VIGILANCE MANUAL 2017

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2017

CENTRAL VIGILANCE COMMISSION

Vigilance Manual
2017

[SEVENTH EDITION]

Central Vigilance Commission

First Edition	1968
Second Edition	1971
Third Edition	1974
Fourth Edition	1982
Fifth Edition	1991
Sixth Edition	2005

Foreword

Probity and integrity are the bedrock of good governance. Vigilance administration is a fundamental and vital function of the management. It is intended that this comprehensive Vigilance Manual serves as a useful reference book, a vade mecum, for effective Vigilance administration thereby facilitating good governance.

The Vigilance Manual was brought out in 2005. There have been many significant developments since then. Several Circulars, Guidelines, etc., have been issued by the Government and the Commission from time to time. There is an imperative need for compiling them in a single document. With this objective, for the first time Special chapters on Public Sector Enterprises, Banking & Insurance Companies and several guidelines issued by the Chief Technical Examiners' office have been integrated in this Manual. Separate chapters on CBI, PIDPI Resolution, Preventive Vigilance, Disciplinary Proceedings & Suspension and some other relevant issues have been introduced. Most of the relevant Circulars and instructions of the Government and the Commission have also been cited.

An Online Version , hyperlinking the cited orders and circulars to their host website is also being released on the Commission's website www.cvc.nic.in. The underlying idea is to periodically update the Online version of the Manual.

This Manual has been meticulously and painstakingly compiled by Shri Praveen Sinha, Additional Secretary in the Commission. He was ably assisted by Sri M. A. Khan, Under Secretary and Shri H. K. Beniwal, Director (Retd.).The Commission compliments them and acknowledges the efforts and contribution of all those who have contributed to this compilation.

The Commission welcomes suggestions on the content or form of this Manual and errors or omissions in this Manual for further improvement.

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01.07.2017

Acknowledgement

The Commission held wide consultation for the preparation and drafting of this Manual. Many Officers and some Organisations have contributed either by collating information or by way of suggestions. The Commission thankfully acknowledges the contribution of Smt. Nilam Sawhney, Secretary, CVC for her enthusiastic participation, valuable guidance and inputs to the Manual Drafting Committee. A Committee headed by Sri Praveen Sinha, Additional Secretary, CVC was constituted for preparation of this Vigilance Manual.To assist this Committee, separate Sub-Committees under each of the Additional Secretaries and CTEs were constituted to submit drafts on assigned subjects. The Commission places on record its sincere appreciation for the painstaking efforts put in by the Additional Secretaries - Shri Salim Haque, Shri S.P.N Singh, Smt. Sonali Singh and Shri Praveen Sinha and CTEs - Shri Hemant Kumar and Shri Ramesh Chandra, who headed these Sub-Committees.

The Commission is thankful for the valuable contribution made by the members of these sub-committees viz. Shri Shailendra Singh, Advisor; Shri J. Vinod Kumar, Director, Shri R.N. Nayak, OSD, Shri Premanshu Biswas, Director, Shri Asit Gopal, Director, Smt. Shivani Singh, Director, Shri Nitish Kumar, Director; Advisors (Banking) - Shri J.K. Srivastava, Shri L.V.R. Prasad, Shri Rajesh Verma, Shri Manish Tandon; Shri S.V. Krishnan, Assistant Advisor(Banking): Under Secretaries - Shri M.A.Khan, Shri Rajiv Verma, Shri T.P. Sharma; Shri Soumitra Mazumdar, Technical Examiner and Shri H.K. Beniwal, Director (Retd.). The Commission specially acknowledges the contribution of Shri Arvind Kadyan, CVO, BHEL in preparing the detailed Chapter on Disciplinary Proceedings & Suspension and Shri Keshav Rao, CVO, Pawan Hans Ltd. in preparing the Chapter on Role and functions of CVOs. The Commission is also thankful to all other Officers and Staff members of the Commission and other CVOs, Vigilance Officers and retired officials who gave valuable suggestions from time to time.

The Commission acknowledges the valuable contribution of Department of Personnel and Training (DoPT) and the Central Bureau of Investigation (CBI), that helped in finalising the present Manual.

Disclaimer

1. Vigilance Manual 2017 is intended only to be a reference book and it cannot be a substitute for rules, orders, etc. of various authorities.

2. We have taken every effort to provide accurate and updated information in the Vigilance Manual 2017. For any inadvertent error and omission or doubt, the Commission may be contacted for clarification.

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Chapter I
Vigilance Administration

INTRODUCTION

Indian history is replete with examples of good governance practices which helped ensure ethics in public affairs. Righteousness is the foundation of good governance. The organisations, systems and procedures of the Government must not only be efficient but also ethical, just and fair. Integrity has to be its essential ingredient. The ill-effects of corruption are well known. It undermines our developmental efforts and weakens democratic institutions. Corruption is manifested in various forms such as bribery; nepotism; wilful action or wilful inaction to benefit someone or to deny benefit to someone known or unknown; favouritism; failure to follow laid down processes leading to unintended benefit to someone or denial of benefit to the deserving. The challenge before us is to create an environment in which the honest can work fearlessly and the corrupt are punished promptly.

The battle against corruption is fought on many fronts. An oversight mechanism often referred to as vigilance administration is at the fore front of this battle. Vigilance is defined as watchfulness and alertness. Vigilance administration in any organisation is an integral function like any other function of management, such as finance, personnel, operation, marketing, material, and contracts, etc. If the vigilance set-up is effective in an organisation, it will certainly ensure the functioning of the other segments in an efficient way. Vigilance administration comprises of preventive and punitive anti-corruption measures. It includes detecting irregularities, analysing and finding out reasons for such irregularities and making effective systemic improvements to curb them. It also entails identifying the public servants responsible for misconduct and taking appropriate punitive actions.

1.1 EVOLUTION OF VIGILANCE ADMINISTRATION

Anti-corruption measures of the Central Government are responsibility of (i) the Central Vigilance Commission *[hereinafter referred to as the Commission]* (ii) Administrative Vigilance Division [AVD] in the Department of Personnel & Training; (iii) Central Bureau of Investigation [CBI]; (iv) Vigilance units in the Ministries / Departments of Government of India, Central Public Sector Enterprises and other autonomous organisations [hereinafter referred to as *Department]*; (v) Disciplinary authorities; and (vi) Supervisory officers.

1.1.1 CENTRAL VIGILANCE COMMISSION

(a) ***Genesis:*** The Central Vigilance Commission was set up by the Government of India by a *Resolution, dated 11.2.1964* in pursuance of the recommendations made by the Committee on Prevention of Corruption *[popularly known as Santhanam Committee]*. Further, it was in pursuance of the directions of the Hon'ble Supreme Court in the case of *Vineet Narain vs. Union of India [CWP 340-343 of 1993]* that the Commission was accorded statutory status with effect from 25.8.1998 through "*The Central Vigilance Commission Ordinance, 1998*". It was followed by *CVC (Amendment) Ordinance dated 27.10.1998, CVC Ordinance dated 8.01.1999, DoPT Resolution No. 371/20/99-AVD-III dated 04.04.1999 and DoPT Resolution No. 371/20/99-AVD-III dated 13.08.2002*, while the CVC Bill was under the consideration of the Parliament. Subsequently, the CVC Bill was passed by both Houses of Parliament in 2003 and the President gave assent on 11th September 2003. Thus, the *Central Vigilance Commission Act, 2003 (No.45 of 2003)* came into effect from that date.

(b) ***Set-up****:* In terms of the provisions contained in Section 3 & 4 of CVC *Act, 2003*, the Commission shall consist of a Central Vigilance Commissioner [Chairperson] and not more than two Vigilance Commissioners [Members]. The Central Vigilance Commissioner and the Vigilance Commissioners are appointed by the President by warrant under his hand and seal for a term of four years from the date on which they enter upon their offices or till they attain the age of sixty-five years, whichever is earlier. The Commission is assisted by a Secretary who is appointed by the Central Government.

1.1.2 ADMINISTRATIVE VIGILANCE DIVISION

The Administrative Vigilance Division was set up in the Ministry of Home Affairs, in August 1955, to serve as a central agency to assume overall responsibility for anti-corruption measures. With the establishment of the Central Vigilance Commission, a good part of the functions performed by the Administrative Vigilance Division are now exercised by the Central Vigilance Commission. The Administrative Vigilance Division of the *Department of Personnel and Training in the Ministry of Personnel, Public Grievances & Pension* is now responsible for the formulation and implementation of policies of the Central Government in the field of vigilance, integrity in public services, anti-corruption and to provide guidance and coordination to Ministries / Departments of Government of India in matters requiring decisions of Government.

1.1.3 CENTRAL BUREAU OF INVESTIGATION

The Central Bureau of Investigation was constituted under the Government of India Resolution No. 4/31/61-T dated 01.04.1963. CBI is the successor organisation to the Delhi Special Police Establishment (DSPE) with an enlarged Charter of functions. In fact, with the establishment of CBI on 1st April, 1963, the Delhi Special Police Establishment was made one of its Divisions, viz. 'Investigation and Anti-Corruption Division' which derives its police powers from the *Delhi Special Police Establishment Act, 1946* to inquire and to investigate certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants. Section 3 of the DSPE Act provides that Central Government may, by notification in the official gazette, specify the offences or class of offences, which are to be investigated by the CBI.

The Anti-Corruption Division of CBI is responsible for collection of intelligence with regard to corruption, maintaining liaison with the various Departments through their Vigilance Officers, inquiries into complaints about bribery and corruption, investigation and prosecution of offences pertaining to bribery and corruption and tasks relating to preventive aspects of corruption. It handles all cases registered under the *Prevention of Corruption Act, 1988* and cases registered under other related

Sections of the *Indian Penal Code, 1860*. If an offence under any other criminal law is committed along with an offence of bribery and corruption, it will also be investigated by the Anti-Corruption Division. The CBI is headed by a Director who is appointed by the Central Government on the recommendation of a high-level committee chaired by Prime Minister.

More details on the CBI have been given in *Chapter VI*.

1.1.4 VIGILANCE UNIT OF THE ORGANISATIONS

The Chief Vigilance Officer (CVO) heads the Vigilance Division of the organisation concerned and acts as an advisor to the chief executive in all matters pertaining to vigilance. He also provides a link between his organisation and the Central Vigilance Commission on one hand and his organisation and the Central Bureau of Investigation on the other. 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 improper practices or commission of misconducts; examining audit, inspection and other reports from the point of vigilance angle, etc. Thus, the CVO's functions can be broadly divided into three categories, viz. (i) Preventive vigilance; (ii) Punitive vigilance; and (iii) Surveillance and detection.

Detailed information about the procedure for appointment of CVOs and their role and functions are given in *Chapter II*.

1.1.5 DISCIPLINARY AUTHORITY

In any organisation, the Disciplinary Authority (DA) means the authority who has been entrusted with powers to impose any penalty on its officers under its Discipline & Appeal Rules. In respect of employees governed by *CCS (CCA) Rules,1965*, the term disciplinary authority is defined as the authority competent to impose on Government servant any of the penalties specified in *Rule 11*. It is the responsibility of the Disciplinary

Authority to ensure discipline in the organisation and to deal with the misconduct by way of awarding suitable punishment. Role and functions of DA are dealt in Discipline & Appeal Rules of respective organisations as applicable to them.

1.1.6 SUPERVISORY OFFICERS

(a) It is the duty of every officer holding a Supervisory post in any organisation to take all possible steps to ensure the integrity and devotion to duty of all officials for the time being under his control and authority. In *CCS (Conduct) Rules, 1964 Rule 3(2)(i)* lays down this provision.

(b) The supervisory officer ensures that officers for the time being under his control maintain absolute integrity. A column has been introduced in the proforma for Annual Performance Appraisal Report (APAR) of officials in which the supervisory officer reports on the integrity of the officer reported upon. If any suspicion arises upon the integrity of officials under his control, further action is taken as per guidelines issued in this regard by *DoPT* vide *OM No. 51/5/72-Estt. 'A' dated 20.05.1972.*

1.2 JURISDICTION OF CENTRAL VIGILANCE COMMISSION

1.2.1 *Juristiction under Section 8 of CVC Act, 2003:*

1.2.1 (a) For the purpose of clause (d) of Section 8(1) of *CVC Act, 2003*, the Commission's jurisdiction extends to such category of public servants as defined under Section 8(2) of the Act and subsequent notifications issued by the Central Government from time to time.

Clause 8(1)(g) of the *CVC Act, 2003* requires the Commission to tender advice 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 on such matters as may be referred to it by that Government, such Government companies, societies and local authorities owned or controlled by the Central Government or otherwise and for this purpose the Commission's jurisdiction is co-terminus with those provided under Section 8(2) of *CVC Act, 2003*.

The following categories of public servants [hereinafter referred to as

Category 'A' officers] fall within the jurisdiction of the Commission in terms of sub-section (2) of Section 8 of *CVC Act, 2003*: —

(a) Members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government;

(b) Such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf: Provided that till such time a notification is issued, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1) of Section 8 of *CVC Act, 2003*.

(c) On a reference made by the Lokpal under proviso to sub-section (1) of section 20 of the *Lokpal and Lokayuktas Act, 2013*, the persons referred to in clause (d) of sub-section (1) shall also include–

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf: Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in clause (d) of sub-section (1)of Section 8 of *CVC Act, 2003*.

1.2.1 (b) At present, the following levels of officers have been notified by the Central Government for the purpose of clause (b) of sub-section (2) of Section 8 of *CVC Act, 2003 (DoPT Notifications vide S.O. 371(E) dated 18.3.2004* & *S.O. 1538(E) dated 12.9.2007)*:

(i) Officers of Scale V and above of Public Sector Banks; (Scale V is in the range of Rs. 59,170-66,070 in most banks as on 01.01.2015)

(ii) Chief Executives and Executives on the Board and other officers of E-8 and above in respect of Schedule 'A' and 'B' Public Sector Undertakings;

(E-8 Scale in Sch. 'A' & 'B' CPSEs is in the range of Rs. 51,300 – 73,000 effective from 01.01.2007 pursuant to pay revision after 6th CPC)

(iii) Chief Executives and Executives on the Board and other officers of E-7 and above in respect of Schedule 'C' and 'D' Public Sector Undertakings; (E-7 Scale in Sch. 'C' & 'D' CPSEs is in the range of Rs. 43,200 – 54,000 effective from 01.01.2007 pursuant to pay revision after 6th CPC)

(iv) Officers in Grade 'D' and above in respect of RBI, NABARD and SIDBI; (As on 01.01.2015 the Grade 'D' Scale in RBI is Rs. 39,850 – 46,150)

(v) Managers and above in General Insurance Companies;

(vi) Senior Divisional Managers and above in Life Insurance Corporations; and

(vii) Officers drawing salary of Rs. 8700/ - p.m. and above on Central Government D.A. pattern, as on the date of the notification (*DoPT* Notification dated 12.9.2007) and as may be revised from time to time in Societies and other Local Authorities.

1.2.2 JURISDICTION OVER OTHER CATEGORIES IN SPECIAL CASES

(a) ***Composite cases:*** In composite cases, Commission's advice would be necessary in respect of all officers of the Central Government or an organisation under it, irrespective of their level, if they are involved in the same matter in which Category 'A' is involved.

[May also Refer to *Chapter VII* (para 7.9.5 & 7.9.6)]

(b) ***Difference of opinion:*** The Commission's advice would also be necessary in cases of difference of opinion between the disciplinary authority and the CVO with regard to the action to be taken against officers who are not within the jurisdiction of the Commission if these differences cannot be resolved with the intervention of the Secretary of the Ministry or Head of the Departments. *(CVC Circular No. 98/VGL/15 dated 16.04.2004)*.

(c) ***Complaints under PIDPI Resolution:*** For the purpose of *Public Interest Disclosure and Protection of Informer Resolution 2004*, the Commission's jurisdiction extends to any employee of Central Government, corporations established by or under any Central Act, Government companies, societies

and local authorities owned or controlled by the Central Government irrespective of the category or class or group of employees.

(d) ***Below Group 'A' Gazetted officers of Central Government:*** In terms of *GoI Resolution, dated 11.02.1964*, the Commission's jurisdiction extended to Group 'A' and Group 'B' gazetted officers of the Ministry or Department and equivalent level of officers in organisations. However, after the enactment of *CVC Act, 2003*, the jurisdiction of Commission extends to the officers as described in paras 1.2.1 (a) & (b) hereinabove. Further, in respect of cases involving Gazetted officers below Group 'A' of the Central Government, in which the Commission has tendered its first stage advice before issue of *CVC Circular No. 98/VGL/15 dated 16.04.2004*, the matter need not be referred to the Commission for second stage advice if the disciplinary authority, on conclusion of the disciplinary proceedings, proposes to impose a penalty which coincides with the Commission's first stage advice, provided that none of the officers involved in that matter is an officer of All-India Service or a Group 'A' officer. The case, however, may be referred to the Commission for its advice if the disciplinary authority proposes to take action, which does not conform to the Commission's first stage advice, (or it differs with the recommendation of the CVO with regard to the quantum of punishment to be imposed).

1.3 FUNCTIONS AND POWERS OF CENTRAL VIGILANCE COMMISSION

1.3.1 The functions and powers of the Commission, laid down in Section 8(1) of the *CVC Act, 2003*, are as under: -

(a) To exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the *Prevention of Corruption Act, 1988* or an offence with which a public servant specified in sub-section (2) of Section 8 of *CVC Act, 2003* may, under the *Code of Criminal Procedure, 1973*, be charged at the same trial;

(b) To give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the *Delhi Special Police Establishment Act, 1946*:

Provided that while exercising the powers of superintendence or giving directions to, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) To inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the *Prevention of Corruption Act, 1988*; or an offence with which a public servant may, under the *Code of Criminal Procedure, 1973*, be charged at the same trial;

(d) To inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the *Prevention of Corruption Act, 1988* and an offence with which a public servant specified in sub-section (2) may, under the *Code of Criminal Procedure, 1973*, be charged at the same trial;

(e) To review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the *Prevention of Corruption Act, 1988* or the public servant may, under the *Code of Criminal Procedure, 1973*, be charged at the same trial;

(f) To review the progress of applications pending with the competent authorities for sanction of prosecution under the *Prevention of Corruption Act, 1988*;

(g) To tender advice 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 on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(h) To exercise superintendence over the vigilance administration of the

various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government: Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;

1.3.2 The functions and powers of the Commission as laid down in some other Sections of *CVC Act, 2003* are as under: -

1.3.2 (a) ***Power relating to inquiries:*** Section 11 of *CVC Act, 2003* provides that the Commission, while conducting any inquiry referred to in Section8(1) (c) and (d) of *CVC Act, 2003*, shall have all the powers of a civil court trying a suit under the *Cr. P. C., 1973* and in particular, in respect of the following matters, namely: –

(i) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing Commissions for the examination of witnesses or other documents; and

(vi) any other matter which may be prescribed.

1.3.2 (b) ***Tender advice on Report of inquiry:*** Report of inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission and on receipt of such report and after taking into consideration any other factors relevant thereto, the Commission would tender its advice to the Central Government and Corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government, as the case may be, as to the further course of action. They shall take appropriate action after taking into consideration the advice of the Commission and

in the event of disagreement, the reasons shall be recorded in writing and communicated to the Commission. (Section 17, *CVC Act, 2003)*

1.3.2 (c) ***Call for Reports & returns:*** In terms of Section 18 of *CVC Act, 2003)*, the Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in that Government and in the said corporations, Government companies, societies and local authorities. Presently, Monthly Report, Annual Report and Quarterly Progress Report (QPR) are required to be submitted to the Commission in prescribed proforma. QPR is discussed in *Chapter IX. (CVC Circular No. 004/RTN/3 dated 28.07.2005; No. 98/VGL/25 dated 20.10.1998)*

1.3.2 (d) ***Mandatory consultation by Central Government:*** The Central Government shall, in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the Union or to members of the All-India Services, consult the Commission. (Section 19 of *CVC Act, 2003)*

1.3.2 (e) ***Annual report of Commission:*** The Commission is to present annually to the President a report as to the work done by it within six months of the close of the year under report. The report shall contain a separate part on the functioning of the Delhi Special Police Establishment in so far as it relates to Section 4(1) of the *Delhi Special Police Establishment Act, 1946*. On receipt of such report from the Central Vigilance Commission, the President shall cause the same to be laid before each House of Parliament. (Section 14 of *CVC Act, 2003)*

1.3.2 (f) ***Recommendations to Government on key appointments in Enforcement Directorate:***

(1) The Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of :–

(a) the Central Vigilance Commissioner – Chairperson;

(b) Vigilance Commissioners – Members;

(c) Secretary to GoI in charge of Ministry of Home Affairs in Central Government – Member;

(d) Secretary to GoI in charge of Ministry of Personnel in Central Government – Member;

(e) Secretary to GoI in charge of Department of Revenue, Ministry of Finance in Central Government – Member;

The Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to above.

(2) The Committee shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers. *(Section 25 of CVC Act, 2003)*.

1.3.2 (g) ***Recommendations to Government on key appointments in CBI:***

(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of: –

(a) the Central Vigilance Commissioner – Chairperson;

(b) Vigilance Commissioners – Members;

(c) Secretary to the Government of India in charge of the Ministry of Home – Member;

(d) Secretary to the Government of India in charge of the Department of Personnel – Member:

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.

(Section 4C of *Delhi Special Police Establishment Act, 1946* r/w Section 26 of *CVC Act, 2003)*

(2) Under provisions of Section 4BA of *Delhi Special Police Establishment Act, 1946* Delhi Special Police Establishment Act, 1946 (inserted by *Lokpal and Lokayuktas Act, 2013*, the Central Government shall appoint the Director of Prosecution on the recommendation of Central Vigilance Commission.

1.3.3 ***Residuary functions under CVC Resolution of 1964:*** In terms of Section 24 of the *CVC Act, 2003*, the Commission continues to discharge the functions entrusted to it vide GoI Resolution dated 11.02.1964, in so far as those functions are not inconsistent with the provisions of the Act. Thus, the Commission continues to perform the following functions:

(a) ***Appointment of CVOs:*** The Chief Vigilance Officer in Ministries / Departments (whether fulltime or part-time) will be appointed in consultation with the Central Vigilance Commission and no person whose appointment as the Chief Vigilance Officer is objected to by the Central Vigilance Commission will be so appointed. *(DoPT OM No. 371/32/97-AVD. III dated 28.11.1997* and *para 6 of the GoI Resolution dated 11.02.1964*

(b) ***Writing APARs of CVOs:*** In terms of *DoPT OM No. 122/2/85-AVD.I dated 28.01.1986* and para 7 of *GoI Resolution dated 11.02.1964*, the Central Vigilance Commissioner would assess the work of the CVO which would be recorded in the character rolls (APARs) of the officer concerned. As laid down in *DoPT OM No. 11059/2/93-AIS (III) dated 13.03.1993 and 14.04.1993*, the Central Vigilance Commissioner would add his remarks in the APARs of the CVO of Public Sector Undertakings / Organisations as the accepting authority. However, in respect of the CVOs of the Ministry/ Departments such assessment would be recorded on a separate sheet and added to the APARs of the CVO concerned.

(c) ***Commission's advice in Prosecution cases:*** In cases in which the sanction for prosecution is required to be accorded in the name of the President under any law, the 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.(para 2(vii) of *GoI Resolution dated 11.02.1964)* and the guidelines issued by *DoPT* vide *OM No. 134/2/85-*

AVD-I dated 15/17.10.1986 and OM No. 399/33/2006-AVD-III dated 06.11.2006).

(d) ***Resolving difference of opinion between the CBI and the administrative authorities:*** In terms of the *DoPT* guidelines and GoI Resolution referred to in sub-para (c) above, in cases where an authority other than the President is competent to sanction prosecution and the authority does not propose to accord the sanction sought for by the CBI, the case will be reported to the Commission and the authority will take further action after considering the Commission's advice. In cases recommended by the CBI for Departmental action against such employees as do not come within the normal advisory jurisdiction of the Commission, the Commission will continue to resolve the difference of opinion, if any, between the CBI and the competent administrative authorities as to the course of action to be taken.

Provided that in cases falling under the categories mentioned in sub-para (c) and (d) above and where the administrative authorities do not propose to accept the advice of the Commission for grant of sanction for prosecution, it should be referred to *DoPT* for a final decision as laid down in the *DoPT OM dated 15/17.10.1986*.

(e) ***Entrusting cases to CDIs:*** The Commission has the power to require that the oral inquiry in any Departmental proceedings, except the petty cases, should be entrusted to one of the Commissioners for Departmental Inquiries borne on its strength or such other officer as it may deem fit. (Para 2 (viii) of *GoI Resolution dated 11.02.1964)*

(f) ***Advising on procedural aspects:*** If it appears that the procedure or practice in a Department or Organisation is such as it affords scope or facilities for corruption or misconduct, the Commission may advise the Department or the Organisation concerned that such procedure or practice be appropriately changed, or changed in a particular manner.(Para 2 (x) of *GoI Resolution dated 11.02.1964)*

(g) ***Review of Procedure and Practices:*** The Commission may initiate at such intervals as it considers suitable, the review of procedures and

practices of administration in a Department or Organisation in so far as they relate to maintenance of integrity in administration. (Para 2 (xi) of *GoI Resolution dated 11.02.1964)*

1.3.4 ***Functions under PIDPI Resolution 2004:*** CVC is the designated authority under *Public Interest Disclosure and Protection of Informer Resolution 2004* to receive complaint alleging corruption against any employee of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and to take further action thereon including recommending disciplinary and criminal proceedings. Commission is also empowered to take appropriate action for protection of informer. Refer to *Chapter IV* for more details on PIDPI Resolution.

1.3.5 ***CVC as Specified Authority under Prevention of Money Laundering Act, 2002:***

Under Section 66 of the *Prevention of Money Laundering Act, 2002*, the Director or any other authority specified by him may furnish or cause to be furnished such information to such other officer or body as the Central Government may in its opinion deem it necessary to do so in public interest, specify, by notification in the Official Gazette. Any information received or obtained by such Director or any other authority in the performance of their duties under PMLA may be shared with such notified authority. Vide *Notification No. GSR 970 (E) dated 15.12.2015*, the Central Government has notified "Central Vigilance Commission" as an Authority Competent to receive such information from the Director, Financial Intelligence Unit (FIU).

The information (on suspicious transactions) so received from Director FIU is relevant and crucial for detecting criminal misconducts and may lead to detection of moneys laundered. The Commission on receipt of such information would (on the facts and circumstances of the case) require either the CBI, the CVO concerned or any other agency to investigate and report the facts and to ascertain whether there is any misconduct by a public servant within the jurisdiction of the Commission. The Commission on a consideration of such a report would tender its advice.

1.3.6 ***Inputs on Vigilance Status of officers for appointment to key positions:*** *DoPT* vide its *OM No. 104/33/2005-AVD-I dated 29.10.2007,No. 11012/11/2007-Estt.A dated 14.12.2007andNo. 27(5) – EO/88 (ACC) dated 04.08.1988* has laid down that while considering cases for grant of vigilance clearance for the purpose of empanelment of AIS officers of any particular batch, for members of Central Civil Services / Central Civil posts, Board level positions in Public Sector Enterprises, the comments of the Central Vigilance Commission may be obtained. Further, Commission's *Circular No. No. 3(v)/99/4 dated 12.07.1999* provides that vigilance clearance shall also 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.

For more details on Vigilance Clearance refer to para 11.2 (*Chapter XI).*

1.3.7 ***Other functions and activities:***

(a) ***Supervision & control of CTE Organisation:*** Commission exercises supervision and administrative control of Chief Technical Examiner's Organisation.

(b) **Appointment of *Independent External Monitors:*** The Commission approves persons for appointment as Independent External Monitors whose function is to ensure implementation of Integrity Pact. For more details on IEM refer to *Chapter X*.

(c) ***Integrity Index:*** Commission is working on the development of a Comprehensive Integrity Index for organisations. Central Vigilance Commission has decided to adopt a strategy which will ensure transparent, accountable and efficient governance through the Integrity Index for public organisations. The Index will be based on bench marking internal processes and controls within an organisation as well as management of relationship and expectation of outside stake holders. For the development of the Integrity Index, the Commission has appointed IIM, Ahmadabad as Consultant for one year. More details on Integrity Index have been given in *Chapter X*.

(d) ***Capacity Building Programmes:*** Commission organises training programmes for the CVOs and for its own personnel. It conducts a monthly lecture by eminent person which is web-cast live.

(e) ***Vigilance Awareness Week:*** Commission vide its *Circular No.3(v)/99/11 dated 23.06.2000* has declared that the week in which 31st October, which is the Birth anniversary of Bharat Ratna Sardar Vallabh Bhai Patel, the first Home Minister of India falls, shall be observed as "Vigilance Awareness Week" with a view to spread awareness among citizens regarding the fight against corruption and their role. Every year in August / September, the Commission issues a Circular for observance of Vigilance Awareness Week by the Ministries / Departments / Organisations with specific theme. The Circular lays down the measures to be taken during the week which, inter alia, includes organising workshops, seminars, debate, competition, slogan / essay writing, cartoon, painting, etc. at micro level such as school, colleges, institutes, etc.

(f) ***News Letter:*** Central Vigilance Commission brings out its quarterly newsletter "VIGEYEVANI" to create awareness against corruption, besides sharing its activities with all the stakeholders against corruption.

1.3.8 ***Assistance to Constitutional Courts:*** Whenever directed to do so, the Commission has assisted the Hon'ble Supreme Court of India or the High Courts in specific cases, e.g. cases relating to allocation of 2G spectrum, allocation of coal blocks, works executed in connection with CWG 2010, etc.

1.4 DEFINITION OF VIGILANCE ANGLE

1.4.1 Vigilance angle is obvious in the following acts:

(a) Demanding and / or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.

(b) Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he has or is likely to have official dealings or his subordinates have official dealings or where he can exert influence.

(c) 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.

(d) Possession of assets disproportionate to his known sources of income.

(e) Cases of misappropriation, forgery or cheating or other similar criminal offences.

1.4.2 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 wilful 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 of required transactions and issues in time; cause of undue loss or a concomitant gain to an individual or a set of individuals / a party or parties; 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.

1.4.3 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. *(CVC Office Order No. 74/12/05 dated 21.12.2005)*

1.4.4 The purpose 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.

1.4.5 It would be quite unfair to use the benefit of hind-sight to question the technical merits of a managerial decision 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 made 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 malafide, 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.

1.4.6 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 judgment 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.

1.4.7 The Commission has decided that the CVOs, while sending the case to the Commission for advice against the lapses of officers exercising quasi-judicial powers, should examine critically whether the criteria laid down by Hon'ble Supreme Court in *K.K. Dhawan's case* was attracted or not. The following criteria was laid down: -

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) If he has acted in a manner which is unbecoming of a Government Servant;

(iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) If he had acted in order to unduly favour a party;

(vi) If he had actuated corrupt motive, however, small the bribe may be.

(CVC F.No.007/MISC/Legal/04(Pt.) Circular No. 39/11/07 dated 01.11.2007)

Further, in a recent judgment dated 12th July 2016 in *R.P. Parekh Case (Civil Appeal Nos. 6116-6117 of 2016*, the Supreme Court has observed in para-15 of the judgment as under: -

"The issue of whether a judicial officer has been actuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn. Cases involving misdemeanours of a judicial officer have to be dealt with sensitivity and care. A robust common sense must guide the disciplinary authority. At one end of the spectrum are those cases where direct evidence of a misdemeanour is available. Evidence in regard to the existence of an incriminating trail must be carefully scrutinised to determine whether an act of misconduct is established on the basis of legally acceptable evidence. Yet in other cases, direct evidence of a decision being actuated by a corrupt motive may not be available. The issue which arises in such cases is whether there are circumstances from which an inference that extraneous considerations have actuated a judicial officer can legitimately be drawn. Such an inference cannot obviously be drawn merely from a hypothesis that a decision is erroneous. A wrong decision can yet be a bona fide error of judgment. Inadvertence is consistent with an honest error of judgment. A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. .....".

The Supreme Court in *R P Parekh case* has laid down the following conditions / procedure to be followed to determine as to whether an act

of a judicial officer has been actuated by an oblique motive or corrupt practice:

(i) Since, direct evidence of corruption may not always be forthcoming in every case involving a misconduct, a wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle.

(ii) In the absence of cogent explanation, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that an officer was actuated by extraneous considerations can be drawn.

(iii) The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which form the basis of the charge of misconduct was not an honest exercise of judicial power.

(iv) A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact.

In addition to the principles enunciated in Commission's Circular dated 1st November, 2007, the afore-mentioned criteria in the judgment may also be kept in view by CVOs while examining alleged lapses / misconducts in respect of officials exercising quasi-judicial functions / powers.

(CVC Circular No.12/10/16 dated 24.10.16)

1.4.8 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.

1.4.9 Administrative misconduct such as lack of punctuality, drunken behaviour at work, insubordination, etc. would 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 rights to initiate appropriate penalty proceedings against erring employees. *(CVC Office Order No.23/04/04 dated 13.04.2004)*

1.5 ORGANISATIONAL STRUCTURE OF COMMISSION

1.5.1 In terms of Section 3(4) of *CVC Act, 2003*, the Central Government appoints a Secretary to the Commission to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

1.5.2 In terms of Section 7 of *CVC Act, 2003*, the Central Government, in consultation with the Commission, makes rules with respect to the number of members of the staff of the Commission and their conditions of service.

1.5.3 In terms of Section 13 of *CVC Act, 2003*, the expenses of the Commission, including salaries, allowances and pensions payable to the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, is charged on the Consolidated Fund of India.

1.5.4 The Commission is assisted in discharge of its functions by a Secretariat headed by the Secretary. At present, there are four Additional Secretaries. Besides, there are two Chief Technical Examiners who assist the Commission in technical matters. The major Branches / Units of the Commission are: -

(a) **Vigilance:** There are nine Vigilance Branches, each of them under a Director / Deputy Secretary level officer who are in turn supervised by the respective Additional Secretaries. The Vigilance Branches process the complaints and cases pertaining to the various Ministries / Departments or Organisations falling under Commission's jurisdiction and communicate advice of the Commission.

(b) **Confidential:** It handles complaints received under PIDPI Resolution.

(c) **Co-ordination:** It deals with policy matters, Annual Report, research, CVO's appointment, Vigilance clearance, matters pertaining to superintendence over CBI, etc.

(d) **CDI Unit:** To assist the disciplinary authorities in the expeditious disposal of oral inquiries, the Ministry of Home Affairs appointed Officers on Special Duty [later re-designated as Commissioners for Departmental Inquiries] on the strength of the Administrative Vigilance Division. On the recommendation of the Committee on Prevention of Corruption, the Commissioners for Departmental Inquiries were transferred to work under

the control of the Central Vigilance Commission. The officers designated as CDIs undertake the function of conducting oral inquiries in individual disciplinary cases on behalf of the Disciplinary Authority.

(e) **Inquiry Wing:** Deals with direct inquiries into complaints conducted by the Commission under Section 11 of *CVC Act, 2003*.

(f) **Vigilance Audit:** Deals with audit of CVO's set-ups & its functioning in various Departments / organisations by the officers of the Commission.

(g) **Administration:** It comprises of Establishment, Cash, General matters, Library and Hindi cell.

(h) **Legal:** It deals with matters involving legal issues.

(i) **RTI:** Nodal division for RTI matters and processing RTI Appeal cases.

(j) **IT:** Maintaining and implementing e-governance.

(k) **Training:** Deals with training of CVOs and others on vigilance administration and organising knowledge workshops, etc.

(l) **CTE Organisation:** It is the technical wing of the Commission headed by Chief Technical Examiners. It provides assistance and advice to the Commission on technical matters and issues relating to procurement. It carries out inspection of civil, electrical and horticulture works of the Central Government Departments, Central Public Sector Enterprises, CPSB and FIs,etc.

Further details about the CTE Organisation have been given in *Chapter IX*.

1.6 ADVISORY FUNCTIONS OF COMMISSION—A SUMMARY

1.6.1 *Matters where the Commission tenders its advice to the competent authority in the following cases —*

(a) when a request for grant of previous sanction necessary for prosecution is made by an investigating agency to the competent authority in respect of specified categories of public servants, and

(b) for initiating Departmental proceedings and before taking a final decision in the vigilance case against the specified category of public servants.

1.6.2 ***Previous sanction for prosecution—Consultation with Commission:***

Commission tenders its advice:

(a) When the CBI or the other investigating agency recommends sanction of prosecution, in cases of officers in which sanction of prosecution is required to be accorded in the name of the President.

(b) In cases in which an authority other than the President is competent to accord sanction for prosecution, and that authority does not propose to accord sanction, the Commission tenders its advice for resolution of difference of opinion.

(c) Proposals from the State Government seeking prosecution sanction in respect of AIS officers against cases investigated by CBI or other investigating agency on matters pertaining to the affairs of the State Government are received in Government of India, as competent authority. The Central Government may refer such matters to the CVC to tender its advice.

1.6.3 ***Departmental proceedings:***

The Commission tenders its advice at two stages:

(a) First Stage Advice (FSA):

The Commission is required to be consulted:

(1) in all cases where vigilance angle is present and in respect of the public servants specified in Section 8(2) of *CVC Act, 2003* [Category-A], after conclusion of preliminary inquiry / investigation and before the issue of charge-sheet;

(2) where an Investigation Report on a complaint forwarded by the Commission has been called for, the CVO is required to submit the Investigation Report to the Commission for advice;

(3) in following cases for public servants other than Category-A:

(i) in Composite cases, wherein public servants other than Category-A [i.e. Category-B] are also involved along with those belonging to Category-A and wherein vigilance angle is present.

(ii) where there is difference of opinion between the CVO and the Chief

Executive of the Organisation, the matter is required to be referred to the Commission for advice.

(b) Second Stage Advice (SSA):

(1) In all such cases where First stage advice has been tendered, on conclusion of oral inquiry after issue of charge-sheet but before a final decision is taken by competent authority, the Commission is required to be consulted for second stage advice. (Subject to exception & exemptions mentioned below)

(2) Further, in respect of other cases where there is difference of opinion between the CVO and the Disciplinary Authority, the Commission is also required to be consulted.

Exception: -

In respect of a Presidential appointee, if the Disciplinary Authority proposes a penalty and where UPSC is required to be consulted, the Commission's advice is not required. However, in respect of a Presidential appointee, if the Disciplinary Authority proposes exoneration, the Commission's second stage advice is required to be obtained.

[CVC Circular No. 17/12/12 dated 07.12.2012]

1.6.4 ***Reconsideration of advice:*** Commission may be consulted for reconsideration of its 1st stage or 2nd stage advice. The Commission entertains the reconsideration proposal only for one time at each stage and strictly when there are new facts which have not been considered by the Commission earlier.

1.6.5 ***Deviation from / non-implementation of Commission's advice:***

(a) When the Disciplinary Authority deviates from or does not implement Commission's advice, the CVO may bring it to the notice of the Commission. The Commission may consider it for inclusion in its Annual Report as a case of non-implementation of Commission's advice.

(b) When the Appellate Authority's order is at variance with Commission's advice, the CVO may forward a copy of Appellate Authority's Order to the Commission. The Commission may consider it for inclusion in its Annual

Report as a case of non-implementation of Commission's advice.

1.6.6 ***Exemption from consultation in certain circumstances:***

(a) In complaints referred by the Commission for investigation and report, if after investigation it is found that the officials involved in the case do not fall under the jurisdiction of the Commission, the case need not be referred to the Commission and may be dealt with by the CVO. However, the action taken by the CVO on the CVC referred complaint may be intimated to the Commission in order to monitor compliance. *(Circular No. 009/VGL/056 dated 28.01.2010)*

(b) In respect of composite cases wherein the Commission had tendered its first stage advice for all categories of officers involved, second stage advice of the Commission should be sought only in the case of officers falling within the jurisdiction of the Commission. With respect to officers not falling under the jurisdiction of the Commission, the case should be dealt at the level of the CVO, and referred to the Commission for second stage advice only if the DA's opinion is at variance with the Commission's advice. This procedure would also apply to CBI investigated cases involving officials not falling under the jurisdiction of the Commission wherein the Commission had rendered its advice (cases where there were differences between the CBI and the DA and which were referred to the Commission for advice). *(CVC Circular No. 009/VGL/056 dated 28.01.2010)*

(c) In cases where the disciplinary authority (DA), on conclusion of disciplinary proceedings, proposes to impose a penalty which is in line with the Commission's first stage advice in respect of officers falling within the jurisdiction of the Commission, the second stage consultation with the Commission is not required. However, the CVO in all such cases is required to forward a copy each of the IO's findings and the final order issued by the DA in the case for Commission's record. *(Circular No. 08/12/14 dated 03.12.2014)*

(d) In cases involving Gazetted officers below Group 'A' of the Central Government, in which the Commission has tendered its first stage advice prior to the enactment of *CVC Act, 2003*, the matter need not be referred

to the Commission for second stage advice if the disciplinary authority, on conclusion of the disciplinary proceedings, proposes to impose a penalty which is in line with the Commission's first stage advice, provided that none of the officers involved in that matter is an officer of All-India Service or a Group A' officer. The case, however, may be referred to the Commission for its advice if the disciplinary authority proposes to take action, which does not conform to the Commission's first stage advice, (or it differs with the recommendation of the CVO with regard to the quantum of punishment to be imposed). *(CVC Circular No. 98/VGL/15 dated 16.04.2004)*

1.6.7 ***Expectations from CVO while delegating powers under para 1.6.6 above*:** While delegating powers to the Ministries / Departments / Organisations vide para 1.6.6, to handle vigilance cases against certain categories of employees, the Commission expects that (i) appropriate expertise would be available to the CVOs; (ii) the CVO would be in a position to exercise proper check and supervision over such cases and would ensure that the cases are disposed of expeditiously; and (iii) the punishment awarded to the concerned employee would be commensurate with the gravity of the misconduct established on his part. In order to ensure that the Commission's expectations are fully met, the Commission may depute its officers to conduct vigilance audit through onsite visits and also review it through the monthly information system (monthly reports), etc. If the Commission comes across any matter, which in its opinion has not been handled properly, it may recommend its review by the reviewing authority or may give such directions as it considers appropriate.

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Chapter II

Appointment, Role, Functions and Responsibilities of Chief Vigilance Officers

INTRODUCTION

Government of India appoints Chief Vigilance Officers in various Ministries/ Departments / Central Public Sector Undertakings / Public Sector Banks / Public Sector Insurance Companies / Autonomous Bodies / Societies, etc. to carry out vigilance work. The primary responsibility for maintenance of efficiency, integrity and transparency in an Organisation vests in the Secretary of a Ministry or the Head of the Department, or the Chief Executive of Public Sector Enterprises including Public Sector Banks and Public Sector Insurance Companies. Such an authority is assisted by the Chief Vigilance Officer (CVO) in the discharge of vigilance functions. The CVO acts as an advisor to the Chief Executive and reports directly to him. He heads the Vigilance Division of the Organisation and provides a link between the Organisation and the Central Vigilance Commission as well as the Central Bureau of Investigation.

Large Departments / Organisations should have a full-time CVO, i.e. the officer should not be burdened with any other responsibility. If it is considered that the CVO in an Organisation does not have full-time vigilance work, he may be entrusted with such functions that serve as input to the vigilance activities, e.g. audit and inspections. However, the work related to security should not be entrusted to the CVO, as in that case, CVO may find very little time for effective performance of vigilance functions, apart from creating situations of conflict of interest. Furthermore, in order to be effective, a CVO should ordinarily be an outsider appointed for a fixed tenure on deputation terms as stipulated by Department of Personnel &Training. 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. *(DoPT OM No. 372/8/99-AVD. III dated 18.01.2001)*

2. APPOINTMENT OF CVO

After the Manual was approved and was under process of publication, the *DoPT*, vide their *O.M. No.372/7/2016-AVD-III dated 28.04.2017*, has issued a revised procedure for appointment of CVOs in Central Public Sector Undertakings and other organisations under Central Ministries/ Departments. (A copy of the said O.M. is placed as *Annexure-I* to this Chapter). Existing procedure before issue of this Circular, for appointment of CVOs is dealt below.

2.1 APPOINTMENT OF PART TIME CVO IN MINISTRIES / DEPARTMENTS

The charge of Chief Vigilance Officer in Ministries / Departments of Government of India may be entrusted to an officer of the Ministry / Department on a part time basis with the approval of the Commission. Further, there may be certain Organisations under the administrative control of Ministries / Departments which are small in size and do not have officers of sufficient seniority to be appointed as CVOs in those Organisations. In such cases, the concerned Ministry / Department may entrust the function of vigilance to a suitable officer of appropriate level. Such appointments can be made under intimation to the Commission.

2.2 APPOINTMENT OF CVO IN DEPARTMENTS WHERE THE CVO IS A CADRE POST

In a few Departments viz., CBDT, CBEC, Department of Posts and Railway Board, there is an encadred post of full time CVO. In such Departments, a panel of names of officers of adequate seniority in the order of preference, along with the bio data and complete APAR dossiers is sent to the Commission. One of the officers from the panel approved by the Commission is appointed as CVO in that Organisation.

2.3 APPOINTMENT OF FULL TIME CVO IN PSUs / SOCIETIES / AUTONOMOUS BODIES AND DEPARTMENTS

The following guidelines have been prescribed for filling up full-time posts of CVOs:

(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 organised services as well as PSUs to offer officers of proven integrity for these posts. The cadre authorities as well as the officers who apply would also be required to indicate choice of location. The names so received, would be forwarded along with bio-data of the officers concerned and their APAR dossiers to the Central Vigilance Commission for approval;

(iii) The *DoPT* would maintain a panel of names approved by the Commission;

(iv) The offer list would be operative for a period of one calendar year;

(v) A panel of officers cleared by the Commission would be suggested by the *DoPT* to the administrative Ministry / Department concerned with the approval of the Minister of State in the Department of Personnel & Training. The administrative Ministry is required to select an officer out of the panel with the approval of its Minister-in-Charge and communicate the same to the Department of Personnel & Training for obtaining the approval of the competent authority.

May also refer to the latest guidelines issued by DoPT vide OM No. 372/7/2016-AVD-III dated 28.04.2017 *revising the procedure for appointment of CVOs which is placed at Annexure-I* to this Chapter.

2.4 APPOINTMENT OF CVO IN SELECT ORGANISATIONS

In the absence of its own field Organisation, the Commission is dependent on the vigilance wing of the various Organisations headed by the CVOs. The importance of proper selection of such CVOs in the independent and effective functioning of the vigilance wing in any Organisation cannot be over-emphasized. The Commission, therefore, maintains a select list of Organisations where appointment of CVO is made with the specific approval of the Commission. In accordance with this established practice, the *DoPT* would obtain specific approval of the Commission in respect of the panel of officers under consideration for appointment of CVOs in any of the select Organisations.

2.5 APPOINTMENT OF CVO IN PUBLIC SECTOR BANKS, INSURANCE COMPANIES AND FINANCIAL INSTITUTIONS

CVOs in Public Sector Banks or Insurance Companies or Financial Institutions (PSBs / PSICs / FIs) are appointed on deputation by the Department of Financial Services. General Managers of PSBs, Chief General Managers of Reserve Bank of India or Executive Directors in Financial Institutions, having minimum three years of residual service are eligible to apply for the posts of CVOs in PSBs. General Managers or Deputy General Managers having three years experience as DGM in PSBs and residual service of minimum three years are eligible to apply for the posts of CVOs in FIs. Officers of the level of General Manager / DGM with three years experience in PSBs or CGM in FIs and ED / Zonal Manager in LIC are eligible to apply for the posts of CVOs in PSICs.

The Department of Financial Services calls for applications from willing officers at least six months before a vacancy arises in the post of a CVO in a Public Sector Bank or Insurance Company or Financial Institution and shortlists a panel of names. The shortlisted panel along with bio-data and complete APAR dossiers of the officers concerned is forwarded to the Commission for consideration. One of the officers from the panel as approved by the Commission is appointed as CVO in that particular bank or insurance company or financial institution.

2.6 APPOINTMENT OF CVO IN AUTONOMOUS ORGANISATIONS / SOCIETIES, etc.

2.6.1 An Autonomous Organisation or Co-operative Society, etc. would forward, along with bio-data and complete APAR dossiers through Administrative Ministries / Departments, a panel of names of three officers, arranged in order of preference, for the Commission's consideration. One of the officers from the panel 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.

2.7 TENURE OF CVO

2.7.1 The CVOs would be eligible for an initial deputation tenure of three years which is extendable up to a further period of two years in the same PSU (total five years) with the prior clearance of the CVC or up to a further period of three years on transfer to another PSU on completion of initial tenure of three years in the previous PSU (i.e. total six years). *(DoPT OM No. 372/8/99-AVD. III dated 18.01.2001)*

2.7.2 The post of CVO in the Central Public Sector Undertakings is treated at par with Central Staffing Scheme post as it is filled after following the same procedure as is being followed under the Central Staffing Scheme for posts in the Central Government. However, in order to attract officers for manning the post of CVO in various Public Sector Undertakings, certain special dispensations have been made which are applicable to non-Central Staffing Scheme posts. For instance, if a request is received from an officer occupying a post under the Central Staffing Scheme on deputation, at least one year before the expiry of his tenure in the Central Staffing Scheme, duly recommended by the Ministry / Department in which he is posted, with the approval of the Minister-in-Charge, for being considered for appointment as CVO, such an officer, if selected for appointment as CVO may be allowed a tenure of three years as CVO subject to a maximum combined tenure of seven years in the Central Staffing Scheme and the post of CVO taken together.

2.7.3 Posting as CVO in a Public Sector Undertaking located at places other than Metropolitan Cities could be allowed in continuation of a posting with the Government of India, subject to the condition that the total period including the earlier tenure, shall not exceed seven years. Thus, if an officer has served a post under the Central Staffing Scheme for four years and then proceeds on deputation to a post of CVO in a PSU located at a place other than Metropolitan Cities, he will have a tenure of three years on the post of CVO subject to an overall ceiling of seven years of combined tenure on the Central Staffing Scheme post and the post of CVO.

2.8 SHORT TERM ARRANGEMENT IN THE POST OF CVO

2.8.1 Suitable arrangements in vacancies for not more than three months may be made by the appropriate authority concerned, without prior approval of the 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.

2.8.2 Such adhoc / interim CVO should report and obtain prior approval of the Commission while taking decision in vigilance cases including closure of cases / complaints irrespective of the fact whether the suspect / charged officer comes within the jurisdiction of the Commission or not. *(CVC Circular No. 001/VGC/211 dated 12.3.2003)*

2.8.3 A CVO on regular appointment in an Organisation will also report to the Commission immediately after taking over, the actions taken on vigilance cases during the tenure of adhoc / interim CVO.

2.8.4 As far as feasible, charge of vacant posts of CVOs should be assigned to another CVO within the same Ministry, or to another eligible officer of the Ministry. Asking a junior officer in an Organisation (PSU/PSB/ Autonomous body) to hold charge of CVO's office should be avoided. Similarly, an officer who may be Government nominee Director in a PSU/ PSB should not handle cases where there is possibility of a conflict of interest with his full-time assignment.

2.9 ASSOCIATION OF CVO WITH OTHER ORGANISATIONAL MATTERS

2.9.1 Participation in decision making or close association of CVO or the 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, CVO and the vigilance functionaries should not be a party to decision-making processes, which are likely to have vigilance sensitivity, as this may result in conflict of interest. However, advice can be tendered on some policy matters especially those requiring implementation of preventive vigilance measures.

2.9.2 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 preferably serve as input to vigilance activities such as inspection, audit, etc.

2.10 PERMANENT ABSORPTION OF CVO

If an assurance is extended to a CVO, who has been appointed on deputation terms for a fixed tenure in the Organisation, for permanent absorption, there is a distinct possibility that it might impair his objectivity in deciding vigilance cases and might negate the very purpose of appointing an outsider as CVO. It has, thus, been provided that an outsider CVO shall not be permanently absorbed in the same Organisation on expiry or during currency of his tenure as CVO. *(Para 7 of DoPT OM No. 372/8/99-AVD.III dated 18.01.2001)*, *(CVC Circular No. 006/VGL/091 dated 12.09.2006)*

2.11 ASSESSMENT OF CVO's WORK

Central Vigilance Commissioner assesses the work of CVOs. The Assessment is recorded in the APAR of the officer. The following procedure has been prescribed for this purpose:

(i) The APARs of the CVOs in the Organisations, whether working on a fulltime or a part-time basis, would be initiated by the Chief Executive of the Organisation concerned, 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) APARs of full time CVOs in the Ministries will be initiated by Secretary of the Ministry and reviewed by the Central Vigilance Commissioner.

(iii) 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. *(DoPT OM No. 11059/2/93-AIS (III), dated the 13.03.1993 & 14.04.1993)*

2.12 DUTIES AND FUNCTIONS OF CVO

2.12.1 A CVO heads the Vigilance Division of an Organisation and acts as an advisor to the Chief Executive in all matters pertaining to vigilance. He is also the nodal officer of the Organisation for interaction with CVC and CBI. 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 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 improper practices and commission of misconducts, etc. Thus, the CVO's functions can broadly be divided into three categories, as under: -

(i) Preventive vigilance

(ii) Punitive vigilance

(iii) Surveillance and detection.

2.12.2 While 'punitive action' for commission of misconduct and other malpractices is certainly important, 'surveillance' and 'preventive measures' to be taken by the CVO are comparatively more important as these are likely to reduce the occurrence of vigilance cases. Thus, the role of CVO should be predominantly preventive.

2.13 PREVENTIVE VIGILANCE FUNCTIONS BY CVO

The CVO is expected to take following measures on preventive vigilance side: -

(i) To undertake study of existing procedures and practices prevailing in his Organisation with a view to identify those procedures or practices which provide a scope for corruption and require modification.

(ii) To find out the causes of delay, the points at which delay occurs and devise suitable steps to minimize delays at different stages;

(iii) To review the regulatory functions to see whether all of them are strictly necessary and whether the method of discharge of those functions is capable of improvement;

(iv) To devise adequate methods to ensure that discretionary powers are not exercised arbitrarily but in a transparent and fair manner; and in accordance with some laid down guidelines.

(v) To educate the citizens about the procedures of dealing with various matters and also to simplify these as far as possible;

(vi) To identify the areas in his Organisation which are prone to corruption and to ensure that officers of proven integrity only are posted in those areas;

(vii) To identify sensitive posts in the Organisation;

(viii) To ensure periodical rotations of staff and in particular officers holding sensitive posts; *(CVC Circular No. 004/VGL/090 dated 11.09.2013)*

(ix) To ensure that well-defined internal processes as well as corresponding controls with clear responsibilities, for different kind of activities, are set out;

(x) To ensure that the Organisation has prepared manuals on important subjects such as purchases, contracts, procurement, recruitment, etc. and that these manuals are updated from time to time and conform to the guidelines issued by the Commission and the Ministries concerned;

(xi) To develop and implement an effective Whistle Blower mechanism;

(xii) To leverage technology for making preventive vigilance function effective;

(xiii) To ensure prompt observance of Conduct rules relating to integrity, covering (i) statements of assets and acquisitions (ii) gifts (iii) relatives employed in private firms or doing private business (iv) to scrutinise immovable property returns of at least 20% executive employees every year and (v) keep an eye on benami transactions;

(xiv) To ensure observance of Vigilance Awareness Week as per directions of the Commission;

(xv) To scrutinise (a) Internal auditor's reports, (b) Statutory auditor's report (c) CAG audit report;

(xvi) To scrutinise inspection reports;

(xvii) In order to keep a watch on the activities of public servants who are of doubtful integrity, the Ministries / Departments / Organisations are required to maintain two lists viz. (i) "Agreed list" and (ii) list of public servants of gazetted status of "doubtful integrity". The "Agreed list" of suspected officers has its origin in the "Programme for vigilance and anti-corruption work during 1966", whereas the list of public servants of gazetted status of doubtful integrity was prescribed in 1969. The criteria for making such lists have been provided in the *Ministry of Home Affairs Letter No.130/1/66-AVD dated 05.05.1966 and letter No. 105/1/66-AVD dated 28.10.1969*. It has been provided in these instructions that the "Agreed list so prepared will remain in force for one year from the date of preparation and officials' work / activities / behaviour during the period would be watched and the list would be reviewed after this period". The list of Officers of Doubtful Integrity will remain in force for a period of three years. In the above perspective, the CVO has to perform the following functions: -

(1) To prepare a list of 'Officers of Doubtful Integrity' which 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;

(2) To prepare the 'Agreed List' in consultation with the CBI which will include the names of officers whose honesty or integrity is doubtful or suspicious. The following action would be taken by the CVO and the CBI in respect of the officers appearing on the list:

(a) Closer and more frequent scrutiny and inspection of their work and performance by the Departments concerned, particularly in spheres where there is scope for discretion or for showing favours;

(b) Quiet check about their reputation both by the Department and the CBI;

(c) Unobtrusive watch of their contacts, style of living, etc. by the CBI;

(d) Secret enquiry by the CBI about their assets and financial resources. The Departments will make available their property returns and other relevant records to the CBI; and

(e) Collection of information by the CBI of specific instances of bribery and corruption practices.

(CVC Circular No. 3(v)/99(6) dated 18.08.1999; No. 3K-DSP-10 dated 07.04.2000and 03.09.2001)

(xviii) Adequate precautions should be taken in drawing up and maintaining the "Agreed list" and the "list of Officers of Doubtful Integrity" to ensure that they are correctly and objectively prepared and reviewed from time to time. CVO should ensure that the officers who are placed on the aforesaid lists should not be posted in sensitive positions. CBI would co-ordinate with the Ministries / Departments / Organisations so that the lists so prepared are periodically reviewed. Director of CBI and the CVOs of the Departments will keep the Commission posted about developments from time to time.

(MHA OM No.: 105/1/66-AVD-I dated 28.10.1969 and CVC Circulars No.004/VGL/090 dated 11.09.2013, 04.01.2012&01.05.2008, and Nos. 98/VGL/60 dated 02.11.2001&15.04.1999)

(xix) To conduct CTE type inspection in his organisation; and

(xx) To tender advice to the Disciplinary Authority and the Appellate Authority in vigilance cases, irrespective of level of officers involved.

2.14 PUNITIVE VIGILANCE FUNCTIONS BY CVO

2.14.1 The CVO is expected to scrutinise 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; Standing committee report for the Ministry, CAG audit report, Statutory auditor's report, internal audit reports, complaints and allegations appearing in the press; and to take appropriate action thereon.

2.14.2 The CVO, inter-alia, is expected to take following action on the punitive vigilance aspects:

(i) To receive complaints from all sources and scrutinise them as per existing instructions. When he is in doubt on the issue of existence of vigilance angle in them, the CVO may refer the matter to his administrative head;

(ii) To investigate or cause an investigation to be made into such allegations involving 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 report expeditiously for obtaining orders of the competent authority about further course of action to be taken and also for obtaining Commission's advice on the investigation reports, where necessary;

(v) To ensure that charge-sheet, statement of imputations, lists of witness and documents, etc. are carefully drawn up; copies of all the documents relied upon and the statements of witnesses cited on behalf of the disciplinary authority are prudently prepared, issued expeditiously and supplied to the charged officer whenever possible.

(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 to obtain orders of the competent authority about further course of action to be taken and also obtain 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 he had applied his mind and exercised his independent judgment;

(ix) To ensure that rules and time limits with regard to disciplinary proceedings are scrupulously followed at all stages by all concerned as any violation of rules would render the entire proceedings vitiated;

(x) To scrutinise on a continuous basis, complaints and grievances received by other divisions / units in the Organisation.

(xi) To see that proper assistance is given to the CBI in the investigation of cases entrusted to them or started by them on their own source information;

(xii) To take proper and adequate action with regard to petitions filed by delinquent officers in Courts of Law / Tribunal;

(xiii) To review from time to time the existing arrangements for vigilance work in the Ministry / Department, to see if the work of subordinate officers is adequate and to ensure expeditious and effective disposal of vigilance work;

(xiv) To ensure that the competent disciplinary authorities do not adopt a dilatory or lax attitude in processing vigilance cases, particularly in cases when officers are due for promotion or retirement. CVO shall refer such instances to the Commission;

(xv) To ensure that cases against the public servants on the verge of retirement do not lapse due to time-limit for reasons such as misplacement of files, etc. and that the orders passed in the cases of retiring officers are implemented in time;

(xvi) To review pendency of references received from Commission.

(xvii) To refer cases, within his jurisdiction, to CBI with the administrative approval of CEO. In case of difference of opinion with the CEO, the matter may be referred to the Commission.

(xviii) 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 cases requiring reconsideration 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. 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;

(xix) Although the discretion to place a public servant under suspension, when a disciplinary proceeding 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;

(xx) To 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;

(CVC Circular Nos. 006/PRC/1 dated 11.12.2014;014/VGL/ 061 dated 03.12.2014;015/MSC/016 dated 27.04.2015;010/ VGL/095 dated 07.12.2012)

(xxi) To scrutinise the matter carefully, wherever the Appellate Authority has disagreed with Commission's Advice which was earlier accepted by the Disciplinary Authority. To take up such matter with the reviewing authority and also to report such cases to the Commission;

(xxii) To bring to the notice of the Board specific cases where the Disciplinary Authority has disagreed with the CVO's advice in respect of officials not under the jurisdiction of the Commission;

(xxiii) To ensure that the CVO is invited and remains present at the time of review of vigilance work by the Board;

(xxiv) To monitor and to take up for necessary action any case of recruitment in violation of the laid down rules and procedure and wherever necessary to report the matter to the Commission.

(Para VII of CVC Circular No. 006/VGL/065 dated 6th July 2006)

(xxv) Identify cases having vigilance angle reported in inspection reports, audit reports, media reports, reports of Parliamentary Committees, etc., carry out investigation and take misconducts, if any, to its logical conclusion.

(xxvi) Examine the decision of the DA and if they are not in tune with the advice of the Commission, bring it to the notice of the Commission for further consideration.

(xxvii) Examine the orders of DA in respect of officers not within the jurisdiction of the Commission and to ensure even handedness, fairness, etc. Recommend revision of inappropriate orders by the competent authority.

2.15 SURVEILLANCE AND DETECTION BY CVO

2.15.1(i) 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 practices by the public servants. He should carry out at least six CTE type inspections on one of the projects / works in the organisation every year. It is described in detail in *Chapter-IX* of this Manual.

(ii) He should also undertake prompt scrutiny of annual property returns and intimations given by the public servants under the conduct rules and take further necessary action, if called for.

(iii) In addition, he should also gather intelligence from his own sources in whatever manner he deems appropriate about the misconducts/ malpractices having been committed or likely to be committed. He should also collect source material on misconducts and examine them for logical conclusion with necessary approval. He may also initiate suo motu enquiries based on any prima facie information regarding misconducts. He shall, however, carry out enquiries with necessary approvals.

2.15.2 No prior approval / sanction of CVO's tour programmes is required from CMD / CEO for proceeding on tour for carrying out any surprise inspections.*(CVC Circular No. 005/VGL/15 dated 04.05.2005)*. However, the Commission and the CEO may be kept informed of such tours immediately on conclusion of the tour. Of late, certain cases of misuse of trust reposed in CVOs in this regard have been reported. In the interest of transparency and accountability, whenever prior approval / intimation has not been given to the competent authority, a detailed report be submitted to the competent authority on conclusion of the tour and the outcome thereof.

2.16 SOME SPECIFIC FUNCTIONS OF CVO IN PSB

CVOs of PSBs should obtain vital information / inputs, in a structured manner like (a) Quick mortality borrowal accounts (b) Special letters/ reports sent by Internal Inspections / Audit teams while inspecting branches (c) Names & inspection reports of the branches which have slipped, in Inspection gradation, to 'unsatisfactory' grade & (d) details of OTS entered into, specially high value accounts on a select basis. They should also get accountability reports in the case of large value non-performing advances in a routine matter irrespective of the fact whether the Disciplinary Authority has found a vigilance angle or otherwise. *(CVC Circular No. 01/Misc/01/-Part I dated 31st Jan, 2003)*. It is described in detail in *Chapter VIII* of this Manual.

2.17 VIGILANCE ADMINSTRATION OF SUBSIDIARIES AND JOINT VENTURE COMPANIES

2.17.1 Commission has jurisdiction over any organisation so long as the administrative Ministry/Department of the Central Government continues to exercise administrative control over these organisations including appointment of Chief Executive and Board Members, etc. Accordingly, the CVOs are expected to ensure that vigilance activity is carried out in PSUs, their subsidiaries and joint venture companies in accordance with guidelines of the Commission. All important issues should be reported to the Commission. *(CVC Circular No. 000/VGL/66 dated 24th July 2003)*

2.17.2 *OM No. C-36011/22/2012-Vig. dated 19.11.2013* issued by Ministry of Petroleum and Natural Gas outlines the following mechanism for setting up of Vigilance Administration in JV / subsidiaries: -

Sr. No.	*Government shareholding through PSUs*	*Vigilance set up*
1.	***SUBSIDIARY WITHIN THE COUNTRY***	
	51% and above by a single PSU i.e. for subsidiary companies.	*CVO of parent company to oversee the vigilance function. Existing arrangement of vigilance set up, if any, in such companies would also continue.*

2.	***SUBSIDIARY OUTSIDE THE COUNTRY***	
	51% and above by a single PSU i.e. for subsidiary companies.	*CVO of parent company to oversee the vigilance functions. In case the subsidiary is registered in a foreign country, the proposed vigilance set up should not in any way be contradictory to the Act / provisions under which the company is registered.*
3.	***JV OF PSUs HAVING EQUITY 51% OR MORE – INDIVIDUALLY OR COLLECTIVELY***	
3.1	*Combined holding of PSUs/ Govt. 51% and above.*	*CVO of the PSU with the largest % shareholding should be the CVO.*
3.2	*Combined holding of PSUs/ Govt. 51% and above with equal share for all PSUs / Govt.*	*The CVO may be from the PSU having expertise / core competence in the area in which the JV operates along with consideration of other factors like market capitalization, turnover, etc. to be decided by the CVOs of the Ministries concerned with the approval of the Commission.*
3.3	*Combined holding of PSUs/ Govt. 50% and above but below 51%.*	*There should be a vigilance mechanism which could be a CVO from the PSU having expertise core competence in the area in which the JV operates or any other suitable vigilance mechanism as may be decided by the Company with the approval of the Commission.*
4.	**JV OF PSUs HAVING EQUITY OF 26% AND ABOVE BUT LESS THAN 50% - INDIVIDUALLY OR COLLECTIVELY**	
4.1	*Combined holding of PSUs of 26% and above but less than 50% and the private partner more than 50%.*	*There should be a vigilance mechanism in such companies. Modalities may be decided by the Board of Directors.*
4.2	*Combined holding of PSU of 26% and above but less than 50% with individual private partners also less than 50%, but total Private holding more 50%.*	*There should be a vigilance mechanism in such companies. Modalities may be decided by the Board of Directors.*

(a) *In case a JV is registered in a foreign country, the vigilance set up would be constituted in a manner that is not in any way contradictory to the Act/ provisions under which the Company is registered or the laws of the host country.*

(b) *Intimation regarding additional responsibilities of respective CVO in respect of the abovementioned JV / subsidiaries should be sent to the Commission.*

(c) *The percentage share of paid up capital and not intended equity holding in the JV should be taken into account.*

A proposal has been made by the Commission to *DoPT* to advise other Ministries / Department to issue guidelines similar to those issued by Ministry of Petroleum and Natural Gas. Further instructions are awaited.

2.18 MONITORING OF VIGILANCE CASES & ORGANISING STRUCTURED/ PERIODICAL MEETINGS

2.18.1 CVO should invariably review all pending matters, such as investigation reports, disciplinary cases including Departmental inquiries and other vigilance complaints / cases in the first week of every month and take necessary steps for expediting action on those matters.

2.18.2 The CVO should arrange structured meetings on a quarterly basis to be taken by the Secretary of the Ministry / Department or the Chief Executive for reviewing the vigilance work done in the organisation.

2.18.3 The CVO should also arrange periodical meetings with the officers of the CBI to discuss matters of mutual interests, particularly those arising from inquiries and investigations.

2.19 SUBMISSION OF PERIODICAL REPORTS BY CVO TO THE COMMISSION

2.19.1 The CVO should ensure that monthly reports of the work done on vigilance matters is furnished to the Commission by seventh day of the following months.

2.19.2 The CVO should ensure that the Annual Report(AR) of the previous year

(Jan. to Dec.), of the work done on vigilance matters, is furnished to the Commission by 31st of January of the succeeding year.

2.19.3 The CVO should ensure that quarterly progress reports (QPR), on the civil, electrical, horticulture works in progress and also on procurement of stores, are furnished to the CTEO by 15th day of the month following the quarters ending March, June, September and December.

2.20 HANDLING OF COMPLAINTS AGAINST CVO / OTHER VIGILANCE FUNCTIONARIES

Any complaint against the CVO should be immediately referred to the Commission, which would decide on the further course of action. However, complaints against the other vigilance functionaries shall be looked into by the CVO personally and further action taken as per normal procedure. However, in the event of a complaint against the CVO of a Ministry or Department, Secretary of the Ministry / Department should ask another officer of the same or higher rank to investigate the matter. Situations of conflict of interest in all such matters should be carefully avoided.

2.21 CHIEF EXECUTIVE vis-à-vis VIGILANCE MATTERS

As already mentioned, the responsibility of ensuring probity, fairness and transparency in an organisation, vests with the Chief Executive, i.e. Secretary of a Ministry / Department, CEO / CMD / MD of a PSU/ PSB / PSIC or Head of any autonomous body. The CVO assists the Chief Executive in vigilance related matters as an extended arm of the Commission. Any vigilance function should aim at upholding the morale and protecting the value system of the organisation. A responsibility is cast on the Chief Executive who heads the organisation to set the right tone from the top management to ensure that the guilty are punished swiftly and innocents are protected from harassment. This would help prevent misconducts, unethical practices and support the efficient functioning of the organisation. The Chief Executive is, therefore, expected to carefully review the vigilance work at least on a quarterly basis and act upon the reports submitted by CVO in a timely manner.

The Chief Executive should also ensure the following: -

(i) Filling up of vacancies in the Vigilance Unit;

(ii) Holding structured meetings with the CVO every quarter;

(iii) Develop monitoring mechanisms to ensure probity and transparency in the organisation;

(iv) Encourage efforts made in the direction of preventive vigilance so that occasions for resorting to punitive methods are reduced; and

(v) Extend adequate support to surveillance activities of the Vigilance Department for developing source information on any malpractices and taking corrective action thereon.

(vi) It is essential for the staff of any organisation to be updated on the rules, regulations, systems and procedures as they are dynamic and prone to revision. The Chief Executive should facilitate periodic training of all staff members in these areas for generating general awareness about possible deviations and transgressions attracting sanctions so that informed decisions permeate through all levels of the organisation and employees do not suffer due to ignorance.

2.22 MANPOWER IN VIGILANCE SETUP

Head of Organisation, in consultation with CVO, should ensure formulation of suitable guidelines for manning of personnel for effective vigilance management in the Organisation.

2.23 ROTATION OF VIGILANCE OFFICERS

Postings in vigilance wings / Departments are classified as sensitive. 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 case of Organisations 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. CVOs are to certify annually that this exercise has been carried out. *(CVC Circular No. 98/VGL/60 dated 02.11.2001)*

2.24 PROTECTION AGAINST VICITIMISATION OF VIGILANCE OFFICIALS

Independence of the vigilance officials is the foundation for effective

vigilance administration in any Organisation. They cannot function without fear or favour if they perceive any victimization, as a consequence of their working in vigilance Organisation. The Commission views such incidents seriously as 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. Instances of denial of the same is to be perceived as victimisation. While Chief Executive must put in special efforts to ensure this, CVOs are expected to promptly report such instances to the Commission. Circular. *(CVC Circular No. 006/VGL/022 dated 28.03.2006)*

2.25 LIST OF SELECT ORGANISATIONS IN WHICH SPECIFIC APPROVAL OF THE COMMISSION IS REQUIRED FOR AN OFFICER TO BE APPOINTED AS CVO

On the basis of criteria such as turnover, manpower and spread across the country, Commission has identified some select Organisations for which prior concurrence of the Commission is necessary before considering a panel of names for appointment as CVO in them. The list as on 31.03.2017 is as follows: -

1. Airports Authority of India
2. Allahabad Bank
3. Andhra Bank
4. Bank of Baroda
5. Bank of India
6. Bank of Maharashtra
7. Bharat Coking Coal Ltd.
8. Bharat Dynamics Ltd.
9. Bharat Earth Movers Ltd.
10. Bharat Electronics Ltd.
11. Bharat Heavy Electricals Ltd.
12. Bharat Petroleum Corporation Ltd.
13. Bharat Sanchar Nigam Ltd.

14. Canara Bank
15. Central Bank of India
16. Central Coalfields Ltd.
17. Chennai Port Trust
18. Coal India Ltd.
19. Container Corporation of India Ltd.
20. Corporation Bank
21. Central Public Works Department
22. Damodar Valley Corporation
23. Delhi Development Authority
24. Delhi Jal Board
25. Dena Bank
26. Eastern Coalfields Ltd.
27. Employees Provident Fund Organisation
28. Employees State Insurance Corporation
29. Kamarajar Port Ltd.
30. Food Corporation of India
31. GAIL (India) Ltd.
32. Goa Shipyard Ltd.
33. Hindustan Aeronautics Ltd.
34. Hindustan Shipyard Ltd.
35. Hindustan Petroleum Corporation Ltd.
36. Housing & Urban Development Corporation
37. IDBI Bank Ltd.
38. Indian Bank
39. Indian Overseas Bank
40. Indian Oil Corporation Ltd.
41. IRCON International Ltd.
42. Indian Renewable Energy Development Agency Ltd.

43. Indian Tourism Development Corporation
44. Jawaharlal Nehru Port Trust
45. Kandla Port Trust
46. Cochin Shipyard Ltd.
47. Kolkata Port Trust
48. Kudremukh Iron Ore Company Ltd.
49. Life Insurance Company of India
50 Mangalore Refinery & Petrochemicals Ltd.
51. Mazagon Dock Shipbuilders Ltd.
52. Municipal Corporation of Delhi (North, South & East)
53. Mishra Dhatu Nigam Ltd.
54. MMTC Ltd.
55. Mahanagar Telephone Nigam Ltd.
56. Mumbai Port Trust
57. National Bank for Agriculture & Rural Development
58. National Aluminium Company Ltd.
59. Air India Ltd.
60. National Housing Bank
61. National Insurance Company Ltd.
62. New Delhi Municipal Council
63. New India Assurance Company Ltd.
64. Neyveli Lignite Corporation Ltd.
65. National Highway Authority of India
66. NHPC Limited
67. North Eastern Electric Power Corporation Limited
68. Northern Coalfields Ltd.
69. NTPC Ltd.
70. Oil India Ltd.
71. Oil & Natural Gas Corporation Ltd.

72. Oriental Bank of Commerce
73. Oriental Insurance Company Ltd.
74. Paradip Port Trust
75. Power Finance Corporation Ltd.
76. Power Grid Corporation of India Ltd.
77. Punjab & Sind Bank
78. Punjab National Bank
79. Rashtriya Ispat Nigam Ltd.
80. Reserve Bank of India
81. RITES Ltd.
82. Steel Authority of India Ltd.
83. Satluj Jal Vidyut Nigam Ltd.
84. Shipping Corporation of India Ltd.
85. Small Industries Development Bank of India
86. South Eastern Coalfields Ltd.
87. State Bank of India
88. State Trading Corporation of India
89. Syndicate Bank
90. V.O. Chidambaranar Port Trust
91. UCO Bank
92. Union Bank of India
93. United Bank of India
94. United India Insurance Company Ltd.
95. Vijaya Bank
96. Visakhapatnam Port Trust
97. Security Printing & Minting Corporation of India Ltd.
98. Dedicated Freight Corridor Corporation of India Ltd.

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Annexure-I

F.No.372/7/2016-AVD-III
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of personnel & Training
*****

North Block, New Delhi
Dated the 28th April, 2017

OFFICE MEMORANDUM

Subject: Revised procedure for appointment of Chief Vigilance Officers (CVOs) is Central Public Sector Enterprises (CPSEs) and other organizations under central Ministries / Departments.

The undersigned is directed to refer to this Department O.M No. 372/8/99-AVD-III dated 18th January, 2001 and to covey to approval of Competent Authority for the following revised guidelines / procedures for appointment of Chief Vigilance Officers (CVOs) in Central Public Sector Enterprises (CPSEs) and other organizations under central Ministries/ Departments in supersession of all instruction on this subject expect those relating to [pay, perks & accommodation issued by the Government in the past:-

A. <u>Tenure of CVOs</u>

(i) The posts of CVOs in CPEs and other organizations under central Ministries/ Departments shall be filled up on deputation basis and these will be Non-Central Staffing Scheme posts.

(ii) The tenure of appointment of CVOs in a CPSE / organizations shall be for a period of these years which is extendable by another 2 years subject to the overall combined limit prescribed for central deputation and / or being away from the cadre, as issued by Department of Personnel & Training (DoPT) from to time.

(iii) The initial tenure of 3 years as CVO in a CPSE / Organizations is extendable for a further period of 3 years on lateral transfer to another CPSE / organizations with prior concurrence of CVE Subject to the overall combined limit prescribed for central deputation and / or being away from the cadre, as issued by DoPT from time to time.

(iv) Officers already on Central deputation on a central Staffing (CSS) post would normally be appointed for a minimum residual tenure of 3 years. Applications of such officers should be forwarded with the approval of the Minister-in-charge of Ministry / Department in which the officer is posted and should reach DoPT at least a year before the expiry of tenure of the officer on the Central Staffing Scheme post.

B. Category of Officers who may apply

Following category of Officers may be applying for the post of CVOs:-

(i) Officers of the All India Services;

(ii) Officers of the Government of India subject to their satisfying the eligibility conditions as prescribed in Para 2(c) below;

(iii) Officers of Central Public Sector Enterprises (CPEs) as per their eligibility.

C. Eligibility criteria & condition

(i) The following categories of officers be considered be appointment to the posts of CVO's at joint Secretary level:

a) Only those officer (i) drawing their pay in scale of Senior Administrative Grade (SAG) in their cadres and, (ii) whose batches (of service to which the officer belongs) have been empanelled to hold the posts of joint Secretary in Government of India or **have completed 19 years of service.**

b) Officers of the All India Services (AIS) and organized Group-A equivalent posts in a CPSE and are holding posts drawing pay equivalent to SAG in their organizations.

(ii) Officers of Organised Group-A Services and officers working as Director in the Government of India may apply for Director level posts, if they have completed 14 years of Group-A service and have been granted Non-Functional Selection Grade (NFSG) in their respective cadre. For officers of the CPSE's, only those who have completed 14 years on Group-A equivalent posts in CPSE and are holding posts drawing pay equivalent to NFSG in their organizations would be considered for appointment to posts of CVOs at the level of Director.

(iii) Officers of Organised Group-A service and officers working as Deputy Secretaries in the Government of India may apply Deputy Secretary level posts, if they have completed 9 years of Group-A service. For officers of the CPSE's, only those who have completed 9 years on Group-A equivalent posts in a CPSE and are holding posts drawing pay equivalent to junior Administrative Grade (JAG) in their organization should be considered for appointment to posts for CVOs at the level of Deputy Secretary.

(iv) Officers will be considered based on their past experience including in Personnel, Administrative Vigilance, Investigation, Legal and Public Procurement matters etc.

(v) The Bench Mark for selection would be at least "Very Good" in the APAR Grading the last 5 years the integrity should be beyond doubt.

(vi) Officers whose batches (of the service to which the officer belong) have been empanelied to hold the posts of Additional Secretary on the Government or India or equivalent shall not be considered for the posts of CVOs.

(vii) The officers coming directly from the cadre should not be more than 54 years of age as on 1st April of the financial year in which the application are being considered.

(viii) However, where the extension of deputation in sought through lateral shift or from an existing posting under CSS or non-CSS post to posting as CVO, age limit may be considered to be fixed at 56 years.

(ix) Officers, against whom ay major or minor penalty was imposed in their careers as a result of disciplinary proceeding, are not eligible for applying for the posts of CVOs.

(x) The officers should have completed the requisite 'cooling off period in their parent cadre before they are recommended for appointment as CVO.

(xi) Consequent to their selection to the post of CVOs, if an officer does not join within the prescribed time, his appointment would be treated as cancelled and the officer concerned would stand debarred from all kinds of central deputation (including Central Staffing Scheme) for a period of five years from the date of issuing orders of his/her appointment. Further, the officer would also be debarred from being given cadre clearance for being deputed on foreign assignments / consultancies abroad during the period of debarment. However, before debarring an officer a notice shall be issued to him/her through the Cadre Controlling Authority (CCA).

(xii) The cadre authorities as well as the officers shall be required to indicate choice of location only (and not CPSEs / Organizations) while sending to final their applications.

(xiii) Even through officers will be asked to give their choices of stations / locations of posting for being considered, Government reserves the right to final decision in the matter.

(xiv) An officer will not be considered for appointment as CVO is an organization to which he / she. Further, the officer being considered should not have worked (in the preceding 3 years) in an organization / office in any capacity having direct official dealing with the concerned CPSE / organization in which he/she is being considered for appointment. The Cadre Controlling Authority, while forwarding the application of the officer, will specify the CPSE / organization with whom the officer had officer in the last three years.

D. Procedure for selection

(i) Officers willing to be posted as CVOs will online applications as are done for the CSS. The portal will have facilities for exercising the option to apply for (a) CSS only (b) CVO or (c) both for CVO and CSS posts.

(ii) The cadre Controlling Authorities will forward the online applications of the officers along with APAR dossiers of the officers.

(iii) Such applications would be forwarded to CVC for clearance including clearance on suitability for 'select organizations'.

(iv) Once cleared by CVC, such officer will be retained on "CVO offer list" for appointment. The offer list of CVOs will be maintained by Establishment Officer (EO) on the lines of CSS offer list, for placing it before Civil Service Board (CSB) along with the list of vacancies existing / likely to arise in near future.

(v) The Selection to the post of CVO will be undertaken following the Civil Services Board (CSB) procedure. For Deputy Secretary / Director level posts, orders for appointment will be issued by the EO with the approval of MOS(PP). For JS level posts the same procedure will be followed as is being for appointments of Joint Secretaries under the Central Staffing Scheme.

E. Procedure to be followed for extension of initial tenure of three years

(i) The proposal for (a) extension of tenure of CVOs beyond the initial of three years (b) non-extension of tenure of CVOs beyond three years shall be processed by the concerned Administrative Ministry / Department at least 6 months prior to the completion of three years tenure of the officer.

(ii) The proposal should be submitted to the DoPT along with the concurrence/ comments of CVC at least 3 months prior to completion of tenure of the officer.

(iii) In cases where the proposal is not sent within the stipulated time, an explanatory note will have to be submitted by the Administrative Ministry / Department along with the delay statement.

(iv) In all cases, the CVO will be relived after expiry of the three years tenure, if the order of Competent Authority for extension of tenure is not communicated before of tenure ends

F. Additional Charges

If due to unforeseen circumstances, the post of CVO fails vacant any replacement, then additional charge arrangements amongst the eligible officers of appropriate seniority will be as per the procedure followed for CSS posts. The concerned Ministry / Department any eligible officer (of appropriate seniority) working in the Ministry / Department of working as CVO in any other

Organization within the Ministry / Department of outside the Ministry/ Department. The concerned Ministry / Department will submit the proposal to DoPT with the concurrence of CVC and after taking approval of Minister-in-change. The approval of cabinet Secretary will be required for additional charge up-to three months. For approval beyond three, approval of ACC will be required.

G. <u>Pre-mature repatriation:</u>

(i) Every officer shall revert at the end of his / her tenure, on the exact date of completing his / her tenure. His / she will, however, have a choice to revert to his / her cadre on 31st of May, previous to the date of the end of his / her tenure in case of personal grounds such as children's education etc. necessitate such reversion. Orders for premature reversion to the respective cadres may be issued by:-

(a) The Establishment Officer, in cases where the officers want to avail off the benefit of promotion in their cadres;

(b) By the Establishment Officer with the approval of the Cabinet Secretary in cases of compassionate / personal grounds where the officer has a balance tenure of six months or less left.

However, if an officer wants to prematurely repatriate to the cadre Controlling Authority and his / her case is not covered by any of the provisions mentioned above, and the repatriation is approved by the Competent Authority as under the Central Staffing Scheme, it is stipulated that the concerned officer's name will be entertained for retention in the offer list for a 'cooling off' in his / her cadre, after the expiry of the unfinished tenure of his / her deputation on the post held by him / her at the time of his / her premature repatriation. So, the 'cooling off' period will be reckoned not from the date of his / her actual repatriation but from the date he / she would have finished his / her normal deputation term. If, however, the officer is recalled by the State Government for appointment as Secretary so Chief Minister / Governance, or for being appointed as Chief Secretary, he / she would not be subjected to the extended 'cooling off' period.

(ii) If the officer appointed as CVO has to be repatriated pre-maturely due to administrative reasons, such as inadequate performance and / or lack of integrity or such other grounds, such proposal, when referred to the CVC, will be submitted for the approval of Competent Authority by the Establishment Officer for repatriation with the condition of extend 'cooling off'. In case, the proposal is initiated by the Administrative Ministry / Department or suo-motu by DoPT, the comments of CVC would be obtained before processing further by Establishment Officer, for approval of the Competent Authority with the condition of extended 'cooling off'.

H. **Association of CVOs with departmental duties, handing sensitivity matters**

The vigilance functionaries should not be a party to processing and decision-making process or in other similar administrative transactions of such nature, which are likely to have a clear vigilance sensitivity.

I. **Permanent adsorption of CVOs in Central Public Sector Enterprises**

(i) Once an officer has worked as CVO in a particular CPSE / organization, he/she shall not be considered not be considered for the post CVO in the same organizations for another term.

(ii) An outsider officer appointed as CVO in any CPSE shall not be permanently adsorbed in the same organization on expiry or in his / her tenure as CVO in that organization.

(iii) The existing instructions relating to pay, perks and accommodation etc. issued by the Government from time to time would continue to be applicable until revised instruction are issued in this regard.

(Devesh Chaturvedi)
Joint Secretary to the Government of India

To,

1. All Ministries / Departments of the Government of India
2. All Chief Secretaries to the state Government / UTs
3. All Cadre Controlling Authorities of Organised Group-A Service
4. EO(SM) / EO(MM)

Copy to:-

1. Central Vigilance Commission, Satarkta Bhawan, GPO Complex, Block-A, INA, New Delhi-110023
2. NIC with the request to upload on DoPT's website.

Chapter III
Complaints

INTRODUCTION

A complaint is a piece of statement or information containing details about offences alleged to have been committed under the PC Act,1988, or malpractice/ misconducts under Conduct Rules governing specified categories of public servants.

3.1 SOURCE OF COMPLAINTS

3.1.1 Information about corruption, malpractice or misconduct on the part of public servants may flow to the administrative authority, the Commission, the CBI or the police authorities from any of the following or other sources:

(a) Complaints received from employees of the organisation or from the public;

(b) Departmental inspection reports and stock verification surveys;

(c) Scrutiny of annual property statements;

(d) Scrutiny of transactions reported under the Conduct Rules;

(e) Reports of irregularities in accounts detected in the routine audit of accounts; e.g. tampering with records, over-payments, misappropriation of money or materials, etc.;

(f) Audit reports on Government accounts and on the accounts of public undertakings and other corporate bodies, etc.;

(g) Reports of Parliamentary Committees like the Estimates Committee, Public Accounts Committee and the Committee on Public Undertakings;

(h) Proceedings of the Houses of Parliament;

(i) Complaints and allegations appearing in the press, etc.;

(j) Source information, if received verbally from an identifiable source, to be reduced in writing; and

(k) Intelligence gathered by agencies like CBI, ACB, Lokayuktas, etc.

3.1.2 In addition, the Chief Vigilance Officer concerned may also devise and adopt such methods, as considered appropriate and fruitful in the context of nature of work handled in the organisation, for collecting information about any malpractice and misconduct among the employees. Similarly, CVOs in all the organisations must also scrutinise the news items relevant to their organisation on a continuous basis to check whether any cases of corruption are revealed in them. Information gathered from reports, returns, news-papers, etc. will be included under the term "complaint" and will be dealt with in the same way as letters of complaints. Information received verbally will be reduced to writing and dealt with similarly. Information gathered in such a manner should be reduced to writing and registered in the Vigilance Complaints Register at a suitable stage.

3.1.3 Information about corruption and malpractices on the part of Public Servants may also be received from their subordinates or other Public Servants. While normally a Public Servant is required to address communications through the proper official channel, there is no objection to entertaining direct complaints or communications giving information about corruption or other kinds of malpractices. While genuine complainants should be afforded protection against harassment or victimisation, serious notice should be taken if a complaint is, after verification, found to be false and malicious. There should be no hesitation in taking severe Departmental action or launching criminal prosecution against such complainants.

3.2 ACTION ON AUDIT REPORTS INCLUDING CAG PARAS, NEWS ITEMS, etc.

3.2.1 The reports of internal audit, statutory audit and Comptroller & Auditor

General are important tools of preventive vigilance as they provide an independent periodic check of the efficacy of the internal controls within the organisation and create awareness about areas at risk of fraud or weak controls. The Commission has advised CVOs to look into all such reports with the objective of identifying vigilance issues. As a strategy of good governance, the Commission has been advising all Government organisations to evolve a strong internal audit mechanism.

3.2.2 The audit report of the C&AG many a time reveals not only administrative and financial irregularities but also actual cases of misconduct and corruption. The C&AG reports are generally well documented and would be useful in bringing the corrupt public servants to book. The valuable information available through the C&AG's reports in the form of documented cases of misconduct or corruption call for prompt action on the part of the disciplinary authorities. *(CVC Circular No. 3(V)/99/14 dated 16.05.2001)*

3.2.3 CVOs in all the organisations must scrutinise internal and external audit reports including audit report of the C&AG to check whether any cases of misconduct or corruption are revealed in them. In all such cases, immediate action must be initiated against the public servants concerned through the standard practice of referring vigilance cases to CVC. (CVC *Circular No. 3(V)/99/14 dated 16.05.2001)*

3.2.4 All serious cases of malpractices reported by C&AG which are perceived to have a vigilance angle would also be sent to the Commission for examination and follow up action. On receiving such references from C&AG, the Commission would take follow up action with the disciplinary authorities. In this way, it will be ensured that the cases of corruption and issues having a vigilance angle are not lost sight of and there is effective synergy between C&AG and the Commission to strengthen the system to fight corruption. *(CVC Circular No. 3(V)/99/14 dated 16.05.2001)*

3.3 COMPLAINT HANDLING POLICY OF COMMISSION

3.3.1 The complaint handling policy of the Commission has been laid down in detail in *CVC Circular No. 98/DSP/9 dated 15.12.2014*.

(i) The Commission may inquire or cause an inquiry or investigation to

be made into any complaint against any official belonging to specified category of officials wherein it is alleged that he has committed an offence under the *Prevention of Corruption Act, 1988* and an offence with which he may, under the *Code of Criminal Procedure, 1973*, be charged at the same trial. Specified category of officials and the organisation falling under the jurisdiction of the Commission are described in *Chapter I*.

(ii) However for complaints from "whistle-blowers" under the *Public Interest Disclosure and Protection of Informer Resolution 2004*, the Government of India has authorised the Commission, as the Designated Agency, to receive written complaints or disclosure on any allegation of corruption or of misuse 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 and take action in accordance with the provision of the Resolution.

3.4 ACTION TAKEN ON COMPLAINTS IN THE COMMISSION

3.4.1 ***Nature of action:*** Taking into account the facts and the nature of allegations made in the complaints, the Commission may take any of the following actions: -

(i) get enquiry or investigation done through the CBI or any other investigating agency into the allegations made in the complaint. It may get the enquiry done through the CVO of the organisation concerned or any other CVO or an officer of the Commission and call for Inquiry Report (I&R); or

(ii) send the complaint to the above-mentioned Inquiry / Investigating Agencies for Factual Report or Discreet Verification and obtain report (FR); or

(iii) send the complaint to the respective CVO for necessary action (NA); or

(iv) file or close the complaint.

3.4.2 ***Complaints forwarded for I&R:***

(a) The following criteria are generally applied while taking a decision to send a complaint for I&R: -

(i) Complaints should be against officials and organisations within the

jurisdiction of the Commission and containing allegations of corruption or misconduct or malpractice.

(ii) Complaints without specific factual details, verifiable facts and which are vague or contain sweeping or general allegations will not be acted upon.

(iii) Complaint should be addressed directly to the Commission.

(iv) The Commission does not entertain anonymous or pseudonymous complaints.

(v) Complaints sent on email should contain postal address and mobile/ telephone number, if any, of the sender. Complaints on email received without this information will be treated as anonymous or pseudonymous and filed.

(vi) As regards complaints in the matter of tenders, it is clarified that while the Commission may get the matter investigated, it would not generally interfere in the tendering process. Commission may, in appropriate cases, tender suitable advice to the authorities concerned.

(vii) As the Commission deals only with matters of corruption, redressal of grievances should not be the focus of complaints to the Commission.

(b) Before sending a complaint for investigation and report (I&R), a confirmation would be sought from the complainant for owning or disowning the complaint, as the case may be, together with copy of his identity proof. If no response to the letter seeking confirmation is received from the complainant within 15 days, a reminder is sent. If still no response is received after 15 days of reminder, the complaint may be filed treating it as a pseudonymous complaint.

(c) Once the Commission directs to investigate and submit a report on a complaint, a unique complaint number would be provided to the complainant. The complainant can use this complaint number to see the status of action on the complaint by clicking on the 'Complaint Status' displayed on the Commission's website – *www.cvc.nic.*in. However, the unique complaint number is not provided to the complainants in respect of complaints which have been filed or sent for necessary action or a factual report. The unique complaint number is distinctly separate from

the letter or file number mentioned in the correspondence.

(d) When the complaint has been registered in the Commission, further correspondence in the matter will not be entertained. However, Commission will ensure that the complaints are investigated and action taken to its logical conclusion.

(e) The CVO has to submit his report on the complaints sent by the Commission for I & R, within 12 weeks or in such time as specified while forwarding the Complaint. However, in respect of PIDPI complaints, the time limit for submission of report is one month. If due to unavoidable reasons, it is not possible to complete enquiry within the specified period, the Chief Vigilance Officer should personally look into the matter and send an interim report to the Commission indicating the progress made, the reasons for delay and the date by which the final report could be expected. If a CVO does not submit such an Interim Report, he may seek time and indicate the date by which his report would be submitted. Non-compliance of the above instructions by the CVO may be taken note of adversely while recording remarks in their APAR.

(f) After receipt of the report, the Commission may tender its advice or seek further information or clarification (FI) from the CVO. Upon receiving such further Report as called for, the Commission would tender its advice. In respect of references made by the Commission to the Ministries, Departments / Organisations for clarification and / or comments, the same should be sent to the Commission within six weeks. If, in any case, it is not possible to do so, the Chief Vigilance Officer concerned should, after satisfying himself of the reasons for delay, write to the Commission for extension of time.

3.4.3 ***Complaints forwarded for necessary action:***

(a) Complaints which do not meet the criteria laid down in para 3.4.2 will either be filed (no action taken) or will be forwarded to the CVO of the concerned Organisation / Ministry for necessary action. Complainant may find out the status of those complaints which have been referred by the Commission for necessary action from the CVO of the concerned Organisation / Ministry.

(b) The Commission expects the CVO to scrutinise the complaints sent by the Commission for necessary action and decide action on such complaints within a period of one month from the date of receipt of complaint from the Commission.

(c) Complaints referred to CVOs for necessary action must be referred back to the Commission for advice, if they have been investigated and a vigilance angle has come to notice against an officer falling under the jurisdiction of the Commission. If any such complaints are taken up for inquiry/ investigation by the CVO, the time limit of 12 weeks for completion of investigation and submission of report would apply. Otherwise such complaints require no further reference to the Commission and are to be disposed of by the Departments / Organisations themselves after taking necessary action. CVO should update the status of complaints sent for necessary action on the Commission's website.

(d) However, all the complaints made under PIDPI Resolution which have been forwarded to the CVO for necessary action must be referred back to the Commission, irrespective of Commission's normal jurisdiction, for advice if they have been investigated and a vigilance angle has come to notice.

3.4.4 ***Procedure for handling Complaints received by the Commission against Secretaries to GoI and Chief Executives / CMDs and Functional Directors of PSEs, PSBs and FIs:***

(a) Complaints against Secretaries to the Government of India, received by the authorities other than the Commission will be referred to the Cabinet Secretariat for placing before the Group of Secretaries headed by the Cabinet Secretary. Similarly, complaints against the Chief Executives and Functional Directors of Public Sector Undertakings and the CMDs & Functional Directors of Public Sector Banks and Financial Institutions received by authorities other than the Commission will be placed before a Group of Officers headed by Secretary (Coordination) in Cabinet Secretariat The procedure is laid down in *DoPT OM No. 104/100/ 2009-AVD.I dated 14.01.2010* as amended by *Corrigendum of the same No. dated 8.03.2010* and in *DPE's OM No. 15(1)/2010/DPE(GM), dated*

11.03.2010 as amended by *OM of the same No. dated 12.04.2010 and dated 11.05.2011*.

(b) In large number of cases, complaints are sent to multiple authorities and processed. Therefore, to ensure consistency, any complaint received in CVC against Secretaries to Government of India and where an investigation report is to be sought by CVC, the same should be sought through Secretary, *DoPT*.

(c) In respect of complaints referred by the Commission to the Ministries/ Departments against the Chief Executives and Functional Directors of Public Sector Undertaking and the CMDs & Functional Directors of Public Sector Banks and Financial Institutions, the same are to be dealt / inquired into by the Ministries / Departments concerned to whom the complaints have been forwarded by the Commission, and reports submitted to the Commission by the respective authorities.

3.5 ACTION ON COMPLAINTS RECEIVED BY MINISTRIES / DEPARTMENTS

Complaints received by or cases arising in Ministries / Departments/ Offices in respect of the employees under their administrative control may be dealt with by the administrative Ministry / Department concerned. The Central Vigilance Commission is, however, responsible for advising the administrative authorities in respect of all matters relating to integrity in administration. The Commission has also the power to call for reports, returns and statements from all Ministries / Departments so as to enable it to exercise a general check and supervision over vigilance and anti-corruption work in Ministries / Departments. It may also take over under its direct control any complaint or cases for investigation and further action.

The matters in which the Central Vigilance Commission should be consulted during the progress of inquiries and investigations and the reports and returns which should be submitted to Central Vigilance Commission to enable it to discharge its responsibilities have been indicated in the relevant paragraphs of the Manual.

3.5.1 ***Initial action on complaint received by Ministries / Departments:***

The following procedure may be followed: -

(a) Every Vigilance Section / Unit will maintain a vigilance complaints register in Form CVO-1, in two separate parts for category 'A' and category 'B' employees. (Refer Annexure-I to this Chapter). Category 'A' includes such employees against whom Commission's advice is required whereas category 'B' includes such employees against whom Commission's advice is not required. If a complaint involves both categories of employees, it should be shown against the higher category, i.e. Category 'A'.

(b) Every complaint, irrespective of its source, would be entered in the prescribed format in the complaints register chronologically as it is received or taken notice of. A complaint containing allegations against several officers may be treated as one complaint for the purpose of statistical returns.

(c) Entries of only those complaints in which there is an allegation of corruption or improper motive; or if the alleged facts prima facie indicate an element or potentiality of vigilance angle should be made in the register. Complaints, which relate to purely administrative matters or technical lapses, such as late attendance, disobedience, insubordination, negligence, lack of supervision or operational or technical irregularities, etc. should not be entered in the register and should be dealt with separately under "non-vigilance complaints".

(d) A complaint against an employee of a Public Sector Enterprise or an Autonomous Organisation may be received in the administrative Ministry concerned and also in the Commission. Such complaints will normally be sent for inquiry to the organisation in which the employee concerned is employed and should be entered in the vigilance complaints register of that organisation only. Such complaints should not be entered in the vigilance complaints register of the administrative Ministry in order to avoid duplication of entries and inflation of statistics, except in cases in which, for any special reason, it is proposed to deal with the matter in the Ministry itself without consulting the employing organisation.

3.5.2 ***Scrutiny of complaints:***

Each complaint will be examined by the Chief Vigilance Officer to see whether there is any substance in the allegations made in it to merit looking into. Where the allegations are vague and general and prima facie unverifiable, the Chief Vigilance Officer may decide, with the approval of the head of the Department, where considered necessary, that no action is necessary and the complaint should be dropped and filed. Where the complaint seems to give information definite enough to require a further check, a preliminary inquiry / investigation will need to be made to verify the allegations so as to decide whether, or not, the public servant concerned should be proceeded against Departmentally or in a court of law or both. If considered necessary, the Chief Vigilance Officer may have a quick look into the relevant records and examine them to satisfy himself about the need for further inquiry into the allegations made in the complaint. Detailed guidelines about the nature of investigation and the agency, which should be entrusted with it, are given in Chapter V. The information passed on by the CBI to the Ministry/ Department regarding the conduct of any of its officers should also be treated in the same way.

3.5.3 ***Disposal of Complaints:***

(a) A complaint which is registered can be dealt with as follows: (i) file it without or after investigation; or (ii) to pass it on to the CBI for investigation / appropriate action; or (iii) to pass it on to the concerned administrative authority for appropriate action on the ground that no vigilance angle is involved; or (iv) to take up for detailed investigation by the Departmental vigilance agency. An entry to that effect would be made in columns 6 and 7 of the Vigilance Complaint Register (Form CVO-1) with regard to "action taken" and "date of action" respectively. A complaint will be treated as disposed off in monthly / annual returns either on issue of charge-sheet or on final decision for closing or dropping the complaint. If a complaint is taken up for investigation by the Departmental vigilance agency or in cases in which it is decided to initiate Departmental proceedings or criminal prosecution, further progress would be watched through other

relevant registers. If there were previous cases / complaints against the same officer, it should be indicated in the remarks column, i.e. column 8.

(b) Complaints received from the Commission under the PIDPI Resolution are not required to be verified for genuineness by the CVO as the process of verification/confirmation is completed in the Commission on receipt of the complaint under the PIDPI Resolution. Therefore, these should be taken up for investigation by CVO on their receipt from the Commission. Such complaints shall, in other words, be treated as registered, immediately on receipt. The Department is required to send its report to the Commission within one month from the date of receipt of the reference.

(c) Complaints received by the Department where the Commission has called for an "I & R" shall be treated as a signed complaint (not required to be verified for genuineness) and taken up for investigation. *(CVC Circular No. 01/01/2015 dated 23.01.2015)*

3.5.4 ***Comments / Clarification sought by Commission**:*

In respect of references made by the Commission to the CBI / Ministries, etc. for clarification and / or comments, the same should be sent to the Commission within 6 weeks.

3.6 ACTION ON COMPLAINTS RECEIVED BY CPSE, PSB, PSIC, etc.

The following procedure may be followed: -

(a) Guidelines as laid down in preceding paras are, by and large, common to all and need to be followed by every CVO.

(b) 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 CEO may, if there are valid reasons, within a period of 15 days, differ from the CVO. In case of difference between CVO and CEO, the matter shall be referred to the Commission. After registering the information as a complaint in the Vigilance Complaint Register (physical or electronic form), 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 internally.

(c) In exercise of its 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. Wherever, the Commission calls for 'investigation and report' on a complaint, the reports of the investigation should normally be sent to the Commission. However, after the investigation, if it is found that the officials involved in the case do not fall under the jurisdiction of the Commission the case need not be referred to the Commission and may be dealt with by the CVO. In such cases, action taken by the CVO may be intimated to the Commission in order to monitor compliance. However, in respect of PIDPI complaints where the Commission has jurisdiction over all categories of officials, report in respect of all officials be sent to the Commission.

3.7 HANDLING OF COMPLAINTS AGAINST BOARD LEVEL OFFICIALS

(a) A complaint involving a Board-level appointee, whether figuring alone or in association with others, may be forwarded by the CVO of the PSE or PSB or FI to the CVO of the administrative Ministry. Under no circumstances should he initiate action against the Board-level appointee on his own initiative. The CVO of the administrative Ministry would initiate action on such complaints in accordance with the instructions given in para 3.5.

(b) In cases where the Commission calls for investigation and report against a Board-level appointee, the CVO of the Ministry shall initiate inquiries and furnish report in the prescribed format. (*CVC Circular No. 06/03/11 dated 14.03.2011*).

(c) 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 Commission after collecting all the relevant facts and following the prescribed procedure.

(d) If a complaint against a Board-level appointee is directly received by the PSUs / PSBs / PSICs / Societies, the CVO shall send the same to the CVO of the Ministry for consideration.

(e) In the case of PSEs and PSBs, sometimes, cognisance has been taken of the fact that there is a spate of complaints against individuals whose names are being considered / finalised by the PESB. Similarly, when an official is due for promotion, sometimes old complaints are taken cognisance of and investigations started against the official. In order to avoid unnecessary harassment to the officials, against whom frivolous complaints are received at the time of their promotion, selection or empanelment, the Commission has decided that for the purpose of giving vigilance clearance in such cases: -

(i) as a rule, complaints / cases which are more than 5 years old and against which no action has been taken till then, should not be taken into cognisance. However, the limit of 5 years will not apply to cases of fraud and other criminal offences; and

(ii) no cognisance should be taken of any complaint which is received up to 6 months prior to the initiation of selection process for senior posts.

(CVC's Office Order No. 57/8/04 dated 31.8.2004)

3.8 HANDLING OF COMPLAINTS AGAINST CVO, VO, etc.

Any complaint against the CVO should be immediately referred to the Commission and the Commission would decide the further course of action thereon. However, the complaints against the other vigilance functionaries shall be looked into by the CVO personally and further action taken as per normal procedure.

3.9 ACTION ON COMPLAINTS RECEIVED FROM MEMBERS OF PARLIAMENT AND DIGNITARIES

References received from Members of Parliament and Dignitaries are to be dealt as per procedure laid down in Central Secretariat Manual of Office Procedure brought out by the Department of Administrative Reforms and Public Grievances (Refer to Annexure-II to this Chapter). It has, however,

been noticed that a number of complaints are being received using letter heads of Members of Parliament / VIPs and with forged signatures of the Hon'ble MPs / VIPs. Hence, as a measure of abundant caution and to provide adequate protection to the officers against whom such complaints have been made, confirmation shall be sought from the dignitary regarding the making of the complaint. On receipt of confirmation, the complaint shall be dealt with on priority as per the procedure referred to above.

3.10 ACTION ON ANONYMOUS / PSEUDONYMOUS COMPLAINTS

3.10.1 The instructions / guidelines issued from time to time in the matter by *DoPT*/ CVC are as follows: -

(a) *DoPT OM No. 321/4/910-AVD.III dated 29.09.1992* states that no action is required to be taken on anonymous / pseudonymous complaints in general. However, it provided the option to inquire into such complaints which contained verifiable details.

(b) Commission's initial *Circular No.3(v)/99/2 dated 29.06.1999* prescribes that no action should be taken on anonymous / pseudonymous complaints and they should just be filed.

(c) Commission's *Circular No. 98/DSP/9 dated 31.01.2002* reiterates that under no circumstances, should any investigation be commenced on anonymous / pseudonymous complaints.

(d) Commission's *Circular No. 98/DSP/9 dated 11.10.2002* reviewing its earlier instructions of 1999, envisaged that if any Department / organisation proposes to look into the verifiable facts alleged in anonymous/ pseudonymous complaints, it may refer the matter to the Commission seeking its concurrence through the CVO or the head of the organisation. These guidelines stand withdrawn vide *CVC Circular No. 07/11/2014 dated 25.11.2014*.

(e) *DoPT OM No. 104/76/2011-AVD.I dated 18.10.2013* provides that no action is required to be taken on anonymous complaints irrespective of the nature of the allegations and such complaints need to be simply filed.

(f) Commission's *Circular No. 07/11/2014 dated 25.11.2014* withdrawing *Circular No. 98/DSP/9 dated 11.10.2002*, reiterates previous *Circular*

No.3(v)/99/2 dated 29.6.1999 and *Circular No. 98/DSP/9 dated 31.01.2002* to the effect that no action should be taken on anonymous / pseudonymous complaints and such complaints should be filed.

(g) As per DoPT complaint handling policy issued vide *OM No. 104/76/2011-AVD.I dated 18.10.2013*, complaints containing vague allegations could also be filed without verification of identity of the complainant even if identity of complainant is mentioned in the complaint.

3.10.2 The Commission has furnished clarifications through *Circular No.03/ 03/16 dated 07.03.2016* to Ministries / Departments on action to be taken on anonymous / pseudonymous complaints which were acted upon and were at different stages of process including disciplinary proceedings before issue of *CVC Circular No. 07/11/2014 dated 25.11.2014*. Accordingly, it has been clarified that: -

(a) No action should be taken on anonymous / pseudonymous complaints in line with Commission's present *Circular No. 07/11/2014 dated 25.11.2014*, and such complaints should be filed.

(b) However, where the action was initiated on anonymous / pseudonymous complaints prior to the issue of *CVC's Circular No.3(v)/99/2 dated 29.6.1999*, it can be pursued further to its logical end.

(c) Where action was initiated on anonymous / pseudonymous complaints between the period 11.10.2002 and 25.11.2014 with prior concurrence of the Commission but is pending, further action is permissible on such complaints.

(d) Material / evidence gathered during the investigation / verification of anonymous complaints when the action was prohibited on such complaints (i.e. between29.6.1999 & 11.10.2002), or where such inquiry was initiated without the approval of the Commission, can be utilised for further initiation of disciplinary proceedings on misconducts noticed in such verification/inquiry.

3.10.3 The procedure for handling anonymous / pseudonymous complaints has been modified in view of the fact that complainants who desire to protect their identity now have the protection of the *Public Interest Disclosure &*

Protection of Informer's Resolution – 2004 (PIDPIR). Relevant instructions on this have been issued vide *DoPT OM No. 104/76/2011-AVD.I dated 18.10.2013*.

3.10.4 Any complaint that does not bear the name and address of the complainant is an anonymous complaint. No action is to be taken on anonymous complaints by the Ministries / Departments / Organisations, irrespective of the nature of allegations, and such complaints should be filed. Such complaints shall not be treated as registered complaints.

3.10.5 Similarly, no action is to be taken by the Ministries / Departments/ Organisations in the case of complaints which are treated as pseudonymous. A complaint that does not bear the full particulars of the complainant or is unsigned or is not subsequently acknowledged by a complainant as having been made is a pseudonymous complaint. Pseudonymous complaints will be referred to the complainant for confirmation / genuineness verification and if no response is received from the complainant within 15 days of sending the complaint, a reminder will be sent. After waiting for 15 days of sending the reminder, if still no response is received, the said complaint may be filed as pseudonymous by the concerned Ministry / Department. The relevant Circulars on the subject are CVC's *Circular No. 07/11/2014 dated 25.11.2014*, *DoPT OM No. 104/76/2011-AVD.I dated 18.10.2013* and *Circular No.03/03/16 dated 07.03.2016*.

3.11 INSTRUCTIONS TO COMPLAINANTS FOR MAKING COMPLAINTS TO THE COMMISSION

3.11.1 ***Lodging of Complaints:*** Complaints can be lodged by addressing a letter / e-mail directly to the Commission, giving the specific facts of the matter relating to corruption. The complaints can also be lodged directly on CVC's web-site. Procedure for lodging complaints under the PIDPI Resolution by the whistle-blowers is given in detail in *Chapter IV*.

3.11.2 ***Complainants to be careful before lodging complaints:***

Complainants are important stake holders for an anti-corruption institution like Central Vigilance Commission. The Commission expects that the complaints lodged with the Commission are genuine and not

malicious, vexatious or frivolous; are based on verifiable facts and pertain to the Commission's jurisdiction. Complainants must keep in mind that the resources at the command of the Commission and other vigilance formations are precious; and so, it needs to be used prudently in unearthing serious issues of corruption that would serve the public interest. Apart from using the resources of the Commission, false and frivolous complaints create administrative delays in decision making like in the selection processes, project implementations apart from tarnishing personal reputations of the Government functionaries. Though there are provisions in law to deal with false and frivolous complainants, the same are not used ordinarily so that genuine complainants are not deterred. However, in appropriate cases of misuse of the provision with a malafide to harass or harm an innocent Government servant, necessary action could be taken against such complainants.

3.11.3 ***Guidelines:*** Keeping these aspects in perspective, the Commission desires that the complainants should follow some guidelines / instructions to make a meaningful contribution in the vigilance administration. Some of these guidelines are: -

(a) The complaint should not be anonymous or pseudonymous. If the complainant expects that the Commission should not file (take no action) their complaints on the basis of it being anonymous or pseudonymous, the complainants are expected to mention their name, correspondence address and contact details properly. It is also expected that the complainants will be quick to respond to the verification / confirmation being sought from them by the Commission.

(b) Similarly, complaints having incomplete / vague / generic observations are difficult to inquire into or investigate and are normally filed (no action taken). Therefore, it is expected from the complainants to go through the complaint handling policy of the Commission, which is available on its website www.cvc.nic.in, so that only those complaints are lodged which are specific and where adequate evidence is enclosed so that it can indicate a substantive vigilance angle prima-facie.

(c) The complaint should not be biased or based on any personal grievances, not having any vigilance angle as such.

(d) The complaint should be in relation to Ministries / Departments/ Organisations falling within the normal jurisdiction of the Commission. For example, complaints against any authority pertaining to State Governments do not fall within the normal jurisdiction of the Commission and hence the same would be filed (no action taken). The process of filing complaints and its processing within the Commission may lead to the use of the resources within the Commission in an un-productive manner.

(e) The complainants who want to make whistle blower complaint under PIDPI Resolution are also expected to familiarise themselves with the proper procedure as enumerated in the Commission's *Circular* for complaints under PIDPI Resolution. If these procedures are not followed, then the complaints made there under will be treated like a general complaint and the identity of the complainant may get revealed. This may put the complainant in a disadvantageous position.

(f) The complainants are advised to raise only those issues in their complaints to Commission which may not have been raised by anyone before any authority. At times, the complainant addresses his complaint to multiple agencies rather than addressing to the Commission only. In such situations, it becomes very difficult for the Commission to initiate action as it is felt that since the complaint is addressed to other agencies they may take appropriate action in the matter. Therefore, it is expected from the complainant to address their complaints only to the Commission, in those cases where they expect action to be taken by the Commission.

(g) It has also been the experience of the Commission that some complainants raise a large number of issues in one complaint in a way that all the issues get mixed up / intertwined with each other and it becomes difficult to discern and delineate the specific issues individually. The Commission expects that the complainants, while forwarding their complaints to the Commission, should mention about the various specific issues one by one in a coherent manner so that any person of normal prudence can understand these issues unambiguously.

(h) It has also been observed that many a time, hand written complaints received in the Commission are not legible at all and it becomes difficult to understand the contents of complaints and take appropriate action. If a hand-written complaint is forwarded to the Commission, it is

expected that it should be legible. The same applies to the enclosures sent along with the complaints. All types of complaints, even if printed or photocopied should be clearly legible.

(i) The complainants are also expected to lodge complaints regarding only those issues having vigilance angle which are not part of any litigation in any courts, tribunals, etc., i.e. the matter should not be sub-judice.

3.12 ACTION AGAINST PERSONS MAKING FALSE COMPLAINTS

3.12.1 If a complaint against a public servant is found to be malicious, vexatious or unfounded, it should be considered seriously whether action should be taken against the complainant for making a false complaint.

3.12.2 Under Section 182 of the *Indian Penal Code, 1860*, a person making false complaint can be prosecuted. Section 182 reads as follows: -

"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 not 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.

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 the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this 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 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 neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, 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 villagers or some of them. A has committed an offence under this section."

3.12.3 If the person making a false complaint is a public servant, it may be considered whether Departmental action should be taken against him as an alternative to prosecution.

3.12.4 Under section 195(1)(a) of *Code of Criminal Procedure, 1973* 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.

3.12.5 In respect of complaints received by the Commission, while dealing with the matters if it comes across any such false complaint, the Commission may advise the administrative authority concerned about appropriate action to be taken. Regarding complaints received by the Departments/ organisation, the administrative authorities may also, at their discretion, seek the advice of the Commission in respect of such cases involving public servants.

3.13 WITHDRAWAL OF COMPLAINTS

Some complainants, after confirming the complaint made by them, make a request for withdrawing the same or stopping the inquiry / investigation by the Commission / organisation. It is to be noted that once a complainant confirms the complaint and action has been initiated for inquiry/ investigation by the Commission / organisation, it is not permissible to withdraw / stop such enquiry / investigation even if the complainant withdraws his complaint. The allegations contained in the complaint have to be taken to its logical conclusion irrespective of complainant's request for withdrawal of the complaint.

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Annexure-I

PROFORMA

CVO-1

C.V.O. Register 1 of complaints to be maintained in separate columns for category A and Category B employees.

A. No.	Source of Complaint (See N.B.1)	Date of receipt	Name and designation of officers(s) complained against	Reference to file No.	Action taken (See N.B.2)	Date of action	Remarks (See N.B.3)
1	2	3	4	5	6	7	8

N.B:

1. A Complaint includes all types of information containing allegations of misconduct against public servants, including petitions from aggrieved parties, information passed on to the CVO by CVC, and CBI, press reports, findings in inspection reports, audit paras, PAC reports, etc. In the case of petitions the name and address of the complainants should be mentioned in Col. 2 and 1 and in other cases, the sources as clarified above should be mentioned.

2. Action taken will be of the following types: (a) filed without enquiry (b) Filed after enquiry (c) Passed on to other sections as having no vigilance angle(c) Taken up for investigation by Departmental vigilance agency.

3. Remarks Column should mention (a) and (b).

(a) If there were previous cases / complaints against the same officer, the facts should be mentioned in the "Remarks" column.

(b) Date of charge-sheet issued, wherever necessary.

Annexure-II

(Extracts from CENTRAL SECRETARIAT MANUAL OF OFFICE PROCEDURE, 14th Edition, May 2015)

CHAPTER-V

37. Correspondence with Members of Parliament and VIPs—

(i) Communications received from Members of Parliament and VIPs should be attended to promptly.

(ii) Where a communication is addressed to a Minister, it shall, as far as possible, be replied to by the Minister himself. In other cases, a reply should normally be signed by an officer of the rank of Secretary only.

(iii) Where, however, a communication is addressed to the head of an attached or subordinate office, Public Sector Undertakings, Financial Institutions (including nationalized banks) Division / Branch In charge in a Ministry / Department / Organisation, shall be replied to by the addressee himself. In routine matters, he may send an appropriate reply on his own. In policy matters, however, the officer should have prior consultation with higher authorities before sending a reply. It should, however, be ensured that the minimum level at which such replies are sent to Members of Parliament and VIPs is that of Under Secretary and that also in letter form only.

(iv) Normally information sought by a Member / VIP should be supplied unless it is of such a nature that it would have been denied to him even if asked for on the floor of the Houses of Parliament.

(v) In case, a reference from an ex-Member of Parliament is addressed to a Minister or Secretary, reply to such reference may be sent by a Joint Secretary level officer after obtaining approval of the Secretary of the Ministry / Department. In case the reference is addressed to a lower level officer, reply to such reference could be sent by the officer on his own in non-policy cases and after obtaining approval of the higher authorities in policy cases. However, the minimum level at which reply could be sent should be that of an Under Secretary and that too in a polite letter form only.

(vi) Each communication received from a Member of Parliament / VIP, shall be acknowledged within 15 days, followed by a reply within the next 15 days of acknowledgement sent.

(vii) Appropriate record shall be maintained in respect of communications received from Members of Parliament and VIPs and monitored by all concerned. A similar procedure may also be followed for judicial / quasi-judicial matters.

CHAPTER XI

CHECKS ON DELAYS

60. Timely Disposal of receipts and monitoring of Parliamentary Assurances, Parliament Questions, Applications under RTI Act, 2005, MP / VIP References, CAT / Court Cases, etc. –

Time Limits will be fixed for disposal of as many types of cases as possible handled in the Department through Departmental instructions. As a general rule, no official shall keep a case pending for more than 7 working days unless higher limits have been prescribed for specific types of cases through Departmental instructions. In case of a case remaining with an official for more than the stipulated time limit, an explanation for keeping it pending shall be recorded on the note portion by him. The system of exception reporting will be introduced to monitor the disposal of receipts. For timely disposal and monitoring of Parliament Assurances, Parliament Questions, Applications under RTI Act, 2005, MP/VIP References, Judicial / quasi-judicial, etc. each Department shall maintain separate records of such cases.

E-Governance methods, suiting to the requirements, should also be adopted for monitoring and tracking of Government work.

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Chapter IV
PIDPI Complaints

INTRODUCTION

Department of Personnel and Training's Resolution No. 89 dated 21st April, 2004, commonly known as Public Interest Disclosure and Protection of Informers Resolution, 2004, envisages a mechanism by which a complainant can blow a whistle by lodging a complaint and also seek protection against his victimisation for doing so. The Central Vigilance Commission is the designated agency to receive complaints from whistle blowers under the PIDPI Resolution.

4.1 PIDPI RESOLUTION

4.1.1 In 2004, in response to a Writ Petition (Civil) No. 539/2003 filed after the murder of Shri Satyendra Dubey, the Supreme Court directed that a machinery be put in place for acting on complaints from whistle-blowers till a law is enacted. Pursuant to that, the Government of India vide *Gazette Notification No. 371/12/2002-AVD- III dated 21.04.2004 r/w Corrigendum dated 29.04.2004* notified the *Public Interest Disclosure and Protection of Informers Resolution (PIDPI), 2004* which gave the powers to the Commission to act on complaints from whistle-blowers. The PIDPI Resolution has the following main provisions: -

(a) The Commission is authorised as the Designated Agency to receive written complaints or disclosure on any allegation of corruption or of misuse 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;

(b) Any public servant or a person including an NGO can make written

disclosure to the designated agency except those referred in clauses (a) to (d) of *Article 33 of Constitution*;

(c) The designated agency may call for further information or particulars from the persons making the disclosure;

(d) Anonymous complaints shall not be acted upon;

(e) The identity of the complainant will not be revealed unless the complainant himself has disclosed his identity;

(f) The Head of the Department / Organisation to keep the identity of informant secret if he comes to know about it;

(g) The designated agency may call the comments / explanation of the Head of Department / Organisation on the disclosure made;

(h) The designated agency may seek the assistance of CBI or the police authorities to complete the investigation pursuant to the complaint received;

(i) The designated agency on finding the allegation of misuse of office or corruption substantive, shall recommend appropriate action to the concerned Department or Organisation;

(j) If the informant feels he is being victimised, he may make an application before the designated agency seeking redress in the matter. The designated agency may give suitable directions to the concerned public servant or the public authority;

(k) If on an application or on the basis of information gathered, the designated agency is of the opinion that the complainant or the witness need protection, it shall issue appropriate directions to the concerned Government authorities; and

(l) 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 authorised to initiate appropriate action as per extant regulations against the person or agency making such disclosure.

4.1.2 Pursuant to the *PIDPI Resolution, 2004*, the Commission vide *Office Order No. 33/5/2004 dated 17.05.2004* issued guidelines and Public Notice on the procedure to be followed for filing whistle-blower complaints under the *PIDPI Resolution, 2004*.

4.1.3 Subsequent to the Resolution of 2004, the *DoPT* vide *Notification No. 371/4/2013-AVD.III dated 14.08.2013* partially amended the PIDPI Resolution. The amendment, inter alia, authorised the Chief Vigilance Officer of the Ministries or Departments of Government of India to act 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 Department. The amendment also authorised the Central Vigilance Commission to supervise and monitor the complaints received by the designated authority. The amendments have the following provisions: -

(a) Para 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.

(b) Para 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.

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

4.2 HANDLING OF COMPLAINTS RECEIVED UNDER PIDPI RESOLUTION

4.2.1 The Commission has the responsibility of keeping the identity of the complainant secret. Hence the Public Notice was issued by the

Commission, informing the general public that any complaint, which is to be made under this Resolution should comply with the following conditions: -

(a) The complaint should be in a closed / secured envelope.

(b) The envelope should be addressed to Secretary, Central Vigilance Commission and should be super-scribed **"Complaint under The Public Interest Disclosure"**. If the envelope is not super-scribed and closed, it will not be possible for the Commission to protect the complainant under the above Resolution and the complaint will be dealt with as per the normal complaint handling policy of the Commission. The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter.

(c) Commission will not entertain anonymous / pseudonymous complaints.

(d) The text of the complaint should be carefully drafted so as not to give any details or clue as to the complainant's identity. However, the details of the complaint should be specific and verifiable.

(e) In order to protect identity of the person, the Commission will not issue any acknowledgement and the whistle-blowers are advised not to enter into any further correspondence with the Commission in their own interest. The Commission assures that, subject to the facts of the case being verifiable it will take the necessary action, as provided under the Government of India Resolution mentioned above. If any further clarification is required, the Commission will get in touch with the complainant.

(f) The Commission can also take action against complainants making motivated/vexatious complaints under this Resolution.

4.2.2 At present the procedure being followed in the Commission for handling complaints received from whistle blowers under PIDPI Resolution is as follows: -

(a) Complaints received under PIDPI Resolution are opened in the Confidential Section and parallel files (separate file for each complaint) are created after concealing the name and address of the complainant.

(b) The complaints which have been addressed to other / several authorities are not treated as complaint under PIDPI Resolution and are forwarded by the Confidential Section to the section concerned of the Commission for taking necessary action. Anonymous and Pseudonymous complaints received under PIDPI Resolution are also sent directly to the section concerned of the Commission for taking necessary action under Complaint Handling Policy of the Commission.

(c) In respect of those complaints which are considered fit for processing under PIDPI Resolution, a letter is sent to the complainant to obtain (a) confirmation as to whether he / she has made the complaint or not and (b) a certificate that that he / she has not made similar / identical allegation of corruption / misuse of office to any other authorities to qualify as a Whistle Blower complainant. Prescribed time limit for receiving the confirmation and the certificate from the Complainant is 30 days from the date of receipt of Commission's letter by the complainant. In case of no response within the prescribed time limit, a reminder is issued, giving additional two weeks' time to the complainant for sending confirmation and the certificate to the Commission. If there is still no response from the complainant, the complaint is sent to the Branch concerned of the Commission for necessary action under Complaint Handling Policy of the Commission.

(d) In case the matters are personal in nature or it is very difficult to hide the name / identity of the complainant, a No Objection Certificate (NOC) is also obtained from the complainant. In case the complainant refuses to give NOC, the complaint is filed in the Confidential Section without any further action.

(e) After receiving necessary confirmation along with the certificate and NOC (if applicable) from the complainant, the complaint is placed before the Screening Committee for decision.

(f) The Screening Committee is headed by the Secretary and the Additional Secretaries of the Commission are members. The Screening Committee examines all complaints and recommends complaints for Investigation and Report (I & R) / Necessary Action (NA) / Filing.

(g) The complaints, where necessary action has been recommended by the Screening Committee, are referred to the concerned Branch for further action. Complaints recommended for investigation and report are sent to the concerned Branch for further action after approval of the Commission. The Commission, vide Office Order No. 4/2/09 dated 27.02.2009, has prescribed a period of one month from the date of receipt of reference of the Commission for submitting report to it.

4.3 PROTECTION TO WHISTLEBLOWERS

4.3.1 According to the PIDPI Resolution, following provisions have been made for protection of Whistle Blowers: -

(a) Clause 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 (CVC) 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.

(b) Clause 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.

(c) Clause 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 authorised to initiate appropriate action as per extant regulations against the person or agency making such disclosure.

4.3.2 The Commission, after receipt of representation(s) from Whistle Blowers about threat to their life, takes up the matter with the Ministry of Home Affairs, the Nodal Agency, to undertake the responsibility of providing security cover to the genuine Whistle Blowers. On the advice of the Ministry of Home Affairs, State Governments / UTs have appointed Nodal Officers and details of such officers nominated by State Governments are furnished to the Commission from time to time by the Ministry of Home Affairs.

4.3.3 As regards protection against victimisation or harassment within the Department, the Commission forwards such complaints of Whistle Blowers to the CVO of the concerned organisation for appropriate action.

4.4 SUPERVISION AND MONITORING OF DESIGNATED AUTHORITY

Keeping in view the Clause 11A of *Resolution dated 14.08.2013* (amendments to its earlier PIDPI Resolution) which says that the Commission shall supervise and monitor the complaints received by the designated authority, a report on PIDPI complaints including cases of alleged harassment / victimisation received by the Chief Vigilance Officers of the Ministries or Departments of the Government of India are required to be sent to the Commission by the CVOs of the Ministries/ Departments.

4.5 WHISTLE BLOWERS ACT

The Whistle Blowers Protection Act, 2011 (originally introduced as PUBLIC INTEREST DISCLOSURE AND PROTECTION OF PERSONS MAKING THE DISCLOSURE BILL 2010) has been notified on 12.05.2014. However, the provisions of the Act have not come into force as some amendments to the Act were proposed and a bill to this effect is pending before the Parliament.

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Chapter V
Preliminary Enquiry

INTRODUCTION

Preliminary Enquiry is conducted for ascertaining and verifying the facts alleged in a complaint. It generally involves collection of documents and other evidence, obtaining statement of witnesses, their verification and scrutiny to bring out the truth. In common parlance, it is also referred to as Vigilance Investigation. Investigation into the criminal offence is conducted by CBI or a Police Officer under the *Code of Criminal Procedure, 1973*. The Preliminary Enquiry is thus different from an investigation into criminal offence, as powers under the *Code of Criminal Procedure, 1973* are not vested in the Enquiry Officer.

5.1 PRELIMINARY ENQUIRY / INVESTIGATION – AGENCIES FOR CONDUCTING PRELIMINARY ENQUIRY / INVESTIGATION

5.1.1 ***CBI / ACB of UTs:*** As soon as a decision has been taken by the competent authority to investigate the allegations contained in a complaint, it will be necessary to decide whether the allegations should be enquired into Departmentally or whether a police investigation is necessary. As a general rule, investigation into allegations of the types given below should be entrusted to the Central Bureau of Investigation or to the Anti-Corruption Branch in the Union Territories:

(a) Allegations involving offences punishable under law which the Delhi Special Police Establishment are authorised to investigate; such as offences involving bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, etc.;

(b) Possession of assets disproportionate to known sources of income;

(c) Cases in which the allegations are such that their truth cannot be ascertained without making inquiries from non-official persons; or those involving examination of non-Government records, books of accounts, etc.;

(d) Other cases of a complicated nature requiring expert police investigation.

5.1.2 ***Local police:*** In cases in which the allegations are such as to indicate prima facie that a criminal offence has been committed but the offence is one which the Delhi Special Police Establishment are not authorised to investigate, the case should be handed over to the local police authorities.

5.1.3 ***Departmental agency:*** In cases where allegations relate to a misconduct other than an offence, or to a departmental irregularity or negligence, and the alleged facts are capable of verification or inquiry within the Department / Office, the inquiry / investigation should be made departmentally.

5.1.4 ***Consultation with CBI:*** In certain cases, the allegations may be of both types. In such cases, it should be decided in consultation with the Central Bureau of Investigation as to which of the allegations should be dealt with departmentally and which should be investigated by the Central Bureau of Investigation.

5.1.5 ***Allegations difficult to segregate:*** If there is any difficulty in separating the allegations for separate investigation in the manner suggested above, the better course would be to entrust the whole case to the Central Bureau of Investigation.

5.2 PARALLEL INVESTIGATION BY DEPARTMENTAL VIGILANCE AGENCY AND THE CBI

Once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and a parallel investigation by the Departmental agencies should be avoided. Further action by the Department in such matters should be taken on completion of investigation by the CBI on the basis of their report. However, if the Departmental

proceedings have already been initiated on the basis of investigations conducted by the Departmental agencies, the administrative authorities may proceed with such Departmental proceedings. In such cases, it would not be necessary for the CBI to investigate those allegation, which are the subject matter of the Departmental inquiry proceedings, unless the CBI apprehends criminal misconduct on the part of the official(s) concerned. Further, the guidelines issued by *DoPT vide OM No. 11012/6/2007-Estt (A-III) dated 21.07.2016* and *CVC Circular No. 99/VGL/87 dated 30.09.2005* may also be kept in view.

Instances have come to the notice of the Commission that while CBI is investigating allegations made in a complaint against a public servant on issues involving criminal misconduct, the concerned organisation does not take up investigation into other misconducts contained either in the same complaint or in other complaints which are of departmental nature, pending investigation by CBI. It is to be clarified that the concerned organisation shall enquire / investigate on issues which are not being investigated by CBI and take the matter to logical conclusion as per laid down procedure. Further, if CBI is investigating criminal misconduct by a bank employee or a borrower relating to some loan / fraud / forging of accounts, etc., the bank must not wait for CBI to complete its investigation to initiate action for recovery.

5.3 REFERRING MATTER FOR INVESTIGATION

(a) The Commission has issued instructions on referring matters of alleged Commission of criminal offences and frauds in CPSEs to CBI vide its *Circular No. 03/03/15 dated 19.03.2015*. As a general rule, investigations into criminal matters involving officials of the CPSEs should be entrusted to the Anti-Corruption Branch of CBI with the approval of the CMD. If involvement of officials of the CPSE is prima-facie not evident, the matter should be referred to the Economic Offences Wing of CBI. Criminal matters of the above nature would be referred to the local police / State police only in matters wherein CBI has refused / rejected to take up investigations or where transaction value is less than Rs. 25 lakh.

(b) In cases of Public Sector Banks, the following monetary limits would be

followed while referring financial fraud to the CBI and the local / State Police: -

(i) Fraud involving amount exceeding Rs. 10,000 and below Rs.1.00 lakh

To Local Police Station: where staff involvement is prima facie evident

(ii) Fraud involving amount exceeding Rs. 1.00 lakh and below Rs.3 crores

To Sate CID / Economic Offences Wing of State Police

(iii) Cases of Rs. 3 crores and above, upto Rs. 15 crores.

To the Anti-Corruption Branch (ACB) of CBI-where staff involvement is prima facie evident.

To the Economic Offence Wing (EOW) of CBI-where staff involvement is not prima facie evident.

(iv) All cases above Rs. 15 crores-to the BS & FC unit of CBI.

(*please refer to Chapter VIII also)*

(c) Further, CVOs of the CPSEs or PSBs are required to interact frequently and exchange information with CBI on quarterly basis. In their monthly reports, CVO should report regularly to the Commission the details of cases / matters noticed in the CPSEs or PSBs and the action taken status thereon.

5.4 COMPETENCY TO REFER MATTER TO CBI

All Chief Vigilance Officers, subject to the administrative approval of the Chief Executive concerned, have complete discretion to refer the above types of cases to the CBI. In case of difference of opinion between the CVO and the Chief Executive, matter needs to be referred to the Commission.

5.5 PRELIMINARY ENQUIRY BY DEPARTMENTAL AGENCIES

5.5.1 After it has been decided that the allegations contained in the complaint should be enquired departmentally, the vigilance officer should proceed to make a preliminary enquiry with a view to determining whether there is, prima facie, some substance in the allegations. The preliminary enquiry may be made in several ways depending upon the nature of allegations and the judgment of the enquiry officer, e.g.: -

(a) If the allegations contain information which can be verified from any document or file or any other Departmental records, the enquiry / vigilance officer should, without loss of time, secure such records, etc., for personal inspection. If any of the papers examined is found to contain evidence supporting the allegations, such papers should be taken over by him for retention by the vigilance Department to guard against the possibility of available evidence being tampered with. If the papers in question are required for any current action, it may be considered whether the purpose would not be served by substituting authenticated copies of the relevant portions of the records; the original being retained by the enquiry officer in his custody. If that is not considered feasible for any reason, 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 case, where the alleged facts are likely to be known to other employees of the Department, the enquiry officer should interrogate them orally or ask for their written statements. The enquiry officer should make a full record of the oral interrogation which the person interrogated should be asked to sign in token of confirmation. Wherever necessary, any important facts disclosed during oral interrogation or in written statements should be verified by documentary or collateral evidence to make sure of the facts;

(c) In case, it is found necessary to make inquiries from the employees of any other Government Department or office, the investigating officer may seek the assistance of the Department concerned, through its CVO, for providing facility for interrogating the person(s) concerned and / or taking their written statements;

(d) In certain types of complaints, particularly those pertaining to works, the enquiry officer may find it helpful to make a site inspection, or a surprise check, to verify the facts on the spot and also to take suitable action to ensure that the evidence found there, in support of the allegations, is not disturbed;

(e) If during the course of enquiry, it is found that it will be necessary to

collect evidence from non-official persons or to examine any papers or documents in their possession, investigation in the matter may be entrusted to the Central Bureau of Investigation.

In cases where the inquiry is being conducted on a reference made by the Commission under Section 8 of the *CVC Act, 2003*, the assistance of the Commission could also be sought. Under Section 11 of the *CVC Act, 2003*, while conducting any inquiry for the cases under its jurisdiction, the Commission have all the powers of a civil court trying a suit under the *Code of Civil Procedure, 1908* and in particular, in respect of following matters namely, (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; (e) issuing Commissions for the examination of witnesses or other documents; and (f) any other matter which may be prescribed.

(f) If the public servant complained against is in-charge of stores, equipment, etc., and there is a possibility of his tampering with the records pertaining to such stores or equipment, the enquiry / vigilance officer may consider whether the public servant concerned should not be transferred immediately to other duties. If considered necessary, he may seek the assistance of the head of the Department or office in doing so.

(g) While, normally, the preliminary enquiry will be made by the vigilance officer himself, he may suggest to the administrative authority to entrust the inquiry to any other officer considered suitable in the particular circumstances of the case; e.g. it may be advisable to entrust the conduct of the preliminary enquiry to a technical officer if it is likely to involve examination and appreciation of technical data or documents. Similarly, the administrative authority may entrust the inquiry to an officer of sufficiently higher status if the public servant complained against is of a senior rank.

(h) While conducting the inquiry, it is recommended that the Enquiry Officer may take the help of the Scientific Tools and Forensic Tools to aid the enquiry/investigation, whenever required. It is described in *Chapter XI*.

(i) During the course of preliminary enquiry by the Vigilance Department, the public servant concerned may be given an opportunity to say what he may have to say about the allegations against him to find out if he is in a position to give any satisfactory information or explanation. In the absence of such an explanation, the public servant concerned is likely to be proceeded against unjustifiably. It is, therefore, desirable that the enquiry officer tries to obtain the suspect officers' version of "facts" and why an inquiry should not be held. There is no question of making available to him any document at this stage. Such an opportunity, however, may not be given in cases in which a decision to institute Departmental proceedings is to be taken without any loss of time; e.g. in a case in which the public servant concerned is due to retire or to superannuate soon and it is necessary to issue a charge-sheet to him before his retirement; the facts are not in dispute; officer is not traceable; the officer is deliberately delaying his reports, etc.

5.5.2 On completion of the inquiry process, the officer conducting the inquiry would prepare a self-contained report including the material available to controvert the defence. The inquiry report should contain the explanation of the suspect officer. The fact that an opportunity was given to the officer concerned should be mentioned in the inquiry report even if the officer did not avail of it. The enquiry officer should also take all connected documents in his possession as this becomes very helpful if Departmental action has to be taken against the officer.

5.5.3 The enquiry officer will submit his report to the CVO, who will decide whether on the basis of the facts disclosed in the report of the preliminary enquiry, the complaint should be dropped or whether regular Departmental proceedings should be recommended against the public servant concerned or the administration of a warning or caution would serve the purpose. He will forward the inquiry report to the disciplinary authority, along with his own recommendations, for appropriate decision.

5.5.4 The CVO, while submitting his report / comments to the disciplinary authority in the organisation, may also endorse an advance copy of the inquiry report to the Commission if the officials involved are under the

jurisdiction of the Commission, so that it may keep a watch over deliberate attempts to shield the corrupt public servants either by delaying the submission of inquiry report to the Commission or by diluting the gravity of the offences / misconducts. The inquiry report of the CVO should broadly conform to the instruction issued vide Commission's *Circular No. 21/8/09 dated 06.08.2009*.

5.5.5 The decision, whether Departmental action is to be taken against a public servant should be taken by the authority competent to award appropriate penalty specified in the *C.C.S. (C.C.A) Rules, 1965* or relevant Discipline and Appeal Rules. In cases, where during the course of the preliminary inquiry or before a decision is taken on the report of the preliminary inquiry, a public servant is transferred to another post, the decision should be taken by the disciplinary authority of the latter post. The Commission's advice would, however, be obtained in respect of officer falling under category 'A' before the competent authority takes a final decision in the matter. In respect of officer falling under category 'B', if there persists an unresolved difference of opinion between the Chief Vigilance Officer and the disciplinary authority concerned about the course of action to be taken, the matter would be reported by the CVO to the Chief Executive for appropriate direction.

5.5.6 As soon as it is decided by the disciplinary authority to institute disciplinary proceedings against the public servant(s) concerned, the complaint should be regarded as having taken the shape of a vigilance case.

5.6 ENQUIRY AGAINST OFFICERS ON DEPUTATION

Enquiry against an officer on deputation should be carried out by the CVO of the organisation where the misconduct has occurred. However, when enquiry has started against an officer, who is on deputation, by parent Department, it will be appropriate if parent Department sends an intimation to that effect to the borrowing organisation. In such cases, the result of final enquiry should also be sent to the borrowing organisation. Further, where enquiry was initiated by the parent organisation in respect of an officer for a misconduct in the parent organisation and the officer

proceeds on deputation, the CVO of the parent organisation shall take the matter to a logical conclusion and not transfer to CVO of the organisation in which the suspect officer is on deputation.

5.7 ENQUIRY AGAINST OFFICERS UNDER SUSPENSION / CLOSE TO RETIREMENT

Enquiry into the allegations against officers under suspension, or those about to retire should be given the highest priority. It should also be ensured that there is sufficient time for processing the enquiry reports involving retiring and retired employees so that the matter does not get time barred for action (if warranted) under the Pension Rules or Regulations. Sending cases of retiring officials close to their retirement/ superannuation to the Commission should be avoided. Such cases may be sent to the Commission preferably three months in advance in the prescribed format duly approved by the competent authority.

5.8 RESIGNATION BY OFFICERS PENDING INVESTIGATION / INQUIRY

(a) If an officer against whom enquiry or investigation is pending, irrespective of whether he has been placed under suspension or not, submits his request for resignation, such request should not normally be accepted or taken. Where, however, the acceptance of resignation is considered necessary in the public interest, because the alleged offence(s) do not involve moral turpitude; or the evidence against the officer is not strong enough to justify the assumption that if the proceedings are continued, the officer would be removed or dismissed from service; or the proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation, the resignation may be accepted with the prior approval of the head of the Department in the case of holders of Groups 'C' and 'D' posts and that of the Minister-in-charge in respect of Group 'A' and 'B' posts. Prior concurrence of the Commission should also be obtained, in respect of the officers falling under its jurisdiction, before submitting the case to the Minister-in-charge, if the Commission had advised initiation of Departmental action against the officer concerned or such action had been initiated on the advice of the Commission.

(b) In case of Group 'B' officers serving in the Indian Audit and Accounts Department, such a resignation may be accepted with the prior approval of the Comptroller and Auditor General. Approval of the Commission should also be obtained if the Commission has tendered advice in respect of that officer.

5.9 GRANT OF IMMUNITY / PARDON TO APPROVERS

(a) If during an enquiry or investigation, the SPE or the CVO finds that a public servant, against whom the Commission's advice is necessary, has made a full and true disclosure implicating himself and other public servants or members of the public and that such statement is free from malice, the IG/ SPE or the CVO, as the case may be, may send his recommendation to the Commission regarding grant of immunity / leniency to such person from the Departmental action or punishment. The Commission will consider the recommendation in consultation with the administrative Ministry/ Department / Organisation concerned and advise that authority regarding the course of further action to be taken.

(b) In cases investigated by the CBI, if it is decided to grant immunity to such a person from Departmental action, the Commission will advise the SPE whether to produce him at the appropriate time before a Magistrate of competent jurisdiction for the grant of pardon u/s 337 of *Cr.P.C.*; or to withdraw prosecution at the appropriate stage u/s 494 of *Cr.P.C*.

(c) In cases pertaining to the officials against whom Commission's advice is not necessary, the recommendation for grant of immunity / leniency from Departmental action and for the grant of pardon u/s 337 of *Cr.P.C*. or for the withdrawal of prosecution u/s 494 of *Cr.P.C* may be made to the Chief Vigilance Officer, who will consider and advise the disciplinary authority regarding the course of further action to be taken. If there is a difference of opinion between the SPE and the administrative authorities or between the CVO and the disciplinary authority, the SPE or the CVO, as the case may be, will refer the matter to the Commission for advice.

(d) The intention behind the procedure prescribed above is not to grant immunity / leniency in all kinds of cases but only in cases of serious

nature and that too on merits. It is not open to the public servant involved in a case to request for such immunity / leniency. It is for the disciplinary authority to decide in consultation with the Commission or the CVO, as the case may be, in which case such an immunity / leniency may be considered and granted in the interest of satisfactory prosecution of the disciplinary case.

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Chapter VI

Central Bureau of Investigation

6.1 **EVOLUTION:** Special Police Establishment [SPE] was set up in 1941 to investigate bribery and corruption in transactions of the War and Supply Department of India during World War II with its Headquarters in Lahore. *Delhi Special Police Establishment Act* was brought into force in 1946 which enlarged its scope to cover all Departments of the Government of India. Its jurisdiction extended to the Union Territories, and could be further extended to the States with the consent of the State Governments involved. Central Bureau of Investigation (CBI) was set up through a Home Ministry *Resolution No. 4/31/61-T dated 1.4.1963 & SPE* became one of the constituents of CBI. The Central Government has been empowered under Section 5 to extend to any area (including Railway area) in a State not being a Union Territory, the powers and jurisdiction of members of the DSPE for the investigation of any offence or classes of offences specified in a notification under section 3 of the DSPE Act subject to the consent of the Government of the concerned State, under section 6 of the Act.

6.2 **JURISDICTION OF CBI vis-à-vis STATE POLICE*:*** The Special Police Establishment of CBI (Ant-Corruption Division) enjoys with the respective State Police Force concurrent powers of investigation and prosecution under the *Code of Criminal Procedure, 1973*. However, to avoid duplication of effort, an administrative arrangement has been arrived at with the State Governments according to which:

(a) Cases, which substantially and essentially concern Central Government employees or the affairs of the Central Government, even though involving State Government employees, are to be investigated by the SPE. The State

Police is, however, kept informed of such cases and will render necessary assistance to the SPE during investigation;

(b) Cases, which substantially and essentially involve State Government employees or relate to the affairs of a State Government, even though involving certain Central Government employees, are investigated by the State Police. The SPE is informed of such cases and it extends assistance to the State Police during investigation, if necessary. When the investigation made by the State Police authorities in such cases involves a Central Government employee, the requests for sanction for prosecution of the competent authority of the Central Government will be routed through the SPE. (Refer to Chapter 17 of CBI Crime Manual)

6.3 SUPERINTENDENCE AND ADMINISTRATION OF CBI

(i) The genesis of superintendence of CBI has been laid down in the landmark decision of the Supreme Court delivered on 18th December, 1997 in *Vineet Narain v/s UOI* case. In this judgement, directions were issued that the CVC shall be responsible for the efficient functioning of the CBI. For giving effect to this direction, *CVC Act, 2003* was enacted. Section 4 of *Delhi Special Police Establishment Act, 1946* was also amended w.e.f. 01.09.2003, which reads as follows:

"4. Superintendence and administration of Special Police Establishment.

(1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 *(49 of 1988), shall vest in the Commission.*

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf."

Similar provisions are also there in Clause (a) and (b) of sub-section (1) of Section 8 of CVC Act, 2003.

"Sec. 8(1): The functions and powers of the Commission shall be to-

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 *or an offence with which a public servant specified in sub-section (2) may, under the* Code of Criminal Procedure, 1973*, be charged at the same trial;*

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946*:*

Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;"

(ii) The functions and powers of Commission also include review of progress of investigations conducted by the DSPE into offences alleged to have been committed under *Prevention of Corruption Act, 1988* or the public servant may, under the *Code of Criminal Procedure, 1973*, be charged at the same trial. [Section 8 (1) (e) of CVC Act, 2003]

(iii) The Commission may cause an inquiry or investigation to be made by the CBI, on a reference made by the Central Government or into any complaint against officials falling under its jurisdiction, alleging Commission of offence under PC Act,1988 and an offence with which a public servant may under *Code of Criminal Procedure, 1973* be charged at the same trial.

The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission. [Sec 17 *CVC Act, 2003*]

(iii) The Commission shall review the progress of applications pending with the competent authorities for sanction of prosecution under PC Act, 1988. (Section 8(1) (f) of *CVC Act, 2003*)

6.4 APPOINTMENTS IN CBI

6.4.1 Director of the CBI is appointed by the Central Government on the recommendations of a committee comprising of Prime Minister—Chairperson, Leader of Opposition in Lok Sabha—Member and Chief Justice of India or a judge of the Supreme Court nominated by him—Member.

[This is as per the existing provisions in section 4A of the *Delhi Special Police Establishment Act, 1946* which has been brought by an amendment through the *Lokpal and Lokayuktas Act, 2013*. Prior to this, as per section 4A of the *Delhi Special Police Establishment Act, 1946* (which stands amended now), the above-said committee comprised of Central Vigilance Commissioner—Chairperson, Vigilance Commissioner—Member, Secretary, MHA—Member, and Secretary (Coordination and Public Grievances) in the Cabinet Secretariat—Member.]

6.4.2 The Central Government appoints the Director of Prosecution in CBI on the recommendation of Central Vigilance Commission. (Section 4BA of *Delhi Special Police Establishment Act, 1946*)

6.4.3 The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of: -

(a) the Central Vigilance Commissioner—Chairperson;

(b) Vigilance Commissioners—Members;

(c) Secretary to the Government of India in charge of the Ministry of Home—Member;

(d) Secretary to the Government of India in charge of the Department of Personnel—Member:

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government.

The proposals for extension of tenure may be put up to the Committee in due time. Ex post facto approvals should be avoided.

6.5 ENQUIRY/ INVESTIGATION BY CBI

6.5.1 Enquiry or investigation into Complaints alleging corruption and related malpractices is taken up by CBI either after verification of information collected from its own sources [SIR-Source Information Report], or obtained from the members of the public or from public servants, or on the basis of complaints referred to them by the Commission, administrative authorities or the courts.

6.5.2 Once a decision has been taken to refer the case to Special Police Establishment [SPE / CBI], unless there are special reasons to the contrary, the complaints, which are to be investigated should be handed over to them at the earliest stage. Apart from other considerations, it is desirable to do so to safeguard against the possibility of the suspect public servant tampering with or destroying incriminating evidence against him. The SPE, however, should not take up inquiries or register a case where minor procedural flaws are involved. They should also take a note of an individual officer's positive achievement so that a single procedural error does not cancel out a lifetime of good work. However, law does not bar investigation of such cases.

6.5.3 In cases, in which the information available appears to be authentic and definite so as to make out a clear cognizable offence or to have enough substance in it, the C.B.I. may register a regular case (R.C.) straightaway under Section 154 of the *Code of Criminal Procedure,1973*.

6.5.4 If the available information appears to require verification before formal investigation is taken up, a Preliminary Enquiry (P.E.) may be made in the first instance. As soon as the preliminary enquiry reveals that there is substance in the allegations, a regular case may be registered.

However, detailed instructions laid down by the Constitution Bench of Hon'ble Supreme Court in 2013 in the case of *Lalita Kumari Vs. Govt. of UP & Ors.*, listing out certain category of cases in which Preliminary Enquiry might be carried out, may be kept in view. Operative part of the judgment is reproduced below:

"In view of the aforesaid discussion, we hold:

(i) *Registration of FIR is mandatory under Section 154 of the Code, if the information discloses Commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

(ii) *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

(iii) *If the inquiry discloses the Commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

(iv) *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

(v) *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

(vi) *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

(a) Matrimonial disputes / family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay / laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary / Station Diary / Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

6.5.5 In cases, in which the allegations are such as to indicate, prima facie, that a criminal offence has been committed but Special Police Establishment are not empowered to investigate that offence, the case should be handed over to the local police authorities.

6.5.6 The SPE will normally take into confidence the head of the Department or office concerned, before taking up any enquiry (PE or RC), or as soon after starting the enquiry as may be possible according to the circumstances of each case. This will also apply in case a search is required to be made of the premises of an officer. *(Refer para 17.13- Chapter-17 of Crime Manual of CBI)*

6.5.7 In cases involving defence personnel, irrespective of their status and rank, the local administrative authority concerned will be taken into confidence as early as possible. In cases where the Delhi Special Police Establishment Division have already consulted the Army / Air / Naval Headquarters and the latter have agreed to enquiries or investigations being conducted, the local administrative authority concerned will be informed by the Army/ Air / Naval Headquarters direct. The SPE will, however, take the local administrative authority into confidence before starting the enquiry.

6.5.8 ***Forwarding copies of FIR / PE Registration Report to administrative authorities:*** As soon as the Preliminary enquiry (P.E.) or a Regular case (R.C.) is registered, a copy of the P.E. Registration report or the F.I.R. will

be sent by the SPE confidentially to the head of the Department and/or the administrative Ministry concerned and the Chief Vigilance Officer of the organisation concerned.

A copy of the P.E. / F.I.R. will also be endorsed to A.G.'s Branch (P.S.I.) (AFHQ) in respect of Commissioned officers and Organisation of the A.G.'s Branch (AFHQ) in respect of civilian gazetted officers. The copy of the P.E.R.R. or the FIR endorsed to the Ministry of Defence in such case will indicate that a copy has been sent to the A.G.'s Branch.

In the case of officers of Public Sector Enterprises or Public Sector Banks, etc., a copy of the P.E.R.R. or the F.I.R. will be sent to the head of the Organisation concerned.

6.5.9 In respect of the PC Act cases, in terms of clause (a) and (b) of sub section (1) of Section 8 of *CVC Act, 2003*, a copy of the P.E.R.R. or the F.I.R. will also be sent to the Secretary, Central Vigilance Commission immediately, and in any case not later than fifteen days of registration.

6.5.10 In respect of reference made by the Commission under clause (c) or (d) of sub section (1) of Section 8 of *CVC Act, 2003*, the CBI shall cause an inquiry or investigation as directed by the Commission.

6.5.11 ***Expeditious completion of enquiry/investigation:*** The HoZ / DIG should keep a close watch on the progress of enquiries and investigations to ensure that the processing of the enquiries and the investigations is done as expeditiously as possible.

In cases referred by the CVC for investigation and report, the CBI shall furnish reports on such complaints within a period of six months. If due to unavoidable reasons, it is not possible to complete investigation within the specified period, the HoZ / DIG should send an interim report to the Commission indicating the progress of investigation, the reasons for delay and the date by which the final report could be expected.

6.5.12 Investigation into the allegations against officers under suspension or about to retire should be given the highest priority so that the period of suspension is kept to the barest minimum and there is sufficient time for processing the investigation report involving retiring employees. The

fact of impending retirement and / or suspension of the officer should be prominently marked on the case to attract attention of all concerned.

6.5.13 In respect of references made by the Central Vigilance Commission to the CBI for clarification and / or comments, the same should be sent to the Commission within six weeks. If, in any case, it is not possible to do so, the HoZ / DIG concerned should, after satisfying himself of the reasons for delay, write to the Commission for extension of time.

6.5.14 ***Final Disposal of PE:*** The Preliminary Enquiries will result either in (i) Registration of Regular Case or (ii) Recommendation for Departmental action, or (iii) Reference to the Department through a Self-Contained note to take 'Such action' as deemed fit by them, or (iv) Closure for want of proof.

In all cases where copy of P.E.R.R. is forwarded to the Commission, CBI shall inform the Commission about its Final Disposal within fifteen days of the disposal.

6.5.15 ***Final Disposal of RC:*** On completion of investigation, CBI will file the Final Report under Section 173 of *Code of Criminal Procedure, 1973* in the competent Court of Law. The Regular Case will result either in launching of criminal prosecution against accused public servant(s) or in Closure of the criminal case. In either circumstance, CBI may also recommend (a) Regular Departmental Action for Major or Minor penalty against Suspect Public Servants (SPS) or (b) such action as deemed fit by the competent administrative authority or no action against them to be taken. In cases where Previous Sanction is necessary for Prosecution of Public Servant or where Regular Departmental Action has been recommended, CBI will forward its Report to the competent authority.

In all cases where copy of FIR is forwarded to the Commission, CBI shall inform it of the final outcome of the RC and also forward a copy of the Closure Report, wherever filed.

6.6 ACTION ON CBI REPORT

6.6.1 ***Cases where Action by Department Recommended:***

In cases in which sufficient evidence is not available for launching criminal prosecution, C.B.I. may come to the conclusion that:

(a) The allegations are serious enough to warrant regular Departmental action being taken against the public servant concerned. The CBI Report in such cases will be accompanied by (i) draft article(s) of charge(s) in the prescribed form, (ii) a statement of imputations in support of each charge, and (iii) lists of documents and witnesses relied upon to prove the charges and imputation; or

(b) Sufficient proof is not available to justify prosecution or regular Departmental action but there is a reasonable suspicion about the honesty or integrity of the public servant concerned. The CBI Report in such cases will seek to bring to the notice of the disciplinary authority, the nature of irregularity or negligence for such action as may be considered feasible or appropriate.

6.6.1.1 Reports of both types mentioned in paragraph 6.6.1(a) and 6.6.1(b), involving category 'A' officers (officers who are under jurisdiction of Commission), will be forwarded by C.B.I. to the Commission, which after considering the administrative authority's report, will advise the disciplinary authority concerned regarding the course of further action to be taken. The reports forwarded to the Central Vigilance Commission will be accompanied by the verbatim statement(s) of the suspected officer(s) recorded by the investigating officer and the opinion of the Law Officer (s) of the C.B.I., wherever obtained. C.B.I. report may also mention the date when the First Information Report was lodged or Preliminary Enquiry was registered, as this will be helpful for a proper assessment of the documentary evidence produced during the enquiry. A copy of the report will also be sent by the CBI to the administrative authority, through the CVO concerned, for submission of their comments to the Commission.

6.6.1.2 Investigation reports pertaining to category 'B' employees (officials who do not fall under Commission's jurisdiction) will be forwarded by the CBI to the disciplinary authority concerned, through its CVO. In such cases, no further fact-finding enquiry should normally be necessary. However, if there is any matter on which the disciplinary authority may desire to have additional information or clarification, the CBI may be requested to furnish the required information / clarification. If necessary, the CBI may conduct a further investigation.

6.6.1.3 In cases in which preliminary enquiry / investigation reveals that there is no substance in the allegations, the CBI may decide to close the case. Such cases pertaining to category "A" officers will be reported to the Central Vigilance Commission as also to the authorities to whom copies of the F.I.Rs / P.Es registration reports were sent. In other cases, the decision to close a case will be communicated by the CBI to the administrative authorities concerned.

6.6.2 ***Cases where prosecution recommended:***

On completion of investigation, if the C.B.I. comes to a conclusion that sufficient evidence is available for launching a criminal prosecution, they shall forward its Report to the Central Vigilance Commission if Previous sanction for prosecution is required under *Prevention of Corruption Act, 1988* to be issued in the name of the President and also to the authority competent to sanction prosecution, through the CVO concerned. In other cases, the report will be forwarded to the authority competent to sanction prosecution, through the CVO concerned. The report, which may be accompanied by the draft sanction order, should give the rank and designation of the authority competent to dismiss the delinquent officer from service and the law or rules under which that authority is competent to do so.*(CVC Circular No. 005/VGL/11 dated 12.05.2005, 28.03.2012 and 25.05.2015*

6.7 PREVIOUS SANCTION FOR CRIMINAL PROSECUTION

6.7.1 ***Requirement of sanction:*** Section 19 of the *Prevention of Corruption Act, 1988* lays down that no court shall take cognizance of an offence punishable under Sections 7,10,11,13 and 15 of *Prevention of Corruption Act, 1988* alleged to have been committed by a Public Servant, except with the previous sanction of the authority competent to remove him from his office.

It may be noted that the requirement of previous sanction under section 19 of *Prevention of Corruption Act, 1988* is necessary only in respect of serving public servants and no such sanction is required in respect of retired public servants under the PC Act.

6.7.2 ***Guidelines for the Sanctioning authorities****:* On receipt of a request for grant of Previous sanction necessary for prosecution under section 19 of *Prevention of Corruption Act, 1988* from the CBI or other investigating agencies and while processing such requests, all the Ministries/ Departments / Organisations shall take decisions expeditiously and in accordance with the guidelines issued by the Commission vide *CVC Circular No. 005/VGL/11 dated 12.05.2005,28.03.2012* and *25.05.2015*.

The Hon'ble Supreme Court has in its judgements in various cases, particularly in the cases of *Vineet Narain & others Vs Union of India, 1997*, and CBI Vs Ashok Kumar Agarwal, 2013, laid down detailed guidelines to be observed while considering request for grant of sanction for prosecution. Commission vide Circular No. 005/VGL/11 dated 12.05.2005, 28.03.2012 and 25.05.2015 has summarised the Supreme Court's guidelines which are to be observed by the administrative authorities while considering request for grant of sanction for prosecution.

As per the directions of the Apex Court, a time limit of 3 months has been fixed for grant or refusal of sanction for prosecution and 4 months where the opinion of Attorney General or of any other law officer in AG's office is sought.

The Commission in terms of its powers and functions under Section 8(1)(f) of the CVC Act,2003 directs all administrative authorities to scrupulously follow the guidelines while considering and deciding requests for Sanction for prosecution.

6.7.3 The guidelines as summarised in the *CVC Circular No. 005/VGL/11 dated 12.05.2005* are hereunder: -

(i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima facie constitute the offence.

(ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed

by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation / enquiry by calling for the record / report of his Department.

(iii) When an offence alleged to have been committed under the P.C. Act has been investigated by the SPE, the report of the IO is invariably scrutinised by the DIG, IG and thereafter by DG (CBI). Then the matter is further scrutinised by the concerned Law Officers in CBI.

(iv) When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinised so many times at such high levels, there will hardly be any case where the Government would find it difficult to disagree with the request for sanction.

(v) The accused person has the liberty to file representations when the matter is pending investigation. When the representations so made have already been considered and the comments of the IO are already before the Competent Authority, there can be no need for any further comments of IO on any further representation.

(vi) A representation subsequent to the completion of investigation is not known to law, as the law is well established that the material to be considered by the Competent Authority is the material which was collected during investigation and was placed before the Competent Authority.

(vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

6.7.4 The guidelines issued vide *Commission's Circular No. 005/VGL/11 dated 25.05.2015* are hereunder: -

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material / document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts / materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

6.7.5 ***Commission's advice in cases where Previous Sanction for Prosecution is sought:*** Para 2 (vii) of *GoI Resolution dated 11.02.1964* and the guidelines issued by *DoPT vide OM No. 134/2/85-AVD-I dated 15/17.10.1986 and OM No. 399/33/2006-AVD-III dated 06.11.2006*, provide that the Commission tenders advice in cases of prosecution for Presidential appointees. In cases in which the CBI or other Investigating Agency considers that prosecution should be launched and the previous sanction for such prosecution is required under any law to be issued in the name of the President, the Commission will tender advice, after considering the comments received from the concerned administrative authority, as to whether or not prosecution should be sanctioned. In terms of Commission's instructions issued vide *letter No. 98/VGL/7 dated 12.03.1998*, the time limit for

furnishing comments by the administrative authorities on the CBI report is 30 days. Further, in terms of the *DoPT OM No. 399/33/2006-AVD-III dated 06.11.2006* & *20.12.2006* and *No. 118/2/2011 dated 31.01.2012* the administrative authorities are required to formulate their tentative views on the report of the CBI within three weeks. In case the comments of Ministry / Department / Undertaking are not received within three weeks in respect of cases where sanction for prosecution has been recommended, the Commission would tender its advice suo motu. Comments received after three weeks but before 31 days, the Commission would treat it as a reconsideration request. Any comments received after expiry of 31 days shall not be entertained by the Commission and would be referred to DoPT for final decision. *(CVC Circular No. 33/09/10 dated 28.09.2010)*.

6.7.6 ***Request for Reconsideration of Commission's advice:*** In terms of para 2. (ii)& (iii) of *DoPT OM No. 399/33/2006-AVD-III dated 06.11.2006&20.12.2006*, the Ministry / Department shall formulate their view on the advice of the Commission within seven days and may refer the case to the Commission for reconsideration of its advice only in exceptional cases when new facts have come to light. The Commission would render appropriate advice to the competent authority within a fortnight. In case, the Commission 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 Commission, the case will be referred to the Department of Personnel and Training for a final decision as per *DoPT OM No. 134/2/85-AVD-I dated 15/17.10.1986*. The *DoPT* shall decide the case within three weeks and convey its decision to the concerned Ministry / Department.

6.7.7 ***Resolving difference of opinion between the CBI or other Investigating Agency and the Competent authority:*** In terms of the *DoPT* guidelines and *GoI Resolution* as referred to in para 6.7.5 above, in cases where an authority other than the President is competent to sanction prosecution under section 19 of *Prevention of Corruption Act, 1988* and the authority does not propose to accord the sanction sought for by the CBI, or the other investigating agency, as the case may be, the case will be reported to the

Commission and the authority will take further action after considering the Commission's advice.

In cases recommended by the CBI for Departmental action against such employees as do not come within the normal advisory jurisdiction of the Commission, the Commission will continue to resolve the difference of opinion, if any, between the CBI and the competent administrative authorities as to the course of action to be taken.

6.7.8 ***Reference to DoPT:***

(i) In cases falling under the categories mentioned in para 6.7.5 and 6.7.6 above and where the administrative authorities do not propose to accept the advice of the Commission for grant of sanction for prosecution, the cases should be referred to DoPT for a final decision.

(ii) 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 *DoPT OM No. 134/2/85-AVD-I dated 15/17.10.1986*. Where Sanction is granted in the case of one of the Government servants but Sanction is refused in the case of the other or others, the CBI will refer the case to the DoPT for resolution of the conflict, if any, and for a final decision.

(DoPT OM No. 134/2/85-AVD-I dated 15/17.10.1986)

6.8 GRANT OF IMMUNITY / PARDON TO APPROVERS

If during an investigation, the SPE finds that a public servant, against whom the Commission's advice is necessary, has made a full and true disclosure implicating himself and other public servants or members of the public and that such statement is free from malice, the IG / SPE may send its recommendation to the Commission regarding grant of immunity/ leniency to such person from the Departmental action or punishment. The Commission will consider the recommendation in consultation with the administrative Ministry / Department / Organisation concerned and advise that authority regarding the course of further action to be taken.

6.9 ASSISTANCE AND COOPERATION TO CBI IN ENQUIRY / INVESTIGATION

(a) The administrative authorities and the individual public servants should extend full cooperation to the CBI during the course of investigation.

The Directive on "Investigation of cases by the SPE Division of the CBI and facilities and cooperation to be extended by Administrative Authorities" were issued vide MHA OM NO. 371/13/66-AVD.II dated 25.06.1969 and *DoPT* OM No. 371/5/73-AVD.III dated 05.09.1975. A revised version of the Directive, incorporating all amendments upto then, was issued vide *DoPT* OM No. 371/13/87-AVDII dated 11th September, 1988. They were issued in pursuance of recommendations of the Committee on Prevention of Corruption that the separate instructions issued by different Departments be reviewed by the Central Vigilance Commission and a single consolidated Directive be issued in their place by the MHA.

(For more detail, *Chapter 17 of CBI Crime Manual* may be referred.)

(b) Apart from other instructions, this Directive lays down the provisions relating to assistance to CBI from technical organisations including CTEO of CVC; assistance in scrutinising of records, - classified, other than the classified, documents in possession of audit officials; assistance in laying of trap ; assistance in examination of witnesses; procedure for arrest/ handing over of defence personnel, etc. to civil police; facilities and cooperation to be extended to the SPE by the administrative authorities; assistance for transport and communication; transfer and suspension of officers on the request of CBI; action when bribe is offered to the public servants, etc.

[For details on Suspension on CBI's recommendation, refer to para 7.40.3 (*Chapter VII*)]

6.10 CLOSE LIAISON BETWEEN CBI AND THE ADMINISTRATIVE AUTHORITIES

(a) The need for close liaison and co-operation between the Chief Vigilance Officer / Vigilance Officer of the Ministry / Department / Office and the

S.P.E., during the course of an inquiry and investigation and the processing of individual cases, hardly needs to be emphasised. Both, the S.P.E. and the Chief Vigilance Officers, receive information about the activities of the officer from diverse sources. As far as possible, the information could be cross-checked at appropriate intervals to keep officers of both the wings fully apprised with the latest developments.

(b) At New Delhi, the Chief Vigilance Officers or Vigilance Officers of the Ministries / Departments / Offices should keep themselves in touch with Joint Directors / Head of Zone concerned of the S.P.E. In other places, the Superintendent of Police / Head of S.P.E. Branch will frequently call on the Head of the Department / Office, etc., and discuss personally matters of mutual interest, particularly those arising from enquiries and investigations. Periodical meetings between the Chief Vigilance Officers and the Officers of the Central Bureau of Investigation will help to a great extent in avoiding unnecessary paper work and in eliminating unnecessary delay at various stages of processing cases. Such meetings could be held once a quarter or more frequently.

6.11 ASSISTANCE IN PREPARATION & MAINTENANCE OF AGREED LIST

The Agreed List of officers of Gazetted status against whose honesty or integrity there are complaints, doubts or suspicion is prepared in consultation with the CBI by the Departments / Organisations to keep a secret watch on them. The guiding principles for preparation and maintenance of Agreed List is derived from paras 7 to 9 of Ministry of Home Affairs' OM No. 130/1/66-AVD dated 05.5.1966. The manner of consultation with the CBI and the mode of keeping watch on the officers have been spelt out in para 5.6 and 5.8 of Chapter-5 of Crime Manual.

6.12 ASSISTANCE IN PREPARATION & MAINTENANCE OF LIST OF OFFICERS OF DOUBTFUL INTEGRITY (ODI)

The list of Public Servants of Gazetted status of Doubtful Integrity is maintained by the Departments / Organisations as per the scheme laid down in *Ministry of Home Affairs OM No. 105/1/66-AVD-Idated 28.10.1969*. The CBI assists in addition or deletion of names in the ODI List as per the procedure laid down in *para 5.7 of Chapter-5 of Crime Manual*.

6.13 JOINT SURPRISE CHECK

CBI may conduct Joint Surprise checks at places and points of corruption in cooperation with the Vigilance Unit of the Department concerned, after thoroughly acquainting themselves with the rules, regulations, procedure and practice as well as the modus operandi adopted by the corrupt public servants. Wherever adequate and credible information exists about some corruption racket, it would be a better idea to verify such information and register a Regular case rather than resorting to surprise check. Ref. *para 5.9 of Chapter-5 of Crime Manual.*

6.14 LIST OF UNDESIRABLE CONTACT MEN

CBI prepares and maintains the lists of undesirable contact men who are suspected of resorting to corrupt or irregular practices in their dealings with official agencies. More detail may be seen in *para 5.10 of Chapter-5 of Crime Manual*.

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Chapter VII

Disciplinary Proceedings and Suspension

INTRODUCTION

After considering the report of the Preliminary Enquiry or Investigation, the Disciplinary Authority may come to the conclusion that certain Departmental rules or instructions have been violated and a formal Departmental action needs to be initiated against the delinquent public servant. The moment a decision is taken by the Disciplinary Authority to frame charges against the delinquent public servant and a Memorandum of charges is served on him, the process that follows is called Disciplinary Proceedings. It ends after the final orders of punishment or exoneration are passed.

7.1 DISCIPLINARY RULES

7.1.1 Public servants have got a special relationship with their employer, viz. the Government, which is in some aspects different from the relationship under the ordinary law between the master and servant. The Government has framed different sets of rules governing the recruitment and the conditions of service of Government servants as per the provisions of Article 309 and 312 of the *Constitution*. Further, the Government has made rules under the above provisions for regulating the conduct and discipline of Government servants.

7.1.2 The procedures for Departmental disciplinary proceedings have been laid down in different sets of rules applicable to Government servants. The rules having the widest applicability are the *Central Civil Services (Classification, Control & Appeal) Rules, 1965, often referred to as CCS (CCA) Rules, 1965* which apply to all civil Government servants including the civilian Government servants in the Defence services, except:

(a) Railway servants, as defined in Rule 102 of the *Indian Railway Establishment Code (Vol. I)*.

(b) Members of the All India Services;

(c) Persons in casual employment;

(d) Persons subject to discharge from service on less than one month's notice;

(e) Persons for whom special provisions is made, in respect of matter covered by these rules by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President in regard to matters covered by such special provisions; and

The President may, however, by order exclude any class of Government servants from the operation of all or any of the provisions of these Rules.

7.1.3 A Government servant governed by the Classification, Control and Appeal Rules who is transferred temporarily to the Railways will continue to be governed by the Classification, Control & Appeal Rules.

7.1.4 Among the excepted categories, the Railway servants are governed by the *Railways (Discipline & Appeal) Rules, 1968* *and* the members of *All India Services by the All India Services (Discipline & Appeal) Rules, 1969*.

7.1.5 The Defence services personnel (other than Civilian Government servants in the Defence Services) who are paid out of the Defence Services Estimates and are subject to the *Army Act, 1950, the Navy Act, 1957* and the *Air Force Act, 1950*, are governed by the disciplinary provisions contained in the respective Acts and the Rules made thereunder.

7.1.6 The employees of Public Sector Undertakings, Statutory Corporations, etc., are governed by the Discipline and Appeal rules framed by the respective Public Sector Undertaking or Corporation in exercise of the powers conferred upon it by the Statute or by the Articles of Memorandum constituting it. In certain cases, they are laid down in the contract of service. The Central Vigilance Commission on the basis of the report of a Working Group, including representatives of important Public Sector Undertakings, had also approved the draft of a set of Model Conduct,

Discipline and Appeal Rules for Public Sector Undertakings. The *Model Rules* were circulated by the Bureau of Public Enterprises to all the Public Undertakings for their adoption.

7.1.7 The disciplinary rules applicable to Government servant have been framed in conformity with the provisions of Article 311 of the *Constitution*. The basic provisions in them are, therefore, similar in character. As most of the Government servants in civil employment are governed by the *CCS (CCA) Rules, 1965*, the procedures discussed in the Manual are those prescribed in those rules. While a reference to variations of an important nature in other rules has been made in appropriate places, the Chief Vigilance Officer or the Vigilance Officer should take care to ensure that the provisions of the respective rules are observed where they vary from those prescribed in the *CCS (CCA) Rules, 1965*. This is particularly necessary in the case of Public Sector Enterprises, and Statutory Corporations, as their employees are governed by the rules framed by the respective organisations. The Departmental proceedings against any employee shall be taken strictly as per the disciplinary rules notified by the organisation / applicable to the organisation.

7.2 PENALTIES

7.2.1 Under Rule 11 of the *CCS (CCA) Rules, 1965* the competent authority may, for good and sufficient reasons, impose on a Government servant any of the following penalties: -

Minor penalties —

(1) Censure;

(2) Withholding of promotion;

(3) Recovery from his pay of the whole or part of any pecuniary loss caused by the Government servant to the Government by negligence or breach of orders;

(3A) Reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension;

(4) Withholding of increments of pay;

Major penalties —

(5) save as provided for in Clause (3A), Reduction to a lower stage in the time-scale of pay, for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(6) Reduction to a lower time-scale of pay grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with directions; as to whether or not, on promotion on the expiry of the said specified period-

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time-scale of pay, grade, post or service.

(7) Compulsory retirement;

(8) Removal from service which shall not be a disqualification for future employment under the Government;

(9) 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 source 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 clause (8) or clause (9) shall be imposed:

Provided further that in any exceptional case and for special reasons recorded in writing any other penalty may be imposed.

7.2.2 ***Model Rules:*** All Central Public Enterprises were advised vide *BPE's letter No. 2/(121)/73–BPE (GM-1), dated 26.04.1974* to frame their own

Conduct, Discipline and Appeal Rules based on the Model Rules issued by Department of Public Enterprise. The CDA rules of some PSEs have not been amended and in some organisations, there is no distinction between Minor and Major penalties. All CPSEs should amend their CDA rules as per Model Rules issued by the Department of Public Enterprise and update the same from time to time in line with instructions issued by the Government.

7.2.3 ***Warning****:* There may be occasions, when a superior officer may find it necessary to criticize / comment adversely the work of an officer working under him (e.g. point out negligence, carelessness, lack of thoroughness, delay, etc.) or he may call for an explanation for some act or omission and taking all factors into consideration, it may be felt that, while the matter is not serious enough to justify the imposition of the formal punishment of censure, it calls for some formal action, such as, the communication of a written or oral warning, admonition, reprimand or caution. Administration of a warning in such circumstances does not amount to a formal punishment. It is an administrative device in the hands of the superior authority for conveying its criticism and disapproval of the work or conduct of the person warned and for making it known to him that he has done something blame-worthy, with a view to enabling him to make an effort to remedy the defect and generally with a view to toning up efficiency and maintaining discipline.

Where a Departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalized, he should be awarded any of the statutory penalties mentioned in rules 11 of the *CCS (CCA) Rules, 1965*. In such a situation, a recordable warning should not be issued as it would for all practical purposes amount to a "Censure" which is a formal punishment to be imposed by a competent Disciplinary Authority after following the procedure prescribed in the relevant disciplinary rules.

A warning or reprimand, etc., may also be administered when as a result of a preliminary investigation or inquiry, if the competent Disciplinary Authority comes to the conclusion that the conduct of the official is somewhat blameworthy, though not to the extent calling for the imposition of a formal penalty.

(MHA OM No. 39/21/56-Ests (A) dated 13.12.1956 regarding distinction between 'Warning' and 'Censure'.)

(DoPT OM No. 22011/2/78-Estt (A) dated 16.02.1979 Regarding Effect of Warning, Censure, etc. ' on promotion and the "sealed cover" Procedure)

7.2.4 ***Displeasure of Government:*** On occasions, an officer may be found to have committed an irregularity or lapse of a character which though not considered serious enough to warrant action being taken for the imposition of a formal penalty or even for the administration of a warning but the irregularity or lapse is such that it may be considered necessary to convey to the officer concerned the sense of displeasure over it. However, the practice of communicating Government displeasure to a retired public servant should be avoided.

7.2.5 ***Reduction of Pension:*** A Government servant ceases to be subject to the disciplinary rules after retirement. Pension and Gratuity once sanctioned cannot be reduced, withheld or withdrawn except in accordance with the provisions of *Rule 9 of the CCS (Pension) Rules, 1972* or the *Rule 6 of the AIS (Death-cum-Retirement Benefit) Rules, 1958 in the case of officer of All India Services.*

(Right of President to withhold or withdraw pension–Rule 9, CCS (pension) Rules 1972 amended by notification No. 7/14/ 90-P&PW(F) dated 23.08. 1991 and No. 38/189/88-P&PW(F) dated 04.02.1992)

7.3 AUTHORITY COMPETENT TO INITIATE PROCEEDINGS

The Disciplinary Authority specified under *Rule 7 of the All India Services (Discipline and Appeal) Rules, 1969* or *Rule 12 of CCS (CCA) Rules, 1965* may institute proceedings against a member of the All India Services or the Central Civil services respectively as per procedure prescribed therein.

7.4 AUTHORITIES COMPETENT TO INITIATE DISCIPLINARY PROCEEDINGS AGAINST OFFICERS LENT OR BORROWED BY ONE DEPARTMENT TO ANOTHER OR STATE GOVERNMENT, etc.

For the powers of the authorities to deal with the misconduct committed by an employee borrowed from another organisation and the procedure

to be followed in such cases, refer to Chapter 23 of *'Handbook for Inquiry officers and Disciplinary Authorities' issued by DoPT*.

7.5 INSTITUTION OF FORMAL PROCEEDINGS

7.5.1 Once a decision has been taken, after a preliminary inquiry, that a prima facie case exists and that formal disciplinary proceedings should be instituted against a delinquent Government servant under the *CCS (CCA) Rules, 1965*, the Disciplinary Authority will need to decide whether proceedings should be taken under Rule 14 (i.e. for imposing a major penalty) or under Rule 16 (i.e. for imposing a minor penalty).

7.5.2 Certain types of vigilance cases in which it may be desirable to start proceedings for imposing a major penalty are given below as illustrative guidelines: -

(i) Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a court of law, e.g.

(a) Possession of disproportionate assets;

(b) Obtaining or attempting to obtain illegal gratification;

(c) Misappropriation of Government property, money or stores;

(d) Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

(ii) Falsification of Government records;

(iii) Gross irregularity or negligence in the discharge of official duties with a dishonest motive.

(iv) Misuse of official position or power for personal gain;

(v) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the official Secrets Act;

(vi) False claims on the Government like T.A claims, reimbursement claims, etc.

7.5.3 In cases in which the institution of proceedings is advised by the Central Vigilance Commission, the Commission will also advise, keeping in view

the gravity of the allegations, whether proceedings should be initiated for the imposition of a major penalty or a minor penalty.

7.6 COMMON PROCEEDINGS

7.6.1 Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all the accused Government servants may make an order directing that disciplinary action against all of them be taken in a common proceeding. If the authorities competent to impose the penalty of dismissal from service on such Government servants are different, an order for common proceedings may be made by the highest of such authorities with the consent of the others. Such an order should specify: -

(i) the authority which may function as the Disciplinary Authority for the purpose of such common proceedings;

(ii) the penalties which such Disciplinary Authority will be competent to impose;

(iii) whether the proceedings shall be initiated as for a major penalty or for a minor penalty.

(Rule 18 of *CCS (CCA) Rules, 1965)*

A standard Form of the order is given in Chapter 32 of *'Handbook for Inquiry officers and Disciplinary Authorities' issued by DoPT*.

7.6.2 If the alleged misconduct has been committed jointly by person who has retired from Government service and a person who is still in service, common proceedings against them cannot be started. Proceedings against the retired person will be held under *Rule 9 of the CCS (Pension) Rules, 1972* and against the persons in service under *Rule 14 of the CCS (CCA) Rules, 1965*. The oral inquiry against both of them could, however, be entrusted to the same Inquiring Authority.

7.6.3 A joint proceeding against the accused and accuser is an irregularity which should be avoided.

7.6.4 It may also happen that two or more Government servants governed by

different disciplinary rules may be concerned in a case. In such cases, proceedings will have to be instituted separately in accordance with the rules applicable to each of the Government servant concerned.

7.7 SPECIAL PROCEDURE IN CERTAIN CASES

7.7.1 *Rule 19 of CCS (CCA) Rules, 1965*, provides that notwithstanding anything contained in Rules 14 to 18: -

(i) where any penalty is proposed to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the *CCS (CCA) Rules, 1965*, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in the *CCS (CCA) Rules, 1965*, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit.

(iv) The Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any Order is made in a case under Clause (i). The Union Public Service Commission will be consulted where such consultation is necessary before any order is made in any case under this rule.

7.7.2 In a case where a public servant has been convicted by a Court of Law of any penal offence but dealt with under Section 3 or 4 of the *Probation of Offenders Act, 1958*, he shall not suffer any disqualification because of the provisions of Section 12 of the Probation of Offenders Act, 1958 which reads as follows: -

"Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification if any, attaching to a conviction of an offence under such law:

Provided that nothing in the section shall apply to a person who, after

his release under section 4, is subsequently sentenced for the original offence".

The question whether action under *Rule 19(i) of the CCS (CCA) Rules* can be taken against a Government servant, who though convicted by a Court of Law but is not to suffer any disqualification because he has been dealt with under Section 3 or 4 of the Probation of Offenders Act, has been considered in consultation with the Ministry of Law and on the basis of the Andhra Pradesh High Court's Judgement in A. Satyanarayana Murthy Vs. Zonal Manager, L.I.C. (AIR 69 A.P. 371). It has been decided that the order under Rule 19(i) of *CCS (CCA) Rules, 1965* should be passed on the ground of conduct which led to the conviction of the Government servant and not because of the conviction, in view of Section 12 of the Probation of the Offenders Act, 1958.

7.7.3 In cases where an inquiry is to be dispensed with in the interest of the security of the State under Rule 19(iii), the order of the President should be obtained in such cases. For this purpose, it will be sufficient if the orders of the Minister-in-charge are obtained as the Supreme Court, in *Shamsher Singh's Case (AIR 1974 SC 2192)* has over ruled their earlier decision in the case of Sardari Lal Vs. Union of India and others (Civil Appeal No.576 of 1969), under which each such case has to be submitted to the President, for orders. The Supreme Court has now clearly pointed out that the Rules of Business and the allocation among the Ministers of the said business, indicate that the rules of business made under Article 77 (3) in the case of President and Article 166 (3) in the case of Governor of the State is the decision of the President or the Governor respectively. In the said judgment it has been held that neither the President nor the Governor has to exercise the executive functions personally. It would thus, be clear that the requirement of proviso (c) to Article 311 (2) of the *Constitution* and *Rule 19 (iii) of the CCS (CCA) Rules, 1965* would be satisfied if the matter is submitted to the Minister- in-charge under the relevant rules of business and it receives the approval of the Minister.

7.8 PROSECUTION vis–à–vis DEPARTMENTAL PROCEEDINGS

7.8.1 Prosecution should be the general rule in all cases which are found fit to be

sent to Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In other cases, involving less serious offences or involving malpractices of a Departmental nature, Departmental action only should be taken and the question of prosecution should generally not arise. Whenever there is a difference of opinion between the Department and the CBI whether prosecution should be resorted to in the first instance, the matter should be referred to the CVC for advice.

(MHA O.M No. 39/8/64-Ests (A) dated 04.09.1964 regarding prosecution or Departmental action according to seriousness of the offence in the cases of bribery, corruption or other criminal misconduct)

7.8.2 There is no legal bar to the initiation of Departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency / misconduct in criminal prosecution and Departmental proceedings, as well as the standards of proof required in both cases are not identical. In criminal cases, the proof required for conviction has to be beyond reasonable doubt, whereas in Departmental proceedings, proof based on preponderance of probability is sufficient for holding the charges as proved. What might, however, affect the outcome of the subsequent proceedings may be the contradictions which the witnesses may make in their depositions in the said proceedings. It is, therefore, necessary that all relevant matters be considered in each individual case and a conscious view taken whether disciplinary proceedings may not be started alongside criminal prosecution. In a case where the charges are serious and the evidence strong enough, simultaneous Departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the public servant and a final decision can be taken about his further continuance in employment.

(CVC Circular No. 1K/DSP/3 dated 03.02.1981 regarding starting of Departmental proceedings along with prosecution)

7.8.3 The Supreme Court in the case of *Delhi Cloth and General Mills Ltd. vs. Kushal Bhan (AIR 1960 SC 806)* observed that it cannot be said that "principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee". They however, added that "if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced".

7.8.4 Should the decision of the Court lead to acquittal of the accused, it may be necessary to review the decision taken earlier as a result of the Departmental proceedings. A consideration to be taken into account in such review would be whether the legal proceedings and the Departmental proceedings covered precisely the same grounds. If they did not, and the legal proceedings related only to one or two charges i.e. not the entire field of Departmental proceedings, it may not be found necessary to alter the decisions already taken. Moreover, while the Court may have held that the facts of the case did not amount to an offence under the law, it may well be that the Competent Authority in the Departmental proceedings might hold that the public servant was guilty of a Departmental misdemeanour and he had not behaved in the manner in which a person of his position was expected to behave.

7.8.5 The most opportune time for considering the question whether Departmental action should be initiated simultaneously is when the prosecution is sanctioned. At that stage, all the documents are available and taking photostat copies or producing the originals before the Inquiring Authority is not a problem. Once the originals have been admitted by the Charged Officer, the photostat copies duly attested by the Inquiring Officer and / or the Charged Officer could be utilised for further processing the Departmental proceedings, as the originals would be required in Court proceedings.

(DoPT OM No. 11012/6/2007-EsttA, dated 01.08.2007 regarding simultaneous action of prosecution in a court and initiation of Departmental proceedings)

7.9 PROCEDURE FOR OBTAINING COMMISSION's FIRST STAGE ADVICE (*Refer para* 1.6 of *Chapter I* also)

7.9.1 CVOs of the Ministries / Departments and all other organisations are required to seek the Commission's first stage advice after obtaining the tentative views of Disciplinary Authorities (DAs) on the reports of the preliminary inquiry / investigation of all complaints involving allegation(s) of corruption or improper motive; or if the alleged facts prima-facie indicate an element of vigilance angle which are registered in the Vigilance Complaint Register involving Category-A officers (i.e., All India Service Officers serving in connection with the affairs of the Union, Group-A officers of the Central Govt. and the levels and categories of officers of CPSUs, Public Sector Banks, Insurance companies, Financial Institutions, Societies and other local authorities as notified by the Government u / s 8(2) of *CVC Act, 2003)* before the competent authority takes a final decision in the matter.

7.9.2 After enquiry / investigation by the CVO in complaints / matters relating to Category-A officers, as well as composite cases wherein, Category-B officers are also involved, if the allegations, on inquiry do not indicate prima facie vigilance angle / corruption and relate to purely non-vigilance / administrative lapses, the case would be decided by the CVO and the DA concerned of the public servant at the level of Ministry/ Department / Organisation concerned. The CVO's reports recommending administrative / disciplinary action in non-vigilance / administrative lapses would, therefore, be submitted to the DA and if the DA agrees to the recommendations of the CVO, the case would be finalised at the level of the Ministry / Department / Organisation concerned. In all such matters, no reference would be required to be made to the Commission seeking its first stage advice. However, in case there is a difference of opinion between the CVO and the DA as to the presence of vigilance angle, the matter as also enquiry reports on complaints having vigilance angle though unsubstantiated would be referred to the Commission for first stage advice.

7.9.3 The above consultation procedure / dispensation would not apply to the complaints received by the Commission and referred for investigation

and report to the CVO of the Ministry / Department / Organisation and CVOs would continue to furnish their investigation reports in all matters involving Category-A officers for seeking first stage advice of the Commission irrespective of the outcome of inquiry / investigation.

Similarly, all written complaints / disclosures (Whistle Blower complaints) received under the *Public Interest Disclosure and Protection of Informers' Resolution (PIDPI), 2004 or the Whistle Blowers Protection Act, 2011* would also continue to be handled / processed by CVOs in terms of the existing prescribed procedures or as amended from time to time.

(CVC Circular No. 07/04/15 dated 27.04.2015 - Consultation with CVC for First stage advice- revised procedure)

7.9.4 ***Information to be submitted for obtaining Commission's first stage advice:*** While seeking first stage advice of the Commission, following material should be submitted: -

(a) A self-contained note clearly bringing out the facts and the specific point(s) on which Commission's advice is sought. The self- contained note is meant to supplement and not to substitute the sending of files and records.

(b) The bio-data of the officer concerned;

(c) Other documents required to be sent for first stage advice: -

(i) A copy of the complaint/source information received and investigated by the CVOs;

(ii) A copy of the investigation report containing allegations in brief, the results of investigation on each allegation;

(iii) Version of the concerned public servant on the established allegations, the reasons why the version of the concerned public servant is not tenable/ acceptable, and the conclusions of the investigating officer;

(iv) Statements of witnesses and copies of the documents seized by the investigating officer;

(v) Comments of the Chief Vigilance Officer and the Disciplinary Authority on the investigation report {including investigation done by the CBI and their recommendation};

(vi) A copy of the draft charge sheet against the SPS along with the list of documents and witnesses through which it is intended to prove the charges;

(vii) Assurance memo.

(CVC Circular No. 14/3/ 06 dated 13.03.2006: Reference to the Commission for its advice-Documents including the draft charge sheet to be enclosed for seeking first stage advice and the documents to be enclosed for seeking second stage advice)

(CVC Circular No. 21/8/09 dated 06.08. 2009: References to the Commission for first stage advice- procedure regarding)

7.9.5 ***Commission's advice in Composite cases**:* If a Government servant falls within the Commission's jurisdiction, the advice of Commission 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 a composite case and falls within the Commission's jurisdiction.

7.9.6 A composite case should be processed as 'one' and action against every individual employee should be taken only on Commission's advice, even if there is only one official who comes within Commission's jurisdiction.

(CVC Office order No. 2/1/04 dated 08.01.2004: Obtaining Commission's advice in composite cases)

7.9.7 ***Making available a copy of CVC's first stage advice to the concerned employee:*** A copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge - sheet served upon him, for his information.

(CVC Circular No. 99/VGL/66 dated 28.09.2000: Consultation with the CVC - Making available a copy of the CVC's advice to the concerned employee)

7.9.8 ***Difference of opinion between the CVO and the Chief Executive and between the Vigilance Officers and the Head of Office:*** With regard to

category 'A' cases, i.e. the cases which are required to be referred to the Commission for advice, all relevant files, including the file on which the case has been examined, are required to be sent to the Commission. In such cases, the Commission would, thus, be in a position to examine all facts and viewpoints of all the authorities concerned who might have commented on various aspects of the case. However, with regard to category 'B' cases, which are not required to be sent to the Commission for advice, if there is a difference of opinion between the concerned vigilance officer and the Head of Office, the matter may be reported by the Head of Office to the concerned Chief Vigilance Officer for obtaining orders of the Chief Executive in order to resolve the difference of opinion between the vigilance officer and the Head of office. In case of difference of opinion between the CVO and the CMD in respect of corruption case, involving below Board level appointees in public sector undertaking, it is the responsibility of the CMD to bring the case to the Board.

7.10 INITIATION OF DISCIPLINARY PROCEEDINGS FOR MINOR PENALTIES

7.10.1 In cases in which the Disciplinary Authority decides that proceedings should be initiated for imposing a minor penalty, the Disciplinary Authority will inform the Government servant concerned in writing of the proposal to take action against him by a Memorandum accompanied by a statement of imputations of misconduct or misbehaviour for which action is proposed to be taken, giving him such time as may be considered reasonable, ordinarily not exceeding ten days, for making such representation as the Government servant may wish to make against the proposal. In this Memorandum, no mention should be made of the nature of the penalty which may be imposed. The Memorandum and the statement of imputations of misconduct or misbehaviour should be drafted by the Chief Vigilance Officer / Vigilance Officer. The memorandum should be signed by the Disciplinary Authority and not by any one else on its behalf.

7.10.2 If the competent Disciplinary Authority in respect of the Government servant against whom action proposed to be taken is the President, the

file should be shown to the Minister concerned before the charge-sheet is issued and the memorandum should be signed in the name of the President by an officer competent to authenticate orders on behalf of the President under Article 77 (2) of the *Constitution*.

7.10.3 Rule 16 of the *CCS (CCA) Rules, 1965* does not provide for the accused Government servant being given the facility of inspecting records for preparing his written statement of defence. There may, however, be cases in which documentary evidence provides the main grounds for the action proposed to be taken. The denial of access to records in such cases may handicap the Government servant in preparing his representation. Request for inspection of records in such cases may be considered by the Disciplinary Authority on merits.

7.10.4 After taking into consideration the representation of the Government servant or without it if no such representation is received from him by the date specified, the Disciplinary Authority will proceed, after taking into account such evidence, as it may think fit, to record its findings on each imputation of misconduct or misbehaviour.

7.10.5 If as a result of its examination of the case and after taking the representation made by the Government servant into account, the Disciplinary Authority is satisfied that the allegations have not been proved, it may exonerate the Government servant. An intimation of such exoneration will be sent to the Government servant in writing.

7.10.6 In case the Disciplinary Authority is of the opinion that the allegations against the Government servant, stand substantiated, it may impose upon him any of the minor penalties specified in *Rule 11 of the CCS (CCA) Rules, 1965*.

7.10.7 In cases in which minor penalty proceedings were instituted on the advice of the Central Vigilance Commission, consultation with the Commission at the stage of imposition of the penalty is not necessary if the Disciplinary Authority decides to impose one of the minor penalties specified in *Rule 11 of the CCS (CCA) Rules, 1965* or other corresponding rules. In such cases a copy of the order imposing minor penalty should be endorsed to the Commission. However, where the Disciplinary Authority decides not

to impose any of the minor penalties, consultation with the Commission is necessary.

(CVC Letter No. DSP 14 dated 29.11.80 regarding second stage advice in case of minor penalty)

(CVC Circular No. 1/14/70-R dated 20.09.1973 regarding procedure of consultation with Central Vigilance Commission in minor penalty proceedings)

(CVC Circular No. 1/14/70-R, dated 20.07.1970 regarding making of a second reference to the Commission)

7.10.8 In case the Government servant is one whose services had been borrowed from another Department or, office of a State Government or a local or other, authority and if other borrowing authority, who has the powers of Disciplinary Authority for the purposes of conducting a disciplinary proceedings against him, is of the opinion that any of the minor penalties specified in clauses *(i) to (iv) of Rule 11 of the CCS (CCA) Rules, 1965* should be imposed, it may make such orders on the case as it deems necessary after consultation with the lending authority. In the event of difference of opinion between the borrowing authority and the lending authority, the services of the Government servant will be replaced at the disposal of the lending authority.

7.10.9 *Under Rule 16(1) (b) of the CCS (CCA) Rules, 1965*, the Disciplinary Authority may, if it thinks fit, in the circumstances of any particular case, decide that an inquiry should be held in the manner laid down in sub-rules *(3) to (23) of Rule 14 of the CCS (CCA) Rules, 1965*. The implication of this rule is that all the formalities beginning with the framing of articles of charge, statement of imputation, etc. will have to be gone through. The procedure to be followed will be the same as prescribed for an inquiry into a case in which a major penalty is proposed to be imposed.

7.11 INITIATION OF DISCIPLINARY PROCEEDINGS FOR MAJOR PENALTY

7.11.1 *Rule 14(1) of the CCS (CCA) Rules, 1965* provides that no order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made

except after an inquiry has been held in the manner prescribed in *Rules 14 and 15 of the CCS (CCA) Rules, 1965 or in the manner provided by the Public Servants (Inquiries) Act, 1850*, where an inquiry is held under that Act.

7.11.2 Ordinarily an inquiry will be made in accordance with the provisions of *Rule 14 of the CCS (CCA) Rules, 1965*. However, in respect of a Government servant who is not removable from his office without the sanction of Government, the Disciplinary Authority, which will be the President in the case of such a Government servant, may decide to make use of the procedure laid down in the Public Servants (Inquiries) Act, 1850 (hereafter referred to as the "Act") if it is considered that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour on his part.

7.11.3 The choice of the procedure is a matter within the discretion of the Disciplinary Authority. It is not obligatory to proceed under the Act when Government proposes to take action against a Government servant covered by the Act. *(Venkataraman Vs. Union of India A.I.R. 1954, SC 375)*

7.11.4 There is no material difference in the scope of the two procedures which is to make a fact-finding inquiry to enable Government to determine the punishment which should be imposed upon the delinquent officer. Like the proceedings under the *CCS (CCA) Rules, 1965*, the Commission (s) appointed under the Act to make the inquiry do not constitute a judicial tribunal though they possess some of the trappings of a court. The findings of the Commissioner (s) upon the charge are a mere expression of opinion and do not partake of the nature of a judicial pronouncement and the Government is free to take any action it decides on the report.

7.11.5 The holding of an inquiry against a Government servant under the Act does not involve any discrimination and will not give him cause to question the conduct of an inquiry against him on that ground within the meaning of Article 14 of the *Constitution*. A person against whom an inquiry has been held under that Act could not claim a further or a fresh inquiry under the *CCS (CCA) Rules, 1965* (Venkataraman Vs. Union of India).

7.11.6 The procedure under the Act is, however, distinguishable from the provisions of the disciplinary rules in that while an inquiry made under the Act is a public inquiry, a Departmental inquiry made under the relevant disciplinary rules is not so. Another distinguishing feature is that the Commissioner (s) appointed under the Act have the power of punishing contempt and obstructions to the proceedings and of summoning witnesses and to compel production of documents. These factors will need to be taken into account in deciding whether in any particular case the procedure of the Act should be adopted or not. An inquiry under the provisions of the Act is generally made in a case in which a high official is involved and it is considered desirable in the circumstances of the case to have a public inquiry. Generally, a judicial officer like a Judge of a High Court is appointed as a Commissioner to conduct an inquiry under the Act. That procedure will, however, not be found suitable in a case which might involve the disclosure of information or production of documents prejudicial to national interest or to the security of the State.

7.12 ARTICLES OF CHARGE

7.12.1 As soon as a decision has been taken by the competent authority to start disciplinary proceedings for a major penalty, the Chief Vigilance Officer/ Vigilance Officer will draw up on the basis of the material gathered during the Investigation:

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain:

(a) a statement of all relevant facts including any admission or confession made by the Government servant; and

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

7.12.2 A charge may be described as the prima-facie proven essence of an allegation setting out the nature of the accusation in general terms,

such as, negligence in the performance of official duties, inefficiency, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule, etc. A charge should briefly, clearly and precisely identify the misconduct / misbehaviour. It should also give time, place and persons or things involved so that the public servant concerned has clear notice of his involvement.

7.12.3 The articles of charge should be framed with great care. The following guidelines will be of help: -

(a) Each charge should be expressed in clear and precise terms, it should not be vague;

(b) If a transaction / event amount to more than one type of misconduct then all the misconducts should be mentioned;

(c) If a transaction / event shows that the public servant must be guilty of one or the other of misconducts, depending on one or the other set of circumstances, then the charge can be in the alternative;

(d) A separate charge should be framed in respect of each separate transaction/ event or a series of related transactions / events amounting to misconduct, misbehaviour;

(e) Multiplication or splitting up of charges on the basis of the same allegation should be avoided;

(f) The wording of the charge should not appear to be an expression of opinion as to the guilt of the accused;

(g) A charge should not relate to a matter which has already been the subject-matter of an inquiry and decision, unless it is based on benefit of doubt or on technical considerations;

(h) A charge should not refer to the report on Preliminary Investigation or the opinion of the Central Vigilance Commission;

(i) The articles of charge should first give the plain facts leading to the charge and then only at the end of it mention the nature of misconduct/ misbehaviour (violation of Conduct Rules, etc.).

(CVC Letter No. 4/23/70-R dated 13.12.1973 regarding drafting of charge-sheets & CVC Letter No. 4/4/75-R dated 04.01.1977 regarding drafting of charge-sheets in disciplinary cases)

7.12.4 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. Rahman 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. Saligram AIR 1960 All 543). Equally importantly, while drawing 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 2SLR 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; Powari Tea Estate Vs. Barkataki (M.K.) 1965 Lab LJ 102).

(CVC Circular No. 3(v)/99/8 dated 05.10.1999: Drafting of Charge–sheet)

7.13 STATEMENT OF IMPUTATIONS

The statement of imputation should give a full and precise recitation of the specific and relevant acts of Commission or omission on the part of the Government servant in support of each article of charge including any admission or confession made by the Government servant and any other circumstances which it is proposed to be taken into consideration. A statement that a Government servant allowed certain entries to be made with ulterior motive was held to be much too vague. A vague accusation that the Government servant was in the habit of doing certain acts in the past is not sufficient. The statement of imputations should be precise and factual. In particular, in cases of any misconduct / misbehaviour, it should mention the conduct / behaviour expected or the rule violated. It

would be improper to call an Investigating Officer's Report a statement of imputations. While drafting the statement of imputations, it would not be proper to mention the defence and enter into a discussion of the merits of the case. Wording of the imputations should be clear enough to justify the imputations in spite of the likely version of the Government servant concerned.

7.14 LIST OF WITNESSES

A number of witnesses are usually examined during the course of the preliminary inquiry and their statements are recorded. The list of such witnesses should be carefully checked and only those witnesses who will be able to give positive evidence to substantiate the allegations should be included in the statement for production during the oral inquiry. Formal witnesses to produce documents only need not be mentioned in the list of witnesses.

7.15 LIST OF DOCUMENTS

The documents containing evidence in support of the allegations which are proposed to be listed for production during the inquiry should be carefully scrutinised. All material particulars given in the allegations, such as dates, names, makes, figures, totals of amount, etc., should be carefully checked with reference to the original documents and records.

7.16 STANDARD FORM OF ARTICLES OF CHARGE

7.16.1 Standard skeleton forms of the articles of charge and the statement of imputations and of the covering memorandum are given in Chapter 32 of *Handbook for Inquiry officers and Disciplinary Authorities' issued by DoPT*

7.16.2 The covering memorandum should be signed by the Disciplinary Authority or in case in which the President is the Disciplinary Authority by an officer who is authorised to authenticate orders on behalf of the President.

(DoPT O.M No. 234/18/65-AVD II dated 14.03.1966 regarding Annexures to charge-sheet under rule 14 of the CCS (CCA) Rules, 1965)

7.17 DELIVERY OF ARTICLES OF CHARGE

7.17.1 The Disciplinary Authority will deliver or cause to be delivered a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each charge is proposed to be sustained to the Government servant in person if he is on duty and his acknowledgement taken or by registered post, acknowledgement due. The acknowledgement of the Government servant should be added to the case.

7.17.2 If the Government servant evades acceptance of the articles of charge and/ or refuses to accept the registered cover containing the articles of charge, the articles of charge will be deemed to have been duly delivered to him as refusal of a registered letter normally tantamount to proper service of its contents.

7.17.3 A copy of the articles of charge and the accompanying papers will be endorsed to the Special Police Establishment in cases in which disciplinary proceedings are instituted on the basis of an investigation made by them.

7.18 STATEMENT OF DEFENCE

7.18.1 The Government servant should be required to submit his reply to the articles of charge (i.e. his written statement of defence) by a date to be specified in the covering memorandum and should also be required to state whether he pleads guilty and whether he desires to be heard in person. Ordinarily the time allowed to the Government servant for submitting his written statement of defence should not exceed 10 days.

7.18.2 In the interest of timely conclusion of Departmental proceedings, as far as possible, copies of the documents and the statements of witnesses relied upon for proving the charges may be furnished to the charged officer along with the charge sheet. If the documents are bulky and the copies cannot be given to the Government Servant, he may be given an opportunity to inspect these documents in about 15 days' time.

7.19 ACTION ON RECEIPT OF THE WRITTEN STATEMENT OF DEFENCE

7.19.1 On receipt of the written statement of defence, the Disciplinary Authority should examine it carefully. If all the charges have been admitted by the Government servant, the Disciplinary Authority will take such evidence as it may think fit and record its findings on each charge. Further action on the findings will be taken in the manner provided under Para -7.21 to 7.23.

7.19.2 The Disciplinary Authority has the inherent power to review and modify the articles of charges or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the accused Government servant under *Rule 14(4) of the CCS (CCA) Rules, 1965*. The Disciplinary Authority is not bound to appoint an Inquiry Officer for conducting an inquiry into the charges which are not admitted by the accused Government servant but about which the Disciplinary Authority is satisfied on the basis of the written statement of defence that there is no further course to proceed with. The exercise of the powers to drop the charges after consideration of the written statement of defence will be subject to the following conditions: -

(a) In cases arising out of investigation by the Central Bureau of Investigation, latter should be consulted before a decision is taken to drop any of or all the charges on the basis of the written statement of defence. The reasons recorded by the Disciplinary Authority for dropping the charges should also be intimated to the Central Bureau of Investigation.

(b) The Central Vigilance Commission should be consulted where the disciplinary proceedings were initiated on the advice of the Commission and the intention is to drop any of or all the charges

(G.I., MHA O.M No. 11012/2/79-Estt(A) dated the 12.03.1981and OM No. 11012/8/82-Estt. (A) dated the 08.12.1982 regarding the question whether charges can be dropped at the stage of initial written statement of defence)

7.19.3 In many cases the Disciplinary Authority "decides" to disagree with the Commission and then send the case back to the Commission for

reconsideration of its advice. This is not quite in order and requests for reconsideration should be made at a stage prior to the final decision, for once the competent authority has 'decided' or 'resolved' to differ with the Commission, the case will be treated as one of non-acceptance of the Commission's advice.

(CVC Circular No. 4K/DSP/23 dated 16.04.1981 regarding reference to the CVC seeking reconsideration of its advice)

7.19.4 With a view to bringing about greater uniformity in examining on behalf of the President, the advice tendered by the Commission and taking decisions thereon, it has been laid down that the Department of Personnel and Training should be consulted before the Ministries / Departments finally decide (i.e. after second reference to the CVC for reconsideration), to differ from / not to accept any recommendation of the Commission in those cases which relate to Gazetted Officers for whom the appointing authority is the President. Such a reference to that Department in those cases should be made at the following stages:

(i) where the CVC advises at the first stage but the authority concerned does not propose to agree with the advice;

(ii) where the authority concerned proposes not to accept or differ from the advice of the CVC at the Second Stage.

(DoPT OM No. 118/2/ 78-AVD-I dated 28.09.1978 regarding Central Vigilance Commission- Cases of differences from / non- acceptance of the advice of- procedure for consultation with the Department of Personnel and A.R in cases of non-acceptance of recommendation of the CVC)

7.20 AMENDED / SUPPLEMENTARY CHARGE-SHEET

7.20.1 The Disciplinary Authority has inherent power to review and modify the article of charge after receipt and examination of the written statement of defence submitted by the accused Government servant under *Rule 14(4) of the CCS (CCA) Rules, 1965*. However, IO has no such powers.

7.20.2 During the course of Inquiry, if it is found necessary to amend the charge sheet, it is permissible for the DA to do so, provided a fresh opportunity is given to the CO in respect of the amended / supplementary charge-

sheet. The Inquiring Authority may hold the inquiry again from the stage considered necessary so that the CO should have a reasonable opportunity to submit his defence or produce his witness in respect of the amended charge sheet. If there is, however, a major change in charge-sheet, it would be desirable to hold fresh proceedings on the basis of amended charge-sheet.

7.20.3 ***Precaution to be taken consequent to issue of Amended / Supplementary charge-sheet:***

In the case of M.G. Aggarwal Vs. Municipal Corporation of Delhi decided on 10 July, 1987 [32 (1987) DLT 394] it was held as under:

"It is obvious that the effect of the corrigendum would be to make out a new charge against the petitioner. However, the earlier enquiry was not terminated and new enquiry was not commenced against the petitioner. The corrigendum substantially altered the charge against the petitioner. No new enquiry was held. Mr. S.P. Jain witness was re-called in the continued enquiry on 03/04/1986 and he further gave evidence which supported the corrigendum. The enquiry ultimately resulted in the aforesaid order of dismissal dated 24/07/1986 which was confirmed by an order dated 18/11/1986. The result of this enquiry cannot obviously be sustained. When the charge has been substantially altered, it has to be tried de novo. The enquiry held and continued on the basis of the charge-sheet dated 31/01/1985 and continued by incorporating the distinct charge, the subject-matter of the corrigendum dated 04/03/1986, is no enquiry at all as the petitioner has been denied an opportunity to meet the amended charge, as amended by the corrigendum. He has not been permitted to file reply to the amended charge. This being the case, the petitioner not having been given the opportunity to defend himself, the entire enquiry proceedings are bad in law, and the order of termination dated 24/07/1986 as well as the appellate order dated 18/11/1986 have to be quashed."

7.21 APPOINTMENT OF INQUIRING AUTHORITY

7.21.1 If the Disciplinary Authority finds that any or all the charges have not been admitted by the Government servant in his written statement of defence or if no written statement of defence is received by him by the

date specified, the Disciplinary Authority may itself inquire into such charges or appoint an Inquiring Authority to inquire into the truth of the charges. Though the *CCS (CCA) Rules, 1965* permit such an inquiry being made by the Disciplinary Authority, itself, the normal practice is to appoint another officer as Inquiring Authority. It should be ensured that the officers so appointed has no bias and had no occasion to express an opinion in the earlier stages of the case.

7.21.2 The Departmental inquiry may be entrusted to a Commissioner for Department Inquiries (CDI) borne on the strength of Commission or to Departmental Inquiry officer. Where the DA is of the view that it would be better / desirable to appoint the IO from outside the Department, a request could be made to the Commission. The Commission may nominate a CDI or any other suitable person to be appointed as IO.

7.21.3 ***CDI as Inquiring Authority:*** In all cases pertaining to category "A" officers in respect of whom the Central Vigilance Commission is required to be consulted or in any other case in which disciplinary proceedings for imposing a major penalty have been initiated on the advice of the Central Vigilance Commission, the Commission may nominate a Commissioner for Departmental Inquiries borne on the strength of the Commission or any other officer as it may deemed fit as an IO. In composite cases where non-Gazetted Officers are involved with Gazetted Officer (s) and where CDI has been nominated by the Commission, the inquiry against all officers will be done by the CDI.

7.21.4 ***Departmental Inquiry Officers / Authority:*** In all cases where CDI or any other suitable officer is not nominated by the Commission as IO, the Disciplinary Authority may nominate a Departmental Inquiry Officer to conduct an Inquiry.

7.21.5 ***IO to be sufficiently senior:*** It may not be always possible to entrust inquiries against delinquent officers to Gazetted Officers. However, the inquiries should be conducted by an Inquiry Officer who is sufficiently senior to the officer whose conduct is being inquired into as inquiry by a junior officer cannot command confidence which it deserves.

Further, it may be ensured that the officer only with sufficient service

experience and seniority is appointed as Presenting Officer.

7.21.6 ***Panel of retired officers for appointment of IOs:*** The Departments/ Public Sector Undertakings / Organisations depending upon their need, and if they so desire, may maintain a panel of retired officers from within or outside the Department or Organisation for appointment as Inquiring Authorities, in consultation with the Chief Vigilance Officer. In case, there is difference of opinion between the Disciplinary Authority and the Chief Vigilance Officer about the inclusion of any name in the panel or appointment of any one out of the panel as IO in any case, the CVO may report the matter to the next higher authority, or the CMD for resolution of the difference. If still unresolved, the CVO may refer the matter to the CVC. A case of difference of opinion between the CVO and the CMD, if acting as Disciplinary Authority, may be referred to the Commission for its advice.

(MHA OM No. 6/26/60–Ests (A) dated 16.02.1961 regarding precaution to be taken while appointing I.O.)

(DoPT OM No. 142/15/2010-AVD-I dated 31.07.2012 - Grant of Honorarium to Inquiry Officers (IO)/Presenting Officers (PO)-Consolidated instructions regarding)

(CVC Office Order No. 34/7/ 2003 dated 01.08.2003- Utilising the services of outsiders including retired officers for conducting Departmental Inquires)

7.21.7 ***Order for appointment of IO:*** As soon as the Disciplinary Authority has decided upon the person who will conduct the oral inquiry, it will issue an order appointing him as the Inquiring Authority in the form given in Chapter 32 of *'Handbook for Inquiry officers and Disciplinary Authorities' issued by DoPT*

7.21.8 ***Appointment of a Presenting Officer:*** The Disciplinary Authority which initiated the proceedings will also appoint simultaneously a Government servant or a legal practitioner as the Presenting Officer to present on its behalf the case in support of the articles of charge before the Inquiring Authority. Ordinarily a Government servant belonging to the Departmental set up who is conversant with the case will be appointed

as the Presenting Officer except in cases involving complicated points of law where it may be considered desirable to appoint a legal practitioner to present the case on behalf of the Disciplinary Authority. An officer who made the preliminary investigation or inquiry into the case should not be appointed as Presenting Officer.

7.21.9 ***Appointment of PO when specific provision in rules does not exist:*** While the disciplinary rules under which Departmental inquiries are conducted against Central Government employees and Railway servants provide for the appointment of a Presenting Officer by the Disciplinary Authority to present its case before the Inquiring Authority, the disciplinary rules of certain Public Sector Undertakings do not contain such a provision. As the appointment of a Presenting Officer would help in the satisfactory conduct of Departmental inquiry, the Central Vigilance Commission has advised that even in cases where the disciplinary rules do not contain a specific provision for the appointment of a Presenting Officers, the Disciplinary Authorities may consider appointing a Presenting Officer for presenting the case before the Inquiring Authority.

7.21.10 ***Honorarium to PO:*** In order to expedite disposal of Departmental inquiries, the competent authority within its financial powers may consider sanction of suitable honorarium, where inquiries are not part of their sphere of duties, to the Presenting Officer. The amount payable on each occasion may be decided on merits taking into account the quality/ volume of work and its quick and expeditious completion.

7.22 ASSISTANCE TO THE CHARGED GOVERNMENT SERVANT IN THE PRESENTATION OF HIS CASE

7.22.1 In the copy of the order appointing the Presenting Officer, endorsed to the Government servant concerned, he should be asked to finalise the selection of his Defence Assistant before the commencement of the proceedings. The Government servant may avail himself of the assistance of any other Government servant, as defined in *Rule 2 (h) of the CCS (CCA) Rules, 1965*, posted in any office either at this headquarters or at the place where inquiry is held. The Government servant may take the assistance of any other Government servant posted at any other station

if the Inquiring Authority having regard to the circumstances of the case and for reasons to be recorded in writing so permits.

7.22.2 If the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, the Government servant will be so informed by the Disciplinary Authority as soon as the Presenting Officer has been appointed so that the Government servant may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiry Officer. The Government servant may not otherwise engage a legal practitioner unless the Disciplinary Authority, having regard to the circumstances of a case, so permits. If for example, the facts and the mass of evidence are very complicated and a layman will be at sea to understand the implications thereof and prepare a proper defence, the facility of a lawyer should be allowed as part of the reasonable opportunity.

7.22.3 When on behalf of the Disciplinary Authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or by a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the Disciplinary Authority to exercise his discretion in favour of the delinquent officer 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 Government servant.

7.22.4 No permission is needed by the charged Government servant to secure the assistance of any other Government servant. The latter also is not required to take permission for assisting the accused Government servant. It will, however, be necessary for him to obtain the permission of his controlling authority to absent himself from office in order to assist the charged Government servant during the inquiry.

(CVC Circular No. 61/3/67-C dated 08.01.1968 regarding Government servant assisting the delinquent officer)

7.22.5 Government servants involved in disciplinary proceedings may also take the assistance of retired Government servants. For details refer to chapter 16 of *Handbook for Inquiry Officers and Disciplinary Authorities published by DoPT.*

(DoPT O.M No. 35014/1/77-Estt(A) dated 24.08.1977 as amended by OM No. 11012/19/77-Estt(A) dated 03.06.1978 regarding retired Government servants assisting Government servants involved in disciplinary proceedings)

(DoPT O.M No. 11012/11/2002-Estt(A) dated 05.02.2003 regarding Ceiling raised to seven cases for retired Government servants appearing as defence assistants)

7.22.6 ***Conditions relating to appointment of a serving Government Servant as Defence Assistant:***

(a) The Government servant concerned must be posted in any office at the Headquarters of the CO or in any office where the inquiry is being held.

(b) The person so appointed must not have three pending cases as Defence Assistant.

(Refer Chapter 16 of *'Handbook for Inquiry officers and Disciplinary Authorities' issued by DoPT)*

7.23 DOCUMENTS TO BE FORWARDED TO THE INQUIRY OFFICER

7.23.1 As soon as the order of appointment of the Inquiry Officer is issued, the Disciplinary Authority will forward to him the following papers along with that order: -

(i) A copy of the articles of charge and the statement of imputations of misconduct or misbehaviour;

(ii) A copy of the written statement of defence submitted by the Government servant. If the charged Government servant has not submitted a written statement of defence, this fact should be clearly brought to the notice of the Inquiring Authority;

(iii) List of witnesses by whom the articles of charge are proposed to be sustained;

(iv) A copy each of the statement of witnesses by whom the articles of charge are proposed to be sustained. In the case of common proceedings, the

number of copies of the statements of witnesses should be as many as the number of accused Government servants covered by the inquiry;

(v) List of documents by which the articles of charge are to be proved;

(vi) A copy of the Covering Memorandum to the articles of charge addressed to the Government servant concerned;

(vii) Evidence proving the delivery of the documents to the Government servants. The date of receipt of the document by the charged officer should be clearly indicated. The date of receipt of the articles of charge by the Government servant will need to be taken into account by the Inquiring Authority in fixing the date of the first hearing;

(viii) A copy of the order appointing the Presenting Officer;

(ix) Bio-data of the officer in the prescribed form.

(CVC Circular No. 1/11/ 66-Coord dated 22.11.1966 regarding forwarding of documents/papers to the CDE by the Disciplinary Authorities)

(CVC Circular No. 4/42/72-R dated 21.11.1972 regarding forwarding of documents by the Disciplinary Authority to the C.D.Es)

(CVC Circular No. 4/3/77-R dated 12.4.1977 regarding forwarding of documents by the Disciplinary Authority to the CDIs)

7.23.2 The above documents and all other relevant paper should be made available to the Presenting Officer at the earliest possible. If the Government servant has submitted a written statement of defence, the Presenting Officer will carefully examine it. If there are any facts which the Government servant has admitted in his statement, without admitting the charges, a list of such facts should be prepared by the Presenting Officer and brought to the notice of the Inquiry Officer at an appropriate stage of the proceedings so that it may not be necessary to lead any evidence to prove the facts which the Government servant has admitted.

7.23.3 Before referring a case to the Inquiry Officer, the Disciplinary Authorities may ensure that they are in possession of the listed documents. While forwarding the case to the Inquiry Officer, the Disciplinary Authorities may specifically mention that all the listed documents are available with them or with the Presenting Officer concerned.

(CVC letter No. 20/DSE/1 dated 27.03.1980 regarding bringing the listed documents by Presenting officers at the regular hearings in the Inquiry)

(CVC letter No. 4K/DSP/25 dated 06.05.1981 regarding listed documents in Departmental inquiries)

7.24 HOLDING ORAL INQUIRY

7.24.1 ***Stages of oral inquiry:*** The main stages of an oral inquiry are as under:

(a) Pre – Hearing Stage: From the appointment of IO and PO till the commencement of hearing. During this stage, the IO and PO examine the documents received by them and ensure their correctness. Besides, the PO prepares for the presentation of the case.

(b) Preliminary Hearing Stage: From the time, the parties start appearing before the IO, till the commencement of presentation of evidence. During this stage CO is asked once again as to whether the charges are admitted, inspection of documents take place, CO presents the list of documents and oral witnesses required for the purpose of defence.

(c) Regular hearing stage: During this stage, evidence is produced by the parties and Examination-in- chief and Cross Examination of witness is done.

(d) Post hearing stage: During this stage, the PO and the CO submit their written briefs to the IO and the IO submits his report to the Disciplinary Authority.

(The details regarding procedure for holding of oral inquiry are available in "Handbook for Inquiry Officers and Disciplinary Authorities"on DoPT website.)

(MHA OM No. 6/26/60-Ests(A) dated 08.06.1962 regarding examination of witness on behalf of the accused official)

(CVC Circular No. 001/DSP/6 dated 02.11.2001 regarding. ensuring attendance by private witness in Departmental Inquiries)

7.24.2 ***Responsibilities of Inquiry Officer:*** The basic purpose of appointment of Inquiry Officer is to inquire into the truth of the imputations of misconduct

or misbehaviour against a Government Servant. The Departmental inquiry proceedings shall be completed within six months from the date of appointment of IO. The Inquiry Officer shall ensure that: –

(i) There is no delay in commencement and conduct of inquiry after receipt of IO and PO appointment orders. The preliminary hearing shall be fixed within the prescribed time limit.

(ii) The date for the preliminary hearing is chosen in such a way so as to provide reasonable opportunity to the parties concerned. For example, if the parties are posted outstation, date of hearing must be fixed so that there is adequate time for the communication to reach the parties and adequate time for the parties for undertaking the travel and reaching the venue.

(iii) The charged officer is asked in the notice of preliminary hearing itself to nominate his defence counsel and bring the officer during preliminary hearing.

(iv) Programme for conduct of inquiry is prepared in consultation with prosecution and defence.

(v) Inspection of listed documents is completed by Presenting Officer immediately after the receipt of appointment order or as ordered by the Inquiring Authority.

(vi) A day for brief hearing is fixed for deciding relevance of defence documents and witnesses to avoid protracted correspondences.

(vii) The parties are not allowed to dominate the proceedings by seeking frequent adjournments except in case of illness supported by medical certificates or any unavoidable circumstance.

(viii) Statements of listed witnesses recorded during the inquiry shall be made available to the charged officer well in time for cross- examination.

(ix) The request from the charged officer for providing copies of statement of witnesses recorded during investigation but which are not part of listed documents, may not be entertained.

(x) Summons to witnesses are issued well in advance. Presenting Officer and charged officer should be made responsible personally to ensure the witnesses presence.

(xi) Hearing is held and completed on day-to-day basis and no adjournment is allowed on frivolous ground.

(xii) Ex-parte inquiry may not be held if the charged officer is under suspension and is unable to attend the inquiry proceedings due to non-receipt of subsistence allowance.

(xiii) During main examination, leading question are not allowed.

(xiv) Witness understands the question asked to him during examination/ cross-examination and ensures that the answer given in vernacular is properly translated and recorded.

(xv) Witness is recalled for re-examination only if it is absolutely necessary in the interest of justice.

(xvi) Production of new evidence to fill up a gap in the evidence is not allowed except when there is an inherent lacuna and defect in the evidence originally produced.

(xvii) No material from personal knowledge having bearing on the fact of the case or of extraneous nature which was not part of the charge-sheet or in the evidence submitted during inquiry and against which the charged officer has no opportunity to defend himself is imported to case.

(xviii) Inquiry findings are confined to the essence of misconduct attributable to charged official or whether the charge of misconduct is made out against the official or not.

(xix) Findings in the case are not merely based on the written statements submitted by Prosecution and Defence but on the analysis of evidence produced during the inquiry by the parties.

(xx) The inquiry conclusion is logical and it should not appear as if mind has already been made up.

(xxi) The principle of natural justice and reasonable opportunity is followed during conduct of Departmental proceedings.

(xxii) The charge sheet is perceived on the basis of the Charge – Fact – Evidence correlation. This will help in analysing and appreciating evidence.

(xxiii) Charged Officer is examined in general about the circumstances appearing against him before closing the Inquiry.

(xxiv) Submission of written brief by Presenting Officer and Defence Assistant as per time fixed.

(xxv) Inquiry Report is written and submitted in a fortnight after receipt of written brief.

7.24.3 ***Responsibilities of Presenting Officer (PO):*** Presenting Officer is appointed for the purpose of presenting the case of the Disciplinary Authority and to help Inquiring Authority to find truth in the charge (s). Presenting Officer is required to lead the evidence of the Prosecution logically and forcefully before the Inquiring Authority and satisfactorily answer the contentions raised by the Charged Officer. Some of the broad responsibilities of the Presenting Officer are: -

(i) Read the case in all its aspects and ramification and evolve a strategy for presentation of prosecution case;

(ii) Ensure inspection of Listed document as ordered by Inquiring Authority;

(iii) Produce accepted documents to Inquiring Authority for marking the same as exhibits and for taking them on record;

(iv) Evolve strategy for presentation of listed prosecution documents and witnesses in a logical sequence to prove the charge (s);

(v) Present the prosecution case;

(vi) Ensure attendance of prosecution witness;

(vii) Lead the oral evidence on behalf of the Disciplinary Authority;

(viii) Cross-examine and re-examine the Defence witness;

(ix) Seek permission of Inquiring Authority to introduce new evidence if considered necessary before conclusion of prosecution case;

(x) Prepare and submit the Written Brief;

(xi) Keep the Disciplinary Authority posted with the progress of Inquiry by sending the brief of work done at the end of each hearing.

7.24.4 ***Stay of disciplinary proceedings:*** The inquiry in disciplinary proceedings should be stayed only when a court of competent jurisdiction issues an

injunction or clear order staying the same or when the Charged Officer has alleged bias against the Inquiry Officer. *(Refer Chapter 14 of Handbook for Inquiry officers and Disciplinary Authorities issued by DoPT)*

7.24.5 ***Conducting ex-parte proceedings:*** If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiry Officer or otherwise fails or refuses to comply with the provisions of the applicable C.D.A. Rules, the Inquiry Officer may hold the inquiry ex parte. If the Government servant does not take advantage of the opportunity given to him to explain any facts or circumstances which appear against him he has only to blame himself and the Inquiry Officer has no choice but to proceed ex parte. But if a Government servant under suspension pleads his inability to attend the inquiry on account of financial stringency caused by the non payment of subsistence allowance to him, the proceedings conducted against him ex-parte would be violative of the provisions of Article 311 (2) of the *Constitution* as the person concerned did not receive a reasonable opportunity of defending himself in the disciplinary proceedings. *(Supreme Court's observation in the case of GhanShyam Das Srivastava vs. State of Madhya Pradesh - AIR 1973 SC 1183*).Therefore, in cases where recourse to ex-parte proceeding becomes necessary, it should be checked up and confirmed that the Government servant's inability to attend the inquiry is not because of non-payment of subsistence allowance.

7.24.6 ***Manner of ex-parte proceedings:*** In an ex-parte proceeding the full inquiry has to be held i.e., the Presenting Officer will produce documentary evidence and witnesses in the manner outlined in paragraphs 7.24.1 to 7.24.3 above. Notice of each hearing should be sent to the Government servant also. However, if the CO joins the proceedings at a later stage, he cannot be prevented from doing so.

7.24.7 ***Invoking Rule 19(ii) of CCS (CCA) Rules, 1965:*** However, if it is not possible to trace the Government servant and serve the charges on him, the Disciplinary Authority may take recourse to Rule 19 (ii) and finalise the proceeding after dispensing with the inquiry on the ground that it is not reasonably practicable to hold one.

7.25 ACTION ON INQUIRY REPORT

7.25.1 The report of the Inquiring Authority is intended to assist the Disciplinary Authority in coming to a conclusion about the guilt of the Government servant. Its findings are not binding on the Disciplinary Authority who can disagree with them and come to its own conclusion on the basis of its own assessment of the evidence forming part of the record of the inquiry.

7.25.2 On receipt of the report and the record of the inquiry, the Disciplinary Authority, if it is different from Inquiring Authority, will forward a copy of the inquiry report to the Government servant concerned, giving him an opportunity to make any representation or submission.

7.25.3 If the Disciplinary Authority disagrees with the findings of the Inquiring Authority on any article of charge, it will, while recording its own findings, also record reasons for its disagreement, which will be provided to the Government servant concerned.

7.25.4 On receipt of his reply, or if no reply is received within the time allowed, the Disciplinary Authority will examine the report and record of the inquiry, including the points raised by the concerned Government servant, carefully and dispassionately and after satisfying itself that the Government servant has been given a reasonable opportunity to defend himself, will record its findings in respect of each article of charge saying whether, in its opinion, it stands proved or not.

7.25.5 If after considering the report of Inquiring Authority or after considering the reply of Government Servant to Inquiring Authority report, the Disciplinary Authority arrives at a conclusion which is not in conformity with Commission's first stage advice, the case will be forwarded to the Commission along with tentative views, for second stage advice/ reconsidered advice.

7.26 FURTHER INQUIRY

7.26.1 If the Disciplinary Authority considers that a clear finding is not possible or that there is any defect in the inquiry, e.g., the Inquiring Authority had

taken into consideration certain factors without giving the delinquent officer an opportunity to defend himself in that regard, the Disciplinary Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report. The Inquiring Authority will, thereupon, proceed to hold the further inquiry according to the provisions of *Rule 14 of the CCS (CCA) Rules, 1965*, as far as may be.

7.26.2 If the Disciplinary Authority comes to the conclusion that the inquiry was not made in conformity with principles of natural justice, it can also remit the case for further inquiry on all or some of the charges.

(Observations of the Rajasthan High Court in Dwarka Chand Vs. State of Rajasthan (AIR 1959, Raj. 38) regarding holding of second Departmental inquiry)

7.26.3 The case for further Inquiry cannot be remitted to new Inquiry Officer. Further or de-novo Inquiry should be done by the same Inquiry Officer if original Inquiry Officer is available.

7.26.4 The discretion in this regard should be exercised by the Disciplinary Authority for adequate reasons to be recorded in writing. A further inquiry may be ordered, for example, when there are grave lacunae or procedural defects vitiating the first inquiry and not because the first inquiry had gone in favour of the delinquent officer. In latter type of cases, the Disciplinary Authority can, if it is satisfied on the evidence on record, disagree with the findings of the Inquiring Authority.

7.27 MAKING AVAILABLE A COPY OF CVC ADVICE TO THE CONCERNED EMPLOYEE

When the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report, to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

(CVC Circular No. 99/VGL/66 dated 28.09.2000- Making available a copy of CVC's advice to the concerned employee)

[Supreme Court judgement dated 13.10.1992 in SBI and others Vs D.C. Aggrawal and another (AIR 1993 SC 1197); Karnataka High Court decision in CWP No. 6558/93]

7.28 PROCEDURE FOR OBTAINING SECOND STAGE ADVICE OF THE COMMISSION *(Refer para 1.6 of Chapter I also)*

7.28.1 In cases where the Disciplinary Authority (DA), on conclusion of disciplinary proceedings, proposes to impose a penalty which is in line with the Commission's first stage advice in respect of officers falling within the jurisdiction of the Commission, second stage advice of the Commission is not required. Such cases would be dealt at the level of the CVO and DA concerned in the Organisation / Department. However, the CVO should forward a copy of the final order issued by DA in all such cases of officers for Commission's record. All such cases, where the Disciplinary Authority proposes to take any action which is at variance with the Commission's first stage advice, would be referred to the Commission for obtaining second stage advice (Para 7.56.3 may also be referred).

7.28.2 The CVO would exercise proper check and supervision over such cases and would ensure that the cases are disposed of expeditiously within the time norms stipulated by the Commission; and will ensure that the punishment awarded to the concerned officer is commensurate with the gravity of the misconduct established on his part. The Commission may depute its officers to conduct vigilance audit through onsite visits to check the compliance. If the Commission comes across any matter, which in its opinion, has not been handled properly, it may recommend its review by the appropriate authority or may give such directions as it considers appropriate.

(CVC Circular No. 08/12/14 dated 03.12.2014- Second stage consultation with the CVC in disciplinary cases)

7.28.3 ***Advice in Composite Case:*** In respect of composite cases wherein the Commission had tendered its first stage advice for all categories of officers involved, second stage advice of the Commission should be sought only if the DA's opinion is at variance with the Commission's advice. This

procedure would also apply to CBI investigated cases involving officials not falling under the jurisdiction of the CVC wherein the Commission had rendered its advice (cases where there were differences between the CBI and the DA and which were referred to the CVC for advice).

(CVC Office order No. 03/01/10 dated 28.01.2010 – Clarification regarding making reference to the Commission for advice on complaints and second stage advice cases)

7.28.4 ***Materials to be furnished for second stage advice:*** Following material should be furnished to the Commission while seeking its second stage advice:

(i) A copy of the charge sheet issued to the public servant;

(ii) A copy of the Inquiry Report submitted by the Inquiring Authority (along with a spare copy for the Commission's records);

(iii) The entire case records of the inquiry, viz. copies of the depositions, daily order sheets, exhibits, written briefs of the Presenting Officer and the Charged Officer;

(iv) Comments of the CVO and the Disciplinary Authority on the assessment of evidence done by the Inquiring Authority and also on further course to be taken on the Inquiry Report.

(CVC Circular No. 14/3/06 dated 13.03.2006- Reference to the Commission for its advice- Documents including the draft charge sheet to be enclosed for seeking first stage advice and the documents to be enclosed for seeking second stage advice reg.)

7.28.5 ***Procedure for seeking reconsideration of Commission's Advice:*** The Commission's advice is based on inputs received from the organisation and where the Commission has taken a view different from the one proposed by the organisation, it is on account of the Commission's perception of the seriousness of the lapses or otherwise. In such cases, there is no scope for reconsideration. Therefore, proposal for reconsideration of the Commission's advice may not be submitted unless new additional facts have come to light which would have the effect of altering the seriousness of the allegations / charges levelled against an officer.

(CVC Circular No. 15/4/08 dated 24.04.2008- Reference to the Commission for reconsideration of its advice- regarding)

7.28.6 The reconsideration of advice will be only in exceptional cases at the specific request of the DA, before a decision is taken by it to impose the punishment or otherwise. After a decision has been taken by DA, the Commission will not entertain any reconsideration proposal. Such cases will be treated only as "deviation" from and non-acceptance of Commission's advice.

(CVC Circular No. 0001/DSP/1 dated 10.02.2003-Non-acceptance of the Commission's advice in the matter of appeals)

7.29 ISSUE OF FINAL ORDER ON THE REPORT OF INQUIRING AUTHORITY

7.29.1 It is in the public interest as well as in the interest of the employees that disciplinary proceedings should be dealt with expeditiously. At the same time, the Disciplinary Authorities must apply their mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. In cases which do not require consultation with the Central Vigilance Commission or the UPSC, it should normally be possible for the Disciplinary Authority to take a final decision on the inquiry report within a period of 3 months at the most. In cases where the Disciplinary Authority feels that it is not possible to adhere to this time limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases where consultation with the UPSC and the CVC is required, every effort should be made to ensure that such cases are disposed of as quickly as possible.

(DoPT O.M No. 39/43/70-Ests(A) dated 08.01.1971 regarding taking of expeditious action by Disciplinary Authorities on the reports of Inquiring Authorities)

(DoPT OM No. 11012/21/98-Estt(A), dated 11.11.1998 regarding Final orders should be passed within three months)

7.29.2 After considering the advice of the UPSC, where the UPSC is consulted,

the Disciplinary Authority will decide whether the Government servant should be exonerated or whether a penalty should be imposed upon him and will make an order accordingly.

7.29.3 In determining the quantum of punishment, the Disciplinary Authority should take into account only that material which the Government servant had the opportunity to rebut. The object is to ensure that no material of which the Government servant was not given prior notice and which he was not given adequate opportunity of rebutting or defending himself against should be taken into account for deciding the extent of punishment to be awarded.

7.29.4 The order should be signed by the Disciplinary Authority competent to impose the penalty. In a case in which the competent authority is the President, the order should be signed by an officer authorised to authenticate order issued in the name of the President under Article 77(2) of the *Constitution*.

7.29.5 ***Self-contained speaking and reasoned order to be issued by DA:*** The Commission's view / advice in disciplinary cases are advisory in nature and it is for the DA concerned to take a reasoned decision by applying its own mind. The DA while passing the final order, has to state that the Commission has been consulted and after due application of mind, the final order have been passed. Further, in the speaking order of the DA, the Commission's advice should not be quoted verbatim.

(CVC Circular No. 02/01/09 dated 15.01.2009 regarding need for self-contained speaking and reasoned order to be issued by the Authorities exercising Disciplinary powers)

(DoPT O.M No. 134/11/81-AVD-I dated 13.07.1981 regarding the need for issuing 'Speaking orders" in disciplinary cases)

7.29.6 The disciplinary proceedings against employees conducted under the provisions of *CCS (CCA) Rules, 1965*, or under any other corresponding rules, are quasi-judicial in nature and therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. The recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according

to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. Such orders passed by the competent Disciplinary/ Appellate Authority as do not contain the reasons on the basis whereof the decisions communicated by that order were reached, are liable to be held invalid if challenged in a court of law.

7.29.7 All Disciplinary / Appellate Authorities should issue a self-contained, speaking and reasoned orders conforming to the legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order especially when they differ with the advice / recommendation of CVO or Inquiry officer or the Commission as the case may be giving cogent reasons thereof.

7.29.8 In all orders issued in disciplinary matters, the name and designation of DA should also be clearly indicated.

(CVC Circular No. 003/DSP/3 dated 15.09.2003-Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers)

(CVC Circular No. 02/05/2014 dated 19.05.2014-Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers)

7.30 COMMUNICATION OF ORDER

7.30.1 The order made by the Disciplinary Authority will be communicated to the Government servant together with: -

(a) a copy of the report of the Inquiring Authority, if not supplied already;

(b) a statement of findings of the Disciplinary Authority on the Inquiring Authority's report together with brief reasons for its disagreement, if any, with the findings of the Inquiring Authority, if not supplied already;

(c) a copy of the advice, if any, given by the UPSC and where the Disciplinary Authority has not accepted the advice of the UPSC a brief statement of the reasons for such non--acceptance.

[DoPT No. 11012/12/2010-Estt(A) dated 12.11.2010 regarding Communicating tentative reasons for disagreement under Rule 15(2)]

7.30.2 A copy of the order will also be sent to: -

(i) the Central Vigilance Commission in cases in which the Commission has given advice;

(ii) the UPSC in cases in which they have been consulted;

(iii) to the Head of Department or office where the Government servant is employed for the time being unless the Disciplinary Authority itself is the Head of the Department or office; and

(iv) to the SPE in cases in which action was recommended by the agency.

7.30.3 ***Scope of order of punishment:*** While passing an order of punishment, the Disciplinary Authority should define the scope of the punishment in clear term

7.30.4 ***Difference of opinion with CVC's advice:*** The CVOs to ensure that wherever it has been finally decided to disagree with the Commission's advice, reasons for the same are communicated to the Commission along with a copy of final order in the case, to enable the Commission to decide about inclusion of the case in its Annual Report.

(CVC Circular No. 006/VGL/098 dated 10.10.2006 difference of opinion with CVC advice)

7.31 DEFECT IN PROCEEDINGS AFTER THE INQUIRY WILL NOT INVALIDATE EARLIER PART OF THE PROCEEDINGS.

Once an inquiry has been properly held, a defect in the subsequent proceedings will not necessarily affect the validity of the oral inquiry. It was held in Lekh Raj Vs. State (A.I.R. 1959 M.P. 404) that where the order of dismissal was set aside on the ground that it was made by an authority subordinate to the appointing authority i.e. for contravention of Article 311(1), the fresh proceedings could be restarted from the stage after the oral inquiry.

7.32 RECONSIDERATION OF A DECISION BY SUCCESSOR DISCIPLINARY AUTHORITY

7.32.1 When a decision is recorded by a Disciplinary Authority (other than the

Head of the State) at the conclusion of the Departmental proceedings, the decision is final and cannot be varied by that authority itself or by its successor-in-office before it is formally communicated to the Government servant concerned. The IA and DA are quasi-judicial authority but order/ decision of DA is judicial in nature and can be changed only by Appellate Authority.

7.32.2 When a decision is taken by or in the name of the Head of State as a Disciplinary Authority, it is open to Disciplinary Authority to vary or alter the opinions or advice. Once, however, the decision is recorded in the name of the Head of the State, it cannot be varied or altered. This, of course, is subject to the exercise of powers of review or revision expressly conferred upon the Head of the State by rules. The decision once recorded by the Disciplinary Authority can only be changed by Appellate Authority/ Revising Authority / Reviewing Authority.

7.33 ACTION FOR PAST MISCONDUCT IN PREVIOUS EMPLOYMENT

Action can be taken against an employee in respect of misconduct committed by him in his previous or earlier employment if the misconduct was of such a nature as has rational connection 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. *(MHA O.M 39/1/67-ESTs(a) dated 21.02.1967)*

7.34 APPEALS, REVISION AND REVIEWS

7.34.1 ***Orders against which appeal lies:*** Under *Rule 23 of CCS (CCA)* Rules,1965 a Government servant including a person who has ceased to be in Government service, may prefer an appeal against any order made by the Disciplinary Authority or by any Appellate Authority or Revising Authority. The details of orders against which appeal can be filed are mentioned in Rule 23 of *CCS (CCA) Rules, 1965*.

7.35 APPELLATE AUTHORITY (RULE 24 of CCS (CCA) RULES, 1965)

7.35.1 A Government servant, including a person who is no longer in Government

service, may prefer an appeal against any order referred to in *Rule 23 of CCS (CCA) Rules, 1965* to the Authority specified in this behalf in the Schedule to the CCS *(CCA) Rules, 1965* or by a general order or special order of the President. Where no such authority is specified, the appeal of Group A or Group B Officers shall lie to the appointing authority, where the order appealed against is made by an authority subordinate to it; and to the President where such order is made by any other authority. An appeal from a Government servant of Group C or Group D will lie to the authority to which the authority making the order appealed against is immediately subordinate.

7.35.2 Appeals against orders issued in common proceedings will lie to the authority to which the authority functioning as a Disciplinary Authority for the purpose of such proceedings is immediately subordinate provided that where such authority is subordinate to the President in respect of a Government servant for whom President is the Appellate Authority, the appeal will lie to the President. In cases where the authority after making an order becomes the Appellate Authority by virtue of his subsequent appointment or otherwise, appeal shall lie to the authority to which such an authority is immediately subordinate.

7.35.3 Where the President is the Appellate Authority and has on his motion reviewed and confirmed the punishment imposed by a subordinate authority, an appeal will still lie to the President under *Rule 23/24 of CCS (CCA) Rules, 1965* against the punishment order passed by the subordinate authority.

7.35.4 A Government servant may prefer an appeal against an order imposing any penalty to the President, even if no such appeal lies to him, if such penalty is imposed by any authority other than the President on such Government servant in respect of his activities connected with his work as an office-bearer of an association, federation or union participating in the Joint Consultative Machinery and Compulsory Arbitration Scheme. All such appeals should be placed before the Minister-in-charge for final orders, irrespective of whether the general directions in various Ministries, relating to disposal of appeals addressed to the President, require such submission or not. In respect of persons serving in Indian

Audit and Accounts Department, such appeals will be disposed of by the C & AG of India.

7.35.5 ***Period of limitation for appeals (Rule 25, CCS (CCA) Rules, 1965):*** No appeal shall be entertained unless it is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the appellant. However, the Appellate Authority may entertain the appeal even after the expiry of a period of 45 days if it is satisfied that the appellant has sufficient cause for not preferring the appeal in time.

7.35.6 ***Form and content of appeal (Rule 26, CCS (CCA) Rules, 1965):*** Every appeal shall be preferred by the appellant in his own name and addressed to the authority to whom the appeal lies. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself.

7.35.7 ***Channel of submission of appeal (Rule 26,* CCS (CCA) Rules, 1965*):***

(i) The appeal will be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against.

(ii) The authority which made the order appealed against will, on receipt of the copy of the appeal, forward the same to the Appellate Authority, without any avoidable delay and without waiting for any direction from Appellate Authority, with all the relevant records and its comments on all points raised by the appellant. Mis-statement, if any, should be clearly pointed out.

(iii) The procedure to be followed by the Appellate Authority to consider the appeal and pass orders on appeal has been laid down under *Rule 27 of CCS (CCA) Rules, 1965*. Where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the Appellate Authority may after considering all relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing. Such personal hearing of the appellant by the Appellate Authority at times may afford the former an opportunity to present his case more effectively and thereby facilitate the Appellate Authority in deciding the appeal quickly and in a just and equitable manner.

7.36 REVISION (*Rule 29, CCS (CCA) Rules, 1965*)

7.36.1 The Revising authorities specified in *Rule 29 of CCS (CCA) Rules, 1965*, may at any time, either on their own motion or otherwise, call for records of any inquiry and revise any order made under the *CCS (CCA) Rules, 1965*.

7.36.2 The Appellate Authority, may call for records of any inquiry and revise any order, within six months of the date of the order proposed to be revised.

7.36.3 A revising authority after passing an order of revision becomes functus officio and cannot again revise its own order. [Delhi High Court judgment in R.K. Gupta Vs. Union of India and another (Civil Writ Petition No.196 of 1978 and 322 of 1979); Vol. 26 SLR 752]

7.36.4 ***Orders by the Revising Authority:*** After considering all the facts and circumstances of the case and the evidence on record the revising authority may pass any of the following orders: -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

7.36.5 No order imposing or enhancing any penalty should be made by revising authority unless the Government servant has been given a reasonable opportunity of making a representation against the penalty proposed. If it is proposed to impose or enhance the penalty to one of the major penalties, and if an inquiry under Rule 14 has not been held, such an inquiry should be held before imposing punishment.

7.36.6 The UPSC shall be consulted before orders are passed in all cases where such consultation is necessary.

7.36.7 The orders passed by the revising authority should be a self-contained, speaking and reasoned.

7.36.8 ***Procedure for revision (Rule 29, CCS (CCA) Rules, 1965):***

(i) An application for revision will be dealt with as if it were an appeal under the *CCS (CCA) Rules, 1965*.

(ii) No revision proceedings shall commence until after the expiry of the period of limitation for an appeal, or if an appeal has been preferred already, until after the disposal of the appeal.

7.37 REVIEW BY THE PRESIDENT (Rule 29-A *CCS (CCA) Rules, 1965*)

The President may, at any time, either on his own motion or otherwise, review any order passed under the *CCS (CCA) Rules, 1965*, including an order passed in revision under Rule 29, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice.

7.38 DEVIATION CASE TO BE REPORTED TO COMMISSION

Sometimes after imposition of the punishment by the Disciplinary Authority, the charged official makes an appeal. The Appellate Authority is expected to keep in view the advice tendered by the Commission and decide on the appeal. In case the Appellate Authority decides to deviate from the advice given by the Commission on appeal, the CVO will report this to the Commission, which will take an appropriate view whether the deviation is serious enough to be included in its Annual Report.

(CVC Circular No. 000/DSP/1 dated 10.02.2003 regarding non-acceptance of the Commission's advice in matter of appeals)

7.39 PETITIONS, MEMORIALS ADDRESSED TO THE PRESIDENT

The procedure to be followed in dealing with petitions and memorials addressed to the President is contained in the instructions published in the Ministry of Home Affairs *Notification No.40/5/50-Ests (B), dated 08.09.1954*.

7.40 SUSPENSION

7.40.1 The order of "suspension" is an executive order which debars a Government/ public servant from exercising his powers and performing his legitimate duties during the period the order remains in force. However, during the period of suspension, a Government servant continues to be a member of the service to which he belongs and the relationship of master and servant also continues. He continues to be governed by the same set of Conduct, Discipline and Appeal Rules, which were applicable to him before he was placed under suspension. Though, suspension is not a formal penalty, it constitutes a great hardship to the person concerned as it leads to reduction in his emoluments, adversely affects his prospects of promotion, and also carries a stigma. Therefore, an order of suspension should not be made in a perfunctory or in a routine and casual manner but with due care and caution.

7.40.2 Instructions regarding suspension are provided at various places, viz. *CCS (CCA) Rules, 1965, Fundamental Rules, Circulars, etc.,* issued from time to time by MHA / DoPT, etc. To consolidate these instructions on suspension, the DoPT has issued OM No. 11012/17/2013-Estt (A) dated 02.01.2014. The copy of the OM is placed at *Annexure-I* to this Chapter.

7.40.3 ***Suspension on the Recommendation of CBI:*** The Special Police Establishment, either during the course of investigation or while recommending prosecution / departmental action, may suggest to the disciplinary authority that the suspect officer should be suspended giving reasons for recommending such a course of action. On receipt of such suggestion, the matter should be carefully examined. The disciplinary authority may exercise its discretion to place a public servant under suspension even when the case is under investigation and before a prima-facie case has been established. Certain guidelines for considering the need and desirability of placing a Government servant under suspension have been given in para 7.40.2 above. However, if the CBI has recommended suspension of a public servant and the competent authority does not propose to accept the CBI's recommendation, it may be treated as a case of difference of opinion between the CBI and the administrative authority and the matter may be referred to the Central Vigilance Commission

for its advice. Further, if a public servant is placed under suspension on the recommendation of the CBI, the CBI may be consulted if the administrative authority proposes to revoke the suspension order.

7.41 ACTION AGAINST PENSIONERS

7.41.1 ***Circumstances in which pension may be reduced, withheld or withdrawn:***

Action for misconduct after retirement —

After pension has been granted, future good conduct is an implied condition of its continued payment. The appointing authority can withhold or withdraw a pension or any part of it if the pensioner is convicted of serious crime or is found guilty of grave misconduct *[Rule 8 of the CCS (Pension) Rules, 1972]*.

Action for misconduct during service —

Under Rule 9 of the CCS (Pension) Rules, 1972, the President has reserved to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and of ordering recovery from the pension of whole or part of any pecuniary loss caused to Government if the pensioner is found, in a Departmental or judicial proceedings, to have been guilty of grave misconduct or negligence during the period of his service including his service under re- employment.

7.41.2 The action against a pensioner could be taken if the charge regarding grave misconduct during the period of service or in re-employment or after retirement, is established against the pensioner during Departmental or judicial inquiry.'

7.41.3 In terms of *Rule 9(2) (a) of the C.C.S. (Pension) Rules, 1972* the Central Government has the power to withhold or withdraw pension even as a result of minor penalty proceedings instituted against the Government servant, while in service, and continued after his retirement, provided grave misconduct or negligence is established. It should, however, be the endeavour of the Disciplinary Authority to see that minor penalty proceedings instituted against a Government servant, who is due to retire, are finalised quickly and preferably before his retirement so that the need

for continuing such proceedings beyond the date of retirement does not arise.

7.41.4 Even though there is no statutory requirement in *Rule 9(1) of the C.C.S. (Pension) Rules, 1972*, for giving a show-cause notice, the principles of natural justice would have to be followed. It would, therefore, be necessary to issue a show-cause notice to the pensioner, giving him an opportunity to represent against the proposed penalty [if no inquiry has been held in the manner provided in *Rule 14 of the C.C.S. (CCA Rules)*], and take his representation into consideration before obtaining the advice of the UPSC and passing the final order. However, there is no need to issue a show-cause notice where an oral inquiry in which the Government servant / pensioner has had a reasonable opportunity to defend his case was held. In such cases, a copy of the inquiry report may be sent to him giving him an opportunity to make any representation or submission.

7.41.5 If common inquiry had been ordered when all the co-accused were in service and if one of them retires before the completion of the inquiry, the proceedings can be continued under *Rule 9 (2) of the CCS (Pension) Rules, 1972*. It is not necessary to split up the enquiries the moment one of the officers retires. On receipt of the report of Inquiring Authority, the Disciplinary Authority can straightaway impose a punishment on the officers in service. But he will have to submit his findings to the Government in respect of the retired officer.

7.42 ACTION IN CASES IN WHICH DEPARTMENTAL PROCEEDINGS HAD BEEN INITIATED BEFORE RETIREMENT

7.42.1 If Departmental proceedings had been initiated against a Government servant under the *CCS (CCA) Rules, 1965* while he was in service, including re-employment, the proceedings will be deemed to be proceedings under *Rule 9 of the CCS (Pension) Rules, 1972* and will be continued and concluded by the authority by which the proceedings were commenced in the same manner as if the Government servant had continued in service.

7.42.2 If the proceedings had been initiated by an authority subordinate to the President, such authority will submit the report of the Inquiring Authority,

after recording its findings to the Government, as the power to pass orders in such a case vests in the President under *Rule 9 of the CCS (Pension) Rules, 1972*.

7.43 ACTION IN CASES IN WHICH A GOVERNMENT SERVANT HAD RETIRED FROM SERVICE

7.43.1 If Departmental proceedings had not been instituted while the officer was in service including the period of his re-employment, if any, proceedings under Rule 9 of the CCS (Pension) Rules, 1972 can be instituted only: -

(a) by or with the sanction of the President, and

(b) in respect of a cause of action which arose, or in respect of any event which took place not earlier than four years before the institution of the proceedings.

7.43.2 The proceedings will be conducted by such authority and at such place as the President may direct and in accordance with the procedure applicable in Departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

7.43.3 A standard form of Memorandum of charges to be served on the pensioner is given in Chapter 32 of 'Handbook for Inquiry officers and Disciplinary Authorities' issued by DoPT. On receipt of his reply an inquiry will be held in accordance with the procedure in Para 7.21 & 7.24. On receipt of the report of the Inquiring Authority, if Government decides to take action under *Rule 9 of the CCS (Pension) Rules, 1972*, further action will be taken as stated in para 7.51 above.

7.43.4 On receipt of the reply of the pensioner the Union Public Service Commission will be consulted in all cases in which action is proposed to be taken under *Rule 9 of the CCS (Pension) Rules, 1972*. After considering the reply of the pensioner and the advice of the Union Public Service Commission, orders will be issued in the name of the President under the signature of an officer authorised to authenticate order on behalf of the President.

7.44 JUDICIAL PROCEEDINGS

If a Government servant is found guilty of a grave misconduct or negligence as a result of judicial proceedings instituted against him before his retirement, including re-employment, action may be taken against him by Government under *Rule 9 of the CCS (Pension) Rules, 1972*.

7.45 DISCIPLINARY ACTION AGAINST RETIRED PSU EMPLOYEES

7.45.1 Public Sector Undertakings (PSUs) are non-pensionable establishments. However, Departmental proceedings against PSU employee will continue after retirement and penalty can be imposed on delinquent employee on conclusion of Departmental proceedings that continued beyond the date of their superannuation, provided a provision has been incorporated in CDA Rules on following lines:

"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 proceeding are concluded and final order is passed in respect thereof. He will also not be entitled for the payment or retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF."

7.45.2 Hon'ble Supreme Court has upheld the punishment of dismissal on a retired Bank employee on conclusion of Departmental proceedings after his retirement on the basis of above provision. In its judgment dated 18.05.2007 in the case of Ramesh Chandra Sharma Vs Punjab National Bank, the legality of the above provision has been upheld. The CVO will ensure that this provision is incorporated in CDA Rules framed by the organisation.

7.45.3 In case of Departments / organisations where the services are non-pensionable, if any retired employee is found guilty of grave misconduct, the benefits like privilege passes by Railways / Air India, etc. may be withdrawn.

(CVC Circular No. 44/12/07 dated 28.12.2007 regarding amendment of CDA rules of PSUs)

7.46 CONSULTATION WITH UPSC IN DISCIPLINARY MATTERS

7.46.1 **Constitutional provisions:** Article 320(3)(c) of the *Constitution* provides that the U.P.S.C. shall be consulted on all disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials and petitions relating to such matters. The proviso to this Article provides that the President may make regulation specifying the matter in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary to consult the UPSC. The President has under this proviso made the Union Public Service Commission (Exemption from Consultation) Regulations, 1958.

7.46.2 ***Matters in which consultation with UPSC is necessary:*** It is necessary to consult the UPSC in the following type of cases: -

(a) an original order by the President imposing any of the penalties;

(b) an order by the President on an appeal against an order imposing any of the prescribed penalties made by a subordinate authority;

(c) an order by the President over-ruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the prescribed penalties made by the President or by a subordinate authority;

(d) an order by the President imposing any of the prescribed penalties in exercise of his powers of review and in modification of an order under which none of the prescribed penalties has been imposed.

(Role of UPSC in disciplinary case, Chapter 26 of Handbook for Inquiry officers and Disciplinary Authorities' issued by DoPT)

7.46.3 The cases in which U.P.S.C. advice is obtained at second stage on conclusion of disciplinary proceeding as per extant rules, consultation with Central Vigilance Commission is not required.

7.47 ADHERENCE TO TIME LIMIT IN CONDUCTING DEPARTMENTAL INQUIRIES

After the Manual was approved and was under process of publication, the *DOPT* vide their *Notification No. G.S.R. 548 (E) dated 02.06.2017* has

issued *CCS (CCA) Amendment Rules, 2017* revising certain time limits. A copy of the said Notification is placed at *Annexure II* to this Chapter. Exisiting procedure before issue of this Notification is dealt below.

7.47.1 The Departmental inquiry is often delayed due to laxity on the part of IO, lack of monitoring by DA & CVO, non-availability of listed or additional documents, delay in inspection of original or certified documents, frequent adjournments, non-attendance of witnesses, especially private witnesses, faulty charge-sheets and frequent change of IO / PO and non-monitoring of progress of inquiry. The following steps may be ensured and complied strictly by the IOs / administrative authorities to avoid delay in the conduct of Departmental inquiries.

(i) In cases where investigation has been conducted by the CBI / other investigating agency and the documents have been seized by them for prosecution in courts and RDA is also contemplated, it is the responsibility of the CVO / DA to procure from the CBI / investigating agency legible certified copies of seized documents required for RDA. In cases investigated by CVOs it must be ensured that certified legible photocopies of all documents are made available at the time of preparation of draft charge sheet itself.

(ii) While drafting the charge sheet it may be ensured that all the relied upon documents as well as copies of relevant rules / instructions are in the custody of CVO. After issue of charge sheet and submission of defence statement, the DA is required to take a decision within 15 days for appointment of IO / PO in major penalty cases.

(iii) As far as practicable, the IO should be chosen from amongst the serving officers / retired officers in the same station where the charged officer is posted, who is likely to continue till the conclusion of inquiry.

(iv) It may be ensured that the PO is appointed simultaneously. Changes in IO / PO be resorted to only in exceptional cases under intimation to the Commission (in respect of officers within the jurisdiction of the Commission).

(v) In cases involving more than one charged officer, it may be ensured that, as far as practicable, same IO / PO is appointed in all cases.

(vi) The PO must keep copies of relevant Rules / Regulations / Instructions, etc. readily available with him. Departments / Organisations should also ensure online availability of all their Rules / Regulations / Instructions, etc. so that it can be downloaded during the inquiry proceedings without any loss of time.

(vii) It may be ensured that the defence documents are made available within the time allowed by the IO. Responsibility should be fixed on the custodian of such documents for any undue delay / not producing it in time or loss of these documents.

(viii) The IO should normally conduct Regular Hearing on a day-to-day basis and not grant more than one adjournment for appearance of witnesses. It may be ensured that all the prosecution or defence witnesses are summoned and examined in separate but simultaneous batches expeditiously.

(ix) If witnesses do not appear in response to notices or are not produced by PO / CO as the case may be, powers conferred under the Departmental Inquiries *(Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972* be exercised to request the Competent Court to pass orders for production of the witness through summons issued by the Court.

(x) The request for admission of additional documents during the Inquiry, be allowed by IO only after due application of mind, making sure that such request is not delaying the process.

(xi) The time-limit for various stages of inquiry, as prescribed by the Commission vide its *Circular No. 8(1)(g)99(3) dated 03.03.1999* may be complied with strictly by the Disciplinary Authorities and the Inquiry Officers.

(xii) Where the CO or PO do not co-operate in the manner of attendance, production of documents, witnesses, etc., IO may after affording reasonable opportunity, proceed to give a report ex-parte based on facts, documents, witnesses produced before him.

CVC Circular No. 02/01/2016 dated 18.01.2016-Timely completion of disciplinary proceedings

7.47.2 ***Model Time Limit:*** The model time limit for investigation of complaints

and different stages of Departmental inquiry, as mentioned below, shall be adhered to: -

Model Time Limit for Investigation of Complaints & Departmental Inquiries

SN	*State of Investigation or inquiry*	*Time Limit*
1	Decision as to whether the complaint involves a vigilance angle.	One month from receipt of the complaint.
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-
3	Conducting 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's report by the CVO/ 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	Submission of defence reply / statement.	Ordinarily ten days or as specified in CDA Rules. However, in respect of members of AIS, it is 30 days which is further extendable by 30 days but not exceeding 90 days. [Rule 8(5)(b) of AIS(D&A) Rules, 1969].
9	Consideration of defence reply / statement.	Within 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.	Within 15 (fifteen) days after receipt and consideration 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 Charged Officer for his representation.	(i) Within 15 (fifteen) days of receipt of IO's report if any of the Articles of charge has been held as proved;
	Over all time limit for conclusion of disciplinary proceedings.	(ii) 15 (fifteen) days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated.
14	Submission by charged officer to IO's findings / DA's disagreement note.	Within 15 (fifteen) days. However, in respect of members of AIS, it is 15 days, extendable for a further period of 15 days but not exceeding 45 days. [Rule 9(5)(b) of AIS (D & A) Rules, 1969].
15	Over all time limit for conclusion of disciplinary proceedings.	*DoPT* vide OM No. 372/3/2007-AVD-III (Vol. 10) dated 14.10.2013 has prescribed a time limit of 18 months for completion of major penalty proceedings against Government servants from the date of delivery of charge-sheet and till the date of passing of final orders.

7.47.3 Timely completion of Departmental inquiry / Departmental proceedings is the prime responsibility of the Disciplinary Authority. Therefore, the Disciplinary Authorities in each Ministry / Department / Organisation may regularly monitor the progress of inquiry on regular basis and ensure that the inquiry / Departmental proceedings are completed within the time-limit prescribed as laid down by Hon'ble Supreme Court in the case of *Prem Nath Bali Vs Registrar, High Court of Delhi &Anr (Civil Appeal No. 958 of 2010)*. The CVO concerned would assist the Disciplinary Authority in monitoring the progress of Departmental proceedings. The Commission may recommend adverse action against the concerned Disciplinary/

Administrative Authority who is found responsible for any unexplained delay observed in any case. In appropriate cases, wherein the IO delays the proceedings, DA may not hesitate to take necessary and appropriate action against the IO.

7.47.4 Delay in decision-making by authorities in processing of vigilance cases would also be construed as misconduct under the relevant Conduct Rules and would be liable to attract penal action. All administrative authorities shall take note and strictly adhere to the prescribed schedule of time-limits in dealing with disciplinary cases.

(CVC office order No. 51/08/2004 dated 10.08.2004 regarding adherence to time limits in processing of disciplinary cases)

7.47.5 Subsequent to receipt of Commission's first and second stage advice, the responsibility for finalisation and award of punishment passes on from the Vigilance to the Personnel Department. Administration may impress upon all concerned and especially the Personnel Departmental that in view of the shift in responsibility from the Vigilance to the Personnel, any delay over and above the prescribed time limits for finalisation of disciplinary cases will be viewed as misconduct by the Commission and will render the concerned officials of the Personnel Department and others concerned liable for being proceeded from the vigilance angle with its attendant ramifications.

(CVC Circular No. 000/VGL/18 dated 03.03.2003-Delay in Implementation of Commission's advice)

7.47.6 The Chief Vigilance Officers shall pursue for implementation of the CVC's first and second stage advice within a month of the receipt of Commission's advice with the concerned Disciplinary Authority to get the orders issued on such matters.

(CVC Circular No.002/VGL/49 dated 19.09.2002–Delay in implementation of CVC's advice)

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Annexure-I

No. 1012/17/2013-Estt (A).
Ministry of Personnel, Pensions & Public Grievances
Department of Personnel & Training
New Delhi, the 2nd January 2014

OFFICE MEMORANDUM

Sub: Consolidated instructions on suspension

At present instructions regarding suspension are spread over a number of Rules such as CCS (CCA) Rules 1965, 1965, Fundamental Rules etc. In addition, a number of orders covering different aspects of suspension have been issued from time to time. A need has been felt for bringing at one place all these orders.

2. The guidelines on suspension have been consolidated and are placed as appendix to this O.M. for facility of Ministries / Departments.

(J.A. Vaidyanathan)
Director (E)
Tel.230939

To:
All Ministries / Departments

DoPT O.M. No.11012/17/2013-Estt (A). dated 2nd Jan 2014

APPENDIX

SUSPENSION

Suspension, in the context of disciplinary proceedings, may be defined as temporary withdrawal of duties from a government servant, pending inquiry into his / her conduct, with simultaneous reduction in pay and withdrawal of some rights / privileges.

2. The provisions relating to suspension are scattered across several rules. The main provisions are contained in Rule 10 of CCS (CCA) Rules, 1965 (or corresponding rules governing the Government servant concerned) and FR 53, 54 and 55.

3. Suspension, though not a penalty, is to be resorted to sparingly. Whenever a Govt. servant is placed under suspension not only does the Govt. lose his services but also pays him for doing no work. It also has a stigma attached to it. Therefore the decision to place a Govt. servant under suspension must be a carefully considered decision and each case would need to be considered on merits. A Govt. servant may be placed under suspension, in the following circumstances:

(a) where, a disciplinary proceeding against him is contemplated or is pending;

or

(b) where, in the opinion of the competent authority, he has engaged himself in activities prejudicial to the interest of the security of the State;

or

(c) where, a case against him in respect of any criminal offence is under investigation, inquiry or trial.

Rule 10(1) of CCS (CCA) Rules, 1965

4. A Disciplinary Authority may consider it appropriate to place a Government servant under suspension in the following circumstances. These are only intended for guidance and should not be taken as Mandatory:-

(i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) where the continuance in office of the Government servant will be against the wider public interest [other than those covered by (i) and (ii)] such as there is public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against the Government servant and preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or is being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/ or dismissal, removal or compulsory retirement from service.

NOTE:

(a) In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a prima facie case has been established.

(b) Suspension may be desirable in the circumstances indicated below:-

(i) any offence or conduct involving moral turpitude;

(ii) corruption, embezzlement or misappropriation of Government Money, possession of disproportionate assets, misuse of official powers for personal gain;

(iii) serious negligence and dereliction of duty resulting in considerable loss to Government;

(iv) desertion of duty;

(v) refusal or deliberate failure to carry out written orders of superior officers In respect of the types of misdemeanor specified in sub clauses (iii) and (v) discretion has to be exercised with care.

5. Reasons for Suspension, if not indicated in the suspension order itself, should be communicated within three months.

6. **Deemed Suspension**

A Government servant shall be deemed to have been placed under suspension by an order of appointing authority :-

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event Of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of forty-eight hours referred to in clause (b) shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(c) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(d) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

Rule10 (2), (3) and (4) of CCS (CCA) Rules,1965

7. **Authority competent to place a Government Servant under suspension**

The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension.

Provided that, except in case of an order of suspension made by the Comptroller and Auditor General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

Rule 10(1) of CCS (CCA) Rules, 1965

8. **Review of Suspension**

An order of suspension made or deemed to have been made may at any time be modified or revoked by the authority which made or is deeded to have made the order or by any authority to which that authority is subordinate.

Rule 10(5) (c) of CCS(CCA) Rules 1965

An order of suspension made or deemed to have been made shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

An order of suspension made or deemed to have been made shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension, if the government servant continuous to be under detention at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.

Rule 10(6) & (7) of CCS (CCA) Rules, 1965

9. **Subsistence Allowance**

A Government servant under suspension is not paid any pay but is allowed a Subsistence Allowance at an amount equivalent to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or half pay and in addition dearness allowance, if admissible on the basis of such leave salary FR 53 1(II) (a)

Subsistence allowance to be reviewed after 3 months and may be increased by up to 50% of the allowance during the first 3 months or reduced up to 50% of the allowance during the first 3 months.

FR 53 1(ii) (a) – (i) and (ii)

10. **Headquarters during Suspension**

An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such, the headquarters of a Government servant should normally be assumed to be his last place of duty. The order placing an officer under suspension should clearly indicate what his headquarters would be.

However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of TA, etc. or other complications.

11. **Promotion during suspension**

Officer under suspension shall be considered by the DPC along with others. However the recommendations in respect of those under suspension shall be placed inn a sealed cover. The sealed cover shall be opened/not acted upon depending on the outcome of the disciplinary proceedings.

If an officer is suspended subsequent to the meeting of the DPC but before he is actually promoted, then the recommendations would be deemded to have been placed in the sealed cover.

DOPT OM No. 22034/4/2012-Estt(D) dated 2.11.2012

12. **LTC**

A Government Servant under suspension cannot avail of LTC as he cannot get any leave including casual leave during the period of suspension. As he continues to be in service during the period of suspension, members of his family are entitled to LTC.

13. **Leave**

Leave may not be granted to a Government servant under suspension.

(FR 55)

14. **Recoveries from Subsistence Allowance**

A. Compulsory Deductions to be enforced

a) Income Tax

b) House Rent (Licence Fee) and allied charges

c) Repayment of loans and advances taken from Government - rate of recovery to be determined by Head of Department

d) CGHS contribution

e) CGEGIS subscription

B. **Deductions at the option of the suspended officer**

- PLI premia
- Amounts due to Co-op stores / Societies
- Refund of GPF advance

C. **Deductions Not to be made**

- GPF subscription
- Amounts due to court attachments
- Recovery of loss to Government

15. **Forwarding of applications etc.**

Application of a Government servant for appointment, whether by Direct Recruitment, transfer on deputation or transfer to any other post should not be considered / forwarded if he is under suspension.

DOPT OM No. AB 14017/101/91-Estt. (RR) dated 14th July 1993

Vigilance clearance may not be granted to an officer under suspension for deputation, empanelment, etc.

DOPT OM No. 11012/11/2007-Estt (A) dated 14.12.2007 and 21.6.2013

16. **Voluntary Retirement/Resignation**

(a) Notice of Voluntary Retirement Under FR 56(k) or Rule 48(1) of CCS (Pension) Rules, 1972

It shall be open to the Appropriate Authority to withhold permission to a Government Servant under suspension who seeks to retire under either of these rules.

Proviso (c) of FR 56(k) (1) (c) and second proviso to Rule 48(1) of CCS (Pension) Rules, 1972.

(b) Voluntary Retirement under rule 48-A of Pension .Ru!es

A notice of voluntary retirement given after completion of twenty years qualifying service will require acceptance by the appointing authority if the date of retirement on the expiry of the notice would be earlier than the date on which the Government servant concerned could have retired voluntarily under the existing rules applicable to him [e.g., FR 56 (k), Rule 48 of the CCS(Pension) Rules, 1972, Article 459 of CSRs or any other similar rule]. Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Government servant concerned. If it is proposed to accept the notice of voluntary retirement even in such cases, approval of the Minister-in-charge should be obtained in regard to Group 'A' and Group • B' Government servants and that of the Head of the Department in the cases of Group 'C' and Group 'D' Government servants. Even where the notice of voluntary retirement given by a Government servant requires acceptance by the appointing authority, the Government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless, the competent authority issues an order to the contrary before the expiry of the period of notice.

GOI Decision below Rule 48-A of CCS (Pension) Rules, 1972

(c) Resignation

The competent authority should examine, with reference to the merit of the disciplinary case pending against the Government servant, whether it would be in the public interest to accept the resignation. Normally, as officers are placed under suspension only in cases of grave delinquency, it would not be correct to accept the resignation of an officer under suspension. Exceptions would be where the alleged offence does not involve moral turpitude or where the evidence against the officer is not strong enough to justify that departmental proceedings, if continued would result in removal from service / dismissal or where departmental proceedings are likely to be so protracted that it would be cheaper for the exchequer to accept the resignation.

(d) Retirement

A Government servant who retires while under suspension is entitled to provisional pension equal to the maximum pension on the basis of qualifying service upto the date immediately preceding the date on which he was placed under suspension.

Gratuity will not be paid until the conclusion of disciplinary proceedings except where the proceedings are under Rule 16 of CCS (CCA) Rules (for imposition of minor penalty) [Rule 69 of CCS(Pension) Rules, 1972]

17. **Revocation of Suspension**

An order of suspension made or deemed to have been made may be modified or revoked at any time by the authority who made it (or deemed to have made) or any authority to which such authority is subordinate.

Rule of CCS(CCA) Rules, 1965

An order of suspension made or deemed to have been made shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension, if the Government servant continues to be under detention at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.

Rule 10(7) of CCS (CCA) Rules, 1965

18 **On Conclusion of Proceedings**

A. **If Exonerated**

a) Where the Competent Authority is of the opinion that the suspension was wholly unjustified, the Government servant may be paid full pay and allowances.

b) Where the Competent Authority is of the opinion that the proceedings were delayed for reasons directly attributable to the Govt. servant, it may after notice to the Govt. servant and considering his representation-if any, order a reduced amount to be paid.

c) The period of suspension will be treated as period spent on duty for all purposes.

[FR 54-8 (3) & (4)]

B. **Minor Penalty is imposed**

Where the proceedings result only in minor penalty being imposed, then the suspension is treated as wholly unjustified.

DoPT O.M. No. 11012/15/85-Estt (A) dt. 5-12-1985

C. **Other than exoneration / minor penalty**

(a) The competent authority shall determine the amount to be paid, after notice to Govt servant and considering his representation-if any.

[FR 54-B(5)]

(b) The period of suspension shall not be treated as duty unless the competent authority specifically directs that it shall be so treated for any specified purpose.

(c) If the Govt servant so desires, the period of suspension may be converted into leave of the kind due and admissible. (Note: Such leave can be in excess of 3 months in case of temporary Govt servants or 5 years in case of permanent Govt servants)

[FR 54-B(7)]

NOTE: As per FR 54-B(9) wherever the amount allowed is less than full pay and allowances it shall not be less than the Subsistence Allowance already paid.

D. **Death while under suspension**

Where a Govt. servant under suspension dies before the disciplinary proceedings or the court proceedings against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances to which he would have been entitled had he not been suspended, for that period subject to adjustment of subsistence allowance already paid.

[FR 54-B(2)]

19. **Serving of Charge Sheet etc.**

a) Suspension order should normally indicate the grounds for suspension.

b) Where the suspension is on grounds of contemplated proceedings, charge sheet should be served upon the Govt servant within 3 months.

c) Where charge sheet is not served within 3 months, the reasons for suspension should be communicated to the Govt servant immediately on expiry of 3 months from the date of suspension.

DoPT O.M. No. 35014/1/81-Ests.(A) dated the 9th November, 1982

20. **Appeal**

Order of Suspension is appealable under Rule 23 (i) of CCS (CCA) Rules, 1965.

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Annexure-II

4 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II-SEC. 3(i)]

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

NOTIFICATION

New Delhi, the 2nd June, 2017

G.S.R. 548(E) – In exercise of the powers conferred by the proviso to article 309 and clause (5) or article 148 of the Constitution, and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Service (Classification, Control an Appeal) Rules 1965, namely:-

1. (1) These rules may be called the Central Civil Service (Classification, Control and Appeal) Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Central Service (Classification, Control and Appeal) Rules, 1965,-

1. In Rule 14,-

(i) for sub-rule (4), the following sub-rule shall be substituted, namely:-

"(4)(a) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article or charge is proposed to be sustained.

(b) On receipt of the article of charge, the Government servant shall be required to submit his written statement or defense, if he of desires, and also state whether he desires to be heard in person, within a period of fifteen days, which may be further extend for a period not exceeding fifteen days at a time for reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorised by the Discipline Authority on his behalf:

(ii) For sub-rule (13), of the following sub-rule shall be substituted, namely:-

"(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same or issue a non-availability certificate before the inquiring Authority within one month of the receipt of such requisition:

Provided that if authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the Inquiring Authority accordingly and

the Inquiring Authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made be it for the production or discovery of such documents:

(iii) after sub-rule (23), the following sub-rule shall be inserted, namely:

"(24)(a) The Inquiring Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority.

(b) Where it is not possible to adhere to the time limit specified in clause (a), the Inquiring Authority may record the reasons and seek ext6ension of time from the disciplinary authority in writing, who may allow an additional time not exceeding six months for completion of the Inquiring, at a time.

(c) The extension for a period not exceeding six months at a time may be allowed for an good and sufficient reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorised by the Disciplinary Authority on his behalf:

II. in rule 16.,-

(i) In sub-rule (1), in clause (b), for the words, brackets and figure "sub-rules (3) to (23) of rule 14", the words, brackets and figure "sub-rules (3) to (24) of rule 14" shall be substituted:

(ii) In sub-rule (1-A), for the words, brackets and figure "sub-rules (3) to (23) of rule 14", the words, brackets and figure "sub-rule (3) to (24) of rule" shall be substituted;

III. in rule 19, in the second proviso, after the words "against the advice of the Commission", the words "within the time limit specified in clause (b) of sub-rule (3) of rule 15," shall be inserted;

IV. in rule 27, in sub-rule (2), in the proviso, in clause (i) after the words "against the advice of the Commission", the words "within the time limit specified in clause (b) of sub-rule (3) of rule 15," shall be inserted;

V. in rule 29, in sub-rule (1), in the first proviso , after the words "against the advice of the Commission", the words "within the time limit specified in clause (b) of sub-rule (3) of rule 15," shall be inserted;

VI. in rule 29-A, in the proviso, after the words "against the advice of the Commission", the words "within the time limit specified in clause (b) of sub-rule (3) of rule 15," shall be inserted.

[F. No. 11012/9/2016-Estt.A-III]
GYANENDRA DEV TRIPA, Jt. Secy.

Note: The principal rules were published in the Gazette of India vide notification number 7/2/63. Exit (A), dated the 20th November, 1965 subsequently amended vide notification numbers:-

Chapter VIII

Specific Issues Related to Public Sector Banks & Insurance Companies

INTRODUCTION

Vigilance administration in Ministries / Departments / Organisations have been described in detail in other chapters. While they are applicable to the Public Sector Banks and Insurance Companies also, this chapter describes some of the issues specific to the Banking and Insurance sectors.

PUBLIC SECTOR BANKS

8.1 VIGILANCE ANGLE IN PUBLIC SECTOR BANKS

8.1.1 Vigilance angle is described in Chapter I. In the Banking parlance, the following actions would be perceived to have vigilance angle:

(a) Irregularities in opening of accounts leading to the creation of fictitious accounts;

(b) Recurrent instances of sanction of Overdrafts (ODs) in excess of discretionary powers / sanctioned limits without reporting;

(c) Frequent instances of accommodations granted to a party against norms e.g. discounting bills against bogus MTRs; purchase of bills when bills had earlier been returned unpaid; affording credits against un-cleared effects in the absence of limits and opening Letter of Credits (LCs) when previously opened LCs had devolved;

(d) Cases in which there is a reasonable ground to believe that a penal offence has been committed by the alleged official but the evidence forthcoming is not sufficient for prosecution in a court of law e.g. possession of disproportionate assets;

(e) Misappropriation of Banks property, money or stores;

(f) Falsification of Bank's records;

(g) Disclosure of secret or confidential information even though it does not fall strictly within the scope of Bank's Secrecy issues;

(h) False claims on the Bank viz. TA claims, reimbursement claims, etc.;

(i) Failure to take necessary action to protect the interest of the Bank;

(j) Sacrificing/ignoring the interest of the Bank and causing loss to the Bank.

8.1.2 The following actions involving an employee would also come under the purview of vigilance angle, if he, —

(a) has not acted in accordance with rules and his recommendations are not in the interest of the Bank;

(b) has failed to conduct himself in such a manner that his decisions or recommendations do not appear to be objective and transparent and seem to be calculated to promote improper gains for himself or for anyone else;

(c) has acted in a manner to frustrate or undermine the policies of the Bank or decisions taken in the Bank's interest by the management;

(d) seems to have complied with unauthorised and unlawful oral instructions of his seniors without bringing them to the notice of the Competent Authority as per extant guidelines;

(e) has exceeded his discretionary powers and his actions do not appear justifiable or to serve Bank's interest;

(f) has abused or misused his official position to obtain benefit for himself or for another.

8.2 FIXING STAFF ACCOUNTABILITY

8.2.1 In the case of accounts categorized as NPAs, banks must initiate and complete a staff accountability exercise within six months from the date of classification as a NPA. The completion of the staff accountability exercise for frauds and the action taken may be placed before the Special

Committee of the Board for monitoring and follow-up of Frauds (SCBF) and intimated to the RBI at quarterly intervals as hitherto.

8.2.2 Banks may treat all frauds as a vigilance case and should be referred to the investigative authorities. In cases of accountability on the part of Board level officials, CVO, Department of Financial Services (DFS) will be examining the same.

8.2.3 Staff accountability should not be held up on account of the case being filed with law enforcement agencies. Both the criminal and domestic enquiry should be conducted simultaneously. The general trend observed in fraud cases related to advances portfolio, is to include a large number of officials in the probe so that the investigation is both delayed and diluted. Even in instances where investigations are concluded, there is a tendency to hold only the junior level officials involved in post disbursement supervision and ignore the lapses on the part of higher officials who were involved in sanctioning of the advances.

8.2.4 RBI guidelines on 'framework for dealing with loan frauds' issued vide *Circular No. RBI/2014-15/590(DBS.CO.CF MC.BC.No.007/23.04.001/2014-15) dated 07.05.2015* may be followed strictly while fixing staff accountability.

8.3 DETERMINATION OF VIGILANCE ANGLE IN PUBLIC SECTOR BANKS

8.3.1 The Commission has directed that each bank may set up an Internal Advisory Committee (IAC) of three members, preferably of the level of General Managers but not below the level of Deputy General Managers, to scrutinise the complaints received in the bank and also the cases arising out of inspections and audit & other staff accountability matters, 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 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.

8.3.2 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 the DA. In case of difference of opinion between the DA and the CVO, the said issue be initially referred to the CMD/MD&CEO in respect of officers not coming under the jurisdiction of the Commission. If the difference persists, the same may be referred to the Commission for taking a final view. However, in case of officials coming under the jurisdiction of the Commission, the difference of opinion between DA and CVO would be referred to the Commission.

8.3.3 It is clarified that investigation / inquiry report on the complaints / cases arising out of audit and inspection, etc., involving a vigilance angle will have to be referred to the Commission for advice even if the Competent Authority in the bank decides to close the case, if any of the officers involved is of the level for whom the Commission's advice is required.

(CVC Circular No. 004/VGL/18 dated 16.12.2014)

(CVC Circular No.004/VGL/18 dated 26.03.2009)

(CVC Circular No.004/VGL/18 dated 15.04.2004)

8.4 ROLE OF CVO OF PUBLIC SECTOR BANKS

8.4.1 The role of CVO is described in Chapter II. In Public Sector Banks, some specific vigilance functions are also performed. In Public Sector Banks, wherein regular Audits (Internal, Statutory, etc.,) are carried out, it is essential that the reports generated out of such audits are scrutinised with dispassion and objectivity. In this direction, CVO's (including part time CVO's / Additional Charge CVO's) must examine such reports every year and submit report to the Commission. Any grave irregularities noticed in the normal course be brought to the notice of the Commission by the CVO from time to time.

8.4.2 CVOs of PSBs should obtain vital information / inputs, in a structured manner like (a) Quick mortality borrowal accounts (QMBA) (b) Special letters / reports sent by Internal Inspections / Audit teams while inspecting branches (c) Names & inspection reports of the branches which have

slipped, in Inspection gradation, to 'unsatisfactory' grade & (d) details of One Time Settlement (OTS) entered into, especially high value accounts on a select basis. They should also get accountability reports in the case of large value non-performing advances in a routine manner irrespective of the fact whether the Disciplinary Authority has found a vigilance angle or otherwise. *(CVC Circular No.01/Misc/01/-Part I/dated 31.01.2003)*.

8.4.3 It shall be the responsibility of the CVO to ensure that the IAC meet periodically, review the cases, examine their recommendations and seek FSA from the Commission in appropriate cases.

8.5 VIGILANCE ADMINISTRATION IN REGIONAL RURAL BANKS (RRBs)

Commission observed that there is no uniform coverage or implementation of vigilance administration in RRBs sponsored by certain Public Sector Banks. Commission, therefore, directed Public Sector Banks to adopt the following measures to strengthen vigilance administration of RRBs sponsored by them:

(i) Setup Vigilance Cells headed by Sr. Managers in all RRBs;

(ii) Implement Complaint Handling Policy and Whistle Blower Policy of the Commission;

(iii) Seek the Commission's advice in respect of officials of RRBs who fall under the normal advisory jurisdiction of the Commission;

(iv) Direct regular preventive vigilance visits by officers of RRBs vigilance cells to all RRB Branches;

(v) Ensure job rotation and submission of Annual Property Returns for all officials of RRBs;

(vi) Introduce regular training programme for officials;

(CVC Circular No.009/VGL/045 dated 03.08.2009)

8. 6 FRAUDS

8. 6.1 Incidence of frauds in general and in loan portfolios in particular is posing a huge threat to Financial Sector. The CVOs should focus on all related aspects pertaining to prevention, early detection, prompt reporting to RBI

the incidence of frauds in general and in loan portfolios in particular (for system level aggregation, monitoring & dissemination). Early detection of Frauds and the necessary corrective action is of paramount importance to reduce the quantum of loss, which the continuance of the Fraud may entail.

8.6.2 Bank frauds can be summarised as deposit related, advances related and services related. The advances related frauds are in focus because of their size and far reaching implications on the financial sector. Financial frauds, more specifically the advances related frauds, occur because of breach of contract and trust. It could be because the pledged or mortgaged assets are compromised or divested off; or the documents are forged; or the funds availed are diverted or siphoned off; or the documentary credits like the letters of credit or guarantees are misused, etc.RBI has issued directions vide its *Master Circular on frauds –No. RBI/DBS/2016-17/28(DBS.CO.CFMC.BC.NO.1/23.4.001/2016-17 dated 01.07.2016)* with a view to providing a framework to banks enabling them to detect and report frauds early and taking timely consequent actions like reporting to the Investigative agencies so that fraudsters are brought to book early, examining staff accountability and do effective fraud risk management. These directions may be followed by PSBs / FIs in letter and spirit.

8.7 LOAN FRAUDS

8.7.1 The best way to prevent loan frauds is to tone up the appraisal process. A good appraisal can weed out many undesirable or flawed proposals that may eventually turn out to be fraud. A good appraisal does not only mean analysing the financial statements and projections submitted by the potential borrowers. It involves going beyond the paper work and independently gathering intelligence on the potential borrower. This requires accessing public databases, news reports on any adverse Governmental action like raids, etc. A good appraisal should also take into account problems brewing in the industry, in the promoters' group, etc. which may show the direction in which a company's operations are going on and whether there is inherent resilience in the promoters and the project to face rough weather and come out unscathed.

8.7.2 The laxity in post disbursement supervision and inadequacy of follow up of the advances portfolio in banks is clearly underlined by the fact that majority of the fraud cases come to light when the recovery process initiated after the accounts have been classified as NPA. Quite often the banks are confronted with facts that the title deeds are not genuine or that the borrowers had availed multiple finance against the same property. Loan accounts should be closely monitored and the Early Warning Signals (EWS) thrown by loan accounts (as defined by RBI) should immediately put a bank on alert, regarding a weakness or wrong doing which may ultimately turn out to be fraudulent. Such accounts should be treated as Red Flagged Accounts (RFAs). A bank cannot afford to ignore such EWS but must instead use them as a trigger to launch a detailed investigation into a RFA.

8.7.3 The tracking of EWS in loan accounts should be integrated with the credit monitoring process in the bank so that it becomes a continuous activity and also acts as a trigger for any possible credit impairment in the loan accounts given the interplay between credit risks and fraud risks. Another glaring issue is the considerable delay in declaration of frauds by various banks in cases of consortium / multiple financing, which not only enables the borrower to defraud the banking system to a large extent, but also allows him considerable time to erase the money trail and queer the pitch for the investigative agencies.

8.7.4 For issues relating to prevention of loan frauds, its early detection, prompt reporting to the investigative agencies (for instituting criminal proceedings against the fraudulent borrowers) and timely initiation of the staff accountability proceedings, the RBI has issued detailed framework vide *Circular No. (RBI/2014-15/590 (DBS.CO.CFMC. BC.No.007/ 23.04.001/2014-15) dated 7.05.2015* which may be followed while dealing with loan frauds. The directions of RBI issued through the *Master Circular on fraud*, as mentioned in para 8.6.2, may also be adhered to.

8.8 CYBER CRIMES AND FRAUDS IN THE BANKING SECTOR

8.8.1 Financial transactions are increasingly getting processed in real time with lesser human intervention. End users are becoming more demanding

for faster, more efficient, easier and more secure means of carrying out their transactions. At the same time, the financial sector is facing ever-escalating threats from cyber criminals. Banks have benefitted a lot from technological revolution. Information Technology (IT) has acted as a catalyst for the development of sophisticated products, evolution of better market infrastructure and implementation of reliable techniques for risk management. With introduction of IT and the possibility of online financial transactions, banking industry has immensely scaled up its level of activity by making services and products easily accessible and affordable to an ever-increasing set of people. There has been a remarkable shift in the service delivery model with greater technology integration in the financial services sector. Banks are increasingly nudging their customers to adopt newer service delivery platforms like mobile, internet and social media for enhanced efficiency and cost-cutting. Further, Government has proposed many measures to hasten India's movement to a cashless economy, to increase transparency.

8.8.2 While banks' customers have become tech-savvy and started availing online banking services and products, evidence suggests that even fraudsters are devising newer ways of perpetrating frauds by exploiting the loopholes in technology systems and processes. There have been several instances of low value frauds wherein the fraudsters have employed hostile software programs or Malware attacks, Phishing (sending e-mails by disguising as a trustworthy entity in order to induce individual to reveal personal information such as username, password, credit card details, etc.) Vishing (making phone calls or leaving voice call messages in order to induce individual to reveal personal information such as username, password, bank details, etc.), SMiShing (a security attack in which a user is tricked to download Trojan Horses, virus or other malware into his cellular phone or other electronic device. This is a short form of "SMS Phishing"), Whaling (targeted phishing on High Net Worth Individuals) techniques apart from stealing confidential data to perpetrate frauds.

8.8.3 Fraud is also perpetrated by Hacking. It is an unauthorised access made by a person to bypass the security mechanisms of the banking sites or accounts of the customers.

8.8.4 ***Credit card fraud:*** Credit card fraud is a wide-ranging term for theft and fraud committed using or involving a payment card, such as a credit card or debit card, as a fraudulent source of funds in a transaction. The purpose may be to obtain goods without paying, or to obtain unauthorised funds from an account. It is a form of identity theft that involves an unauthorised taking of another's credit card information for the purpose of charging purchases to the account or removing funds from it. Many online credit card frauds are perpetrated when customers use their credit card or debit card for any online payment. A person who has a malafide intention uses details and password of such cards by hacking and misusing it for online purchase. If electronic transactions are not secured the credit card numbers can be stolen by the hackers who can misuse this card by impersonating the credit card owner.

8.8.5 ***Preventive measures to check cybercrimes and frauds:*** Many measures to prevent technology related frauds have been introduced as under: -

(i) introduction of two factor authentication in case of 'card not present' transactions;

(ii) converting all strip based cards to chip based cards for better security;issuing debit and credit cards only for domestic usage unless sought specifically by the customer;

(iii) putting threshold limit on international usage of debit / credit cards;

(iv) constant review of the pattern of card transactions in coordination with customers;

(v) sending SMS alerts in respect of card transactions.

8.9 VULNERABILITY & RED FLAGS

8.9.1 ***Vulnerability:*** In an interconnected world, although all organisations are targets for cyber-attacks, financial institutions are more vulnerable than most others. The vulnerability arises due to the nature of banking business. An attack on banks can help the perpetrator to gain funds and therefore makes them the prime target. As banks have to keep their systems open to the customers unlike other vulnerable systems like defence, they are, in general easier targets. More importantly, the financial sector is based on

trust. A customer would be willing to park his money with a bank if he believes that it is safe. In the digital world, the customer trust depends on the strength of security, or more precisely, perceived strength of security. This perception gets built on the experience of the customers. As more and more customers experience fraud-free transactions through digital channels, their trust in banks is likely to increase.

8.9.2 ***Technology red flags:*** The following are some of the technology red flags, against which every organisation has to take guard and put in place appropriate mechanism / systems to ward off the unwanted intruder. Studies revealed that several instances of compromising / sharing of passwords in different financial organisations have led to the occurrence of frauds, resulting in loss of money to the concerned organisations:

(a) System crashing

(b) Audit trails not available

(c) Mysterious "system" user Ids

(d) Weak password controls

(e) Simultaneous logins

(f) Across the board transactions

(g) Transactions that violate the trends – weekends,

(h) Excessive amounts, repetitive amounts.

8.9.3 With the spread of mobile banking, banks would also need to closely engage with the telecom service providers for reducing technology related fraud risks. Banks could also consider seeking insurance coverage as a risk transfer tool and a mitigant for the financial losses arising from technology induced fraudulent customer transactions. IT security implies that the IT systems including data are held in a secure manner and made available only to the legitimate users of the system. It implies protecting the IT systems, networks, programs and data bases from damage, attack, or unauthorised access, so that resources are available for business transactions whenever required.

8.9.4 Cyber threat is real and is constantly evolving. No organisation is immune or can claim to be fully secure against a cyber-attack. Preventive measures

are a must in this scenario. Where prevention fails, quick detection and decisive response should be in place. All organisations should have an IT Governance Policy as a subset of cyber security policy. The policy should identify key assets, the risks they are exposed to, prescribe mitigation measures, roles and responsibilities in case of a cyber incident and state the response required. Banks should be ready for worst case scenarios and plan and practice the response in each case while being an active participant in sharing information on cyber threats faced. Adoption of internationally recognized best-practice standard for information security management is a must.

8.10 PREVENTIVE VIGILANCE IN BANKS

Details on Preventive Vigilance measures have been described in *Chapter II & X*. However, sector specific preventive aspects are listed below: -

8.10.1 The main functions of banks include accepting of deposits from the public and lending the same. The credit areas include sanctioning of various types of loans e.g., loans to Corporates, Small businessmen and Retail loans. Banks accept deposits from individuals, Corporates & Institutions.

Both credits as well as deposits are areas vulnerable to frauds, both with and without connivance and facilitation by insiders. Besides, banks make huge investments in IT related procurements, hiring of premises, etc. which are also areas in which one with malafide intention can subvert the systems and procedures. Although banks have well defined systems / guidelines for concurrent audit, statutory audit, RBIA (Risk Based Internal Audit), etc., however the importance of a mechanism for preventive vigilance can hardly be overemphasised for safeguarding the banks' funds. Though, credit decisions are taken based upon circumstances and availability of information at that point of time and risk taking is an integral part of the credit functions of the banks, there is a very thin line between bonafide commercial decisions and malafide decisions.

8.10.2 In this backdrop, preventive vigilance measures can, to a great extent, insulate the bank from probable loss of funds as well as image. Preventive vigilance must cover every conceivable area of banking activity, be it

deposits, remittances, fee based transactions, credit related matters, Forex transactions, procurements, HR initiatives, engaging premises for offices, compliance of Government guidelines. Knowledge empowerment and training and sensitizing of workforce on a continuous basis should be the key word on every bank related activity.

8.10.3 In order to safeguard banks' image and trust of the public and to a great extent minimise the corruption, preventive vigilance measures in the following areas are suggested.

(i) Banks to undertake a study of existing procedure and practices in the organisation with a view to modifying the ones which leave a scope for corruption, indiscretion, and also to find out the causes and points of delay and devise suitable steps to minimize delays at different stages;

(ii) To devise adequate methods of control over exercise of discretion so as to restrict arbitrary use of discretionary powers and instead to encourage transparent and fair practices;

(iii) The Bank / CVO to identify sensitive posts and ensure officials posted on these posts are rotated every two / three year so as to avoid developing vested interest. Officials should not be retained in the same place/ position for unduly long periods in the guise of indispensability, etc. by the management.

(iv) To ensure that the organisation has prepared manual of instructions / job cards / SOPs on all important banking operations including areas such as purchases, contracts, etc. and that these manuals are updated from time to time and conform to the guidelines issued by the Commission.

(v) Training plays a key role in disseminating knowledge / information on preventive vigilance.

(vi) Creation of special cells, audit committees / team for facilitating credit dispensation in respect of accounts beyond a cut off limit and also to monitor certain sensitive accounts by marking / flagging them.

(vii) Need to set up proper vigilance committees for ensuring that staff meeting is held at periodical intervals in all large size branches so as to bring awareness amongst the staff members about the operational areas which are prone to frauds / loss.

(viii) The root cause of financial frauds can be reduced to one single phenomenon. It is failure to Know - Somebody - i.e. failure to Know Its Customer, or failure to Know Its Employee, or failure to Know Its Partner/ Vendor.

8.11 KYC / KYE / KYP

8.11.1 Know Your Customer (KYC)

(i) Prescribed documents should be obtained from an account holder to comply with the KYC norms.

(ii) Apart from obtaining the relevant documents, effort should be made to 'know the customer' in the real sense - his background, his stated activities/ profession. Discreet enquiries be made on the suppliers / buyers to check if they are in the same line of business or are bogus entities. Such timely checks help identify frauds at an early stage.

(iii) Data analytics and also intelligence gathering be made use of, to make fraud detection as near to real time as possible. Data analytics solutions can crunch huge data and give the patterns, in a visual, easily understandable format.

(iv) Customers be segmented on their risk profile and transaction patterns and develop appropriate response systems for exceptional patterns noticed and fortify systemic level controls.

[RBI Circular on KYC/AML]

(RBI/2015-16/42)

(DBR.AML.BC.NO.15/14.01.001/2015-16 dated 01.07.2015) (RBI/DBR/ 2015-16/18)

(Master Direction DBR.AML.BC.NO.81/14.01.001/2015-16 dated 25.02.2016)

8.11.2 Know Your Employee (KYE)

Several frauds are insider jobs or perpetrated with the abetment of insiders. Banks have to take extra care to have continuous vigil on their staff. Techniques of background check for antecedents, periodic rotations,

vigilance assessments, internal audits, etc. have to be effectively employed to know the employees better.

8.11.3 Know Your Partner (KYP)

(i) Modern day banking necessitates to work in hand with partners, agents and vendors, etc. Outsourcing, peripheral and several operational activities involve deploying and trusting outside agency's employees. Varied activities as diverse as cash logistics to IT and data management are being entrusted to third parties. Banking Correspondents and Banking Facilitators are emerging as another set of persons closely associated with a bank. If frauds are to be prevented, banks should have appropriate mechanism to screen their partners.

(ii) Due diligence on other professionals like Chartered Accountants, Valuers and Advocates involved in the loan assessment and sanctioning processes is also an essential safeguard. There have been instances where some of these professionals have facilitated perpetration of frauds by colluding with the borrowers to fabricate / fudge financial statements, inflate security valuation reports and prepare defective search reports for title deeds of mortgaged property and banks have been led to overestimate the funding requirements and security cover.

(iii) Where ever, it is found that the professional service providers like CAs, etc., engaged by the bank are found to be conniving with the perpetrators of the fraud on the bank, apart from de-panelling them, requisite reporting has to be made to their respective affiliated professional bodies like ICAI/ Bar Council, etc. through a centralised system, as per the policy laid down by respective Boards of the Banks.

8.12 FRAUD RISK AND GOVERNANCE

(a) A strong system of guiding the anti-fraud initiatives should be present in the bank. This requires a look at the corporate governance in banks and board level ownership of the anti-fraud initiatives.

(b) The Board of a bank should be proactive in understanding the fraud risks facing the bank and also put in place robust anti-fraud machinery. They should have a deep understanding of the institution's strengths and weaknesses and be able to steer the institution in the right direction.

(c) The Board needs to assess the robustness of the internal controls, with each new threat detected and be in a position to get the data analysed in a holistic fashion.

(d) The bank should deal firmly and consistently with any fraud, which should enable employees to escalate their concerns and insights on potential frauds to the Top Management.

8.13 REPORTING OF FRAUD CASES

8.13.1 ***Reporting to CBI / Police:*** Fraud involving

1. Amount exceeding Rs. 10,000 and upto Rs.1.00 lakh

   Local Police Station: only where staff involvement is prima facie evident

   (CVC Circular No. 007/VGL 050 dated 03.01.2008; CVC Circular No. 007/VGL/050 dated 14.06.2017)

2. Amount exceeding Rs. 1.00 lakh and below Rs.3 crores

   State CID / Economic Offences Wing of the State Police concerned

3. Amount involving Rs.3 crores and above & upto Rs.15 crores

   CBI–(Anti-Corruption Branch) Where staff involvement is prima facie evident

   CBI–(Economic Offences Wing) Where staff involvement is prima facie not evident

4. Amount involving above Rs.15 crores

   CBI – Banking Security and Fraud Cell which is specialised cell of Economic Offences Wing

   (CVC Circular No. 007/VGL 050 dated 03.01.2008, No. 007/VGL/050 (Part) dated 17.08.2010 and 12.06.2012)

   (Refer Annexure-B to this Chapter)

8.13.2 ***Reporting in respect of large value frauds:***

Department of Financial Services, vide their letter *No.4/5/2014-Vig. dated 13.05.2015* has issued instructions on the subject of 'Framework for timely

detection, reporting, investigation, etc. relating to large value bank frauds' (a copy of the said letter is placed at *Annexure-A* to this chapter).

In respect of large value frauds exceeding Rs. 50 crores, the complaint to be lodged by the bank with the CBI would be as per the following scheme: -

(i) Joint Director (Policy), CBI Headquarters, New Delhi shall be the nodal person for lodging of all bank fraud cases in consortium accounts.

(ii) In accounts where fraud exceeds Rs. 50 Crores, the CVO of the Bank concerned shall be designated as the nodal officer responsible for vetting the complaint and for ensuring that it is as per the extant guidelines. The CVO shall also be responsible for any subsequent coordination required to be undertaken with CBI in this regard.

(iii) The overall responsibility for ensuring compliance of the various timelines being laid down in the RBI Circular would rest with the CMD/MD & CEO of the Bank.

(iv) In case of a consortium lending / multiple banking arrangement, only one bank will be required to file an FIR and all the other banks would extend necessary support to the investigating agency in investigation of the fraud, including by way of providing all necessary information, documents, etc.

(v) Once the fraud is reported to RBI, the banks would immediately initiate examination of the issue of wilful default.

(vi) Banks at the time of lodging a complaint with the CBI would also lodge a complaint with the Enforcement Directorate in those accounts where money laundering and FEMA violations also appear to be there. Similarly, where the fraud also appears to involve violations in the export and/or import of goods and services, a report will also be lodged with DRI.

(DFS Circular/Letter No. 4/5/2014-Vig dated 13.05.2015)

8.14 FRAUD REPORTING TO COMMISSION

Before making reference 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 or 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 complaint 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 serious misdemeanour / misconduct or equivalent negligence.

The Commission had taken the fraud cases out of Vigilance ''A" category and reclassified them as vigilance "F". Category "F" frauds are frauds of Rs.1 crore and above, perpetrated with a criminal intention by any bank official, either alone, or in collusion with insiders / outsiders. The CVOs are to personally monitor the above cases and ensure that Departmental action is disposed of within a period of 4 months from the date of issue of the charge sheet. CVO is also required to submit a monthly report on such "F" category cases to the Commission in respect of such cases of fraud where officials are directly involved in the commission of fraud in the prescribed format.

The reporting of these cases should be ensured by the CVO and it should also be ensured that vital information (viz. Date of reporting to RBI, Lodging of FIR, Amount involved and likely loss, Modus operandi, status of staff accountability exercise, status of CBI case) is adequately covered in reporting. CVO must also ensure to suggest systemic improvement undertaken or proposed to be undertaken for avoiding recurrence of such frauds.

(CVC Circular issued vide Letter No. 001/Misc (V-3)/002 dated 05.04.2002)

8.15 FORENSIC SCRUTINY OF IRREGULARITIES

8.15.1 There is justified expectation of high level of transparency in Public Sector Banks by the stakeholders and Regulators. With increased Regulatory

scrutiny, banks are under greater pressure to implement best practices. Compliance to systems and procedures and Regulatory norms is therefore not an option but the need of the hour. It is vital that PSBs protect themselves against significant risks that exist and implement robust anti-fraud systems and controls to counter such risks and maintain market confidence.

(RBI Circular No. RBI/2014-15/590 DBS.CO.CFMC. BC.No.007/23.04.001/ 2014-15 dated 07.05.2015)

8.15.2 ***Importance and purpose of forensic investigation in the banks:***

(a) With advancement of technology available for putting through interbank transactions on real time basis with full secrecy, it has become very difficult to rightly understand the nature of banking transaction and the final destination of funds. Many unscrupulous borrowers, having access to huge bank funds, resort to different kinds of mischievous and fraudulent activities in a very clandestine and dubious manner to defraud the banks. Such borrowers conceal and camouflage fraudulent transactions with such an alacrity and adroitness that it becomes virtually impossible for an average investigator to detect the fraud, its modus operandi, the identity of perpetrators and their malafide acts and above all, the trail and exact final destination of the funds. Therefore, the bankers as well as the investigating agencies have now started engaging forensic investigators to lift the veil from the transactions, to identify the fraudulent acts, if any, on the part of the big borrowers, to discover the modus operandi with names of persons involved, the quantum of fraud and loss, the trail of funds/bank's money and the possible legal procedure and routes to recover bank's money together with tracing and collecting legally enforceable evidences.

(b) The basic purpose of forensic investigation is (i) to probe & discover whether suspected fraud has actually occurred (ii) who are the perpetrators of fraud / other persons responsible (iii) to quantify the amount of fraud or loss due to fraud (iv) tracing, collecting & identifying legally tenable evidence (v) ensuring the safety of collected / traced evidence (vi) preparing & presenting the structured evidence based findings which

have definite potentials to stand before the examination & scrutiny of courts.

8.15.3 ***Features / Objectives of Forensic Investigation:***

(i) The process of investigation is undertaken with the objective in mind to find legally enforceable evidences, which may be acceptable to the courts.

(ii) Sometimes, the investigators are assigned altogether different duty of probing into the non-financial matters, especially where the monetary disputes are to be settled pursuant to closure of business / unit.

(iii) It involves systematic approach i.e. first planning, then collection of evidence and then co-relation of evidence with the suspected fraudulent activity and review of information.

(iv) Forensic auditing strengthens control mechanisms and will protect the business enterprise against financial crimes.

(v) Forensic auditing can play an important role for companies under review by regulatory authorities and can also be invaluable to ensure regulatory compliance.

(vi) Forensic auditing can help protect organisations from the long-term damage to their reputations caused by the publicity associated with insider crimes.

(vii) Forensic auditing can improve efficiency by identifying areas of waste and by revealing the gaps / loop holes in the system.

8.16 FORENSIC AUDIT AND VIGILANCE INVESTIGATIONS IN BANKS

(a) In domestic enquiries in banks, the standard of proof is related to preponderance of probability. However, evidential material should point to the guilt of the delinquent in respect of each charge with some degree of definiteness. Therefore, gathering of correct and strong evidence in vigilance investigations is essential. This is all the more important in respect of high value frauds.

(b) The importance of forensic audit practices in bank vigilance investigations have been well recognized by RBI. RBI has advised that from the

operational point of view they may take certain measures in order to ensure effective and quick investigation, monitoring and follow up. Public Sector Banks, in line with RBI guidelines, may consider developing procedures for performing routine tasks, such as imaging a hard disk, capturing and recording volatile information from systems, or securing physical evidence. The goal for the guidelines and procedures is to facilitate consistent, effective and accurate forensic actions, which is particularly important for incidents that may lead to prosecution or internal disciplinary actions.

(c) In Bank Vigilance investigations, the investigating officials perform an almost similar role as that played by Forensic Auditors. However, forensic audit is an advanced and scientific method of investigation of frauds deploying specialized skills and techniques for optimum results. Training in forensic audit for bank vigilance investigating officials will enable them in unearthing appropriate evidence, in ruling out the role of innocents and thereby protecting them, in arriving at the exact financial loss, in clearly establishing the modus operandi; in revealing the loop holes in the system and finally in booking the culprits in a more efficient manner.

(d) The biggest advantage of forensic scrutiny for banks is to identify assets created by the borrowers out of funds siphoned off including personal properties and properties held in the names of their associates.

PUBLIC SECTOR INSURANCE COMPANIES

8.17 VIGILANCE ANGLE IN INSURANCE RELATED TRANSACTIONS

Broad guidelines on vigilance angle have been dealt in Chapter-I. However, sector specific details are listed below:

8.17.1 Business in Insurance is a risk transfer mechanism by which an organisation / individual (called "the insured") can exchange uncertainty for certainty. The insured agrees to pay a fixed premium and, in return, the insurance company agrees to meet any losses which fall within the terms of policy. In life insurance business where the contract is for a longer period, the repayment of the sum assured and the solvency of the insurer are vital to being able to fulfil its obligations. If the insurer fails to keep its

promise of indemnification or there is undue delay in settling it, it can be a cause of public grievance. At the same time, being in the public sector and thus not guided by the overriding concern of profit, it is possible that claims that are not otherwise eligible are settled to the detriment of the interests of the insurer. The insurer, while meeting its obligations to the insured by spreading the risk of few claims across the larger mass of premium paying insured, it also fulfils its commercial obligations by placing the funds at its disposal in various investment portfolios. Funds management is an integral part of the insurance industry and the interests of the organisation requires optimization of these investment decisions. Juxtaposed with this optimization, the trusteeship concept is a key element of insurance management. It is appreciated that there cannot be any general rule for such placements but any action that is a breach of trust revealed by improper investment also needs to be acted against. Vigilance cases, which arise in the insurance industry, inter-alia, relate to;

(a) Pre-dating of cover notes;

(b) Settlement of bogus claim in collusion with the insured;

(c) Payment of an exaggerated amount as a claim;

(d) Disposal of salvage, etc.;

(e) Cases of misappropriation of cash, purchase of inferior material at inflated cost, hiring and releasing of premises without observing set norms and irregularities in awarding contract;

(f) Acceptance of a bad risk for insurance cover;

(g) Collusion with doctors and others on medical examination of prospects;

(h) Deliberate bad underwriting practices;

(i) Acting against the interest of the company in placement of funds.

8.17.2 It is the responsibility of the Chairman and other senior officers of insurance companies to nip such activities in the bud through effective monitoring and supervision, periodical inspection and by streamlining of procedures.

CEO of an organisation is not only expected to set a personal example of honesty, uprightness and effectiveness, but is also expected to ensure the same on the part of officers and staff in his organisation by suitable motivation, streamlining of procedures and by having in place an effective and receptive public grievance redressal machinery. A CEO can ensure the moral fibre of the organisation by according an important place to vigilance in the scheme of management. Therefore, it is reiterated that vigilance is essentially a function of the management and it is for the management to respond appropriately to the advisory functioning of the CVO. The Chief Executive Officer has a variety of functions to perform and the status accorded to the CVO and its functioning vis-à-vis the other functions, would send out the appropriate message across the organisation.

8.18 PREVENTIVE VIGILANCE

This is the most important aspect of a CVO's function. This helps in ensuring that vigilance cases are minimised. Various activities associated with Preventive vigilance are described in *Chapter II* and *X*. However, measures specific to the insurance sector are stated hereinafter.

8.18.1 *Underwriting Check Points:*

(a) While procuring the business all necessary details are to be incorporated in the proposal form. The proposal should be complete in all respects with definite information. Policy should be in consonance with the information elicited in the proposal form.

(b) All the underwriting instructions issued by the Company from time to time should be adhered to.

(c) The respective underwriting should follow the limits of acceptance. If the proposal is beyond the acceptance limit, it should be forwarded to next higher authority for sanction.

(d) In case the Risk Inspection is required as per Company norms, it should be done by the authorised person.

(e) It should be ensured that the policy should be underwritten as per sanction given by higher authority, the riders on the sanctions should

be duly incorporated in the policy.

(f) In case the business is being brought by a Broker, ensure the Broker has the mandate of the client.

(g) Renewal should not be done in a mechanised way. Any change in sum insured / risk or coverage should be duly signed by the insured.

(h) Where there is break in insurance, necessary pre-acceptance modalities should be completed.

(i) In case of Motor Insurance, the IDV should be fixed taking into account the provisions made for the purpose so as to avoid unnecessary disputes in case of total loss.

(j) The name, address and locational details should be clearly mentioned in the policy.

(k) The manual record of underwriting- binders should be maintained in a systematic manner.

(l) Third party cheques should not be accepted while doing insurance.

(m) In case of acceptance of declined risks, Corporate Office guidelines should be followed without fail.

(n) Any alternation or change during the policy period should be accepted after due verification and care.

(o) Post loss changes in the policy should be done with due permission of the appropriate authority.

(p) Attachment of relevant Conditions / Warranties / Clauses to be ensured.

(q) Change of agency after issue of policy to be supported by specific reasons.

(r) Refund requests should be accepted very carefully and as per Company guidelines.

(s) Collection of Premium in respect of Marine Cargo specific policies, Policies on Short Period basis, Overseas Medi-claim polices should be by way of NEFT / DD / Pay Order.

8.18.2 CLAIMS

(a) Claims should be registered immediately on receipt of intimation.

(b) Claims where close proximity is there, the waiver should be done by the appropriate authority.

(c) Create a strict follow up with the surveyors for the submission of survey reports in time. Wherever required the interim reports are to be invoked.

(d) The claim file should be maintained in a systematic chronological order.

(e) In every file claim note and duly signed 64 VB compliance should be placed.

(f) Where there is delay in intimation of claim or accident day happens to be off day / Saturday / Sunday—a bit of caution is required.

(g) Recovery rights in all claims should be invoked immediately on the settlement of the claim without any delay. A register should be maintained to this effect.

(h) Where the claims are repudiated—the repudiation must be conveyed in specific terms and in case of major claims repudiation should be vetted by retainer / advocate.

(i) Surveyor should be deputed immediately within a time frame and job rotation of surveyors must be adhered to.

(j) Post Loss inspection by DO / RO Official / Engineer for major losses above DO limit is a must.

(k) Intermittent periodical review of surveyors / Third Party Administrators.

(l) Processing of claims is a sensitive / technical task and various aspect like acceptance of risks without proper approval, claim preceded by increase of Sum Insured / inclusion of affected location just prior to claim, consecutive claims of similar nature, damages to obsolete machinery, cases of declared NPA by the financial institutions, suspicious documents, salvage issues, etc. should be kept in mind while settling the claims.

(m) Company must formulate norms for settlement of non-standard claims

and it has to be ascertained whether they fall under these norms and should be dealt with accordingly.

(n) To ensure that claim minimisation measures have been taken in all claims.

(o) Claims should be approved by Competent Authority and it should be ensured that satisfaction voucher and discharge voucher be placed in the file.

(p) Disposal of salvage should be as per norms and guidelines issued by the Company from time to time.

8.18.3 MOTOR ACCIDENT CLAIM TRIBUNAL (MACT) & OTHER LEGAL CLAIMS

(a) In case of bodily injury / death claims it should be ensured that proper documents including police report, medical report / post mortem report, data regarding age, income, dependency, marital status of victim should be collected and properly investigated.

(b) In case of fault liability claims, negligence of the owner / driver of the vehicle involved in the accident is to be proved.

(c) In case of summons received from MACT, the insured should be contacted to ascertain the liability of the Company and necessary follow up should be done by the office with the dealing advocate.

(d) It should be ensured that all the defences available have been duly incorporated in the written statement filed in the court. The awards must be satisfied in time to avoid any further interest.

(e) If the case is fit for appeal, then matter should be taken up with the appropriate authority for filing appeal within the prescribed time limits.

(f) In case of third party property damage claims it should be ensured that surveyor's report is available for the property damage. FIR is available in these cases. The office has called for inspection of Driving License, RC Book and obtained bills of repairs and / or replacement of the damaged property.

8.18.4 ACCOUNTS

(a) No third-party cheques should be accepted.

(b) Record of deposit of cheques and cash should be maintained in unified way.

(c) In case of cheque dishonoured, the policy should be cancelled immediately with information to the insured by Registered Post with AD. In case of Motor policies, the concerned RTO is also to be informed in the same manner. In no way, the cheques should be re-represented. Original policy should be taken back from the insured.

(d) All the payments vouchers should be duly signed by the officials concerned.

(e) Ensure that the authority who has passed the payment is having financial authority vested by the Competent Authority.

(f) All the payments should be governed by Financial Standing Order in effect as on date.

(g) The NEFT should be sent immediately without any delay on the generation of advice. The NEFT advice should be signed by duly authorised persons.

(h) The payment voucher should have all the relevant papers of sanction of payment. The payment vouchers should be placed in the relevant claim files.

(i) Every office should scrutinise the trail balance on intermittent basis to adjust/dispose-off the outstanding entries.

(j) Bank Reconciliation should be done on monthly basis. In case of large offices, it can be done even more than once in a month to ease the pressure and secure accuracy.

(k) No NEFT entry should be outstanding in the bank reconciliation except for the last days.

(l) The copy of accounting record of Micro Offices should be available in the MOs for inspection purposes. The accounts of MOs should be monitored on regular basis.

(m) All the advances should be duly recorded in the registers maintained for the purpose.

(n) While receiving the payments anti-money laundering provisions and instructions should be followed in totality.

(o) Ensure that all the advances are adjusted within time frame on the completion of journey. Delay in submission of TA / LTS bills should not take place.

(p) LTS Register should be maintained exhibiting Block Year, name, amount and date of payment

(q) Do not sign any blank document like cheque, etc.

8.18.5 APPOINTMENT OF SURVEYORS

The CVOs have to ensure that there is an effective system in place for taking Surveyors on panel and also rotation of work among the Surveyors on panel. The performance of Surveyors also has to be closely monitored by the insurance company so that there is appropriate system in place for submission of Surveyor reports in processing of claims. In this regard, appropriate SOPs are required to be drawn by the Insurance companies bringing transparency, timelines, methodologies, MIS and monitoring for processing of claims.

*****

Annexure-A

F.No. 4/5/2014-Vig.
Ministry of Finance
Department of Financial Services.
*****

New Delhi,
Dated 13th May, 2015

To:

All the CMDs/MSDs of PSBs/CBI/RBI/CEIB/DRI/MCA/ED

Subject: Framework for timely detection, reporting, investigation, etc. relating to large value bank frauds

1. In view of the serious lapse observed in the timely identification and initiation of proceeding in the matter of large value bank frauds, resulting in substantial loss to banks, misappropriation of public money and delays in brining the offenders to justice. It was decided to put new systems in place aimed at wide ranging structural and procedural reform of the prevailing system. Accordingly, RBI has since issued a circular DBS. CO.CFMC.BC.No.007 / 23.04.001 2014-15 dated May 7, 2015 lying down revised framework applicable to banks for dealing with loan frauds.

2. Banks should be prompt in identification of frauds and taking prescribed follow-up actions. While following all extant instructions issued by RBI in this regard. Timelines indicated in the RBI circular for reporting of frauds following instructions are being which would be applicable to all Public Sector Banks (PSBs).

3. The complaint to be lodged by the bank with the CBI in the event of a fraud would be in accordance with the checklist enclosed at Annexure-I.

4. Joint Director (Policy), CBI Headquarters, New Delhi shall be the nodal person for lodging of all bank fraud cases.

5. In case of frauds exceeding Rs. 50 crore, the CVO of the Bank concerned shall be designated as the nodal officer responsible for vetting complaint and ensuring that it is as per the checklist enclosed at Annexure-I herewith. The CVO shall also be responsible for any coordination required to be undertaken with the CBI in this regard.

6. The overall responsibility for ensuring compliance of the various time lines being laid down in the RBI circular would rest the concerned CMD/MD of the Bank.

7. CBI would ensure that based on the complaint the FIR is registered at the earliest and in no case should it be delayed beyond 15 Days from filing of the complaint by the Bank. Upon receipt of the complaint the CBI would examine the documents and give written comments to the CVO or any other designated officer, as the case may be either through email or at a meeting that may be covered to discuss the matter, within five working days receive the complaint. Inputs sought by CBI would be furnished by the Bank in no later than 4 working days from receiving the comments on the Initial complaint from CBI. Thereafter, the FIR would immediately be lodged.

8. In case of a consortium lending / multiple banking arrangements only one bank will be required to file an FIR and all the other banks would extend necessary support to the investigating agencies of the fraud, including by way of providing all necessary information, documents etc.

9. Once the fraud is reported to RBI, the banks would immediately initiate examination of the issue of willful defaulters to include borrowers who are perpetrators of frauds in the process of borrowing from Banks, given the prior intension of defrauding the Bank and attempting to escape/ weaken the liability and/or responsibility to repay their debt.

10. All accounts exceeding Rs. 50 crore, if classified as NPA, shall simultaneously be examined by the banks from the angle of possible fraud. A report would be placed before the Bank's Committee for review of NPAs on the finding of this investigation.

11. While the banks should endeavor to seek a report from the CEIB on any prospective borrower at the time pre-sanction stage, in case an account turns NPA, the banks shall be required to seek a report on the borrower from CEIB. Report would be furnished by CEIB within one week after receiving a request from the Bank.

12. The CBI will put in place a mechanism for reviewing and monitoring progress in investigations etc. of all banking coordination. Various investigating / monitoring agencies like Ministry of Corporate Affairs (SFIO), CEIB, FIU, RBI and DRI will be associated in this mechanism, as also Department of Financial Services (DFS), which would extend all such support as required by the CBI. CBI would prepare a prescribed format for monitoring the pending cases. Decisions taken in these meeting would be bending on all constituents of this mechanism attending the meeting

13. DFS would facilitate CBI in obtaining appropriate professional help n its investigations as and when requested by CBI.

14. Banks at the time of lodging a complaint with the CBI would also lodge a complaint with the Enforcement Directorate in those accounts where money laundering and FEMA violations also appear to be there. Similarly where the fraud also appears to involve violations in the export and/ or import of goods and services. A report will also be lodged with DRI.

(Anna Roy)
Director (Vigilance)

Checklist to Ensure Filing of complete Complaint by Banks in Fraud Cases

Complaint by the Banks to CBI must include the following.

Sl. No.	Details
1	The complaint has authorization from the competent authority to file the complaint.
2	The account has been declared NPA as per the laid down procedure.
3	The date of NPA and outstanding thereof have been mentioned.
4	The NPA account has been declared as fraud, with the date of declaration.
5	Where there is delay in filling complaint with CBI after declaration of fraud by the bank. The delay has been explained.
6	The grounds for declaring the fraud by the bank are mentioned clearly.
7	Details of background of company, sanctioned credit facilities. Primary and collateral securities etc. are mentioned.
8	Legal facts constituting cognizable offence have specific mention.
9	Name(s) and role of erring bank official(s) as per the staff Accounting Report is/ are clearly mentioned.
10	Findings of Forensic Audit Report, if conducted and Internal Investigation Report are duly incorporated.
11	Details of crime proceeds/ end-use funds as per the filings of Forensic Audit are mentioned.
12	In case of uncertainty about the criminality on the part of bank officials. The bank has mentioned allegations against unknown public servants.
13	Roles of CA, Statutory Auditors, Stock Auditors, Empanelled Values etc. if any are mentioned
14	Availability of relevant original documents and their safe custody with the bank is mentioned.
15	The bank has ensured that there is no contradiction in the complaint as to whether it is an act of crime or a business loss.

Annexure-B

Telegraphic Address :
"SATARKTA: New Delhi

E-Mail Address
cenvigil@nic.in

Website
www.cvc.nic.in

EPABX
24600200

फैक्स/Fax : 24651186

सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
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

007/VGL/050
सं./No.....

14th June, 2017
दिनांक / Dated.....

Circular No.06/06/17

Subject: Reporting of fraud cases to Police/State CIDs/Economic Offences Wing of State Police by Public Sector Banks.

According to the existing instructions contained in para 3 of the Commission's Circular No. 3/1/08 dated 3rd January, 2008, in the matter of reporting cases involving financial frauds to the local police by Public Sector Banks (PSBs), cases below the value of Rs.1,00,000/-, but above Rs.10,000/- are required to be reported to the local police by the concerned branch of the PSBs.

2. The Commission, in consultation with the Reserve Bank of India taking into account the practical difficulties faced by PSBs in reporting such categories of cases has decided that only if staff of the bank is involved in the fraud cases of below Rs.1,00,000/- and above Rs.10,000/- would need to be reported / file complaint to the local police station by the Bank branch concerned.

(J. Vinod Kumar)
Director

To

1. All CMDs of Public Sector Banks
2. All CVOs of Public Sector Banks

Copy for information to:

(i) Chief Vigilance Officer, Department of Financial Services, New Delhi.
(ii) Reserve Bank of India, Department of Banking Supervision, Mumbai.
(iii) The Joint Director(Policy), CBI, New Delhi.

Chapter IX
Chief Technical Examiners' Organisation

9.1 THE ORGANISATION

9.1.1 ***Evolution:*** The Chief Technical Examiner's Organisation was set up in 1957 under the Ministry of Works, Housing & Supply, as it was known at that point of time, with a view to introduce a system of internal concurrent and continuous administrative and technical audit of the works of Central Public Works Department and to secure economy in expenditure and better technical & financial control of the works (Reference: para-3.12/ Section-3/*Santhanam Committee Report)*.

The *Committee*, while making recommendations (para-3) on the working of CPWD (Annexure-X), observed that: –

"*The Chief Technical Examiner's Cell set up in the year 1957 has been doing extremely good work. We consider that this organisation should not only be continued but also should be suitably strengthened to discharge the functions that have been entrusted to it more effectively and intensively. The jurisdiction of the organisation should be extended to cover construction work which may be undertaken by any Ministry / Department / Central Corporate undertaking through its own agencies. The Chief Technical Examiner's Cell should also have specialized staff like wood experts, accounts men, etc. This organisation should be attached to the Central Vigilance Commission so that its services may easily be available to the Central Bureau of Investigation or in inquiries which are caused to be made under the directions of the Central Vigilance Commission*."

Thus, the Chief Technical Examiner's Organisation became part of the Central Vigilance Commission when it came into existence in 1964.

In the year 1979, one more post of Chief Technical Examiner was created to cater to the increasing work load and growing complexities of public procurement. Considering the fact that a major chunk of Government expenditure was on public procurement and public procurement was one of the important means of delivery in day to day governance, other types of procurement were also brought within purview of scrutiny by Chief Technical Examiners' Organisation (CTEO), as the organisation is known as at present.

9.1.2 ***Set up:*** The CTEO is headed by two Chief Technical Examiners (CTEs)– one of them is generally responsible for examination of civil / horticulture related procurement cases and matters and the other for all other types of procurement contracts, viz., supply contracts, electrical / mechanical contracts, IT procurements, consultancy & service contracts, transport contracts, etc. and related matters. The CTEs are assisted by a team of Technical Examiners (TEs), Assistant Technical Examiners (ATEs) and Junior Technical Examiners (JTEs).

9.2 ROLE & FUNCTIONS

(a) The primary responsibility of CTEO is to conduct technical and financial scrutiny of different procurement cases to ensure better economy and efficiency in procurement process and thereby to achieve financially and qualitatively better output, in fair, equitable and transparent manner.

(b) Secondly, as technical wing of the Commission, CTEO advises on specific references by the Commission, involving substantial technical issues, and other related matters, referred to it from time to time.

(c) To give effect to its main function, CTEO conducts Intensive Examinations (IEs), short listing some of the critical procurement cases, with the approval of the Commission, mainly from those reported by different organisations through Quarterly Progress Reports (QPRs), beyond a laid down threshold value. The procurement cases, so selected, are thoroughly examined right from the stage of their inception to the stage of fulfilment of all contractual obligations and beyond in an objective manner.

In course of Intensive Examination, issues involving vigilance angle– reflecting gross negligence, grave procedural irregularities, financial

imprudence resulting in loss to the organisation, malafide, etc., are converted into vigilance references, with the approval of the Commission and duly followed up, by the concerned vigilance branch of the Commission, with the organisation concerned for suitable disciplinary action or otherwise, against the officials found responsible. Punitive actions, recovery or any other suitable administrative action, are also advised against the defaulting firms / Contractors.

It needs no over emphasis that systemic improvements, in the matters found lacking in one aspect or the other, in the course of the examination, are regularly advised as a measure of preventive vigilance and better performance in times to come.

(d) CTEO offers its advice on policy matters / specific issues, mainly related with public procurement, referred to the Commission for its comments/ opinion, by the Ministries, Departments of the Government of India, PSEs/ PSBs or any other entity within the jurisdiction of the Commission.

(e) CTEO offers its advice on the policy matters / specific issues, mainly related with public procurement, referred to the Commission for its consideration, by the various entities representing different industries, different sectors of economy, etc.

(f) As a measure of preventive vigilance and system improvement, CTEs/TEs participate in workshops, seminars to share experience and familiarise people with the issues related with public procurement.

9.3 JURISDICTION OF CTEO

The jurisdiction of the CTEO is coextensive with the jurisdiction of Central Vigilance Commission.

9.4 INTENSIVE EXAMINATION

The *Central Vigilance Commission Act, 2003* empowers the Commission to call for reports, returns and statements from all Ministries / Departments/ Corporations / Central Undertakings so as to enable the Commission to exercise general check and supervision over the vigilance and anti-corruption work in the Ministries / Departments / Undertakings. CTEO need to carry out technical and financial audit of procurement cases, as per its original mandate.

9.5 SUBMISSION OF QUARTERLY PROGRESS REPORT BY CHIEF VIGILANCE OFFICER OF THE ORGANISATION

9.5.1 The CVO of an organisation, covered under the jurisdiction of the Commission, is required to furnish Quarterly Progress Reports (QPRs) in respect of ongoing / completed procurement contracts for the quarter by 15th day of the month following the end of the quarter.

9.5.2 In the *CVC Circular No. 15/07/12, issued vide Letter No.98-VGL-25/18 dated 30.07.2012* the current monetary limits for reporting the contracts in QPRs are defined. The threshold limits are as follows:

(a)	Civil Works	Rs.5 Crores & above
(b)	Turnkey Works Projects	
(c)	Stores and Purchase	
(d)	Public –Private Partnership (Cost/Revenue values)	
(e)	Sale of goods/scrap/land	
(f)	Electrical/Mechanical Works/ Maintenance/Service Contracts Including Electronics/Instrumentation/ Telecommunication/Manpower supply, etc.	Rs.1 Crore & above
(g)	Medical Equipment	Rs.50 lakh & above
(h)	Consultancy Contracts	Rs.1 Crore & above
(i)	Horticulture Works	Rs.10 lakh & above
(j)	Supply of Medicines	4 largest value contracts

The QPRs should be submitted both in soft copy through e-Mail at *qpr.te.general@nic.in* as well as in hard copy, separately for each sub-category of procurement cases mentioned above. For contracts below the threshold value, CVO is required to conduct CTE type inspections and intimate the outcome to the Commission through their regular monthly/ quarterly reports.

9.5.3 The following explanatory notes are for guidance regarding the QPRs:

(i) Civil works also include marine, mining, excavation and related transportation works.

(ii) Electrical / Mechanical works also include air conditioning, firefighting, fire alarm and all other allied works.

(iii) In case there are no works awarded more than the threshold value mentioned under each sub-category, 2 contracts with highest value in each of such sub-category should be reported. In case no contracts are awarded "Nil" QPRs shall be sent.

(iv) In case the orders are placed in foreign currency, the threshold limit would be determined based on conversion of foreign currency into Indian Rupee at the exchange rate / criteria defined in the tender documents. However, the currency of payments may also be indicated as per the contract.

(v) Contracts awarded on Assignment / Nomination / Single Tender / OEM/ OES / PAC (*) basis falling in the above categories should also be reported.

(*) OEM: Original Equipment Manufacturer

OES: Original Equipment Supplier

PAC: Proprietary Article Certificate

(vi) For furnishing the QPR related to sale contracts, the QPR also to indicate the value as per reserve price besides the sale price.

(vii) The organisations shall report all types of contracts irrespective of their role as Client / Owner or Engineer-in-Charge of the Contract or Project Management / Supervision Consultant.

(viii) All works whether in India or outside India in progress, contracts awarded and the works completed during the quarter shall be included in the QPR. In respect of works completed during the relevant quarter, the actual date of completion shall be indicated.

(ix) Against all the procurement cases, reported in the QPR, mode of tendering adopted against each of the procurement case, shall be distinctly mentioned.

(x) CVO to certify on the QPR that all the Works / Purchases / Consultancies

and other contracts required to be reported as per *Circular* have been included in the QPR.

9.6 SELECTION OF PROCUREMENT CASES FOR INTENSIVE EXAMINATION BY CTEO WITH APPROVAL OF THE COMMISSION

9.6.1 Selection process of procurement cases for Intensive Examination consists of short-listing of the procurement cases, as per the laid down criteria and approval of the Commission. The short-listing of procurement cases for Intensive Examination is made either based upon inputs directly received by the Commission, e.g., complaints / source information or based upon QPRs. Various factors considered while short-listing procurement cases for Intensive Examination are as follows: -

(a) Complaints regarding procurement cases, received from various sources; the complaints may be regarding irregularities in tendering process, poor quality of execution, undue benefit to the contractor / s, time and cost overruns, etc.;

(b) works specifically recommended by the Commission for Examination, based upon certain inputs as to various irregularities committed at different stages of the procurement;

(c) works of the organisations handling large number of high value contracts;

(d) value of contracts; the QPRs are submitted for the procurement cases having contract value more than the threshold value depending upon the nature of procurement;

(e) works of the organisations not having their own Engineering Departments for supervision and quality control;

(f) periodicity of Intensive Examination of procurement cases of different organisations, so as to ensure that these organisations are covered on regular interval;

(g) geographical spread of procurement activities, so as to ensure that regular Examinations are conducted across the country;

(h) nature of procurement – works, supply, services, consultancy, etc., and criticality thereof;

(i) procurement cases having abnormal delays in completion and cost overrun.

As such procurement cases are short-listed, on merit of each individual case, after giving due weightage to each of the factors listed above; shortlisted procurement cases are put up to the Commission for consideration and approval.

9.6.2 At least 20% of the procurement cases (from those selected for Intensive Examination by CTEO with the approval of the Commission), in a year, would be taken up for focused and directed / thematic scrutiny in course of Intensive Examination. These cases would be from different sectors of economy, of different nature (material procurement / works / consultancy/ services, etc.), having wide range of tender value with subject matter of the procurement located across different corners of the country; these cases will also be selected with approval of the Commission.

The idea is to have better understanding / appreciation of different factors / ground realities / issues, affecting qualitative and successful execution of the procurement cases. Such factors / issues may include those affecting / related to timely execution of the projects / procurement cases, cost estimation, statutory provisions and framework of instructions for delivery, tender and tendering process, execution of the project in the field and supervision thereof, quality issues, payments to the contractor, completion report, objective fulfilment and feedback from different stakeholders, etc.; preferably, one taken at a time for thematic scrutiny. Based upon thematic scrutiny, suitable guidelines / suggestions / best practices / assessment will be brought out/made and submitted to the concerned authority, at appropriate level, for consideration, appreciation and implementation.

9.7 PROCESS OF INTENSIVE EXAMINATION

9.7.1 Intensive Examinations are done with prior intimation to the concerned organisation. First, all necessary and relevant documents are called for by CTEO for examination and then field examination is carried out. In course of field examination, physical inspection of the works / material,

checking of measurements and quality, collection of samples for testing, etc., is undertaken.

9.7.2 During the examination, all concerned engineers including the representatives of Planning / Design / Tender Processing and Execution Wings, representative of the contractor / s, the consultant, if any, and the Chief Vigilance Officer are required to be present, to the possible extent. However, while taking samples, representatives of the execution team, contractor and the Chief Vigilance Officer are invariably required to be present at the site. The samples so collected are handed over to the representative of Chief Vigilance Officer for sending them to the laboratory for testing, except in important cases where CTEO decides to get the samples tested separately.

9.7.3 ***Intensive Examination Report:*** On completion of Intensive Examination, a Report is prepared. Intensive Examination Report broadly covers the following points: -

(a) Preliminary estimate, administrative approval and expenditure sanction, vetting of demands, checking of specification, etc., in respect of procurement cases.

(b) Detailed estimate, technical sanction.

(c) Appointment of consultant.

(d) Call of tenders and award of work.

(e) Agreement.

(f) Inspection, despatch and acceptance of materials.

(g) Scrutiny of bills.

(h) Scrutiny of site records.

(i) Site inspection.

In general, observations on issues related with lack of transparency and fairness, non-adherence to public procurement procedures, specifications, quality deficiencies, time and cost overrun, over-payments, tax compliance, etc. are brought out. The Report is put up to the concerned

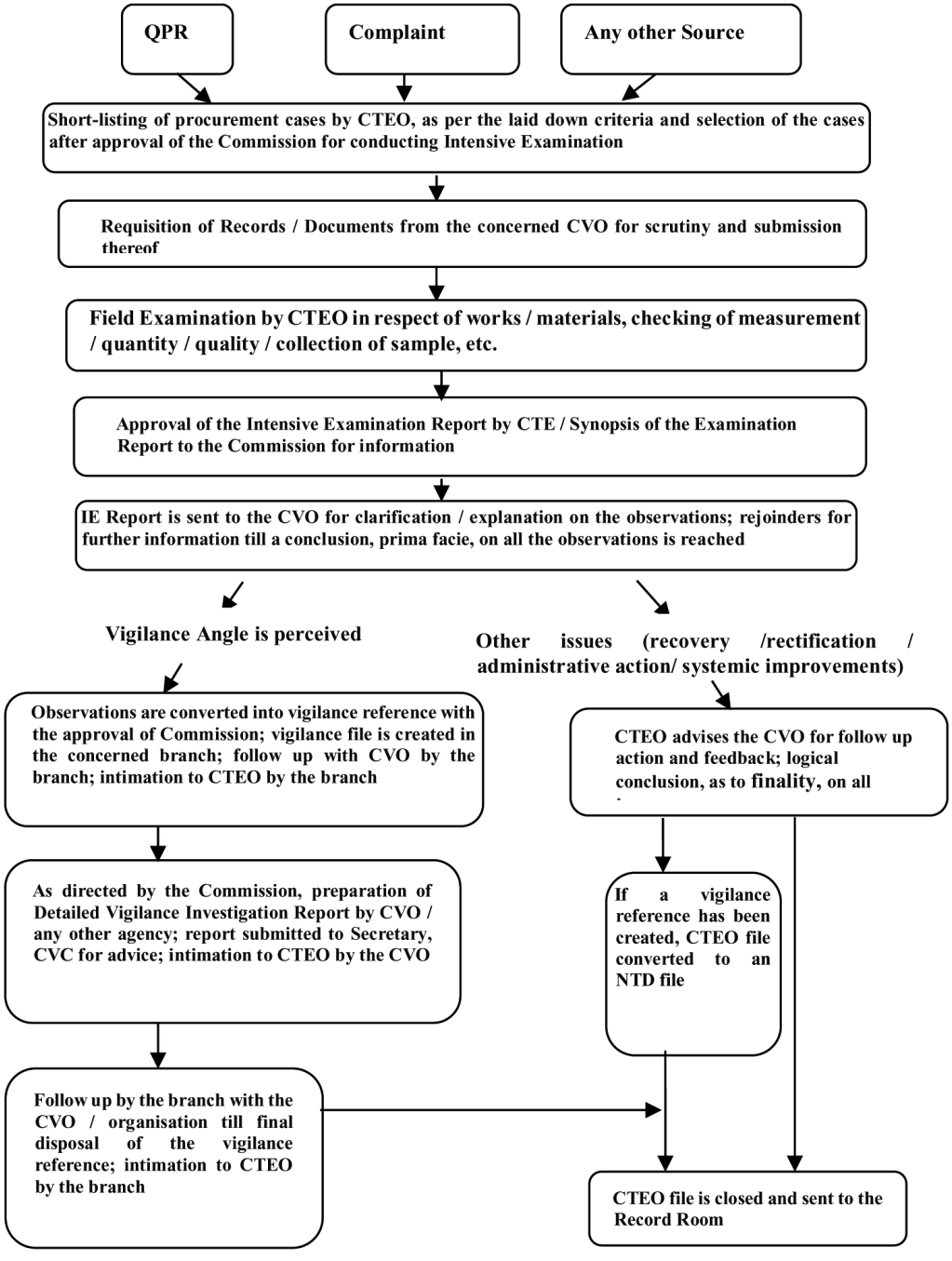
Chief Technical Examiner for approval and then synopses are put up to the Commission for kind perusal and information.

9.7.4 ***Follow up Action on the Intensive Examination Report:*** The Report is sent to the Chief Vigilance Officer of the organisation for comments. On receipt of the satisfactory comments / rejoinders against a number of observations, same are dropped; however, where satisfactory comments/ clarifications are not made against the observations, same are converted into vigilance reference with the approval of the Commission and sent for detailed investigation by the Chief Vigilance Officer / any other agency, as deemed fit by the Commission. Such vigilance references are followed up by the concerned vigilance branch in the Commission, to their logical conclusion, as per the laid down procedure followed in case of complaints.

The action taken on some of these observations results in systemic improvements, rectification of quality deficiencies / remedial actions, punitive and / or administrative action /s against the erring officials, penal actions against contractors and recoveries.

Guidelines for Intensive Examination by CTEO are available in *'Guidelines on Intensive Examination of Procurement & Other Contracts 2014'*.

Flow diagram Showing Stages of Intensive Examination (IE) Process



9.8 CTE TYPE INTENSIVE EXAMINATION BY CHIEF VIGILANCE OFFICERS

In order to bring about qualitative and in-depth improvement in vigilance administration, especially with reference to procurement, both in terms of content and scope, Chief Vigilance Officers of the respective organisations have been mandated by the Commission to carry out Intensive Examinations like CTEO, of some judiciously chosen contracts.

9.8.1 *Selection of Procurement cases for Intensive Examination by the Chief Vigilance Officer:*

The selection of procurement cases for Intensive Examination by the CVO should be done out of the procurement cases reported through QPRs and those which have not been reported to the Commission. Each Chief Vigilance Officer shall carry out Intensive Examination of not less than 6 procurement cases of different nature (supply, works / services/ consultancy,etc.) in a year. Preferably, selection should be done in such a manner that, at least, 3 cases of large value, 2 cases of medium value and 1 case of small value are selected for Intensive Examination.

Value of the procurement contracts may be judiciously categorized to decide the large, medium and small value cases keeping in view the scale and nature of procurement activities in the organisation. Chief Vigilance Officer shall inform CTEO about the details of contracts selected for Intensive Examination, so as to avoid duplicity of examination by the CTEO and the Chief Vigilance Officer, if any.

9.8.2 *Documents/Records for Examination to be called for by the CVO:*

After selection of the procurement cases for Intensive Examination, all relevant documents, samples pertaining to the said contract, shall be collected and examined. Following is a list of documents which should normally be requisitioned for taking up an Intensive Examination:

(i) (a) Press cuttings indicating publication of Notice Inviting Tender (NIT)/ Expression of Interest (EOI) and subsequent corrigendum(s), if any.

(b) Copy of print out in support of publicity of the tender on the website-(i)

for pre-qualification of Architects / Consultants; (ii) for pre-qualification of contractors; (iii) call of tenders.

(c) Record of sale of tenders.

(d) Record of tender opening.

(ii) Report of Administrative Approval and Expenditure Sanction.

(iii) Copy of Detailed Project Report (DPR) / Detailed Estimate (DE) and its Technical Sanction by the Competent Technical Authority.

(iv) Approval of NIT in original & Draft Tender Document.

(v) Pre-tender Documents.

(vi) Record of proceedings of Tender Scrutiny Committee (TSC) / Tender Evaluation Committee (TEC):

(a) for selection of architects / consultants;

(b) for contractors / suppliers / other service providers.

(vii) Record of current assessment of the cost to assess the reasonableness of the L1 / H1 offer.

(viii) Details regarding negotiations, if any, conducted with recording of reasons before acceptance of tenders.

(ix) Record of acceptance of tender by the Competent Authority.

(x) Original contract with consultant / contractor.

(xi) Guarantee bonds towards Performance Guarantee,

Security Deposit, Specialized items, Machinery / Mobilization / Material Advances, etc., including extension of their validity, if any.

(xii) (a) Insurance Policies for work, materials, equipment,Men, etc., including extension of validity;

(b) letter of credit in original.

(xiii) Guarantee for water tightness, termite proofing, etc.

(xiv) Standard specifications, inspection documents.

(xv) Standard Schedule of Rates.

(xvi) Drawing – Architectural and Structural.

(xvii) All connected measurement books, level books, field books and lead charts.

(xviii) All bills paid in original / running account bills with all connected enclosures / statements / vouchers.

(xix) Statements showing details of check of measurements by superior officers, copies of order laying down such requirements.

(xx)(a) Materials at site accounts of cement, steel, bitumen, paints, waterproofing compound, pig head, anti-termite chemical, etc.;

(b) stock / issue register of stores.

(xxi) Site order book / test records / log books.

(xxii) Details of extra / substituted items and of deviated quantities being executed considered for execution in the work along with analysis of rates.

(xxiii) Hindrance Register.

(xxiv) Office correspondence files and inspection notes issued by inspecting officer and their file.

(xxv) Complaint records, if any.

(xxvi) Any other documents relevant to the procurement process.

This list is not exhaustive; CVO may requisition more documents, as considered necessary, for an effective and holistic examination of the procurement case.

9.8.3 ***Check Points to carry out Intensive Examination by CVO:***

No amount of instructions can be adequate and all-inclusive to lay down the areas / points, to be covered in the course of an Intensive Examination across the different organisations. It is only out of experience in an organisation that a CVO will get to know about the sensitive areas/ activities / stages which are to be kept under watch.

However, a broad list of the points to guide Intensive Examination in any organisation is as follows: -

(i) Objective to be fulfilled by way of undertaking the procurement process, under examination;

(ii) feasibility study, if any, before formulating the project;

(iii) assessment of the requirement / quantity; any past trend, forecast, etc.;

(iv) preparation of a realistic cost estimate; administrative and technical approvals of the proposal by the competent authorities; sanction of the expenditure by a competent authority; budgetary provisions, etc.;

(v) various aspects related to tendering stage of the procurement process;

(vi) various aspects related with post tendering and execution stage of the procurement process;

(vii) availability and compliance of the extant policies / instructions / guidelines, on the subject matters of procurement under examination, of the GoI or CVC; availability, compliance and regular updation (in light of extant policies / instructions of the GoI/concerned bodies and current trends and practices, as considered relevant to the overall objectives of procurement process) of Departmental Codes / Manuals / Instructions on the subject matters of procurement under examination;

(viii) leveraging technology–status of implementation of Procurement, e-Auction, e-Reverse Auction, etc.;

(ix) training of the officials, dealing with the procurement process, in different aspects of procurement;

(x) timely fulfilment of the objective, to be met by way of the procurement process under examination.

Any other point / activity can be brought under scrutiny to make the examination effective and complete. In this regard, instructions issued by the Commission, from time to time, and a list of check points, hosted by the Commission on its website, under the title *"ILLUSTRATIVE CHECK POINTS FOR VARIOUS STAGES OF PUBLIC PROCUREMENT"* may be referred to.

9.8.4 ***Intensive Examination Report:***

Based upon scrutiny of documents and field inspections carried out, the Chief Vigilance Officer shall summarize the findings in form of a Preliminary Report. Wherever required references shall be made to the concerned Unit Heads, seeking clarification and/or advising immediate

interim actions, if any. The reply from the concerned Unit Head will be made in a time bound manner, within 15-days from the date of receipt of reference from Chief Vigilance Officer or as decided by him depending upon the merit of the case.

After due consideration of the reply / clarification received from the concerned Unit Heads, Intensive Examination Report shall be prepared.

9.8.5 ***Follow up Action on the Intensive Examination Report:***

(a) The CVO shall submit the Intensive Examination Report for information and necessary action. The management shall take appropriate / corrective/ punitive action /s with regard to the report within 90-days from the date of its receipt and ensure taking them to finality.

(b) Where serious irregularities, grave misconduct, negligence, etc., are observed on the part of any public servant and disciplinary actions, or otherwise, involve advice of the Commission, same shall be processed within 90-days from the date of preparation of the report.

(c) The CVO shall report details / information regarding these Intensive Examinations and the outcome to the Commission through monthly/ quarterly / annual reports.

(d) Regular submission of Quarterly Progress Reports, as per laid down instructions, and qualitative aspects of minimum prescribed number of Intensive Examinations by the CVO will be considered by the Commission while assessing the annual performance of the CVO.

Detailed guidelines on the subject are available in *'Guidelines for Intensive Examination of Public Procurement Contracts by Chief Vigilance Officers'*.

9.9 PUBLIC PROCUREMENT

9.9.1 ***General:*** Public Procurement means acquisition by purchase, lease, licence or otherwise of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a public procuring entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include

any acquisition of goods, works or services without consideration. Public procurement normally involves expenditure from public funds by public procurement entities. Transparency, fairness, equality of treatment to the prospective bidders / bidders and the successful contractor /s, efficiency, economy, competition, accountability and probity are the hallmarks of public procurement process. The prime objective is to achieve best value for the money spent in transparent and fair manner.

9.9.2 ***Important Ingredients of Public Procurement Process:*** Public procurement constitutes substantial part of Government spending; as such there is a need to create adequate safety mechanism to arrest any possibility of misuse of public funds, apart from abuse of authority. While punitive vigilance has its own relevance in the system, preventive vigilance is the best tool to check all such issues. Some of the important stages in public procurement process and relevant instructions are as enumerated in the following paragraphs: -

(i) **Procurement Manual**

Cardinal principle of public procurement is to procure the materials/ services / works of the specified quality, at the most competitive prices and, in a fair, just and transparent manner. To achieve this end, it is essential to have uniform and well documented policy guidelines and procedures in the organisation, so that this vital activity is timely executed in a well-coordinated manner, with least cost overruns. Procurement (work/ purchase / services) Manual should be regularly updated. Delegation of power and commensurate accountability, at various levels of decision-making, should be essential feature of the Procurement Manual.

For Ministries and Departments of Central Government, *General Financial Rules, 2005 (now revised as General Financial Rules, 2017), Manual on Policies and Procedures for Procurement of Goods,2006,Manual for Procurement of Goods, 2017,Manual on Policies and Procedure for Procurement of Works, 2006, Manual of Policies and Procedure of Employment of Consultants, 2006, Manual for Procurement of Consultancy & other Services, 2017* are there to be followed while processing procurement cases.

In some organisations, Procurement Manual is either not in place or has not been updated for years together, which renders the system of procurement ad-hoc and arbitrary. Such organisations are required to prepare Procurement Manual, in keeping with instructions of Government of India and guidelines of Central Vigilance Commission. Similarly, regular updation of the Manual is very essential for smooth procurement.

(ii) **Scope of Work / Time Perspective**

It is essential for any procurement case to have its scope clearly defined, in specific term. The genesis of any procurement lies in the realization of a need for betterment of existing system in terms of efficiency, economy, convenience of use / asset creation / day to day maintenance and operational requirements, etc. The scope of procurement must address satisfaction / fulfilment of the need. The scope must be reflected in the description of the subject matter of the procurement, quantitative and qualitative aspects with timeline for its completion, in broad sense.

Any genuine need has to be met in time bound manner to realise/derive maximum possible benefit out of its satisfaction and to ensure the best value for the money spent. So, definite and specific timeline for successful completion of a procurement process is imperative. A regular monitoring of the milestones reached, preferably making use of PERT/ CPM and other technological tools, comparison of actual timeline with targets and corrective measures, if any, and proper appreciation of all risk factors involved, having direct bearing on the actual timeline, and mitigation thereof by way of proper planning and logistics are of utmost importance.

(iii) **Administrative Approval & Expenditure Sanction**

No procurement shall be commenced or any liability incurred in connection with it without administrative approval and sanction to incur expenditure from the competent authority.

While initiating a procurement case, especially one for works, field surveys and feasibility study should be completed first, leading to preparation of a preliminary project report. The report is put up to the

competent authority for administrative approval - kind of a 'go-ahead' in principle.

Next important stage is preparation of a preliminary cost estimate. Cost estimation is necessary to give some idea as to likely expenditure on the procurement, to seek sanction from the competent authority to incur expenditure and to allot funds to carry out the process.

(iv) **Consultancy**

There may be a number of complexities involved in a procurement, especially big-ticket projects, e.g., assessment of exact need, technological selection, determination of required description and specifications, carrying out tendering, source selection, supervision over execution, quality assurance, IT related issues; the situation is aggravated when in-house expertise and necessary set up are not available to carry out these activities. All these factors lead to engagement of suitable consultant/s.

The Commission has issued guidelines regarding appointment of Consultants vide CVC *Circular No. 3L-PRC-1 dated 12.11.1982 and reiterated vide CVC Circular No. OFF1-CTE-1 dated 25.11.2002*.

Further, the Commission issued detailed guidelines on the possible 'Conflict of Interest' in appointment of Consultants and 'Professional Liability' of the Consultants, vide *CVC Circular No. 08/06/11 dated 24th June, 2011*. Ministry of Finance issued comprehensive instructions in the form of *'Manual of Policies and Procedure of Employment of Consultants, 2006'* and *'Manual for Procurement of Consultancy & other Services, 2017'.*

All organisations, outside the ambit of the instructions of Ministry of Finance, must have guidelines for appointment of consultants in place and these guidelines should be regularly updated. Guidelines for appointment of consultants should include, amongst others, provision of professional liability, upper extent of consultancy fee, payment linked to actual work output, penal clauses for frequent change of staff deployed by the consultant, delay in services, deficiency in services, clauses to deal with professional misconduct, etc.

Unambiguous eligibility criteria for selection of consultants should be fixed before inviting the offers for the consultancy work and should be commensurate with the importance, complexity and size of the project. Especially in the cases where bid evaluation is based upon Cost–cum-Quality or Combined Cost–cum-Quality criteria, attributes which will be considered to look into capacity–cum-capability of the bidders, their benchmarking and marking scheme must be brought out upfront. Wide and adequate publicity, including web-publicity, should be given for inviting the offers for the consultancy work.

In case of limited tender enquiry, panel should be prepared in a fair and transparent manner and should be regularly updated. Bid(s) received should be checked for its / their conformity with the terms of the tender document; and evaluation of the bids should be done as per the notified qualifying criteria. Issues related to the Services Tax, Professional Tax, etc. should be appropriately addressed at the time of bid evaluation. Compliance of contract conditions, related to proper performance of the consultant, should be meticulously monitored and recorded.

(v) **Detailed Project Report (DPR) / Detailed Estimate**

Successful contract performance depends on the quality of Detailed Project Report (DPR). If, DPR is prepared in ad-hoc manner, not based upon the actual ground conditions, there is every likelihood of hindrances to smooth execution, delays and deviations, resulting in time and cost overrun. It is imperative for trouble free execution of the contract that there is consistency among schedule of items, drawings and specifications; any ambiguity would add to execution related issues, qualitative aspect of execution, avoidable delays, besides leading to legal complications.

Detailed preparatory / exploratory work must be undertaken before finalising the technological aspects, determining tender terms and conditions – importantly Special Conditions of Contract, eligibility conditions for prospective bidders, items / materials to be used in the project and their respective specifications, suiting to the ground conditions.

For detailed estimation of cost, rates considered, as realistic as, should be

based upon last accepted rates (received through open tenders for same or similar items, under similar prevailing ground conditions), standard schedule of rates, proper cost analysis of different inputs, market survey. DPR should be in conformity with local bylaws, Archaeological Survey of India guidelines, Environmental norms, and with any other mandatory regulations.

(vi) **Design and Drawings**

Designing of products / structures / service modules is an important aspect of any procurement. It is important that various elements of the subject matter are properly designed as per extant standard practices and codal provisions and are environment friendly, energy saving, economical, efficient and user friendly. Design should be in keeping with the prevailing ground conditions and include all necessary details leaving no room for ambiguity.

(vii) **Tender Documents**

All procuring entities should have tender enquiry documents, in line with the extant rules, regulations, directives, procedures, etc. A set of standard documents should broadly have prescribed standard and procurement specific contents, following standard document templates, to the possible extent. SOP for any alterations / deviations, permitted in the standard contents and templates, with appropriate legal and financial advice, must be in place.

The tender documents must, at least, contain information as to the complete description / specifications of the subject matter of the procurement with quantity, timeline for meeting contractual obligations, instructions to the prospective bidders on bidding process / various process timelines/ bid eligibility and evaluation criteria/standard set of documents for bid submission and complete set of terms and conditions which will govern the contract agreement and its performance. Transparency, fairness and equality of treatment to all prospective bidders are the key words in designing of tender documents.

Inclusion of appropriate and adequate terms and conditions in the tender documents, by way of careful tender designing, is as important as technical

detailing and designing of the subject matter itself. It is imperative to go into detailing of a procurement case, bringing out different complexities involved in the specifications / design of the subject matter, prevailing conditions affecting the procurement and other ground realities. Tender terms and conditions, standard as well as procurement case specific, must be adequate to meet all such complexities / prevailing conditions / other foreseeable factors affecting successful execution of the procurement case / uncertainties to a reasonable extent.

Also, it is important to ensure that a due balance between the interest of the employer and the contractor is maintained, by incorporating suitable terms and conditions in the tender documents, in consultation with the associated finance and legal advisor. Any uncertain / onerous/ unreasonable condition /s, to any of the parties to the contract, may lead to time delays / litigation and alternative dispute resolution / cost escalation, etc., adversely affecting the procurement.

Various information / documents, normally included in the tender documents, are as follows:

(i) Notice Inviting Tender (NIT)

(ii) Instructions to Bidders (ITB)

(iii) Additional Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section)

(iv) Eligibility and qualification criteria

(v) Schedule of requirements

(vi) Technical specifications (including Drawings) and QualityAssurance (Inspections and Tests)

(vii) General Conditions of Contract (GCC)

(viii) Special Conditions of Contract (SCC)

(ix) Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.

Every information which is included in the tender documents, in deviation

from the standard practice or needing attention of the prospective bidders/ successful bidder, must be prominently placed, advising due attention.

Tender documents must be put in place before publication of NIT in the newspapers and websites; complete tender documents must also be available on the websites for down loading; tender documents are priced, based upon cost of preparation of the documents, and the payment towards the price may be made along with the bid.

(viii) **Pre-qualification / Bid Eligibility Conditions**

The success of any procurement largely depends on the capacity-cum-capability of the contractor. Pre-qualification aims at selection of competent contractor /s, having technical and financial capacity-cum-capability, commensurate with the requirements of the particular procurement, at the initial stage of procurement process itself. Eligibility of bidders may also be looked into, at a later stage, after calling bids.

The Commission issued guidelines vide *Circular No12-02-1-CTE6 dated 17.12.2002and 07.05.2004* advising framing of the prequalification/ eligibility criteria in such a way that they are neither too stringent nor too lax to achieve the purpose of fair competition.

Some of the irregularities observed in course of Intensive Examinations of the high value projects are as follows: -

Stringent eligibility criteria resulting in entry barrier for potential bidders and poor competition.

Evaluation criteria not notified to the bidders upfront, making the bidding process non-transparent.

Eligibility criteria changed / relaxed during evaluation, thus favouring the few chosen ones and discriminating against other capable ones.

Credentials of the bidders, as submitted by them, not verified from the respective credential certifying agency.

(ix) **Notice Inviting Tender**

The award of any public contract must be through transparent, fair and competitive process, ensuring at the same time, economy and efficiency

of the procurement process. Different modes of tendering have been discussed in following paragraphs.

The Commission, vide *Circular No. 98/ORD/1 dated 18.12.2003* , issued guidelines for uploading the Notice Inviting Tender and also tender documents in a down loadable form on the web site of the organisation. The web site publicity is to be given even in the case of limited tenders.

In terms of *OM No.26/12/2014-PPC dated 21.01.2015*, issued by the Department of Expenditure, Ministry of Finance, all Ministries/ Departments of Central Government, their attached and subordinate offices, Central Public Sector Enterprises (CPSEs), Autonomous / Statutory bodies are required to commence e-Procurement, including e-publishing of tender enquiry, in respect of all procurements having estimated tender value of Rs.2,00,000/- or more, in a phased manner.

(x) **Tender Evaluation and Award of Contract**

This is the most sensitive area, susceptible to many unintended and/or intended irregularities. Some of the points to ensure tender evaluation, in transparent, fair & open manner, are as follows:

Tender Evaluation Committee must be duly notified by the competent authority, ensuring that the members of the Tender Evaluation Committee are competent to deal with the subject matter, in keeping with the Procurement Manual.

Evaluation of tenders is done strictly as per pre-notified criteria.

There is no inordinate delay in processing of the tender for award, and preferably, the tender is finalised within original bid validity period.

Commission's guidelines on negotiation with the bidder /s are complied with.

Tender terms and conditions / specifications are not relaxed to favour any bidder /s.

L1 is not ignored on flimsy grounds.

Compliance with the purchase preference policy of the Government of India is ensured.

Rate reasonableness is duly looked into.

CVC guidelines in this regard have been issued vide following *Circulars*:

(CVC Circular No. 8(1)(H)/98(1) dated 18.11.1998)

(CVC Circular No. 98/ORD/1 dated 24.08.2000/ 15.03.1999)

(CVC Office Order No. 13/3/05 (005/VGL/4) dated 16.03.2005)

(CVC Circular No. 06-03-02-CTE-34 dated 20.10.2003)

(CVC Circular No. 004/DSP/11–6594 dated 24.02.2005)

(CVC Circular No. 005/CRD/012 dated 03.03.2007)

(xi) **Contract Agreement**

Contract agreement is a legal document, including Letter of Acceptance, which is signed at the final and conclusive stage of tendering process. A contract agreement includes the agreement between the procuring entity and the successful bidder /s, in terms of complete offer and counter offer, if any, as they are made and accepted by the parties to the contract.

The basic principles, to be always kept in view, by those who are authorised to enter into agreements, are as follows: -

(i) The terms of contract must be precise and definite, and there must not be any room for ambiguity or misconstruction, and the matters to be agreed upon should include, in appropriate manner, the following:

(a) what the contractor is to do; when, where, and to whose satisfaction it is to be done;

(b) what the procuring entity is to do; and on what terms;

(c) what payment is to be made; to whom it is to be made; and the method and basis of making it;

(d) the terms on which variations and modifications, if any, are to be permitted, the authority competent to order and to assess them, and the occasion and basis of such assessment;

(e) the measures to be adopted in the event of a breach of the contract by either party thereto; and the method of and grounds for the determination thereof;

(f) the method of settling disputes.

(ii) As far as possible, legal and financial advice should be taken in the drafting of contracts before they are finally entered into.

(iii) Standard forms of contracts should be adopted wherever possible.

(iv) The terms of contract, once entered into, should not be materially varied excepting approval of the competent authority and advice from legal and financial authority.

(v) No contract involving an uncertain or indefinite liability should be entered into.

(vi) Provision must be made in contracts for safeguarding the property, of Government / procuring agency, entrusted to a contractor.

(vii) While entering into contracts, especially long-term contracts, consideration should be given to the possibility of reserving the right for the procuring entity to cancel the agreement at any time, under the circumstances reflecting upon the need not to proceed with the execution of the contract, in a fair and equitable manner.

(viii) The power to retain and "set off" all claims, whether arising out of the particular contract or out of any other transaction or claim whatever, against the contractor, should be secured for the procuring entity, in fair and equitable manner.

No authority shall execute a contract, –

(i) Which is beyond its powers;

(ii) which relates to a work, the incurrence of expenditure or liability on which is not authorised under current rules and orders regarding control of expenditure;

(iii) which involves, in respect of the work to which it relates, an excess over the estimate greater than that is within such authority's competence to sanction; and

(iv) any provision of which contravenes any standing rule or order of higher authority.

On behalf of the contractor, the signature of only such person or persons as are competent to bind him legally shall be accepted on a contract.

Proposal for subcontracting must be scrutinised scrupulously to assess the competence of the sub-contractor as indiscriminate sub-contracting, that too to the inexperienced / incompetent sub-contractors, may lead to serious quality compromises, besides delay in execution of the work.

(xii) **Payment to the Contractors**

Payment to the contractors should be made strictly as per the terms of contract. Any payment outside the contract agreement should have proper & specific approval of the competent authority, highlighting the need / necessity for the same, and with concurrence of the associated finance. Various types of advances such as Mobilization Advance, Plant & Machinery Advance, Advance on Materials (Secured Advance), etc. may have been provided in the contracts, which need to be paid and recovered as per the stipulation in the contract agreement. The basic purpose of Mobilization Advance is to extend financial assistance, within the terms of contract, to the contractor to mobilize the men and the material resources for timely and smooth take off of the project or procurement of equipment, material or another services contract. There could be possibility of misuse of Mobilization Advance, especially the interest free advance, either due to absence of necessary safeguards or due to non-implementation of the safeguards provided in the contracts.

The Mobilization Advance so paid could be misused by the contractors either in building their own capital or for the purpose other than the one for which it was disbursed, rendering it to be counter-productive. In view of the susceptibility of its misuse, Commission, vide its *Circular No. UU/POL/19 dated 8th October, 1997* issued guidelines to ban the provision of interest free Mobilization Advance. However, in view of representations from various organisation, Commission has reviewed the earlier instructions and allowed the organisations to stipulate interest free advance with safeguards against its misuse, vide *CVC Circular No.10/4/07 issued vide letter No.4CC-1-CTE-2 dated 10.04.2007*.

More importantly, the BGs taken in lieu of Mobilization Advance need to be properly examined with respect to the acceptable format and any condition, deterrent to the interest of the procuring entity, and they should

be got withdrawn before acceptance, besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation/ encashment of BGs also needs to be taken so as to protect the interest of the procuring entity.

Similarly, Plant & Machinery Advance should be allowed only for the purchase of Plant & Machinery meant for bona-fide use in the project and it should be allowed only on the production of genuine documents.

Tax evasion in the procurement contracts could be another area of concern; therefore, it is necessary that tax liability of the contractors is examined properly with reference to the extant instructions of the Government.

It should be ensured that, -

(a) Payment is made as per the terms of the contract.

(b) There is no duplicate / over- payment to the contractor / supplier.

(c) Rates for extra / substituted items are derived as per the provision in the contract agreement / Procurement Manual. Payment for extra / substituted items is made after due approval of the competent authority.

(d) Advances are paid to the contractors / suppliers for the amount specified in the contract agreement.

(e) Recovery of advances is made as per the terms of the contract agreement.

(f) Recovery of mandatory taxes and duties is done as per the extant statutory provisions and instructions of the Central and / or State Government /s, as the case may be, and as per the terms of the contract agreement.

(g) Reimbursement of Service Tax, Excise Duty, etc. is done against documentary proof.

(h) Some of the contracts provide escalation clause, with detailed formula in order to compensate the contractors for increase in the material / labour/ raw material cost / statutory levies, during the contract period. In such cases, payment must be as per the provisions of the contract.

(i) Hire charges of Plant and Machineries are recovered from the contractor as per the specified rate.

(xiii) **Release of Guarantee / Security Deposits**

An employer must ensure that guarantee / security deposits are released as soon as the stage, associated with such guarantee / security deposit, is reached to the satisfaction of the procuring entity, on due certification and recording of the facts and as per the terms and conditions of the contract agreement.

(xiv) **Completion Report**

A Completion report must be prepared at the end of procurement process in time bound manner. The primary objective of preparing Completion Report is to compare actual expenditure made on procurement with cost estimates provided in the last sanctioned estimate; the comparison should be carried out across all the heads / sub heads of credit and debit, as included in the estimate. Items having substantial variations, on either side, are duly explained. The Report, after vetting from the associated finance, must be put up to the competent authority, as per the Purchase Manual, as a tool of financial appraisal of the procurement process.

9.9.3 **Modes of Tendering:**

Procuring entity can adopt any of the following methods of tendering for procurement of goods, works or services on the basis of their approved policy / procedure, in line with GFR provisions and guidelines issued by the Central Vigilance Commission, from time to time–

(a) Open tender

(b) Limited tender

(c) Single tender / Nomination

(d) Spot purchase / tender

(a) **Open Tender:**

Open / Advertised tendering is the most preferred competitive public procurement method, used for acquiring goods, services and works or any combination thereof. It is open to all bidders for participation and also known as competitive tender or public tender. Organisations / Departments should resort to open tendering, under normal circumstances, for all

procurements whose estimated value exceeds the prescribed threshold value for open tenders in the respective Organisation / Department. As per *General Financial Rules, 2005(now revised as General Financial Rules, 2017),* in case of procurement of goods, having estimated tender value Rs. 25 lakh or above, invitation to tenderers should normally be through advertisement [Rule 150 of GFR 2005 (161 of *GFR 2017)*]; in case of works tenders, open tenders will be called for works having estimated value more than Rs. 5 lakh and above (Para 4.2.5.1 of *Manual on Policies and Procedure for Procurement of Works, 2006* issued by Department of Expenditure, Ministry of Finance). All other organisations, not with in the ambit of these instructions, may follow their respective Purchase Manuals for threshold values to float open tender. It is imperative that all such organisations have Purchase Manuals, duly approved by the competent authorities, dealing with all necessary instructions on complete procurement process.

Open tender is an arrangement where an advertisement, in local newspapers, at least one national newspaper, having wide circulation, and Indian Trade Journal, etc., along with ICT *(Information & Communications Technology)* based notification, invites prospective bidders to apply for tender documents.e-Publishing of open tenders on the CPPP and the website of the respective organisation is mandatory, subject to certain exemptions.

Whenever public procuring entity decides to involve suitable and competitive offers from abroad, Global Tender Enquiry may be floated, sending copies of the tender notice to the Indian Embassies abroad and Foreign Embassies in India, as per extant instructions, for wider publicity. The time allowed for submission of bids will be suitably fixed in such cases and should be minimum of four weeks.

The qualifying / eligibility conditions in open tenders are finalised based on the required specifications and need to assess the technical, financial and manufacturing capacity-cum-capability of the prospective bidders and, at the same time, keeping in view the adequacy of competition. The qualifying requirements should neither be too stringent nor too relaxed.

Open Tender is a transparent method which ensures that only the contractor with the best price and meeting all the technical requirements wins the tender.

(b) **Limited Tender:**

Limited Tenders are also known as short term, closed or selective tenders where press publicity is not utilized and the pre-qualified or known/ proven vendors are intimated and allowed to participate in the tender.

As per *CVC Office Order No. 10/2/04 dated 11.02.2004* of the Commission, the notice inviting tender for short term / limited tenders can be put on the official website, as this brings transparency and reduces chances of abuse of power. Limited tenders amongst enlisted vendors, for the procurements of the items having regular and repetitive use and within a laid down tender value, are generally economical. Also, limited tendering can be adopted in case of limited sources of supply / contractors who can perform the work, emergency or to meet the specific safety or technical requirements, with the approval of the competent authority as per the laid down instructions.

For the purpose of registration / enlistment of the vendors, registration/ empanelment process should be undertaken on regular basis in a transparent manner.

(c) **Single Tender:**

Single tendering means sending the tender enquiry to one particular party only. Normally, procurement from a single source may be resorted to in the following circumstances:

(i) Proprietary items

(ii) In case of emergencies

(iii) For standardization of machinery or spare parts to be compatible to the existing sets of equipment, the required item is to be purchased only from a selected firm

(iv) No response even after several rounds of tendering

Single tenders should be avoided, as far as possible, because it is most

restrictive mode of tendering and there is no competition; the bidder may quote unreasonable rates. Single tender process is to be followed only in exceptional and unavoidable conditions with proper reasoned justification. The urgency of procurement and OEM *(Original Equipment Manufacturer)* status of the item needs to be scrutinised to control manipulations and irregularities in procurement through this route.

(d) **Spot Tender:**

In this tender, spot enquiries are issued, by visiting market, to the vendors who are dealing with the desired item. According to Rule No. 145 & 146 of *GFR 2005*[Rule 154 & 155 of *GFR 2017*] *(General Financial Rules)*, goods up to the value of Rs. 15,000 [Rs. 25,000 as per *GFR 2017*] can be purchased without quotation and goods up to the value of Rs. 1 lakh [Rs. 2,50,000 as per *GFR 2017*] can be purchased through Purchase Committee.

This type of tendering may also be resorted to in case of immediate requirement or where it is difficult to determine exact specifications due to inadequate market information. As tendering process is not adopted for spot purchase, special attention is required for ascertaining rate reasonability.

9.10 LEVERAGING TECHNOLOGY

(a) **e-Procurement**

e-Procurement means use of information and communication technology by the procuring entity, to carry out the procurement process with the prospective bidders/bidders, for procurement of goods, works, services or any combination thereof. The very basic aim of e-Procurement is to leverage technology for ensuring transparency, fairness and efficiency in the procurement process, ruling out any undue human intervention.

In terms of *OM No.26/12/2014-PPC dated 21.01.2015*, issued by *Department of Expenditure (DoE), Ministry of Finance (MoF)*, all Ministries/Departments of Central Government, their attached and subordinate offices, Central Public Sector Enterprises (CPSEs), Autonomous/Statutory bodies are required to commence e-Procurement in respect of all procurements having estimated tender value of Rs.2,00,000/ - or more, in a phased manner.

Procurement covers complete tendering process, starting from online publishing of tender enquiries, online bid submission by the bidders, online bid evaluation and publication of award of contract. All authorised users in the procuring entity are required to have valid digital signature certificate along with user ID and password to carry out e-procurement process. It also requires all prospective bidders to register / enrol on Central Public Procurement Portal (CPPP) or any other e-procurement portal under use by a procuring entity, use of valid digital signature and valid e-mail address.

All the public procurement agencies are required to e-publish information regarding tender enquiries, on Central Public Procurement Portal, accessible at the URL *(http//eprocure.gov.in)* or e-procurement sites under use by them, duly providing a link or mirroring information between the two sites.

All Ministries / Departments which are already carrying out eProcurement through other service providers or have developed e-procurement solutions in-house, need to ensure that their e-procurement solution meets all the requirements notified by D/o Information Technology (DoIT) under the title *"Guidelines for compliance to quality requirements of e-procurement systems"*, published on e-governance portal: *http://egovstandards.gov.in*; also they need to ensure that the procurement procedure adopted conforms to the general principles envisaged under *GFR 2005* (now *GFR 2017)* and CVC guidelines.

In certain procurement cases where national security and strategic considerations demand confidentiality, the Ministry / Department may exempt such cases from e-procurement, after seeking approval of the Secretary of the Ministry / Department, with the concurrence of their internal Financial Advisor. Statistical information on the number of cases in which exemption was granted and the value of concerned contracts may be intimated on quarterly basis to DoE.

All other procuring entities, not within the ambit of the instructions of Ministry of Finance, may suitably frame instructions to deal with e-procurement, with the approval of competent authority.

(b) **e-Sale**

e-Sale refers to sales activities carried out with the help of information and communication technology, especially internet. The main objective is to sell goods, natural resources, scrap, land, etc., making use of technology in a transparent, fair and efficient manner.

Any public entity, having decided to resort to e-Sale, needs to start with wide publicity of sale schedule for information of prospective buyers; the object(s) under sale, its / their complete description, general terms & conditions of e-Sale along with object specific sale terms & conditions are required to be duly publicized in transparent and fair manner.

On the scheduled date and time, buyers may bid online after depositing the security money / earnest money, as per the terms & conditions of e-Sale. Most of the monetary transactions may also take place online only, through a suitable mechanism.

The bid of highest and acceptable responsive bidder is accepted. The accepted bid should normally be higher than the reserved price, fixed for the sale by competent person or a committee. Reserved price is fixed based upon price database preferably for the same / similar object, similar conditions and location of the object under sale, price analysis based upon standard price indices, rates of constituents / ingredients, potential for commercial exploitation or with the help of costing experts, etc., as per the merit of each case.

Any selling entity needs to have appropriate framework of instructions in place, with the approval of competent authority.

(c) **Reverse Auction**

Reverse Auction is a process of online, real-time purchase, adopted by procuring entities to select the successful bid; the process involves presentation of successively more favourable bids by the bidders, over a pre-defined time schedule; the process also allows compilation and evaluation of bids.

At present, not much instructions / guidelines on the subject of reverse auction are available. However, it has to be carried out within the broad

framework of GFR and CVC guidelines on public procurement ensuring transparency, fairness and efficiency, so as to achieve best value for the money spent.

9.11 SWISS CHALLENGE

To achieve and maintain the targeted rate of growth, development of infrastructure is important. Bottleneck in infrastructure development has been mainly due to non-availability of adequate financial resources, appropriate technical know-how & administrative mechanism to undertake big projects. This calls for active participation from private sector. Swiss Challenge has come up as one of the innovative forms of public procurement, facilitating participation of private sector.

Under this method, a public procurement entity receives unsolicited proposal for a public project or service; this proposal is made open by the procuring entity to other parties to match or exceed.

In today's perspective, there have been issues involved in Swiss Challenge method and some of them are as follows:-

(a) Consideration of unsolicited offer from an original private proposer, if it has not been so invited;

(b) having adequate appreciation of the original proposal vis-à-visactual requirements / public needs of the project;

(c) the very scheme of receiving unsolicited proposal from one private agency may result in information asymmetries in the procurement process and absence of equal opportunities to all other parties making matching/ better proposals, leading, in turn, to lack of transparency, fair and equal treatment of potential proposers in the procurement process;

(d) setting a reasonable time limit for completion of efficient bidding phase;

(e) dealing with counter proposals from other parties, especially so when they offer specifications very much different from those included in the original proposal;

(f) looking into reasonableness of the proposals ensuring that all the risks

involved are duly taken care of and no undue benefit is extended to any of the proposers, at the cost of others;

(g) suitable compensation to the original proposer, if any, for his original concept / intellectual property.

Keeping in view all the issues, as listed above, a strong legal and regulatory framework to award projects under Swiss Challenge method needs to be in place, before this method of procurement is adopted.

9.12 COMMON IRREGULARITIES IN PUBLIC PROCUREMENT

9.12.1 ***General irregularities:*** In course of Intensive Examinations, a number of irregularities and lapses in the award and execution of the works / stores / purchases have been observed. Some of the areas of concern where irregularities in procurement cases have been observed on regular basis are as follows:

(i) ***Improper estimation of cost****:* Cost estimation without due regard to detailed specifications, site conditions and other procurement specific requirements; without due reference to market survey, appropriate last accepted rates, inputs cost analysis for the tendered item. It may result in incorrect decisions in respect of cost-benefit analysis, fund requirement assessment, competent authority for project sanction and assessment of rate reasonableness of the price bids.

(ii) ***Engagement of consultant:*** Engagement of the consultant on nomination basis and, at times, without due regard to its competence in view of specific nature of the procurement and other technicalities; over dependence and lack of scrutiny and appreciation, with due diligence, of the advice tendered by the consultant, in spite of availability of in-house expertise; agreement with consultant lacking in specifics regarding deliverables and performance related payment.

(iii) ***Bid eligibility conditions:*** Deviation from the laid down instructions on the subject either due to ignorance or vested interest, making eligibility criteria either too lax or restrictive; at times, eligibility conditions fail to address specific requirements of procurement deliverables, by way of proper assessment of the capacity-cum-capability of the prospective bidders.

(iv) ***Bid evaluation criteria:*** Bid evaluation criteria, i.e. attributes of the prospective bidders and the bids, to be weighed into consideration while looking at the suitability of the bids, are decided without due regard to the nature and performance of the procurement agreement; not brought out, at times, upfront in transparent manner. Marking scheme, i.e., bench marking of measurable parameters, correlated to the desirable attribute, is not brought out in fair and transparent manner in the NIT.

(v) ***Verification of the credentials submitted by the bidders:*** Verification of documents, submitted by the bidders in support of their credentials, is not undertaken with due diligence, making a reference back to the document issuing authority, before adjudging suitability of an offer and arriving at a decision as to the successful tenderer /s for award of contract.

(vi) ***Participation by JVs:*** Just to meet the requirements of the bid eligibility conditions, constituent firms of a joint venture, join together in a loose manner without bringing out specific credentials and roles to be played by each one of them in contract execution; at times, the constituent firm signing the contract or the employer may really not have legally binding power to ensure that all the JV partners play their respective roles , at the time of contract execution, as envisaged while evaluating the bids.

In an endeavour to introduce system improvements to avoid recurrence of different lapses / irregularities and to achieve better technical and financial control in the execution of contracts, instructions highlighting the lapses / irregularities in different types of procurement contracts, as observed in course of Intensive Examinations, have been issued and are as referred in following paras.

9.12.2 ***Works Contracts - irregularities:*** Various shortcomings / deficiencies observed during Intensive Examinations of works by CTEO were compiled and issued in the form of following booklets-

(i) *'Common Irregularities/Lapses Observed in Award and Execution of Electrical, Mechanical and Other Allied Contracts and Guidelines for Improvement thereof' dated 21.11.2002, and*

(ii) *'Shortcomings of General Nature Observed During Intensive Examinations of Works Contracts' dated 07.04.2004*

9.12.3 ***Supply Contracts - irregularities:*** Common irregularities / lapses observed during the Intensive Examination of stores / purchase contracts by CTEO were compiled in form of a booklet titled *'Common Irregularities / Lapses Observed in Stores / Purchase Contracts and Guidelines for Improvement in the Procurement System' dated 15.01.2002*.

9.12.4 ***Consultancy / Service Contracts:*** Guidelines in connection with the selection of consultants have been issued by the Commission as follows-

(i) *CVC Circular No.3L PRC 1 dated 12.11.1982*

(ii) *CVC Circular No. 3L –IRC 1 dated 10.01.1983*

(iii) *CVC Circular No.OFF-1-CTE-1 dated 25.11.2002* reiterated its previous guidelines and listed out commonly observed lapses / irregularities.

(iv) CVC Circular No. 98 / DSP / 3 dated 24.12.2004 clarified that Consultants and any of its affiliates who are engaged for the preparation or implementation of a project, should be disqualified from participating in subsequent tenders for providing goods or works or services related to the initial assignment for the same project.

9.12.5 ***IT Procurement:*** IT related procurement cases consist of contracts for procurement of only hardware, only software or software & hardware together. While procuring computer systems, it is advisable to go for generalized specifications and not to specify the international brands. Such practice vitiates the guidelines for open tender system laid down in General Financial Rules and deprives other brands including domestic manufacturers of an opportunity to participate in the tender.

Government procurement entities also need to ensure that they receive desktop computers, personal computers made of genuine parts and not those made of counterfeit parts. As a first step in this direction, there is a need for all buyers to insist on signed undertaking from appropriate authority of the system OEM, certifying that all the components of the parts / assembly / of the software used in the supplied item are original/ new components / parts / assembly / software and that no refurbished/

duplicate / second hand / components / parts / assembly / unauthorised software have been used; it should also be ensured that IT items are supplied in factory sealed boxes, with system OEM seal, to ensure that contents are not changed en-route.

In the procurement cases, through turn-key contracts, for networking of computer systems, necessary care should be taken to ensure that unrelated products which are either not required or which can be procured separately, in stand-alone mode, at a much lower cost, are not included in the networking system.

In case of procurement of proprietary IT related items, extant instructions, on the subject of procurement through single tender / proprietary article certificate, are required to be followed.

With ever increasing emphasis on use of IT by Government organisations, several instances of malpractices and irregularities were observed in the procurement contracts of IT & related products. Accordingly, the Commission issued instructions vide following Circulars-

(i) *No. 000/VGL/14 dated 06.03.2000*

(ii) *No. 98/ORD/1 dated 05.05.2003*

(iii) *No. 004/ORD/8 dated 03.11.2004, and*

(iv) *No. 007/CRD/008 dated 15.02.2008*

9.13 ***Check list for public procurement process:*** The compendium of check-points in public procurement for the purpose of ensuring fairness, equity and transparency is available on *'Illustrative Check Points on Various Stages of Public Procurement' issued by CTEO*.

This check list is illustrative and intended to serve as a guide to executives dealing with procurement or vigilance activities.

9.14 ***Compilation of Guidelines on Public Procurement:*** Guidelines issued by CTEO on public procurement, from time to time, are available at *www.cvc.nic.in.*

9.15 ***Relevant instructions from Ministry of Finance:***

(i) General Financial Rules, 2017

(ii) General Financial Rules, 2005

(iii) Manual for Procurement of Goods, 2017

(iv) Manual for Procurement of Consultancy & other Services, 2017

(v) Manual on Policies and Procedures for Purchase of Goods, 2006

(vi) Manual on Policies and Procedures for Procurement of Works, 2006

(vii Manual of Policies and Procedure of Employment of Consultants, 2006

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Chapter X
Preventive Vigilance

10.1 RECOMMENDATIONS OF SANTHANAM COMMITTEE

(a) "Corruption cannot be eliminated or even significantly reduced unless preventive measures are planned and implemented in a sustained and effective manner. Preventive action must include administrative, legal, social, economic and educative measures" *(Santhanam Committee Report, 1964)*.

(b) During a debate in Parliament in June, 1962 Members of Parliament expressed concern over corruption in public administration and sought remedial measures. In response, a Committee was set up under Shri K. Santhanam, Member of Parliament which identified four major causes of corruption, namely:

(i) administrative delays,

(ii) Government taking upon itself more than what it could manage by way of regulatory functions,

(iii) scope for personal discretion in the exercise of powers vested in different categories of Govt. servants and

(iv) Cumbersome procedures in dealing with various matters which were of importance to citizens in their day to day affairs.

(c) The Santhanam Committee in its *Report* observed that the main effort for checking corruption must come from within the Ministry / Department and that it is important to be continuously on the watch for sensitive spots rather than merely taking action when some case comes to notice.

It was suggested that Ministries undertake a systematic and thorough review of the laws, rules, procedures and practices for the purpose of listing discretionary powers, levels at which these are exercised, manner in which they are exercised, control over the exercise of such powers and the points at which citizens come into contact with the Departments and why. It was also recommended that a study should be made by Ministries of the extent, possible scope and modes of corruption, remedial measures prescribed and their effectiveness.

(d) The Report deals in detail with the major causes of corruption and steps to deal with each. The Committee observed that:

(i) Administrative delays must be reduced to the extent possible and firm action should be taken to eliminate causes of delay.

(ii) Each Ministry should undertake a review of existing procedures and practices to find out causes of delay, points at which delay occurs and devise steps to minimize the same.

(iii) Time limits should be prescribed and these should be strictly adhered to; those responsible for delays should be called to account.

(iv) Levels at which files are to be processed and manner of decision making have also been prescribed.

The Committee recommended that:

(i) Ministries review their regulatory functions and whether the manner of discharge of those functions can be improved.

(ii) while recognising that it may not be possible to completely eliminate discretion, it should be possible to devise a system of administration which would reduce the need for personal discretion, to a minimum.

(iii) that a serious attempt be made to educate citizens about their rights and responsibilities and make arrangements to enable citizens' access to the administration without having to go through intermediaries.

Other preventive measures listed in the Report include: -

(i) recruitment of officers / officials with high integrity,

(ii) informal codes of conduct for different categories of Government servants,

(iii) having agencies where a genuine complainant can seek redressal and protection from harassment,

(iv) easy availability of forms required by the public for obtaining licenses, etc.,

(v) ban on Government servants accepting private employment after retirement among others.

(e) Significant developments have taken place since the recommendations of the Santhanam Committee were made. In 2003, statutory status was conferred upon the Central Vigilance Commission and it also became a multi-member body. In 2004, it was made the designated authority to receive whistle blower complaints and to protect the whistle blowers. The institutional framework for addressing corruption has been progressively strengthened with the establishment of the Central Bureau of Investigation, the Directorate of Enforcement, the Directorate General of Income Tax Investigation, State Anti-Corruption agencies and Lokayuktas and the legal framework has also expanded. There are also elaborate conduct rules which aim to promote integrity in public services and other policies and guidelines for transparency in recruitments and promotions.

10.2 THE CONCEPT OF PREVENTIVE VIGILANCE

(i) ***Concept:***

It is adoption of a package of measures to improve systems and procedures to eliminate / reduce corruption, promote transparency and ease of doing business.

(ii) ***Who is required to implement preventive vigilance measures?***

Preventive vigilance involves systemic improvements which besides reducing corruption also lead to better operational results. It is a tool of management and good governance and therefore, it is the duty of the management as a whole, and not of the CVO alone. Indeed, it can be said that it is the duty of every employee.

10.2.1 ***Causes of corruption:*** Preventive vigilance is aimed at identifying, tackling / addressing the root cause of corruption within the organisation. The common causes of corruption, inter alia, could be:

(a) Excessive regulation & licensing.

(b) Complicated rules and regulations.

(c) Monopoly over delivery of goods / services.

(d) Lack of transparency.

(e) Lack of accountability.

(f) Too much discretionary power.

(g) Poor regulatory framework.

(h) Poor grievance redressal mechanism.

(i) Very low rate of detection of corruption.

(j) Lack of condemnation of corrupt practices by the public.

(k) Absence of a formal system of inculcating values, ethics & integrity.

(l) Inadequacy of regular / periodic / surprise checks.

(m) Rigid bureaucratic framework / processes.

(n) Lack of awareness about rights, duties, procedure to complain, rules, laws, etc.

10.3 POTENTIAL AREAS OF CORRUPTION

Preventive vigilance is aimed at tackling the areas vulnerable to corruption within the organisation. Although potential areas of corruption are specific to organisations / sectors, there are some broad areas common to all organisations, which need special attention while putting in place a system of preventive vigilance. These relate to: -

(a) ***Procurement:*** Procurement is a vast area ranging from procurement of store materials & services to execution of infrastructure projects. It is one of the major corruption prone areas in all organisations.

(b) ***Sale of goods and services:*** The disposal of goods (the reverse of procurement) and services is also a major area of corruption in some organisations. Similarly, allocation of scarce and / or precious natural resources is an area of corruption.

(c) ***Human resource management:*** Human resource management is common to all organisations and the processes relating to recruitment, promotion, transfer and posting are prone to manipulation and corruption.

(d) ***Delivery of services to public:*** Although not common to all Public Sector Organisations, major Government Departments are involved in delivery of services which are a potential area of corruption.

(e) ***Enforcement:*** The enforcement of Acts, Rules and Regulations is also an area vulnerable to corruption mainly due to lack of awareness among citizens and ineffective grievance redressal mechanism.

10.4 PREVENTIVE VIGILANCE MEASURES

Preventive vigilance measures can broadly be categorized as: -

(a) ***Simplification and standardisation of rules:*** Simplification and standardisation of rules and procedures results in elimination of discretion and arbitrariness, which in turn reduces corruption. Identifying areas involving exercise of discretion which are not governed by guidelines together with a complete review of existing rules and regulations needs to be undertaken to introduce clarity and accountability. Similarly, simplification and standardisation of forms / application also reduces scope for corruption.

(b) ***Leveraging technology:*** Technology as an enabler for fighting corruption has been effectively demonstrated. E-procurements, E-payments, use of websites for dissemination of information and creating awareness, use of CCTV in places of public dealing, use of GPS enabled devices / RFIDs, use of appropriate analytical tools, computer assisted audit techniques for detecting frauds are examples of how technology strengthens the system of preventive vigilance.

(c) ***Automation:*** Using IT as an enabler for reducing corruption along with business process re-engineering is recognized as an effective tool of preventive vigilance. Automation reduces interface / interaction between public officials and common public. It also removes monopoly in delivery of services and personal discretion, reducing the opportunities for discretion thus leading to reduction in corruption. Therefore, the organisations should strive to reduce interface of officials with common public / customers by way of automation / online services. However, IT systems are not an end in themselves; they are the means to an end. It

follows therefore that there is a need to develop a system of alerts as also a response mechanism.

(d) ***Business Process Re-engineering (BPR):*** BPR is very important as it helps the organisations rethink how they do their work and in the process, encourages a full-scale re-creation of processes in order to meet the objectives of the organisation. Existing processes may be re-engineered to even prevent leakage of revenue.

(e) ***Transparency:*** Transparency removes the information gap between the public and public officials which in turn reduces corruption. The website of the Department / Organisation should contain rules & regulations, contact details of officials and all other information useful for common public / customers.

(f) ***Accountability:*** There is no fear of punitive action due to lack of accountability. A system with clear accountability and assigned responsibility at each level is necessary not only for smooth functioning but increased transparency, efficiency and for ensuring effective punitive action in case of misconduct.

(g) ***Control & Supervision:*** Regular and routine inspections, surprise inspections, audit and reviews keep a check on aberrant and corrupt behaviour. A list of points and areas prone to corruption will facilitate the purpose of organising checks and streamlining procedures. A structured interaction between vigilance and internal audit will enable better monitoring and also help identify potential problem areas.

(h) ***Early detection of misconducts:*** Early detection of misconducts apart from bringing to light the damages to the system, will enable recouping the loss wherever possible and facilitate control of further damage.

(i) ***Time-bound and effective punitive action:*** Punitive (disciplinary or criminal) action within short period of occurrence of misconduct and finalisation of such cases in a time-bound manner resulting in award of exemplary and adequate (commensurate with gravity of misconduct) punishment deters others from committing such misconduct. Delays and inefficiencies in such proceedings encourages and emboldens others to

take risk of committing misconduct under the belief that nothing would happen to them.

(j) ***Providing necessary infrastructural facilities:*** Non-provision of adequate infrastructural facilities such as accommodation, conveyance, utilities, etc. also induce corruption.

(k) ***Training & Awareness:*** Capacity building and sensitization at all levels and across all functional areas is important. Public officials should be made aware of their duties and responsibilities, code of conduct, rules and regulations through regular training and awareness programmes. A list of Dos & Don'ts for employees / officials is a simple yet effective tool. Likewise, familiarization with Standard Operating Procedures relating to different spheres of activity will enhance awareness and reduce procedural violations / inadvertent errors arising out of a lack of awareness. Knowledge sharing initiatives such as publishing / circulating information relating to areas where fraud / misconduct has been detected and sharing information on best practices are other effective awareness generation methods for more effective preventive vigilance. There should also be an effort to create awareness among all stakeholders.

(l) ***Conducive work environment:*** Conducive work environment for preventive vigilance may include drawing up a list of sensitive posts, rotation policy for sensitive posts, identification of persons of doubtful integrity and keeping them away from sensitive posts / public dealing. It would be necessary also to create an environment that promotes ethical behaviour. Protection to Whistle Blowers must be ensured in order to bring to light cases of corruption.

(m) ***Awareness among public:*** If public is made aware of their rights, and also of the rules and regulations, then they are able to resist unfair treatment and arbitrary behaviour by public officials. Public should be encouraged to demand the services due to them and to raise their voice when their rights are denied or powers are misused by public officers. Organisations should prominently display information relevant / useful to the common public on their office notice board / website.

(n) ***Inculcating Moral Values:*** Inculcating ethical behaviour among public, particularly the younger generation is an important tool of preventive vigilance. Vigilance Awareness Week (VAW), celebrated every year during the last week of October is aimed at creating such awareness. This opportunity should be utilized by all CVOs / Organisations to create awareness among public as well as among its own officials regarding need for imbibing right values.

10.5 INTEGRITY PACT

10.5.1 Integrity Pact (IP) is an important tool of preventive vigilance which is aimed at preventing corruption and ensuring integrity in public procurement. The Central Vigilance Commission is the nodal authority for the implementation of Integrity Pact in India. It addresses not only bribery, but also other corrupt practices such as collusion and bid rigging. IP is a written agreement between the Government / Government Department / Government Company, etc. and all the bidders agreeing to refrain themselves from bribery, collusion, etc. If the written agreement is violated, the pact describes the sanctions that shall apply. These include:-

(i) Loss or denial of contract;

(ii) Forfeiture of the bid or performance bond;

(iii) Liability for damages;

(iv) Exclusion from bidding on future contracts(debarment); and

(v) Criminal or disciplinary action.

10.5.2 Integrity Pact has a monitoring system which provides for independent oversight. The Central Vigilance Commission nominates Independent External Monitors (IEMs) to monitor implementation of Integrity Pact. Thus, IP in its present form has three players –

(i) The Principal or the Company / Department,

(ii) The Vendor, and

(iii) The Independent External Monitor (IEM).

10.5.3(a) In order to ensure transparency, equity and competitiveness in public procurement, the Commission has been recommending adoption of Integrity Pact (IP) and implementation by Government organisations. CVC through its *Office Order No. 41/12/07 dated 04.12.2007 and No. 43/12/07 dated 28.12.2007* as well as *Circular and No. 24/08/08 dated 05.08.2008* recommended adoption of Integrity Pact to all the organisations and provided basic guidelines for its implementation in respect of major procurements in Government Organisations. A Standard Operating Procedure (SOP) was issued by the Commission vide *Office Order No. 10/5/09 dated 18.05.2009*.

(b) The Commission issued clarifications regarding the appointment, tenure and eligibility criteria of IEMs vide *Circular No. 008/CRD/013 dated 11.08.2009 and No. 009/VGL/016 dated 19.04.2010*. The review system for IEMs was modified vide *Circular No. 008/CRD/013 dated 13.8.2010* and clarification regarding tenure of IEMs was issued by the Commission vide its *Circular No. 011/VGL/053 dated 23.07.2012*.

(c) *Department of Expenditure vide OM No. 14 (12)/2008– E-II (A) dated 19.07.2011*, issued guidelines to all Ministries / Departments / Organisations including their attached / subordinate offices and autonomous bodies for implementation of IP. Also, vide *OM No. 14 (12)/2008 – E- II (A) dated 20.07.2011*, the Department of Expenditure requested Department of Public Enterprises for issuing directions to the Central Public Sector Enterprises for use of IP.

(d) Further, in view of the increasing procurement activities of Public Sector Banks (PSBs), Insurance Companies (ICs) and Financial Institutions (FIs), the Commission vide *Circular No. 02/02/2015 dated 25.02.2015* advised that all PSBs, PSICs and FIs shall also adopt and implement the Integrity Pact.

10.5.4 ***Adoption of Integrity Pact–Standard Operating Procedure; Independent External Monitor:***

The Commission appointed a Committee in December, 2015 under the Chairmanship of Shri P. Shankar, the former Central Vigilance Commissioner to review the entire scheme of Integrity Pact. After considering the report of the Committee, the Commission has issued a

revised Standard Operating Procedure for adoption of Integrity Pact in Government Departments / Organisations vide *Circular No. 02/01/2017 dated 13.01.2017*. The salient points are as under:

(A) **Integrity Pact**

(1) The Pact essentially envisages an agreement between the prospective vendors / bidders and the buyer, committing the persons / officials of both sides, not to resort to any corrupt practices in any aspect / stage of the contract. Only those vendors / bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

(a) Promise on the part of the principal not to seek or accept any benefit, which is not legally available;

(b) Principal to treat all bidders with equity and reason;

(c) Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;

(d) Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.

(e) Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC Act or IPC;

(f) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;

(g) Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary;

(h) Bidders to disclose any transgressions with any other company that may impinge on the anti-corruption principle.

(2) Integrity Pact, in respect of a particular contract, would be operative from the date IP is signed by both the parties till the final completion of the

contract. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

(B) **Implementation procedure**

(a) As stated in *Department of Expenditure O.M. dated 20.07.2011*, Ministries/ Departments may, in consultation with the respective Financial Adviser and with the approval of the Minister-in-Charge, decide on and lay down the nature of procurements / contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions / contracts concluded by them or their attached / sub-ordinate offices.

(b) The above provision is also applied for procurements made by autonomous bodies for which also the concerned administrative Ministry / Department may lay down the nature of procurements / contracts and the threshold value above which the Integrity Pact would be used.

(c) The provision for the Integrity Pact is to be included in all Requests for Proposal / Tender documents issued in future in respect of the procurements / contracts that meet the criteria decided in terms of sub-para (a) and (b) above.

(d) Tenders should specify that IEMs have been appointed by the Commission. In all tenders, particulars of all IEMs should be mentioned instead of nominating a single IEM in the tender as far as possible.

(e) The purchase / procurement wing of the organisation would be the focal point for the implementation of IP.

(f) The Vigilance Department would be responsible for review, enforcement, and reporting on all related vigilance issues.

(g) It has to be ensured, through an appropriate provision in the contract, that IP is deemed as part of the contract so that the parties concerned are bound by its provisions.

(h) IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organisation. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.

(i) Periodical Vendors' meets, as a familiarization and confidence building measure, would be desirable for a wider and realistic compliance of the principles of IP.

(j) A clause should be included in the IP that a person signing IP shall not approach the Courts while representing the matters to IEMs and he / she will await their decision in the matter.

(k) In case of sub-contracting, the principal contractor shall take the responsibility of the adoption of IP by the sub-contractor.

(l) Information relating to procurements / contracts covered under IP and its progress / status would need to be shared with the IEMs on monthly basis.

(m) The final responsibility for implementation of IP vests with the CMD/ CEO of the organisation.

(C) **Role and Duties of IEMs**

(a) The IEMs would have access to all contract documents, whenever required.

(b) It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organisation on a quarterly basis including an annual meeting to discuss / review the information on tenders awarded during the previous quarter. Additional sittings, however, can be held as per requirement.

(c) The IEMs would examine all complaints received by them and give their recommendations / views to the Chief Executive of the organisation, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. IEMs are expected to tender their advice on the complaints within 10 days as far as possible.

(d) For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs jointly as far as possible, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.

(e) IEM should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging malafide on the part of any officer of the organisation should be looked into by the CVO of the concerned organisation.

(f) The role of IEMs is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organisation.

(g) Issues like warranty / guarantee, etc. should be outside the purview of IEMs.

(h) All IEMs should sign non-disclosure agreements with the organisation in which they are appointed. They would also be required to sign a declaration of absence of conflict of interest.

(i) A person acting as an IEM shall not be debarred from taking up other assignments such as consultancy with other organisations or agencies subject to declaring that his / her additional assignment does not involve any conflict of interest with existing assignment. In case of any conflict of interest arising at a later date from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse himself / herself from that case.

(j) All organisations may provide secretarial assistance to IEM for rendering his / her job as IEM.

(k) In case of any misconduct by an IEM, the CMD / CEO should bring it to the notice of the Commission detailing the specific misconduct for appropriate action at the Commission's end.

(l) The role of the CVO of the organisation shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him / her or directed to him / her by the Commission.

(D) **Appointment of IEMs**

(a) The IEMs appointed should be eminent personalities of high integrity and reputation. The Commission would invite applications from willing interested persons and maintain a panel of persons eligible to be appointed as IEM. The Commission may make independent and discreet background check before including a name in the panel.

(b) The choice of IEM should be restricted to officials from the Government and Public Sector Undertakings who have retired from positions of the level of Additional Secretary to the Government of India and above or equivalent pay scale, and for Public Sector Undertakings, Board level officers and above in Schedule 'A' Companies, Public Sector Banks, Insurance Companies and Financial Institutions. Officers of the Armed Forces who have retired from the rank equivalent of Lt. General and above may also be considered for appointment.

(c) For appointment as IEM, the Organisation has to forward a panel of suitable persons to the Commission. This panel may include those who are in the panel maintained by the Commission or they may propose names of other suitable persons for appointment as IEM. While forwarding the panel of suitable persons, the Organisation would enclose detailed bio-data in respect of all names proposed. The details would include postings during the last ten years before superannuation, special achievements, experience, etc., in Government sector. It is desirable that the persons proposed possess domain experience of the PSU activities or the relevant field with which they may be required to deal.

(e) The Commission would not consider the name of an officer / executive who is either serving or who has retired from the same organisation to be an IEM in that organisation, although they may have served in the top management.

(d) A maximum of three IEMs may be appointed in Navratna PSUs and a maximum of two IEMs in other Public Sector Undertakings, Public Sector Banks, Insurance Companies and Financial Institutions.

(f) A person may be appointed as an IEM in a maximum of three organisations at a time.

(g) The appointment of IEM would be for an initial tenure of three years and could be extended for another term of two years on a request received by the Commission from the organisation appointing the IEM. An IEM can have a maximum tenure of 5 years in an organisation with an initial term of three years and another term of two years.

(h) Age should not be more than 70 years at the time of appointment / extension of tenure.

(i) Remuneration payable to the IEMs by the organisation concerned would be equivalent to that admissible to an Independent Director in the organisation and in any case, should not exceed Rs. 20,000/- per sitting. Remuneration being paid to existing IEMs may not be changed to their detriment for the duration of their tenure.

(j) The terms and conditions of appointment, including the remuneration payable to the IEMs, should not be included in the Integrity Pact or the NIT. This may be communicated individually to the IEMs concerned.

(E) Review System

All organisations implementing IP would undertake a periodical review and assessment of implementation of IP and submit progress reports to the Commission. CVOs of all organisations would keep the Commission posted with the implementation status through their annual reports and special reports, wherever necessary.

(F) Advisory

All organisations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and carry it to its effective implementation.

(G) Empanelment as IEM

The Scheme for empanelment of persons for appointment as Independent External Monitors (IEMs) is described in detail in *CVC Circular No. 015/VGL/091 dated 13.01.2017*.

(Refer Annexure-II of this Chapter)

(H) The role of CVO

The role of CVO of the organisation shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the *CVC Act, 2003* or of the Vigilance Manual. *(CVC Office Order No. 41/12/07 dated 04.12.2007)*

10.6 INTEGRITY INDEX

10.6.1 Commission is working on the development of a Comprehensive Integrity Index for organisations. It will be launched shortly. Through the Integrity Index for public organisations the Central Vigilance Commission has decided to adopt a strategy which will ensure transparent, accountable and efficient governance. The Index will be based on bench marking internal processes and controls within an organisation as well as management of relationship and expectation of outside stake holders.The main objectives for which the Integrity Index is to be established are:

(i) Define what constitutes Integrity of Public Organisations

(ii) Identify the different factors of Integrity and their inter-linkages

(iii) Create an objective and reliable tool that can measure the performance of organisations along these above factors

(iv) Validate the findings over a period of time to improve upon the robustness of the tool that measures Integrity

(v) Create an internal and external ecosystem that promotes working with Integrity where public organisations lead the way.

10.6.2 The Commission has appointed Indian Institute of Management, Ahmadabad as a Consultant for a period of one year to develop the Integrity Index. Based on the survey and extensive consultation with the organisation, the Consultant will:

(i) Provide a benchmark of good governance mechanisms needed to combat corruption.

(ii) In the preparation of the Index effort will be made to check the existence

of rules, SOPs and transparency mechanisms designed to deter, prevent or curb corruption and their implementation and enforcement.

10.6.3 The project is designed to cover all the CPSEs and Central Government Ministries / Departments in five years. It is expected that while expansion will take place in the first 2-3 years, the mechanism will stabilise in 2-3 years following that.

10.6.4 In the first year, the Commission has identified 25 CPSEs and Central Government Ministries / Departments to be covered. [Annexure-I]

10.6.5 The organisation in consultation with the consultant will be required to collect data from the internal and external stake holders, conduct workshops and surveys to gather information, evaluate and bench mark the organisations against the Index so developed.

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Annexure-I

LIST OF 25 CPSEs / MINISTRIES / DEPARTMENTS / PSBs, etc. FROM DIFFERENT SECTORS TO BE COVERED FOR THE INTEGRITY INDEX IN THE FIRST INSTANCE

Sl. No.	Sector		Name of CPSE / Ministry/ PSB, etc.
1	Oil and Gas	1	IOCL
		2	ONGC
2	Power	3	NTPC
		4	PGCIL
3	Coal	5	Eastern Coalfields
		6	Western Coalfields
4	Steel	7	SAIL
5	Banks	8	PNB
		9	Syndicate Bank
6	Transport	10	NHAI
		11	Mumbai Port Trust
		12	RVNL
		13	M/o Railways
7	Mining	14	NMDC
		15	NALCO
8	Defence	16	BEL
9	DHI	17	BHEL
10	Commerce and Textiles	18	CCI

11	Social Sector	19	FCI
		20	EPFO
		21	MCI
12	Communication	22	MTNL
13	Urban Development & Local bodies	23 & 24	DDA and South MCD
14	Financial Sector	25	CBDT

Annexure-II

Central Vigilance Commission

No. 015/VGL/091

Dated: 13.01.2017

NOTICE

Subject: - Appointment of Independent External Monitors (IEMs) in Ministries / Departments / Organisations.

The Commission, in the year 2007, recommended implementation of a concept called 'Integrity Pact' (IP) in respect of all major procurements and in May, 2009 formulated a Standard Operating Procedure (SOP) outlining the essential ingredients of IP. The SOP has since been modified vide *Circular* No.02/01/2017 dated 13.01.2017. IP is to be implemented through Independent External Monitors (IEMs) who are eminent personalities of high integrity and reputation. The Commission proposes to maintain a panel of names for appointment as IEMs in Ministries / Departments / Organisations.

Persons fulfilling the eligibility conditions and willing to be empanelled by the Commission for being considered for appointment as IEMs as per the terms & conditions laid down in the 'Scheme' may submit their applications in the prescribed proforma to the Secretary, Central Vigilance Commission, Satarkta Bhawan, Block-A, GPO Complex, INA, New Delhi – 110023.

Proforma for sending particulars for empanelment as IEMs in Ministries/ Departments / Organisations

1.	Name of the person (in full)		Please affix latest passport size photograph
2.	Father's Name		
3.	Date of Birth		
4.	Date of Retirement		
5.	Date of Entry into service		
6.	Service to which the officer belonged including batch/ year cadre, etc.		
7.	Post held at the time of retirement (whether it is Secretary/ AS rank)		
8.	Pay scale at the time of retirement		
9.	Educational Qualifications		
10.	Present Address		
11.	Contact No.		
	a) Telephone (along with STD code)		
	b) Mobile		
	a) Fax		
	a) E-mail Address		
12.	Positions held (during the ten preceding years of superannuation)		

S. No	Organisation	Designation & Place of Posting	Administrative / nodal Ministry / Deptt. concerned (in case of officers of PSUs, etc.)	From	To

13. Brief details of work experience
14. Experience in handling procurement / tenders
15. Brief Details of any other domain experience
16. Present assignments, if any.
17. Whether already an IEM?
    If so, name of organisation(s).
18. Desired place of appointment
    (Please indicate city)
19. Please indicate list of PSUs in which your appointment as IEM may have potential conflict of interest

Name & Signature

The Scheme for empanelment of persons for appointment as Independent External Monitors (IEMs)

In the year 2007, the Commission vide office order No.41/12/07 dt.4.12.2007 recommended implementation of a concept called 'Integrity Pact' (IP) in respect of all major procurements. The IP essentially envisages an agreement between the prospective vendors /bidders and the buyer committing the persons / officials of both the parties not to exercise any corrupt influence on any aspect of the contract. The Integrity Pact in respect of a particular contract would be effective from the stage of invitation of bids till the complete execution of the contract. Further, in May 2009, vide *Circular* No.10/5/09 dated 18.5.2009, the Commission formulated a Standard Operative Procedure (SOP) outlining the essential ingredients of IP (All the above quoted orders are available on the Commission's website www.cvc.nic.in.

1. The main role and responsibility of IEM is to resolve issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or indicates bias towards some bidders. IEMs are expected to examine process integrity and not expected to concern themselves with fixing of responsibility on officers.

2. The SOP has since been reviewed by the Commission and a modified SOP has been issued by the Commission vide *Circular* No. 02/01/2017 dated 13.01.2017.

3. IP is to be implemented through Independent External Monitors (IEMs) appointed by the organisation. IEMs would review independently and objectively whether and to what extent parties have complied with their obligations under the pact. The IEMs would have access to all contract documents and would examine all complaints received by them and give their recommendations / views to the CEO of the organisation (and to the CVO in case of suspicion of serious irregularities). The recommendations of IEMs are advisory in nature and not legally binding. The role of IEMs and CVO are separate and would remain unaffected by each other.

4. Now, the Commission proposes to empanel names for appointment as IEMs as per the following scheme: -

Eligibility: -

- The choice of IEM should be restricted to officials from the Government and Public Sector Undertakings who have retired from very senior positions. The very senior positions shall mean level of Additional Secretary to the Government of India and above or equivalent pay scale. For Public Sector Undertakings, top positions shall mean Board level and above in Schedule A companies, Public

Sector Banks / Insurance Companies / Financial Institutions. Officers of the Armed Forces who have retired from the rank equivalent of Lt. General and above may also be considered for appointment.

- Age should not be more than 70 years at the time of appointment / extension of tenure.

Selection method: -

- A Notice inviting applications from eligible persons will be published on the Commission's website.
- After due scrutiny and verification of the applications and documents by the Commission, the applicants will be shortlisted for empanelment by the Commission.

Terms & conditions: -

- A person cannot be appointed as IEM in more than three organisations at a time.
- A maximum of three IEMs would be appointed in any organisation.
- IEMs would be appointed for an initial period of three years, which is extendable by another two years with the approval of the Commission.
- A person who is either serving or has retired from the same organisation cannot be appointed as IEM in that organisation.
- Remuneration payable to the IEMs by the organisation concerned would be equivalent to that admissible to an Independent Director in the organisation and in any case, would not exceed Rs. 20,000/- per sitting.

Procedure: -

- The Commission would maintain a panel of names for appointment as IEMs, which can be accessed by all the organisations.
- On receipt of request from organisation concerned for appointment as IEMs, the Commission would approve two / three names as the case may be from the panel of names.
- For extension of tenures, the organisation concerned would send a request to the Commission atleast one month before the expiry of initial three-year tenure.

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Chapter XI

Some Relevant Issues

11.1 STANDARD OPERATING PROCEDURE REGARDING LEGAL CASES WHERE COMMISSION HAS BEEN MADE RESPONDENT

(1) The Central Vigilance Commission, under the provisions contained in Section 8(1)(g) and Section 17(2) of the *CVC Act, 2003* has the mandate to tender advice 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, regarding the officers covered under its advisory jurisdiction as defined under Section 8(2) of the *CVC Act, 2003*.

(2) The Commission takes a considered view regarding the further course of action to be taken in respect of officers / cases as mentioned above, based on the records / evidence / material available with it and may advise either prosecution of the Suspected Public Servant or initiation of appropriate disciplinary proceedings or for imposition of appropriate penalty as the case may be, based on the misconducts detected.

(3) The aggrieved officers concerned, against whom action has been taken as advised by the Commission, sometimes approach either Central Administrative Tribunal or other constitutional Courts of Law with the prayer to get the disciplinary action or penalty quashed. The Commission and / or its officers, alongwith the organisation concerned to whom the officer belongs and the Disciplinary Authority of the petitioner officer are made respondents by the officer concerned.

(4) In cases, where the Central Vigilance Commission has been named as a respondent alongwith the organisation concerned, the authorities

concerned in the organisation, immediately on receipt of a notice from the respective court or on receipt of advance copy of the petition / application / plaint, etc., shall bring the same to the notice of the Chief Vigilance Officer of the organisation. The Chief Vigilance Officer of the organisation shall inform the Central Vigilance Commission immediately about the court case. The Chief Vigilance Officer shall also forward a self-contained note containing a summary of the issues raised in the petition / application / plaint, etc., indicating the paras where Commission's actions have been described / questioned and also quoting the Commission's references / correspondences exchanged with the organisation concerned relating to the case mentioned before the Court / Central Administrative Tribunal, etc., if any.

(5) During the intervening period, when correspondence is being made by the Chief Vigilance Officer of the organisation with the Commission and prior to receipt of its specific advice / directions, the Chief Vigilance Officer of the organisation concerned shall ensure that the Commission's and its officers' interest are duly protected before the Court, if the case comes up for hearing.

The Chief Vigilance Officer and / or any other authority concerned of the organisation, shall suitably brief the counsel / advocate of the organisation about Central Vigilance Commission's functions and powers and its advisory jurisdiction, as mandated under Section 8 and 17 of the *CVC Act, 2003* to suitably apprise the court. Section 15 of the *CVC Act, 2003* states that "No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act". This may also be brought to the notice of respective Courts, through the organisation's counsel / advocate in order to get the name of the Central Vigilance Commission or its officers deleted from the list of respondents.

(6) Many a time, petitioners / applicants / plaintiffs approach the Courts alleging corrupt / inappropriate activities by various Govt. organisations and / or by public servants and seek investigation about such inappropriate

activities through Central Vigilance Commission. In case they had made complaint to the Commission earlier regarding the issues mentioned before the court, they point out this fact in their petition / prayer and sometimes express dissatisfaction about the action taken by the Commission on their complaints, as may have been intimated to them. In such cases also, immediately on receipt of a notice from the respective court or on receipt of advance copy of the petition / application / plaint, etc., the authorities concerned in the organisation shall bring the same to the notice of the Chief Vigilance Officer of the organisation immediately. TheChief Vigilance Officer of the organisation shall inform the Commission immediately about the court case. The Chief Vigilance Officer shall also forward a self-contained note containing a summary about the issues raised in the petition / application / plaint, etc., indicating the paras where Commission's actions have been described / questioned and also quoting the Commission's references / correspondences exchanged with the organisation concerned relating to the case mentioned before the Court / Central Administrative Tribunal, etc., if any.

(7) During the intervening period, when correspondence is being made by the Chief Vigilance Officer of the organisation with the Commission and prior to receipt of its specific advice / directions, the Chief Vigilance Officer of the organisation concerned shall ensure that the Commission's and its officers' interest are duly protected before the Court, if the case comes up for hearing. The Chief Vigilance Officer and / or any other authority concerned of the organisation, shall suitably brief the counsel / advocate of the organisation about the Commission's Complaint Handling Policy and provisions contained under Section 8 and 17 of the *CVC Act, 2003* to suitably apprise the court accordingly.

(8) Wherever a need arises to argue, before the respective Courts, the merits of specific advice tendered by the Commission in a particular case or action taken by it on an individual complaint or any other action of Commission, the organisation shall seek specific comments and advice of Commission before informing / apprising the Court through their counsel / advocate.

(9) The orders passed by the respective courts or any development pertaining to the case shall be intimated to the Commission by the Organisation /

CVO concerned at the earliest possible, alongwith the details of action required to be taken at the end of Commission, if any.

(CVC Circular No. 11/09/2016 dated 05.10.2016)

11.2 PROCEDURE FOR OBTAINING AND GRANT OF VIGILANCE CLEARANCE

(1) In terms of *para 5 of CVC Resolution dated 11.02.1964* (which is not inconsistent with the provisions of *CVC Act, 2003* for the purpose of Section 24 of the Act), the Commission advises the Ministries / Departments / Undertakings in respect of all matters pertaining to maintenance of integrity in administration which also includes vigilance inputs on the antecedents of public servants. This in common parlance is often referred to as 'Vigilance Clearance'. Under its powers of superintendence of vigilance administration, the Commission has issued guidelines in this regard for obtaining vigilance clearance by the Ministry / Departments / Organisations in respect of certain categories of public servants. However, in all such matters the Commission generally follows the various guidelines issued by *DoPT* which are described hereinunder.

(2) *Para 5 of DoPT* guidelines issued vide *OM No. 104/33/2005 – AVD.I dated 29.10.2007* pertaining to grant of "Vigilance Clearance" to AIS officers, inter-alia, provides that "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."

(3) Similarly, *para 5 of DoPT* guidelines vide *OM No. 11012/ 11/2007-Estt. (A) dated 14.12.2007* pertaining to grant of "Vigilance Clearance" to members of the Central Civil Services / Central Civil posts inter-alia provides that "While considering cases for grant of vigilance clearance for the purpose of empanelment of members of the Central Civil Services / Central Civil posts of a particular batch, the vigilance clearance / status will continue to be ascertained from the respective Cadre Authority. In all such cases,

the comments of the Central Vigilance Commission will be obtained."

(4) *DoPT's DO No.27(8)-EO/87(ACC) dated 25.01.1988* and *DoPT* OM No. 27(5)-EO/88 (ACC) dated 4th August 1988 pertaining to scrutiny of antecedents of persons recommended for Board level posts in Public Sector Enterprises, inter-alia, provides that "it would be the primary responsibility of the administrative Ministry / Department concerned to ensure that the candidates, whose appointment as Functional Director/ CMDs in Public Sector Enterprises is recommended for being considered by the ACC should be cleared from vigilance angle and that the Ministry/ Department concerned should bring this fact specifically to the notice of the Minister-in-charge. In respect of those persons, who are already holding Board level positions and who have been recommended for higher Board level positions, the vigilance clearance may be ascertained, besides other sources, from the Central Vigilance Commission." The Commission, vide its *Circular No. 3(v)/99/4dated 12th July 1999*, issued instructions 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".

(5) As per the above instructions, the need for reference to the Commission arises in cases of empanelment of any particular batch in respect of AIS officers and members of Central Civil Services / Central Civil posts, for appointment to Board level positions in Public Sector Enterprises and sensitive top posts viz., Chairperson / Members of CAT, National Green Tribunal, PESB, various autonomous and quasi-judicial bodies, etc.

(6) It is clear that vigilance clearance as such is to be granted only by the concerned cadre authorities and therefore maintenance of career profile and vigilance history of the officers falls within their domain. The Commission considers the vigilance profile furnished by the cadre authorities, duly signed by the CVO. Inputs are also obtained from CBI and the concerned branches in the Commission. Based on the said information, the Commission offers its comments as to whether anything adverse is available on its records against the officer under consideration for empanelment / selection.

(7) The instructions pertaining to AIS officers and members of Central Civil Services / Central Civil posts envisage that vigilance clearance is to be ascertained from the cadre controlling authorities and comments to be obtained from the Commission. Accordingly, adverse inputs, if any, may be conveyed to the authorities with the advice to place the facts of the case before the competent authority while considering the suitability of the officer for empanelment.

(8) However, in respect of appointments to Board level positions, Department of Personnel & Training have issued instructions vide *OM No. No.27(4) EO/2014(ACC) dated 22.10.2014* pertaining to guidelines for processing proposals for appointment to Board level posts in Central Public Sector Enterprises (CPSEs). Policy guidelines for extension of tenure of board level incumbents where vigilance clearance is not available have also been issued by *Department of Personnel & Training* vide *OM No.17(9) EO/2014-ACC dated 30.10.2014*. These are being followed while processing matters of vigilance clearance.

(9) The following three options are generally exercised by the Commission while conveying its inputs on the vigilance status of officers:

(a) In respect of cases where there is no adverse input available in the database of the Commission, feedback of CBI and vigilance profile furnished by the concerned Department, it is conveyed that there is nothing adverse on the records of the Commission;

(b) In respect of cases where there is any adverse input from CBI (viz., prosecution launched against the officer, regular case under investigation); or, vigilance profile furnished by the Department indicates any disciplinary proceeding in progress or currency of penalty imposed is still in force; or, the data-base of the Commission indicates any advice tendered by the Commission for initiation of disciplinary proceedings against the officer is pending, denial of clearance is conveyed by the Commission;

(c) In respect of cases where there are complaints / cases pending at the end of the concerned Department, (i.e., where the officer is not clear from vigilance angle as per records of the Department), the Commission advises that the complaints / cases pending at the end of the Department may be

taken to their logical conclusion and thereafter the Commission may be approached for vigilance clearance with updated vigilance profile of the officer. Department is, therefore, intimated that clearance in respect of the officer cannot be considered by the Commission at this stage.

(DoPT's Compendium of Guidelines Regarding Board Level Appointments in CPSEs may also be referred.)

11.3 RIGHT TO INFORMATION ACT, 2005

(1) The *Right to Information Act, 2005* was enacted by the Government for providing right to every citizen to secure access to information under the control of the Public Authority concerned. Every Public Authority covered under the RTI Act, 2005 receives a large number of applications from the public, seeking information on various issues and the requested information is to be given by the Central Public Information Officers (CPIOs) / Public Information Officers (PIOs) concerned of the Public Authorities. Under the provisions of *RTI Act, 2005*, an Applicant has the right to make an Appeal to the first Appellate Authority of the Public Authority concerned, in case, he is not satisfied with the reply / information provided to him by the CPIO / PIO concerned.

(2) The necessity for First Appeal arises due to the fact that there are shortcomings / ambiguities in the reply / information provided by the CPIO / PIO of the Public Authority concerned. However, it has been observed that sometimes the First Appeal is made by the Appellant out of ignorance of the provisions of RTI Act, 2005 or his / her lack of clarity about the scope and limitation of the provisions of *RTI Act, 2005*.

(3) Central Information Commission (CIC) is authorised under the *RTI Act, 2005* to receive and enquire into a complaint and / or decide on Second Appeal relating to deficiencies in supply of information to the RTI Applicants by the Public Authority concerned. If the points mentioned in para 11.3.4 below are kept in view by the various Public Authorities, while replying to RTI Applicants, it may be useful in increasing the level of satisfaction among the RTI Applicants and increased awareness among the Applicants about the provisions, scope and limitations of *RTI Act, 2005*. With the increased knowledge about the provisions of *RTI Act, 2005*,

the Applicants would be in a better position to make RTI Applications in an unambiguous manner, thus making it easier for the Public Authorities also to provide an appropriate, clear and specific reply to the Applicants, in letter and spirit of the provisions of *RTI Act, 2005*.

(4) Common shortcomings noticed in the replies given by the CPIOs / PIOs to the RTI Applicants and corrective measures thereon to be taken by the authorities concerned are as under: -

(i) Many a time, while rejecting the Applicant's request for information sought by him, the reasons for such rejection / denial of the information are not given by the CPIOs / PIOs concerned, which is a violation of Section 7(8)(i) of the *RTI Act, 2005*. The CPIOs simply quote the Section of the RTI Act, 2005, under which the information is being denied or they state that the issue raised by the Applicant does not constitute 'information' as defined under Section 2(f) and 2(i) of the *RTI Act, 2005*, which is not sufficient. The 'reasons', why exemption is being claimed from disclosure and / or why the issue raised does not constitute 'information' and the relevant rulings of the CIC and / or constitutional courts, etc., must be explained to the Applicants.

(ii) In cases where the information is denied and the Applicant's request is being rejected, the period during which an Appeal may be preferred and the particulars of the Appellate Authority are not mentioned in the reply to the Applicant, which is a mandatory requirement under Section 7(8)(ii) and 7(8)(iii) of the *RTI Act, 2005*, in such cases. The CPIOs / PIOs should provide these details to the Applicants, in case, information / a part thereof is being denied to the Applicants.

(iii) Sometimes the reply to the Applicants is given in perfunctory manner, without verifying the records of the organisation concerned. The information as sought by the Applicants, should be given to them after checking the records thoroughly.

(iv) Adherence to the time limit is essential in handling Applications received under *RTI Act, 2005*. *RTI Act, 2005* has specified time limits for different stages and actions to be taken on Applications received by the Public Authority concerned. Any applications / part(s) thereof, which are

required to be forwarded to other Public Authorities, should normally be forwarded within 5 days of the receipt of the Application, in accordance with Section 6(3) of the *RTI Act, 2005*.

(v) Under Section 11 of the *RTI Act, 2005*, notice to the third party is to be given only for that information pertaining to third party, which has been treated as confidential by it. Such notice is to be given within 5 days of the receipt of the request and a final decision regarding providing the information is to be taken by the CPIO concerned, within 40 days of the receipt of the request.

(vi) In many cases the CPIOs / PIOs delay the reply to the Applicants beyond 30 days' time limit prescribed under Section 7(1) of the *RTI Act, 2005*, without assigning any reason either on file and / or without informing the Applicant. In case, it is not possible to give the information to the Applicant within 30 days, the CPIOs / PIOs should send an interim reply within 30 days', informing the Applicants about the delay.

(vii) Sometimes there is delay in providing information to the Applicants on the ground that the relevant files are under submission with the higher authorities. In such cases, the CPIOs / PIOs should withdraw the files 'temporarily' for providing information to the RTI Applicants.

(viii) The CPIOs / PIOs while denying the information to the Applicants must records the reasons in the file also to justify the denial / rejection of the request of the Applicant.

(5) Many times, a question arises regarding disclosure of information pertaining to disciplinary action / proceedings / show-cause notices / punishments awarded to a public servant and financial details of a public servant. The Hon'ble Supreme Court of India in its judgment in *Special Leave Petition (Civil) No. 27734 of 2012 in the case of Girish Ramchandra Deshpande Vs. Central Information Commission and Ors*. has ordered that—

"*The petitioner herein sought for copies of all memos, show cause notices and censure / punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other*

financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act, 2005.

We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure / punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act, 2005. The performance of an employee / officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, 2005, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act, 2005.

We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest.

That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed".

(6) The above decision of the Hon'ble Supreme Court of India may be kept in view while deciding about disclosure of information relating to disciplinary action / proceedings / show cause notices / punishments awarded to a public servant and financial details of a public servant.

11.4 INTERNATIONAL COOPERATION AGAINST CORRUPTION

Globalisation and rapid strides in technology have made territorial boundaries irrelevant. Corruption has increasingly assumed transnational ramifications afflicting nations all across. Hence, corruption can be tackled at global level only with international cooperation. Countries have to assist each other in investigations, prosecutions, judicial proceedings and in recovery of proceeds of crime, etc. Mutual legal assistance may be afforded by countries to the fullest extent possible through relevant laws, treaties, agreements and arrangements. International cooperation may be afforded in the area of law enforcement, joint investigation, extradition of accused, transfer of proceedings, sharing of information, recovery and repatriation of proceeds of crime, etc. The *UN Convention Against Corruption* lays great emphasis on international cooperation in the fight against corruption.

11.4.1 United Nations Convention Against Corruption (*UNCAC*):

(a) *United Nations Convention Against Corruption* is a multilateral convention, which has been negotiated by members of United Nations. It is the first global, legally binding international anti-corruption instrument, which was initially adopted by the United Nations General Assembly on 31st October, 2003. It has since been ratified by a total of 178 parties upto 31st December, 2015, which includes 175 United Nations Member States, apart from the Cook Islands, the State of Palestine and the European Union. India has ratified the *United Nations Convention Against Corruption* in May, 2011.

(b) *United Nations Convention Against Corruption* requires the State Parties to implement several anti-corruption measures including Whistle Blowing mechanism which may affect their laws, institutions and practices. These

measures aim at preventing corruption, including domestic and foreign bribery, embezzlement, trading in influence and money laundering. *UNCAC* is intended to strengthen international law enforcement and judicial cooperation, providing effective legal mechanisms for asset recovery, technical assistance and information exchange, and mechanisms for implementation of the convention, including the Conference of the States Parties to the *United Nations Convention Against Corruption*.

(c) Chapter IV of *United Nations Convention Against Corruption* deals with International Cooperation against Corruption. Article 46 provides for Mutual Legal Assistance which are: -

(i) State Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(ii) Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with Article 26 of this Convention in the requesting State Party.

(iii) Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes: (a) Taking evidence or statements from persons; (b) Effecting service of judicial documents; (c) Executing searches and seizures, and freezing; (d) Examining objects and sites; (e) Providing information, evidentiary items and expert evaluations; (f) Providing originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records; (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; (h) Facilitating the voluntary appearance of persons in the requesting State Party; (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party; (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention; (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(d) India is a member of Interpol and the *NCB-Delhi* which is the Interpol wing in India, functions as a branch of CBI. *NCB-Delhi* is the sole authorised agency in India for contacts with the Police agencies of other countries. Besides, India also has Mutual Legal Assistance Treaty *(MLAT)* with 39 countries, *Extradition Treaty* with 37 countries and *Extradition arrangement* with 7 countries which facilitate International Cooperation for the purpose of compliance with Article 46 of *UNCAC*. For more detail, Chapter 25 of Crime Manual of CBI may be referred. How to provide / seek assistance of Interpol is provided at the CBI web-link on *Interpol / MLAT*.

(e) As per *Government of India(Allocation of Business) Rules, 1961*, the Ministry of Home Affairs is the nodal Ministry and the Central authority for seeking and providing Mutual Legal Assistance in criminal law matters. The Ministry of Home Affairs (MHA) receives all such requests, examines them and takes appropriate action. Cases pertaining to civil and commercial matters are required to be taken up with the Ministry of Law & Justice, which finalises and notifies treaties and arrangements with other countries as per the relevant statutory provisions in the *Code of Civil Procedure, 1908*. Therefore, all requests for seeking assistance from a foreign country including the service of all kinds of judicial processes or other documents are directly submitted to the Ministry of Home Affairs in criminal law matters and to the Ministry of Law & Justice in civil and commercial matters.

(f) Article 33 of *United Nations Convention Against Corruption* provides for protection of Whistle Blower which says that "each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention".

(g) The ratification of *United Nations Convention Against Corruption* by India necessitated creation of an appropriate whistle blowing mechanism and review of the existing *Prevention of Corruption Act, 1988*. Accordingly, the *Whistle Blowers Protection Act, 2011* was enacted in May, 2014. The

same however, is not in force as the Govt. of India aims to modify certain provisions of *Whistle Blowers Protection Act, 2011*. A Bill to this effect has been introduced in the Parliament to carry out the amendments. The PIDPI Resolution 2004 contains provisions regarding protection to whistle blowers. It is described in detail in *Chapter IV* of the Manual.

(h) The *Whistle Blowers Protection Act, 2011* is an Act "to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto".

(i) India being one of the signatories to the *United Nations Convention Against Corruption* has displayed its commitment to implement the provisions of the same, in order to fight corruption and prevent inappropriate activities in public life. A step in this direction was to amend some of the provisions of *Prevention of Corruption Act, 1988* by bringing out the *Prevention of Corruption (Amendment) Bill, 2013*.

11.4.2 *Details of efforts made by Commission towards International Co-operation:*

(a) The Central Vigilance Commissioner is a member of the Executive Committee of IAACA (International Association of Anti-Corruption Authorities) since its inception. The IAACA has been instrumental in the fight against corruption and its principal purpose has been to promote and support the implementation of the *United Nations Convention Against Corruption* (UNCAC), fostering constructive collaboration among its members in prevention, asset recovery and international cooperation.

(b) A Knowledge Management programme called ISAAC (Information Sharing and Analysis for Anti-corruption) has been developed and is being maintained by CVC. This is an information sharing system to ensure global cooperation in checking black money and initiating anti-corruption measures. The ISAAC will facilitate exchange of information about anti-corruption organisations, systems, procedures, practices and

experiences among member organisations and other stakeholders across the world. The purpose of ISAAC is to enable international cooperation in enforcement of anti-corruption measures and prevention of corruption and development of new approaches to tackle graft. It will also help in capacity building of anticorruption authorities and members can share best practices being followed by them to check corruption. About 219 anti-corruption authorities across the world are part of this global online mechanism, which can be accessed at www.isaac.nic.in. The website has data / updates of anti-corruption policies, practices and mechanism in place and being followed by other countries. The ISAAC was launched by H.E. Professor Cao Jianming, President of IAACA.

(c) A Memorandum of Understanding (MoU) between Central Vigilance Commission and Komisi Pemberantasan Korupsi (KPK) of the Republic of Indonesia for International Cooperation on Combating Corruption was signed. The MoU provides to establish and strengthen international cooperation, collaborative efforts through encouragement of sharing and exchange of studies, research and information, training and exchange of expertise on operational measures, etc.

(d) Representatives of Anti-Corruption authorities of various countries, OECD, UNDP, UNODC, World Bank, etc. visit India from time to time and share / exchange experiences of good practices with the Central Vigilance Commission which help in the process of developing, designing and implementing sustainable anticorruption strategies.

11.5 PUBLIC PARTICIPATION IN PROMOTING INTEGRITY AND ERADICATING CORRUPTION

"In the long run, the fight against corruption will succeed only to the extent of which a favourable social climate is created. When such a climate is created and corruption becomes abhorrent to the minds of the public and the public servants and social controls become effective, other administrative, disciplinary and punitive measures may become unimportant and may be relaxed and reduced to a minimum". The Santhanam Committee set up in the year 1962 to study important aspects on the evils of corruption in Indian society made the above observations

about the role of society at large in the fight against corruption, which holds true to the day.

Promoting integrity and eradication of corruption cannot be achieved only by the efforts of anti-corruption agencies, without the active support and participation of the citizen and social institutions. Public participation plays a vital role in the fight against corruption in:

(a) Encouraging Ethical Conduct of the individual and the organisation;

(b) Educating and Creating awareness about the - Rights and duties of the Citizen; Rules, regulations, Duties and responsibilities of the Public officials and Public institutions; Various Government Welfare Schemes;

(c) Acting as a Watchdog through Public Scrutiny of the actions of public servants by Exposing the wrongdoers and Standing by the upright and honest officials;

(d) Acting as a Feedback channel to the Public authority for Grievance redressal of the common man;

(e) Institutional and moral support to those fighting the corrupt public servant;

(f) Exhorting the Citizens and the Organisations to perform their lawful duties.

11.5.1 *Encouraging ethical conduct:*

Corruption mainly includes abuse of authority and selfish exercise of power by those who hold special position in public life. Hence, corruption can be linked to lack of ethical values. Combating corruption is, therefore, not just a matter of making laws and creating institutions, but is deeply rooted in human values, ethics and morality of the individuals, organisations and the society at large. Inculcating ethical and moral values in the citizen -. Truthfulness, Honesty, Integrity, Probity, Courage, Uprightness, Respect for and obedience to law, etc. - is the foundation stone of any society's fight against corruption. Stigmatising the culture of Corruption, favouritism, nepotism and promoting meritocracy create a conducive social climate. Similarly, the spirit of 'consumerism' leads to avarice and craving for easy money. If the Citizen is taught to say 'No

to Bribe', the 'Supply side of Corruption' automatically gets stifled.

Parents, family, peer group, teachers, educational institutions, social intellectual and spiritual leaders, civil society, press, mass media including social media, Governmental and Non-Governmental Organisations (NGOs), etc. have a major role to play in the inculcation and dissemination of high ethical and moral values in individuals, organisations and the society at large.

11.5.2 ***Integrity Pledge:***

To foster probity and integrity in public life, the Commission has launched an 'Integrity Pledge' which can be taken electronically by the citizen as well as by organisations. It can be accessed on the Commission's website at www.pledge.cvc.in.

By taking the Integrity pledge, citizens commit to uphold highest standards of honesty & integrity by following probity and rule of law in all walks of life, to neither take nor offer bribe, to perform all tasks with honesty and transparency, act in public interest and report any incident of corruption to appropriate authority.

Similarly, by taking the integrity pledge, organisation viz., corporate/ entities / firms, etc., would affirm their commitment to eradicate corruption and to uphold highest standards of integrity & good governance by promoting a culture of honesty and integrity in the conduct of their activities. Organisations would pledge to neither offer nor accept bribe, commit to good corporate governance based on transparency, accountability and fairness, adhere to relevant laws, rules and compliance mechanisms in the conduct of business, adopt a code of ethics for all its employees, sensitise their employees of laws, regulations, etc., relevant to their work for honest discharge of their duties, provide grievance redressal and Whistle Blower mechanisms for reporting grievances and fraudulent activities and protect the rights and interests of stakeholders and the society at large.

The Commission acknowledges citizens and organisation taking the Integrity Pledge, for their commitment to the cause of anti-corruption,

through a certificate of commitment. For pledge and certificate, refer to *Annexure-I & II* to this *Chapter*.

11.5.3 ***Fundamental Duties:***

Article 51A of Indian Constitution casts certain duties on every citizen including cherishing and following noble ideals.

It shall be the duty of every citizen of India, —

(a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

It can be said that a natural corollary of these duties explicitly mandated, is a duty to be honest and to oppose corruption.

11.5.4 ***Article 13 of United Nation Convention Against Corruption— Participation of Society:***

Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-Governmental organisations and community-based organisations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

11.5.5 ***Participation of Institutions:***

(a) ***Media:*** The press and electronic media can do a lot to educate and create awareness among the public about their constitutional and legal rights, various Government schemes for the benefit of common citizen, etc. They can do their bit to expose corrupt / inappropriate activities by public servants, systemic failures. Media can do so by highlighting such instances prominently, after conducting an appropriate and thorough enquiry and draw the attention of the public and Government agencies to such activities. They can at the same time also highlight the special efforts of honest and upright public official.

(b) ***Social media:*** The use of electronic social media like Facebook, twitter, WhatsApp, etc. has become very popular. The citizens can liberally resort to its use for spreading awareness against corruption, highlighting the wrongdoings of public servants and documenting evidence of corruption. Similarly, they can also highlight cases of exceptional honesty, probity and uprightness.

(c) ***Educational institutions:*** The schools, colleges, universities, etc. may inculcate ethical values among their students, educate them about areas of corruption and how to bring the culprits to book, apprise them about the anti-corruption authorities, rules and laws and transform them into responsible citizens.

(d) ***Leaders:*** The intellectual, social and spiritual leaders can also play their part in eradicating corruption. By their teachings and work, they can

instil virtuosity, noble values, high moral and ethical standards among their followers.

(e) ***Civil society:*** Civil society can contribute to a nation's fight against corruption in various ways viz. raising awareness, educational programmes, etc. Civil society can advocate reforms that are perceived to be most crucially needed.

The Government may be thus persuaded to remove the infirmities in the system and create new laws to fight corruption. The *Right to Information Act, 2005* and the *Lokpal and Lokayuktas Act,2013* have been legislated, to a large extent, due to the persistent advocacy and the efforts of civil society.

11.5.6 ***Outreach Programmes for Promoting Public Participation:***

To foster public participation in promoting integrity and eradicating corruption, some of the initiatives of the Commission are as under: -

(a) ***Observance of Vigilance Awareness Week:*** All Governmental Organisations observe the vigilance awareness week under the direction and guidance of the Commission every year with a specific theme to create awareness among public servants as well as citizens about the menace of corruption and need for its eradication. The theme for the year 2016 was "Public participation in eradication of corruption". [Described in para 1.3.7(e) of *Chapter I*]

(b) ***Integrity pledge****:* Commission launched an online Integrity Pledge. [Described in para 11.5.2 above]

(c) ***Public outreach programmes****:* Extensive exercise undertaken by the Commission through field offices of Public Sector Banks, Public Sector Enterprises, Educational institutions especially schools and colleges, Govt. Departments, Vigilance Study Circles, NGOs, etc. under a plan of action prepared by the Commission to spread awareness amongst the common citizens particularly the youth and students through various activities.

(d) ***Vigilance Gram Sabha and other Grievance redressal programmes.***

(e) ***Activities in School / Colleges:*** Such as competitions through debates,

slogan writing, essay writing elocution, etc. organised in school / colleges across the country to exhort young minds to inculcate in them moral values of honesty, integrity and probity.

(f) ***Seminars / Workshops / Presentations.***

(g) ***Use of Press / Electronic media****:* through articles, talks, panel discussions, etc. in Hindi, English and Regional language.

(h) ***Use of Social Media****:* The Commission has started a twitter account on which public can share information about corrupt activities against a public servant / organisation.

(i) ***Lectures****:* Commission has started a monthly lecture series by eminent personalities on the issues relevant to incidence of corruption and means to combat it.

11.6 FORENSIC SCIENCE AS A TOOL FOR ENQUIRY / INVESTIGATION

(1) Forensic science deals with scientific methods of investigation and collection of evidence. Normally, several branches of Forensic Science like forensic medicine, computer forensic, forensic pathology, forensic ballistics, etc., are employed for investigation of complex criminal cases. Forensic Science can also be gainfully employed in vigilance investigations too for collection of evidence, better appreciation of the cases and fixing of responsibilities.

Organisations could explore improving the quality of their investigations through use of forensic tools and expertise for ascertaining facts that could be crucial for arriving at definite conclusions in cases. In case of need, certain professional organisations can also be approached to help application of forensic tools for investigation purpose.

(2) During investigating of fraud / corruption cases, various forensic techniques are used for analysis of physical and electronic evidence. Conventional methods are mainly used to prove the authenticity of the documents available; this typically involves examination of physical documents for matching of handwriting and signatures, matching / establishing age of paper and ink to analyse the evidence by comparison and to establish erasures or substitution of documents and restoration of obliterated writing.

(3) Examination and analysis of documents available in physical form may require opinion of GEQD (Government Examiner of Questioned Documents). The following types of examination are carried out by the GEQD: -

(a) to determine the authorship of the questioned writings by a comparison with known standards / accepted documents;

(b) to detect forgeries in questioned documents;

(c) to determine the identity of questioned typescripts by comparison with standards;

(d) to determine the identity of seal impressions;

(e) to decipher erased (mechanically or chemically) or altered writings;

(f) to determine whether there have been interpolations, additions, or overwriting and whether there has been substitution of papers;

(g) to determine the order or sequence of writings as shown by cross strokes and also to determine the sequence of strokes, creases or folds in the questioned documents where additions are suspected to have been made;

(h) to detect any tampering in wax seal impressions;

(i) to decipher secret writings;

(j) to determine the age of documents and other allied handwriting problems.

Services of the Document Division of Central Forensic Science Laboratory (CFSL), CBI or other forensic laboratories of Central /State Government or NABL accredited laboratories may also be used for this purpose.

11.6.1 COMPUTER FORENSICS

(1) Computer forensics deals with identification, documentation, extraction and preservation of computer evidence. Typically, computer forensic tools exist in form of computer software and hardware, procedures and communication protocols. To ensure accuracy and reliability of computer evidence, it is imperative to go for cross validation of the results through use of multiple tools and techniques and standard procedures.

In terms of Section 2 (1) (h) of the *Information Technology Act, 2000*, a computer is any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses, and includes all inputs, outputs, processing, storage, computer software or communication facilities which are related or connected to the computer in a computer system or computer network.

A computer system is a device or collection of devices, having interface with input and output support device, which are programmable; and can be used for performing logic, arithmetic, data storage and retrieval, communication control and other functions making use of computer programmes, electronic instructions and input / output data. Computer network refers to interconnection of one or more computers through communications media.

(2) With growing and widespread use of computer technology, a computing machine / computer system / communication network can be used for committing irregularities / crimes; at the same time, these objects can also be victims of nefarious activities. The first step in the direction of committing such activities is to have access to a computer / computer system / computer network; the access may be physical or from a remote location through a communication network. Though unauthorised and remote access to a computer / computer system makes investigation in to an act of omission or Commission difficult, we need to realise that such acts, like any other conventional irregularity / crime, leave behind evidence at the scene of crime.

Electronic evidence normally consists of an electronic record which, in turn, may be in form of data, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. Computer data means a representation of information, knowledge, facts, concepts or instructions, prepared in a formalized manner and intended to be processed in a computer system or computer network. Significant digital sources of evidence include computers, mobile devices, removable media and external data storage devices, online banking software, e-mail/

notes / letters, telephone records, financial or asset records, electronic money transfers, accounting or record keeping software, etc.

(3) A computer forensic examination may reveal when a document first appeared on a computer, when it was last edited, when it was last saved or printed, and which user carried out these actions. It can detect sophisticated money trails / movement of proceeds of corruption. As much of the day-to-day communication and financial transactions are conducted over the Internet, real time monitoring of bank accounts, e-mail traffic and the interception and processing of other forms of on-line data become important for conducting a proper investigation, complementing traditional investigative and surveillance techniques.

However, all these activities require the assistance of a digital forensic expert. The Cyber Forensic Laboratory and Digital Imaging Centre, functioning under CFSL / CBI, assist investigating / enforcement agencies in the collection and forensic analysis of electronic evidence. Services of other such forensic laboratories of Central / State Government or NABL accredited laboratories may also be used for this purpose.

11.6.2 TRAINING IN FORENSIC SCIENCE

Commission expects that Departments / Organisations should take steps to build capacity of their personnel, engaged in vigilance inquiries & investigations and disciplinary matters, etc., in Forensic Sciences. Commission has organised several training courses for CVOs and vigilance functionariesin several premier institutes. Some of the organisations have also got tailor-made courses organised.

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Annexure-I

INTEGRITY PLEDGE FOR CITIZENS

I believe that corruption has been one of the major obstacles to economic, political and social progress of our country. I believe that all stakeholders such as Government, citizens and private sector need to work together to eradicate corruption.

I realise that every citizen should be vigilant and commit to highest standards of honesty and integrity at all times and support the fight against corruption.

I, therefore, pledge:

- To follow probity and rule of law in all walks of life;
- To neither take nor offer bribe;
- To perform all tasks in an honest and transparent manner;
- To act in public interest;
- To lead by example exhibiting integrity in personal behaviour;
- To report any incident of corruption to the appropriate agency.

INTEGRITY PLEDGE FOR ORGANISATIONS

We believe that corruption has been one of the major obstacles to economic, political and social progress of our country. We believe that all stakeholders such as Government, citizens and private sector need to work together to eradicate corruption.

We acknowledge our responsibility to lead by example and the need to put in place safeguards, integrity frameworks and code of ethics to ensure that we are not part of any corrupt practice and we tackle instances of corruption with utmost strictness.

We realise that as an Organisation, we need to lead from the front in eradicating corruption and in maintaining highest standards of integrity, transparency and good governance in all aspects of our operations.

- We, therefore, pledge that:
- We shall promote ethical business practices and foster a culture of honesty and integrity;
- We shall not offer or accept bribes;
- We commit to good corporate governance based on transparency, accountability and fairness;
- We shall adhere to relevant laws, rules and compliance mechanisms in the conduct of business;
- We shall adopt a code of ethics for all our employees;
- We shall sensitise our employees of laws, regulations, etc. relevant to their work for honest discharge of their duties;
- We shall provide grievance redressal and Whistle Blower mechanism for reporting grievances and fraudulent activities;

Annexure-II

CERTIFICATE OF COMMITMENT

INTEGRITY PLEDGE WEBSITE

List of Abbreviations

S.No.	ABBREVIATIONS / ACRONYMS	
1	A / A	Administrative Approval
2	ACB	Anti-Corruption Branch / Bureau
3	ACR	Annual Confidential Report
4	AFHQ	Armed Forces Headquarters
5	AG	Adjutant General
6	AIS	All India Services
7	AIS (D & A) Rules, 1969	All India Services (Discipline & Appeal) Rules, 1969
8	AITB	Additional Instructions to Bidders
9	APAR	Annual Performance Appraisal Report
10	ATE	Assistant Technical Examiner
11	AVD	Administrative Vigilance Division
12	BPE	Bureau of Public Enterprises
13	BPR	Business Process Re-engineering
14	BS & FC	Banking Securities and Fraud Cell
15	C & AG, CAG	Comptroller & Auditor General of India
16	CAT	Central Administrative Tribunal
17	CBDT	Central Board of Direct Taxes
18	CBEC	Central Board of Excise and Customs
19	CBI	Central Bureau of Investigation
20	CCS (CCA) Rules, 1965	Central Civil Services (Classification Control & Appeal) Rules, 1965
21	CCS (Conduct) Rules, 1964	Central Civil Services (Conduct) Rules, 1964
22	CCTV	Closed Circuit Television
23	CDA Rules	Conduct Discipline & Appeal Rules
24	CDI	Commissioner for Departmental Inquiries
25	CEO	Chief Executive Officer
26	CFSL	Central Forensic Science Laboratories
27	CHP	Complaint Handling Policy
28	CIC	Central Information Commission

29	CHP	Complaint Handling Policy
30	CIC	Central Information Commission
31	CMD	Chairman & Managing Director
32	CO	Charged Officer
33	Constitution	The Constitution of India
34	CPIO	Chief Public Information Officer
35	CPM	Critical Path Method
36	CPPP	Central Public Procurement Portal
37	CPSE	Central Public Sector Enterprise
38	CPWD	Central Public Works Department
39	CrPC, 1973	Code of Criminal Procedure, 1973
40	CTE	Chief Technical Examiner
41	CTEO	Chief Technical Examiners' Organisation
42	CVC	Central Vigilance Commission
43	CVO	Chief Vigilance Officer
44	CWG	Common Wealth Games
45	CWP	Civil Writ Petition
46	DA	Disciplinary Authority
47	DE	Detailed Estimate
48	DFS	Department of Financial Services
49	DGM	Deputy General Manager
50	DoE	Department of Expenditure
51	DoIT	Department of Information Technology
52	*DOPT* / *DoPT*	Department of Personnel and Training
53	DPR	Detailed Project Report
54	DSPE	Delhi Special Police Establishment
55	E / S	Expenditure Sanction
56	ED	Enforcement Directorate / Executive Director
57	EoI	Expression of Interest
58	EOW	Economic Offences Wing
59	EWS	Early Warning Signals
60	FI	Further Information
61	FIR	First Information Report

62	FIs	Financial Institutions
63	FIU	Financial Intelligence Unit
64	FR	Factual Report / Fundamental Rules
65	FSA	First Stage Advice
66	GCC	General Conditions of Contract
67	GEQD	Government Examiners of Questioned Documents
68	GFR	General Financial Rules
69	H1 Offer	Highest Offer
70	HOZ	Head of Zone
71	I & R	Investigation & Report
72	IFS	Indian Foreign Service
73	IA	Inquiring Authority
74	IAACA	International Association of Anti-Corruption Authorities
75	IAC	Internal Advisory Committee
76	ICAI	Institute of Chartered Accountants of India
77	ICT	Information and Communications Technology
78	ID	Identity Document
79	IE	Intensive Examination
80	IEM	Independent External Monitor
81	IG	Inspector General
82	IO	Inquiry Officer
83	IP	Integrity Pact
84	ISAAC	Information Sharing and Analysis for Anti-corruption
85	IT	Information Technology
86	ITB	Instructions to Bidders
87	JPC	Joint Parliamentary Committee
88	JTE	Junior Technical Examiner
89	JV	Joint Venture
90	KYC	Know Your Customer
91	KYE	Know Your Employee
92	KYP	Know Your Partner
93	L1 Offer	Lowest Offer
94	LC	Letter of Credit

95	LIC	Life Insurance Corporation of India
96	MHA	Ministry of Home Affairs
97	MLA	Mutual Legal Assistance
98	MLAT	Mutual Legal Assistance Treaty
99	MoF	Ministry of Finance
100	NA	Necessary Action
101	NABL	National Accreditation Board for Testing and Calibration Laboratories
102	NCB-Delhi	National Central (Interpol) Bureau-Delhi
103	NGO	Non-Governmental Organisation
104	NIT	Notice Inviting Tender
105	NOC	No Objection Certificate
106	NPA	Non-Performing Assets
107	ODI	Officers of Doubtful Integrity
108	ODs	Overdrafts
109	OECD	Organisation for Economic Co-operation and Development
110	OEM	Original Equipment Manufacturer
111	OES	Original Equipment Supplier
112	OTS	One Time Settlement
113	P & PW	Pensions & Pensioners' Welfare
114	PAC	Public Accounts Committee / Proprietary Article Certificate
115	PC Act, 1988	Prevention of Corruption Act, 1988
116	PE	Preliminary Enquiry
117	PERR	Preliminary Enquiry Registration Report
118	PERT	Program Evaluation Review Technique
119	PESB	Public Enterprises Selection Board
120	PIDPI	Public Interest Disclosure & Protection of Informer Resolution, 2004
121	PMLA	Prevention of Money Laundering Act, 2002
122	PO	Presenting Officer
123	President	Hon'ble President of India
124	PSB	Public Sector Bank
125	PSE	Public Sector Enterprise
126	PSICs	Public Sector Insurance Companies

127	PSU	Public Sector Undertaking
128	QMBA	Quick Mortality Borrowal Account
129	QPR	Quarterly Progress Report
130	RBIA	Risk Based Internal Audit
131	RC	Regular Case
132	RDA	Regular Departmental Action
133	RFAs	Red Flagged Accounts
134	SCBF	Special Committee of the Board for monitoring & follow-up of Frauds
135	SLP	Special Leave petition
136	SOP	Standard Operating Procedure
137	SPE	Special Police Establishment
138	SPS	Suspected Public Servant
139	SPV	Special Purpose Vehicle
140	SSA	Second Stage Advice
141	UNCAC	United Nation Convention Against Corruption
142	UNDP	United Nations Development Programme
143	UNODC	United Nations Office on Drugs and Crime
144	UPSC	Union Public Service Commission
145	VAW	Vigilance Awareness Week
146	VO	Vigilance Officer

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Notes

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