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केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



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सं./No....006/MSC/038(Part).....

दिनांक / Dated.....15.01.2020.....

Office Order No. 01 /01/2020

Subject: Framework for Advisory Board for Banking and Financial Frauds...reg.

- Ref:
- (i) CVC Office Memorandum No. 98/Misc./1 dated 26.2.99
 - (ii) CVC Office Memorandum No. 99/VGL/54 dated 8.8.2000
 - (iii) CVC Office Order No. 003/VGL/1(Part) dated 5.7.2001
 - (iv) CVC Office Order No. 05/03/12 on F. No. 006/MSC/038 dated 26.3.2012
 - (v) CVC Office Order No. 05/09/14 on F. No. 006/MSC/038/259085 dated 02.09.2014
 - (vi) CVC Office Order No. 06/08/19 on F. No. 006/MSC/038(Part)/429692 dated 21.8.2019

The Central Vigilance Commission, in partial modification of all earlier orders, has decided to issue revised instructions on the subject as under:

1. The Commission in February 1999, considering the complexities involved in commercial decisions of managers in PSBs and PSEs had decided to have in place an Advisory Board as a first level of examination of all large fraud cases before recommendations/ references are made to investigative agencies, i.e. CBI by the respective PSBs. As per guideline dated 21.8.2019, CBI can also refer any case/ matter to the said Board where it has any issue/ difficulty or in technical matters insofar as PSBs are concerned. The experience of such an Advisory Board has been found to be satisfactory and the same has withstood the test of time. However, recent changes in the nature of economic offences being committed as well as the changes in law necessitate the Commission to bring its instructions in step with the needs of the prevailing circumstances. Furthermore, it is now considered expedient to extend the ambit of advice pertaining to these matters to other relevant organizations.

2. The Central Vigilance Commission is vested with powers under section 8(1) of the Central Vigilance Commission Act, 2003 and section 4(1) of the Delhi Special Police Establishment (DSPE) Act, 1946, inter alia to exercise superintendence over the functioning of the Delhi Special

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Police Establishment in specified matters. Vide Notification No. 228/40/88- AVD.II dated 28th October, 1988 issued by the Department of Personnel and Training in terms of provisions of section 3 of the DSPE Act and amendment thereto vide notification dated 6th March, 2019, DSPE has been given jurisdiction over offences under the Prevention of Corruption Act, 1988.

3. The apex court has, from time to time, enunciated the need for having an expert body advice at pre-inquiry stage, through its decisions in the matters of *Vineet Narain & others vs. Union of India & another* and *Lalita Kumari vs. Govt. of UP & Ors.* The apex court had in the former case observed that:

"There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the decision maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision making of that kind is relevant and may be even decisive in reaching the conclusion whether allegation requires any investigation to be made."

4. Having regard to the amendment to the Prevention of Corruption Act, 1988 through the Prevention of Corruption (Amendment) Act, 2018 which has been brought into force with effect from 26-07-2018 and the operationalization of the institution of Lokpal, an enhanced responsibility has now been cast upon the Commission with respect to inquiring/ causing inquiry into corruption allegations against public servants. The statutory provisions also expand the range of public servants covered under the anti-corruption legislation. Accordingly, the Commission is now seized with the issue of expanding its advisory role.

5. The amendments to the law stipulate that no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is "relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties" without the previous approval of the competent Government/ Authority. Being a provision specific to the recommendation made or decision taken, the complexities and finer nuances of decision making process are now statutorily required to be examined before a prima facie inference can be drawn as to commission of an offence under the Prevention of Corruption Act, by a public servant.

6. In the recent decision of the apex court in the Review Petition (CrI.) No.46 of 2019 in Writ Petition (CrI.) No.298 of 2018 - *Yashwant Sinha & Ors. vs. Central Bureau of Investigation* wherein the Hon'ble court categorically observed that *"Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation.....Section 17A continues to be on the Statute Book and it constitutes a bar to any inquiry or enquiry or investigation."* This decision of the Hon'ble Supreme Court supports the policy of the Commission, the statutory position to lay emphasis on due scrutiny and examination by casting a specific responsibility on the Police Officer to seek the inputs of the competent Government/ authority before proceeding for any enquiry/ inquiry or investigation against any public servant.

7. Further, the nature of economic offences now involves violation of a catena of laws and vigilance action often results in composite cases being registered. Hence, a measured and harmonious application of all relevant laws is a necessary condition for successful prosecution of these matters, with a view to both enhancing success rate as well as reducing burden on the criminal courts.


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8. The Commission had on 21.08.2019 in consultation with the Reserve Bank of India, based on recommendations of an Expert Committee on NPAs and Frauds, constituted the Advisory Board for Banking Frauds.

9. Now in view of the increasing complexities and issues arising or difficulties being faced in technical matters, it is decided to rename the Board as "**Advisory Board for Banking and Financial Frauds**" as follows:

1.	<i>Dr. T.M. Bhasin, Ex-CMD, Indian Bank,</i>	Ex-Vigilance Commissioner, CVC	Chairperson
2.	<i>Shri Madhusudan Prasad, IAS(Retd)</i>	Former Secretary, Ministry of Urban Development	Member
3.	<i>Shri D. K Pathak, IPS(Retd.)</i>	Former Director General, Border Security Force	Member
4.	<i>Shri Suresh N Patel</i>	Ex MD & CEO, Andhra Bank	Member
5.	<i>Shri/ Smt.</i>	Experts from the Financial Sector, including Banking and Insurance	Member (To be nominated)

10. The tenure of Chairman and Members would be for a period of two years. The other terms and conditions of appointment would be as indicated in the Commission's Office Orders No. 06/08/19 dated 21-08-2019 and 006/MSC/038(Part) dated 21.10.2019.

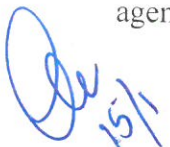
11. The "**Advisory Board for Banking and Financial Frauds**" shall:

- (i) function as the first level of examination, in respect of officials in the rank of GM and above in PSBs and equivalent thereof in Public Financial institutions in case of frauds amounting to more than Rs. 50 Crores (Rupees Fifty Crores), before such organizations initiate action in matters of allegations of banking and financial frauds;
- (ii) tender advice in respect of such officers as mentioned in (i) above, under all relevant laws, including all composite cases;

12. The Public-Sector Banks and Public Financial institutions shall continue to refer all suspected large frauds to the Board in terms of the guidelines issued vide Commission's Office Order dated 21-08-2019. The advice rendered by the Board may be suitably considered by the competent authority while initiating criminal investigation.

13. All Public-Sector Banks and Public Financial institutions shall refer all matters of suspected frauds involving sums of money in excess of Rs.50 Crores (Rupees Fifty Crores) in respect of public servants equivalent in rank to the General Managers and above as referred to in Commission's Office Order dated 21-08-2019 to the Board constituted under Para 9 above for advice before initiating enquiry or inquiry or investigation.

14. All Administrative Ministries, organisations and entities of the Government shall ensure that the advice of the Board has been sought, received and made available, in respect of officials in the rank of GM and above in PSBs and equivalent thereof in Public Financial institutions in case of frauds amounting to more than Rs. 50 Crores (Rupees Fifty Crores), to the investigative agencies who may take such advice into account while taking consequential action to initiate


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preliminary enquiry/ inquiry or investigation and follow due procedure under the provisions of section 17A of the Prevention of Corruption Act, 1988.

15. In case during the course of investigation, the involvement of a public servant employed in PSBs and PFIs above the rank of GM comes to the notice of the investigative agency, they may refer the matter to the Board for advice before proceeding further.

16. State Vigilance Organisations are also advised to adopt a similar framework or refer the matter to the Board constituted hereinabove, in the interest of harmonious and uniform application with respect to matters relating to the provisions of the Central Act, i.e. the Prevention of Corruption Act, 1988 for matters under their respective jurisdictions.

17. The Board will ordinarily, within a month of receipt of the initial reference, tender its advice as may be requisitioned by the Ministry/ Department/ CVC or the Investigating Agency (including the Delhi Special Police Establishment). The Board would on its own decide on internal procedures for its functions/ affairs and shall keep the Commission informed about its performance and activities on a quarterly basis.

18. These guidelines shall apply in all cases henceforth.


(Archana Varma) 15/1
Additional Secretary

To

1. Chairman and Members of the Advisory Board for Banking and Financial Frauds
2. Cabinet Secretary, Rashtrapati Bhawan, New Delhi
2. Secretary, Department of Personnel & Training, North Block, New Delhi
3. Secretary, Department of Financial Services, New Delhi
4. Secretary, Ministry of Corporate Affairs, New Delhi
5. Governor/ Dy. Governor, RBI, Mumbai
6. Director, Central Bureau of Investigation, New Delhi
7. All Chief Executives/ CVOs of Public Sector Banks & Financial Institutions
8. Chief Secretaries of States/UTs