



SPECIAL CHAPTER

ON

**VIGILANCE MANAGEMENT IN
PUBLIC SECTOR BANKS**

VIS-À-VIS

**THE ROLE AND FUNCTIONS OF THE
CENTRAL VIGILANCE COMMISSION**

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VIGILANCE MANAGEMENT IN PUBLIC SECTOR BANKS VIS-À-VIS THE ROLE AND FUNCTIONS OF THE CVC

1. INTRODUCTION

This chapter deals with the application of the principles of vigilance to public sector Banks. Its objective is to apply and supplement rather than substitute the material contained in the earlier chapters. To that extent, it is not and should not be construed as a self-sufficient code.

1.1 HISTORICAL BACKGROUND

The Central Vigilance Commission (hereinafter referred to as the Commission) was set up by the Government of India by its resolution dated 11.2.1964 in pursuance of the recommendation made by the Committee on Prevention of Corruption.^{*} The Commission acts as the apex body for exercising general superintendence and control over vigilance matters in administration and probity in public life. The Commission has been accorded statutory status with effect from 25.8.1998 through "The Central Vigilance Commission Ordinance, 1998". While the Commission continues to perform the functions assigned to it by the Government's Resolution, (insofar as these are not inconsistent with the provisions of the Ordinance) it has also been given some additional powers with a view to strengthening its functioning.

2. MAJOR CHANGES BROUGHT IN ORDINANCE

Some of the major changes brought out through the Ordinance are given below:-

- (i) The Commission has been made a multi-member Commission, headed by the Central Vigilance Commissioner (CVC);
- (ii) The Central Vigilance Commission and other Vigilance Commissioners (VCs) shall be appointed by the President by warrant under his hand and seal;
- (iii) The Commission been empowered to:-
 - (a) exercise superintendence over the functioning of the Delhi Police Establishment (DSPE) insofar it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988;
 - (b) review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the PC Act.
- (iv) The Commission has been given all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, while inquiring, or causing an inquiry or investigation to be made, into any complaint against a public servant, and in particular in respect of the following matters:
 - a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - b) requiring the discovery and production of any document;

^{*} Popularly known as the Santhanam Committee.

- c) receiving evidence on affidavits;
 - d)requisitioning any public record or copy thereof from any court or office;
 - e)issuing commissions for the examination of witnesses or documents;
 - f) any other matter which may be prescribed.
- (v) The Commission is deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.
- (vi) No suit, prosecution or other legal proceeding shall lie against the Commission, the CVC, any VC, Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under the ordinance.
- (vii) The CVC will head the Committees to make recommendations for the appointments to the posts of the Director, CBI and the Director of Enforcement.

3. JURISDICTION

The Commission's jurisdiction is co-terminus with the executive powers of the Union. It can undertake any inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper or corrupt purpose; or cause such an inquiry or investigation to be made into any complaint of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of mal-practices or misdemeanors on the part of a public servant. The Commission tenders appropriate advice to the concerned disciplinary authorities in all such matters.

For practical considerations, the Commission has restricted its jurisdiction to the officers of the rank of scale-III and above in the public sector banks; However, in composite cases involving officials who fall in the Commission's jurisdiction alongwith other who do not, the case as a whole has to be referred to the Commission for its advice. Such composite reference enable the Commission to take an overall view of the individual accountabilities in the transaction. As earlier, all cases of officials who do not fall within the jurisdiction of the Commission will continue to be referred to the CVO or his nominee for concurrence before any action is taken against them.

When a reference has been made to the Commission in respect of officers not within the jurisdiction of the Commission and award staff, by virtue of it being a composite case, it will be not necessary to approach the Commission for second stage advice in respect of such officials provided the Commission's advice has been accepted by the Banks.

4. WHAT IS A VIGILANCE ANGLE?

The Chief Vigilance Officers in the concerned organizations have been authorized 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; or
- (ii) irregularities reflecting adversely on the integrity of the public servant; or
- (iii) lapses involving any of the following;
 - (a) gross or wilful negligence;
 - (b) recklessness;
 - (c) failure to report to competent authorities, exercise of discretion without or in excess of powers / jurisdiction; and
 - (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.

5. VIGILANCE CASES IN BANKS:

As in all organizations, vigilance activity in financial institutions is 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. In banking institutions risk-taking forms an integral 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 decision, and an extraordinary loss which has occurred due to any malafide, motivated or reckless performance of duties. While the former has to be accepted as a normal part of business and ignored from the vigilance point of view, the latter has to be viewed adversely and dealt with under the extant disciplinary procedures.

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 interests of the organization is one possible criterion for determining the bonafides of the case. A positive response to this question may indicate the existence of bonafides. 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. Such failures may be a matter of serious concern to the organization but not from the vigilance point of view. They have to be dealt with separately.

The criteria indicated above for determination of a vigilance angle in a case would also obviously exclude all cases of misdemeanours in personal life. Administrative

* Union of India V J.Ahmed, AIR 1979 SC 1022

misconduct, such as, unpunctuality, drunken behaviour at work etc. would again be left to the disciplinary authority to deal with in a appropriate manner.

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 for the same.

6. INVESTIGATION BY CBI:

6.1 The Special Police Establishment, Central Bureau of Investigation, was constituted by the Government of India, under the DSPE Act, 1946, it inquires and investigates into Offences pertaining to corruption and other malpractices involving public servants. The SPE takes up cases for investigation on the basis of the information collected by them³³ from their own sources or received from members of the public. It also investigates cases referred to them by the Commission and the administrative authorities. If the information discloses, prima – facie, commission of a cognizable offence, a regular case (RC) is registered u/s 154 Cr.P.C. But if the information prima facie discloses commission of irregularities, which call for further inquiry, a preliminary enquiry (PE) is first registered. If the PE reveals commission of a cognizable offence, a regular case is registered for further investigation. As soon as a PE or a RC is registered, a copy thereof is sent to the Head of Department and / or the administrative Ministry. A copy of PE/RC is also sent to the Commission if the public servant concerned comes within the advisory jurisdiction of the Commission. The SPE generally does neither take up inquiries or register a case where minor procedural flaws are involved nor it is expected to conduct roving inquiries from the banks. All their investigations are expected to be focused towards the specific information received by them. They are also expected to take note of an individual officer's positive achievements as provided by the bank while recommending RDA so that a single procedural error does not cancel out a life time's good work.

ADVISORY BOARDS

6.2. Considering the complexities involved in commercial decisions of bankers especially in matters related to credit, the CBI may obtain the benefit of expert advice from various disciplines before registration of PE/RC. The existing Advisory Board on Bank, Commercial and Financial Frauds (ABBCFF) would continue to assist CBI for this purpose. This Board would form part of the Organisational infrastructure of the CBI. Appointments on the Board would be approved by CVC.

It would not be necessary for the CBI to refer cases of frauds in non-borrowal accounts to such boards. Even in respect of borrowal accounts it would not be necessary for them to take advice therefrom if the CVO of the bank has himself referred the matter to the CBI. Reference to the boards will thus lie only in respect of complaints in borrowal accounts which the CBI has suo motu found worthwhile to tentatively pursue. The cases involving all officials irrespective of their levels would continue to be referred to the ABBCFF. The Board concerned would give its considered opinion within one month from the date of reference failing which the CBI would be competent to decide the matter without advice. It is also clarified that the advice of the Board will not be binding on them.

Investigational and secretarial services required by the Boards would be provided by the RBI.

6.3 While the CBI have the powers to take up any fraud case for investigation irrespective of the amount of loss involved, in order to maximize the effectiveness of investigations the following guidelines may be followed in future:

The Banking Securities & Fraud Cell (BS&FC) at Delhi, Bombay and Bangalore would handle information / complaints if the amount of the alleged bank fraud exceeds Rs.5 crores. If the amount of the alleged fraud ranges between Rs.25 lacs and Rs.5 crores, the information would be handled / investigated by the branch of the CBI having territorial jurisdiction over the area. If the amount involved in the bank fraud appears to be less than Rs.25 lacs the complaint may be entrusted to the local police. However, having regard to the legal difficulties in the CBI taking over a case after it has been registered with the local police, the bank should also carefully examine the matter with regard to the inter-state/international ramifications of the case. Regardless of the quantum involved in the fraud, the CBI may register any case suo motu, if it has reason to believe that it has inter-state or international ramifications.

The BS&FC would be the focal point to co-ordinate the handling of all bank cases. The Banks would initially refer the matter to the respective Zonal Office of the BS&FC (Jurisdiction of such offices to be indicated by the CBI). The BS&FC would either assume jurisdiction or pass on the matter to the concerned wing of the CBI under intimation to the Bank.

6.4 Full cooperation and facilities should be extended by the Public Sector banks to the CBI during the course of investigation. This would include making available to them the requisite documents with the least possible delay, directing such employees as are to be examined to appear before the investigating officer and making suitable accommodation in the bank's guest houses, available to touring officers (subject to availability), in accordance with their entitlement and on payment of the prescribed charges.

When the Banks make reference to the CBI for investigation, they should also make available duly certified photocopies of all relevant documents along with the complaint so that there is no delay in initiating action on the part of the CBI. The originals may be handed over to them only at the time of the actual registration of the case. Similarly, when CBI seizes documents, authenticated copies of all the documents, should within four days of the seizure, be made available to the CVO of the Bank. Further, whenever the CBI or other investigating agencies require assistance in tracing and freezing assets created from the proceeds of an offence, the Banks would extend to them such assistance as may be requested for and is possible. The Banks may also avail the services of Chartered Accountants / Computer professionals for the purpose.

7. INVESTIGATION REPORTS RECEIVED FROM THE CBI:

7.1 On completion of their investigation, the CBI forwards a copy of the SP's report to the concerned CVOs for further action. A copy of the SP's report is also endorsed to the Commission in cases in which the Commission's advice is necessary.

7.2 The CBI generally recommends prosecution in cases of bribery, corruption or other criminal misconduct; it also considers making similar recommendations in cases involving a substantial loss to the Government or a public body. The Commission's advice for prosecution however is required only if the sanction for prosecution is necessary under any law promulgated in the name of the President. In such cases,

CVOs should furnish the department's comments within a month of the receipt of the CBI report by the competent authority. In other cases, as directed by the Supreme Court, the matter should be processed expeditiously to ensure that the required sanction is issued within a period of three months (the instructions issued by the Department of Personnel & Training vide O.M. dated 14.01.1998 also refer). However, in case of difference of opinion between the CBI and the administrative authority, the matter may be referred to the Commission for its advice irrespective of the level of the official involved.

7.3 Prosecution proposals should be able to meet the technical requirements laid down by the Courts. Apart from adequate evidence to establish that offence has been committed under the relevant provision of the law, there should be some facts on record from which it should be possible to infer or presume a criminal or guilty intention behind the omission or commission. In the absence of *mens rea* violation of rules or codal formalities could at worst be considered as transgressions of systems and procedures of the organization and the same would, as such, be more suitable as the subject matter of RDA rather than criminal prosecution. In *Maj. SK Kale v/s State of Maharashtra, 1977 Cri. L.J. 604* and *Shri SP Bhatnagar v/s State of Maharashtra, 1979 Cri. L.J. 566* the Supreme Court rules that irregularities *per se* may not amount to indication of criminal intent even if third parties had benefited.

7.4 In cases, where the CBI recommends RDA for major / minor penalty action or such action as deemed fit' against the officials and the Commission is to be consulted, the CVO should ensure that the comments of the department on the CBI report are furnished to the Commission within one month of the receipt of the CBI's investigation report. Further action in such cases may be taken as per the Commission's advice. In other cases, the CVO should take expeditious action to ensure that charge-sheets, if necessary, are issued within two months of the receipt of the investigation report from the CBI. It would not be necessary for the CBI to follow the matter in such cases after the disciplinary authority has initiated action for RDA against the concerned officials in accordance with their recommendations. However, in case of difference of opinion between the CBI and administrative authorities, the matter would be referred to the Commission for advice irrespective of the level of the official involved. The organization would take further action in accordance therewith.

7.5 The law of the land permits prosecution as well as RDA to proceed simultaneously (*Jang Bhagdur Singh v/s Baijnath Twwari, 1969 SCR, 134*).

Where the suspect officer is primarily accountable for conduct which legitimately lends itself to both criminal prosecution in a court of law as well as RDA, as a general rule, both should be launched simultaneously after consultation with the CBI or other investigating agencies charged with conducting the prosecution. Such simultaneous conduct of RDA and criminal prosecution should be resorted to especially if the prosecution case is not likely to be adversely affected by the simultaneous conduct of RDA. Keeping RDA in abeyance should be an exception rather than rule. The copies of all the relevant documents authenticated by the charged employees may be retained, for the purpose of RDA, before the original documents are sent to the Court. If the documents have already been sent to a Court of law for the purpose of Criminal proceedings, certified copies may be procured for the purpose of RDA. Care, however, should be taken to draft the charge-sheet for the purpose of RDA in such a manner that it makes the suspect official accountable for violation of various provisions of Conduct Rules without reference to criminal misconduct. No Bipartite Agreement should stand

in the way of disciplinary action continuing parallelly with the criminal investigation / trial. This is necessary in the interest of speedy action in vigilance cases.

8. COMPALINTS AND ACTION THEREON

8.1 Information about corruption, malpractices or misconduct on the part of public servants may come to the CVO's notice through various sources, such as (1) the complaints received from the public, or through the administrative Ministry, CBI and the CVC; (ii) departmental inspection reports and stock verification surveys, (iii) scrutiny of property returns and the transactions reported by the concerned employee under the Conduct Rules, (iv) audit reports, (v) press reports, (vi) reports of parliamentary committees etc. Information received verbally should be reduced to writing and dealt with similarly.

In the first instance the decision with regard to the existence of a vigilance angle in a case may be taken by the CVO. The CMD or his nominee, may, if there are valid reasons, within a period of 15 days, differ from the CVO. In case of difference between CVO and CMD, the matter may be referred to the Commission.

If there is a vigilance angle, the CVO would register the information as a complaint in the Vigilance Complaint Register. He would then process the matter further to decide as to whether the allegations are general or vague and deserve to be filed / or the matter requires further investigation. In the latter case, he would also have to decide as to whether the investigation into the allegations should be entrusted to the CBI or local police or taken up departmentally. In any case, neither any complaint nor any accountability report irrespective of the level of the official concerned should be closed without the prior concurrence of the Chief Vigilance Officer or his nominee.

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

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

8.2 In exercise of its extraordinary jurisdiction, the Commission has the power to call for a report in respect of any case with a vigilance angle in so far as it relates to any public servant falling within its jurisdiction. It also has the power to advise further course of action to the disciplinary authority in respect thereof. Therefore, whenever the Commission advises the CVO to investigate such a case, he shall not only submit his investigation report but subsequently also seek first stage advice on par with other cases falling with the Commission's ordinary jurisdiction.

8.3 A complaint involving a Presidential appointee may be forwarded to the CVO of the Banking Division. The latter in the first instance would decide whether the information involves a vigilance angle or not. If so, he would register that as a complaint in the Vigilance Complaint Register and would process the matter further to decide whether the allegations are general in nature or vague and deserve to be filed, or the matter requires further investigation. In the latter case, he would also decide as to whether requires further investigation into the allegations should be entrusted to the CBI or taken

up departmentally. If it is decided to investigate the matter departmentally he may, in his discretion, take assistance of or seek factual reports from the RBI or the CVO or any other authority of the Bank concerned.

9. INVESTIGATION BY CVO

9.1 ANONYMOUS / PSEUDONYMOUS COMPLAINTS

9.1.1 No action should at all be taken on anonymous / pseudonymous complaint. They must just be filed.

9.2 OTHER COMPLAINTS

9.2.1 After it has been decided that the allegations contained in a complaint should be looked into departmentally, the CVO should proceed to make a preliminary inquiry (generally termed as investigation). He may conduct the preliminary inquiry himself or entrust it to one of the Vigilance Officers. He may also suggest to the administrative authority to entrust the investigation to any other officer considered suitable for the purpose in the particular circumstances. The purpose of such an inquiry is to determine whether, prima-facie, there is some substance in the allegations.

9.2.2 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 allegation contain information, which can be verified from documents, files or other departmental records, the investigating officer should, without loss of time, secure such records etc. for personal inspection. If any paper is found to contain evidence supporting the allegations, it should be taken over by him for retention in his personal custody to guard against the possibility of available evidence being tampered with later on. If the papers in question are required for any current action, it may be considered whether the purpose would be served by substituting authenticated copies of the relevant portions of the record, the originals being retained by the investigating officer in his custody. If that is not feasible, the officer requiring the documents or papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of inquiry;
- (b) In cases where the alleged facts are likely to be known to any other employee of the department, investigating officer should interrogate them orally or ask for their written statement. In case of oral interrogation, a full record of interrogation may be kept and the person interrogated may be asked to sign as a token of his confirmation of his statement.
- (c) Wherever necessary, important facts disclosed during oral interrogation on in written statements should be sought to be corroborated.
- (d) If it is necessary to make inquiries from the employees of any other Government department or bank or PSU the investigating officer should seek the assistance of the concerned CVO for providing the necessary facilities.

9.2.3 During the course of preliminary enquiry, the Investigating officer may also obtain the version of facts from the concerned employee so as to find out if he has any plausible explanation. In the absence of such an explanation, the concerned employee may be proceeded against unjustifiably. There is, however, no question of making available to him any document at this stage. Such an opportunity, need not be given in

cases in which a decision to institute department proceedings is to be taken without any loss of time, e.g. in cases in which the public servant is due to retire or superannuate soon and it is necessary to issue the charge sheet to him before retirement.

9.2.4 After the preliminary inquiry has been completed, the investigating officer should prepare a self-contained report containing, inter alia, the facts of the case as also lists of documents and witnesses, in support of the allegations made out in the investigation report and his observations. This should be forwarded to the disciplinary authority through the CVO. The investigating officer / CVO or his nominee 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. They may follow the following criteria for the purpose and highlight in the report if the answer to any of the questions is in the affirmative:

- (a) Can malafides 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 or willful 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 organization?
- (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?

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

9.2.6 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 3 months. In the State of MP Vs. Bani Singh, 1990 Suppl. S.C.C. 738 it was held that an inordinate and inexplicable delay in finalization 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.

10. ACTION ON INVESTIGATION REPORT

10.1 The disciplinary authority would consider the investigation report and decide, on the basis of the facts disclosed in the preliminary inquiry, whether the complaint should be dropped or warning / caution administered or regular departmental proceedings launched. The test to be applied at this juncture is to see as to whether a prima-facie case has been built up on the basis of the evidence collected during the course of preliminary inquiry. Generally, if any of the criteria indicated in the preceding paragraphs 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 formal forms of disapproval, such as reprimanding the concerned employee, issuing him an advisory memo or warning, or communicating the Organisation's displeasure. 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' (Union of India Vs. Sardar Bahadur – SLR 1972 p. 352; State of A.P. Vs. Sree Rama Rao – SLR 1974 – p.25; and Nand Kishore Prasad Vs. State of Bihar and others – SLR 1978 – p.46).

10.2 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 the officers / staff who are not within the Commission's jurisdiction if they are involved along with other officers who are within the jurisdiction of the Commission, as the case has to be considered as a composite one. The matter may be referred to the Commission, through the CVO, for its advice. Further action in the matter should be taken on receipt of the Commission's advice, wherever the same has been sought. Certain types of vigilance cases where it is desirable to initiate major penalty proceedings have been mentioned in para 11.4 of Chapter X by way of illustrative guidelines. In addition the following lapses / irregularities in the banking operations could also be considered for such action:

- i. Irregularities in opening of accounts leading to the creation of fictitious accounts;
- ii. Recurrent instances of sanction of ODs in excess of discretionary powers / sanctioned limits without reporting;
- iii. Frequent instances of accommodation granted to a party against norms.

Where a group of officers are involved in the same set of lapses in a branch / zonal office, having different disciplinary authorities, there could be delay in the processing of the cases and also differences in perception of the lapses. Therefore, the Disciplinary Authority of the senior most officer in that group may institute and complete the disciplinary proceedings in respect of the different officers involved in the same case.

10.3 The Commission has noticed that references made to it both at the first as well as second stage are incomplete, resulting in back references to the banks. It has therefore become necessary for the Commission to reiterate the extant procedure to be followed in this regard.

10.4 On completion of the preliminary investigation of the case, the Disciplinary Authority shall be required to forward:

- (i) the preliminary investigation report on the basis of which the allegations are proposed to be established or dropped.
- (ii) The documents and records 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 aforesaid Bureau.
- (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) The bio-data of the officials concerned.

Since CVOs in banks are also experts in their field, they should invariably provide their own analysis and assessment of the facts of the case so that the Commission can have the benefit of their expertise.

10.5 CATEGORISATION OF CASES

Before making references to the Commission, the CVO may classify references into Vigilance A, B and F. 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 misdemeanor / 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.

Category 'F' cases may be defined as frauds of Rs.1 crore and above, perpetrated with a criminal intention by any bank official, either alone, or in collusion with other officials and outsiders.

The CVO would personally monitor the above cases and ensure that departmental action is disposed of within a period of 4 months from the date of issue of the charge-sheet. He should submit a monthly report to the Central Vigilance Commission in the prescribed proforma in respect of each such case. This category will comprise those officials who are directly involved in the commission of a fraud. In all such cases, documents and witnesses relied upon by the disciplinary authority should be supplied alongwith the charge sheet. The oral inquiry should be conducted on day-to-day basis and no adjournment should be granted except on emergent grounds. The inquiry shall be completed within a period of two months of the appointment of the Inquiry Officer and the disciplinary authority should pass appropriate order within a month of the receipt of the Inquiry report. Any laxity / delay in meeting with this time limitation should

be viewed extremely seriously. In the event of any time overrun, the CVO shall obtain the explanation from the Presenting Officer / Inquiry Officer / Disciplinary Authority, as the case may be.

11. RECONSIDERATION OF THE COMMISSION'S ADVICE

If the disciplinary authority, in a case, does not propose to accept the Commission's advice, the case may be referred back to the Commission, with prior approval of the Managing Director / the Chief Executive, for its reconsideration. The reconsideration of the Commission's advice is necessary regardless of whether the disciplinary authority proposes to take "severer" or "lighter" action than that recommended by the Commission. Decisions taken in a manner, other than that mentioned above, would be treated as cases of non-acceptance of the Commission's advice and reported in the Commission's annual report. As a rule, the Commission entertains only one request for reconsideration.

12. PROCEDURE FOR IMPOSING MAJOR PENALTY

12.1 CHARGE SHEET

12.1.1 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) and the misconduct involved. It should be ensured that no relevant material is left out and at the same time, no irrelevant material or witnesses are included.

12.1.2 The charge sheet comprises the memorandum, informing the concerned employee about initiation of proceedings against him and giving him an opportunity to admit or deny the charge(s) within a period not exceeding 15 days. The memorandum is to be signed by the disciplinary authority himself. In case, the disciplinary authority is the President, an officer, who is authorized to authenticate the orders on behalf of the President, may sign the memorandum. The Memorandum should be supported by annexures, namely, Article(s) of charge, statement of imputations of misconduct or misbehaviour in support of each article of charge, and lists of documents and witnesses. Lists of documents and witnesses should form an integral part of the chargesheet even if the disciplinary rules applicable to the concerned employee do not contain such a provision.

12.1.3 Special care has to be taken while drafting a chargesheet. A charge of lack of devotion to duty or integrity or unbecoming conduct should be clearly spelt out and summarized 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 chargesheet. The Courts have stuck down charge sheets on account of the charges framed being general or vague (*S.K. Raheman Vs State of Orissa* 60 CLT 419). If the charge is that the employee acted out of an ulterior motive that motive must be specified (*Utter Pradaesh Vs Salig Ram* AIR 1960 All 543). Equally importantly, while drawing a charge sheet, special care should be taken in the use of language to ensure that the guilt of the charged official is not pre-judged or pronounced upon in categorical terms in advance (*Meena Jahan Vs Deputy Director, Tourism* 1974 2 SLR 466 Cal). However, the statement merely of a hypothetical or tentative conclusion of guilt in the charge, will not vitiate the charge sheet (*Dinabandhu Rath Vs State of Orissa* AIR 1960 Orissa 26 cf. also *Powari Tea Estate Vs Barkataki* (M.K.) 1965: Lab LJ 102).

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

12.1.5 The concerned employee is not expected to furnish a detailed reply to the charge sheet. He is required only to state his defence and 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 alongwith 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 in about 15 days' time.

12.2 DEFENCE STATEMENT

12.2.1 ADMISSION OF CHARGE

If the charged employee admits all the charges unconditionally and unambiguously, 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.

12.2.2 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.

12.2.3 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.

12.3 PROCEDURE FOR DEPARTMENTAL INQUIRY

The procedure for conducting a departmental inquiry has been given in detail in Chapter XI of the Vigilance Manual Vol.1. The important provisions, however, are summarized below.

12.3.1 APPOINTMENT OF INQUIRING AUTHORITY / OFFICER

- (i) Under the disciplinary rules, the disciplinary authority may itself inquire, or appoint an inquiring authority / officer (IO) to inquire into such charges against the charged employee / officer (CO) if the latter does not admit the same or has otherwise not submitted his defence statement within the

specified time. It should, however, be ensured that the officer so appointed has no bias and had no occasion to express an opinion at any stage of the preliminary inquiry. The inquiring authority should also be directed to ensure submission of the report mandatorily within a period of six months of his appointment. This time limit should be invariably adhered to at all cost.

- (ii) The organizations in which large number of departmental inquiries are pending, may earmark some officers on a full-time basis to complete the inquiries within the specified time limit. The disciplinary authority may also consider appointing retired public servants as the inquiring authorities, on payment of honorarium on case-to-case basis. All such appointments should be made from a panel duly approved by the Board of Directors in accordance with the extant rules. All organizations, however, should ensure that the inquiries are completed within the stipulated time limitation and no inquiry should suffer on account of non-availability of an I.O.
- (iii) Generally, the Commission nominates one of the Commissioners for Departmental Inquiries (CDI), borne on its strength, for appointment as inquiring authority to inquire into the charges against such employees against whom it advises initiation of major penalty proceedings. However, because of its limited manpower resources, the Commission cannot nominate a CDI in each and every case in which it tenders advice. It therefore permits the appointment of a departmental inquiring authority in certain cases. Because of similarity in rules, procedures and norms, banks will in future have a common pool of inquiry officers, details of which will be maintained in the Commission. The rationale behind the proposed provision is to ensure removal of bias and expedition in the conduct of the inquiry proceedings. Henceforth, the Commission would also nominate the name of the inquiring authority while tendering its first stage advice.

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.

12.3.2 APPOINTMENT OF PRESENTING OFFICER

The disciplinary authority would also appoint an officer, called as Presenting Officer (PO), to present the case on its behalf before the inquiring authority. Unlike in the past, it would not now be necessary to nominate a CBI Officer to act as PO in the cases investigated by them.

12.3.3 DEFENCE ASSISTANT

The charged employee has also a right to take assistance of a public servant, generally termed as defence assistant (DA), to help him in the presentation of his case in a departmental inquiry. Most rules provide that the CO may not engage a legal practitioner to present the case on its behalf before the IO, unless the PO appointed by the disciplinary authority is also a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits. It is, however, clarified that if the case is being presented, on behalf of the disciplinary authority, by a "Prosecuting

Officer" of the CBI or by the Law Officer of the Department, such as a Legal Adviser etc., there would evidently be good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent employee and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent employee.

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.

12.3.4 PRELIMINARY HEARING

- (i) On the date fixed for the purpose, the inquiring authority (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 delinquent employee admits. In respect of other charges, the IO would ask the PO to prove the articles of charge and adjourn the case to a date within 30 days of the preliminary hearing.
- (ii) 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. For reasons to be recorded by him in writing, 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.

12.3.5 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 from day to day and not grant any adjournments, save in unavoidable and exceptional circumstances. Admitted documents may be taken on record straight way 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 documents through relevant witnesses. He should in the examination-in-chief, examine his witnesses in such a way that brings out the case in a logical manner. The IO should also ensure that the witness understands the question properly. He should protect him against any unfair treatment, disallowing questions which are leading, irrelevant, oppressive or dilatory in nature. As far as possible, all evidence should be recorded in narrative form. Previous statements admitted by the witness should also be taken

on record. After the examination of a witness is over, the witness may be cross-examined by the CO or his DA to bring out further facts, remove discrepancies; or throw light on the reliability of the witness. After the cross-examination, the PO may re-examine the witness on any point on which he had been cross-examined but not on any new matter unless specifically allowed by the IO. In the latter case, the CO would have a right to further cross-examine the witness. The IO may also put such questions to a witness as he thinks fit, at any time during the inquiry, to bring out the truth and for the emergence of a fair and clear understanding of the case. With this end in view, he may also 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 the 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) Before the close 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, or recall and re-examine any witness. 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 CO 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. The CO or his DA would 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.
- (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 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 within such 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.
- (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 briefs submitted by the PO may also be sent to him so as to give him a reasonable opportunity to submit defence briefs. The CO, always has the option to participate in or join the inquiry at any stage.
- (xiii) **Alleging Bias against IO:** If the CO alleges 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.
- (xiv) **Change of IO:** Whenever for any reason the IO is changed and a new IO is appointed to continue the inquiry, he shall take into account the evidence recorded or partly recorded by his predecessor. If he is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may recall, examine, re-examine and cross-examine such witnesses.

12.4 SUBMISSION OF INQUIRY REPORT

12.4.1 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 malafides. It is clarified that the PO is not expected to prove malafides in cases where the act itself speaks of a dishonest motive e.g. a person traveling without ticket in a train or a person who has been unable to explain his assets satisfactorily. Malafides, however, are 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 upto the stage of recording whether the charge is proved, or partially proved or not proved. The conclusion should be derived from the facts and circumstances of the case and not on

its extenuating aspects. He should not recommend the punishment to be imposed on the CO. Neither is he required to comment on the quality of drafting of the charge-sheet, nor the conduct of the disciplinary authority in framing the charges or that of the PO in arguing the same. The IO becomes *functus officio* as soon as he submits the report and cannot make any change thereafter.

12.4.2 The initial burden in the 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 of quasi-judicial rather than judicial in nature, the strict rules of evidence stipulated in the Evidence Act would not be applicable except to the extent specifically indicated in the relevant rules.

12.4.3 The report of the IO should contain:

- (i) A reference to the order of his appointment as IO.
- (ii) Articles of charge in brief, indicating those which are dropped, or admitted, or have been inquired into;
- (iii) 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;
- (iv) A brief summary of the findings.

12.4.4 The report should be accompanied by essential documents, namely, the charge-sheet, depositions of witnesses recorded during the inquiry, daily order-sheet, list of exhibits, exhibits and the correspondence files of the IO. The IO would, in all cases, submit the report to the disciplinary authority, with extra copies, one each for the CO and the CBI, if the case had been investigated / presented by them. However, in cases in which a CDI conducts the inquiry, he would also submit a copy of the report to the Secretary of the Commission.

12.4.5 The IO must complete the inquiry proceedings and submit his report within a period of six months from the date of his appointment.

12.5 ACTION ON INQUIRY REPORT

12.5.1 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.

12.5.2 In view of the Supreme Court's judgement in Ramzan Khan's case, if the disciplinary authority is different from the inquiry 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.

12.5.3 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 its opinion, none of the charge 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. The fact that the inquiry has gone in favour of the CO or the evidence led in the inquiry has gaps, should not be a reason for remitting the case for further inquiry (Dwarka Chand Vs State of Rajasthan – AIR 1959 Raj.38). In such a case, the disciplinary authority may disagree with the IO's findings. The final order passed by the disciplinary authority should be a well-reasoned speaking order.

12.5.4 The cases requiring the Commission's advice may be referred to it, in the form of a self-contained note, alongwith 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; and
- (iv) Tentative conclusions of the disciplinary authority and CVO
- (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.

12.5.5 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.

13. PROCEDURE FOR IMPOSING MINOR PENALTIES

13.1 The procedure for imposing a minor penalty is much simpler as compared to the procedure for imposing a major penalty. For the imposition of the latter, 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.

13.2 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.

14. APPEAL AND REVIEW

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 appellate / 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.

14.1 Where the Commission has not advised a specific penalty, the CVO shall scrutinize 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.

15. ACTION AGAINST PERSONS MAKING FALSE COMPLAINTS

15.1 Section 182 IPC provides for prosecution of a person making a false complaint. Therefore, if a complaint against a public servant is found to be malicious, vexatious or unfounded, serious action should be considered against the complainant. Section 182 IPC reads as under:

“Whoever gives to any public servant any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant:

- (a) to do or omit anything which such public servant ought to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person;

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”.

15.2 Under Section 195(1)(e) Cr.P.C., a person making a false complaint can be prosecuted on a complaint lodged with a court of competent jurisdiction by the public servant to whom the false complaint was made or by some other public servant to whom he is subordinate.

15.3 Alternatively, if the complainant is a public servant, it may also be considered whether departmental action should be taken against him as an alternative or in addition

to prosecution. When the Commission comes across any such complaint in the normal course of its functioning, it would advise the administrative authority concerned about appropriate action to be taken on its own initiative. However, in respect of cases which do not fall within the Commission's normal jurisdiction, the organization concerned may decide the matter on its own as it deems fit.

16. DIFFERENCE OF OPINION BETWEEN THE CVO AND THE CMD

Where there is a difference of opinion between the disciplinary authority and the CVO with regard to cases which are not to be referred to the Commission, the CVO may report the matter to the next higher authority / CMD for the resolution of the difference of opinion between the two. However, if the CMD himself is the disciplinary authority in the case and there is an unresolved difference of opinion between him and the CVO, the CVO may report the matter to the Commission for advice.

17. GRANT OF IMMUNITY TO 'APPROVERS' IN DEPARTMENTAL INQUIRIES

17.1 It is felt that in cases of serious nature, the evidence of "Approvers" may sometimes lead to considerable headway in investigation of cases. This also facilitates booking of offences / misconduct of more serious nature. Therefore, the following procedure may be followed for grant of immunity / leniency to a public servant in the cases investigated by the CVO:

- (a) If during an investigation, the CVO finds that an officer, in whose case the advice of the Commission is necessary, has made a full and true disclosure implicating himself and other public servants or members of the public and further that such statement is free from malice, the CVO may send his recommendation to the CVC regarding grant of immunity / leniency to such officer from departmental action or punishment. The Commission would consider the CVO's recommendation and advise that authority regarding the further course of further action;
- (b) In cases pertaining to officials against whom the Commission's advice is not necessary, the recommendation for grant of immunity / leniency may be made to the CVO who would consider and advise the disciplinary authority regarding the further course of action. If there is a difference of opinion between the CVO and the disciplinary authority, the CVO would refer the matter to the Commission for advice.

18. OBSERVANCE OF THE TIME LIMITS IN CONDUCTING INVESTIGATIONS AND DEPARTMENTAL INQUIRIES

Delays in disposal of disciplinary cases are a matter of serious concern to the Government and the Commission. Such delays also affect the moral of the delinquent employee and others in the organisation. Therefore, in order to ensure that disciplinary cases are disposed of quickly, the CVO should ensure that the following time limits are strictly adhere to:

18.1 In cases other than Vigilance 'F' cases

| | State of Investigation or Inquiry | Time limit |
|----|--|---|
| 1 | Decision as to whether the complaint involves a vigilance angle | One month from receipt of the complaint. |
| 2 | Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action | -do- |
| 3 | Conducting investigation and submission of report. | Three months. |
| 4 | Department's comments on the CBI reports in cases requiring Commission's advice. | One month from the date of receipt of CBI's report by the DA. |
| 5 | Referring departmental investigation reports to the Commission for advice. | One month from the date of receipt of investigation report |
| 6 | Reconsideration of the Commission's advice, if required | One month from the date of receipt of Commission's advice. |
| 7 | Issue of charge-sheet, if required | i) One month from the date of Commission's advice. ii) Two months from the date of receipt of investigation report. |
| 8 | Time for submission of defence statement | Ordinarily ten days. |
| 9 | Consideration of defence statement | 15 (fifteen) days. |
| 10 | Issue of final orders in minor penalty cases. | Two months from the receipt of defence statement. |
| 11 | Appointment of IO/PO in major penalty cases | Immediately after receipt and consideration of defence statement. |
| 12 | Conducting departmental inquiry and submission of report | Six months from the date of appointment of IO/PO |
| 13 | Sending a copy of the IO's report to the 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. |
| 14 | Consideration of IO's representation and forwarding IO's report to the Commission for second stage advice. | One month from the date of receipt of representation. |
| 15 | Issuance of orders on the Inquiry report | i) One month from the date of Commission's advice. ii) Two months from the date of receipt of IO's report if Commission's advice was not required. |

18.2 In Vigilance F Cases.

| | State of Investigation or Inquiry | Time limit |
|---|---|--|
| 1 | Issue of charge-sheet | 15 days from the date of the Commission's advice or one month from the date of receipt of the investigation report. |
| 2 | Time for submission of Defence Statement | Ten days. |
| 3 | Appointment of IO/PO in major penalty cases | Immediately after receipt of consideration of defence statement. |
| 4 | Conduct of departmental inquiry and submission of report | Two months from the date of appointment of IO/PO. |
| 5 | Sending of a copy of the IO's report to the CO for his representation | i) Within one week of receipt of IO's report if any article of charge has been held as "Proved". ii) 15 days if any of the charges is held as "Not Proved". |
| 6 | Consideration of CO's representation and forwarding IO's report to the Commission for forwarding second-stage advice. | 15 days from the date of receipt of representation. |
| 7 | Issuance of orders on inquiry report | Within one month from the date of receipt of IO's report. |

19. SUPERVISION OVER VIGILANCE ACTIVITIES

The Commission exercises general superintendence over the vigilance administration and anti-corruption work in the public sector banks. In order to enable the Commission to discharge this function effectively, the Banks would henceforth submit a quarterly report on receipt, disposal and pendency of complaints and vigilance cases to the Commission in the prescribed format. This report would include the list of cases against officers in Scale-III and above as might have been closed / handled by the administrative authorities on their own on the ground that they did not involve a vigilance angle, or were otherwise found to be baseless.

20. INSTITUTION MEETINGS:

The CVC would conduct quarterly meetings with the CVO of the Banking Division and a representative each of the RBI and the CBI with a view to sharing information and discussing matters of common interest. The CVO of a bank may also be co-opted as a participant for a particular meeting if any of the matters proposed to be discussed in the

meeting pertains to him and it is felt that his presence would be of help in taking an appropriate view in the matter.

21. REPORTING AND CONFIRMATION

In the normal course of discharging their functions, Bank officials may, on occasions, be required to exceed their powers / discretion, in organizational interests. After such a transaction has taken place, it should be immediately reported to the controlling authority for confirmation. The latter will grant or reject such requests for ratification within 15 days of the receipt of the report. In case queries / clarification are necessary for grant of such confirmation, the controlling authority may take another 15 days for taking the final action in this regard. It should, however, in all circumstances, ensure that such decision is taken within a period of one month of the receipt of the original report. Otherwise, the transaction in question shall be deemed to have been ratified by it.

When, however, a transaction has to be ratified under the powers of the Board, the confirmation in respect of such a transaction may be obtained from the latter in its next meeting.

22 TIME LIMIT FOR INITIATION OF DISC. PROCEEDINGS

Every Bank has evolved a system of Credit audit/inspection for non-borrowal/borrowal accounts under which they are subjected to close scrutiny. This audit/inspection would scrutinize pre-sanction appraisal, documentation and disbursement of loans/advances and post sanction follow up. If any irregularity is missed out by auditors/inspectors in the first audit/inspection, it is reasonable to expect that the remaining undetected irregularities will be detected in the second audit/ inspection and necessary disciplinary proceeding initiated against the concerned officials in the follow up action. Normally the second audit / inspection would be completed within 3-4 years. The Commission has accordingly approved the proposal that no disciplinary proceeding will ordinarily lie against any official for any lapse not detected within two successive internal regular audits/inspections of the same account or 4 years from the date of event, whichever is later. In case any irregularity is detected subsequent to the second audit/inspection, the auditors/inspectors concerned will be held accountable and be liable for disciplinary proceedings. This time limit will not apply to cases of i) frauds, ii) other criminal offences or iii) cases where malafides are inferable.

23 EXCHANGE OF INFORMATION BETWEEN PSB/PSU

Financial irregularities/frauds are now a days occurring in many PSBs/PSUs. This calls for greater coordination / exchange of information between various Organizations. With a view to strengthening vigilance mechanisms, the Chief Vigilance Officer seeking information shall formally make a request for the same from the concerned Organization clearly specifying the purpose and the exact information required. The Organization which receives the request shall furnish the requested information (including certified copies of documents, if required) with the concurrence of the Chief Vigilance Officer. This information may be parted with in strict confidence and for the specific limited purpose of facilitating vigilance investigations only. It will be the responsibility of the Organizations receiving the information to maintain strict confidentiality.
