

SPECIAL CHAPTER
ON
VIGILANCE MANAGEMENT IN
PUBLIC SECTOR ENTERPRISES
AND
THE ROLE AND FUNCTIONS
OF THE CVC



Government of India
CENTRAL VIGILANCE COMMISSION
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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 29th 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 15th 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. (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; 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. ii) Two months from the date of receipt of IO's report if Commission's advice was not required.	DA

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