



**Delhi Metro Rail Corporation Limited**

# **VIGILANCE MANUAL 2016**





# **FOREWORD**

## **From the desk of Managing Director/DMRC**



Vigilance cannot be considered an activity merely to prevent corruption. Considered, holistically it can acquire a more meaningful role. In fact, vigilance has to be seen as a part of the overall risk management mechanism of an organization whereby systems are structured.

Vigilance is an essential organ of Management. Like other segments of management, its role is to take forward the organisation in a healthy transparent environment. Preventive vigilance is the modern tool of effective management, whereby frauds and scams are prevented before actually happening. It has scored above the punitive vigilance which is only dealing with the events already occurred. Preventive vigilance calls for review of Rules, Procedures and Practices and it is to be exercised not only by the vigilance organization alone but in association with it. Vigilance should not be considered an external agency hampering in work. It only prevents the big scam by pointing out the initial small deviation committed unintentionally. There is always an element of misconception regarding the functioning of vigilance. The main reason for this misconception is lack of knowledge about the working of vigilance, their internal rules and procedures.

Vigilance Manual is an important document to enhance the transparency between executives and the vigilance. I am happy that DMRC is going to have its first ever 'Vigilance Manual' which will go a long way in making the efforts of vigilance more successful and acceptable.

**Dr. Mangu Singh**



# CVOs FOREWORD



Vigilance is considered an organization very much different from the parent organization. Normally vigilance is considered non-cooperative, unreasonable and unpractical. It is perceived that vigilance slows down the well progressing works and discourages the executives in taking bold decisions.

However, most of the perceptions are based upon assumptions only which are far from reality. Nobody else is to be blamed for this faulty perception except for the wide gap of knowledge and understanding of vigilance working. There is a need of disseminating the vigilance working to all concerned. 'Vigilance Manual' is one step towards this through which the vigilance working will be made known to everybody. This will be useful not only to the executives, but also to the vigilance officials who are inducted into the organisation.

The manual not only elaborates interaction with CVC and CBI but also the duties, obligations and powers of the disciplinary Authority. It will dispel the notion that the vigilance is responsible for unreasonable decisions regarding Disciplinary Proceedings against the officials and unnecessary meddling with the affairs of the executive. In fact the consent of technical heads and the DA is always taken at every stage of vigilance investigation. the decision of the DA finally prevails as the vigilance has got only advisory role.

I hope all these things would be made clear through this manual and everybody would find it useful. I congratulate Shri Chitiz Kumar, Dy. CVO and his entire team of vigilance officials for their painstaking efforts in bringing out this Manual.

**Ghansham Bansal**



# INDEX

<b>Chapter</b>	<b>Subject</b>	<b>Page No.</b>
<b>1.</b>	<b>Delhi Metro Vigilance Organization &amp; Its Role</b>	
1.1	Introduction	1
1.2	Definition of Corruption	1-2
1.3	Structure of Vigilance in Delhi Metro	2
1.4	CVO's Organization	2
1.5	Selection of CVO's in DMRC	2
1.6	Functions and Responsibilities of Vigilance Officials	2-3
1.7	Role of CVO in DMRC	3-4
1.8	Selection of Officers/Staff for Vigilance	5
1.9	Preventive Vigilance	5-6
1.10	Punitive Vigilance	6-7
1.11	Surveillance and detection	7-8
1.12	Organising review meetings	8
1.13	Submission of reports and returns	8
1.14	What is a Vigilance angle?	8-9
1.15	Vigilance cases in DMRC	9-10
<b>2.</b>	<b>COMPLAINTS</b>	
2.1	Introduction	11
2.2	Source of Complaints	11
2.3	Action on Anonymous and Pseudonymous Complaints	11
2.4	Complaints received from subordinate Officials	11-12
2.5	Verification of genuineness	12
2.6	Scrutiny of Complaints	12
2.7	Disposal of Complaints	12-13
2.8	Complaints received under public interest disclosure	13-16
<b>3.</b>	<b>INVESTIGATION</b>	
3.1	Agency for conducting investigation	17
3.2	Competency to refer the matter to CBI	17
3.3	Parallel investigation by Departmental Vigilance and the CBI	17-18
3.4	Preliminary inquiry/investigation by Departmental Vigilance	18-19
3.5	Investigation/inquiry report	19-21
3.6	Investigation of Complaints against Vigilance personnel in DMRC	21

<b>Chapter</b>	<b>Subject</b>	<b>Page No.</b>
3.7	Investigation of Complaints against board level appointee	21
3.8	Action on investigation report	21-22
3.9	Reference to CVC	22-23
3.10	Categorization of Cases	23
3.11	Reconsideration of Commission's advice	23-24
3.12	Investigation against Officers on deputation	24
3.13	Review of Cases entrusted to the CBI	24
3.14	Registration pending investigation/inquiry	24
3.15	Action against persons making false complaints	24
3.16	Grant of immunity/pardon to approver	25
<b>4.</b>	<b>Procedure for imposing major penalty</b>	
4.1	Charge-Sheet	26-27
4.2	Defence statement	27
4.3	Procedure for departmental inquiry	27-33
4.4	Action on inquiry report	33-34
4.5	Procedure for imposing minor penalties	35
4.6	Appeal and review	35
4.7	Supervision over Vigilance activities	35
4.8	Deputation tenure of CVO's in DMRC	36
4.9	Review of Vigilance matters in DMRC	36
4.10	Access to documents/information by the Vigilance	36
4.11	Rotation of Staff in sensitive posts	36
4.12	Time limits in conducting investigations and departmental inquiries	36-37
<b>5.</b>	<b>CVC Circulars</b>	
5.1	CVC Circular No. 03/03/16	38-39
5.2	CVC Circular No. 02/01/16	40-42
5.3	CVC Circular No. 08/05/15	43-44
5.4	CVC Circular No. 01/04/14	45
5.5	CVC Circular No. 03/09/13	46
5.6	CVC Circular No. 15/07/12	47-48
5.7	CVC Circular No. 03/01/12	49
5.8	CVC Circular No. 01/02/11	50
5.9	CVC Circular No. 16/03/06	51-52

# Chapter-1

## Delhi Metro Vigilance Organization And Its Role

### 1.1 INTRODUCTION

Corruption is not a new phenomenon. It appeared as soon as the human beings came into existence. There is a mention of corruption in Kautilya's "Arthashastra" dating back to fourth century BC. Like today's vigilance, they used to have a group of trusted people to keep watch on the corrupt and to catch them red-handed.

Evolution of Today's Vigilance organization : Considering the gravity of problem, the Government established the Special Police Establishment (SPE), in terms of the Delhi SPE Act, 1946. However, this organization could not become very effective due to resistance from various ministries. Accordingly, an organization in the Ministry of Home Affairs was formed and named as 'Administrative Vigilance Division' which began functioning in August, 1955.

The public perception did not improve much and while replying to the debate on 6th June 1962, Shri Lal Bahadur Shastri, Minister for Home Affairs, proposed establishment of a committee of MPs and Government officials to review the problem of corruption and thus the "Committee on Prevention of Corruption" was born under the Chairmanship of Shri K. Santhanam, Hon'ble MP. This committee made several far-reaching recommendations, the foremost of which was the establishment of the Central Vigilance Commission (CVC). The CVC came into being in Feb. 1964 as the apex agency to advise and guide Central Government agencies in the field of vigilance.

### 1.2 DEFINITION OF CORRUPTION

Every organization aspires to grow in a corruption free atmosphere. The Santhanam Committee attempted to define corruption as "improper or selfish exercise of power and influence attached to a public office or to the special position one occupies in public life."

As per 'Transparency International' corruption is defined as the "abuse of entrusted power for private gain. Corruption if not controlled can become a monster which is difficult to handle." Corruption should therefore be controlled by everybody. Vigilance alone can't be successful without the active support from the executives.

As per Prevention of Corruption Act- 1988, "Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain gratification whatever, other than legal remuneration as a motive or a reward for doing or for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions favour or disfavour to any person with the Central or State Government or Parliament or Legislature of any State or with any public servant as such".

World Bank defines "Corruption" as the abuse of public office for private gain.

Corruption is also described as the acquisition of forbidden benefits by officials or employees, so bringing into question their loyalty to their employers.

### **1.3 STRUCTURE OF VIGILANCE IN DMRC**

The structure of Vigilance in DMRC has been moulded over the years. At present, the Vigilance Department in DMRC is headed by Chief Vigilance Officer. He is a link between the DMRC and CVC. He is assisted by a team of officers & staff in the Vigilance Department.

At present, there is one Deputy Chief Vigilance Officer, who in turn is assisted by five Sr. VO/AVOs, each from different background such as Civil, Electrical, Signalling, Operation, Rolling stock & Finance etc. Further Sr. VO/AVOs are assisted by the VIs from respective background as mentioned above. The organizational chart of the Vigilance Department at the apex level in the DMRC is shown in Annexure-I/I.

### **1.4 CVO's ORGANISATION**

The CVO heads the Vigilance Division of the organization concerned and acts as a special advisor to the Managing Director in matters pertaining to vigilance. He also provides a link between his organization and the Central Vigilance Commission on one hand and his organization 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 organization; investigating or causing an investigation to be made into verifiable allegations reported to him; processing investigation reports for further consideration of the disciplinary authority concerned; referring the matters to the Commission for advice wherever necessary, taking steps to prevent commission of improper practices/misconducts, etc. Thus, the CVO's functions can broadly be divided into three parts, viz. (i) Preventive vigilance; (ii) Punitive vigilance; and (iii) Surveillance and detection.

### **1.5 SELECTION OF CVO IN DMRC**

The CVO in DMRC, as far as practicable, should be from outside DMRC, preferably from Indian Railways. The thrust behind this policy is to ensure that the officer appointed as CVO is able to inspire confidence that he would not be hampered by past association with the organization in deciding vigilance cases.

The CVO of DMRC shall be selected by BOD of DMRC. Before appointing the CVO, name of three officers are selected by BOD from outside organization and sent to CVC for approval. After getting clearance from CVC, the CVO is to be appointed by the concerned Ministry.

### **1.6 FUNCTIONS & RESPONSIBILITIES OF VIGILANCE OFFICIALS**

While it is difficult to outline an exhaustive list of functions & responsibilities of Vigilance functionaries, as the sphere of Vigilance is ever-evolving, an indicative list is as under:

- i. Undertake prompt investigation of authenticated complaints, with special emphasis on Presidential & PMO references, CVC-referred complaints, complaints appearing in the media and serious complaints, involving malafide intent, sent by the public.

- ii. Carry out checks, with follow-up investigations, on serious cases of irregularities, based on source information.
- iii. Ensure speedy processing of Vigilance cases at all stages. Undertake regular review of these cases.
- iv. Ensure that charge sheets are prepared accurately, without any loopholes, and relevant documents are carefully sorted out and sent promptly to the Inquiry Officer.
- v. Ensure prompt appointment of the Presenting Officer (PO) and the Inquiry Officer (IO) for D&AR inquiries.
- vi. Ensure that DAR inquiries are conducted expeditiously by Inquiry Officers.
- vii. Process the IO's report properly and expeditiously for obtaining final orders of the Disciplinary Authority.
- viii. Ensure that the Central Vigilance Commission (CVC) is consulted at all relevant stages, in an expeditious manner.
- ix. Ensure prompt submission of returns to CVC.
- x. Maintain close liaison with CVC and CBI.
- xi. Ensure that proper assistance is given to CBI for investigation of cases.
- xii. Keep a close watch on the functioning & integrity of personnel in the Vigilance department itself.
- xiii. Undertake review of existing rules & procedures, with a view to plug loopholes and suggest systemic improvements to curb corruption.
- xiv. Maintain close surveillance on officials of doubtful integrity.
- xv. Arrange regular and surprise inspections at sensitive work units, which are susceptible to corruption.
- xvi. Monitor adherence to aspects of Conduct Rules relating to integrity.
- xvii. Disseminate awareness about Vigilance, through Vigilance bulletins, seminars, workshops, lectures, Vigilance Awareness week etc.

## **1.7 ROLE OF CVO IN DMRC**

One of the most important functions of the Chief Vigilance Officer is to take preventive measures against corruption and other malpractices apart from detection and punishment of those involved in corrupt practices.

Broadly, the roles and functions of the CVO are as follows:

- i. To examine in detail the existing Rules and procedures of the Organization with a view to eliminate or minimize the scope for corruption or malpractices.
- ii. To identify sensitive/corruption prone spots in the Organization and keep an eye on personnel posted in such area.
- iii. To plan and enforce surprise inspections and regular inspections to detect system failures and existence of corruption or malpractices.
- iv. To maintain proper surveillance on officers of doubtful integrity.

- v. To ensure prompt observance of Conduct Rules relating to integrity of the Officers such as:
  - a) Annual Property Returns
  - b) Gifts accepted by the official
  - c) Benami transactions
  - d) Employment of relatives in private firms or private business etc.
- vi. To ensure speedy processing of vigilance cases at all stages. In cases requiring a decision with regard to vigilance angle and those requiring consultation with the Central Vigilance Commission, a decision shall be taken by the CVO.
- vii. To ensure that charge sheet, statement of imputations, lists of witnesses and documents etc. are carefully prepared and copies of all the documents relied upon and the statements of witnesses cited on behalf of the disciplinary authority are supplied wherever possible to the accused officer along with the charge sheet.
- viii. To ensure that all documents required to be forwarded to the Inquiring Officer are carefully sorted out and sent promptly.
- ix. To ensure that there is no delay in the appointment of Inquiring Officer and that no dilatory tactics are adopted by the accused officer or the Presenting Officer.
- x. To ensure that the processing of the Inquiry Officer's report for final orders of Disciplinary Authority is done properly and quickly.
- 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 of information.
- xii. To take proper and adequate action with regard to writ petitions filed by accused officers.
- xiii. To ensure that the Central Vigilance Commission is consulted at all stages where it is to be consulted and that as far as possible; the time limits prescribed in the Vigilance Manual for various stages are adhered to.
- xiv. To ensure prompt submission of returns to the Commission.
- xv. To review from time to time the existing arrangements for vigilance work in DMRC to see if they are adequate to ensure expeditious and effective disposal of vigilance work.
- xvi. To ensure that the competent disciplinary authorities do not adopt a dilatory or negative attitude in processing vigilance cases. To ensure that cases against the officers 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.
- xvii. To ensure that the period from the date of serving a charge sheet in a disciplinary case to the submission of the report of the Inquiry Officer, should, ordinarily, not exceed six months.

## **1.8 SELECTION OF OFFICERS/STAFF FOR VIGILANCE**

The Chief Vigilance Officer of DMRC is selected only after prior consultation with the CVC. Prior consultation with CVC is also necessary if a change of CVO is sought, other than in the normal course of transfer after completing tenure, promotion, retirement etc.

All the officers and staff in a Vigilance unit shall be posted with the approval of the Chief Vigilance Officer of DMRC.

## **1.9 PREVENTIVE VIGILANCE**

Santhanam Committee, while outlining the preventive measures to significantly reduce corruption, had identified four major causes of corruption, viz. (i) Administrative delays; (ii) Government taking upon themselves more than what they can manage by way of regulatory functions; (iii) Scope for personal discretion in the exercise of powers vested in different categories of Government servants; and (iv) Cumbersome procedures of dealing with various matters which are of importance to citizens in their day to day affairs. The Vigilance is thus expected to take following measures on preventive vigilance side:

- i. To undertake a study of existing procedure and practices prevailing in his organization with a view to modifying those procedures or practices which provide a scope for corruption, and also to find out the causes of delay, the points at which delay occurs and device suitable steps to minimize delays at different stages;
- ii. To undertake a review of the regulatory functions with a view to see whether all of them are strictly necessary and whether the manner of discharge of those functions and exercise of powers of control are capable of improvement;
- iii. To device adequate methods of control over exercise of discretion so as to ensure that discretionary powers are not exercised arbitrarily but in a transparent and fair manner.
- iv. To educate the citizens about the procedures of dealing with various matters and also to simplify the cumbersome procedures as far as possible;
- v. To identify the areas in his organization which are prone to corruption and to ensure that the officers of proven integrity only are posted in those areas;
- vi. To prepare a list of officers of doubtful integrity- The list would include names of those officers who, after inquiry or during the course of inquiry, have been found to be lacking in integrity, such as
  - (a) Officer convicted in a Court of Law on the charge of lack of integrity or for an offence involving Moral turpitude but who has not been imposed a penalty of dismissal, removal or compulsory retirement in view of exceptional circumstances;
  - (b) Awarded departmentally a major penalty on charges of lack of integrity or

- gross dereliction of duty in protecting the interest of government although corrupt motive may not be capable of proof;
  - (c) Against whom proceedings for a major penalty or a court trial is in progress for alleged acts involving lack of integrity or moral turpitude; and
  - (d) Who was prosecuted but acquitted on technical grounds as there remained a reasonable suspicion about his integrity;
- vii. To prepare the “agreed list” in consultation with the CBI- This list will include the names of officers against whose honesty or integrity there are complaints, doubts or suspicions;
- viii. It is also expected :
  - (a) To ensure that the officers appearing on the list of officers of doubtful integrity and the agreed list are not posted in the indentified sensitive/ corruption prone areas;
  - (b) To ensure periodical rotations of staff; and
  - (c) To ensure that the organization has prepared manuals are updated from time to time and conform to the guidelines issued by the Commission.

## **1.10 PUNITIVE VIGILANCE**

- 1.10.1** Predominantly, the CVO is expected to take following action on the punitive vigilance aspects:
- i. To receive complaints from all sources and scrutinize them with a view to find out if the allegations involve a vigilance angle. When in doubt, the CVO may refer the matter to the respective administrative heads;
  - ii. To investigate or cause an investigation to be made into such specific and verifiable allegations as involved a vigilance angle:
  - iii. To investigate or cause an investigation to be made into the allegations forwarded to him by the Commission or by the CBI;
  - iv. To process the investigation reports expeditiously for obtaining comments/ orders of the competent authorities 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 the charge sheets to the concerned employees are drafted properly and issued expeditiously;
  - vi. To ensure that there is no delay in appointing the inquiring authorities where necessary;
  - vii. To examine the inquiry officer’s report, keeping in view the evidence adduced by the prosecution and the defense during the course of inquiry, and obtaining comments of the competent authority about further course of action to be taken and also obtaining the Commission’s second stage advice where necessary;

- viii. To ensure that the disciplinary authority concerned, issues a speaking order, while imposing a punishment on the delinquent employee. The order to be issued by the disciplinary authority should show that the disciplinary authority had applied its mind and exercised its independent judgment;
  - ix. To ensure that rules with regard to disciplinary proceedings are scrupulously followed at all stages by all concerned as any violation of rules would render the entire proceedings void;
  - x. To ensure that the time limits prescribed for processing the vigilance cases at various stages, as under, are strictly adhered to:
- 1.10.2** Although the discretion to place a public servant under suspension, when disciplinary proceeding is either pending or contemplated against him, is that of the disciplinary authority, yet the CVO is expected to assist the disciplinary authority in proper exercise of this discretion. The CVO should also ensure that all cases in which the officers concerned have been under suspension are reviewed within a period of 90 days with a view to see if the suspension order could be revoked or if there was a case for increasing or decreasing the subsistence allowance.

**1.10.3** CVC advice wherever applicable, is to be obtained at two stages; firstly on the investigation report and secondly on the inquiry report of Investigating officer. The CVO to ensure that the cases receive due consideration of the appropriate disciplinary authority before these are referred to the Commission and its tentative recommendation is indicated in the references made to the Commission. The reference to the Commission should be in the form of a self-contained note along with supporting documents, viz the complaint, investigation report, statement/version of the concerned employee(s) on the allegations established against them and the Comments of the administrative authorities thereon in first stage advice cases; and copy of the charge-sheet, statement of defense submitted by the concerned employee, the report of the inquiring authority along with connected records and the tentative views/ findings of the disciplinary authority on each article of charge in second stage advice cases.

The CVO may also ensure that the bio-data of the concerned officers is also furnished to the Commission in the prescribed format, while seeking its advice. The cases requiring reconsiderations of the Commission's advice may, however, be sent with the approval of the Chief Executive, or the Head of the Department, as the case may be.

## **1.11 SURVEILLANCE AND DETECTION**

The CVO should conduct regular and surprise inspections in the sensitive areas in order to detect if there have been instances of corrupt or improper practice by the

public servants. He should also undertake prompt and adequate scrutiny of property returns and intimations given by the public servants under the conduct rules and proper follow up action where necessary. In addition, he should also gather intelligence from its own sources in whatever manner he deems appropriate about the misconduct/malpractices having been committed or likely to be committed.

## **1.12 ORGANISING REVIEW MEETINGS**

CVO should invariably review all pending matters, such as investigation reports, disciplinary cases and other vigilance complaints/cases regularly and take necessary steps for expediting action on those matters.

The CVO should also arrange quarterly meetings to be taken by the MD for reviewing the vigilance work done in the organization.

## **1.13 SUBMISSION OF REPORTS AND RETURNS**

**1.13.1** The CVO would ensure that monthly reports of the work done on vigilance matters are furnished to the Commission by fifth day of the following months.

**1.13.2** The CVO would ensure that the Annual Report (AR) of the previous year (Jan. to Dec.) of the work done on vigilance matter is furnished to the commission by 30th Jan. of the succeeding year.

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

## **1.14 WHAT IS A VIGILANCE ANGLE?**

The Chief Vigilance Officers (CVOs) in the organizations have been authorised to decide upon the existence of a vigilance angle in a particular case, at the time of registration of the complaint. Once a complaint has been registered as a vigilance case, it will have to be treated as such till its conclusion, irrespective of the outcome of the investigation. Although formulation of a precise definition is not possible, generally such an angle could be perceptible in cases characterized by :

- i. Commission of criminal offences like demand and acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, abuse of official position with a view to obtaining pecuniary advantage for self or for any other person;
- ii. Irregularities reflecting adversely on the integrity of the public servant; or
- iii. Lapses involving any of the following;
  - a) Gross negligence;
  - b) Recklessness;
  - c) Failure to report to competent authorities, exercise of discretion/powers without or in excess of powers/jurisdiction;

- d) Cause of undue loss or a concomitant gain to an individual or a set of individuals/a party or parties; and
- e) Flagrant violation of systems and procedures.

## **1.15 VIGILANCE CASES IN DMRC**

**1.15.1** As in other organizations, vigilance activity in DMRC should form an integral part of the managerial function. The *raison d'être* of such activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organization. Commercial risk taking forms part of business. Therefore, every loss caused to the organization, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. It would be quite unfair to use the benefit of hind-sight to question the technical merits of managerial decisions from the vigilance point of view. At the same time, it would be unfair to ignore motivated or reckless decisions, which have caused damage to the interests of the organization. Therefore, a distinction has to be drawn between a business loss which has arisen as a consequence of a bona-fide commercial/operational decision, and an extraordinary loss which has occurred due to any mala fide, motivated or reckless performance of duties. While the former has to be accepted as a normal part of business and ignored from the vigilance point of view, the latter has to be viewed adversely and dealt with under the extant disciplinary procedures.

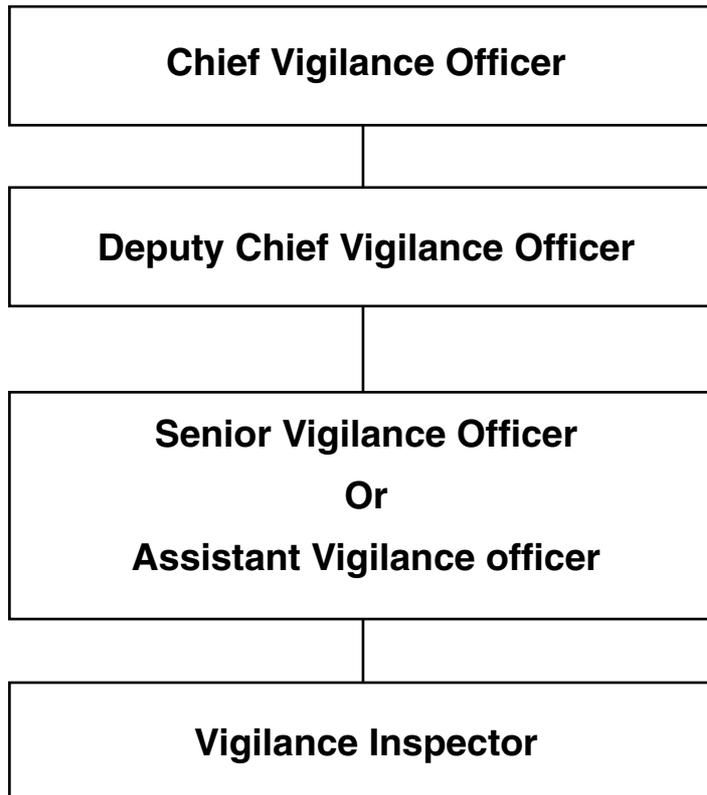
**1.15.2** Whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organisation is one possible criterion for determining the bona fides of the case. A positive response to this question may indicate the existence of bona fides. A negative reply, on the other hand, might indicate their absence. It follows that vigilance investigation on a complaint would not be called for on the basis of a mere difference of opinion/perception or an error of judgement simpliciter or lack of efficiency or failure to attain exemplary devotion in the performance of duties. (*Union of India Vs. J. Ahmed AIR 1979 SC 1022*). Such failures may be a matter of serious concern to the organization but not form the vigilance point of view. They have to be dealt with separately.

**1.15.3** Administrative misconduct, such as, unpunctuality, drunken behavior at work, insubordination etc. would again be left to the disciplinary authority to deal with in an appropriate manner. If the lapse is without a vigilance angle, the disciplinary authority would be within its right to initiate appropriate penalty proceedings against such erring employees.

- 1.15.4 However, once a vigilance angle is evident, it becomes necessary to determine through an impartial investigation as to what went wrong and who is accountable.

## **Annexure-I/I**

### **Organization of Vigilance Department in DMRC**



# Chapter-2

## COMPLAINTS

### 2.1 INTRODUCTION

Receipt of information about corruption, malpractice or misconduct on the part of public servants, from whatever source, would be termed as a complaint.

### 2.2 SOURCE OF COMPLAINTS

Complaints relating to corruption and malpractices are being received by the CVO or by the Vigilance Unit of the Delhi Metro. These may comprise of complaints received from, or forwarded by:

- a) The complaints received from the public, or through the administrative Ministry, CBI and the CVC
- b) Complaints received from employees of the organization.
- c) The President's Secretariat and the Prime Minister's Office.
- d) MPs/MLAs/VIPs, individuals and social and other organizations.
- e) Complaints made under Public Interest Disclosure.
- f) Scrutiny of Annual Property Statements.
- g) Scrutiny of transactions reported under the Conduct Rules.
- h) Reports of irregularities in accounts detected in the routine audit of accounts; tampering with records, over –payments, misappropriation of money or materials etc.
- i) Complaints and allegations appearing in the press etc.
- j) Source information, if received verbally from an identifiable source, to be reduced in writing.
- k) Complaints received through E-mails and verified through formal letter.

### 2.3 ACTION ON ANONYMOUS AND PSEUDONYMOUS COMPLAINTS

The pre-requisite for investigation of a complaint, barring certain exceptions, is that the complaint should be signed and contain the name and address of the complainant. Any complaint that does not bear the name and address of the complainant is an anonymous complaint. A complaint which 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. As per CVC instructions, no action is required to be taken on such complaints and these complaints are simply filed.

### 2.4 COMPLAINTS RECEIVED FROM SUB-ORDINATE OFFICIALS

While normally a employee is required to address communications through proper official channel, but in case of vigilance there is no objection in entertaining a direct complaint or communication from him giving information about corruption or other

kinds of malpractice. While genuine complainants should be afforded protection against harassment or victimization, serious notice should be taken if a complaint, after verification, is found to be false and malicious. There should be no hesitation in taking severe departmental action or launching criminal prosecution against such complainants.

## **2.5 VERIFICATION OF GENUINENESS**

Every complaint is required to be verified for genuineness. This may be done by one or both of the following methods:-

- a) Addressing the complainant through a registered letter (acknowledgement due), asking him to confirm, within a specified time limit, that he has made the complaint.
- b) By deputing an authorised official to personally contact the complainant.

Where a complaint, received from a VIP, has been forwarded to the DMRC with a positive endorsement by, or on behalf of the Minister, asking for a report, the investigations may be undertaken without verification of genuineness. In addition verification of genuineness is not required to be done in cases of complaints forwarded by the CVC for investigation and in regard to complaints received under the Public Interest Disclosure Scheme.

## **2.6 SCRUTINY OF COMPLAINTS**

Each complaint will be examined by the Chief Vigilance Officer to see whether there is any substance in the allegations. Where the allegations are vague and general and prima facie unverifiable, the CVO may decide, with the approval of MD, where considered necessary, that the complaint should be filed. In other situations, the following action may be taken :-

- (a) If the complaint contains allegations which have no vigilance angle, the same should be forwarded for necessary action to the administrative department concerned.
- (b) If the allegations are of a vague or general nature, or not susceptible of verification the complaint may be filed.
- (c) Anonymous and pseudonymous complaints should be dealt with as laid down in the relevant Para.
- (d) Where the allegations attract a vigilance angle, the genuineness of the complainant should be verified, unless verification has already been done by the authority forwarding the complaint.

A final decision on the above will be taken by the CVO of Delhi Metro Rail Corporation Limited.

## **2.7 DISPOSAL OF COMPLAINTS**

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. An entry to that effect would be made of the vigilance complaint register with regard to “action taken” and “date of action” respectively. A complaint will be treated as disposed-off for monthly/annual returns either on issue of charge-sheet or final decision for closing or dropping the complaint. If a complaint is taken up for investigation by the departmental vigilance 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 of register.

In the first instance, the decision with regard to the existence of a vigilance angle in a case may be taken by the CVO. After registering the information as a complaint in the Vigilance Complaint Register, he would then process the matter further to decide as to whether the allegations are general or vague and deserve to be filed or the matter requires further investigation. In the later case, he would also have to decide as to whether the investigation into the allegations should be entrusted to the CBI or local police or taken up departmentally. In case the matter is to entrusted to outside agency, specific approval of MD is required.

The case may, with the approval of the MD, be entrusted to the CBI, if the allegations:

- i. Are criminal in nature (e.g. bribery, corruption, forgery, criminal breach of trust, possession of assets disproportionate to known sources of income, cheating, etc.; or
- ii. Require inquiries to be made from non-official persons; or
- iii. Involve examination of private records; or
- iv. Need expert police investigation for arriving at a conclusion; or
- v. Need investigation abroad.

## **2.8 COMPLAINTS RECEIVED UNDER PUBLIC INTEREST DISCLOSURE**

**2.8.1** The Central Government had issued a Resolution dated 21.4.2004 relating to Public Interest Disclosure and Protection of Informers (PIDPI). The resolution contains details of the machinery evolved for acting on complaints from whistle blowers. The salient features of the resolution are as follows:-

- a) The Central Vigilance Commission is authorised, as the designated agency, to receive written complaints or disclosure on any allegation of corruption or misuse of office by any employee of the Central Government or of any Corporation established by or under any Central Act, Govt. Companies, Societies or local authorities owned or controlled by the Central Govt. The disclosure or complaint shall contain as full particulars as possible and shall be accompanied by supporting documents or other material.
- b) The CVC may, if it deems fit, call for further information or particulars from the persons making the disclosure. If the complaint is anonymous, the CVC shall not take any action in the matter.

- c) Notwithstanding anything contained in the Official Secrets Act, 1923, any public servant other than those referred to in clauses (a) to (d) of Article 33 of the Constitution or any other person including any non-Governmental organisation, may make a written disclosure to the CVC.
- d) If the complaint is accompanied by particulars of the person making the complaint, the CVC shall take the following steps:
- i. The CVC will ascertain from the complainant whether he was the person who made the complaint or not.
  - ii. The identity of the complainant will not be revealed unless the complainant himself has made the details of the complaint either public or disclosed his identity to any other office or authority.
  - iii. After concealing the identity of the complainant, the CVC shall make, in the first instance discreet inquiries to ascertain if there is any basis of proceedings further with the complaint. For this purpose, the CVC shall devise appropriate machinery.
  - iv. Either as a result of the discreet inquiry, or on the basis of the complaint itself without any inquiry, if the CVC is of the opinion that the matter requires to be investigated further, the CVC shall officially seek comments/or explanation from the Head of the Department of the concerned Organisation or office. While doing so, the CVC shall not disclose the identity of the informant and also shall request the concerned Head of the Organisation to keep the identity of the informant secret, if for any reason, the concerned Head of the Organization comes to know of the identity.
  - v. After obtaining the response of the concerned Organisation, if the CVC is of the opinion that the investigations reveal either misuse of office or substantiate allegation of corruption, the CVC shall recommend appropriate action to the concerned Govt. Department or Organisation. These, shall, inter alia, include following:
    - a) Appropriate proceedings to be initiated against the concerned Government servant.
    - b) Appropriate administrative steps for redressing the loss caused to the Government as a result of the corrupt act or misuse of office, as the case may be.
    - c) Recommend to the appropriate authority/agency initiation of criminal proceedings in suitable cases, if warranted by the facts and circumstances of the case.
    - d) Recommend taking of corrective measures to prevent recurrence of such events in future.
    - e) For the purpose of making discreet inquiry or obtaining information from the concerned organisation, the CVC shall be authorised to call upon the CBI or the police authorities, as considered necessary, to render all assistance to complete the investigation pursuant to the complaint received.

- f) If any person is aggrieved by any action on the ground that he is being victimised due to the fact that he had filed a complaint of disclosure, he may file an application before the CVC seeking redress in the matter, who shall take such action, as deemed fit. The CVC may give suitable directions to the concerned public servant or the public authority as the case may be.
- g) Either on the application of the complainant, or on the basis of the information gathered, if the CVC is of the opinion that either the complainant or the witnesses need protection, the CVC shall issue appropriate directions to the concerned Government authorities.
- h) The machinery evolved herein shall be in addition to the existing mechanisms in place. However, secrecy of identity shall be observed, only if the complaint is received under this machinery.
- i) In case the CVC finds the complaint to be motivated or vexatious, the CVC shall be at liberty to take appropriate steps.
- j) The CVC shall not entertain or inquire into any disclosure :-
  - (i) In respect of which a formal and public inquiry had been ordered under Public Servants Inquiries Act, 1850 or
  - (ii) In respect of a matter which has been referred for inquiries under the Commissions of Inquiry Act 1952.
  - (iii) In the event of the identity of the informant being disclosed in spite of the CVC's directions to the contrary, the CVC is authorized to initiate appropriate action as per extant regulations against the person or agency making such disclosure.

**2.8.2** In pursuance of the aforementioned Resolution, the CVC had issued the following public guidelines relating to the receipt of complaints:-

- i. The complaint should be in a closed/secured envelope.
- ii. 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 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.
- iii. Commission will not entertain anonymous/pseudonymous complaints.
- iv. The text of the complaint should be carefully drafted so as not to give any details or clue as to his/her identity. However, the details of the complaint should be specific and verifiable.

In order to protect the 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 Resolution mentioned above. If any further clarification is required, the Commission will get in touch with the complainant.

# Chapter-3

## INVESTIGATION

### 3.1 AGENCY FOR CONDUCTING INVESTIGATION

**3.1.2** As soon as a decision has been taken to investigate the allegations contained in a complaint, it will be necessary to decide whether the allegations should be inquired into departmentally or whether a police investigation is necessary. As a general rule, investigation into the allegations of the types given below should be entrusted to the Central Bureau of Investigation or the Anti-Corruption:-

- i. 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, possession of assets disproportionate to known sources of income, etc.
- ii. 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.; and
- iii. Other cases of a complicated nature requiring expert police investigation.

**3.1.2** 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 investigation should be made departmentally.

**3.1.3.** 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.

**3.1.4** 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.

### 3.2 COMPETENCY TO REFER THE MATTER TO CBI

Chief Vigilance Officers of DMRC after taking approval from MD may refer the above types of cases to the CBI and it is not necessary to seek prior permission from the Commission.

### 3.3 PARALLEL INVESTIGATION BY VIGILANCE 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 allegations, which are the subject matter of the departmental inquiry proceedings, unless the CBI apprehends criminal misconduct on the part of the official(s) concerned.

### **3.4 PRELIMINARY INQUIRY/INVESTIGATION BY VIGILANCE**

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

- a) If the allegations contain information which can be verified from any document or file or any other departmental records, the investigating/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 in his personal custody 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 investigating 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 investigation;
- b) In case, where the alleged facts are likely to be known to other employees of the department, the investigating officer should interrogate them orally or ask for their written statements. The investigating 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 enquiries 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 investigating 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 investigation, 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, further investigation in the matter should be entrusted to the Central Bureau of Investigation;

- f) If the employee 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 investigating/vigilance officer may consider whether the employee 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) During the course of preliminary enquiry, the employee 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 employee concerned is likely to be proceeded against unjustifiably. It is, therefore, desirable that the investigating 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.
- h) While, normally, the preliminary enquiry/investigation will be made by the vigilance officer himself, he may suggest to the administrative authority to entrust the investigation 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 investigation to an officer of sufficiently higher status if the public servant complained against is of a senior rank.

After the preliminary enquiry has been completed, the investigating officer should prepare a self-contained report, containing inter alia the material to controvert the defence, and his own recommendations.

Where a case involves both criminal misconduct as well as flagrant violation of systems and procedures of the organisation, further investigation into the former should be left to the CBI. However, DMRC may also simultaneously consider the latter and initiate appropriate disciplinary proceedings, in accordance with the prescribed procedure, if required. The CVO of the DMRC and the DIG concerned of the CBI should coordinate their efforts to ensure that violation of rules, regulations and DMRC norms which are best covered under DA rules are left to the disciplinary authority to deal with; the CBI on the other hand should focus their investigation on the criminal aspects of the case.

### **3.5 INVESTIGATION/INQUIRY REPORT**

The Investigating Officer (IO) should indicate the allegations contained in the complaint in the first paragraph of his report. The next paragraph should contain the gist of the investigation carried out by him as well as documentary and oral evidence

that he has relied upon. The IO should then detail the procedure and guidelines which the Suspected Public Servant (SPS) was required to follow/comply with. After reporting the SPS's explanation, the same along with evidence on record should be discussed and assessed by the IO. Finally, he should give his findings in the last paragraph of the report clearly bringing out the accountabilities of the officials. Seized documents and statements of the witnesses and the SPS recorded during the investigation should accompany the investigation report.

**3.5.1** The report of the IO should thus be comprehensive and completely documented so as to enable the CVO and DA to form an opinion whether any disciplinary or any other action is called for or not.

**3.5.2** The report should be forwarded to the disciplinary authority through the CVO. The disciplinary authority/CVO should make a meticulous evaluation of the actions of various officials with reference to the nature of their duties. They are also required to assess the gap between what the managers at different levels of the decision-making hierarchy actually did and what they were required to do in accordance with manuals/guidelines/orders. They may follow the following criteria for the purpose and highlight in their reports if the answer to any of the questions is in the affirmative:-

- a) Can mala fide be inferred or presumed from the actions of any of the concerned officials?
- b) Could any of the officials be said to have engaged in a misconduct or misdemeanor?
- c) Was the conduct of any of the officials reflective of lack of integrity?
- d) Did the official(s) act in excess of their delegated powers/jurisdiction and failed to report the same to the competent authority?
- e) Did they or any of them show any gross neglect of their official functions?
- f) Is there any material to indicate that any of them acted recklessly?
- g) Has the impugned decision caused any undue loss to the organisation?
- h) Has any person/party or a set of persons/parties either within the organisation or outside it been caused any undue benefit?
- i) Have the norms or systems and procedures of the organisation been flagrantly violated?

**3.5.3** Timeliness in the conduct of the preliminary inquiry cannot be over-emphasised. Both the courts as well as administrative instructions have indicated that there should not be an inordinate delay between the occurrence of the impugned events and the issue of the charge-sheet. The current instructions of the Government are that the preliminary inquiry should be completed within three months. In the State of M.P. Vs. Bani Singh, 1990 Suppl. S.C.C. 738, it was held that an inordinate and inexplicable delay in finalisation of the charge sheet can itself be a ground for quashing of the same on the ground of denial of reasonable opportunity. Similarly, delayed charge sheets can also be legally challenged on grounds of staleness. Further, in State of Punjab Vs. Chaman Lal Goyal SLR (1995)(1) 700 S.C. it was held that in the case of inordinate delay, the burden of proving that the delay was due to a reasonable cause would be on the department. Thus, although it may

not be desirable to indicate time limit for staff accountability, yet the need to ensure that the same is done at the earliest, needs to be reiterated.

### **3.6 INVESTIGATION OF COMPLAINTS AGAINST VIGILANCE PERSONNEL IN DMRC**

- 3.6.1** Complaints against the CVO of DMRC may be examined/investigated by the CVO of the administrative ministry. A report along with the original record together with comments of the Secretary of the Ministry/Department may be referred to the CVC for proper and independent examination of the case.
- 3.6.2** Complaints against vigilance executives other than the CVO of DMRC may be examined/investigated by the CVO himself and a final decision may be taken with the approval of the MD.
- 3.6.3** If the allegations are prima facie established against such vigilance functionaries, they should be shifted to non-sensitive positions and in case they are on deputation from some other organisations, they may be repatriated to their parent organisations with appropriate recommendation to their disciplinary authorities with regard to the disciplinary action to be initiated against them.

### **3.7 INVESTIGATION OF COMPLAINTS AGAINST BOARD LEVEL APPOINTEE**

- 3.7.1** If the CVO of an administrative ministry asks for a factual report against a Board-level appointee from the CVO of the DMRC, the latter will send the same to the CVO of the ministry, after taking approval of MD. The CVO of the ministry may make a reference to the CVC after collecting all the relevant facts and following the prescribed procedure.
- 3.7.2** In cases where CVC calls for investigation and report against a Board-level appointee, the CVO of the ministry shall initiate inquiries and may in this regard obtain factual information from the CVO of the DMRC. Thus, CVO of the DMRC under no circumstances should initiate action against the Board-level appointee on his own initiative.

### **3.8 ACTION ON INVESTIGATION REPORT**

- 3.8.1** The disciplinary authority would consider the investigation report and the first stage advice of the CVO and decide, on the basis of the facts disclosed in the preliminary enquiry, whether the complaint should be dropped or warning/caution etc. administered or regular departmental proceedings launched. The test to be applied at this juncture relates to whether a prima-facie case has been built up on the basis of the evidence collected during the course of preliminary enquiry. Generally, if any of the criteria indicated in the relevant paragraph is satisfied, a prima-facie case for instituting regular departmental proceedings could be said to exist. If on the other hand the evidence on record falls short of establishing such a prima facie case, the disciplinary authority may either close the matter, or may take recourse to other forms of disapproval, such as reprimanding the concerned employee, issuing him an advisory memo or warning, or communicating the Organisation's displeasure etc., as per rules of the DMRC. While taking such

a decision, the disciplinary authority should bear in mind that a departmental proceeding is not a criminal trial, and that the standard of proof required is based on the principle of 'preponderance of probabilities' rather than 'proof beyond reasonable doubt'.

**3.8.2** If any of the employees involved in the case falls within the Commission's jurisdiction, the latter's advice would be required and any decision of the disciplinary authority at this juncture may be treated as "tentative". Such a reference would be required to be made even in respect of an officer/staff who are not within the Commission's jurisdiction if they are involved along with other officers who are within the jurisdiction of the and fall within the Commission's jurisdiction. The matter may be referred to the Commission, through the CVO, for its advice. However, if an administrative authority investigates into an anonymous or pseudonymous complaint under the impression that it is a genuine signed complaint, or for any other reason, the Commission need not be consulted if it is found that the allegations are without any substance. Further action in the matter should be taken on receipt of the Commission's advice, wherever the same has been sought. Lapses/irregularities in DMRC would depend upon the functions which the DMRC is performing. However, misconduct, lack of devotion to duty or integrity, as the case may be, could be inferred illustratively in the following circumstances, where the employee concerned:

- a) has not acted in accordance with rules and his recommendations are not in the public interest; or
- b) has failed to conduct himself in such a manner that his decisions or recommendations do not appear objective and transparent and seem to be calculated to promote improper gains for himself or for any one else; or
- c) has acted in a manner to frustrate or undermine the policies of the organization or decisions taken in the public interest by the management; or
- d) seems to have complied with unauthorized and unlawful oral instructions of his seniors without bringing them to the notice of the MD;
- e) has exceeded his discretionary powers and his actions do not appear justifiable or to serve any organizational interests; or
- f) has abused or misused his official position to obtain benefit for himself or for another; or
- g) has not reflected intellectual honesty in his decisions and recommendations.

### **3.9 REFERENCE TO CVC**

**3.9.1** The CVC is consulted at two stages of departmental proceedings. Following documents are required to be sent to CVC by DA on completion of the preliminary investigation of the case, the disciplinary authority shall be required to forward:-

- i. The preliminary investigation report;

- ii. The relevant documents and records/files connected with the case;
- iii. A self-contained note clearly indicating the facts on which the Commission's advice is sought;
- iv. The disciplinary authority's own tentative recommendations;
- v. In cases investigated by the Central Bureau of Investigation under the Special Police Establishment Act, 1946, the comments of the disciplinary authority on the recommendations of the CBI;
- vi. A neatly typed tabular statement clearly indicating the allegations against the officer proposed to be included in the charge-sheet, his defence in respect thereof, and the disciplinary authority's and CVO's comments;
- vii. A panel of employees to be nominated as Presenting Officers; and
- viii. The bio-data of the officials concerned.

**3.9.2** The CVO should invariably provide their own analysis and assessment of the facts of the case so that the Commission can have the benefit of their expertise.

**3.9.3** It is necessary that before a case is referred to the CVC for advice, it receives due consideration at the appropriate level in the organisation.

### **3.10 CATEGORISATION OF CASES**

Before making references to the Commission, the CVO may classify references into Vigilance A and B. Vigilance-A would comprise cases where the lapses committed/irregularities noticed are serious and a prima-facie case for initiation of RDA for major penalty proceedings has been made out; Vigilance-B, on the other hand, would comprise less serious cases of procedural lapses, which in the opinion of the CVO, do not reflect adversely on the integrity of the official concerned. Vigilance-B cases ordinarily will not invite any administrative disabilities normally associated with the registration of a vigilance case against an official. These cases will continue to be monitored through the Vigilance Complaints Register till their disposal but only because they technically fall within the ambit of the term 'vigilance' and not because the official is accountable for a serious misdemeanour/misconduct or equivalent negligence. It follows then that an official can be proceeded against for a minor penalty but may not suffer any disability by way of posting, training, placement on 'Agreed List' etc., during the pendency of the disciplinary proceedings. If he is found accountable in the disciplinary proceedings, he will be duly punished but for all other purposes (except promotion, for which a separate sealed cover procedure exists) he will be treated at par with other equally/comparably placed employees facing minor penalty proceedings in a non-vigilance case.

### **3.11 RECONSIDERATION OF COMMISSION'S ADVICE**

**3.11.1** The scheme of consultation with the Commission envisages consultation at two stages. First stage advice is required at the time of initiation of disciplinary proceedings on the basis of investigation carried out by the CBI or the DMRC Vigilance. Second stage advice, on the other hand, is required before a final decision is taken on the conclusion of the departmental proceedings. There is

provision for another reference to the Commission requesting for reconsideration of its advice if the disciplinary authority disagrees with the Commission's perception of the case. Requests should be made soon after the receipt of the Commission's advice.

**3.11.2** Reconsideration of the Commission's advice is necessary regardless of whether the disciplinary authority proposes to take "severe" or "lighter" action than that recommended by the Commission. Decisions taken in a manner, other than that mentioned above, would be treated as cases of non-acceptance of the Commission's advice and may be reported in the Commission's annual report to be placed on the Table of both the Houses of Parliament. Ordinarily, the Commission does not entertain more than one request for reconsideration and that too, if new facts not within its knowledge earlier are brought to light.

**3.11.3** Compliance of CVC's first stage advice and second stage advice may be ensured within periods of one month and two months respectively.

### **3.12 INVESTIGATION AGAINST OFFICERS ON DEPUTATION**

When investigation is started against an officer, who is on deputation, it will be appropriate if parent department sends intimation to that effect to the borrowing organisation. In such cases, the result of final investigation should also be sent to the borrowing organisation.

### **3.13 REVIEW OF CASES ENTRUSTED TO THE CBI**

No review should ordinarily be made by the administrative authority of a case registered by the C.B.I. If, however, there are special reasons for discussion/review, the C.B.I. should invariably be associated with it.

### **3.14 REGISTRATION PENDING INVESTIGATION/INQUIRY**

If an officer against whom enquiry or investigation is pending, irrespective of whether he has been placed under suspension or not, submits his resignation, such resignation should not normally be accepted. 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 MD.

### **3.15 ACTION AGAINST PERSON MAKING FALSE COMPLAINTS**

**3.15.1** 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.

**3.15.2** 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.

### **3.16 GRANT OF IMMUNITY/PARDON TO APPROVERS**

- 3.16.1** If during an investigation, the CVO finds that a employee has made a full and true disclosure implicating himself and other members of the public and that such statement is free from malice, the CVO, may consider grant of immunity/leniency to such person from departmental action or punishment.
- 3.16.2** The intention behind this 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 employee involved in a case to request for such immunity/leniency. It is for the disciplinary authority to decide in consultation with the CVO, in which case such an immunity/leniency may be considered and granted in the interest of satisfactory prosecution of the disciplinary case.

# Chapter-4

## PROCEDURE FOR IMPOSING MAJOR PENALTY

### 4.1 CHARGE-SHEET

**4.1.1** Once the disciplinary authority decides to initiate major penalty proceedings against an employee, on the basis of the Commission's advice or otherwise, it should take immediate steps to issue the charge-sheet. A properly drafted charge-sheet is the sheet anchor of a disciplinary case. Therefore, the charge-sheet should be drafted with utmost accuracy and precision based on the facts gathered during the investigation (or otherwise) of the misconduct involved. It should be ensured that no relevant material and witnesses are left out and at the same time, no irrelevant material or witnesses are included.

**4.1.2** The charge-sheet comprises the memorandum, informing the concerned employee about initiation of proceedings against him and giving him an opportunity to admit or deny the charge(s) within a period not exceeding 15 days. The memorandum is to be signed by the Disciplinary Authority himself. The Memorandum should be supported by Annexure, namely, (i) Article(s) of charge, (ii) Statement of imputations of misconduct or misbehaviour in support of each article of charge, (iii) List of documents and (iv) List of witnesses.

Lists of documents and witnesses should form an integral part of the charge-sheet even if the disciplinary rules applicable to the concerned employee do not contain such a provision.

**4.1.3** Special care has to be taken while drafting a charge-sheet. A charge of lack of devotion to duty or integrity or unbecoming conduct should be clearly spelt out and summarised in the articles of charge. It should be remembered that ultimately the IO would be required to give his specific findings only on the articles as they appear in the charge-sheet. The Courts have struck down charge-sheets on account of the charges framed being general or vague. If the charge is that the employee acted out of an ulterior motive then motive must be specified. It is also equally important that while drafting a charge-sheet, special care should be taken in the use of language to ensure that the guilt of the charged official is not pre-judged or pronounced upon in categorical terms in advance. However, the statement merely of a hypothetical or tentative conclusion of guilt in the charge, will not vitiate the charge-sheet.

**4.1.4** All relevant details supporting the charges should be separately indicated in the statement of imputations.

**4.1.5** The concerned employee is not expected to furnish a detailed reply to the charge-sheet. He is required only to admit or deny the charge(s). Therefore, the rules do not provide for making available the relevant documents to the concerned employee for submission of his defence statement. However,

notwithstanding the legal position, copies of the documents and the statements of witnesses' relied upon, as far as possible, may be supplied to him along with the charge-sheet. If the documents are bulky and copies cannot be given, he may be given an opportunity to inspect those documents and submit his reply within 15 days' time.

## **4.2 DEFENCE STATEMENT**

**4.2.1 Admission of Charge:** If the charged employee admits all the charges unconditionally, the disciplinary authority shall record its finding on each charge. Where the advice of the Commission is required, the case may be referred to the Commission, along with the comments of the disciplinary authority, for second stage advice. In other cases, the disciplinary authority should proceed to pass a self-contained and reasoned speaking order of punishment, defining the scope of punishment to be imposed in clear terms, in accordance with the relevant rules.

**4.2.2 Accepting Defence Statement or Modifying Charges:** The disciplinary authority has the inherent power to review and modify the articles of the charge, or drop some or all of the charges, after the receipt and examination of the written statement of defence. It is not bound to appoint an inquiring authority to inquire into such charges as are not admitted by the charged employee but about which the disciplinary authority is satisfied that these do not require to be proceeded with further. However, before the disciplinary authority exercises the aforesaid power, it may consult the CBI in cases arising out of the investigations conducted by them. The Commission should also be consulted where the disciplinary proceedings were initiated on its advice.

**4.2.3 Charges not Admitted/Defence Statement not Submitted:** If the disciplinary authority finds that any or all the charges have not been admitted by the charged employee, or if he has not submitted the written statement of defence by the specified date, it may cause an inquiry to be made to inquire into the charges framed against the charged employee. The procedure for conducting the inquiry is indicated in the succeeding paragraphs.

## **4.3 PROCEDURE FOR DEPARTMENTAL INQUIRY**

The important provisions are summarised below:

### **4.3.1 Appointment of Inquiry Officer**

**4.3.1.1** Under the disciplinary rules, the disciplinary authority may itself inquire, or appoint an Inquiring Authority/Officer (IO) to inquire into such charges against the Charged Officer (CO) if the latter does not admit the same or has otherwise not submitted his defence statement within the specified time. It should, however, be ensured that the officer so appointed has no bias and had no occasion to express an opinion at any stage of the preliminary inquiry. The inquiring authority should also be directed to ensure submission of the report mandatorily within a period of six months of his appointment. This time limit should be invariably adhered to at all cost.

**4.3.1.2** Some officers in DMRC may be appointed on a full-time basis to complete the inquiries within the specified time limit. The disciplinary authority may also consider appointing retired public servants as inquiring authorities, on payment of honorarium on case to case basis. All such appointments should be made from a panel duly approved by the competent authority in accordance with the extant rules. The inquiries should be completed within the stipulated time limitation and no inquiry should suffer on account of non-availability of an IO.

**4.3.1.3** The disciplinary authority should give the charged officer a period of 15 days time after the service of the charge-sheet to deny or accept the charges. In case no reply is received within this period, the disciplinary authority may proceed to the next stage of the inquiry.

#### **4.3.2 Appointment of Presenting Officer**

**4.3.2.1** The disciplinary authority would also appoint an officer, called as Presenting Officer (PO), to present the case on its behalf before the inquiring authority. It should ensure that the Inquiry Officer and Presenting Officer are appointed simultaneously after the service of the charge-sheet on denial of charges by the Charged Officer.

#### **4.3.3 Defence Assistant**

**4.3.3.1** The charged employee has also a right to take assistance of a public servant, generally termed as Defence Assistant (DA), to help him in the presentation of his case in a departmental inquiry. The CO may not engage a legal practitioner to present the case on its behalf before the IO, unless the PO appointed by the disciplinary authority is also a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits. It is, however, clarified that if the case is being presented, on behalf of the disciplinary authority, by a "Prosecuting Officer" of the CBI or by the Law Officer of the Department, such as a Legal Adviser etc., there would evidently be good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent employee and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent employee.

**4.3.3.2** In order to ensure expeditious disposal of inquiry proceedings, a person will not be permitted to act as defence assistant in more than three cases at any given point of time. The IO shall satisfy himself that the aforesaid condition is satisfied.

#### 4.3.4 Preliminary Hearing

**4.3.4.1** On the date fixed for the purpose, the IO shall ask the CO whether he is guilty or has any defence to make. If the CO pleads guilty to any of the articles of charge, the IO will record the plea, sign the record and obtain the signature of the CO thereon. The IO will then return a finding of guilt in respect of those articles of charge, which the CO admits. In respect of other charges, the IO would ask the PO to adduce evidence to prove the articles of charge and adjourn the case to a date within 30 days of the preliminary hearing.

**4.3.4.2** While adjourning the case, the IO would also record the order permitting inspection of listed documents by the CO. The order should direct the latter to submit a list of witnesses to be examined on his behalf and the list of additional documents needed by him for his defence. The IO should make it clear to the CO, during preliminary hearing, both orally and in writing in the Daily Order Sheet that he should indicate the relevance of defence witnesses and additional documents to enable the IO to decide upon admissibility of evidence desired to be led by the defence. For reasons to be recorded by him in writing, the IO may refuse to requisition such documents, or allow such witnesses, as are in his opinion, not relevant to the case. On the other hand, where he is satisfied that the documents required by the defence are relevant, he may requisition the same from their custodian, through the PO or otherwise, by a specified date. The denial of access to documents, which have a relevance to the case, may amount to violation of reasonable opportunity. Therefore, the power to deny access on grounds of public interest, should be exercised only for reasonable and sufficient grounds to be recorded in writing.

#### 4.3.5 Regular Hearings

- i. **General** - Once all the preliminaries are over, the IO would fix the dates and venue of regular hearings. He should, as a rule, hear the case on day-to-day basis and not grant any adjournments, save in unavoidable and exceptional circumstances. Admitted documents may be taken on record straightaway and marked as exhibits and admitted facts, if any, be taken note of in the order-sheet.
- ii. **Presentation of Prosecution case** - In the first instance, the PO would be asked to present his case. He should introduce unadmitted/disputed listed documents through relevant witnesses. He should examine his witnesses in the examination-in-chief in such a way that brings out the case in a logical manner. The IO should also ensure that the witness understands the question properly. He should protect him against any unfair treatment, disallowing questions which are leading, irrelevant, oppressive or dilatory in nature. As far as possible, all evidence should

be recorded in narrative form. Previous pre-recorded statements admitted by the witness should also be taken on record. After the examination of a witness is over, the witness may be cross-examined by the CO or his Defence Assistant to bring out further facts, remove discrepancies, or throw light on the reliability of the witness. After the cross-examination, the PO may re-examine the witness on any point on which he had been cross-examined but not on any new matter unless specifically allowed by the IO. In the latter case, the CO would have a right to further cross-examine the witness. The IO may also put such questions to a witness as he thinks fit, at any time during the inquiry, to bring out the truth and for the emergence of a fair and clear understanding of the case. With this end in view, he may allow both sides to cross-examine such a witness on any question put by him.

- iii. **Hostile Witness** - If during the examination-in-chief of a prosecution witness, the PO feels that the witness is hostile or that his testimony is likely to affect the prosecution case or that the witness is knowingly not telling the truth, he may seek the permission of the IO to cross-examine that witness after he has been declared hostile. In such situations, the PO may, with the prior permission of the IO, also put leading questions to the witness so as to bring out the truth.
- iv. **Admission of Guilt** - The CO may decide to plead guilty to any of the charges during the inquiry. In that case, the IO may accept the plea and record his findings. He should nonetheless, continue the case to its logical conclusion if, in his opinion, the admission is conditional or only relates to part of the charges.
- v. **New Evidence** - Before the closure of the case on behalf of the disciplinary authority, the IO, in his discretion, may allow the PO to produce evidence not included in the list given to the CO, or may himself call for new evidence. In such situations, the CO would be entitled to have a copy of such evidence, an adjournment of at least three clear days, and an opportunity for inspecting the relevant documents. The IO, however, should not allow such evidence for filling up any gap in the evidence on record but only when there has been an inherent lacuna or defect in the evidence originally produced.
- vi. **Defence Statement** - After closure of the case on behalf of the disciplinary authority, the IO shall ask the CO to state his defence. If the C.O. submits the defence in writing, he should sign every page of it. If he makes an oral statement, the IO should record the same and get it signed by the CO. A copy of the statement of defence should be given to the PO.
- vii. **Presentation of Defence Case**- The CO, thereafter, would be asked to produce evidence in support of his defence. Additional documents permitted by IO may be taken on record and marked as exhibits, if this task has not been performed earlier. The CO or his Defence Assistant would then proceed to examine his witnesses, who will be cross-examined by the PO, and re-examined by the CO on the basis of the

same procedure as indicated in the case of prosecution witnesses.

- viii. **CO Appearing as Witness** - The CO may, in his discretion, offer himself as his own witness. Examination-in-chief of CO would be conducted by the Defence Assistant, cross-examination by the Presenting Officer and re-examination by the Defence Assistant. If there is no Defence Assistant, then the CO will make a suomotu statement and thereafter the Presenting Officer will cross-examine him.
- ix. **Mandatory Questions to CO** - If the CO does not offer himself as a witness, the IO shall examine him generally to enable him to explain the circumstances appearing against him. The IO may do so, even if the CO has offered himself as a witness.
- x. **Written Briefs by PO/CO** - After the completion of the production of evidence, the IO may hear the PO and the CO, or permit them to file written briefs of their respective case, if they so desire. If they are permitted to submit written briefs, the PO may submit his brief, first, within a week of the last hearing of the case. He should also certify that a copy of the brief has been given to the CO. The CO may, thereafter, furnish his brief to the IO within a further period of one week.
- xi. **Daily Order Sheets** - The IO would maintain a daily order sheet to record in brief the business transacted on each day of the hearing. Requests and representations by either party should also be dealt with and disposed of in this sheet. Copies of the recorded order-sheets will be given to the PO and CO with their signatures thereon, if they are present. If they are not present, these will be sent by post. The Defence Assistant will also sign the sheet, but a copy will not be given to him.
- xii. **Ex-parte Proceedings** - If the CO does not submit his written statement of defence within the specified time, or does not appear before the IO on the dates fixed for the inquiry or refuses to comply with the provisions of the rules, the IO may hold the inquiry ex-parte. In that event the copies of the depositions, daily order sheets etc. may be sent to him at his last known address. A copy of the written brief submitted by the PO may also be sent to him so as to give him a reasonable opportunity to submit defence brief. The CO has the option to participate in or join the inquiry at any stage.
- xiii. **Alleging Bias against IO** - If the CO represents alleging bias against the IO, the IO should keep the proceedings in abeyance and refer the matter to the disciplinary authority. He should resume the inquiry only after he is advised by the disciplinary authority to go ahead. Wherever the Charged Officer submits a review petition against the Inquiry Officer on grounds of bias, the proceedings should be stayed and the representation referred, along with relevant material, to the appropriate Reviewing Authority for considering the same and passing appropriate order there on. For this purpose, the Reviewing Authority would normally be the Appellate Authority. Obviously, any representation against the appointment of an Inquiry Officer on grounds of bias should be made as soon as the

Inquiring Officer has been appointed, but not after the proceedings have commenced and reached an advance stage.

- xiv. Change of IO - Whenever for any reason the IO is changed and anew IO is appointed to continue the inquiry, he shall take into account the evidence recorded or partly recorded by his predecessor. If he is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may recall, examine, re-examine and cross-examine such witness.

#### **4.3.6 Submission of Inquiry Report**

**4.3.6.1** After considering the oral and documentary evidence adduced during the inquiry, the IO may draw his own inferences, as a rational and prudent person, and record his findings on each charge. He should rely only on such facts as the CO had the opportunity to refute. Generally, the CO raises a plea of absence of mala fide. It is clarified that the PO is not expected to prove mala fide in cases where the act itself speaks of a dishonest motive e.g. a person travelling without ticket in a train or a person who has been unable to explain his assets satisfactorily. Mala fide, however, is not relevant in proving a misconduct as it does not form an essential ingredient of it. Also, every act of a public servant is expected to be honest, bona fide and reasonable. An act is not bona fide if it is committed without due care and attention. While assessing the evidence, the IO should also bear in mind that the proceedings are civil rather than criminal or quasi-criminal in nature. Accordingly, the standard of proof required in a disciplinary inquiry is that of “preponderance of probability” and not “proof beyond reasonable doubt”. The IO should confine his conclusion only up to the stage of recording whether the charge is proved, partially proved or not proved. The conclusion should be derived from the facts and circumstances of the case and not on its extenuating aspects. He should not recommend the punishment to be imposed on the CO. Neither is he required to comment on the quality of drafting of the charge-sheet, nor the conduct of the disciplinary authority in framing the charges or that of the PO in arguing the same. The IO becomes ‘functus officio’ as soon as he submits the report and he cannot make any change thereafter.

**4.3.6.2** The initial burden in the departmental inquiry of proving the charge with evidence on record is that of the prosecution. Once the same is discharged, the burden of disproving the same and/or bringing to light special circumstances relating to the innocence of the CO will be that of the latter. Otherwise, the proceedings being only quasi-judicial rather than judicial in nature, the strict rules of evidence stipulated in the Indian Evidence Act would not be applicable except to the extent specifically indicated in the relevant rules.

- 4.3.6.3** The report of the IO should contain:
- i. An introductory paragraph in which references to the orders of appointment of IO and PO and engagement of DA will be made;
  - ii. Brief account of hearings, marking of exhibits, recording of evidence;
  - iii. Reproduction of articles of charge (s);
  - iv. Indication about charges which are dropped, or admitted, or have been inquired into;
  - v. Brief statement of the case of the disciplinary authority in respect of the charges inquired into;
  - vi. Brief statement of the case of the Charged Officer;
  - vii. For each charge inquired into –
    - a) the case in support of the charge;
    - b) the case of defence;
    - c) assessment of evidence; and
    - d) the findings.
  - viii. A brief summary of the findings.
- 4.3.6.4** Along with the report, the Inquiry Officer should send to the disciplinary authority a folder containing the following:-
- a) List of exhibits produced by the Presenting Officer.
  - b) List of exhibits produced by the Charged Officer.
  - c) List of prosecution witnesses.
  - d) List of defence witnesses.
  - e) A folder containing deposition of witnesses in the order in which they were examined.
  - f) A folder containing daily order-sheets.
  - g) A folder containing the written statement of defence.
  - h) Written briefs of both sides.
  - i) Correspondence Folder.
- 4.3.6.5** The IO must complete the inquiry proceedings and submit his report within a period of six months from the date of his appointment.

#### **4.4 ACTION ON INQUIRY REPORT**

- 4.4.1** The procedure regarding action to be taken on the report of the Inquiring Officer is given in brief as below:-
- 4.4.2** The IO's report is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the CO. The disciplinary authority has the inherent powers to disagree with the findings of the IO and come to

his own conclusions on the basis of his own assessment of the evidence forming part of the inquiry.

- 4.4.3** In view of the Supreme Court's judgement in Ramzan Khan's case, if the disciplinary authority is different from the inquiring authority, and if the latter has held all or any of the charges against the CO as proved, the disciplinary authority should ask the CO for his representation, if any, within 15 days. In case the IO has held any or all the charges against the CO as "not proved", the disciplinary authority should consider the IO's report in the first instance. If he disagrees with the IO's findings, he should communicate his reasons for disagreement to the CO while asking for his representation. The disciplinary authority may take further action on the inquiry report on consideration of the CO's representation or on the failure of the CO to submit the same within the specified time.
- 4.4.4** The disciplinary authority, in exercise of his quasi-judicial powers, may issue an order imposing a major or a minor penalty on the CO; or exonerate him of the charges, if in his opinion, none of the charges has been proved or what has been proved, is non-actionable. He may remit the case for further inquiry if he considers that there are grave lacunae or procedural defects which vitiate the inquiry or if some important witnesses were not examined. The fact that the inquiry has gone in favour of the CO or the evidence led in the inquiry has gaps, should not be a reason for remitting the case for further inquiry. In such a case, the disciplinary authority may disagree with the IO's findings. The final order passed by the disciplinary authority should be a well-reasoned speaking order.
- 4.4.5** The cases requiring the Commission's advice may be referred to it, in the form of a self-contained note, along with the following documents:
- i. The IO's report and the connected records;
  - ii. Disciplinary authority's tentative findings on each article of charge;
  - iii. Representation of the CO on the inquiry report;
  - iv. Tentative conclusions of the disciplinary authority and the CVO; and
  - v. Wherever the inquiry proceedings have been delayed, the CVO shall specifically comment on the delay fixing accountability for the delay and the action taken/proposed against those responsible for the same.
- 4.4.6** While imposing a punishment on the officer, the disciplinary authority should ensure that the punishment imposed is commensurate with the gravity of the misconduct proved against the CO. He may also take into account at this stage the following other criteria:
- a) the extenuating circumstances, as they emerge from the inquiry; and
  - b) the track record of the charged officer. It should also be ensured that the punishment so imposed is not academic or ineffective; for example, there is no point in imposing a penalty of withholding of an increment, if the CO has already been drawing pay at the maximum of the pay scale. Similarly, there is no point in imposing a penalty of withholding of promotion for a specified period if the officer is not due for promotion.

## **4.5 PROCEDURE FOR IMPOSING MINOR PENALTIES**

**4.5.1** The procedure for imposing a minor penalty is much simpler than that for imposing a major penalty. For the imposition of the former, the disciplinary authority is only required to serve a Memorandum on the concerned employee, enclosing therewith a statement of imputations of misconduct or misbehaviour and asking for a reply within a specified period, generally 10 days. On receipt of the written statement of defence, if the disciplinary authority is satisfied that the misconduct imputed to the CO has not been established, he may, through a written order, drop the charges. On the other hand, if the disciplinary authority considers the CO guilty of the misconduct in question, he may impose one of the minor penalties. The disciplinary authority, in his discretion, may also decide to conduct an inquiry following the same procedure as stipulated for the imposition of a major penalty, if in his opinion, holding of an inquiry is necessary to come to a definite conclusion about the guilt or innocence of the CO or if the employee requests for the same.

**4.5.2** In cases, where minor penalty proceedings were instituted against an employee on the advice of the Commission, the Commission need not be consulted at the second stage if the disciplinary authority, after considering the defence statement, proposes to impose a minor penalty. But in cases where the disciplinary authority proposes to drop the charges, or an inquiry has been conducted, second stage consultation with the Commission is necessary.

## **4.6 APPEAL AND REVIEW**

**4.6.1** If in appeal or review, the appellate/reviewing authority proposes to modify the original order of punishment, the Commission's advice would not be necessary where such modification remains within the parameters of the Commission's original advice. For example, if on the Commission's advice for imposition of a major penalty, the appellate, or reviewing authority proposes to modify the original penalty imposing such a penalty with another major penalty, the Commission's advice at the appeal/review stage would not be necessary. On the other hand, in the instant case, if the modified penalty is not a major penalty, the Commission's advice would be necessary.

**4.6.2** Where the Commission has not advised a specific penalty, the CVO shall scrutinise the final orders passed by the disciplinary authority and ascertain whether the penalty is commensurate with the nature and gravity of the lapses. If the punishment imposed is inadequate or inappropriate, he may recommend a modification thereof to the reviewing authority. On satisfying himself that a case for review exists, the latter may thereafter, assume jurisdiction over the case as provided for under the rules.

## **4.7 SUPERVISION OVER VIGILANCE ACTIVITIES**

The Commission exercises general superintendence over the vigilance administration and anti-corruption work in the DMRC. In order to enable the Commission to discharge this function effectively, the CVO of DMRC would continue to submit a quarterly report on receipt, disposal and pendency of complaints and vigilance cases to the Commission in the prescribed format.

#### **4.8 DEPUTATION TENURE OF CVOs IN DMRC**

The initial deputation tenure of an officer in the post of Chief Vigilance Officer should be three years extendable up to a further period of two years in the same enterprise (maximum five years), with the approval of the CVC.

#### **4.9 REVIEW OF VIGILANCE MATTERS IN DMRC**

The CVO should invariably review all the pending investigation reports, disciplinary cases and other vigilance matters in the first week of every month and take necessary steps for expediting action on pending matters.

#### **4.10 ACCESS TO DOCUMENTS/INFORMATION BY THE VIGILANCE**

**4.10.1** Vigilance functionaries are required to inspect records, conduct surprise inspections and conduct on-the-spot investigations etc. in the discharge of their duties. Accordingly, they should at appropriate levels be authorised to have free access to all offices, stations, stores and other work sites. They should have free access to the relevant records in connection with any investigation/inquiry. They may also take possession of records required by them, subject, however, to the arrangement that working of the Department should not be hampered for want of records.

#### **4.11 ROTATION OF STAFF IN SENSITIVE POSTS**

CVO may identify sensitive posts and ensure rotation of staff in such posts every three years.

#### **4.12 TIME LIMIT IN CONDUCTING INVESTIGATIONS AND DEPARTMENTAL ENQUIRES**

Delays in disposal of disciplinary cases are a matter of serious concern to the Government and the Commission. Such delays also affect the morale of the suspected/charged employees and others in the organisation. Therefore, in order to ensure that disciplinary cases are disposed of quickly, the CVO should ensure that the time limits given in Annexure-II are strictly adhered to.

## Annexure-II

S.N.	State of Investigation or inquiry	Time Limit	Responsible Authority
1	Decision as to whether the complaint involves a vigilance angle.	One month from receipt of the complaint.	CVO/MD
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	One month from receipt of the complaint.	CVO/MD
3	Conducting investigation and submission of report	Three months.	IO/CVO
4	Department's comments on the CBI reports in cases requiring Commission's advice	One month from the date of receipt of CBI's report by the DA.	CVO
5	Referring departmental investigation reports to the Commission for advice	One month from the date of receipt of investigation report.	CVO
6	Reconsideration of the Commission's advice, if required.	One month from the date of receipt of Commission's advice.	CVO/MD/
7	Issue of charge-sheet, if required	(i) One month from the date of receipt of Commission's advice. (ii) Two months from the date of receipt of investigation report.	D.A
8	Time for submission of defence statement	Ordinarily 10 days or as Specified in HR Rules.	CO
9	Consideration of defence statement	15 days.	DA
10	Issue of final orders in minor penalty cases.	Two months from the receipt of defence statement.	DA
11	Appointment of IO/PO in major penalty cases.	Immediately after receipt and consideration of defence statement.	DA
12	Conducting departmental inquiry and submission of report.	Six months from the date of appointment of IO/PO.	IA
13	Sending a copy of the IO's report to the CO for his representation.	i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved; ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated	DA
14	Consideration of CO's representation.	One month from date of receipt of representation	CVO/DA
15	Issuance of orders on the Inquiry report	i) One month from the date of CVO's advice. ii) Two months from the date of receipt of IO's report if CVO's advice was not required.	DA

## **CVC Circular No. 03/03/16 dated 07.03.2016**

### **Sub: Action on Anonymous / Pseudonymous Complaints – reg.**

1. The Commission has been receiving references from Departments / Organisations seeking clarification on the action to be taken on anonymous / pseudonymous complaints which were acted upon and at different stages of process including under disciplinary proceedings before issuance of CVC Circular No. 07/11/2014 dated 25th November, 2014 on the captioned subject. A few Court decisions arising out of the Commission's guidelines issued earlier on the subject were also brought to the notice of the Commission.
2. The Commission considered the details of the Court orders/judgements and in one instance, the Central Administrative Tribunal (CAT), Principal Bench, Delhi had quashed the charge sheet dated 14.02.2004 issued to the delinquent official based on the pseudonymous complaints dated 18.02.1997 and 02.04.1997, vide order dated 20.07.2005. CAT had quashed the charge-sheet served mainly considering the circulars of the Commission dated 29.06.1999 and 31.01.2002 on the subject. In the order dated 20.07.2005, it was observed that the charge-sheet dated 14.10.2004 was issued pursuant to pseudonymous complaints received earlier and therefore is in violation of Commission's circular dated 29.06.1999 and 31.01.2002. The High Court agreed with the findings and observations of the CAT and dismissed the department's Writ Petition filed against the order of the CAT in *limine*. Thereafter, the Supreme Court had also dismissed the department's Civil Appeal in the matter. CAT's decision is based on one of the judgements dated 26.09.2003 of Madras High Court (in another case) wherein it was observed that the preliminary enquiry report dated 25.05.2000 based on anonymous complaint was subsequent to the CVC's circular dated 29.06.1999 and, therefore, is liable to be quashed and further that the prohibition (in CVC circular) that "no action will cover all pending proceedings on that date."
3. The instructions / guidelines issued from time to time on the subject-matter by DoPT / CVC are as follows;
  - i. DoPT's O.M. No. 321/4/910-AVD.III dated 29.09.1992 that no action is required to be taken on anonymous/pseudonymous complaints in general, provided the option to inquire into such complaints which contained verifiable details.
  - ii. Commission's initial Circular No. 3(v)/99/2 dated 29.06.1999 prescribing that no action should be taken on anonymous/pseudonymous complaints and should just be filed.
  - iii. Commission's Circular No.98/DSP/9 dated 31.01.2002 reiterating that under no circumstances, should any investigation be commenced on anonymous/pseudonymous complaints.
  - iv. Commission's Circular No.98/DSP/9 dated 11.10.2002 reviewing its earlier instructions of 1999, providing that if any Departments/organisations 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.
  - v. DoPT O.M. No. 104/76/2011-AVD I dated 18.10.2013 that no action is required to be taken on anonymous complaints, irrespective of the nature of allegations and such complaints need to be simply filed.

- vi. Commission's Circular No.07.11/2014 dated 25.11.2014 withdrawing Circular dated 11.10.2002 and reiterating previous circulars dated 29.06.1999 and 31.01.2002 to the effect that no action should be taken on anonymous/pseudonymous complaints and such complaints should be filed.
4. Since, the aforesaid issues arising out of the observations of CAT and High Court of Madras involve interpretation of substantial questions of law, the opinion of Ld. Attorney General for India was sought by the Commission. Ld. Attorney General for India has furnished his opinion and clarified that unless expressly stated all Executive Circulars are prospective in nature and they do not have retrospective effect. Only a law can be retrospective if a law expressly states that it will be retrospective or the intention to that effect is very clear. It is further clarified that an anonymous / pseudonymous complaint, say made in 1997 i.e. prior to the prohibitory circular dated 29.06.1999 ought to have been generally not entertained but if there was verifiable material in accordance with the DoPT's O.M. of 1992 and investigation has commenced, the same would have to be taken to its logical conclusion notwithstanding the issue of a later circular dated 29.06.1999.
5. Based on the opinion furnished by Ld. AG, the following clarifications are being issued:-
  - i. No action should be taken on anonymous / pseudonymous complaints in line with commission's present instructions dated 25th November, 2014 and such complaints should be filed.
  - ii. However, where the action was initiated on anonymous / pseudonymous complaints prior to the issue of CVC's circular dated 29.06.1999 and was pending as on 29.06.1999, it can be pursued further to its logical end.
  - iii. Where action was initiated on anonymous / pseudonymous complaints between the period 11.10.2002 and 25.11.2014 with prior concurrence of CVC but is pending, further action is permissible on such complaints.
  - iv. Material/evidence gathered during the investigation/verification of anonymous complaints when the action was prohibited on such complaints (i.e. between 29.06.1999 & 11.10.2002), or where such enquiry was initiated without the approval of CVC, can be utilised for further imitiation of disciplinary proceedings on misconducts noticed in such verification / enquiry.
6. All Administrative Authorities / CVOs may note the above clarifications for guidance / compliance while handling and processing matters arising out of anonymous / pseudonymous complaints.

## **CVC Circular No. 02/01/2016 dated 18.01.16**

**Sub: Timely completion of disciplinary proceedings/departmental inquiry proceedings/ departmental inquiry proceedings – improving vigilance administration.**

- Ref:** (i) Commission's Circular No. 8(1)(g)/99(2) dated 19.02.1999  
(ii) Commissions Circular No. 8(1)(g)/99(3) dated 03.03.1999  
(iii) Commission's Circular No. 3(v)/99/7 dated 06.09.1999  
(iv) Commission's Circular No.000/VGL/18 dated 23.05.2000  
(v) Commission's Office Order No. 51/08/2004 dated 10.08.2004

The Commission has noted with serious concern that the administrative authorities are not adhering to the time schedules prescribed for completion of disciplinary proceedings. In recent study conducted by the Commission, it has been noticed that while the average time taken by the administrative authorities in finalisation of disciplinary proceedings is more than 2 years, the maximum time taken in a particular case was eight (8) years and at least in 22% cases the inquiry took more than two years. The Commission vide its Circular No.8(1)(g)/99(3) dated 03.03.1999 and No.000/VGL/18 dated 23.05.2000 has laid down the time limits for various stages of disciplinary proceedings right from the stage of investigation to finalisation of the disciplinary case. The time limit for completion of departmental inquiry is six months from the date of appointment of the IO. Thus, it appears that this time limit is not being adhered to by a majority of the Departments/Organisations. Such long delays not only are unjust to officials who may be ultimately acquitted, but help the guilty evade punitive action for long periods. Further, they have an adverse impact on others who believe that "nothing will happen". The Commission has been emphasising from time to time on the need for expeditious completion of disciplinary proceedings.

2. Recently, the Hon'ble Supreme Court in its judgement dated 16.12.15 in Civil Appeal No.958 of 2010 Prem Nath Bali Vs Registrar, High Court of Delhi & Anr has viewed the delay in handling of disciplinary cases adversely. The Hon'ble Supreme Court while allowing the said appeal in favour of the Appellant Employee has observed as follows :
29. *One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental procedures was not wholly attributable to the appellant but it was equally attributable to the respondents as well. Due to such unreasonable delay, the appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.*
30. *We are constrained to observe as to why the departmental proceedings, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents side to explain the undue delay in completion of departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.*
31. *Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of*

*such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.*

32. *As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.*
33. *Keeping these factors in mind, we are of the considered opinion that every employer (whether State or Private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.”*

3. The Commission has observed that a number of factors contribute to the delay in the conduct of departmental inquiries and with prudent management this needs to be checked. 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 Commission suggests that the following steps may be ensured and complied strictly by the IOs/ administrative authorities.

- (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 within him/Departments/ organisation 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.
  - (viii) 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.
  - (ix) If witnesses 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 issues by the Court.
  - (x) The IO should, as far as practicable, desist from allowing interlocutory documents sought either by the PO or the CO as additional documents during the deposition of witnesses.
  - (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 within 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 etc, IO may after affording reasonable opportunity, proceed to given a report ex-parte based on facts, documents, witnesses produced before him.
4. The suggested time limits for conducting departmental inquiries prescribed by the Commission for various stages is annexed for ready reference. 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 above cited case. 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 un-explained 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.

## **CVC Circular No. 08/05/15 Dated: 25<sup>th</sup> May 2015**

**Sub: Guidelines to be followed by the administrative authorities competent to accord sanction for prosecution u/s.19 of the PC Act- 1988 – Hon'ble Supreme Court Judgement in Criminal Appeal No. 1838 of 2013 - reg.**

**Ref:** (i) CVC Office Order No.31/5/05 dated 12.05.2005  
(ii) CVC Circular No.07/03/12 dated 28.03.2012

1. The Commission has been emphasising the need for quick and expeditious decisions on requests of sanction for prosecution received from CBI/other investigating agencies under the PC Act, 1988 and also to strictly adhere to the time limit of three months for grant or otherwise of sanction for prosecution laid down by the Hon'ble Supreme Court in Vineet Narain & Ors. Vs. Union of India (AIR 1988 SC 889). Despite these instructions and close monitoring of such pending matters; the Commission has been concerned with the serious delays persisting in processing requests for sanction for prosecution by the Competent Authorities.
2. The Commission had earlier vide its Office Order No. 31/5/05 dt. 12/05/2005 brought to the notice of all competent authorities guidelines to be followed by the sanctioning authorities. Subsequently, the Apex Court in the matter of Dr. Subramaniam Swamy Vs. Dr. Manmohan Singh & another (Civil Appeal No. 1193 of 2012) referred to the above guidelines of CVC, and observed that, "the aforementioned guidelines are in conformity with the law laid down by this Court that while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true". Thereafter, the Commission vide circular No. 07/03/12 dated 28/03/2012 reiterated its guidelines dated 12/05/2005 and advised all concerned Competent Authorities to adhere to the time limits for processing requests for prosecution sanction under Section 19 of PC Act as laid down by the Apex Court in letter and spirit.
3. The Hon'ble Supreme Court has recently in Criminal Appeal No. 1838 of 2013 in the matter of CBI Vs. Ashok Kumar Aggarwal, in para 7 of the judgement observed that "there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. Sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the Government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty".
4. In para 8 of the above judgement, the Court has issued guidelines to be followed with complete strictness by the Competent Authorities while considering of sanction as below:-
  - 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.
5. The Commission, would therefore, in terms of its powers and functions under Section 8 (1) (f) of the CVC Act, 2003 direct all administrative authorities to scrupulously follow the guidelines contained in para 2 (i) to (vii) of Commission's circular No. 31/5/05 dated 12/05/2005 and the recent explicit guidelines laid down for compliance by the Hon'ble Supreme Court at para 4 above, while considering and deciding requests for sanction for prosecution, therefore, competent sanctioning authorities should discharge their obligations with complete strictness and would be held responsible for any deviation / non-adherence and issues questioning the validity of sanction arising at a later stage in matters of sanction for prosecution.

## **CVC Circular No. 01.04.14 dated 29.04.2014**

**Sub: Short-comings in bid documents**

**Ref:** Commission's Circular No.33/7/03 dated 09.07.2003

1. The Commission has been impressing upon all Organisations to ensure transparency and fair play in all procurements/contracts. One of the concern relates to the short-comings in framing of NITs and bid documents which results in ambiguity and scope for interpretation differently during processing and award of contracts by the organisations.
2. The Commission had vide its Office Order No.33/7/03 dated 9th July, 2003, advised that whatever pre-qualification, evaluation/exclusion criteria, etc. which the organisation wants to adopt should be made explicit at the time of inviting tenders so that basic concept of transparency and interests of equity and farness are satisfied. The acceptance/rejection of any bid should not be arbitrary but on justified grounds as per the laid down specifications, evaluation/exclusion criteria leaving no room for complaints as after all the bidders spend a lot of time and energy besides financial cost initially in preparing the bids and, thereafter, in following up with the organisations for submitting various clarifications and presentations.
3. The above instructions are reiterated for compliance by all Ministries/Departments/Organisations.

## **CVC Circular No. 03/09/13 dated 11.09.2013**

### **Sub: Rotation of officials working in sensitive posts-regarding.**

1. Central Vigilance Commission and the Department of Personnel and Training have issued instructions for effecting rotational transfers of officials posted on sensitive posts. As per Commission's instructions issued vide letter Nos. 98/VGL/60 dated 15.04.1999, 02.11.2002 and 004/VGL/90 dated 04.01.2008 and 04.01.2012 (for public sector banks) on this issue, it was prescribed that Ministries/Departments /Organisations and CVOs are identify the sensitive posts and staff working in these posts and also ensure that they are strictly rotated after every two/three years to avoid developing vested interests.
2. The Commission in the superintendence of vigilance administration over the years has observed that such rotational transfers are not effected in many organisations due to which officials continue to remain in the same posts for long periods. Such overstay and continuous postings afford scope for indulging in corrupt activities, developing vested interests etc. which may not be in the interest of the organisation. The Commission would therefore, emphasise that periodical rotation of officials holding sensitive posts/jobs needs to be ensured. As such, officials should not be retained in the same place/position for long by the Ministries /Departments/PSUs/Banks/ Organisations etc.
3. Heads/CVOs of all Departments/Organisations are advised to ensure strict compliance of the Commission's guidelines and implement the same in letter and spirit. Further, the CVOs should specifically report the action taken indicating the number of officials rotated/transferred in the respective organisations in the Monthly Report of CVOs submitted to the Commission.

## **CVC CIRCULAR No. 15/07/12**

### **Sub: Revised threshold value for submission of Quarterly Progress Report-QPR.**

In supersession to the Commission's earlier OMs on the subject, the threshold limits for reporting of the contracts in the QPR to the Commission, are revised as under

<b>Works /Contract</b>	<b>Revised Value</b>
<b>Category-I</b>	
a) Civil Works	
b) Turnkey Works Contracts	5 Crores & above
c) Stores & Purchase	
d) PPP-Public Private Partnership [Sost /Revenue values]	
e) Sale of Goods/Scrap /Land	
<b>Category-II</b>	
f) Electrical/Mechanical works/ Maintenance/ Service Contracts including Electronics/ Instrumentation/Telecommunication/ Manpower Supply, etc.	Rs 1 Crore & above
g) Medical Equipment	Rs. 50 Lakhs & above
h) Consultancy Contracts	Rs. 1 Crore & above
<b>Category-III</b>	
i) Horticulture Works	Rs. 10 Lakhs & above
j) Supply of Medicines	4 Largest Value Contracts

2. QPRs should be submitted both in softcopy (in MS Excel format) through e-mail at [qpr.te.general@nic.in](mailto:qpr.te.general@nic.in) as well as hardcopy separately for each sub-category mentioned above. For contracts below the threshold value, CVO may conduct CTE type of inspections and intimate the outcome to the Commission through their regular monthly/quarterly reports.
3. The revised limits would come into effect from July-September 2012 Quarter onwards.
4. The commission is in the process of 'On-line' submission of QPR. The detailed instructions on this would follow. Meanwhile organizations are requested to make necessary arrangement for on-line submission of QPRs and also documents (if called for). These facilities may be developed in the next two months and confirmed to the Commission.
5. The following explanatory notes are for guidance regarding QPR.
  - (i) *Civil works also include marine, mining, excavation and transportation works.*
  - (ii) *Electrical/Mechanical works also include air conditioning, fire fighting, 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 may be sent.*

- (iv) *In case the orders are placed in foreign currency, the threshold limit would be determined based on conversion of foreign currency with Indian Rupee at the exchange rate 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 shall also be reported.*
    - (\*) *OEM: Original Equipment Manufacturer*
    - OES: Original Equipment Supplier*
    - PAC: Proprietary Article certificate.*
  - (vi) *For furnishing the QPR related to Sale Contract [Sub-category-I (e)], the QPR may also to indicate the value as per reserve price besides the sale price.*
  - (vii) *The organizations 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 of 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) *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.*
6. In case of any doubt regarding threshold value or the type of contract, the CTE Organization of the Commission may be consulted.
7. The contents of the circular may be brought to the notice of all the concerned.

## **CVC Circular No. 03/01/12 dated 13.01.2012**

### **Sub: Consideration of Indian Agents.**

**Ref:** Commission's Circular Nos. 12-02-6-CTE/SPI(I)-2 dated 7.01.2003 and 21.04.2004

1. The Commission has been stressing on the need for observing transparency and determination of prices in a fair market competition while dealing with the tenders relating to procurement. The above OMs were issued to reduce the possibility of collusion and cartelization among the bidders so that competitive fair market price of the items of procurement can be determined.
2. A number of references have been received in the Commission citing certain specific situations and difficulties being faced in dealing with tenders. Therefore, the matter has been again examined by the Commission.
3. In supersession to the earlier OMs dated 7.01.2003 and 21.04.2004, Commission has decided that in all cases of procurement, the following guidelines may be followed:
  - a) In a tender, either the Indian agent on behalf of the Principal/OEM itself can bid but both cannot bid simultaneously for the same item/product in the same tender.
  - b) If an agent submits bid on behalf of the Principal/OEM, the same agent shall not submit a bid on behalf of another Principal/OEM in the same tender for the same item/product.
4. The tender conditions may be carefully prepared keeping in view the above guidelines.
5. The receipt of these guidelines may please be acknowledged and circulated amongst the concerned officials for their information and guidance.

## **CVC Circular No. 01/02/11 dated 11.02.2011**

### **Sub: Transparency in Tendering System**

There have been instances where the equipment/plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of the various technical solutions available in the market to meet the desired objectives of a transparent procurement that ensures value for money spent simultaneously ensuring up gradation of technology & capacity building.

2. The Commission advises that in such procurement cases where technical specifications need to be iterated more than once, it would be prudent to invite expression of interest and proceed to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. In such cases, two stage tendering process may be useful and be preferred. During the first stage of tendering, acceptable technical solutions can be evaluated after calling for the Expression of Interest (EOI) from the leading experienced and knowledgeable manufacturers/suppliers in the field of the proposed procurement. The broad objectives, constraints etc. could be published while calling for EOI. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, who are prima facie considered technically and financially capable of supplying the material or executing the proposed work. During these technical discussions stage the procurement agency may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept.
3. Once the technical specifications and evaluation criteria are finalized, the second stage of tendering could consist of calling for techno commercial bids as per the usual tendering system under single bid or two bid system, as per the requirement of each case. Final selection at this stage would depend upon the quoted financial bids and the evaluation matrix decided upon.
4. Commission desires that organizations formulate specific guidelines and circulate the same to all concerned before going ahead with such procurements.

## **CVC Circular No. 16/03/06 dated 28.03.2006**

### **Sub: Protection against victimisation of officials of the Vigilance Units of various Ministries/Departments/organisations.**

1. The Commission has viewed seriously certain instances of harassment and attempts at victimisation of vigilance officials of certain organisations. The need to allow the vigilance officials to work independently and freely without any fear, which is the foundation for effective vigilance administration in any organisation, has been recognized since long. In fact, the Committee on Prevention of Corruption (Santhanam Committee) had recommended that “those posted to the Vigilance Organisations should not have the fear of returning to their parent cadre with the possibility of facing the anger and displeasure of those against whom they made inquires”. The Committee had also recommended that “those working in Vigilance Organisations should have an assurance that good and efficient work in the Vigilance Organisation will enhance their opportunities for promotion and not become a sort of disqualification”.
2. The Commission has considered the problem of possible victimisation of Vigilance officials after they finish their tenure in the Vigilance Department and revert to their normal duties. In the case of CVOs, already, the Commission, as Accepting Authority, is in a position to moderate, if necessary, any biased reporting against the CVO in his ACR. Similarly, the Commission has always been extremely careful and cautious while taking cognizance of complaints against the CVOs and as a matter of principle always obtains the CVOs’ response before coming to any conclusion on the need to investigate such complaints.
3. In order that the required degree of protection is conferred on the Vigilance officials supporting the CVO and keeping in view the spirit of the Santhanam Committee with which commendable foresight had anticipated very clearly some of these issues, the Commission issues the following consolidated instructions in exercise of its powers under Section 8 (1) (h) of the CVC Act:
  - (i) All personnel in Vigilance Units will be posted only in consultation with and the concurrence of the CVOs. They will be for an initial tenure of three years extendable up to five years. Any premature reversion before the expiry of such tenure will only be with the concurrence of the CVO. The CVO shall bring to the notice of the Commission any deviation from the above.
  - (ii) The ACR of personnel working in the Vigilance Department will be written by the CVO and reviewed by appropriate authority prescribed under the relevant conduct rules. The remarks in review shall be perused by the CVO and in case he has reservations about the comments made under the review, he shall take it up with the Chief Executive/HOD to resolve the issue. In case he is unable to do this, he shall report the matter to the Commission who will intercede in the matter suitably.
  - (iii) Since the problem of victimisation occurs, if at all, after the reversion of the personnel to their normal line departments, the Commission would reiterate the following:
    - (a) On such reversion the vigilance personnel shall not be posted to work

under an officer against whom, while working in the Vigilance department, he had undertaken verification of complaints or detailed investigation thereafter. Needless to say his ACR shall not be written by such officer/s.

- (b) All such Vigilance personnel will be deemed to be under the Commission's purview for purposes of consultation in disciplinary matters. This is irrespective of their grade. This cover will be extended to a period of not less than five years from the date of reversion from the Vigilance department.
  - (c) All Vigilance personnel on reversion shall be entitled to represent through the CVO and chief executive of the organisation to the Commission if they perceive any victimisation as a consequence of their working in the Vigilance department. This would include transfers, denial of promotion or any administrative action not considered routine or normal. This protection will be extended for a period not less than five years after the reversion of such personnel from the vigilance department.
4. The above instructions may be noted for strict compliance. The CVO should report promptly to the Commission, the details of any real or perceived victimisation of any official who is working in the Vigilance Unit. Similarly, he should also report such instances pertaining to the former officials of the Vigilance Unit, up to a period of five years after they had completed their tenure in the Vigilance Unit. He should also report where such deserving officials are ignored/superseded in matters of promotion.

