charges as are not admitted by the charged employee but about which the disciplinary authority is satisfied that these do not require to be proceeded with further. However, before the disciplinary authority exercises the aforesaid power, it may consult the CBI in cases arising out of the investigations conducted by them. The Commission should also be consulted where the disciplinary proceedings were initiated on its advice.

### **21.3 CHARGES NOT ADMITTED/DEFENCE STATEMENT NOT SUBMITTED**

If the disciplinary authority finds that any or all the charges have not been admitted by the charged employee, or if he has not submitted the written statement of defence by the specified date, it may cause an inquiry to be made to inquire into the charges framed against the charged employee. The procedure for conducting the inquiry is indicated in the succeeding paragraphs.

## **22. PROCEDURE FOR DEPARTMENTAL INQUIRY**

The procedure for conducting a departmental inquiry has been given in detail in Chapter XI of the Vigilance Manual Vol. I. The important provisions, however, are summarised below:

## 22.1                    **APPOINTMENT                    OF                    INQUIRING AUTHORITY/OFFICER**

22.1.1            Under the disciplinary rules, the disciplinary authority may itself inquire, or appoint an inquiring authority/officer (IO) to inquire into such charges against the charged employee/officer (CO) if the latter does not admit the same or has otherwise not submitted his defence statement within the specified time. It should, however, be ensured that the officer so appointed has no bias and had no occasion to express an opinion at any stage of the preliminary inquiry. The inquiring authority should also be directed to ensure submission of the report mandatorily within a period of six months of his appointment. This time limit should be invariably adhered to at all cost.

22.1.2            The organisations in which large number of departmental inquiries are pending, may earmark some officers on a full-time basis to complete the inquiries within the specified time limit. The disciplinary authority may also consider appointing retired public servants as inquiring authorities, on payment of honorarium on case to case basis. All such appointments should be made from a panel duly approved by the competent authority in accordance with the extant rules. All organisations, however, should ensure that the inquiries are completed within the stipulated time limitation and no inquiry should suffer on account of non-availability of an IO.

22.1.3            Generally, the Commission nominates one of the Commissioners for Departmental Inquiries (CDI), borne on its strength, for appointment as inquiring authority to inquire into the charges against such employees against whom it advises initiation of major penalty proceedings. However, because of its limited manpower resources, the Commission cannot nominate a CDI in each and every case in which it tenders advice. It therefore permits the appointment of a departmental inquiring authority in certain cases. Because of similarity in rules, procedures and norms, PSEs will in future have a common pool of inquiry officers, details of which will be maintained in the Commission. The rationale behind the proposed provision is to ensure removal of bias and expedition in the conduct of the inquiry proceedings. Henceforth, the Commission would also nominate the name of the inquiring authority while tendering its first stage advice.

22.1.4            The disciplinary authority should give the charged officer a period of 15 days time after the service of the charge-sheet to deny or accept the charges. In case no reply is received within this period, the disciplinary authority may proceed to the next stage of the inquiry.

## **22.2 APPOINTMENT OF PRESENTING OFFICER**

22.2.1 The disciplinary authority would also appoint an officer, called as Presenting Officer (PO), to present the case on its behalf before the inquiring authority. Unlike in the past, it would now not be necessary to nominate a CBI officer to act as PO in the cases investigated by them. All PSEs, among others, have already been directed to indicate, henceforth, the names of the Presenting Officers to be appointed while making a first stage reference to the Commission involving initiation of major penalty proceedings. After the Commission endorses the proposed action, the PSEs will ensure that the Inquiry Officer and Presenting Officer are appointed simultaneously after the service of the charge-sheet on denial of charges by the Charged Officer. (Ref. CVC's Directive No. 8 (1)(g)/99 (2) dated 19.2.99).

## **22.3 DEFENCE ASSISTANT**

22.3.1 The charged employee has also a right to take assistance of a public servant, generally termed as Defence Assistant (DA), to help him in the presentation of his case in a departmental inquiry. Most rules provide that the CO may not engage a legal practitioner to present the case on its behalf before the IO, unless the PO appointed by the disciplinary authority is also a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits. It is, however, clarified that if the case is being presented, on behalf of the disciplinary authority, by a "Prosecuting Officer" of the CBI or by the Law Officer of the Department, such as a Legal Adviser etc., there would evidently be good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent employee and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent employee.

22.3.2 In order to ensure expeditious disposal of inquiry proceedings, a person will not be permitted to act as defence assistant in more than three cases at any given point of time. The IO shall satisfy himself that the aforesaid condition is satisfied.

## **22.4 PRELIMINARY HEARING**

22.4.1 On the date fixed for the purpose, the IO shall ask the CO whether he is guilty or has any defence to make. If the CO pleads guilty to any of the articles of charge, the IO will record the plea, sign the record and obtain the signature of the CO thereon. The IO will then return a finding of



guilt in respect of those articles of charge, which the CO admits. In respect of other charges, the IO would ask the PO to adduce evidence to prove the articles of charge and adjourn the case to a date within 30 days of the preliminary hearing.

22.4.2 While adjourning the case, the IO would also record the order permitting inspection of listed documents by the CO. The order should direct the latter to submit a list of witnesses to be examined on his behalf and the list of additional documents needed by him for his defence. The IO should make it clear to the CO, during preliminary hearing, both orally and in writing in the Daily Order Sheet that he should indicate the relevance of defence witnesses and additional documents to enable the IO to decide upon admissibility of evidence desired to be led by the defence. For reasons to be recorded by him in writing, the IO may refuse to requisition such documents, or allow such witnesses, as are in his opinion, not relevant to the case. On the other hand, where he is satisfied that the documents required by the defence are relevant, he may requisition the same from their custodian, through the PO or otherwise, by a specified date. The denial of access to documents, which have a relevance to the case, may amount to violation of reasonable opportunity. Therefore, the power to deny access on grounds of public interest, should be exercised only for reasonable and sufficient grounds to be recorded in writing.

## 22.5 **REGULAR HEARINGS**

(i) **General** - Once all the preliminaries are over, the IO would fix the dates and venue of regular hearings. He should, as a rule, hear the case on day-to-day basis and not grant any adjournments, save in unavoidable and exceptional circumstances. Admitted documents may be taken on record straightaway and marked as exhibits and admitted facts, if any, be taken note of in the order-sheet.

(ii) **Presentation of Prosecution case** - In the first instance, the PO would be asked to present his case. He should introduce unadmitted/disputed listed documents through relevant witnesses. He should in the examination-in-chief, examine his witnesses in such a way that brings out the case in a logical manner. The IO should also ensure that the witness understands the question properly. He should protect him against any unfair treatment, disallowing questions which are leading, irrelevant, oppressive or dilatory in nature. As far as possible, all evidence should be recorded in narrative form. Previous pre-recorded statements admitted by the witness should also be taken on record. After the examination of a witness is over, the witness may be cross-examined by the CO or his DA to bring out further facts, remove discrepancies, or throw

light on the reliability of the witness. After the cross-examination, the PO may re-examine the witness on any point on which he had been cross-examined but not on any new matter unless specifically allowed by the IO. In the latter case, the CO would have a right to further cross-examine the witness. The IO may also put such questions to a witness as he thinks fit, at any time during the inquiry, to bring out the truth and for the emergence of a fair and clear understanding of the case. With this end in view, he may allow both sides to cross-examine such a witness on any question put by him.

(iii) **Hostile Witness** - If during the examination-in-chief of a prosecution witness, the PO feels that the witness is hostile or that his testimony is likely to affect the prosecution case or that the witness is knowingly not telling the truth, he may seek the permission of the IO to cross-examine that witness after he has been declared hostile. In such situations, the PO may, with the prior permission of the IO, also put leading questions to the witness so as to bring out the truth.

(iv) **Admission of Guilt** - The CO may decide to plead guilty to any of the charges during the inquiry. In that case, the IO may accept the plea and record his findings. He should nonetheless, continue the case to its logical conclusion if, in his opinion, the admission is conditional or only relates to part of the charges.

(v) **New Evidence** - Before the closure of the case on behalf of the disciplinary authority, the IO, in his discretion, may allow the PO to produce evidence not included in the list given to the CO, or may himself call for new evidence. In such situations, the CO would be entitled to have a copy of such evidence, an adjournment of at least three clear days, and an opportunity for inspecting the relevant documents. The IO, however, should not allow such evidence for filling up any gap in the evidence on record but only when there has been an inherent lacuna or defect in the evidence originally produced.

(vi) **Defence Statement** - After closure of the case on behalf of the disciplinary authority, the IO shall ask the CO to state his defence. If the C.O. submits the defence in writing, he should sign every page of it. If he makes an oral statement, the IO should record the same and get it signed by the CO. A copy of the statement of defence should be given to the PO.

(vii) **Presentation of Defence Case** - The CO, thereafter, would be asked to produce evidence in support of his defence. Additional documents permitted by IO may be taken on record and marked as exhibits, if this task has not been performed earlier. The CO or his DA would then proceed to

examine his witnesses, who will be cross-examined by the PO, and re-examined by the CO on the basis of the same procedure as indicated in the case of prosecution witnesses.

(viii) **CO Appearing as Witness** - The CO may, in his discretion, offer himself as his own witness. Examination-in-chief of CO would be conducted by the Defence Assistant, cross-examination by the Presenting Officer and re-examination by the Defence Assistant. If there is no Defence Assistant, then the CO will make a suo motu statement and thereafter the Presenting Officer will cross-examine him.

(ix) **Mandatory Questions to CO** - If the CO does not offer himself as a witness, the IO shall examine him generally to enable him to explain the circumstances appearing against him. The IO may do so, even if the CO has offered himself as a witness.

(x) **Written Briefs by PO/CO** - After the completion of the production of evidence, the IO may hear the PO and the CO, or permit them to file written briefs of their respective case, if they so desire. If they are permitted to submit written briefs, the PO may submit his brief, first, within a week of the last hearing of the case. He should also certify that a copy of the brief has been given to the CO. The CO may, thereafter, furnish his brief to the IO within a further period of one week.

(xi) **Daily Order Sheets** - The IO would maintain a daily order sheet to record in brief the business transacted on each day of the hearing. Requests and representations by either party should also be dealt with and disposed of in this sheet. Copies of the recorded order-sheets will be given to the PO and CO with their signatures thereon, if they are present. If they are not present, these will be sent by post. The Defence Assistant will also sign the sheet, but a copy will not be given to him.

(xii) **Ex parte Proceedings** - If the CO does not submit his written statement of defence within the specified time, or does not appear before the IO on the dates fixed for the inquiry or refuses to comply with the provisions of the rules, the IO may hold the inquiry ex parte. In that event the copies of the depositions, daily order sheets etc. may be sent to him at his last known address. A copy of the written brief submitted by the PO may also be sent to him so as to give him a reasonable opportunity to submit defence brief. The CO, always has the option to participate in or join the inquiry at any stage.

(xiii) **Alleging Bias against IO** - If the CO represents alleging bias against the IO, the IO should keep the proceedings in abeyance and refer

the matter to the disciplinary authority. He should resume the inquiry only after he is advised by the disciplinary authority to go ahead. Wherever the Charged Officer submits a review petition against the Inquiry Officer on grounds of bias, the proceedings should be stayed and the representation referred, along with relevant material, to the appropriate Reviewing Authority for considering the same and passing appropriate order thereon. For this purpose, the Reviewing Authority would normally be the Appellate Authority. Obviously, any representation against the appointment of an Inquiry Officer on grounds of bias should be made as soon as the Inquiring Officer has been appointed, but not after the proceedings have commenced and reached an advance stage.

(xiv) **Change of IO** - Whenever for any reason the IO is changed and a new IO is appointed to continue the inquiry, he shall take into account the evidence recorded or partly recorded by his predecessor. If he is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may recall, examine, re-examine and cross-examine such witness.

## 22.6 SUBMISSION OF INQUIRY REPORT

22.6.1 After considering the oral and documentary evidence adduced during the inquiry, the IO may draw his own inferences, as a rational and prudent person, and record his findings on each charge. He should rely only on such facts as the CO had the opportunity to refute. Generally, the CO raises a plea of absence of mala fide. It is clarified that the PO is not expected to prove mala fide in cases where the act itself speaks of a dishonest motive e.g. a person travelling without ticket in a train or a person who has been unable to explain his assets satisfactorily. Mala fide, however, is not relevant in proving a misconduct as it does not form an essential ingredient of it. Also, every act of a public servant is expected to be honest, bona fide and reasonable. An act is not bona fide if it is committed without due care and attention. While assessing the evidence, the IO should also bear in mind that the proceedings are civil rather than criminal or quasi-criminal in nature. Accordingly, the standard of proof required in a disciplinary inquiry is that of “preponderance of probability” and not “proof beyond reasonable doubt”. The IO should confine his conclusion only up to the stage of recording whether the charge is proved, or partially proved or not proved. The conclusion should be derived from the facts and circumstances of the case and not on its extenuating aspects. He should not recommend the punishment to be imposed on the CO. Neither is he required to comment on the quality of drafting of the charge-sheet, nor the conduct of the disciplinary authority in framing the charges or

that of the PO in arguing the same. The IO becomes functus officio as soon as he submits the report and cannot make any change thereafter.

22.6.2 The initial burden in the departmental inquiry of proving the charge with evidence on record is that of the prosecution. Once the same is discharged, the burden of disproving the same and/or bringing to light special circumstances relating to the innocence of the CO will be that of the latter. Otherwise, the proceedings being only quasi-judicial rather than judicial in nature, the strict rules of evidence stipulated in the Indian Evidence Act would not be applicable except to the extent specifically indicated in the relevant rules.

22.6.3 The report of the IO should contain:

- (i) An introductory paragraph in which references to the orders of appointment of IO and PO and engagement of DA will be made;
- (ii) Brief account of hearings, marking of exhibits, recording of evidence;
- (iii) Reproduction of articles of charge (s);
- (iv) Indication about charges which are dropped, or admitted, or have been inquired into;
- (v) Brief statement of the case of the disciplinary authority in respect of the charges inquired into;
- (vi) Brief statement of the case of the Charged Officer;
- (vii) For each charge inquired into -
  - (a) the case in support of the charge;
  - (b) the case of defence;
  - (c) assessment of evidence; and
  - (d) the findings.
- (viii) A brief summary of the findings.

22.6.4 The IO should, in all cases, submit the report to the disciplinary authority, with extra copies, one each for the CO and the CBI, if the case had been investigated/presented by them. However, in cases in which a CDI of the Commission conducts the inquiry, he would also submit a copy of the report along with one copy each of the depositions and Daily Order Sheets to the Secretary of the Commission.

22.6.5 Along with the report, the Inquiry Officer should send to the disciplinary authority a folder containing the following:-

- (a) List of exhibits produced by the Presenting Officer.

- (b) List of exhibits produced by the Charged Officer.
- (c) List of prosecution witnesses.
- (d) List of defence witnesses.
- (e) A folder containing deposition of witnesses in the order in which they were examined.
- (f) A folder containing daily order-sheets.
- (g) A folder containing the written statement of defence.
- (h) Written briefs of both sides.
- (i) Correspondence Folder.

22.6.6 The IO must complete the inquiry proceedings and submit his report within a period of six months from the date of his appointment.

## 23. ACTION ON INQUIRY REPORT

23.1 The procedure regarding action to be taken on the report of the Inquiring Officer has been given in detail in Chapter XII of the Vigilance Manual (Vol. I). The important provisions, however, are summarised below.

23.2 The IO's report is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the CO. The disciplinary authority has the inherent powers to disagree with the findings of the IO and come to his own conclusions on the basis of his own assessment of the evidence forming part of the inquiry.

23.3 In view of the Supreme Court's judgement in Ramzan Khan's case, if the disciplinary authority is different from the inquiring authority, and if the latter has held all or any of the charges against the CO as proved, the disciplinary authority should ask the CO for his representation, if any, within 15 days. In case the IO has held any or all the charges against the CO as "not proved", the disciplinary authority should consider the IO's report in the first instance. If he disagrees with the IO's findings, he should communicate his reasons for disagreement to the CO while asking for his representation. The disciplinary authority may take further action on the inquiry report on consideration of the CO's representation or on the failure of the CO to submit the same within the specified time.

23.4 The disciplinary authority, in exercise of his quasi-judicial powers, may issue an order imposing a major or a minor penalty on the CO; or exonerate him of the charges, if in his opinion, none of the charges has been proved or what has been proved, is non-actionable. He may remit the case for further inquiry if he considers that there are grave lacunae or procedural defects which vitiate the inquiry or if some important witnesses

were not examined. (K.R. Deb Vs. Collector of Central Excise, AIR 1971 S.C. 1447). The fact that the inquiry has gone in favour of the CO or the evidence led in the inquiry has gaps, should not be a reason for remitting the case for further inquiry (Dwarka Chand Vs State of Rajasthan – AIR 1959 Raj. 38). In such a case, the disciplinary authority may disagree with the IO's findings. The final order passed by the disciplinary authority should be a well-reasoned speaking order.

23.5.1 The cases requiring the Commission's advice may be referred to it, in the form of a self-contained note, along with the following documents:

- (i) The IO's report and the connected records mentioned in Para 22.6.5 above;
- (ii) Disciplinary authority's tentative findings on each article of charge;
- (iii) Representation of the CO on the inquiry report;
- (iv) Tentative conclusions of the disciplinary authority and the CVO; and
- (v) Wherever the inquiry proceedings have been delayed, the CVO shall specifically comment on the delay fixing accountability for the delay and the action taken/proposed against those responsible for the same.

23.5.2 The disciplinary authority is to forward the case, in the manner explained above, to the CVC within 30 days of the receipt of the inquiry report from the CDI/IO.

23.6 While imposing a punishment on the officer, the disciplinary authority should ensure that the punishment imposed is commensurate with the gravity of the misconduct proved against the CO. He may also take into account at this stage the following other criteria:

- (a) the extenuating circumstances, as they emerge from the inquiry; and
- (b) the track record of the charged officer.

It should also be ensured that the punishment so imposed is not academic or ineffective; for example, there is no point in imposing a penalty of withholding of an increment, if the CO has already been drawing pay at the maximum of the pay scale. Similarly, there is no point in imposing a penalty of withholding of promotion for a specified period if the officer is not due for promotion.

## **24. PROCEDURE FOR IMPOSING MINOR PENALTIES**

24.1 The procedure for imposing a minor penalty is much simpler than that for imposing a major penalty. For the imposition of the former, the disciplinary authority is only required to serve a Memorandum on the concerned employee, enclosing therewith a statement of imputations of misconduct or misbehaviour and asking for a reply within a specified period, generally 10 days. On receipt of the written statement of defence, if the disciplinary authority is satisfied that the misconduct imputed to the CO has not been established, he may, through a written order, drop the charges. On the other hand, if the disciplinary authority considers the CO guilty of the misconduct in question, he may impose one of the minor penalties. The disciplinary authority, in his discretion, may also decide to conduct an inquiry following the same procedure as stipulated for the imposition of a major penalty, if in his opinion, holding of an inquiry is necessary to come to a definite conclusion about the guilt or innocence of the CO or if the employee requests for the same.

24.2 In cases, where minor penalty proceedings were instituted against an employee on the advice of the Commission, the Commission need not be consulted at the second stage if the disciplinary authority, after considering the defence statement, proposes to impose a minor penalty. But in cases where the disciplinary authority proposes to drop the charges, or an inquiry has been conducted, second stage consultation with the Commission is necessary.

## **25. APPEAL AND REVIEW**

25.1 If in appeal or review, the appellate/reviewing authority proposes to modify the original order of punishment, the Commission's advice would not be necessary where such modification remains within the parameters of the Commission's original advice. For example, if on the Commission's advice for imposition of a major penalty, the appellate, or reviewing authority proposes to modify the original penalty imposing such a penalty with another major penalty, the Commission's advice at the appeal/review stage would not be necessary. On the other hand, in the instant case, if the modified penalty is not a major penalty, the Commission's advice would be necessary.

25.2 Where the Commission has not advised a specific penalty, the CVO shall scrutinise the final orders passed by the disciplinary authority and ascertain whether the penalty is commensurate with the nature and



gravity of the lapses. If the punishment imposed is inadequate or inappropriate, he may recommend a modification thereof to the reviewing authority. On satisfying himself that a case for review exists, the latter may thereafter, assume jurisdiction over the case as provided for under the rules.

## **26. ACTION AGAINST PERSONS MAKING FALSE COMPLAINTS**

26.1 Section 182 IPC provides for prosecution of a person making a false complaint. Therefore, if a complaint against a public servant is found to be malicious, vexatious or unfounded, serious action should be considered against the complainant. Section 182 IPC reads as under:

“Whoever gives to any public servant any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant:

- (a) to do or omit anything which such public servant ought to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person;

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

26.2 Under Section 195(1)(e) Cr.P.C., a person making a false complaint can be prosecuted on a complaint lodged with a court of competent jurisdiction by the public servant to whom the false complaint was made or by some other public servant to whom he is subordinate.

26.3 Alternatively, if the complainant is a public servant, it may also be considered whether departmental action should be taken against him as an alternative or in addition to prosecution. When the Commission comes across any such complaint in the normal course of its functioning, it would advise the administrative authority concerned about appropriate action to be taken on its own initiative. However, in respect of cases which do not fall within the Commission’s normal jurisdiction, the organisation concerned may decide the matter on its own as it deems fit.

27. **DIFFERENCE OF OPINION BETWEEN THE CVO AND THE CMD**

27.1 Where there is a difference of opinion between the disciplinary authority and the CVO with regard to cases which are not to be referred to the Commission, the CVO may report the matter to the next higher authority/CMD for the resolution of the difference of opinion between the two. A case of difference of opinion between the CVO and the CMD in respect of any case falling within the jurisdiction of the CVC should be referred to the CVC. In the case of a Board level appointee, the comments of the administrative ministry along with all relevant files are required to be sent to the CVC so as to enable the Commission for better appreciation of the facts and circumstances of the case and the viewpoints of authorities who might have had the occasion to comment upon its various aspects.

28. **GRANT OF IMMUNITY TO ‘APPROVERS’ IN DEPARTMENTAL INQUIRIES**

28.1 The procedure for grant of immunity/pardon to an employee from the departmental inquiries is explained in Para 7 of Chapter IV and Para 36 of Chapter XIII of Vigilance Manual (Vol .I). It is felt that in cases of serious nature, the evidence of “Approvers” may sometimes lead to considerable headway in investigation of cases. This also facilitates booking of offences/misconduct of more serious nature. Therefore, the following procedure may be followed for grant of immunity/leniency to a public servant in the cases investigated by the CVO:

- (a) If during an investigation, the CVO finds that an officer, in whose case the advice of the Commission is necessary, has made a full and true disclosure implicating himself and other public servants or members of the public and further that such statement is free from malice, the CVO may send his recommendation to the CVC regarding grant of immunity/leniency to such officer from departmental action or punishment. The Commission would consider the CVO’s recommendation and advise that authority regarding the further course of action;
- (b) In cases pertaining to officials against whom the Commission’s advice is not necessary, the recommendation for grant of immunity/leniency may be made to the CVO who would consider and advise the disciplinary authority regarding the

further course of action. If there is a difference of opinion between the CVO and the disciplinary authority, the CVO would refer the matter to the Commission for advice.

## 29. **SUPERVISION OVER VIGILANCE ACTIVITIES**

29.1 The Commission exercises general superintendence over the vigilance administration and anti-corruption work in the public sector enterprises. In order to enable the Commission to discharge this function effectively, the CVOs of PSEs would continue to submit a quarterly report on receipt, disposal and pendency of complaints and vigilance cases to the Commission in the prescribed format.

## 30. **VIGILANCE STAFFING STRUCTURE IN PSEs**

30.1 With a view to tackling corruption and making the functioning of investigating and vigilance agencies more independent, effective, credible and prompt, the Department of Public Enterprises (Government of India), vide their letter No. DPE 15(7)/98(GL-009) GM dated the 25th September, 1998, have recommended the following model of vigilance set-up for the PSEs as a broad guideline to be adopted with such modifications as may be appropriate in the case of an individual undertaking:

### (I) **Corporate Office**

- i) Chief Vigilance Officer.
- ii) Dy. CVO (For Schedule 'A' & 'B' PSEs)
- iii) Vigilance Wings.

#### a) **Investigation Wing**

- |                         |   |     |
|-------------------------|---|-----|
| - Sr. Vigilance Officer | - | One |
| - Investigators         | - | Two |
| - Steno                 | - | Two |

#### b) **Anti-Corruption and Vigilance Wing**

- |                         |   |     |
|-------------------------|---|-----|
| - Sr. Vigilance Officer | - | One |
| - Vigilance Assistant   | - | Two |
| - Steno                 | - | One |

c) **Disciplinary Proceedings Wing**

|                         |   |     |
|-------------------------|---|-----|
| - Sr. Vigilance Officer | - | One |
| - Vigilance Officer     | - | Two |
| - Steno                 | - | One |

d) **Preventive Vigilance Wing**

|                         |   |     |
|-------------------------|---|-----|
| - Sr. Vigilance Officer | - | One |
| - Vigilance Officer     | - | One |
| - Steno                 | - | One |

e) **Technical Wing** (This is applicable to PSEs engaged in engineering and other technical operations)

|                         |   |     |
|-------------------------|---|-----|
| - Sr. Vigilance Officer | - | One |
| - Vigilance Officer     | - | One |
| - Expert                | - | One |
| - Steno                 | - | One |

II. **Regional/Project Plant Office** (This is applicable to Schedule 'A' & 'B' PSEs only)

|                         |   |     |
|-------------------------|---|-----|
| - Sr. Vigilance Officer | - | One |
| - Investigators         | - | One |
| - Steno                 | - | One |

31. **DEPUTATION TENURE OF CVOs IN PSEs**

31.1 The existing guidelines on the subject are contained in para 2 (v) of the Department of Personnel & Training OM No. 36 (9)-EO/89-SM(I) dated 7.2.92. These stipulate that the tenure of a CVO will be for a period of five years irrespective of the grade of the post and the service to which the officer belongs; no other tenure rules would be applicable for this purpose. On the recommendation of the Central Vigilance Commission and the Civil Services Board, the Appointments Committee of the Cabinet has since approved partial modification of the aforesaid provisions. The initial deputation tenure of an officer in the post of Chief Vigilance Officer should be three years extendable up to a further period of two years in the same enterprise (maximum five years), with the approval of the CVC, or up to a further period of three years on transfer to another Public Sector Enterprise on completion of initial deputation tenure of three years in the previous Public Sector Enterprise. (Ref. DOPT's OM No. 372/7/97-AVD-III dated 7.8.98).

## **32. REVIEW OF VIGILANCE MATTERS IN PSEs**

32.1 The CVO should invariably review all the pending investigation reports, disciplinary cases and other vigilance matters in the first week of every month and take necessary steps for expediting action on pending matters.

### **32.2 REVIEW BY THE SECRETARY OF THE ADMINISTRATIVE MINISTRY AND CMD OF PSE.**

In addition to this monthly review by the CVO, the Secretary of each Ministry/Department and the Chief Executive of PSE should undertake a quarterly review of the vigilance work done in the enterprise in the first week of January, April, July and October every year. The result of the quarterly review consolidated separately for each enterprise should be communicated to the Department of Personnel & Training and the CVC by 15<sup>th</sup> day of the month in which such review is undertaken.

### **32.3 REVIEW BY THE BOARD OF DIRECTORS OF PSE**

The Board of Directors of PSE should undertake review of progress of vigilance work/disciplinary cases at least once in 6 months.(Ref. DPE (Govt. of India) OM No. 16(48) 87-G dated 2.8. 1996. A copy each of the proceedings of the Board review meeting should be sent to the CVO of the administrative ministry and also the Secretary of the Commission for information.

## **33. ACCESS TO DOCUMENTS/INFORMATION BY THE VIGILANCE EXECUTIVES**

33.1 Vigilance functionaries are required to inspect records, conduct surprise inspections and conduct on-the-spot investigations etc. in the discharge of their duties. Accordingly, they should at appropriate levels be authorised to have free access to all offices, sub-stations, stores and other work sites. They should have free access to the relevant records in connection with any investigation/inquiry. They may also take possession of records required by them, subject, however, to the arrangement that working of the Department should not be hampered for want of records.

## **34. SANCTION FOR PROSECUTION**

34.1 Various aspects of prosecution have been explained in Chapter VII of Vigilance Manual (Vol. I). For all offences committed under the relevant sections of PC Act, 1988, sanction of the competent authority is required for launching prosecution. Such sanction, however, is not required if at the time of launching the prosecution, the concerned public servant has either retired or resigned from the service of the organisation. This protection is also not available to the employees of PSEs, as such persons cannot be brought within the ambit of Section 197 of Cr. P.C. even though PSEs constitute "State" within the meaning of the Article 12 of the Constitution. (Supreme Court Judgement. 1998 (3) SCALE. MOHD. HADI RAJA. Vs STATE OF BIHAR AND ANR)

34.2 In Vineet Narain and Others Vs. Union of India and another ( CWP No. 340-343 of 1993) the Supreme Court has directed that

"Time limit of 3 months in grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General or any other Law Officer in the AG's Office".

34.3 Administrative instructions have further emphasised that while the Supreme Court has laid down the outer time limits, all efforts should be made to decide the grant of sanction or rejection of the request for sanction as early as possible. (Ref. DOPT OM No. 142/10/97 AVD I dated 14.1.1998)

## 35. **DOCUMENTS HELD UP IN COURTS**

35.1 Where criminal prosecution and departmental proceedings have to be conducted simultaneously, duly authenticated photocopies of the documents by the competent authority should be retained by the CBI and one such set may be made available to the disciplinary authority for use in the departmental proceedings. If the CO desires to inspect the listed documents in the charge-sheet, inspection of the original documents may be arranged with the permission of the Court.

35.2 Policy and Coordination Division of the CBI vide their letter No. 21/90/98-PD dated 15.2.98 to all their offices has informed that as per the existing instructions contained at Paras 57/453 to 60/456 Chapter - XIII of CBI Crime Manual and provisions contained in Para 12, Chapter -VII of Vigilance Manual Vol. I, CBI Branches ought to furnish such original documents as can be sent by them along with the report. In respect of documents which the Branch would not like to part with due to genuine and

cogent reasons, attested copies of the same or a gist of their contents may be duly forwarded to the authority concerned. This would enable the latter to formulate his views/comments on the CBI report expeditiously. In order to avoid delay in processing CBI reports by various organisations/departments, all branch SPs/regional DIGs have already been advised to follow the prescribed procedure scrupulously so that the departments/organisations can process CBI reports expeditiously.

(Ref. CVC's letter No. 98/VGL/7 dated 11.11.98)

36. **TRAVELLING/DEARNESS ALLOWANCES TO THE PRESENTING OFFICERS, DEFENCE ASSISTANTS AND WITNESSES**

36.1 Presenting Officers appointed by the disciplinary authorities, duly authorised defence assistants, prosecution witnesses and defence witnesses permitted by IO are entitled to TA and DA in accordance with extant rules on the basis of certificate of hearing issued by the IO for the purpose.

37. **PAST MISCONDUCT**

37.1 Action can be taken against an employee in respect of misconduct committed by him in his previous or earlier employment if such misconduct was of such a nature as has a rational nexus with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service. The charge sheet will be issued with reference to the CDA Rule of the PSE where the employee is working presently.

38 **DISCIPLINARY PROVISION FOR RETIRED EMPLOYEES**

38.1 There is no provision in CDA Rules of almost all PSEs either to continue departmental proceedings initiated against an employee during his service after retirement or to initiate departmental proceedings in respect of prima facie established lapses/misconduct after retirement. All PSEs should amend their CDA Rules in this regard to provide for continuation of proceedings already initiated and also for initiation of departmental proceedings in respect of grave misconduct in respect of any event which took place not more than four years earlier.

## 39. ROTATION OF STAFF IN SENSITIVE POSTS/ CITIZENS' CHARTER

39.1 CVO may identify sensitive posts and ensure rotation of staff in such posts every three years. Orders issued in this regard along with a list of the sensitive posts identified may be intimated to the CVC for record. The CVO may also review the functioning of public dealing departments. Each PSE may also draw up a Citizen's Charter prescribing time-limits for processing of applications and various categories of work involving public dealings. CVO may monitor the implementation of the Citizen's Charter and furnish a compliance report in this regard to the CVC.

## 40. INTERPRETATION

40.1 If there is inconsistency between provisions of this Chapter and the provisions of the CDA Rules of any PSE; the concerned PSE should get its CDA Rules amended/ updated/ modified to the extent necessary. If any question arises relating to the interpretation of these provisions, it may be referred to the CVC for clarification.

## 41. SCHEDULE OF TIME LIMITS IN CONDUCTING INVESTIGATIONS AND DEPARTMENTAL INQUIRIES

41.1 Delays in disposal of disciplinary cases are a matter of serious concern to the Government and the Commission. Such delays also affect the morale of the suspected/charged employees and others in the organisation. Therefore, in order to ensure that disciplinary cases are disposed of quickly, the CVO should ensure that the following time limits are strictly adhered to:

| S.No. | State of Investigation or inquiry                                                                                                                                                                             | Time Limit                                                    | Responsible Authority      |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------|
| 1.    | Decision as to whether the complaint involves a vigilance angle.                                                                                                                                              | One month from receipt of the complaint.                      | CVO/CMD                    |
| 2.    | Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action. | -do-                                                          | CVO/CMD                    |
| 3.    | Conducting investigation and submission of report.                                                                                                                                                            | Three months.                                                 | IO/CVO                     |
| 4.    | Department's comments on the CBI reports in cases requiring Commission's advice.                                                                                                                              | One month from the date of receipt of CBI's report by the DA. | CVO Adm. Ministry/CVO/ PSE |



|     |                                                                                                            |                                                                                                                                                                                                                        |                        |
|-----|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 5.  | Referring departmental investigation reports to the Commission for advice.                                 | One month from the date of receipt of investigation report.                                                                                                                                                            | CVO                    |
| 6.  | Reconsideration of the Commission's advice, if required.                                                   | One month from the date of receipt of Commission's advice.                                                                                                                                                             | CVO/CMD/Ministry's CVO |
| 7.  | Issue of charge-sheet, if required.                                                                        | (i) One month from the date of receipt of Commission's advice.<br>(ii) Two months from the date of receipt of investigation report                                                                                     | D.A.                   |
| 8.  | Time for submission of defence statement.                                                                  | Ordinarily ten days or as specified in CDA Rules.                                                                                                                                                                      | CO                     |
| 9.  | Consideration of defence statement.                                                                        | 15 (Fifteen) days.                                                                                                                                                                                                     | DA                     |
| 10. | Issue of final orders in minor penalty cases.                                                              | Two months from the receipt of defence statement.                                                                                                                                                                      | DA                     |
| 11. | Appointment of IO/PO in major penalty cases.                                                               | Immediately after receipt and consideration of defence statement.                                                                                                                                                      | DA                     |
| 12. | Conducting departmental inquiry and submission of report.                                                  | Six months from the date of appointment of IO/PO.                                                                                                                                                                      | IA                     |
| 13. | Sending a copy of the IO's report to the CO for his representation.                                        | i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved;<br>ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated | DA                     |
| 14. | Consideration of CO's representation and forwarding IO's report to the Commission for second stage advice. | One month from the date of receipt of representation.                                                                                                                                                                  | CVO/DA                 |
| 15. | Issuance of orders on the Inquiry report.                                                                  | i) One month from the date of Commission's advice.<br>ii) Two months from the date of receipt of IO's report if Commission's advice was not required.                                                                  | DA                     |

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No.325/15/2013-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

North Block,  
New Delhi, the 7<sup>th</sup> November, 2013.

**Office Memorandum**

**Sub: Appointment of CVO in CPSEs/Organisations, etc. – regarding**

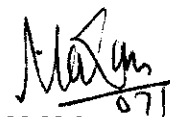
The undersigned is directed to say that to fill up the vacancies of CVOs in CPSEs/Organisations this department provides a panel of officers to the administrative Ministries/Departments for selecting an officer for appointment as CVO.

2. Sometimes, the administrative Ministries/Departments request for sending them a fresh panel of officers without selecting an officer from the panel. In a recent case, the administrative Ministry, to whom a fresh panel was sent again, returned the panel for the second time with a request to send them a fresh panel of officers.

3. The entire process of inviting the applications, seeking clearance from CVC for placing the officers on the offer list, convening the meeting of the Selection Committee for recommending a panel, consultation with CVC (in case of select organisations) and sending the panel with the approval of the Competent Authority to the administrative Ministries/Departments, is a time consuming exercise. It may be appreciated that for providing a fresh panel the entire process has to be gone through again. Further, preparation of a panel is subject to the availability of a sufficient number of officers on offer and it may not always be possible to provide a panel immediately due to non-availability of suitable officers on the offer list. All this while, the post of CVO may remain vacant may have to be manned on a part time basis, which may not be desirable.

4. It has, therefore, been decided that if the administrative Ministry/Department returns a panel of officers without making a selection and requests for a fresh panel of officers, the reasons/justification for rejection of the panel of officers should be clearly indicated and the request should be sent to this department with the approval of the Minister –in-Charge.

5. It has also been decided that in case where the administrative Ministry/Department returns the panel without making a selection for the second time, then no fresh panel will be provided and this department may resort to mandatory appointment of a CVO in consultation with CVC (where required) and with the approval of the Competent Authority.

  
( M.M. Maurya )

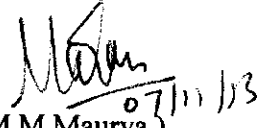
Under Secretary to the Govt. of India  
Tel.No.23094541

To,

**All Secretaries of the Ministries/Departments of the Govt. of India.**

Copy for information to:

1. The Secretary, CVC, Satarkata Bhavan, New Delhi.
2. PS to MOS(PP)/PPS to Secy (P)/EO&AS/AS(S&V).
3. PMO, South Block, New Delhi.
4. ✓ NIC for uploading in website of the department.
5. Guard file.

  
07/11/13

( M.M.Maurya )

Under Secretary to the Govt. of India  
Tel.No.23094541

No.372/9/2012-AVD-III  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel and Training

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North Block, New Delhi,  
Dated the 12<sup>th</sup> July, 2012.

**OFFICE MEMORANDUM**

Subject: **Creation of post of Chief Vigilance Officers and status facilities, perks and perquisites in CPSEs etc.-reg.**

Attention is invited to the Central Vigilance Commission's letter No.3(v)/99/5 dated 29<sup>th</sup> July, 1999 and the Commission's subsequent Office Order No.45/9/03 dated 17<sup>th</sup> September, 2003 on the subject mentioned above.

2. It is envisaged in the aforesaid communications/orders of the CVC that officers of Joint Secretary level joining as CVO would be accorded the status and perks of a functional Director of Board and officers of Director/Deputy Secretary level joining as CVO would be provided the status and perks of Executive Director. The Commission has also advised that as a first step towards implementation of its instructions, the post of CVO may be created at the functional director level in Schedule "A" PSUs and at one level below the board in Schedule "B" and "C" PSUs.

3. The pay structure, allowances, perks and benefits of the Executives of the Central Public Sector Enterprises (CPSEs) have since undergone change on the revision of the scales of pay of Board Level and below Board Level Executives and non-unionized supervisors in CPSEs vide DPE OM No. 2(70)/08-DPE(WC) on 26<sup>th</sup> November, 2008.

4. This Department has also thereafter issued O.M. No.372/21/2009-AVD-III dated 12<sup>th</sup> October, 2010 wherein it was laid down that CVOs and other officers on deputation to the Vigilance Departments of CPSEs may be allowed the option of electing to draw either the pay of the post in the scale of pay of the CPSE concerned or pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any, and that the CVOs and other officers on deputation to the Vigilance Departments of CPSEs may also be allowed all the perks, benefits and perquisites applicable to equivalent level of officers in concerned CPSEs.

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5. In spite of the above instructions, this Department is receiving repeated references from Ministries/Departments as to status and perks to be given to officers who join as CVOs in CPSEs. A need was felt to re-look into the matter in consultation with Central Vigilance Commission (CVC) and Department of Public Enterprises (DPE).

6. Taking into account the viewpoints conveyed by CVC and DPE vide letter No. 003-VGL-18/163022 dated 25.1.2012 and OM No. 9(8)/2011-GM dated 29.12.2011 respectively, the following decisions have been taken for implementation with immediate effect:-

- a) **Level of posts of CVO:** In modification of the earlier guidelines, the post of CVOs in all CPSEs irrespective of the level/status/schedule of such CPSE shall be in the scale of pay equivalent to the level of functional Director in that CPSE. This would imply creation of a post by the Administrative Ministry in the scale of pay equivalent to the level of functional Director where no formal post of CVO exist or upgradation of the existing post where the post has been created at a lower scale of pay. In case of Autonomous Bodies, Societies & Federations, Trusts etc. where there are no functional Directors, the CVOs may be allowed the status, pay and perks of post immediately below the post of CEO of the organization. The CVO, however, will not be a Board Member of the CPSE/ Bodies/Societies.
- b) **Level of officers posted as CVO:** In future, officers of the rank of Joint Secretary to the Government of India or equivalent shall only be appointed as CVO in Schedule 'A' CPSEs, officers of the level of Director in the Government of India or equivalent in Schedule 'B' CPSEs and officers of the level of Deputy Secretary to the Government of India or equivalent in Schedule 'C' CPSEs. The level of officers required to be posted as CVOs in Autonomous bodies, Societies, Trusts, Statutory body etc. may be determined by the administrative Ministries concerned and intimated to this Department keeping in view (a) above.
- c) **Procedure for creation/upgradation of post of CVO:** In modification of the extant guidelines, such posts shall be created/upgraded by the concerned administrative Ministry/Department for the CPSE in the pay scale equivalent to that of the functional Director of the concerned CPSE and no further approval of DPE/DOPT shall be required in this regard. Similar action may be taken by concerned Ministries/Departments in respect of Autonomous bodies, Statutory bodies, Societies, Trusts etc.

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- d) **Status, perks, benefits & perquisites:** The CVOs shall be entitled to pay, status, benefits & perquisites as are admissible to the functional Directors of the concerned CPSE, read with this Department's OM No. 372/21/2009-AVD-III dated 12<sup>th</sup> October, 2010.
- e) There will be no change in the pay scale, etc., of the present incumbent CVOs of Schedule "A" CPSEs who are of the rank of Director in the Government of India or equivalent in their parent cadre. Such posts may continue to be operated in the existing scales till completion of the tenure of such officers. Thereafter, these posts may be operated and filled up in accordance with the above instructions.
7. All Ministries/Departments are requested to comply with the above instructions.

(N. Raja) 12/11/12

**Deputy Secretary to the Government of India**

**Tel No. 23094542**

1. Secretary, Department of Public Enterprises, CGO Complex, Lodhi Road, New Delhi with reference to DPE letter No.9(8)2011-GM dated 29.12.2011.
2. Secretary, Central Vigilance Commission, Satarkata Bhawan, New Delhi with reference to CVC letter No.003-VGL-18/177980 dated 14.6.2012.
3. All Ministries/Departments of the Government of India.
4. Secretary, Department of Expenditure, North Block, New Delhi.
5. Secretary, PESB, CGO complex, New Delhi.
6. All Chief Executives of Central PSEs.
7. All CVOs of CPSEs.
8. NIC Cell with the request to upload the same on the website.

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**No. 6W-CVO-61**  
**Government of India**  
**Central Vigilance commission**  
\*\*\*\*\*

**Satarkta Bhawan, Block-A**  
**GPO Complex, INA,**  
**New Delhi-110023**  
**Dated 15<sup>th</sup> October, 2009**

**Sub:** Appointment of CVOs/VOs in Organizations other than Ministries/Depts, PSUs, PSBs & Insurance Companies.

As per the CVC Act, 2003, the Commission has been mandated to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of inter-alia, Corporations established by or under any Central Act, Government companies, Societies and Local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto. This follows that all 'Corporations', Govt. Companies, Societies and Local Authorities (apart from Govt. of India Depts/Ministries, PSUs, Banks & Insurance Companies) owned or controlled by the Central Govt. should have an in-house vigilance set-up in place, headed by a Chief Vigilance Officer or a Vigilance Officer. In fact, the commission has been emphasizing the need for this during its inter-action with the CVOs of the Ministries/Depts. However, it seems that there are, even now, a few Organizations falling within the above categories which do not have in-house vigilance set-ups and/or duly appointed CVOs or VO.

2 Chief Vigilance Officers of all Ministries are Depts. are accordingly requested to ensure that a proper/structured vigilance set-up is put in place, if it does not exist already, in every organization of the type mentioned above, under the administrative control of their Ministry/Dept. A compliance report in this regard may please be furnished to the Commission in the format enclosed within two months.

-S/d-

(P M PILLAI)  
Officer on Special Duty.



### **ORGANSATIONAL PROFILE**

- (i) Name of the Organization :
- (ii) Status of the Organization :  
(i.e. whether Govt.Co./Corporation,  
Autonomous Body, Statutory Authority,  
Society, Attached Office, Local Authority.
- (iii) Administrative or nodal Ministry/ :  
Department concerned
- (iv) Core activities of the Organization :
- (v) Organizational set up,  
No. of Executives & Employees etc.  
(group-wise)
- (vi) Details of Vig. set-up :
- (vii) Name of CVO/VO :
- (viii) Service particulars of CVO/VO in brief :
- (ix) Date of appointment of CVO/VO :
- (x) Date of expiry of tenure of CVO/VO :

(Signature of CVO of the Ministry/Deptt.)

No.006/VGL/ 065  
Government of India  
Central Vigilance Commission  
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Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi-110 023  
Dated the 6<sup>th</sup> July, 2006

**Circular No.25/7/06**

**Sub: Vigilance Administration – Role of CVO- regarding.**

The Commission has issued a number of instructions on different aspects of vigilance administration and the CVO's role in the same. During the Annual Zonal Meetings and interactive sessions with the CVOs, a number of issues were raised on most subjects, on which, though already instructions exist, the Commission has felt the need to reiterate/clarify and focus on some of the select issues raised in these meetings. Accordingly, the following guidelines are laid down:-

**i) Complaints.**

Meaningful and prompt investigation of complaints with desired follow up action is an important aspect of effective vigilance administration. Inordinate delay in investigation of the complaint sent by the Commission for investigation and report, reflects poorly on the performance of the CVO. Therefore, complaints need to be attended to promptly. Any anonymous complaint sent by the Commission for investigation, needs to be treated as source information and duly investigated, and report sent to the Commission.

It is also seen that in many a case, the complainant is not able to clearly articulate his allegations. In such cases, the CVO should contact the complainant for such additional information/clarification that the complainant could provide so that investigation, if need be, could be undertaken on serious allegations, in a focused manner. Further, wherever the complainant is addressed either for verification or for additional information, in order to avoid delay, the CVO should simultaneously call for the records of the case, scrutinize the same in the light of the allegations made, and take necessary action.

The Commission's prior approval is necessary to take up any anonymous/pseudonymous complaint for investigation. Even though such complaints apparently contain verifiable information, the CVO is expected to conduct a preliminary enquiry and if it is considered that a detailed investigation is called for, then the Commission should be approached for seeking its approval.

While complaints against Board level officials are within the purview of the administrative Ministry's CVO, if it is referred to the CVO of the organisation under the Ministry, he should gather all factual information and submit the same to the Ministry's CVO. He is not required to make analysis or draw conclusions. A copy of his report, whenever called by the Ministry CVO should be sent to the Commission for information. It is also reiterated that no vigilance complaint against any official

under the Commission's jurisdiction should be closed without the prior approval of the Commission.

On receipt of any complaint containing allegations against any tender in process, the tender process need not be stopped. However, the allegations should be brought to the notice of the competent authority, including the purchase committee, tender committee, negotiation committee, etc, and the complaint should be taken up for investigation independently.

It should be borne in mind that if a CVO fails to notice a serious irregularity or to take necessary follow up action, and if such an irregularity is unearthed on investigation of a complaint received by the Commission, it would reflect poorly on the performance of the CVO, and he would need to explain in this regard.

## **ii) Consultation with CVOs.**

The CVO has an important role in effective vigilance administration and functions as an extension of the Commission. While the Commission's jurisdiction is confined to Group 'A' officers and other officials of and above the level notified, and the Commission's advice is only to the Disciplinary Authority, there is no such restriction on the CVOs. They are required to be consulted by the Disciplinary Authority/Appellate Authority, irrespective of the level of officers involved. Wherever the Appellate Authority has disagreed with the Commission's advice, which was accepted by the Disciplinary Authority, the CVOs should scrutinise the matter carefully to take up the matter with the reviewing authority and also report such cases to the Commission. In respect of officials not under the jurisdiction of the Commission, where the Disciplinary Authority has disagreed with the CVO's advice, such cases should be specifically brought to the notice of the Board.

While CVOs may be consulted by the management in formulating a policy, to provide for necessary checks and balances as a preventive vigilance measure, they should not get involved in decisions in individual cases like works/procurement, etc, having financial implications.

The Commission further directs that the CVOs should not be given any operational duties. If any such duty with financial implications is assigned to him, the CVO should promptly bring it to the notice of the Commission for its intervention.

## **iii) Review of Vigilance work by Board**

The Commission's instructions vide No.98/VGL/51 dated 9/12/2003 requires that the Board of Directors review the Vigilance Work in the organisation and the CVO should send a copy of such review to the Commission. It has been observed that in a number of organisations, the CVOs are not invited to the Board Meeting. In the absence of the CVO, the review of the vigilance work by the Board would not be meaningful. The Commission has, therefore, decided that the CMDs/CEOs should ensure that the CVO of the organisation is invited and remains present at the time of the review of vigilance work by the Board.

#### **iv) Monthly/Quarterly/Annual Report of the CVOs**

The CVOs should take utmost care in sending the monthly report, which enables the Commission to assess their performance. They can attach additional sheets if they want to bring any special vigilance related issue to the notice of the Commission. A statement should also be enclosed along with the monthly report giving details of complaints/vigilance cases relating to officials falling under the Commission's jurisdiction, which are pending for more than a year, giving reasons for delay.

The QPR should contain details of all projects and progress relating thereto and the CVO would be responsible for its accuracy. As the annual reports of CVOs form the basis for certain incorporations in the Commission's Annual Report, the CVOs should ensure that their Annual Reports are sent positively by 31<sup>st</sup> January of the year following the completed calendar year.

#### **v) Reference to the Commission**

The Commission has issued detailed instructions regarding the manner of seeking the advice of the Commission. The CVOs should invariably ensure that the reference to the Commission for seeking first stage/second stage advice is made along with the views of the Disciplinary Authority, etc. However, in respect of such officials where the President is the Disciplinary Authority, the case could be referred to the Commission for seeking first stage advice with the views of the Secretary of the concerned administrative department.

#### **vi) Disciplinary Cases**

The CVOs should ensure that charge-sheets are carefully drafted covering all lapses. It is seen that in some CBI cases, there is delay in obtaining the documents. It should be ensured that the listed documents are obtained from the CBI before issuing the chargesheet and, where parallel proceedings are to be initiated, a set of listed documents, duly certified, is obtained from the CBI.

#### **vii) Irregularities in Recruitment:**

The Commission has been seriously concerned with certain instances of irregularities in recruitment. Every organisation is expected to have a recruitment policy and proper recruitment rules in keeping with the guidelines of the GOI. The CVOs should monitor and take up for necessary action, any case of recruitment in violation of the laid down rules and procedures, and wherever necessary, report the matter to the Commission.

  
(V. Kannan)  
Director

To

All CVOs  
All CMDs/CEOs

No.003/VGL/9  
Government of India  
Central Vigilance Commission

Satarkta Bhavan, Block "A"  
GPO Complex, I.N.A.  
New Delhi –110023  
Dated the 27<sup>th</sup> May 2003

To

CMDs of all Public Sector Banks

Subject:- Role and functions of Chief Vigilance Officers.

Sir/Madam,

It has been observed that in some of the nationalized banks, a decision as to whether the case has a vigilance angle or not is taken at the level of CMD. Even 1<sup>st</sup> stage/2nd stage references to CVC after the disciplinary authority has taken a view, require prior approval of the CMD. This practice is contrary to the guidelines of the Commission.

2. In this connection, the Commission desires that attention of all the CMDs be invited to paras 4 and 8 of Special Chapter on Vigilance Management in Public Sector Banks, which provide that a decision as to whether the case has a vigilance angle would in every case be taken by the CVO of Bank. Only where there is difference of opinion between the CVO and the CMD over the issue, the matter needs to be referred to the Commission for advice. Hopefully these generally would be exceptional.

3. Similarly, the seeking the Commission's advice at the 1<sup>st</sup> stage and 2<sup>nd</sup> stage, the cases should receive due consideration of the appropriate Disciplinary Authority as per the para 5.13 Chapter I of the Vigilance Manual (Volume I) and not at the level of CMD. However, all re-consideration cases should come to the Commission after having obtained the approval of the Head of the Department as per sub-para (iv) (b) of the *ibid* para.

4. All CVO's are requested to confirm adherence to these instructions of the Commission in their respective organizations.

Yours faithfully,

Sd/-  
(Mange Lal)  
Deputy Secretary  
Telefax: 24651010



# VIGILANCE MANUAL

## VOLUME I



CENTRAL VIGILANCE COMMISSION

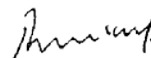
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## **FOREWORD**

The Vigilance Manual brought out by the Central Vigilance Commission has been found to be extremely useful by all who are involved in various areas of vigilance administration. The Manual is updated by the Commission from time to time to take on board revisions and modifications to the rules effected from time to time.

The current revised edition has been meticulously compiled by Shri K.L. Ahuja who has been associated with the preparation of the Manual in the earlier editions also. The Commission places on record its gratitude for the excellent work done by Shri Ahuja.

As has always been underlined by the Commission, the Manual is only a ready reference book for use by all the officers involved in vigilance administration. It cannot and should not be a substitute for reference to the concerned rules and orders issued by the government. The Commission welcomes any suggestion to make the volume better from the point of view of users and will be grateful if any error or omission which might have inadvertently crept in is brought to the Commission's notice.



**(P. Shankar)**

**Central Vigilance Commissioner**

New Delhi  
12<sup>th</sup> January 2005



## ABBREVIATION

|           |                                              |
|-----------|----------------------------------------------|
| ACR       | Annual Confidential Report                   |
| AG (AFHQ) | Adjudicent General                           |
| CBI       | Central Bureau of Investigation              |
| CDI       | Commissioner for Departmental Inquiries      |
| CVC       | Central Vigilance Commission                 |
| CVO       | Chief Vigilance Officer                      |
| DOPT      | Department of Personnel and Training         |
| DSPE      | Delhi Special Police Establishment           |
| GEQD      | Government Examiners of Questioned Documents |
| JPC       | Joint Parliamentary Committee                |
| PSB       | Public Sector Bank                           |
| PSE       | Public Sector Enterprise                     |
| PSU       | Public Sector Undertaking                    |
| QPR       | Quarterly Progress Report                    |
| VC        | Vigilance Commissioner                       |

## TABLE OF CONTENTS

### VOLUME I

#### CHAPTER I - Organisaton

|    |                                                    | Page No. |
|----|----------------------------------------------------|----------|
| 1. | Introduction                                       | 1        |
| 2. | Administrative Vigilance Division                  | 1        |
| 3. | Central Vigilance Commission                       | 1-8      |
| 4. | Chief Vigilance Officer's Organisation             | 8        |
| 5. | Central Bureau of Investigation                    | 8-10     |
| 6. | Vigilance Angle                                    | 10-11    |
| 7. | Determination of Vigilance Angle in Banking Sector | 11-12    |

#### CHAPTER II - CVO - Appointment, Role and Functions

|     |                                            |       |
|-----|--------------------------------------------|-------|
| 1.  | Background                                 | 13    |
| 2.  | Procedure for appointment of CVO           | 13-15 |
| 3   | Tenure of CVO                              | 15    |
| 4.  | Short- term arrangement in the post of CVO | 15    |
| 5.  | Association of CVOs with sensitive matters | 15-16 |
| 6.  | Permanent absorption of CVOs in PSUs       | 16    |
| 7.  | Assessment of the CVOs' work               | 16    |
| 8.  | Role and functions of CVOs                 | 16-17 |
| 9.  | Preventive Vigilance                       | 17-18 |
| 10. | Punitive Vigilance                         | 18-21 |
| 11. | Surveillance and Detection                 | 22    |
| 12  | Organising review meetings                 | 22    |
| 13. | Submission of reports and returns          | 22    |
| 14. | List of Select organisations               | 23-25 |

#### CHAPTER III - Complaints

|     |                                                                                                 |       |
|-----|-------------------------------------------------------------------------------------------------|-------|
| 1.  | Definition                                                                                      | 26    |
| 2.  | Sources of Complaint                                                                            | 26-27 |
| 3.  | Complaints received from subordinate officials                                                  | 27    |
| 4.  | Initial action of complaints received by Ministries/Departments etc                             | 27-28 |
| 5.  | Scrutiny of Complaints                                                                          | 28    |
| 6.  | Disposal of Complaints                                                                          | 28    |
| 7.  | Complaints received in the CVC                                                                  | 28    |
| 8.  | Action on Anonymous/Pseudonymous complaints                                                     | 29    |
| 9.  | Co-operation of voluntary public orgns., press and responsible citizens in combating corruption | 29-30 |
| 10. | GOI Resolution on Public Interest Disclosure and Protection of Informer                         | 30-31 |

## **CHAPTER II**

### **CHIEF VIGILANCE OFFICERS- APPOINTMENT, ROLE AND FUNCTIONS**

#### **BACKGROUND**

2.1.1 Primary responsibility for maintenance of purity, integrity and efficiency in the organisation vests in the Secretary of the Ministry, or the head of the Department, or the Chief Executive of the Public Sector Enterprises. Such authority, however, is assisted by an officer called the Chief Vigilance Officer (CVO) in the discharge of vigilance functions. The CVO acts as a special assistant/advisor to the chief executive and reports directly to him in all matters relating to vigilance. He heads the Vigilance Division of the organisation concerned and provides a link between the organisation and the Central Vigilance Commissioner and his organisation and the Central Bureau of Investigation.

2.1.2 It has been provided that big departments/organisations should have a full-time CVO, i.e. he should not be burdened with other responsibility. If it is considered that the CVO does not have full-time vigilance work, he may be entrusted with such functions that serve as input to vigilance activity, e.g. audit and inspections. The work relating to security and vigilance, however, should not be entrusted to the CVO as, in that case, the CVO would find very little time for effective performance of vigilance functions. Furthermore, in order to be effective, he should normally be an outsider appointed for a fixed tenure on deputation terms and should not be allowed to get absorbed in the organisation either during the currency of deputation period or on its expiry.

#### **PROCEDURE FOR APPOINTMENT**

2.2 The Chief Vigilance Officers in all departments/organisations are appointed after prior consultation with the Central Vigilance Commission and no person whose appointment in that capacity is objected to by the Commission may be so appointed.

#### **APPOINTMENT OF CVOs IN THE MINISTRIES/ DEPARTMENTS**

2.3 The Ministries/Departments of Government of India are required to furnish a panel of names of officers of sufficiently higher level (Joint Secretary or at least a Director/Dy. Secretary), who may report direct to the Secretary concerned, in the order of preference, along with their bio-data and complete ACR dossiers for the Commission's consideration. The officer approved by the Commission for the post of CVO is entrusted vigilance functions on full-time or part-time basis, as the case may be.

#### **APPOINTMENT OF CVOs IN PUBLIC SECTOR UNDERTAKINGS**

2.4.1 The CVO in a public sector undertaking (PSU), as far as practicable, should not belong to the organisation to which he is appointed, and having worked as CVO in an organisation, should not go back to the same organisation as CVO. The thrust behind this policy is to ensure that the officer appointed as CVO is able to inspire confidence that he would not be hampered by past

association with the organisation in deciding vigilance cases.

2.4.2 The following guidelines have been prescribed for filling up full-time posts of CVOs in the PSUs:

- (i) The posts shall be filled as per the procedure followed for posts in the Central Government under the Central Staffing Scheme;
- (ii) The DOPT would request the cadre controlling authorities of various organized services, as well as PSUs, to offer officers of proven integrity for these posts. The names, so received, would be forwarded, along with bio-data of the officers concerned and their ACR Dossiers, to the Central Vigilance Commission for approval;
- (iii) The DOPT would maintain a panel of names approved by the Commission and would request the cadre authorities, as well as the officers on the officer list, to indicate choice of location;
- (iv) The DOPT would offer the names to the Ministries/ Departments concerned for the posts of CVOs in the PSUs under their respective charges;
- (v) The offer list would be operative for a period of one calendar year;
- (vi) The DOPT, or the administrative Ministry/Department concerned, would obtain specific approval in favor of an officer in the proposal is to appoint that officer as a CVO in any of 100 select organisations.

2.4.3 Such PSUs, which do not have full-time posts of CVOs, would forward a panel of names of three officers of sufficiently higher level, who can report direct to the chief executive in the vigilance related matters, arranged in order of preference, along with their bio-data and complete ACR dossiers for the Commission's consideration. The officer approved by the Commission for the post of CVO would be entrusted vigilance functions on part-time basis, i.e. in addition to his normal duties.

#### **APPOINTMENT OF CVOs IN PUBLIC SECTOR BANKS**

2.5 In order to ensure a greater degree of independence and impartiality in the functioning of CVOs, it has been provided that all public sector banks (PSBs) should have CVOs appointed on deputation basis from amongst the Deputy General Managers of PSBs or from the Reserve bank of India, with three years service or the General Managers. For that purpose, the Banking Division would call for applications from willing officers, before a vacancy

arise in the post of CVO in a public sector bank, and would shortlist a panel of names in the manner as deemed appropriate. The short-listed panel, along with bio-data and complete ACRs dossiers of the officers concerned, would be forwarded to the Commission for consideration. The officer approved by the Commission would be appointed as CVO in that particular bank.

**APPOINTMENT  
OF CVOs IN  
INSURANCE  
COMPANIES/  
AUTONOMOUS  
ORGANISATIONS/  
SOCIETIES ETC.**

2.6.1 Irrespective of the fact whether the post of a CVO in an insurance company, autonomous organisation, Co-operative Society etc, is on full-time basis or on part-time basis, such organisations would forward, through their administrative Ministries/Departments, a panel of names of three officers of sufficiently higher level, who can report direct to the chief executive in vigilance related matters, arranged in order of preference, along with their bio-data and complete ACR dossiers for the Commission's consideration. The officer approved by the Commission would be appointed as CVO in that organisation.

2.6.2 Such autonomous organisations that have a full-time post of CVO, and propose to fill up the post on deputation basis on the pattern of Central Staffing Scheme, may obtain a panel of names from the DOPT from the offer list approved by the Commission.

**TENURE OF CVO**

2.7 The normal tenure of a CVO is three years extendable up to a further period of two years in the same organisation, or up to a further period of three years on transfer to another organisation on completion of initial deputation tenure of three years in the previous organisation, with the approval of the Commission, But if a CVO has to shift from one PSU to another PSU without completing the approved tenure in the previous PSU, the principle of overall tenure of six years would prevail.

**SHORT-TERM  
ARRANGEMENT  
IN THE POST OF  
CVO**

2.8 Suitable arrangements in vacancies for three months, or for any shorter period, due to leave or other reasons, may be made by the appropriate authority concerned, without prior approval of the Central Vigilance Commission. The nature and duration of vacancy and the name of the officer, who is entrusted with the duties of CVO, should however be reported to the Commission.

**ASSOCIATION OF  
CVOs WITH  
SENSITIVE  
MATTERS**

2.9 It is considered that participation in decision making or close association of vigilance staff in such matters over which they might be required, at a later stage, to sit in judgment from vigilance point of view, should be avoided. Therefore, vigilance functionaries should not be a party to processing and decision-making processes or in other similar administrative transactions of such nature, which are likely to have clear vigilance sensitivity. While it may not be difficult for full-time vigilance functionaries to comply with this requirement, the compliance of these instructions could be achieved in respect of part-time vigilance functionaries by confining their duties, other than those connected with vigilance work, as far as

possible, to such items of work that are either free from vigilance angle or preferable serve as input to vigilance activities such as inspection, audit, etc.

**PERMANENT  
ABSORPTION OF  
CVOs IN PSUs**

2.10 If an assurance is extended to a CVO, who has been appointed on deputation terms for a fixed tenure in the PSU, for permanent absorption, there is a distinct possibility that it might impair this objectivity in deciding vigilance cases and might negate the very purpose of appointing outsider CVOs. It has, thus, been provided that an outsider CVO shall not be permanently absorbed in the same public sector undertaking on expiry or in continuation of his tenure as CVO in that organisation.

**ASSESSMENT OF  
THE CVOs' WORK**

2.11 Central Vigilance Commissioner has also been given the powers to assess the work of Chief Vigilance officers. The Assessment is recorded in the character rolls of the officer. For that purpose, the following procedure has been prescribed:

- (i) The ACRs of the CVOs in the public sector undertakings/organisations, whether working on a full-time or a part-time basis, would be initiated by the chief executive of the concerned undertaking/organisation, reviewed by the Secretary of the administrative Ministry/Department concerned, and sent to the Central Vigilance Commissioner for writing his remarks as the accepting authority;
- (ii) The assessment by the Central Vigilance Commissioner in respect of the CVOs in the Ministries/Departments of the Government of India and their attached/subordinate offices, who look after vigilance functions in addition to their normal duties, will be recorded on a separate sheet of paper to be subsequently added to the confidential rolls of the officers concerned.

**ROLE AND  
FUNCTIONS OF  
CVOs**

2.12.1 As stated above, the CVO heads the vigilance Division of the organisation concerned and acts as a special assistant/advisor to the chief executive in all matters pertaining to vigilance. He also provides a link between his organisation and the Central Vigilance Commission and his organisation and the Central Bureau of Investigation. Vigilance functions to be performed by the CVO are of wide sweep and include collecting intelligence about the corrupt practices committed, or likely to be committed by the employees of his organisation; investigating or causing an investigation to be made into verifiable allegations reported to him; processing investigation reports for further consideration of the disciplinary authority concerned; referring the matters to the Commission for advice wherever necessary, taking steps to prevent commission of improper practices/misconducts, etc. Thus, the CVOs' functions can broadly be divided into three parts, as under:

- (i) Preventative vigilance
- (ii) Punitive vigilance
- (iii) Surveillance and detection.

2.12.2 While “surveillance” and “punitive action” for commission of misconduct and other malpractices is certainly important, the ‘preventive measure’ to be taken by the CVO are comparatively more important as these are likely to reduce the number of vigilance cases considerably. Thus, the role of CVO should be predominantly preventive.

## **PREVENTIVE VIGILANCE**

2.13 Santhanam Committee, while outlining the preventive measures, that should be taken to significantly reduce corruption, had identified four major causes of corruption, viz. (i) administrative delays; (ii) Government taking upon themselves more than what they can manage by way of regulatory functions; (iii) scope for personal discretion in the exercise of powers vested in different categories of government servants; and (iv) cumbersome procedures of dealing with various matters which are of importance to citizens in their day to day affairs. The CVO is thus expected to take following measures on preventive vigilance side:

- (i) To undertake a study of existing procedure and practices prevailing in his organisation with a view to modifying those procedures or practices which provide a scope for corruption, and also to find out the causes of delay, the points at which delay occurs and device suitable steps to minimize delays at different stages;
- (ii) To undertake a review of the regulatory functions with a view to see whether all of them are strictly necessary and whether the manner of discharge of those functions and exercise of powers of control are capable of improvement;
- (iii) To device adequate methods of control over exercise of discretion so as to ensure that discretionary powers are not exercised arbitrarily but in a transparent and fair manner;
- (iv) To educate the citizens about the procedures of dealing with various matters and also to simplify the cumbersome procedures as far as possible;
- (v) To identify the areas in his organisation which are prone to corruption and to ensure that the officers of proven integrity only are posted in those areas;
- (vi) To prepare a list of officers of doubtful integrity-The

list would include names of those officers who, after inquiry or during the course of inquiry, have been found to be lacking in integrity, such as (a) officer convicted in a Court of Law on the charge of lack of integrity or for an offence involving Moral turpitude but who has not been imposed a penalty of dismissal, removal or compulsory retirement in view of exceptional circumstances; (b) awarded departmentally a major penalty on charges of lack of integrity or gross dereliction of duty in protecting the interest of government although corrupt motive may not be capable of proof; (c) against whom proceedings for a major penalty or a court trial is in progress for alleged acts involving lack of integrity or moral turpitude; and (d) who was prosecuted but acquitted on technical grounds as there remained a reasonable suspicion about his integrity;

- (vii) To prepare the “agreed list” in consultation with the CBI- This list will include the names of officers against whose honesty or integrity there are complaints, doubts or suspicions;
- (viii) To ensure that the officers appearing on the list of officers of doubtful integrity and the agreed list are not posted in the identified sensitive/corruption prone areas;
- (ix) To ensure periodical rotations of staff; and
- (x) To ensure that the organisation has prepared manuals on important subjects such as purchases, contracts, etc. and that these manuals are updated from time to time and conform to the guidelines issued by the Commission.

## **PUNITIVE VIGILANCE**

2.14.1 The CVO is expected to scrutinize reports of Parliamentary Committees such as Estimates Committee, Public Accounts Committee and the Committee on public undertakings; audit reports; proceedings of both Houses of Parliament; and complaints and allegations appearing in the press; and to take appropriate action thereon. Predominantly, the CVO is expected to take following action on the punitive vigilance aspects:

- (i) To receive complaints from all sources and scrutinize them with a view to finding out if the allegations involve a vigilance angle. When in doubt, the CVO may refer the matter to his administrative head;
- (ii) To investigate or cause an investigation to be made into such specific and verifiable allegations as involved a



vigilance angle;

- (iii) To investigate or cause an investigation to be made into the allegations forwarded to him by the Commission or by the CBI;
- (iv) To process the investigation reports expeditiously for obtaining orders of the competent authorities about further course of action to be taken and also obtaining Commission's advice on the investigation reports where necessary;
- (v) To ensure that the charge sheets to the concerned employees are drafted properly and issued expeditiously;
- (vi) To ensure that there is no delay in appointing the inquiring authorities where necessary;
- (vii) To examine the inquiry officer's report, keeping in view the evidence adduced by the prosecution and the defence during the course of inquiry, and obtaining orders of the competent authority about further course of action to be taken and also obtaining the Commission's second stage advice and UPSC's advice, where necessary;
- (viii) To ensure that the disciplinary authority concerned, issued a speaking order, while imposing a punishment on the delinquent employee. The order to be issued by the disciplinary authority should show that the disciplinary authority had applied its mind and exercised its independent judgment;
- (ix) To ensure that rules with regard to disciplinary proceedings are scrupulously followed at all stages by all concerned as any violation of rules would render the entire proceedings void;
- (x) To ensure that the time limits prescribed for processing the vigilance cases at various stages, as under, are strictly adhered to:

S. No.

State of Investigation or inquiry

Time limit

1.

Decision as to whether the complaint involves a vigilance angle

One month from the receipt of the complaint

2.  
Decision on complaint, whether to be filed or to be entrusted to CBI or  
to sent to the concerned administrative authority for necessary  
action.  
One month from the receipt of the  
complaint
3.  
Conduction investigation and submission of report  
Three months
4.  
Department's comments on the CBI reports in cases requiring  
Commission's advice  
One month from the date of receipt of CBI report by the disciplinary  
authority
5.  
Referring departmental investigation reports to the Commission for  
advice  
One month from the date of receipt of investigation report
6.  
Reconsideration of the Commission's advice, if required  
One month from the date of receipt of Commission's advice
7.  
Issue of charge-sheet if required  
(i) one month from the date of receipt of Commission's advice  
(ii) Two months from the date of receipt of investigation report
8.  
Time for submission of defence statement  
Ordinarily ten days or as specified in CDA Rules
9.  
Consideration of defence statement  
15(fifteen) days
10.  
Issue of final orders in minor penalty cases  
Two months from the receipt of defence statement
11.  
Appointment of IO/PO in major penalty cases  
Immediately after receipt of defence statement
- 12.

Conducting departmental inquiry and submission of report  
Six months from the date of appointment of IO/PO

13.

Sending a copy of the IO's report to the CO for his representation

- (i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved
- (ii) 15 days if all charges held as not proved- reason for disagreement with IO's findings to be communicated

14.

Consideration of CO,s representation and forwarding IO,s report to the Commission for second stage advice  
One month from the date of representation

15.

Issuance of orders on the Inquiry report

- (i) One month from the date of Commission's advice
- (ii) Two months from the date of receipt of IO's report if Commission's advice is not required

2.14.2 Although the discretion to place a public servant under suspension, when a disciplinary proceedings is either pending or contemplated against him, is that of the disciplinary authority, the CVO is expected to assist the disciplinary authority in proper exercise of this discretion. The CVO should also ensure that all cases in which the officers concerned have been under suspension are reviewed within a period of 90 days with a view to see if the suspension order could be revoked or if there was a case for increasing or decreasing the subsistence allowance.

2.14.3 The Commission's advice in respect of category 'A' officials is to be obtained at two stages; firstly on the investigation report in terms of para 2.14.1(iv) and secondly on the inquiry report in terms of para 2.14.1(vii) supra. The CVO to ensure that the cases receive due consideration of the appropriate disciplinary authority before these are referred to the Commission and its tentative recommendation is indicated in the references made to the Commission. The references to the Commission should be in the form of a self-contained note along with supporting documents, viz the complaint, investigation report, statement/version of the concerned employee(s) on the allegations established against them and the Comments of the administrative authorities thereon in first stage advice cases; and copy of the charge-sheet, statement of defence submitted by the concerned employee, the report of the inquiring authority along with connected records and the tentative views/findings of the disciplinary authority on each article of charge in second stage advice cases. The CVO may also ensure that the bio-data of the concerned officers is also furnished to the

**SURVEILLANCE  
AND DETECTION**

Commission in the prescribed format, while seeking its advice. The cases requiring reconsiderations of the Commission's advice may, however, be sent with the approval of the Chief Executive, or the Head of the Department, as the case may be.

**ORGANISING  
REVIEW  
MEETINGS**

2.15 The CVO should conduct regular and surprise inspections in the sensitive areas in order to detect if there have been instances of corrupt or improper practice by the public servants. He should also undertake prompt and adequate scrutiny of property returns and intimations given by the public servants under the conduct rules and proper follow up action where necessary. In addition, he should also gather intelligence from its own sources in whatever manner he deems appropriate about the misconduct/malpractices having been committed or likely to be committed.

2.16.1 CVO should invariably review all pending matters, such as investigation reports, disciplinary cases and other vigilance complaints/cases in the first week of every month and take necessary steps for expediting action on those matters.

2.16.2 The CVO would arrange quarterly meetings to be taken by the Secretary of the Ministry/Department or the Chief executive for reviewing the vigilance work done in the organisation.

2.16.3 The CVO would also arrange periodical meetings with the officers of the CBI to discuss matters of mutual interests, particularly those arising from inquiries and investigations.

**SUBMISSION OF  
REPORTS AND  
RETURNS**

2.17.1. The CVO would also ensure that monthly reports of the work done on vigilance matters is furnished to the Commission by fifth day of the following months.

2.17.2 The CVO would ensure that the Annual Report(AR) of the previous year ( Jan. to Dec.) of the work done on vigilance matter is furnished to the Commission by 30<sup>th</sup> Jan. of the succeeding year.

2.17.3 The CVO would also ensure that quarterly progress reports(QPR) on the civil, electrical, horticulture works in progress and also on procurement of stores are furnished to the CTEs by 15<sup>th</sup> day of the month following the quarters ending March, June, September and December.

**LIST OF SELECT ORGANISATIONS FORWHICH  
SPECIFIC APPROVAL OF THE COMMISSION FOR AN OFFICER TO BE  
APPOINTED AS CVO IS REQUIRED**

| S. No. | Name of the Organisation             |
|--------|--------------------------------------|
| 1.     | Container Corporation of India Ltd.  |
| 2.     | IRCON International                  |
| 3.     | RITES Ltd.                           |
| 4.     | Airports Authority of India          |
| 5.     | Air India                            |
| 6.     | Indian Airlines                      |
| 7.     | Indian Telephone Industries Ltd.     |
| 8.     | ITDC                                 |
| 9.     | Bharat Sanchar Nigam Ltd.            |
| 10.    | MTNL                                 |
| 11.    | National Highways Authority of India |
| 12.    | Chennai Port Trust                   |
| 13.    | Ennore Port Ltd.                     |
| 14.    | Goa Shipyard Ltd.                    |
| 15.    | Hindustan Shipyard Ltd.              |
| 16.    | Jawaharlal Nehru Port Trust          |
| 17.    | Kandla Port Trust                    |
| 18.    | Kochi Shipyard Ltd.                  |
| 19.    | Kolkata Port Trust                   |
| 20.    | Mazagon Dock Ltd.                    |
| 21.    | Mumbai Port Trust                    |
| 22.    | Paradip Port Trust                   |
| 23.    | Shipping Corporation of India Ltd.   |
| 24.    | Tuticorin Port Trust                 |
| 25.    | Visakhapatnam Port Trust             |
| 26.    | Bank of Maharashtra                  |
| 27.    | Exim Bank                            |
| 28.    | I.D.B.I.                             |
| 29.    | I.I.B.I.                             |
| 30.    | Indian Bank                          |
| 31.    | Indian Overseas Bank                 |
| 32.    | N.A.B.A.R.D.                         |
| 33.    | National Housing Bank                |
| 34.    | Reserve Bank of India                |
| 35.    | SIDBI                                |
| 36.    | State Bank of India                  |
| 37.    | State Bank of Bikaner & Jaipur       |
| 38.    | State Bank of Hyderabad              |
| 39.    | State Bank of Saurashtra             |
| 40.    | State Bank of Indore                 |
| 41.    | State Bank of Mysore                 |
| 42.    | State Bank of Patiala                |
| 43.    | State Bank of Travancore             |

|     |                                       |
|-----|---------------------------------------|
| 44. | UCO Bank                              |
| 45. | Union Bank of India                   |
| 46. | Allahabad Bank                        |
| 47. | Andhra Bank                           |
| 48. | Bank of Baroda                        |
| 49. | Bank of India                         |
| 50. | Canara Bank                           |
| 51. | Central Bank of India                 |
| 52. | Corporation Bank                      |
| 53. | Dena Bank                             |
| 54. | Oriental Bank of Commerce             |
| 55. | Punjab & Sind Bank                    |
| 56. | Punjab National Bank                  |
| 57. | Syndicate Bank                        |
| 58. | United Bank of India                  |
| 59. | Vijaya Bank                           |
| 60. | LIC of India Ltd.                     |
| 61. | National Insurance Co. Ltd.           |
| 62. | New India Assurance Co. Ltd.          |
| 63. | Oriental Insurance Co. Ltd.           |
| 64. | United India Insurance Co. Ltd.       |
| 65. | Bharat Coking Coal Ltd.               |
| 66. | Bharat Heavy Electricals Ltd.         |
| 67. | Bharat Petroleum Co. Ltd.             |
| 68. | Central Coalfields Ltd.               |
| 69. | Coal India Ltd.                       |
| 70. | Eastern Coalfields Ltd.               |
| 71. | Gas Authority of India Ltd.           |
| 72. | H.P.C.L.                              |
| 73. | I.O.C. Ltd.                           |
| 74. | I.R.E.D.A.                            |
| 75. | M.M.T.C. Ltd.                         |
| 76. | National Aluminium Company Ltd.       |
| 77. | National Thermal Power Corp. Ltd.     |
| 78. | Neyveli Lignite Corporation Ltd.      |
| 79. | Northern Coalfields Ltd.              |
| 80. | O.N.G.C.                              |
| 81. | Oil India Ltd.                        |
| 82. | Power Grid Corporation of India Ltd.  |
| 83. | Rashtriya Ispat Nigam Ltd.            |
| 84. | South Eastern Coalfields Ltd.         |
| 85. | STC of India Ltd.                     |
| 86. | Steel Authority of India Ltd.         |
| 87. | Employees Provident Fund Organisation |
| 88. | Employees State Insurance Corporation |
| 89. | Food Corporation of India             |
| 90. | D.D.A.                                |
| 91. | D.T.C.                                |

|      |                               |
|------|-------------------------------|
| 92.  | M.C.D.                        |
| 93.  | N.D.M.C.                      |
| 94.  | Bharat Dynamics Ltd.          |
| 95.  | Bharat Electronics Ltd.       |
| 96.  | Hindustan Aeronautics Ltd.    |
| 97.  | Kudremukh Iron & Ore Co. Ltd. |
| 98.  | Mishra Dhatu Nigam Ltd.       |
| 99.  | N.H.P.C.                      |
| 100. | Satluj Jal Vidyut Nigam Ltd.  |

## Chapter-III

**Circulars/ Guidelines from CVC regarding -**

**“Rotation of Employees”**

**&**

**“Foreign Visits by Government Employees”**

**&**

**“Protection against victimization of officials of the Vigilance Units  
of various Ministries/Departments/organizations”**

**&**

**“Appointment of consultants in Vigilance Departments”**

**&**

**“Vigilance angle”**





सत्यमेव जयते



TelegraphicAddress :  
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## केन्द्रीय सतर्कता आयोग CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,  
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023  
Satarkta Bhawan, G.P.O. Complex,  
Block A, INA, New Delhi 110023

सं./No..... 004/VGL/090/22553

दिनांक / Dated..... 11.9.2013

Circular No. 03/09/13

Subject:- Rotation of officials working in sensitive posts-regarding.

Central Vigilance Commission and the Department of Personnel and Training have issued instructions for effecting rotational transfers of officials posted on sensitive posts. As per Commission's instructions issued vide letter Nos. 98/VGL/60 dated 15.4.1999, 02.11.2001 and 004/VGL/90 dated 01.5.2008 and 04.01.2012 (for public sector banks) on this issue, it was prescribed that Ministries/Departments/Organisations and CVOs are to identify the sensitive posts and staff working in these posts and also ensure that they are strictly rotated after every two/three years to avoid developing vested interests.

2. The Commission in the superintendence of vigilance administration over the years has observed that such rotational transfers are not effected in many organisations due to which officials continue to remain in the same posts for long periods. Such overstay and continuous postings afford scope for indulging in corrupt activities, developing vested interests etc. which may not be in the interest of the organisation. The Commission would, therefore, emphasise that periodical rotation of officials holding sensitive posts/jobs needs to be ensured. As such, officials should not be retained in the same place/position for long by the Ministries/Departments/PSUs/Banks/Organisations etc.

3. Heads/CVOs of all Departments/Organisations are advised to ensure strict compliance of the Commission's guidelines and implement the same in letter and spirit. Further, the CVOs should specifically report the action taken indicating the number of officials rotated/transferred in the respective organisations in the Monthly Report of CVOs submitted to the Commission.

*K D Tripathi*  
(K D Tripathi)  
Secretary

1. All Secretaries of Ministries/Departments.
2. All CMDs/Heads of CPSUs/Public Sector Banks/Organisations.
3. All CVOs of Ministries/Departments/ CPSUs/Public Sector Banks/Organisations.

TelegraphicAddress :  
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भारत सरकार  
केन्द्रीय सतर्कता आयोग  
GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्प्लैक्स,  
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023  
Satarkta Bhawan, G.P.O. Complex,  
Block A, INA, New Delhi 110023

दिनांक / Dated...04<sup>th</sup> Jan., 2012

Circular No.02/01/12

**Sub: Rotation of officials working in sensitive posts – reg.**

**Ref: Commission's circulars No. 98/VGL/60 dated 15/4/1999, 1/11/2001  
and circular No.17/4/08(004/VGL/90) dated 1/5/2008**

Attention is invited to the Commission's instructions contained in circulars under reference wherein all CVOs were asked to identify the sensitive posts and also to ensure that officials posted on sensitive posts are rotated every two/three years to avoid vested interests. These instructions are not being strictly followed which is a matter of serious concern.

2. Recently, the Commission while dealing with a case pertaining to a Public Sector Bank noticed that a senior ranking official who was associated with procurements etc. was posted in the department for an unduly long period which is against the spirit of the Commission's guidelines. The Commission would once again emphasize that periodical rotation of officials, holding sensitive posts/jobs especially at senior levels need to be ensured. As such, officials should not be retained in the same place/position for unduly long periods in the guise of indispensability etc. by the Management of Public Sector Banks.

3. The Commission while reiterating its guidelines would advise the CVOs of Public Sector Banks to bring to the notice of all concerned to ensure strict compliance of the same. Further, the CVOs should specifically mention the action taken status in this regard indicating the number of officials rotated/transferred in the Bank in the Monthly Report of CVOs to the Commission.

  
(J Vinod Kumar)  
Officer on Special Duty

All CVOs of Public Sector Banks

No.004/VGL/90  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 1<sup>st</sup> May, 2008

**CIRCULAR NO.17/4/08**

**Subject:- Rotation of officials working in sensitive posts.**

Attention is invited to the Commission's circular No. 98/VGL/60 dated 15/4/99 and 2/11/01.

2. The Commission vide circular dated 15/4/99, had asked the CVOs of Ministries/Departments/Organisations to identify the sensitive posts in their organizations and also to send to the Commission, the list of posts so identified. Further, CVOs were also asked to ensure that officials posted on sensitive posts were rotated every two/three years to avoid developing vested interest.

3. No information in this regard has been received in the Commission so far. The CVOs may, therefore, complete the exercise expeditiously now, and send to the Commission, a list of posts identified as sensitive in their organization. The exercise may be completed by 30<sup>th</sup> June 2008.



(Rajiv Verma)  
Under Secretary

All Chief Vigilance Officers

No.: 98/VGL/60  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi – 110 023.  
Dated the 2<sup>nd</sup> November, 2001.

To

All Chief Vigilance Officers

**Subject: Rotation of officials working in sensitive posts.**

\*\*\*\*\*

Attention is invited to Circular No. 98/VGL/60 dated 15<sup>th</sup> April 1999 of the Central Vigilance Commission regarding rotation of officials working in sensitive posts.

2. It is hereby clarified that postings in the vigilance wings/departments are classified as sensitive. Therefore, the above instructions should be strictly followed while transferring officials to and from vigilance.

3. Accordingly, personnel deputed to the vigilance wing from operational wings are to have a tenure of three years following which they are to be reverted to operational areas. In the case of organizations that have a separate cadre for vigilance, the rotation should be done across regions on expiry of tenure of three years in a particular office.

4. CVOs may certify annually that this exercise has been carried.

5. This is for strict compliance by all concerned.

This issues with the approval of the Commission.

Sd/-  
(C.J. Mathew)  
**Deputy Secretary**

**98/VGL/60**  
**Government of India**  
**Central Vigilance Commission**  
\*\*\*\*\*

**Satarkta Bhawan, Block 'A',**  
**GPO Complex, INA,**  
**New Delhi – 110 023**  
**Dated the 15<sup>th</sup> April 1999**

**To**

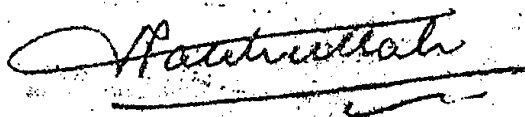
**All Chief Vigilance Officers**

**Subject:      Rotation of officials working in sensitive posts.**

\*\*\*\*\*

Instructions have been issued from time to time by the Central Vigilance Commission and the Department of Personnel and Training for making rotational transfers in respect of the officials posted on sensitive posts at periodic intervals. These instructions are not being strictly followed and fallen into disuse.

2. In order to implement these instructions in a letter and spirit, it has been decided by the Commission that a list of sensitive posts in various Departments/Organisations should be identified by the Chief Vigilance Officer of the Department/Organisation. A list of posts so identified by the CVOs may be intimated to the Commission immediately. Thereafter CVOs in consultation with the Chief Executives would ensure that officials posted on sensitive posts are rotated every two/three years to avoid developing vested interests. In case officials posted on the sensitive posts continue to function in violation of the existing orders, the Commission may be apprised so that it may take up the matter with the concerned Departments/Organisations for implementing these instructions.



**(P.S.FATEHULLAH)**  
**DIRECTOR**

F.No. 004/VGL/87  
Government of India,  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, GPO Complex,  
Block-'A', I N A,  
New Delhi-110023  
Dated, the 27<sup>th</sup> September, 2005

**Officer Order No.60/09/05**

**Subject:- Foreign Visits by Government Employees.**

Please refer to this Commission's Circulars of even no. dated 25/10/2004 & 8/12/2004 on the above subject.

2. It has been noticed by the Commission that some of the Departments/Organisations have not furnished information regarding foreign visits performed by their officials on private visits during 2000 to 2004. All Organisations who have not furnished these details must do the needful immediately as per the format already circulated (format-1 enclosed). Separately information on 'exception list' and a summary of numbers of employees should also be provided in the enclosed format-2. In addition, the detail information may also be sent through e-mails i.e. [cdi4@CVC.delhi.nic.in](mailto:cdi4@CVC.delhi.nic.in) or [ro-coord@cvc.delhi.nic.in](mailto:ro-coord@cvc.delhi.nic.in).



**(Anjana Dube)**  
**Deputy Secretary**

(i) All Chief Vigilance Officers of Ministries/Departments/Autonomous Organisations /Public Sector Undertakings/Public Sector Banks/Insurance Companies/Societies

(ii) President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/Prime Minister's Office.

## Format-1

### Name of the organisation

Details of Officers/Officials who had gone abroad on private visits during \_\_\_\_\_ (year-wise)

| Title | Name of the officer | Designation | Name of country visited | Duration of stay (From-To) | Source of funding | Remarks (purpose/ reason of visit) |
|-------|---------------------|-------------|-------------------------|----------------------------|-------------------|------------------------------------|
|       |                     |             |                         |                            |                   |                                    |
|       |                     |             |                         |                            |                   |                                    |
|       |                     |             |                         |                            |                   |                                    |
|       |                     |             |                         |                            |                   |                                    |

## Format-2

Private foreign visits by Govt. Employees during the years 2000 to 2004 (Nos.)

| S.No. | Name of the Organisation | 2000 | 2001 | 2002 | 2003 | 2004 |
|-------|--------------------------|------|------|------|------|------|
|       |                          |      |      |      |      |      |
| 1     | XYZ                      | 5(1) | 6    | 8(2) | 10   | 4    |

figures in bracket shows the no. of officers who have gone more than once in a calender year  
e.g. if 4 officers have gone only once in 2000 and 1 officer has gone more than once in 2000  
then it will show as 5(1)

Exception list: Details of officers who have travelled on private foreign visits more than once  
in a calender year as per format 1.

Competent authority to certify that sources of funds have been verified.

IMMEDIATE  
CONFIDENTIAL

No.004/VGL/87  
Government of India  
Central Vigilance Commission

\*\*\*\*\*

Satarkta Bhawan, Block-A,  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 8<sup>th</sup> December, 2004

**Office Order No.74/12/04**

**Subject: Foreign visits by the Government employees.**

On the directives of the Hon'ble High Court, Delhi, the Commission vide its Office Order No. 67/10/2004 dtd. 25/10/2004 issued instructions to all the Chief Vigilance Officers of Ministries/Departments/Autonomous Bodies, Organisations/Public Sector Bank/Public Sector Undertakings/Insurance Companies and Societies etc. to furnish the information about private foreign visits made by the employees of their respective organisations during 2003 and 2004.

2. As further directed by the High Court on 17.11.2004, it is desired that the above information may be furnished for the five years i.e. since 1.1.2000 till 2004. The information should be furnished by January 7, 2005. The CVO should give separately an 'exception list' to include names of the officers who have undertaken private foreign visits more than once in a calendar year.

Sd/-  
(Anjana Dube)  
Deputy Secretary

- (i) All Chief Vigilance Officers of Ministries/Departments/Autonomous Organisations /Public Sector Undertakings/Public Sector Banks/Insurance Companies/Societies
- (ii) President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/Prime Minister's Office.



No.004/VGL/87  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block-A,  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 25<sup>th</sup> October 2004

**Office Order No.67/10/04**

**Subject: Foreign visits by the Government employees.**

The High Court of Delhi, in its judgment dated the 28<sup>th</sup> May, 2004 in the Criminal Writ Petition No. 1004/03, (Shri C.K. Jain v/s Union of India) has observed that a Govt. servant who had visited Dubai & Singapore 161 times on private visits without permission was never ever questioned by any authority like Customs and Immigration and other. In a subsequent direction based on the reply filed by the Government, the High Court directed that the "Central Vigilance Commission may collect information about Government servants going abroad on private visits and possibly a data bank should be kept on them".

2. Keeping in view the directives of the High Court, all the Chief Vigilance Officers are requested to collect information about government servants/employees in their respective Organizations, who had gone abroad on private visits during 2003 (January to December) and 2004 (till October 2004), in the enclosed proforma and send the same to the Commission immediately so that the Hon'ble High Court may be intimated timely.

3. Information of such Foreign visits on private account by Government employees be sent in consolidated form (calender year wise) in January of every year.

Sd/-  
(Anjana Dube)  
Deputy Secretary

- (i) All Chief Vigilance Officers of Ministries/Departments/Autonomous Organisations/Public Sector Undertakings/Public Sector Banks/Insurance Companies/Societies
- (ii) President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/Prime Minister's Office.

Proforma

Name of the Organisation

| Sl. No. | Name & Designation of the Officer | Name of the country visited | Duration of stay | Source of funding | Remarks |
|---------|-----------------------------------|-----------------------------|------------------|-------------------|---------|
| 1       | 2                                 | 3                           | 4                | 5                 | 6       |

No.006/VGL/022  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block 'A',  
GPO Complex, INA,  
New Delhi- 110 023  
Dated the 28<sup>th</sup> March 2006

**Circular No.16/3/06**

**Sub: Protection against victimisation of officials of the Vigilance Units of various Ministries/Departments/organisations.**

The Commission has viewed seriously certain instances of harassment and attempts at victimisation of vigilance officials of certain organisations. The need to allow the vigilance officials to work independently and freely without any fear, which is the foundation for effective vigilance administration in any organisation, has been recognized since long. In fact, the Committee on Prevention of Corruption (Santhanam Committee) had recommended that "those posted to the Vigilance Organisations should not have the fear of returning to their parent cadre with the possibility of facing the anger and displeasure of those against whom they made inquiries". The Committee had also recommended that "those working in Vigilance Organisations should have an assurance that good and efficient work in the Vigilance Organisation will enhance their opportunities for promotion and not become a sort of disqualification".

2. The Commission has considered the problem of possible victimisation of Vigilance officials after they finish their tenure in the Vigilance Department and revert to their normal duties. In the case of CVOs, already, the Commission, as Accepting Authority, is in a position to moderate, if necessary, any biased reporting against the CVO in his ACR. Similarly, the Commission has always been extremely careful and cautious while taking cognizance of complaints against the CVOs and as a matter of principle always obtains the CVOs' response before coming to any conclusion on the need to investigate such complaints.

3. In order that the required degree of protection is conferred on the Vigilance officials supporting the CVO and keeping in view the spirit of the Santhanam Committee which with commendable foresight had anticipated very clearly some of these issues, the Commission issues the following consolidated instructions in exercise of its powers under Section 8 (1) (h) of the CVC Act:

- (i) All personnel in Vigilance Units will be posted only in consultation with and the concurrence of the CVOs. They will be for an initial tenure of three years extendable up to five years. Any premature reversion before the expiry of such tenure will only be with the concurrence of the CVO. The CVO shall bring to the notice of the Commission any deviation from the above.

Contd....2/-

- (ii) The ACR of personnel working in the Vigilance Department will be written by the CVO and reviewed by appropriate authority prescribed under the relevant conduct rules. The remarks in review shall be perused by the CVO and in case he has reservations about the comments made under the review, he shall take it up with the Chief Executive/HOD to resolve the issue. In case he is unable to do this, he shall report the matter to the Commission who will intercede in the matter suitably.
- (iii) Since the problem of victimisation occurs, if at all, after the reversion of the personnel to their normal line departments, the Commission would reiterate the following:
  - (a) On such reversion the vigilance personnel shall not be posted to work under an officer against whom, while working in the vigilance department, he had undertaken verification of complaints or detailed investigation thereafter. Needless to say his ACR shall not be written by such officer/s.
  - (b) All such Vigilance personnel will be deemed to be under the Commission's purview for purposes of consultation in disciplinary matters. This is irrespective of their grade. This cover will be extended to a period of not less than five years from the date of reversion from the vigilance department.
  - (c) All Vigilance personnel on reversion shall be entitled to represent through the CVO and chief executive of the organisation to the Commission if they perceive any victimisation as a consequence of their working in the Vigilance department. This would include transfers, denial of promotion or any administrative action not considered routine or normal. This protection will be extended for a period not less than five years after the reversion of such personnel from the vigilance department.

4. The above instructions may be noted for strict compliance. The CVO should report promptly to the Commission, the details of any real or perceived victimisation of any official who is working in the Vigilance Unit. Similarly, he should also report such instances pertaining to the former officials of the Vigilance Unit, up to a period of five years after they had completed their tenure in the Vigilance Unit. He should also report where such deserving officials are ignored/superseded in matters of promotion.

  
(V. Kannan)  
Director

All CMDs of Public Sector Undertakings/Public Sector Banks  
All Chief Vigilance Officers

**No.3(V)/99/12**  
**Government of India**  
**Central Vigilance Commission**  
\*\*\*\*\*

Satarkata Bhavan, Block 'A'  
GPO Complex, I.N.A.,  
New Delhi-110023  
Dated the 14<sup>th</sup> August 2000

**Subject: - Appointment of consultants in vigilance departments.**

It was stated in the Department of Personnel & Training's OM No.371/32/97-AVD.III dated 28.11.1997 that contrary to the instructions governing appointment of CVOs, such functions as are to be performed strictly by the CVOs or vigilance set-ups in the Ministries/Departments were assigned to outsiders engaged as consultants. It was clarified that consultants are not appointed against any regular post and, therefore, their engagement itself for sensitive functions of vigilance and discipline was against the spirit of the scheme of "vigilance and discipline".

2. The appointments against the posts of CVOs are made with the prior approval of the Commission. The Commission, therefore, takes care of the situation that no organisation appoints a consultant to perform the functions of a CVO. It has, however, been observed by the Commission that some of the organisations have appointed retired officers as consultants in the vigilance/personnel departments to perform vigilance functions, in the capacities of other than the CVO.

3. A person, who is not a full-time employee of the Government/public sector enterprise etc., may be amenable to influence. There is also a possibility that the retired officers, appointed as consultants, may provide a convenient legal cover for going easy on corrupt practices, as they may be financially obliged to the Management. It is also difficult to make them accountable for the misconduct committed by them. Therefore, the Commission in exercise of the powers conferred upon it, vide para 3(v) of the Government of India's Resolution No. 371/20/99-AVD.III dated 04.04.1999, directs that the vigilance functionaries should always be full-time employees of the organisation and in no case a retired employee should be appointed as a consultant to perform vigilance functions. If there is not sufficient vigilance work for a full-time functionary in the organisation, the organisation may entrust him some other work in addition to vigilance work.

4. The above instructions may please be followed strictly. For any violation of the above instructions, the CVO and the chief executive of the concerned organisation may be held responsible.

5. This order is available on the CVC's website <http://cvc.nic.in>.

  
(N. VITTAL) 14. 8. 2000  
CENTRAL VIGILANCE COMMISSIONER

To

- (i) The Secretaries of all Ministries/Departments of Government of India
- (ii) The Chief Secretaries to all Union Territories
- (iii) The Comptroller & Auditor General of India
- (iv) The Chairman, Union Public Service Commission
- (v) Chief Executives of all Public Sector Undertakings/ Banks/ autonomous organisations etc.
- (vi) All Chief Vigilance Officers in the Ministries/Departments/ PSEs/Public Sector Banks/Insurance Companies/ Autonomous Organisations/Societies
- (vii) President's Secretariat/Vide President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO/CBI
- (viii) The NGOs/Institutes/Service Associations (appearing in the Commission's mailing list)

No. 004/VGL/18  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkata Bhawan, Block-A,  
GPO Complex, INA,  
New Delhi-1100 23.  
Dated the 21<sup>st</sup> December, 2005

**Office Order No.74/12/05**

**Sub:- Vigilance angle – definition of (partial modification regarding)**

In partial modification to Commission's Office Order No. 23/4/04 issued vide No. 004/VGL/18 dated 13.4.04 on definition of vigilance angle, the following is added at the end of para 2 for the purpose of determination of vigilance angle as para 2 (b)

**“Any undue/unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case”. The existing para 2 will be marked as para 2 (a).**

2. CVO may bring this to the notice of all concerned.

Sd/-  
(Anjana Dube)  
Deputy Secretary

All Chief Vigilance Officers

Copy to:-

1. Director CBI, New Delhi.
2. AVD-III, Deptt of Personnel & Training, North Block, New Delhi.

No. 004/VGL/18  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkata Bhawan, Block-A,  
GPO Complex, INA,  
New Delhi-1100 23.  
Dated: 13<sup>th</sup> April, 2004

**Office Order No. 23/04/04**  
**( read with modification vide Office Order No. 74/12/05)**

**Subject: Vigilance angle – definition of.**

As you are aware, the Commission tenders advice in the cases, which involve a vigilance angle. The term “vigilance angle” has been defined in the Special Chapters for Vigilance Management in the public sector enterprises, public sector banks and public sector insurance companies. The matter with regard to bringing out greater quality and precision to the definition has been under reconsideration of the Commission. The Commission, now accordingly, has formulated a revised definition of vigilance angle as under:

**“Vigilance angle is obvious in the following acts: -**

- (i) Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.
- (ii) Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he has or likely to have official dealings or his subordinates have official dealings or where he can exert influence.
- (iii) Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.
- (iv) Possession of assets disproportionate to his known sources of income.
- (v) Cases of misappropriation, forgery or cheating or other similar criminal offences.

2(a)\*\* There are, however, other irregularities where circumstances will have to be weighed carefully to take a view whether the officer’s integrity is in doubt. Gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible/public interest is evident; failure to keep the controlling authority/superiors informed in time – **these are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.**



- 2(b) **Any undue/unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case.**

**\*\* as modified vide Officer Order No. 74/12/05 dated 21/12/05.**

3. The raison d'être of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organisation. Commercial risk taking forms part of business. Therefore, every loss caused to the organisation, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. Thus, whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organisation is one possible criterion for determining the bona fides of the case. A positive response to this question may indicate the existence of bona- fides. A negative reply, on the other hand, might indicate their absence.

4. Absence of vigilance angle in various acts of omission and commission does not mean that the concerned official is not liable to face the consequences of his actions. **All such lapses not attracting vigilance angle would, indeed, have to be dealt with appropriately as per the disciplinary procedure under the service rules."**

5. The above definition becomes a part of the Vigilance Manual and existing Special Chapter on Public Sector Banks and Public Sector Enterprises brought out by the Commission, in supersession of the existing definition.

CVOs may bring this to the notice of all concerned.

Sd/-  
(Anjana Dube)  
Deputy Secretary

All Chief Vigilance Officers

1.5.6 The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to-

- (a) the employees of the Central Government of the level of Joint Secretary and above: and
- (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

1.5.7 Notwithstanding anything contained in para 1.5.6, no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988.

**WHAT IS A  
VIGILANCE  
ANGLE?**

1.6.1 Vigilance angle is obvious in the following acts

- (i) Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.
- (ii) Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he has or likely to have official dealings or his subordinates have official dealings or where he can exert influence.
- (iii) Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.
- (iv) Possession of assets disproportionate to his known sources of income.
- (v) Cases of misappropriation, forgery or cheating or other similar criminal offences.

1.6.2 There are, however, other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt. Gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible public interest is evident; failure to keep the controlling authority/

superiors informed in time – these are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

1.6.3 The *raison d'être* of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organisation. Commercial risk taking forms part of business. Therefore, every loss caused to the organisation, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. Thus, whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organisation is one possible criterion for determining the *bona fides* of the case. A positive response to this question may indicate the existence of *bona fides*. A negative reply, on the other hand, might indicate their absence.

1.6.4 Absence of vigilance angle in various acts of omission and commission does not mean that the concerned official is not liable to face the consequences of his actions. All such lapses not attracting vigilance angle would, indeed, have to be dealt with appropriately as per the disciplinary procedure under the service rules.

**DETERMINATION  
OF VIGILANCE  
ANGLE IN  
BANKING  
SECTOR**

1.7.1 In view of the paradigm shift in the role and functions of commercial banks, appropriate attention is required to be paid in deciding the involvement of a vigilance angle in the complaints/disciplinary cases relating to banking sector. For that purpose, each bank may set up an internal advisory committee of three members, preferably of the level of General Managers but not below the level of Deputy General Managers, to scrutinize the complaints received in the bank and also the cases arising out of inspections and audit etc; and determine involvement of vigilance angle, or otherwise, in those transactions. The committee shall record reasons for arriving at such a conclusion. The committee will send its recommendations to the CVO. The CVO, while taking a decision on each case, will consider the advice of the committee. Such records shall be maintained by the CVO and would be made available to an officer, or a team of officers, of the Commission for scrutiny when it visits the bank for the purpose of vigilance audit.

1.7.2 All decisions of the committee on the involvement of vigilance angle, or otherwise, will be taken unanimously. In case of difference of opinion between the members, the majority view may be stated. The CVO would refer its recommendations to disciplinary authority. In case of difference of opinion between the disciplinary authority and the CVO, the matter would be referred to the Commission for advice.

## Chapter-IV

**Provisions of Indian Penal Code 1860, Section 197 CrPC vis-à-vis Public Servant under Section 21(Twelfth)(b) IPC, Prevention of Corruption Act 1988, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989**

# THE INDIAN PENAL CODE, 1860

(Act No. 45 of 1860)

[6<sup>th</sup> October 1860]3

## CONTENTS

| SN  | Subject                                                                                              |
|-----|------------------------------------------------------------------------------------------------------|
| 1.  | <a href="#"><u>INTRODUCTION</u></a>                                                                  |
| 2.  | <a href="#"><u>GENERAL EXPLANATIONS</u></a>                                                          |
| 3.  | <a href="#"><u>PUNISHMENTS</u></a>                                                                   |
| 4.  | <a href="#"><u>GENERAL EXCEPTIONS</u></a>                                                            |
| 5.  | <a href="#"><u>ABETMENT</u></a>                                                                      |
| 6.  | <a href="#"><u>CRIMINAL CONSPIRACY</u></a>                                                           |
| 7.  | <a href="#"><u>OFFENCES AGAINST THE STATE</u></a>                                                    |
| 8.  | <a href="#"><u>OFFENCES RELATING TO THE ARMY <sup>1</sup>[NAVY AND AIR FORCE]</u></a>                |
| 9.  | <a href="#"><u>OFFENCES AGAINST THE PUBLIC TRANQUILLITY</u></a>                                      |
| 10. | <a href="#"><u>OFFENCES BY OR RELATING TO PUBLIC SERVANTS</u></a>                                    |
| 11. | <a href="#"><u>CHAPTER IXA</u></a>                                                                   |
| 12. | <a href="#"><u>CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS</u></a>                          |
| 13. | <a href="#"><u>FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE</u></a>                            |
| 14. | <a href="#"><u>OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS</u></a>                               |
| 15. | <a href="#"><u>OFFENCES RELATING TO WEIGHTS AND MEASURES</u></a>                                     |
| 16. | <a href="#"><u>OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS</u></a> |
| 17. | <a href="#"><u>OFFENCES RELATING TO RELIGION</u></a>                                                 |
| 18. | <a href="#"><u>OFFENCES AFFECTING THE HUMAN BODY</u></a>                                             |
| 19. | <a href="#"><u>OFFENCES AGAINST PROPERTY OF THEFT</u></a>                                            |
| 20. | <a href="#"><u>OFFENCES RELATING TO DOCUMENTS AND TO [***] PROPERTY MARKS</u></a>                    |
| 21. | <a href="#"><u>THE CRIMINAL BREACH OF CONTRACTS OF SERVICE</u></a>                                   |
| 22. | <a href="#"><u>OFFENCES RELATING TO MARRIAGE</u></a>                                                 |
| 23. | <a href="#"><u>CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND</u></a>                                    |
| 24. | <a href="#"><u>DEFAMATION</u></a>                                                                    |
| 25. | <a href="#"><u>CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE</u></a>                                   |
| 26. | <a href="#"><u>ATTEMPTS TO COMMIT OFFENCES</u></a>                                                   |

## CHAPTER 1 INTRODUCTION

**Preamble.-** Whereas it is expedient to provide a general Penal Code for India; It is enacted as follows:-

**1. Title and extent of operation of the Code:-** This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

### COMMENTS

**History:** The Indian Penal Code is the Product. Of the work of successive Law Commission constituted by the British during the 19<sup>th</sup> century. The main milestones in the work towards the preparation of the Code are as under:-

- (1) Chapter Act, 1833 under which the first Indian Law Commission was constituted.
- (2) Constitution of the First Indian Law Commission (1834):  
President-Macaulay  
Members (Commissioners):  
McLeod  
Anderson  
Millet
- (3) Draft Code submitted to the Governor General in Council (14<sup>th</sup> October, 1837).
- (4) Constitution of Second Indian Law Commission (26<sup>th</sup> April 1845).
- (5) Report of the Second Indian Law Commission on the Draft Penal Code (1846 and 1847, i.e. in two parts).
- (6) Draft Code revised and presented to Governor General in Council (1856). Revision was done by Bethune and Peacock (Law Members).
- (7) Passing of the Code (6<sup>th</sup> October, 1860).

**2. Punishment of offences committed within India.-** Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which, he shall be guilty within India.

### COMMENTS

**Foreigners:** The words 'every person' are believed to have made it clear that a foreigner is subject to Indian Penal Code for an act committed within India.- *Jilendranath Gohsah v. Chief Secretary*, Air 1932 Cal 753 : ILR 60 Cal 364, Cf Esop (1836) 7 C & P 456.

**Foreign Sovereigns :** Foreign Sovereigns are exempt by International Law which (in this respect) is part

of national law.- The parliament Belge, (1880) 5 P D 197-207.

***Territorial Waters*** : See Proclamation of 30<sup>th</sup> September, 1867.- P.M. Bakshi, Selective Commentary on the Constitution and Rastya Rama,(1817) 8 B H C Cr CJ 63.

***Within India*** : Section 2 focuses on operation of the Code “within India” (see the last eight words).This limits its territorial operation .But it is to be read with Section3,4, 108A, etc. which (directly or indirectly) provided for its extra territorial preparation.

***“Every person”***: The words” every person” highlight the universal application of the Code to all persons. The expression “person” is defined in Section 11. Section 2 should, however, be read as subject to provisions to the contrary, which may be found in various enactments or sources. Principal examples are:

- (a) The constitution Articles, e.g Article 361.
- (b) Excepting provisions in the Indian penal Code (e.g. Chapter4).
- (c) Excepting or limiting provisions in the Code of Criminal Procedure, 1973.
- (d) Excepting provisions in special laws in the nature of protective clauses.
- (e) Rules of International Law (see infra).

***Rules of public International Law***: Certain rules of International Law, are regarded as part of the national law also. One such rule is that foreign states and foreign sovereigns are not subject to the jurisdiction of national courts.- The Parliament Beige, (1889) 5 PD 197- 207 (Court of Appeals per Lord justice Brett).

In the U.S., the rule was first rendered authoritatively by Chief Justice John Marshall in *The Schooner Exchange v. M.C Fid don* , (1812) 11 U.S.(7 Crenel)116, 136, 137,143-146.

The Foreign Sovereign Immunities Act, 1976 (U.S.A, 28 U.S.C. Section 1604) provides that –“subject to existing international agreements to which the United States is a party at the time of enactment of this Act, a foreign state shall be immune from the jurisdiction of the courts of the United States and of the states except as provided in this Act”. This expression “foreign state” is defined as including an agency or instrumentality of a foreign state. See C. Lewis, State and Diplomatic Immunity, 1980.

In India, this rule continuities to apply in regard to criminal proceedings. In regard to civil proceedings, it has been slightly modified by Section 86, Code of Civil Procedure , 1908. That Section, while not totally abrogating the immunity conferred by Public International Law, provides that a foreign sovereign can not be sued except with the consent of the Central Government.

**3. Punishment of offences committed beyond but which by law may be tried within India.-** Any person liable by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

## COMMENTS

**Scope :** The section provides for extra- territorial operation of Indian legislation relating to criminal law , but only if the terms of the section are satisfied. A very important ingredient of the Section is contained in the words.” Any person liable by any Indian law....”.

The Section operates only where an Indian Law specifically provides that an act committed outside India may be dealt with under that law in India.

**“Indian Law”:** As to the expression “Indian Law “, see *Madhavrao v. State of M.P.*, AIR 1916 SC 198. The Code Itself, in Section 4, provides for extra territorial operation of the penal provisions of the Code. For extra territorial application of other, i.e. special laws, the “extent” clause(usually contained in the first Section of the special laws) should be consulted. The Child Marriages Restraint Act, 1929 does not contain any provision for its extra territorial application and , therefore, does not apply to marriage outside India.-*Sheikh Haidar v. Sued Issa* , ILR 1939 Nag 241.

At the same time, if the “Indian Law” clearly provides for its own extra territorial application then it is immaterial that the act or omission was not punishment in the foreign country.- *Pheroze v. State*, (1964) 2 Cr LJ 533 (Bom).

**Application :** Section 3, IPC applies only to a person liable by any Indian Law to be tried for an offence committed beyond India . If the Indian Law does not have extraterritorial operation then Section 3 does not apply.- *Sheikh Haidar v. Sued Issa*, ILR 1939 Nag 241.

At the same time if there is in force such law, it is not necessary that the act must be punishable where it was committed.- *Pheroze v. Syed Issa* , ILR 1939 Nag 241.

**4. Extension of Code to extra territorial offences.-** The provisions if this Code apply also to any offence committed by-

- (1) any citizen of India in any place without and beyond India;
- (2) any person on any ship or aircraft registered in India wherever it may be.

**Explanation.-** In this Section the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code.

#### **Illustration**

A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India at which he may be found.

#### **CHARGE**

I, (name is and office of the Magistrate) hereby charge you(name of the accused) as following:-

If in the place without of beyond India:-

That you being the citizen of India on or about the .....day of.....at with the intention of or with the intention of or with the knowledge that you will hereby commit the offence in



.....(name of place) without or beyond India (specify the place thereby committed the offence (name of the offence) punishable under Section 4, I.P.C and within my cognizance.

And I hereby direct that you be tried on the said charge by the said court.

### COMMENTS

**Scope:** Section 4, IPC defines the extra territorial application of the Code. Procedure for securing surrender is governed by the Extradition Act, 1962.- Jugal Kishore More (1969) 3 SCR 320.

Section 4 does not apply where the offender is not a citizen of India.- Central Bank of India Ltd. V. Ram Narain, (1955) 1 SCR 697.

Section 4 provides for the extra territorial operation of the Penal Code. Such operation is conditioned by the nationality of the offender- clause(1), or by the place of commission – clause(2). Under clause (1), the place of commission is immaterial provided the offender is an Indian citizen.

Citizenship is governed by the Citizenship Act, 1955.

Under clause(2) what is required is that the ship or aircraft, must be registered in India. Registration of ships is governed by the Merchant Shipping Act, 1958. Registration of aircraft is governed by the Indian Aircraft Act, 1934.

**Illegal arrest:** Even if a person is arrested outside India illegally for trial in India, the trial is not vitiated by the illegality of the arrest.-Vinayak D. Saarkar, 1920 ILR 35 Bom 225 (arrest alleged to be in violation of rules of Public International Law).

**Basis of extra territorial jurisdiction:** the most fundamental principle of extra- territorial jurisdiction is nationality. As early as the first authoritative commentator on jurisdiction, the Italian jurist Bartolus, himself a confirmed territoriality, it has been admitted that a state's laws may be applied extraterritorially to its citizens, Individuals or corporations, wherever they may be found. See Bartolus on the conflict of Laws 51 (Beale trans. 1914).

A much more controversial form of extraterritorial jurisdiction is the so called effects principle. Extraterritorial though it may be in practice, in theory the effects principle is grounded on the principle of territorial jurisdiction. The premise is that a state has jurisdiction over extraterritorial conduct when the conduct has an effect within its territory.

The effects principle received its most notable enunciation in the Lotus case, where the permanent Court of International Justice was asked to decide whether Turkey had violated "the principles of international law" by asserting criminal jurisdiction over a French officer who had been navigating a private French vessel, when it collided with, and sank, a Turkish ship on the high seas.

**Lotus case:** The issue was one of extra territoriality because the Frenchman had at all times during the collision been on French territory, i.e. aboard the French ship, although damage had been inflicted upon Turkish territory, i.e. on the Turkish ship. The Lotus court adopted a strictly positivist view of international law, seeing it as a law entirely generated by the positive acts of states and emanating “from their own free will as expressed in conventions or by usages generally accepted expressing principles of law”.

**Lotus case at 18:** The permanent Court searched for “a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case” and, finding none, ruled that Turkey had not acted improperly either in seizing the French Officer or in trying him for violation. Turkey had not acted improperly either in seizing the French Officer or in trying him for violation of Turkish law while outside Turkish territory.

**Lotus case at 33 :** besides nationality and effects, there have been suggested and accepted from time to time a variety of other foundations for a state’s exercise of extraterritorial jurisdiction. Three points should be mentioned here: the protective principle, the universality principle, and the passive personality principle. The protective principle provides that a state has jurisdiction to prescribe law with respect to “certain conduct outside its territory by persons not its nationals which is directed against the security of the state or a limited class of other state interests”. Restatement(revised) supra note 8,402 (3).

5. **Certain laws not to be affected by this Act.-** Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

## COMMENTS

**Scope:** Section 5 marks it clear that the Indian Penal Code is not exhaustive of the entire criminal law of the country.- Motilal Shah, 1930 ILR 55 Bom 89.

But Section 26 of General Clauses Act, 1897 and article 20 of the Constitution prohibit double punishment for the same offence.

Section 5 saves the operation of two categories of laws, namely:-

- (i) enactments relating to armed forces, and
- (ii) special and local laws.

*Armed forces :* As to the category (i) mentioned above see the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957.

*Special and local laws:* As to the category (ii) mentioned above see the expressions “Special law and Local law : as defined in sections 41-42 of the Indian Penal Code.

**Double Jeopardy:** Although the operation of certain other laws is saved by Section 5 of the Penal Code, it is to be remembered that a person cannot be punished twice for the same offence. See-

- (i) Section 71, second Para, Indian Penal Code.
- (ii) Section 26, General Clauses Act, 1897.
- (iii) Article 20, Constitution of India.

## CHAPTER-II GENERAL EXPLANATIONS

### 6. Definitions in the code to be understood subject to exceptions.-

Throughout this Code every definition of an offence, every penal provisions, and every illustration or every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled “General Exceptions “, though those exceptions are not respected in such definition, penal provision, or illustration.

#### Illustrations

- (a) The sections in this Code, which contain defections of offences, do not express that a child under seven years of age cannot commit such offences , but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
- (b) A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that “nothing is an offence which is done by a person who is bound by law to do it”

#### COMMENTS

**Scope:** Section 6, in effect, provides that if the case of the accused falls within a general exception (Chapter 4) he is immune from criminal liability. It is not necessary to repeat in every section defining or punishing an offence that it is subject to Chapter 4.- About *Latif v. State of Assam*, 1918 Cr LJ 1205 (Gau.); *Khageswar Pujari v. State of Orissa*, 1948 CR LJ 1984 Cr LJ 1108 (Orissa).

**Effect :** The effect of Section 6 (in broad terms) is that every penal provision of the Code is to be read as subject to the general exceptions continued in Chapter 4 (sections 76-106) of the Code.- *Khageswar Pujari v. State of Orissa*, 1984 Cr LJ 1108 (Orissa)

7. **Sense of expression once explained.-** Every expression which is explained in any part of this Code in conformity with the explanation.
8. **Gender.-** The pronoun “ he” and its derivatives are used of any person, whether male or female.
9. **Number.-** Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

### COMMENTS

Compare Section 13. General Clauses Act, 1897.

10. **“Man”, “Woman”.-** The word “man”, denotes a male human being of any age; the word “woman” denotes a female human being of any age.

### COMMENTS

The principal significance of Section 10 lies in the words “if any age.” Thus “Woman” includes infant females as also mentioned in Section 354 of the Code.- State v. Major Singh, AIR 1967 SC 63 : 1967 Cr LJ.

11. **“Person”.-** The word “person includes any company or association or body of persons, whether incorporated or not.

### COMMENTS

**Scope :** Section 11 has the effect of including within the expression :

- (a) any company, whether incorporated or not;
- (b) any association of persons, whether incorporated or not; and
- (c) any body of persons, whether incorporated or not.

**Criminal liability of corporations :** Corporations are either :

- (a) Corporations sole (one person or entity constituted by law as an artificial juridical person), or
- (b) Corporations in aggregate (e.g. companies).

**Corporations and their officers :** The general proposition that corporations may be criminally liable gets some support from Section 11, which has also the effect of giving them the benefit of criminal law if they happen to become the victim of specific offences sentenced to imprisonment.- Syndicate Transport Co., (1963) 66 Bom LR 197. Conversely, if the offence is punishable with fine only, the corporation (e.g. a local authority) can be punished.- Girdharilal v. Lalchand, 1970 Cr LJ 987 (Raj).

More important is the question of liability of Directors and responsible officers of corporations. Where, technically, the offender is a corporation, the Directors, etc. may still be liable (in addition to the criminal liability of the corporation) if their own participation in the offence amounts to abetting the offence within the meaning of Sections 107 and 108 of the Indian Penal Code. Besides this, most special Acts enacted during the recent years contain provisions under which Directors and other Officers, who are in charge of the affairs of the corporation and responsible to the corporation for the conduct of the affairs of the corporation, are also declared criminally liable for an offence against that special Act, unless they

can prove that the offence was committed without their knowledge, or that they exercised all due diligence to prevent the commission of that offence.

**Criminal liability of partners:** The Supreme Court, in *Sham Sundar v. State of Haryana*, (Judgment dated 21 August, 1989), JT 1989(3) SC 523, has held that with reference to Section 10 of the Essential Commodities Act, 1955, the true position is that only a partner responsible for conduction the business of the firm could be convicted. The case related to breach of the Haryana Rice Procurement (Levy) Order, 1979. The offender was said to have failed to supply the necessary quantity of rice as per levy rules. Such short supply in contravention of Rice Procurement Order is punishable under Section 7 of the Essential Commodities Act. All the partners were convicted of the offence. It was urged by the appellants before the Supreme Court that there was no evidence that the appellants were in charge of the business of the firm, and for want of evidence, the conviction could not be sustained. The Supreme Court upheld the contention and allowed the appeal. It may be mentioned that Section 10 (1) of the Essential Commodities Act provides that if the person contravening an Order made under the Act is a company (which is defined to include a firm), every person who, at the time of contravention, was in charge of, and was responsible to, the company for the conduct of the business of the company (as well as the company), shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. However, this provision does not render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

The Supreme Court held that Section 10 of Essential Commodities Act was penal provision with a criminal liability, and must be construed strictly. Section 10 does not provide for vicarious liability and does not make all partners liable for an offence, whether they do business or not. The Court observed as under, in this context:-

“It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners, who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence, arises only when the prosecution establishes that the requisite condition mentioned in sub section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was, during the relevant time, in charge of the business. In the absence of any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State”.

12. **“Public”**.- The word public includes nay class of the public, or any community, any company , whether incorporated or not;
13. **[Definition of Queen]**.- Repealed by the A.O.1950.
14. **“Servant Government ”**.- The words “servant of Government” denote nay officer or servant continued, appointed or employed in India by or under the authority of Government.
15. **[Definition of “British India”]**.- Repealed by the A.O.1937.
16. **[Definition of “Government of India”]**.- Repealed .
17. **“Government”**.- The word “Government “ denotes the Central Government or the Government or the Government of a State.
18. **“India”**.- “India” means the territory of India excluding the State of Jammu and Kashmir.

### COMMENT

This definition dies not conflict with the Constitution.- K.P.K. Vara Prasad v. Union of India, AIR 1980 AP 243.

It is only a verbal definition, confined to interpretation for the expression “India” as occurring in the code in various sections- such as Sections 108A, 121A, 359,360,etc. The focus in Section 18 is not on India as a political entity, but on the geographical aspect of the territory intended to be connoted by the expression “India” as occurring in those sections of the Code where the territorial aspect is the crucial element. The definition would have been more expressive (and would have created less controversy) if it began something like this-“India” in relation to the territory....”

19. **“Judge”**.- The word “judge” denotes not only every person who is officially designated as judge but also every person- who is empowered by law to give, in any legal proceeding, civil or criminal, definitive judgment by law to give, in any legal proceeding , civil or criminal, definitive judgment or a judgment which, if confirmed by some other authority, would be definitive or who is one of a body of persons if empowered by law to give such a judgment.

### Illustrations

- (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a judge.
- (c) A member of a panchayat which has power, under Regulation VII, 1810, of the Madras Code to try and determine suits, is a judge.
- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

20. **“Court of Justice”**.- The words “Court of Justice” denote a Judge who is empowered by law to act judicially alone, or a body of judges who is empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.

### Illustrations

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

**21. “Public servant”.-** The words “public servant” denote a person falling under any of the descriptions hereinafter following, namely:-

*First.*<sup>1</sup>[\*\*\*]

*Second.*- Every Commissioned Officer in the Military, Naval or Air Forces of India;

*Third.*- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

*Fourth.*- Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

*Fifth.*- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

*Sixth.*- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent

1. Clause first omitted by the A.O.1950.

*Seventh.*- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

*Eighth.*- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

*Ninth.*- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

*Tenth.*- Every person whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common

purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the right of the people of any village, town or district;

*Eleventh.-* Every Person-

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- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the government;
- (b) in the service or pay of a local authority, a corporation establishment by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

### **Illustration**

A Municipal Commissioner is a public servant.

*Explanation:* 1- Person falling under any of the above descriptions are public servants, whether appointed by the Government or not.

*Explanation:* 2- Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

*Explanation :*3 – The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by; or under, any law prescribed as by election.

[Contents](#)   [Next](#)



**Offence committed in place of worship, etc.-** (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

### CLASSIFICATION OF OFFENCE

**Para I.** Punishment-Imprisonment for 3 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable

**Para II.** Punishment-Imprisonment for 5 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable

### COMMENTS

- (i) Mens rea is a necessary ingredient for the offence under section 153A of the Indian Penal Code; *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, (1997) 7 Supreme Today 127.
- (ii) Publication of the words or representation is not offence under section 153A of the Indian Penal Code; *Bilal Aje,d Kalloo v. State of Andhra Pradesh*, (1997) 7 Supreme Today 127.

<sup>1</sup>[**153B. Imputations, assertions prejudicial to national-integration.-** (1) Whoever, by words either spoken or written or by sings or by visible epresentations or otherwise,-

- (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community , bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or
- (b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community , be denied or deprived of their rights as citizens of India, or
- (c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being member if any religious , racial,language or regional group or cast or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill- will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

1. Ins. by Act 31 of 1972, sec.2.

(2) Whoever commits an offence specified in sub-section (1) , in any place of worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall be liable to fine.]

### CLASSIFICATION OF OFFENCE

**Para I.** Punishment-Imprisonment for 3 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable.

**Para II.** Punishment-Imprisonment for 5 years, or fine or both - Cognizable-Non- bailable-Triable by any Magistrate of the first class- Non- compoundable

**154. Owner or occupier of land on which an unlawful assembly is held.-** Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe to is likely to be committed, do not give the earliest notice thereof in his or their Power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

### CLASSIFICATION OF OFFENCE

Punishment-Fine of 10,000 rupees Non- Cognizable-Bailable-Triable by any Magistrate - Non-compoundable.

**155. Liability of person for whose benefit riot is committed .-** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land, respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot , or who has accepted or derived any benefit there from , such person shall be punishable with fine, if he or his agent or manager having reason to believe that such riot was likely to be committed or that he respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

### CLASSIFICATION OF OFFENCE

Punishment-Fine- Non- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**156. Liability of agent of owner or occupier for whose benefit riot is committed.-** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be committed, or that the lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

#### **CLASSIFICATION OF OFFENCE**

Punishment-Fine- Non- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**157. Harbours persons hired for an unlawful assembly.-** Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

#### **CLASSIFICATION OF OFFENCE**

Punishment-Fine- Non- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**158. Being hired to take part in an unlawful assembly or riot.-** Whoever is engaged or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in Section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Or to go armed.-** and whoever, being so engaged or hired as aforesaid, goes armed or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offences is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **CLASSIFICATION OF OFFENCE**

**Para I.** Punishment-Imprisonment for 6 months, or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**Para II.** Punishment-Imprisonment for 2 year, or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**159. Affray.-** When two or more persons, by fighting in a public place, disturb the public peace, they are said to “Commit an affray”.

**160. Punishment for committing affray.-** Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

#### **CLASSIFICATION OF OFFENCE**

Punishment-Imprisonment for one months , or fine of 100 rupees, or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

### **CHAPTER IX**

#### **OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS**

**161 To 165A.-** [Rep. By the Prevention of Corruption Act, 1988(49 of 1988), sec. 31.]

**166. Public servant disobeying law, with intent to cause injury to any person.-** Whoever, being a public servant , knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

#### **Illustration**

A, being an officer directed by law to take property in execution , in order to satisfy a decree pronounced in Z’s favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z.A has committed the offence defined in this section.

#### **CLASSIFICATION OF OFFENCE**

Punishment-Imprisonment for 1 years, or fine or both- Non-Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**167.- Public servant framing an incorrect document with intent to cause injury.-** Whoever, being a public servant, and being , as<sup>1</sup>[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be

likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

1. Subs. by the Information Technology Act, 2000.sec. 91 and Sch.1, for certain words.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years, or fine or both- Non-Cognizable-Bailable-Triable by any Magistrate of the first class- Non- compoundable.

**168. Public servant unlawfully engaging in trade.-** Whoever, being a public servant and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 1 years, or fine or both- Non-Cognizable-Bailable-Triable by any Magistrate of the first class- - Non- compoundable.

**169. Public servant unlawfully buying or bidding for property.-** Whoever, being a public servant and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years, or fine or both and confiscation of property if purchased - Non-Cognizable-Bailable-Triable by any Magistrate of the first class- - Non- compoundable.

**170. Personating a public servant.-** Whoever pretends to hold any particular office of a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years, or fine or both –Cognizable- Non-bailable-Triable by any Magistrate of the first class- - Non- compoundable.

**171. Wearing garb or carrying token used by public servant with fraudulent intent.-** Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may be extended to three months, or with fine which may extend to two hundred rupees, or with both.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 months, or fine of 200 rupees, or both- Cognizable- Bailable- Triable by Magistrate- Non- compoundable.

## <sup>1</sup>CHAPTER IXA

**171A. “Candidate”, “Electoral right “ defined.-** For the purpose of this Chapter-

- <sup>2</sup>[(a) “candidate” means a person who has been nominated as a candidate at any election;]
- (b) “electoral right “ means the right of a person to stand, or not to stand as, or to a withdraw from being, a candidate or to vote or refrain from voting at any election.

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1. Chapter IXA ins. by Act 39 of 1920, sec.2.

2. Subs. by Act 40 of 1975, sec.9, for clause(a)

**171B. Bribery.-** (1) Whoever-

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
- (ii) accepts either for himself or for any other person any gratification as reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right;

commits the offence of bribery :

Provided that a declaration of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give , or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done , shall be deemed to have accepted the gratification as a reward.

**171C. Undue influence at elections.-** (1) Whoever voluntarily interfere or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provision of sub-section (1) , whoever-

- (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
- (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter , within the meaning of sub- section (1).

(3) A declaration of public policy or a promise of public action , or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

**171D. Personation at elections .-** Whoever at an election applied for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name , or who having voted once at such election applies at the same election for a voting paper in his own name , and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence or personation at an election.

**171E. Punishment for bribery.-** Whoever commits the offence of bribery shall be punished with fine ,or with both.

Provided that bribery by treating shall be punished with fine only.

*Explanation.-* “Treating” means that from of bribery where the gratification consists in food, drink , entertainment, or provision.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 1 years, or fine or both or if treating only-Non - Cognizable-Bailable-Triable by Magistrate of the first class- Non- compoundable.

**171F. Punishment for undue influence or personation at an election.-** Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

### CLASSIFICATION OF OFFENCE

**Para I.** Punishment-Imprisonment for 1 years, or fine or both or if treating only Non-Cognizable- Bailable-Triable by Magistrate of the first class- Non- compoundable.

**Para II.** Punishment -Imprisonment for 1 years, or fine or both or if treating only-Non - Cognizable- Bailable-Triable by Magistrate of the first class- Non- compoundable.

**171G. False statement in connection with an election.-** Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true , in relation to the personal character or conduct of any candidate shall be punished with fine.

### CLASSIFICATION OF OFFENCE

Punishment-Fine Non- Cognizable- Bailable-Triable by Magistrate of the first class- Non-compoundable.

**171 H. False statement in connection with an election.-** Whoever with intent to affect the result of an election makes or publishes any statement of fact which is false and which he either knows or believes to be false or does not believe to be true , in relation to the personal character or conduct of any candidate shall be punished with fine.

### CLASSIFICATION OF OFFENCE

Punishment-Fine Non- Cognizable- Bailable-Triable by Magistrate of the first class- Non-compoundable.

**171H. Illegal payments in connection with an election.-** Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting , or upon any advertisement, circular or publication , or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate , shall be punished with fine



which may extend to five hundred rupees:

Provided that if any persons having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate.

### **CLASSIFICATION OF OFFENCE**

Punishment-Fine of 500 rupees Non- Cognizable- Bailable-Triable by Magistrate of the first class- Non- compoundable.

**171I. Failure to keep election accounts.-** Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.]

### **CLASSIFICATION OF OFFENCE**

Punishment-Fine 500 rupees- Non- Cognizable- Bailable-Triable by Magistrate of the first class- Non- compoundable.

## **CHAPTER X**

### **OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS**

**172. Absconding to avoid service of summons or other proceeding.-** Whoever absconds in order to avoid being served with a summons, notice or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to 1[produce a document or an electronic record in a Court of justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **CLASSIFICATION OF OFFENCE**

**Para I.** Punishment- Simple imprisonment for 1 months, or fine of 500 rupees or both- Cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**Para II.** Punishment-Simple imprisonment for 6months , or fine of 1000 rupees or both-Non - cognizable-Bailable-Triable by any Magistrate - Non- compoundable.

**173. Preventing service of summons of summons or other proceeding or preventing publication thereof .-** Whoever in any manner intentionally prevents the serving on himself, or on any other person, or any summons, notice or order, proceeding from any public servant legally competent , as such public servant , to issue such summons , notice or order,

or intentionally prevents the lawful affixing to any place such summons , notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant , to direct such proclamation to be made.

Shall be punished with simple imprisonment for a term which may extend to one month , or with fine which may extend to five hundred rupees, or with fine which may extend to five hundred rupees , or with both;

Or , if the summons, notice, order or proclamation is to be produced or delivered up to a Court of justice , with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees , or with both.

### CLASSIFICATION OF OFFENCE

**Para I.** Punishment- Simple imprisonment for 1 month, or fine of 500 rupees, or both-Non-cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**Para II.** Punishment- Simple imprisonment for 6 month, or fine of 1, rupees, or both-Non-cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**174. Non-attendance in obedience to an order from public servant.-** Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place of time , or departs from the place where he is bound to attend before the time at which it is lawful for him to depart.

Shall be punished with simple imprisonment for a term which may extend to one month, or

with fine which may extend to five hundred rupees, or with both.

Or, if summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both,

### Illustrations

- (a) A, being legally bound to appear before the <sup>2</sup>[High Court at Calcutta in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.
- (b) A, being legally bound to appear before a <sup>3</sup>[District judge], as a witness, in obedience to a summons issued by that <sup>3</sup>[District judge] intentionally omits to appear. A has committed the offence defined in this section.

- 
- 1. Subs. by the information Technology Act 2000, sec. 91 and Sch. I, for “produce a document in a court of justice”
  - 2. Subs. by the A.O 1950, for “Supreme Court”.
  - 3. Subs. by the A.O. 1950, for “Zila judge”.

### CLASSIFICATION OF OFFENCE

**Para I.** Punishment- Simple imprisonment for 1 month, or fine of 500 rupees, or both-Non-cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**Para II.** Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non-cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**175. Omission to produce to public servant by person legally bound to produce it.**—Whoever, being legally bound to produce or deliver up any <sup>1</sup>[document or electronic record] of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

or, if <sup>1</sup>[document or electronic record] is to be produced or delivered up to a court justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### Illustration

A, being legally bound to produce a document before a <sup>2</sup>[District Court], intentionally omits to produce the same. A has committed the offence defined in this section.

### CLASSIFICATION OF OFFENCE

**Para I.** Punishment- Simple imprisonment for 1 month, or fine of 500 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

- 
1. Subs. by the information Technology Act 2000, sec. 91 and Sch. I, for “ document ”.
  2. Subs. by the A.O 1950, for “Zila Court”.
  3. Subs. by the A.O. 22 of 1939, sec.2.

**Para II.** Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**177. Furnishing false information.-** Whoever, being legally bound to furnish information on any subject to any public servant, as furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Or, if the information, which of the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, willfully misinforms the magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause, 5 section VII, <sup>1</sup>[Regulation III, 1821], of the Bengal

Code, to give early and punctual information of the above fact to the officer of the nearest police station, willfully misinforms the police officer that a body of suspicious character passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section.

- 
1. Rep. by Act 17 of 1862.

<sup>2</sup>[Plantation .- In section 176 and in this section the word “offence”. Includes any act committed at any place out of <sup>3</sup>[India], which if committed in <sup>3</sup>[India], would be punished under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 42, 435, 436, 449, 450, 457, 458, 459, and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.]

### CLASSIFICATION OF OFFENCE

**Para I.** Punishment- Imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**Para II.** Punishment- Simple imprisonment for 2 years, or fine, or both-Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**178. Refusing oath or affirmation when duly required by public servant to make it.-** Whoever refuses to bind himself by an oath <sup>1</sup>[or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with fine which may extend to one thousand rupees, or with both.

Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable –Bailable-Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; if not committed in a court, any Magistrate –Non- compoundable.

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2. Added by Act 3 of 1894.

3. The words “British India “ have successively been subs. by the A.O. 1950 and Act 3 of 1951. 3 and Sch. to read as above.

**179. Refusing to answer public servant authorised to question.-** Whoever, being legally bound to state the truth on any public servant, refuses to answer any question demanded of him touching that

subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### CLASSIFICATION OF OFFENCE

Punishment- Simple imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable –Bailable-Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; if not committed in a court, any Magistrate –Non- compoundable.

**180. Refusing to sign statement.-** Whoever refuse to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

### CLASSIFICATION OF OFFENCE

Punishment- Simple imprisonment for 3 month, or fine of 500 rupees, or both-Non- cognizable – Bailable-Triable by the court in which the offence is committed, subject to the provisions of Chapter XXVI; if not committed in a court, any Magistrate –Non- compoundable.

**181. False statement on or affirmation to public servant or person authorised to administer an oath or affirmation.-** Whoever, being legally bound by an oath 1[or affirmation] to state the truth on any subject to any public servant or other servant or other person as aforesaid, touching the subject, any believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and also be liable to fine.

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1. Ins. by Act 10 of 1873, sec. 15.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years and fine -Non- cognizable –Bailable-Triable by and Magistrate –Non- compoundable.

**2[ 182. False information, with intent to cause public servant to use his lawful power to the injury of another person.-** Whoever gives to any public servant any information which e snows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit of the true

state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six month , or with fine which may extend to one thousand rupees , or with both.

### **Illustrations**

(a) A informs a Magistrate that Z, a police- officer , subordinate to such Magistrate has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

2. Subs. by Act 3 of 1895,sec. 1, for the original section

(b) A falsely informs a public servant that Z has contraband salt in a secret place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighborhood of a particular village. He does not mention the name of any person as one of his assistants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.]

### **CLASSIFICATION OF OFFENCE**

Punishment- Imprisonment for 6 month, or fine of 1,000 rupees, or both-Non- cognizable –Bailable- Triable by and Magistrate –Non- compoundable.

[Contents](#)

[Next](#)

## Section 197 CrPC vis-a-vis Public Servant under Section 21(Twelfth)(b) IPC

Section 197 CrPC vis-à-vis “Public Servant” under Section 21(Twelfth)(b) IPC

By Ch. Amritalingam\*\*

Cite as: (2010) PL August S-8 The moot question under discussion is that whether the protection given under Section 197 of the Criminal Procedure Code, 1973 (called “CrPC”) could be made applicable in respect of employees of government companies who are not removable from office save by or with the sanction of the Government, provided other implied conditions are fulfilled. Flowing from a plain reading of the section, sub-section (1) of Section 197 uses the term “public servant”; thereby meaning the person who is employed....in connection with the “affairs of the Union, of the Central Government/State Government”; under sub-clauses (a) and (b) of sub-section (1) of Section 197 CrPC. Within the meaning of the term “affairs of the Union, of the Central Government/State Government”; as set out in Section 197, brings within its fold the government companies as the instrumentalities of the Government through the corporate veil, having separate juridical identity.

Different courts ruled differently in the matter of definition of “public servant” under Section 21(Twelfth)(b) IPC. In *S.P. Das v. State of Bihar*<sup>1</sup> it has been held that the Senior Divisional Manager and the Assistant Manager of the Insurance Company are “public servants”; as defined under Section 21 IPC for entitling sanction under Section 197 CrPC. However, it has been held by the Allahabad High Court that no sanction is required for prosecuting an employee or officer of a nationalised bank (*Bhagwan Prasad Saxena v. State of U.P.*<sup>2</sup>). However, in *State of Maharashtra v. L.D. Kanchan*<sup>3</sup> it has been held that an employee of a nationalised bank is a public servant. Although, in a different context, the recent judgment of the Supreme Court in *National Small Industries Corpn. Ltd. v. State (NCT of Delhi)*<sup>4</sup> while dwelling on the definition of “public servant”; it has been held that a government company is not a “public servant”; but every employee of the company is a “public servant”.

Contrarily, the SC judgment in *Mohd. Hadi Raja v. State of Bihar*<sup>5</sup> held that the employees of government companies cannot come within the ambit of the term “public servant”; for getting the protective cover as envisaged in Section 197 of the Criminal Procedure Code, 1973 as they cannot be treated on a par with the government servants based on the following supportive and rival contentions.

**Supportive contentions** (a) The officials of the public sector undertakings and the government companies which are “State”; within the meaning of Article 12 of the Constitution will enjoy the same protection as available to a public servant under Section 197 CrPC, although the officials of the public sector undertakings and the government companies are not directly employed by the State Government or the Central Government but they being employees of the instrumentalities of the Government through the corporate veil, are to be treated on a par with the government servant for the purpose of protection by way of requirement of sanction under Section 197 CrPC. (Para 6 of SC judgment in *Mohd. Hadi Raja v. State of Bihar*<sup>5</sup>.)

(b) In reality, the Government acts through the instrumentality or agency of the corporation. Where the corporation is an instrumentality or agency of the Government, it must be subjected to the same limitation in the field of constitutional law as the Government itself, though in the eye of the law, it would be a distinct and independent legal identity.

(c) The officers of the instrumentalities of the State having deep and pervasive control of the State and discharging the duties and functions intended to be performed by the Government through the contrivance of corporate veil, cannot but be entitled to the desired protection under Section 197 CrPC, on satisfying the other implied requirements.

**Rival contentions** That the employees of nationalised banks cannot be treated on a par with government servants on the sly that banks are covered under the Shops and Commercial Establishments Act. Similarly, the Assistant Surgeon of Hindustan Steel Ltd. cannot be treated on a par with government servant since Article 311 of the Constitution is not applicable to him. Rival contention has also been advanced stating that a government company has separate legal existence because being registered under the Companies Act, it has a separate juridical identity and as such could not be regarded as equivalent to a government department in *Praga Tools Corpn. v. C.A. Imanual*<sup>6</sup>, and *Subodh Ranjan Ghosh v. Sindri Fertilisers and Chemicals Ltd.*<sup>7</sup>

The judgment (*Mohd. Hadi Raja v. State of Bihar*) The Hon’ble Judge gave verdict that: (SCC p. 102, para 27)

27. Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are “State”; within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government.

**Briefly on the following considerations: (a) the public undertakings and government companies performing the**



functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important, the same may be in the interest of the State, cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 CrPC, and (b) the functional acts of the employees of government companies and public undertakings in the discharge of public duties through the corporate veil, cannot be construed, as of rule, an action of the Government, it will not be just and proper to bring such persons (in service of government companies) within the ambit of Section 197 by liberally construing the provisions of Section 197 and such an exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by Court.

Without contempt The Hon'ble Judge has been driven by the point that employees, who are in direct employment with the State/Central Government (by way of 'government servant' coming with Article 311 of the Constitution) only can claim the benefit of protection under Section 197 CrPC. If that was the legislative intention, the words 'public servant' would not have been used in Section 197 within the meaning of Section 2(y) CrPC, instead, the words 'government servant' would have been inserted in Section 197 CrPC. It is not necessary that persons falling under any of the descriptions given in various clauses under Section 21 IPC need to be appointed by the Government only. The Explanations given under Section 21 IPC are res ipsa loquitur. Explanation 1 of Section 21 IPC amply clarifies that persons falling under any of these descriptions in Section 21 IPC are public servants whether appointed by the Government or not. Explanation 2 indicates that wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. Sub-clause (b) of clause (Twelfth) of Section 21 expressly makes the officers of local authority and corporation established by or under a Central, Provincial or State Act or a government owned company as defined in Section 617 of the Companies Act, 1956. Despite the above, the puisne Judge gave a go-by to the ex facie/explicit legislative intent writ large in the definition of 'public servant' in Section 21(Twelfth)(b) IPC for providing the benefit of intended protection under Section 197 CrPC.

The logicity of the separate 'juridical identity' of the government company vis-à-vis the constitutionality of the Government [swayed by the wording 'public servant not removable from his office save by or with the sanction of the Government' in Section 197(1) CrPC] as discussed in the judgment *ibid* is not proximate to the core issue i.e. whether the employee of the government company under the corporate veil coming within the definition of 'public servant' under Section 21(Twelfth)(b) IPC will come within the purview of Section 197 CrPC. The term 'public servant' used in Section 197 CrPC cannot be regarded to be disjunctive to the definition given under Section 21(Twelfth)(b) together with the Explanatory notes. The 'juridical identity' of the government company/public undertaking, as separate from the Government within the meaning of Article 12 of the Constitution, cannot, by any rationale, efface the intended legislative intention ascribed to the definition of 'public servant'; the words 'public servant' have been consciously employed in Section 197 CrPC to meet the ends of justice. The puisne Judge did not even dwell or ponder as to whether it is a case of *casus omissus* in the matter.

It is a surrogate thinking that only government servants (within the meaning of Article 311 of the Constitution) only are eligible to secure the protection under Section 197 CrPC and not others in the government corporate sector, say, like Reserve Bank of India (set up under a separate Act of Parliament) discharging the governmental functions like the Currency and Monetary Authority in the country. The concept of separate juridical identity as enjoyed by RBI could in any way, abrogate the legislative intents given in Section 197 CrPC vis-à-vis Section 21(Twelfth)(b) IPC? It could never be.

The definition of 'public authority' in Section 2(h) of the Right to Information Act, 2005 also includes any body owned, controlled or substantially financed and non-government organisation substantially financed directly or indirectly by the appropriate Government. Similarly, Sections 4 to 7 of the UK Act (Right to Information) defined among others that publicly-owned companies also fall within the meaning of 'public authorities' if they are wholly owned by the Crown.

The words 'public servant not removable from his office save by or with the sanction of the Government' used in Section 197 CrPC is obsolete and obnoxious and it has outlived its utility, with the gradual passage of government functions performed by the public sector undertaking and government companies under the corporate veil or otherwise. Perhaps, the Law Commission of India needs to focus its attention to examine the issue in greater perspective and depth to see that the legislative intention of Section 197 CrPC is well-served.

The employees in the government companies (not removable from service save by the Government), discharging public functions similar to that of the Government, under the corporate veil cannot be discriminated against, for getting the protective cover under Section 197 CrPC, in contrast to the government servant in the Government, in the context of Article 14 of the Constitution of India by way of equal protection of laws. Strange are the ways of judicial wisdom. May be, the government servant is born twice in the eye of the law, in the context of Section 197 CrPC vis-à-vis Section 21(Twelfth)(b) IPC!

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- (1990) 1 Crimes 344 (Pat).
- (1989) 1 Crimes 518 (All).
- 1989 Cri LJ 697 (Bom).
- (2009) 1 SCC 407 : (2009) 1 SCC (Cri) 513.
- (1998) 5 SCC 91 : 1998 SCC (Cri) 1265.
- (1969) 1 SCC 585.
- AIR 1957 Pat 10.



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**Prevention of Corruption Act, 1988**  
**Definitions & Salient Features**

[Home](#)

[Table of  
Contents](#)

[Feedback](#)

[Click here  
To View list of  
Articles  
covered  
by Module:](#)

**Prevention of Corruption Act, 1988 - Definitions & Salient Features**

**Definition of the term 'Public Servant' as per P.C.Act, 1988**

1. Any person in the service of the Government or remunerated by the Government either by payment of fees or commission for the performance of any public duty.
2. Any person in the pay or local authority
3. Any person in the services or pay
  - i. a corporation established under a Central, Provincial, or State Act;
  - ii. an authority or a body owned or controlled or aided by the Government, or
  - iii. a Government company as defined in Section 617 of the Companies Act, 1956.
4. Any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory sanctions.
5. any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
6. any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
7. any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
8. any person who holds an office by virtue of which he is authorised or required to perform any public duty;
9. any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act; or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);
10. any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board
11. any person who is a vice-chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
12. any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established,

receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

The definition of public servants under the ACT includes further explanations as under:

Explanation 1:

Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2:

Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

The Prevention of Corruption Act, 1988 is like the Gita or Bible to everyone, who is a public servant or one who deals with public servants. The objective for which the ACT was promulgated is to prevent bribery and corruption among public servants and create purity and cleanliness in the society.

The objects clause describes the act as "an Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therein". The ACT amends the Prevention of Corruption Act, 1947 and also consolidates the legislation dealing with offences under the category bribery and corruption in public services scattered in different enactment. The provisions of other enactment relating to prevention of corruption in public services contained in the Indian Penal Code and The Criminal Law Amendment Act, 1952, are now redundant and have been repealed by this ACT.

Some of the major changes brought about by the Prevention of Corruption Act, 1988, are as under:-

- a. The definition of "public servant" has been enlarged ;
- b. A new concept of public duty has been introduced for the first time [Section 2 (c)(viii);
- c. Minimum sentence of six months has been prescribed for the offences committed under the Act. The Courts have been denied any discretion, either for special or adequate reasons, to reduce the sentence from six months;
- d. The State Government or as the case may be, the Central Government has now the power to make an application to the District Judge for the attachment of the money or property which is believed to have been acquired by the public servant by corrupt means;
- e. The concept of 'known sources of income' has undergone a radical change. This now means not only the income received from any lawful sources but also includes such receipt that has been intimated in accordance with the provisions of any law, rules or orders for the time-being applicable to the public servant.

Section 13 to 15 of the ACT introduces or defines new offences, not earlier provided under the Indian Penal Code, that is, the offence of criminal misconduct on the part of public servants. Section 13 provides that a public servant shall be guilty of misconduct, if it was proved that he or any person on his behalf was in possession of 'disproportionate assets' i.e. property or valuables, disproportionate to his known income for which the accused could not satisfactorily account. Section 14 provides deterrent punishment for habitual committers of specific offences under (Sec.8, 9 ad 12) of the ACT. An attempt to commit offences under specified subsections of Section 13 of the ACT is deemed a crime under Sec.15 and liable for punishment

The public servant can no longer sit tight and wait for the prosecution to conclusively prove his guilt beyond doubt and hold the dictum that until the contrary is proved everyone in the face of law is deemed innocent. The prosecution still has the responsibility, but the procedure is rendered more perfect and transparent. When certain circumstances against the public servant are pointed out, it equally becomes his responsibility to explain his conduct satisfactorily and prove his innocence or else he may be presumed to be guilty. In short if the prosecution proves the specific actions of the public servant implying presumptions of misconduct under the ACT, it is the duty of the public servants to explain those of his actions satisfactorily. In criminal law the motive of the crime is to be established, as it is assumed that crime is committed by the mind principally and meekly executed by the hands or other limbs of the body. This benefit is not available to a public servant accused under the Prevention of Corruption Act, 1988.

Lest the quick and summary provisions of the ACT results in misplaced action and innocent officers or public servants are unduly victimized, the ACT also provides in-built safeguards intended for honest public servants. As a gun can fire in all directions, every tools created to fight or prevent the wrong can be put to abuse or misuse. In the enthusiasm for cleaning of or removing misconduct, enforcement action should not result, and it should not be possible that in the intention of its removal, dirt is actually thrown on an object that is clean already. While it is necessary and in public interest that corruption in public services should be eradicated, it is equally in public interest that honest public servants should be able to discharge their duties without fear of false, frivolous and malicious accusations. The provision to safeguard and prevent unintended abuse or harmful action under the act is provided in Chapter V of the ACT titled 'Sanction for Prosecution & Other Miscellaneous Provisions '. These are powerful and effective tools, but these should be used only by the most responsible persons at senior levels, and that too only after consultation and obtaining the prior sanction of an equally competent public authority. These are the essence of the safeguards provided in the Chapter V of the ACT to ward off hasty or unwarranted use of the enforcement provisions of the ACT

### **Definition of the term 'Public Servant'**

Everything in the ACT concerns the 'public servants', but who are public servants? If lengthy process of investigation is conducted and action or prosecution initiated under the ACT, the accused may still contend in the trial court that he is not a public servant and hence the offences cannot be charged on him. If court accepts the plea, it is on this single plea that the accused is set free. But the more painful part is that the entire labour and time spent on investigation and prosecution are rendered a waste of resource. It is necessary to identify who are public servants easily and it is also necessary that the definition is comprehensive that no one accountable for public functions escapes the ambit of law. The twin objectives are fulfilled, if the law is made not only clear, unambiguous and without being unwieldy, but is also exhaustive and full proof.

Up to now the definition of 'public servant' as given several decades back in Indian Penal Code under Section 21 was considered the exhaustive definition. This included 11 definitions numbered from (ii) to (xii). The approach in the Indian Penal Code was to define persons by stating their duties or functions performed.

The P.C. Act 1988 redefines the term 'public servant' to make it up to date and exhaustive, full proof and unambiguous, without making it too lengthy. It now includes 12 clauses with two clauses giving "Explanation of unique

characteristic of the definition", against 11 under Sec.21 of I.P.C. The present definition in P.C. Act gives both the designation or titles of public servants, as well as the functions performed by them thus lending better clarity. Further a number of new categories of those giving service to the public like office bearers of co-operative societies, or persons holding responsible posts in the Universities including professors and those appointed to be member of service commissions or bodies constituted to conduct examinations. The objective to expand the coverage of all persons holding responsibility for serving the public in any manner. The act covers only public servants and not others. If any person is deemed a public servant, then the various provisions of the act applies. He can be deemed to have committed offences, whenever he commits any action that is prohibited by the ACT, for which punishment as prescribed under the act can be imposed. The exhaustive list included under the ACT is given in the Box at the beginning of this page. to the right.

[Next Page – Subject-wise Table of Contents – PC ACT](#)

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[Top](#)

[Next](#)

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**THE**  
**PREVENTION**  
**OF**  
**CORRUPTION ACT,**  
**1988**

[CONTENTS](#)

[Act No. 49 of 1988 dated 9th. September, 1988]

## CONTENTS

### CHAPTER I: PRELIMINARY

1. Short title and extent
2. Definitions
3. Power to appoint special Judges
4. Cases triable by special Judges
5. Procedure and powers of special Judge
6. Power to try summarily

### CHAPTER III: OFFENCES AND PENALTIES

7. Public servant taking gratification other than legal remuneration in respect of an official act
8. Taking gratification, in order, by corrupt or illegal means, to influence public servant
9. Taking gratification, for exercise of personal influence with public servant
10. Punishment for abetment by public servant of offences defined in section 8 or 9
11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant
12. Punishment for abetment of offences defined in section 7 or 11
13. Criminal misconduct by a public servant
14. Habitual committing of offence under sections 8, 9 and 12
15. Punishment for attempt
16. Matters to be taken into consideration for fixing fine

### CHAPTER IV: INVESTIGATION INTO CASES UNDER THE ACT

17. Persons authorised to investigate
18. Power to inspect bankers' books
19. Previous sanction necessary for prosecution
20. Presumption where public servant accepts gratification other than legal remuneration
21. Accused person to be a competent witness
22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications
23. Particulars in a charge in relation to an offence under section 13(1) (c).
24. Statement by bribe giver not to subject him to prosecution
25. Military, Naval and Air Force or other law not to be affected
26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act
27. Appeal and revision
28. Act to be in addition to any other law
29. Amendment of the Ordinance 38 of 1944
30. Repeal and saving
31. Omission of certain sections of Act 45 of 1860

*An Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.*

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows: -



## **CHAPTER I: PRELIMINARY**

### **1. Short title and extent**

- (1) This Act may be called the Prevention of Corruption Act, 1988.
- (2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

### **2. Definitions**

In this Act, unless the context otherwise requires,-

- (a) "election" means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority;
- (b) "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;  
Explanation.-In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956.
- (c) "public servant" means-
  - (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
  - (ii) any person in the service or pay of a local authority ;
  - (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
  - (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
  - (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
  - (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
  - (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.-Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.-Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

### **3. Power to appoint special Judges**

(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely: -

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973.

#### **4. Cases triable by special Judges**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

#### **5. Procedure and powers of special Judge**

(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973. for the trial of warrant cases by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge. relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-sections (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.

## **6. Power to try summarily**

(1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973, the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the code of Criminal Procedure, 1973, there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

### **CHAPTER III: OFFENCES AND PENALTIES**

#### **7. Public servant taking gratification other than legal remuneration in respect of an official act**

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.-

(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

#### **8. Taking gratification, in order, by corrupt or illegal means, to influence public servant**

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public

servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

#### **9. Taking gratification, for exercise of personal influence with public servant**

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

#### **10. Punishment for abetment by public servant of offences defined in section 8 or 9**

Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

#### **11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant**

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

#### **12. Punishment for abetment of offences defined in section 7 or 11**

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine,

### **13. Criminal misconduct by a public servant**

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

### **14. Habitual committing of offence under sections 8, 9 and 12**

Whoever habitually commits-

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12,

shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

#### **15. Punishment for attempt**

Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

#### **16. Matters to be taken into consideration for fixing fine**

Where a sentence of fine is imposed, under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall taken into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.



## **CHAPTER IV: INVESTIGATION INTO CASES UNDER THE ACT**

### **17. Persons authorised to investigate**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

### **18. Power to inspect bankers' books**

If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a superintendent of Police.

Explanation-In this section, the expressions "bank" and "bankers' books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891.

## **19. Previous sanction necessary for prosecution**

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

## **20. Presumption where public servant accepts gratification other than legal remuneration**

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

## **21. Accused person to be a competent witness**

Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that-

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-

(i) the proof that he has committed or been convicted of such offence is admissible evidence to that he is guilty of the offence with which he is charged, or

(ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

## **22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications**

The provisions of the Code of Criminal Procedure, 1973, shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,-

(a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

(b) in sub-section (2) of section 309, after the 'third proviso, the following proviso had been inserted, namely:-

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.";

(c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:-  
"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";

(d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely:-

"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:-

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.".

## **23. Particulars in a charge in relation to an offence under section 13(1) (c).**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, when an accused is charged with an offence under clause (c) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code: Provided that the time included between the first and last of such dates shall not exceed one year.

## **24. Statement by bribe giver not to subject him to prosecution**

Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under sections 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 12.

## **25. Military, Naval and Air Force or other law not to be affected**

(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957, the Border Security Force Act, 1968, the Coast Guard Act, 1978 and the National Security Guard Act, 1986.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

## **26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act**

Every special Judge appointed under the Criminal Law Amendment Act, 1952,, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

## **27. Appeal and revision**

Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 on a High Court as if the court of special Judge were a court of Session trying cases within the local limits of the High Court.

## **28. Act to be in addition to any other law**

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

## **29. Amendment of the Ordinance 38 of 1944**

In the Criminal Law Amendment Ordinance, 1944,-

(a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words "State Government", wherever they occur, the words "State Government or, as the case may be, the Central Government" shall be substituted;

(b) in section 10, in clause (a), for the words " three months", the words "one year" shall be substituted;

(c) in the Schedule,-

(i) paragraph 1 shall be omitted;

(ii) in paragraphs 2 and 4,-

(a) after the words "a local authority", the words and figures "or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 or a society aided by such corporation, authority, body or Government company" shall be inserted;

(b) after the words "or authority", the words "or corporation or body or Government company or society" shall be inserted;

(iii) for paragraph 4A, the following paragraph shall be substituted, namely: -  
"4A. An offence punishable under the Prevention of Corruption Act, 1988.";

(iv) in paragraph 5, for the words and figures "items 2, 3 and 4", the words, figures and letter "items 2, 3, 4 and 4A" shall be substituted.

## **30. Repeal and saving**

(1) The Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken, under or in pursuance of the corresponding provision of this Act.

**31. Omission of certain sections of Act 45 of 1860**

Sections 161 to 165A (both inclusive) of the Indian Penal Code shall be omitted, and section 6 of the General Clauses Act, 1897, shall apply to such omission as if the said sections had been repealed by a Central Act.

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES  
(PREVENTION OF ATROCITIES) ACT, 1989**

No. 33 OF 1989

[11<sup>th</sup> September, 1989.]

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as Follows :-

CHAPTER I  
PRELIMINARY

Short title,  
extent and  
commence-  
ment.

**1. (1)** This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

**(2)** It extends to the whole of India except the State of Jammu & Kashmir.

**(3)** It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

**2. (1)** In this Act unless the context otherwise requires,-

**(a)** "atrocities" means an offence punishable under section 3;

**(b)** "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

**(c)** "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution:

**(d)** "Special Court" means a Court of Session specified as a Special Court in section 14;

**(e)** "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15;

**(f)** words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code.

**(2)** Any reference in this Act to any enactment or any provision thereof shall in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.



CHAPTER II  
OFFENCES OF ATROCITIES

Punishment for offences of atrocities.      **3. (1)** Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe.

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that

offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Punishment  
for neglect  
of duties.

4. Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

Enhanced  
punishment  
for subse-  
quent convic-  
tion.

5. Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Application  
of certain  
provisions of  
the Indian  
Penal Code.

6. Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, Section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

Forfeiture of  
property of  
certain per-  
sons.

7. (1) Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

(2) Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

Presumption  
as to offences.

8. In a prosecution for an offence under this Chapter, if it is proved that -

(a) the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

Conferment  
powers.

**9.** (1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it consider it necessary or expedient so to do, -

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officer of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

### CHAPTER III

#### EXTERMENT

Removal  
of person  
likely to  
commit  
offence.

**10.** (1) Where the Special Court is satisfied, upon a complaint, or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'tribal areas', as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1) communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

Procedure on  
failure of per-  
son to remove  
himself  
from area  
and enter  
thereon  
after  
removal.

**11.** (1) If a person to whom a direction has been issued under section 10 to remove himself from any area-

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order,

otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under section 10 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

Taking measurements and photographs, etc., of persons against whom order under section 10 is made.

**12. (1)** Every person against whom an order has been made under section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.

(2) If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken resists or refuses to allow his taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.

(3) Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).

(4) Where an order under section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

Penalty for non compliance of order under section 10.

**13.** Any person contravening an order of the Special Court made under section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

#### CHAPTER IV SPECIAL COURTS

Special Court.

**14.** For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

Special  
Public Pro-  
secutor.

**15.** For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

## CHAPTER V

### MISCELLANEOUS

Power of  
State Govern-  
ment to impose  
collective fine.

**16.** The provisions of section 10A of the Protection of Civil Rights Act, 1955 (22 of 1955) shall, so far as may be, apply for the purposes of imposition and realisation of collective fine and for all other matters connected therewith under this Act.

Preventive  
action to be  
taken by  
the law and  
order machi-  
nery.

**17. (1)** A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquility and may take preventive action.

(2) The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1).

(3) The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

Section 438  
of the code  
not to apply to  
persons  
committing  
an offence  
under the Act.

**18.** Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

Section 360  
of the Code  
or the Provi-  
sions of the  
Probation of  
Offenders Act  
not to apply to  
persons guilty  
of an offence  
under the Act.

**19.** The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

Act to override other laws. **20.** Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

Duty of Government to ensure effective implementation of the Act. **21. (1)** Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,-

(i) the provision for adequate facilities, including legal aid to the persons subjected to atrocities to enable them to avail themselves of justice;

(ii) the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act;

(iii) the provision for the economic and social rehabilitation of the victims of the atrocities;

(iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;

(vi) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act;

(vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1)

(4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

Protection of action taken in good faith. **22.** No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

Power to  
make rules.

**23. (1)** The Central government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

V. S. RAMA DEVI,  
*Secy. to the Govt. of India.*

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