THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED
UDYOGAMANDAL, KOCHI 683501

A Compendium of Rules & Procedures for all Departments of FACT

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FACT LIMITED

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विजय शंकर पाण्डेय
सचिव
VIJAY SHANKAR PANDEY
Secretary

सत्यमेव जयते

स्वच्छ भारत
एक कदम स्वच्छता की ओर

भारत सरकार
रसायन और उर्वरक मंत्रालय
उर्वरक विभाग
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MESSAGE

It is indeed heartening to note that FACT is bringing out its own Vigilance Manual for the use of all its Departments. In our efforts to curb corruption and promote vigilance among the employees, a properly framed Manual or Rule Book is the most basic requisite. While most organizations are content to use the CVC Manual and their own Discipline and Appeal Rules, it is always recommended that each CPSE engaged in specialized activities of different types must have a Vigilance Manual as well as other manuals customized for that particular organization.

I am happy to note that FACT Vigilance has taken up this initiative in addition to other interesting and useful innovations. My best wishes to FACT and Vigilance Department for bringing this to fruition.

Jai Hind.

(Vijay Shankar Pandey)

New Delhi,
5th October, 2016.

S.K. Lohani
Joint Secretary & CVO
Tel : 23381294

सत्यमेव जयते

भारत सरकार
GOVERNMENT OF INDIA
रसायन और उर्वरक मंत्रालय
MINISTRY OF CHEMICALS & FERTILIZERS
उर्वरक विभाग
DEPARTMENT OF FERTILIZERS
नई दिल्ली - ११०००१
NEW DELHI-110001

6th October, 2016

FOREWORD

Vigilance Departments in CPSEs are expected to investigate and analyze cases of varied nature ranging from malpractices in procurement or sales to rule violations in recruitment and construction projects. All these are "sensitive functions" and very often the Officers posted to Vigilance may be possessing experience related to only one of these functions by virtue of their parent Department postings. As such, the avenues of training or skill imparting with regard to Vigilance Investigation, etc. are rather scanty and the Officers are expected to pick up the ropes and learns as they proceed with the investigation of cases.

In this context the efforts taken by FACT Vigilance to bring out a streamlined and comprehensive Vigilance Manual is laudatory. This Manual includes an over-view of Vigilance and corruption, the Vigilance organizational set up in India including CVC and CBI, etc. detailed procedures for investigation covering procurements, Stores Department, Human Resources Development Department and canons of Financial Propriety. The details regarding Preventive, Punitive and Detective Vigilance, identification of Vigilance Angle, registration of complaints, analysis of evidence and writing of detailed investigation reports are of great importance to all Vigilance Officers. The Manual also give detailed instructions regarding suspension and writing of Speaking Orders, conduct of Disciplinary Proceedings and types of misconducts. Important CVC Circulars, Judicial precedence, etc. which also makes this a useful reference guide for all the Departments and activities.

I am sure that this document will be of considerable use to the present and future generations of FACT Officers in all the Departments including Vigilance.

My congratulations and best wishes to FACT Vigilance team for the exemplary efforts.

(S.K. Lohani)

ए बि खरे
अध्यक्ष एवं प्रबंध निदेशक
A.B. Khare
Chairman and Managing Director

दि फ़र्टिलाइज़र्स एण्ड केमिकल्स ट्रावनकोर लिमिटेड
उधोगमंडल, कोची 683501, केरल
The Fertilizers And Chemicals Travancore Limited
Udyogamandal, Kochi 683501, Kerala

Message

I am delighted to note that Vigilance has finalized the FACT Vigilance Manual. This Manual has been under preparation for more than 2 years and discussed at various points in the Board Meetings and Audit Committee Meetings. It is heartening to note that amongst several other innovations FACT Vigilance has also managed to publish this Manual for the use of not only Vigilance Department but also of the other Departments/Divisions.

The Manual provides a plethora of information and guidelines collected from CVC Manual, CVC Circulars and FACT's own Rules and Regulations as well as learning from the analyses of various corruption cases investigated by CVC/CBI.

I shall place on record my appreciation of this additional initiative from Vigilance and exhort of our employees and Officers to make the best use of the Vigilance Manual in all their day to day business activities.

(Sd)

A.B.Khare

3 November 2016

जे. विनयन, आई आर टी एस
मुख्य सतर्कता अधिकारी
J. Vinayan, I.R.T.S.
Chief Vigilance Officer

दि फ़र्टिलाइज़र्स एण्ड केमिकल्स ट्रावनकोर लिमिटेड
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Message

It is indeed a matter of satisfaction that after almost 3 years of planning and research we have been able to finalize the FACT Vigilance Manual to be published during the Vigilance Awareness Week 2016. It is a matter of pride that only very few of the over 250 CPSEs and other Central Government Organizations have their own Vigilance Manual. Most of us used to follow the CVC Manual for all normal purposes. A few others such as Air India, HAL, etc. had attempted to bring out their own Vigilance Manual. Some of the Departments like DoPT have their own Hand Book too. However, the CVC Manual and CVC Circulars brought out from time to time have been the abiding guides for all of us in the Vigilance Domain so far. Our editorial team has drawn from the extant Manuals and Codes of other CPSEs, CVC, DoPT and FACT's own CDA Rules and Procurement Manual while finalizing this work.

The Chapters here include the best practices as well as avoidable practices for all the Departments in FACT. Though we have taken every effort to make this project error-free it is quite likely that there may be some mistakes or typos that may have crept in during the production of this book. I apologize in advance for the same.

We have deeply indebted to Shri V.S. Pandey, Secretary (Fertilizers), Shri S.K.Lohani, Joint Secretary & CVO, Department of Fertilizers, Government of India CMD/FACT and all the Division Heads of FACT for their support, encouragement and guidance for this work. I congratulate M/s. K.Rajeswaran, T.B.Sivaraman, K.Sivadasan Pillai, K.S.Balakrishnan, N.Ramachandran & P.K.Synan for the intrinsic value and the depth of matter covered in this Manual. I also acknowledge with gratitude the services of Shri T.R.Sasikumar and others who have contributed in no small way for bringing this to fruition.

I hope this Manual is of some use for the coming generations of FACT employees.

Jai Hind!

J.Vinayan, I.R.T.S.
Chief Vigilance Officer

2 November 2016

From the Editor's Desk

It is a matter of great pleasure that we could bring out this comprehensive manual during the Vigilance Awareness Week 2016. This had been a long cherished need and item in our agenda for years. Every attempt has been made to address the various vigilance issues, practices adopted, disciplinary proceedings, case laws, CVC Circulars, etc. We feel that this would be a guide for preventing and solving common vigilance related matters for all departments.

We are much indebted to Shri Sasikumar T.R. who was AGM (Vigilance) who put in his best efforts to go through similar manuals in many major Public Sector Undertakings and has included the best among them. Major references were the Vigilance Manuals of HAL and Air India. We have tried to connect the clauses with CVC Circulars, FACT CDA Rules and Manuals of other Departments in FACT. I thank my colleagues who have taken pains to thoroughly go through the drafts. My sincere thanks to the earlier team of Vigilance Officers, who had contributed to bringing this manual in this shape. I thank our CVO, Shri J.Vinayan, IRTS, for his enthusiastic approach, meticulous planning, giving continued encouragement and support to us in bringing out this Manual.

We have tried to include all major information which were available to us as on date. However, we are only happy to add on if anything is left in the next revision. Any suggestions for improvements are most welcome. We will, of course, be bringing out revisions of the manual every few years or as required.

We hope this effort stands FACT Management in good stead in managing all our sensitive functions successfully and transparently.

K Rajeswaran
Deputy General Manager (Vigilance)
FACT Ltd.

3 November 2016

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FACT VIGILANCE MANUAL

Chapter I

1.0.0 Purpose

The purpose of the FACT Vigilance Manual is:

To provide a written guideline for all Executives, Officers and Employees, whether dealing with Vigilance matters or not.

To ensure that the guidelines issued by the Central Vigilance Commission (CVC) and Vigilance related instructions and guidelines issued by the Department of Public Enterprises (DPE) and the Department of Personnel & Training (DoPT) are followed in FACT.

2.0.0 Issue of the Manual

FACT Vigilance Manual is issued by CVO, FACT.

Any amendments to this manual shall be issued only by CVO FACT.

The information held within this Manual is supported and supplemented by Vigilance Manual issued by CVC, Special Chapter on Vigilance Administration in Public Sector Enterprises issued by CVC 1999, FACT Employees Conduct, Discipline and Appeal Rules 1977.

3.0.0 Introduction

The word Vigilance has its origin from Latin word ***'vigilare'*** which means 'keep wake'. Vigilance means an action or a state of keeping careful watch for possible danger or difficulties. Though the concept of institutionalized Vigilance set up as available today are of recent origin the basic idea of rulers keeping watch on the affairs of the State was in existence from time immemorial. Rulers used to collect intelligence about the on-going activities in the kingdom so that he could take effective steps to avert any untoward happenings in the State. Being watchful or vigilant becomes relevant in any organization for preventing any practice which is likely to affect its interest. Rules and regulations are laid down in all organizations irrespective of whether it is private or public. Persons occupying supervisory positions are supposed to not only follow the laid down procedures themselves but are also required to ensure that such procedures are followed by all employees working under their control.

Management of any commercial organization is accountable to its owners. In the case of private companies the owners are those who have invested money for raising the organization whereas in the case of Public Sector it is the resources are invested by the Government (State or Central) out of public fund. As such the Management of Public Sector organizations is accountable to the public. With the inception of Right to Information Act any citizen of India can seek any information/record, subject to exceptions granted under the Act. Unlike private organizations where getting decent return on the investment is the only motive, Public Sector organizations are required to conduct its business in free, fair and transparent manner and at the same time ensure return on investment to ensure the existence and growth of the organization. This gives additional responsibility to the Management of Public Sector organizations by way of ensuring that decisions taken are not only fair but also appear to be fair. For ensuring this it becomes necessary to lay down procedures and also follow those procedures. It is necessary for all employees of Public Sector organizations to appreciate the need to follow the procedures and maintain supporting records in case they deviate from the laid down procedures, for substantiating the decision in case the same is questioned later.

4.0.0 Corruption

No country, however democratic, is free from corruption. This social ill touches government officials, politicians, business leaders and journalists alike. It destroys national economies, undermines social stability and erodes public trust. Corruption lowers tax revenue, inflates costs of public services and distorts allocation of resources in the private sector. The negative correlation between good governance and economic development has been identified. Corruption humiliates the ordinary citizen and weakens the state.

4.1.0 Defining Corruption can be a challenge. It takes many forms and perpetrators are skilled in developing new ways to be corrupt and cover their tracks. Much thought has been devoted to developing different definitions of corruption but, despite its complex nature, most people can recognise a corrupt act when they see it.

Committee on Prevention of Corruption (The Santanam Committee) Report 1964 defines corruption as a complex problem having roots and ramifications in society as a whole. In its widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office.

Corruption may be defined as '**the abuse of entrusted power for private gain**'. This definition captures three elements of corruption.

One, corruption occurs in both the **public and private sectors** (and media and civil society actors are not exempted). Two, it involves **abusing power** held in a state institution or a private organization. Three, **the bribe-taker** (or a third party or, for example, an organization such as a political party) **as well as the bribe-giver benefit**, whether it be in terms of money or an undue advantage. Sometimes the 'advantage' gained by the bribe-giver may not be 'undue' or clear cut but is nonetheless an advantage. For example, in a corrupt society where the right to access public services such as health or education can be only secured by paying an unlawful bribe, those who can afford to pay have an advantage over those who cannot. In such circumstances the bribe-givers' 'benefit' is merely that which is his or her rightful due and bribe-takers receive an advantage for carrying out functions that they are obliged anyway to perform.

Corruption is often described as either 'grand' or 'petty' (petty corruption is also described as 'administrative'). **Grand corruption** typically takes place at the top levels of the public sphere and the senior management levels of business, where policies and rules are formulated and executive decisions are made. It also often involves large sums of money (**political corruption** is another common term that may be used to refer to grand corruption more generally or specifically to the negative influence of money in political campaigns and political parties).

Small scale, administrative or **petty corruption** is the everyday corruption that takes place at the implementation end of politics, where public officials meet the public. Petty corruption is most commonly found as bribery in connection with the implementation of existing laws, rules and regulations, or in abuse of power in daily situations (e.g., the traffic police who takes money every day from taxi drivers in return for not harassing them further). It usually involves modest sums of money in any given exchange. However, endemic petty corruption can result in great costs and can place serious stress on the functioning of state systems, in a way comparable to grand corruption.

It is important to note the nuances in trying to categorize different manifestations of corruption. There is not a clear division between where petty corruption ends and grand corruption begins: lowly officials who demand illegal payments from citizens may be doing so because they have to pay a cut of their salaries to their managers, who pay a cut to their superiors, stretching all the way up to the most senior state officials.

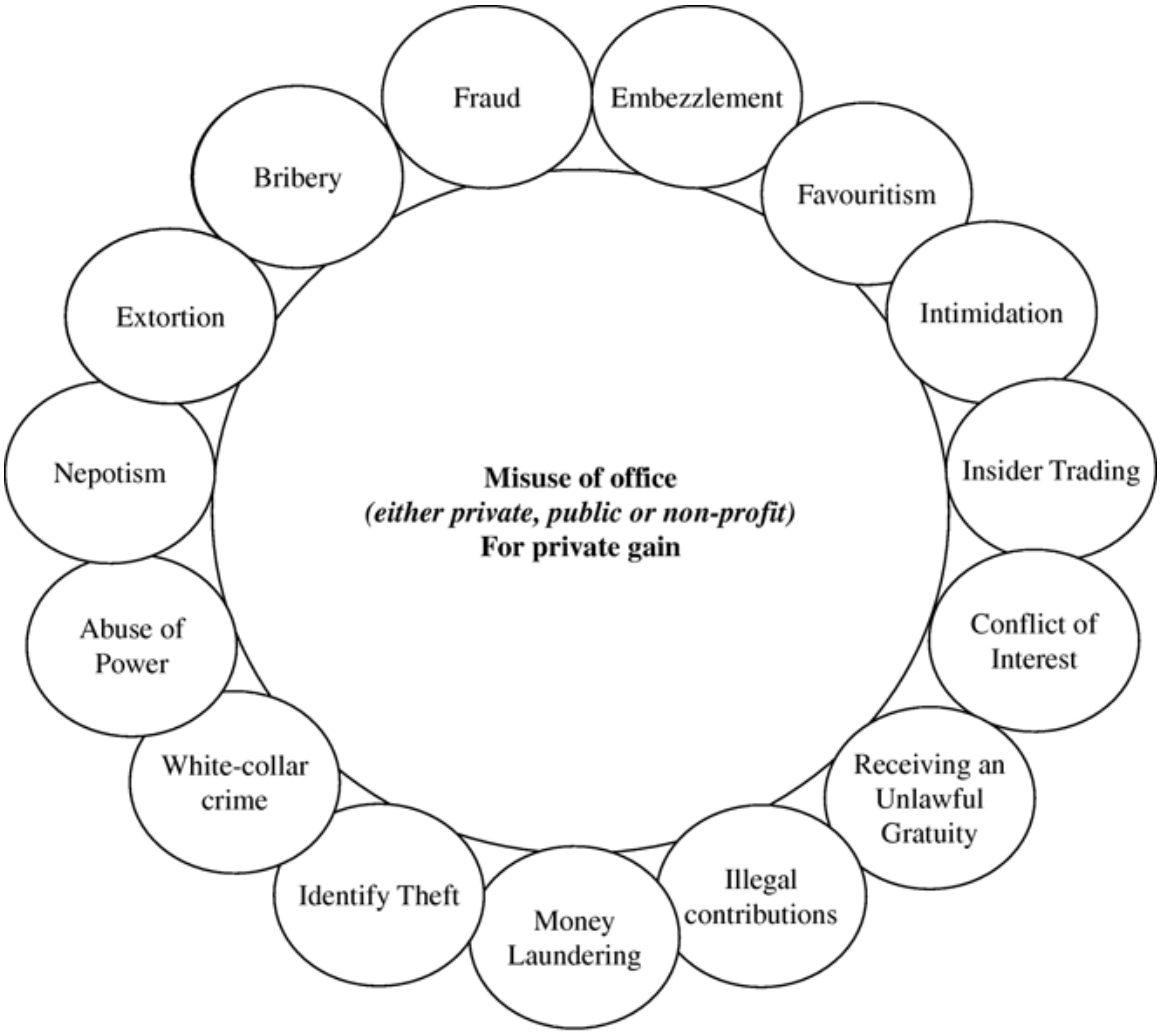
4.1.0 Why does corruption matter for development?

Corruption Costs: Citizens are compelled to pay for services that should be free; state budgets are pillaged by corrupt politicians; public spending is distorted as decision-makers focus spending on activities likely to yield large bribes like major public works; foreign investment is impeded as businesses are reluctant to invest **in uncertain environments; and economies suffer.**

But corruption not only costs in terms of money. It costs in terms of public trust and citizens' willingness to participate in their societies. Corruption often has links to organized crime and fosters, as well as thrives, in conflict and war. Indeed, high levels of corruption can increase the likelihood of a protracted conflict or a post-conflict society sliding back into war. Efforts to tackle climate change can also be undermined by corruption as bribes are paid to ignore environmental protection rules in the pursuit of quick profits. In these ways state security and the very values of democracy are undermined and the fulfilment of development goals is threatened.

4.2.0 Types of Corruption

Many types of corrupt acts are proscribed in criminal and administrative law in different countries. The UN Convention against Corruption sets out the types of corrupt criminal behaviour that signatory states are obliged or recommended to introduce into their legal systems. **Acts can also be corrupt even if the law does not proscribe** and this speaks to the often slippery and complex nature of corruption. Its manifestations constantly evolve and are not always captured by criminal or administrative law; hence prevention, rather than solely punishment, is emphasized by anti-corruption practitioners.



Notes: These other forms of corruption are used interchangeably to mean corruption; in fact, corruption most often lies at the intersection of the public and the private sectors; they are basic forms of corruption which in a real sense occur with in the broader forms of corrupt practices

Some of the **most common types of corrupt acts are**

(i) **Bribery** takes place when a person with authority accepts or solicits a bribe to exercise a function in a particular way.

(ii) A **kickback** is similar to a bribe but usually refers to a payment given in return for receiving a contract, which is 'kicked back' to someone involved in awarding the contract. **Bribery of foreign officials by private sector** actors is also a crime in many countries. Even if a bribe does not take place in a company's country of origin, it may still be punishable by the home country's authorities.

(iii) **Trading in influence** or influence peddling is a form of bribery. For example, a person promises to exert an improper influence over the decision-making process of a public official or private sector actor in return for an undue advantage. Typically this form of corruption can be perpetrated by those in prominent positions or with political power or connections. Such persons' connection to power, that is to say their 'influence', is traded for money or an undue advantage. Not all countries criminalise this form of corruption, despite the fact that international conventions on corruption, including UNCAC, recommend its criminalisation.

(iv) **Illicit enrichment (Disproportionate Assets)** refers to a situation in which officials cannot explain their wealth in relation to the income they lawfully earn. The wealth that is not explicable may be the proceeds of a bribe or a form of stealing such as embezzlement, misappropriation, concealment of property, money laundering or false accounting. All these corrupt behaviours could also occur in the private sector.

4.3.0. Conditions that facilitate corruption

Corruption can grow in a variety of political and economic environments, though it particularly thrives where accountable governance structures and processes are weak. It is important to keep in mind; however, that weak governance does not necessarily lead to corrupt acts – indeed there may be many honest people acting honestly or behaviors that result from incompetence or mismanagement rather than corruption.

While the importance of different factors can vary from place to place and from time to time, it seems that, for corruption to flourish, certain key pre-conditions are necessary. The following **four pre-conditions that facilitate corruption**:

(i) Corruption is facilitated if there exists a set of imperatives and **incentives that encourage someone to engage in corrupt transactions**. These may include, for example, low and irregular salaries for officials with large dependent families. Such officials may feel compelled to become corrupt. Social norms can also create incentives to participate in corruption. For example, norms that encourage giving favourable treatment to particular people (such as family members or those affiliated with your political group). Political pressure can also persuade people into acting corruptly, for example

when a political candidate favours an individual or a group, in detriment of the public good, in return for votes.

(ii) The **availability of multiple opportunities for personal enrichment** increases the temptation of corruption. Some economic environments are much more conducive to corruption, in particular mineral and oil rich environments are more fertile territories than those relying on subsistence agriculture. The size and growth of public resources will help define the possibilities for corruption, and extensive discretion over the allocation of those resources provides opportunities for corrupt behaviour.

(iii) **access to and control over the means of corruption**. Incentive and opportunity create the possibility, but there have to be ways of actually engaging in corruption. These might include control over an administrative process such as tendering or having access to offshore accounts and the techniques of money laundering.

(iv) **limited risks of exposure and punishment**. Corruption will thrive where there are inadequate and ineffective controls. A lack of policing, detection and prosecution encourages corruption Weak internal controls such as financial management, auditing, and personnel systems are also facilitating conditions. Where the media and civil society are controlled and censored, corrupt politicians and officials have less to fear.

4.4.0 Addressing corruption

Anti-corruption work is not just about punishing the corrupt, although prosecution of corrupt individuals is important to demonstrate that corruption is not tolerated and no one, neither the highest government official nor the wealthiest businessperson, is immune from prosecution. A holistic approach to address corruption goes further than criminalisation and prosecution: it involves **preventing it, by building transparent, accountable systems of governance and strengthening the capacity of civil society and the media** as well as improving public integrity, strengthening the personal ethics of public and private officials, and perhaps even challenging social norms that encourage corruption.

Measurement tools to assess the need for anti-corruption interventions and evaluate their success are a key part of reform efforts. **Corruption indices have proliferated in the past decades and are a useful tool to draw media attention to the problem**. However, given the many types of corruption indices and indicators, produced by civil society, international Organizations and governments for different purposes, it is important to know what they

can offer and their limitations, before relying on them to inform policy or design anti-corruption programmes.

Though there is no one-size-fits-all model, United Nations Convention Against Corruption (**UNCAC) sets out a thorough, but not exhaustive, approach to tackling corruption systematically**. It provides approaches to corruption prevention in the public and private sectors, asset recovery, and international cooperation.

Ultimately however any approach to fighting corruption depends primarily on real political will within the country itself to drive reforms.

4.5.0 Prevention

UNCAC includes and elaborates on the prevention practices developed over recent years by many countries. These countries have, with varying levels of success, typically approached corruption by **developing 'National Anti-Corruption Strategies'**, listing the risks of corruption across government and sectors and pinpointing necessary reforms. A common starting point has been to establish an 'Anti-Corruption Commission' which in some cases has an investigative and prosecutorial function, in other cases has an awareness-raising and public education function, and in still others has a monitoring function or indeed comprises all these features. However, a separate body to deal with anti-corruption work may not be necessary, and a country may decide to rely on its existing institutions, which can share the responsibility. A further step might be taken by **mainstreaming anti-corruption measures through policy sectors**.

Beyond the establishment of specific anti-corruption bodies or tailored anti-corruption laws and tools, **states can tackle corruption through a range of other preventive measures**. These often fall under the rubric of good governance and public integrity. Some such measures are explained here.

UNCAC describes a series of actions that states can implement to improve the ethics and performance of public officials. **Systems for hiring and promoting civil servants** and other non-elected public officials can be strengthened to ensure that they are based on transparency and merit. Public officials' quality of work and ethical standards can be improved by **access to education and training** programmes to enable them to meet the requirements for the correct and honourable performance of their public functions. Public officials can also design tailored **codes of conduct** that respond and refer to their particular work and senior public officials

could strengthen their integrity by agreeing to **declare assets and conflicts of interests**.

UNCAC also sets out **measures to prevent corruption in the private sector**. These include **codes of conduct for professions** and the promotion of good commercial practices among businesses, such as the use of fair contract terms.

States are also tasked with promoting transparency in the private sector, such as measures to **make clear the identity of the real people behind corporate entities**. Transparency is also served, and corruption may be prevented, if states develop and implement **clear procedures regulate private entities**, for example regulations regarding subsidies and licences granted by public authorities for commercial activities. In the interest of preventing conflicts of interests, UNCAC recommends imposing **restrictions on the private sector activities of former public officials** where those activities relate directly to the public functions they previously held. Clear and sufficient **internal auditing controls** to prevent and detect acts of corruption are also prioritised.

The **active inclusion of citizens in the business of government** is also emphasised in UNCAC. One approach to achieve this is strengthening **access to information** and encouraging the participation of citizens in decision-making. Access to information is achievable when there are secure and reliable information storage systems in government to preserve documents particularly those relating to public expenditure. Civil society groups can be encouraged to have a meaningful role in policy formation and holding political actors to account.

These, and many more preventive measures, are concerned with building transparent, accountable systems of governance and thus limiting risks and opportunities for corruption.

4.6.0 Asset Recovery

UNCAC details how states should cooperate to ensure that **assets that are the proceeds of corruption crimes are returned to their legitimate owners**. Financial institutions should be obliged to scrutinize deposits in high value accounts made by prominent public officials for the purpose of detecting and reporting to the appropriate authorities any suspicious transactions. Public officials with interests in financial accounts in foreign countries should be obliged to report that relationship to appropriate authorities and to maintain appropriate records related to those accounts.

4.7.0 Anti-corruption Framework

Transparency, participation, ethics, accountability and integrity are closely interconnected concepts and constitute the integral and overlapping elements of any comprehensive anti-corruption framework.

Transparency initiatives typically involve promoting information disclosure and access to information for a wide range of government processes such as budget formulation and implementation, revenue management and procurement processes in different sectors. Participatory approaches aim at empowering beneficiaries to participate at all stages of the decision making, implementation and monitoring processes as a means to promote vertical forms of accountability, using tools such as participatory budget processes, social audit, and citizens' report cards. As it is impossible to mobilise citizens for change without providing them access to information, transparency of government processes and public access to official information are essential to support citizen's demand for good governance and anti-corruption. Transparency International's anti-corruption plain language guide refers to transparency as "the characteristic of governments, companies, Organizations and individuals of being open in the clear disclosure of information, rules, plans, processes and actions. As a principle, public officials, civil servants, the managers and directors of companies and Organizations, and board trustees have a duty to act visibly, predictably and understandably to promote participation and accountability" (Transparency International, 2009).

A wide range of anti-corruption interventions have focused on improving information disclosure policies and transparency of operations in various sectors as a prerequisite to improve project monitoring as well as to promote public oversight of development projects.

But transparency and participation approaches will be effective only if they are combined with accountability such as monitoring, control and oversight by other public institutions that can question and eventually sanction improper behaviours. Integrity cuts across all these interventions as the underlying principle underpinning transparency, ethics, participation and accountability and can be promoted through the effective implementation of integrity pledges or codes of conduct.

The concepts of transparency, participation, accountability and integrity are deeply interconnected, as four constituent – and overlapping - elements of the "accountability" chain. Only informed

citizens can stand up for their rights and hold their leaders accountable for their actions, decisions and management of public resources. Transparency is mainly concerned with promoting information disclosure and access to information as a prerequisite for public accountability. But transparency without empowering beneficiaries to participate at all stages of the decision making, implementation and monitoring processes is unlikely to ensure greater accountability and responsiveness of public policies. As such, public participation can be seen as accountability enhancing by providing affected communities with the means to engage with policy processes.

But "voice"/getting one's voice heard and participation alone, without concrete mechanisms to effectively hold the state accountable, does not automatically lead to accountability. Citizens' participation and empowerment must be matched by strengthening the state's ability to meet its citizens' expectations and demands. Too often, focus is either on voice (affording avenues for citizens' participation and expression) or on accountability (strengthening the state will and capacity to respond to citizens' demands). Both sides of this accountability equation need to be strengthened simultaneously to achieve long lasting change.

4.7.1 Examples of horizontal accountability interventions

Transparency International's plain language guide defines accountability as "the concept that individuals, agencies and Organizations (public, private and civil society) are held responsible for executing their powers properly". The literature traditionally distinguishes between two major forms of accountability, horizontal and vertical. Vertical accountability usually refers to the means through which citizens, mass media and civil society seek to enforce standards of good performance on officials. As many of the participatory approaches/social accountability mechanisms discussed above promote vertical forms of accountability, this section will focus more specifically on horizontal accountability, which requires agencies to report sideways and subjects public officials to restraint and oversight, or 'checks and balances' by other institutions that can question and eventually sanction improper behaviours. This can include measures aimed at increasing financial accountability using tools such as auditing, budgeting or accounting for performances against agreed upon targets.

4.7.2 Initiatives strengthening Organizations' integrity infrastructure.

According to Transparency International's plain language guide, integrity refers to "behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions that create a barrier to corruption".

4.7.3 Development and enforcement of sectoral codes of conducts

Codes of conduct can contribute to raise ethical and professional standards of civil servants and promote a culture of integrity within an institution or an organization. In the education sector for example, codes of conduct have been developed specifically for administration staff, teachers and sometimes even students, in addition to general statutory rules that are in force for all members of the public service. According to The International Institute for Education and Planning (IIEP)-UNESCO, such codes generally aim at enhancing the commitments, dedications and efficiency of the teaching profession, provide self-disciplinary guidelines and establish norms of professional conduct. They often address all forms of unethical behaviours, including sexual extortion or harassment. Bangladesh, Nepal and India are examples of countries that have adopted such an approach. A study in 2005 by UNESCO established that the introduction of teachers' codes of conduct was perceived to have had a positive impact on the commitment, professional behaviour and performance of teachers and school personnel in these countries (Shirley van Nuland and B.P. Khandelwal 2006).

4.7.4 Raising ethical standards in the private sector: the business principles to counter bribery

Transparency International's Business Principles for Countering Bribery provide a framework for Good practice companies to develop comprehensive anti-bribery programmes and policies. Originally developed through an extensive multi-stakeholder process, they represent a good practice model for corporate anti-bribery policies and an expression of core values of integrity and responsibility (Transparency International, 2009). Whilst many large companies have no-bribes policies all too few implement these policies effectively. TI recommends a six step implementation process that provide practical guidance on effectively implementing these principles: (1) defining the company's anti-bribery policy; (2) setting out the company's implementation approach; 3) Integrating into the policies and processes of the enterprise; (4) Communicating the

programme and training to raise awareness of employees and business partners; (5) and (6) Monitoring and evaluation.

4.7.5 Integrity Pacts

Tools such as "Integrity Pacts" (IP) can be used to promote transparency and integrity in the sensitive area of public contracting. Developed by Transparency International, IPs are processes that engage a public institution and all bidders to agree for a public contract that neither side will ever: pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while carrying out the contract. By declaring up-front that the procurement process will be corruption free, both public institutions and private agencies open up their operations for public scrutiny and the IP also introduces a monitoring system that provides for independent oversight and accountability of the procurement process.

In Argentina, for example, Poder Ciudadano (Transparency International - Argentina) demonstrated that cities can save substantial sums of money through the combined use of public hearings and integrity pact. This process was first tried in the city of Morón, a municipality located in the centre of the Buenos Aires Metropolitan Area in a garbage collection bidding process. In addition to promoting transparency and participation, the implementation of the tools resulted in reducing the value of the contract by 35% (UN Habitat, 2004).

The TI national chapter in Bangladesh has extended this concept to other sectors, working with selected schools, hospitals and local government bodies to create "Islands of Integrity" through a public commitment to work without engaging in bribery and community-based oversight mechanisms. In Nepal, the concept of Integrity Pact does not only involve improving the procurement process, but has been adapted to become a comprehensive effort on the part of a number of municipalities to renounce corrupt activities through solemn pledges on the part of elected officials and staff in the municipalities. It also involves establishing public grievance mechanisms as well as an effective monitoring and evaluation system within the municipalities.

4.7.6 Campaigns of asset disclosure for politicians

Many countries around the world have introduced systems of asset declarations for public officials as a tool to prevent corruption. The scope, coverage and level of enforcement of asset declaration laws can greatly vary from country to country, according to the local context, political situation and capacity to manage such schemes, as reflected

by a newly published OECD analysis of the existing practice in the area of asset declarations in Eastern Europe and Central Asia, and in some OECD member states in Western Europe and North America (OECD, 2011). In Romania for example, all high-level government officials must disclose on a public website their financial and property holdings, the positions they hold in associations and businesses, any paid professional activities and any investment made in companies. In Angola, assets declarations of public officials are kept in sealed envelopes that can only be opened if the owner is prosecuted for a crime.

While little is known on the impact of such systems on the actual level of corruption, research findings from a comparative analysis of asset disclosure laws in 16 countries indicate that countries where wealth disclosure is combined with content verification and public access to declarations are significantly associated with lower perceived levels of corruption (Transparency International, 2006). Civil society can play an important role in monitoring the income and assets declaration of public officials.

Imagine a scene in any traffic light junction, it is 10:30 am and you are in your car rushing to an appointment for which you are already late. You are at a red light. You look to the right, no cars coming, look to the left, no-one. You can cross the red light or wait. What do you do?

In an ideal world, a red light should be enough to prevent you from crossing the junction. However, in practice this ordinary traffic situation shows you can either break the law to gain some time or follow the rules and wait.

Your decision is probably influenced by several factors, for example, how important the appointment is. But let's focus on the decision being based on the likelihood of getting into trouble. With no cars or people near you, the possibility of an accident is marginal; therefore your only other main worry is that you get caught crossing the red light and consequently have to pay a fine (or a bribe). This has an impact on your pocket and makes you waste even more time.

Just as this simple example illustrates, even good infrastructure – in this case a red traffic light – has limited effect if you feel you can get away with breaking the law and go unpunished. A similar thing happens with anti-corruption measures like transparency laws, anti-corruption plans and agencies, codes of ethics, the signing of international anti-corruption conventions, registers of interest and asset declarations by public servants, and many more. All those

constitute fundamental infrastructure for preventing corruption. They are essential, but not enough.

In other words, you can install all the traffic lights you want in a city, but if no real mechanism is in place to enforce the “stop” when the red light is on, then they will only be part of the urban landscape, mere decoration

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Chapter II

4.8.0 Anticorruption initiatives in India

The major Anticorruption initiatives in India are the following.

4.8.1 Lokpal and Lok Ayukta

In pursuance of the recommendations of the Administrative Reforms Commission 1966, headed by Shri Morarji Desai, it was proposed to set up the institution of Lokpal and Lok Ayukta to fight corruption in administration and public life. The Lokpal Bill has been introduced several times in Parliament, but due to various reasons it has not been enacted into a law. There was no agreement on (a) the inclusion of the office of PM in the definition of "public servant", (b) the definition of "criminal misconduct", and c) the constitutional status of the institution

The first Administrative Reforms Commission had recommended the setting up of the Lokpal. The Lokpal is supposed to be a watchdog over the integrity of Ministers and the Members of Parliament. The Lokpal Bill provides for constitution of the Lokpal as an independent body to enquire into cases of corruption against public functionaries, with a mechanism for filing complaints and conducting inquiries etc

The bill was tabled in the Lok Sabha on 22 December 2011 and was passed by the house on 27 December 2011 as The Lokpal and Lok Ayuktas Bill, 2011. The bill was subsequently tabled in the Rajya Sabha on 29 December 2011. On 21 May 2012, the bill was referred to a Select Committee of the Rajya Sabha for consideration. The bill was passed in the Rajya Sabha on 17 December 2013 after making certain amendments to the earlier Bill and in the Lok Sabha on 18 December 2013. The Bill received assent from President on 1 January 2014 and came into force from 16 January 2014.

The Lokpal Act, 2013, officially The Lokpal and Lokayuktas Act, 2013, is an anti-corruption Act which "seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connecting them".

4.8.2 Central Vigilance Commission (CVC)

On the basis of recommendations made by the Committee on Prevention of Corruption, popularly known as the Santhanam Committee, the Central Vigilance Commission (CVC) was set up by the Government of India in 1964. It was accorded statutory status, consequent upon the judgment of the Hon'ble Supreme Court in Vineet Narain v. Union of India (1998) 1 SCC 226, through the Central Vigilance Commission Act, 2003. The CVC advises the Union Government on all matters pertaining to the maintenance of integrity in administration. It exercises superintendence over the working of the Central Bureau of Investigation in connection with cases coming of under PC Act 1988 - the principal investigating agency of the Union Government in anti-corruption matters - and also over the vigilance administration of various Ministries and other organizations of the Union Government.

4.8.3 The Right to Information Act 2005

This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

4.9.0 Vigilance-Organizational set up in India

4.9.1 The Central Vigilance Commission (CVC)

The Central Vigilance Commission (CVC) established in 1964, is the apex body for exercising general superintendence and control over vigilance administration in the country. The establishment of the Commission was considered essential for evolving and applying common standards in deciding cases involving lack of probity and integrity in administration. The Resolution empowered the CVC to undertake inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner irrespective of his or her status. Through subsequent ordinances and legislations the Government has added to the functions and powers of the Commission. Subsequent to the directions of Hon'ble Supreme Court in the judgment of the Writ Petition filed in public interest by Shri Vineet Narain and others in

Jain Hawala Case, the Government promulgated an Ordinance in 1998. The Ordinance of 1998 conferred statutory status to the CVC and the powers to exercise superintendence over functioning of the Delhi Special Police Establishment, and also to review the progress of the investigations pertaining to alleged offences under the Prevention of Corruption Act, 1988 conducted by them. In 1998 the Government introduced the CVC Bill in the Lok Sabha in order to replace the Ordinance, though it was not successful. The Bill was re-introduced in 1999 and remained with the Parliament till September 2003, when it became an Act after being duly passed in both the Houses of Parliament and with the President's assent. The provisions of the Act include inquiries into offences alleged to have been committed by certain categories of public servants of the Central Government; corporations established by or under any central Act; government companies; societies; and local authorities owned or controlled by the Central Government; and for matters connected therewith or incidental thereto. To give effect to the provisions of the Act of 2003, the Commission exercises all powers and functions entrusted to it under the Government of India Resolution No.24/7/64-AVD dated 11.2.1964, which are not inconsistent with this Act.

4.9.2 Administrative Vigilance Division

The Administrative Vigilance Division was set up in the Ministry of Home Affairs in August, 1955 to serve as a central agency to assume overall responsibility for anti-corruption measures. Under the scheme each Ministry/Department was required to nominate an officer of at least Deputy Secretary's status to be the Chief Vigilance Officer of the Ministry/Department who was assigned the specific responsibility for dealing with all vigilance matters under his direct control. The task of the

Administrative Vigilance Division was to co-ordinate the efforts of the Ministries/ Departments and to provide direction and drive, in particular:

To ensure that the tasks assigned to the Chief Vigilance Officer in each Ministry/Department were implemented with vigour and speed.

To give guidance and assistance, wherever needed, to ensure that departmental inquiries were conducted with all possible speed consistent with due observance of procedural requirements; and to ensure that investigations and prosecution entrusted to the Special Police Establishment were carried out with due speed and vigour.

With the establishment of the Central Vigilance Commission, a good part of the functions performed by the Administrative Vigilance Division are now exercised by the Central Vigilance Commission. The Administrative Vigilance Division is responsible for the formulation and implementation of policies of the Central Government in the field of Vigilance, integrity in public services and anti-corruption and to provide guidance and co-ordination to Ministries /Department of Government of India in matters requiring decisions of Government.

The Administrative Vigilance Division is in administrative and supervisory charge of the Central Bureau of Investigation and is responsible for the conduct of vigilance cases relating to members of Services controlled by the Department of Personnel and Training e.g. All India Services (except IPS which is dealt with by the Ministry of Home Affairs), Central Secretariat Service (Selection Grade and Grade I), Indian Economic Service and Indian Statistical Service. The members of Indian Economic Service and Indian Statistical Service are controlled by the Department of Economic Affairs and the Department of Statistics respectively.

4.9.3 Central Bureau of Investigation

The Central Bureau of Investigation is constituted under the Government of India, Ministry of Home Affairs Resolution No. 4/31/61-T, dated the 1st April, 1963. The investigation work is done through S.P.E. Wing of the C.B.I. which derives its Police powers from the Delhi Special Police Establishment Act, 1945 to enquire and to investigate into certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants. Central Government may, by notification in the official gazette, specify the offences or class of offences which are to be investigated by the Special Police Establishment.

The Delhi Special Police Establishment Act, 1946 was amended in 1952 to enlarge its scope and to make it possible for the SPE to investigate offences involving employees of statutory corporations and other similar bodies in the proper administration of which Central Government was concerned, particularly from the financial point of view. Section 5 of the act was further amended by the Anti-Corruption (Laws) Amendment Act, 1964 to enable officers of the S.P.E. not below the rank of a Sub-Inspector of Police, to exercise the powers of an officer in-charge of a Police Station

The Special Police Establishment enjoys with the respective State Police force concurrent powers of investigation and prosecution under the Criminal Procedure Code. However, to avoid duplication of effort,

an administrative arrangement has been arrived at with the State Government according to which:

a) Cases which substantially and essentially concern Central Government employees or the affairs of the Central Government, even though involving certain State Government employees, are to be investigated by the S.P.E. The State Police is, however, kept informed of such cases and will render necessary assistance to the Special Police Establishment during investigation;

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

The Special Police Establishment, which now forms a Division of the Central Bureau of Investigation, functions under the administrative control of the Ministry of Personnel, Public Grievances & Pensions. However, the Special Crimes Division referred to hereunder will continue to report to MHA. The Director, CBI also functions as the Inspector General of Police in charge of the SPE under Section 4(2) of the Delhi Special Police Establishment Act, 1946. The SPE has two Divisions

i.e. (1) Anti-Corruption Division and (2) Special Crimes Division. The Anti-Corruption Division will investigate all cases registered under the Prevention of Corruption Act and cases registered under Sections 161 to 165-A and 168 IPC. If an offence under any other section of IPC or any other law is committed along with offences of Bribery and Corruption mentioned above, it will be also investigated by the Anti-Corruption Division. The Anti-Corruption Division will investigate cases against public servants in the Public Sector Undertakings, under the control of the Central Government and case against the public servants of State governments entrusted to the CBI by the State Governments and serious departmental irregularities committed by the above mentioned Public Servants.

The Special Crimes Division will investigate all cases of Economic Offences, which are, at present, being investigated by the Economic Offences Wing, and, all cases of conventional crimes such as offences relating to internal security, espionage, sabotage, narcotics and

psychotropic substances antiquities, Murders, dacoities /robberies, cheating, criminal breach of trust, forgeries and other IPC offences notified U/s 3 of DSPE Act, dowry deaths, suspicious deaths and offences under other laws notified under Section 3 of the DSPE Act.

4.9.4 Role and Functions of Central Vigilance Commission (CVC)

The Commission shall consist of a Central Vigilance Commissioner (Chairperson) and not more than two Vigilance Commissioners (members).

The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President on recommendation of a Committee consisting of the Prime Minister (Chairperson), the Minister of Home Affairs (Member) and the Leader of the Opposition in the House of the People (Member).

The term of office of the Central Vigilance Commissioner and the Vigilance Commissioners would be four years from the date on which they enter their office or till they attain the age of 65 years, whichever is earlier.

The Commission, while conducting the inquiry, shall have all the powers of a Civil Court with respect to certain aspects.

The Commission has jurisdiction and powers in respect of matters to which the executive power of the Union extends. It can undertake or have an inquiry made into any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner or into any complaint that a public servant had exercised or refrained from exercising his powers with an improper or corrupt motive or into any complaint of misconduct or lack of integrity or of any malpractice or misdemeanor on the part of a public servant. In any case, where it appears after a preliminary inquiry, that a public servant had acted or refrained from acting, for an improper or corrupt purpose, the Commission advises the appropriate disciplinary authority regarding suitable action to be taken against the public servant concerned.

5.0.0 The functions and powers of the Commission, as defined in the CVC Act 2003, are as under:

(a) To exercise superintendence over the functioning of Delhi Special Police Establishment [DSPE] insofar as it relates to investigation of offences alleged to have been committed under the PC Act or an offence with which a public servant belonging a particular category [i.e. a member of All India Services serving in connection with the affairs of the Union; or Group 'A' officer of the Central Government; or

an officer of the Central Public Sector enterprise/autonomous Organization etc. may be charged under the Code of Criminal Procedure at the same trial;

(b) To give directions to the DSPE for the purpose of discharging the responsibility of superintendence. The Commission, however, shall not exercise powers in such a manner so as to require the DSPE to investigate or dispose of any case in a particular manner;

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

(d) To inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to the following categories of officials, wherein it is alleged that he has committed an offence under the PC Act:

(i) Members of All India Services serving in connection with the affairs of the Union;

(ii) Group 'A' Officers of the Central Government;

(iii) Officers of Scale-V and above of public sector banks;

(iv) Such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf, provided that till such time a notification is issued, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in this clause.

(e) To review the progress of applications pending with the competent authorities for sanction of prosecution under the PC Act;

(f) To review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the PC Act;

(g) To tender advice to the Central Government, Corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central

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

(h) To exercise superintendence over the vigilance administration of various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(i) **Appointment of CVOs:** The Commission would convey approval for appointment of CVOs in terms of Para 6 of the Resolution, which laid down that the Chief Vigilance Officers will be appointed in consultation with the Commission and no person whose appointment as the CVO is objected to by the Commission will be so appointed.

(j) **Writing ACRs of CVOs:** The Central Vigilance Commissioner would continue to assess the work of the CVO, which would be recorded in the character rolls of the officer concerned in terms of Para 7 of the Resolution.

(k) Commission's advice in Prosecution cases: In cases in which the CBI considers that a prosecution should be launched and the sanction for such prosecution is required under any law to be issued in the name of the President, the Commission will tender advice, after considering the comments received from the concerned Ministry/Department/Undertaking, as to whether or not prosecution should be sanctioned.

(l) Resolving difference of opinion between the CBI and the administrative authorities: In cases where an authority other than the President is competent to sanction prosecution and the authority does not propose to accord the sanction sought for by the CBI, the case will be reported to the Commission and the authority will take further action after considering the Commission's advice. In cases recommended by the CBI for departmental action against such employees as do not come within the normal advisory jurisdiction of the Commission, the Commission will continue to resolve the difference of opinion, if any, between the CBI and the competent administrative authorities as to the course of action to be taken.

(m) Entrusting cases to Commissioner for Departmental Inquiry (CDI). The Commission has the power to require that the oral inquiry in any departmental proceedings, except the petty cases, should be entrusted to one of the Commissioners for Departmental Inquiries borne on its strength; to examine the report of the CDI; and to

forward it to the disciplinary authority with its advice as to further action.

(n) Advising on procedural aspects: If it appears that the procedure or practice is such as affords scope or facilities for corruption or misconduct, the Commission may advise that such procedure or practice be appropriately changed, or changed in a particular manner.

(o) Review of Procedure and Practices: The Commission may initiate at such intervals as it considers suitable review of procedures and practices of administration insofar as they relate to maintenance of integrity in administration.

(p) Collecting information: The Commission may collect such statistics and other information as may be necessary, including information about action taken on its recommendations.

((q)) Action against persons making false complaints: The Commission may take initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.

5.1.0 CTE Organization:

The Chief Technical Examiner's Organization [hereinafter referred as CTEO], which was created in 1957, in the Ministry of Works, Housing & Supply for the purpose of conducting a concurrent technical audit of works of the Central Public Works Department was transferred to the Central Vigilance Commission so that its services may be easily available to the Central Bureau of Investigation or in inquiries made under the direction of the Central Vigilance Commission. The Chief Technical Examiner's Organization now functions under the administrative control of the Central Vigilance Commission as its technical wing, carrying out inspection of civil, electrical and horticulture works of the Central Government departments, public sector undertakings/enterprises of the Government of India and central financial institutions/banks etc. The jurisdiction of the Organization is coextensive with that of the Commission. The works or contracts for intensive examination are selected from the details furnished by the CVO in the quarterly progress reports sent to the CTEO. The intensive examination of works carried out by the Organizations helps in detecting cases related to execution of work with substandard materials, avoidable and/or ostentatious expenditure, and undue favours or overpayment to contractors, etc.

At present, information in respect of civil works in progress having the tender value exceeding Rupees One crore, electrical/mechanical/

electronic works exceeding Rupee fifteen lacs, horticulture works more than Rupee two lacs and store purchase contracts valuing more than Rupee two crores are required to be sent by the CVOs of all Organizations. However, the Chief Vigilance Officers are free to recommend other cases also, while submitting the returns for examination of a particular work, if they suspect any serious irregularities having been committed.

Out of the returns furnished by the Chief Vigilance Officer, the Chief Technical Examiners select certain works for intensive examination and intimate these to the CVOs concerned. The CVO is expected to make available all relevant documents and such other records as may be necessary, to the CTE's team examining the works. After intensive examination of a work is carried out by the CTE's Organization, an inspection report is sent to the CVO. The CVO should obtain comments of various officers at the site of work or in the office at the appropriate level, and furnish these comments to the CTE with his own comments. In case the CTE recommends investigation of any matter from a vigilance angle, such a communication should be treated as a complaint and dealt with appropriately. The investigation report in such cases should be referred to the Commission for advice even if no vigilance angle emerges on investigation. To assist the disciplinary authorities in the expeditious disposal of oral inquiries, the Ministry of Home Affairs appointed Officers on Special Duty [later re-designated as Commissioners for Departmental Inquiries] on the strength of the Administrative Vigilance Division. On the recommendation of the Committee on Prevention of Corruption, the Commissioners for Departmental Inquiries were transferred to work under the control of the Central Vigilance Commission.

5.1.1 Annual Report: The Commission is required to present annual report to the President as to the work done by it within six months of the close of the year under report. The report would contain a separate part on the superintendence by the Commission on the functioning of Delhi Special Police Establishment. The President shall cause the same to be laid before each House of Parliament.

5.2.0 Chief Vigilance Officers and Vigilance Units

While the primary responsibility for the maintenance of probity, integrity and efficiency in his Organization vests in the Secretary of the Ministry or the head of the Department, the Chief Vigilance Officer acts as his special assistant in all matters pertaining to vigilance and provides a link between his Ministry/Department and the Central Vigilance Commission. Besides dealing with the vigilance cases, the Chief Vigilance Officer is also responsible for such items of

work as regular and surprise inspections of sensitive spots, review and streamlining of procedures which appear to afford scope for corruption or misconduct and for initiating other measures for the prevention, detection and punishment of corruption and other malpractices in his Ministry/Department and its attached and subordinate offices.

The Chief Vigilance Officers in the Ministries/Departments/Public Sector Undertakings/Nationalized Banks are appointed after prior consultation with the Central Vigilance Commission.

5.2.1 Appointment of CVOs in the Ministries Departments.

Primary responsibility for maintenance of probity, integrity and efficiency in the Organization vests in the Secretary of the Ministry, or the head of the Department, or the Chief Executive of the Public Sector Enterprises. Such authority, however, is assisted by an officer called the Chief Vigilance Officer (CVO) in the discharge of vigilance functions. The CVO acts as a special assistant/advisor to the chief executive and reports directly to him in all matters relating to vigilance. He heads the Vigilance Division of the Organization concerned and provides a link between is Organization and the Central Vigilance Commissioner and his Organization and the Central Bureau of Investigation.

It has been provided that big departments/Organizations should have a full-time CVO, i.e. he should not be burdened with other responsibility. If it is considered that the CVO does not have full-time vigilance work, he may be entrusted with such functions that serve as input to vigilance activity, e.g. audit and inspections. The work relating to security and vigilance, however, should not be entrusted to the CVO as, in that case, the CVO would find very little time for effective performance of vigilance functions. Furthermore, in order to be effective, he should normally be an outsider appointed for a fixed tenure on deputation terms and should not be allowed to get absorbed in the Organization either during the currency of deputation period or on its expiry.

The Chief Vigilance Officers in all departments/Organizations are appointed after prior consultation with the Central Vigilance Commission and no person whose appointment in that capacity is objected to by the Commission may be so appointed.

The Ministries/Departments of Government of India are required to furnish a panel of names of officers of sufficiently higher level (Joint Secretary or at least a Director/Dy. Secretary), who may report direct to the Secretary concerned, in the order of preference, along with

their bio-data and complete ACR dossiers for the Commission's consideration. The officer approved by the Commission for the post of CVO is entrusted vigilance functions on full-time or part-time basis, as the case may be.

5.2.2 Appointment in Public sector undertakings.

The CVO in a public sector undertaking (PSU), as far as practicable, should not belong to the Organization to which he is appointed, and having worked as CVO in an Organization, should not go back to the same Organization as CVO. 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 normal tenure of a CVO is three years extendable up to a further period of two years in the same Organization, or up to a further period of three years on transfer to another Organization on completion of initial deputation tenure of three years in the previous Organization, with the approval of the Commission, But if a CVO has to shift from one PSU to another PSU without completing the approved tenure in the previous PSU, the principle of overall tenure of six years would prevail.

It is considered that participation in decision making or close association of vigilance staff in such matters over which they might be required, at a later stage, to sit in judgment from vigilance point of view, should be avoided. Therefore, vigilance functionaries should not be a party to processing and decision-making processes or in other similar administrative transactions of such nature, which are likely to have clear vigilance sensitivity. While it may not be difficult for full-time vigilance functionaries to comply with this requirement, the compliance of these instructions could be achieved in respect of part-time vigilance functionaries by confining their duties, other than those connected with vigilance work, as far as possible, to such items of work that are either free from vigilance angle or preferable serve as input to vigilance activities such as inspection, audit, etc.

5.2.3 Permanent Absorption of CVOs in PSUs.

If an assurance is extended to a CVO, who has been appointed on deputation terms for a fixed tenure in the PSU, for permanent absorption, there is a distinct possibility that it might impair this objectivity in deciding vigilance cases and might negate the very purpose of appointing outsider CVOs. It has, thus, been provided that an outsider CVO shall not be permanently absorbed in the same

public sector undertaking on expiry or in continuation of his tenure as CVO in that Organization.

5.2.4 Assessment of the CVO's work

Central Vigilance Commissioner has also been given the powers to assess the work of Chief Vigilance officers. The Assessment is recorded in the character rolls of the officer. For that purpose, the following procedure has been prescribed:

The ACRs of the CVOs in the public sector undertakings/ Organizations, whether working on a fulltime or a part-time basis, would be initiated by the chief executive of the concerned undertaking/Organization, reviewed by the Secretary of the administrative Ministry/Department concerned, and sent to the Central Vigilance Commissioner for writing his remarks as the accepting authority;

(ii) The assessment by the Central Vigilance Commissioner in respect of the CVOs in the Ministries/Departments of the Government of India and their attached/subordinate offices, who look after vigilance functions in addition to their normal duties, will be recorded on a separate sheet of paper to be subsequently added to the confidential rolls of the officers concerned.

5.3.0 Role and Functions of CVOs

The CVO heads the vigilance Division of the Organization concerned and acts as a special assistant/advisor to the chief executive in all matters pertaining to vigilance. He also provides a link between his Organization and the Central Vigilance Commission and his Organization and the Central Bureau of Investigation. 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 CVOs' functions can broadly be divided into three parts, as under:

(i) Preventive Vigilance
(ii) Punitive vigilance
(iii) Surveillance and detection.

5.3.1 Preventive Vigilance

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

The CVO is expected to scrutinize reports of Parliamentary Committees such as Estimates Committee, Public Accounts Committee and the Committee on public undertakings; audit reports; proceedings of both Houses of Parliament; and complaints and allegations appearing in the press; and to take appropriate action thereon.

5.3.2 Punitive Vigilance.

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 finding out if the allegations involve a vigilance angle.

(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 orders of the competent authorities about further course of action to be taken and also 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 defence during the course of inquiry, and obtaining orders of the competent authority about further course of action to be taken and also obtaining the Commission's second stage advice and UPSC's advice, where necessary;

(viii) To ensure that the disciplinary authority concerned, issued a speaking order, while imposing a punishment on the delinquent employee. The order to be issued by the disciplinary authority should show that 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:

Decision as to whether the complaint involves a vigilance angle	One month from the receipt of the complaint
Decision on complaint, whether to be filed or to be entrusted to CBI or to sent to the concerned administrative authority for necessary action	One month from the receipt of the complaint
Conduction investigation and submission of report	Three months
Department's comments on the CBI reports in cases requiring Commission's advice	One month from the date of receipt of CBI report by the disciplinary authority
Referring departmental investigation reports to the Commission for advice	One month from the date of receipt of investigation report
Reconsideration of the Commission's advice, if required	One month from the date of receipt of Commission's advice
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
Time for submission of defence statement	Ordinarily ten days or as specified in CDA Rules
Consideration of defence statement	15 (fifteen) days
Issue of final orders in minor penalty case	Two months from the receipt of defence statement
Appointment of IO/PO in major penalty cases	Immediately after receipt of defence statement
Conducting departmental inquiry and submission of report	Six months from the date of appointment of IO/PO
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- reason for disagreement with IO's findings to be communicated
Consideration of CO,s representation and forwarding IO,s report to the Commission for second stage advice	One month from the date of representation
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 is not required

Although the discretion to place a public servant under suspension, when a disciplinary proceedings is either pending or contemplated against him, is that of the disciplinary authority, the CVO is expected to assist the disciplinary authority in proper exercise of this discretion. 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.

The Commission's advice in respect of category 'A' officials is to be obtained at two stages; firstly on the investigation report and secondly on the inquiry report .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 references 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 defence 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.

The CVO, while submitting his report/comments to the disciplinary authority in the Organization, should also endorse an advance copy of the investigation report to the Commission if a category 'A' Officer is involved, so that it may keep a watch over deliberate attempts to shield the corrupt public servants either by delaying the submission of investigation report to the Commission or by diluting the gravity of the offences/misconducts. (Para 4.5.3. CVC Manual Vol I.)

5.3.3 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.

5.3.4 Organizing Review Meetings

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

The CVO would arrange quarterly meetings to be taken by the Secretary of the Ministry/Department or the Chief executive for reviewing the vigilance work done in the Organization.

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

5.3.5 Submission of Reports and Returns

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

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.

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.

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Chapter III

Complaints

5.4.0 Sources of Complaints

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

Information about corruption, malpractice or misconduct on the part of public servants may flow from any of the following sources:

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

(b) Departmental inspection reports and stock verification surveys;

(c) Scrutiny of annual property statements;

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

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

(f) Audit report

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

(h) Intelligence gathered through 'sources.'
In addition, the Chief Vigilance Officer concerned may also devise and adopt such methods, as considered appropriate and fruitful in the context of nature of work handled in the Organization, for collecting intelligence about any malpractice and misconduct among the employees.

Source information, if received verbally from an identifiable source, to be reduced in writing

Unlike any other official communication, a complaint can be sent directly to CVO and there is no need of sending it through proper channel.

Genuine complainants will be given protection against harassment or victimization by keeping their identity confidential .However if a complaint, after verification, is found to be false and malicious departmental action is liable to be taken against such complainants.

5.4.1 Disposal of Complaints

A Register called Vigilance Complaint Register is maintained in the office of CVO.

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

Complaints, which relate to purely administrative matters or technical lapses, such as late attendance, disobedience, insubordination, negligence, lack of supervision or operational or technical irregularities, etc. should not be entered in the register and should be dealt with separately under "non-vigilance complaints".

Entries of only those complaints in which there is an allegation of corruption or improper motive; or if the alleged facts prima facie indicate an element or potentiality of vigilance angle should be made in the register.

5.4.2 Complaints referred from Ministry/Central Vigilance Commission.

A complaint against an employee of the company may be received in the Ministry of Fertilizers and also in the Central Vigilance Commission. Such complaints will normally be sent for inquiry to CVO .Such complaints also will be entered in the above vigilance complaint Register

5.4.3 Scrutiny of Complaints.

Each complaint will be examined by CVO to see whether there is any substance in the allegations made in it to merit looking into. Where the allegations are vague and general and prima facie unverifiable, the CVO may decide that no action is necessary and the complaint should be dropped and filed. Where the complaint seems to give information definite enough to require a further check, a preliminary inquiry/ investigation will need to be made to verify the allegations so as to decide whether, or not, the employee concerned should be proceeded against.

A complaint which is registered can be dealt with as follow:

(i) file it without or after investigation;

(ii) pass it on to the concerned administrative authority for appropriate action on the ground that no vigilance angle is involved.

(iii) Order vigilance investigation.

(iv) pass it on to the CBI with concurrence from CMD for investigation/appropriate action;

5.4.4 Action on Anonymous/Pseudonymous Complaints.

As per the instructions from Central vigilance Commission no action is to be taken, as a general rule, on anonymous/pseudonymous complaints. When in doubt, the pseudonymous character of a complaint may be verified by enquiring from the signatory of the complaint whether it had actually been sent by him. If he cannot be contacted at the address given in the complaint, or if no reply is received from him within a reasonable time, it should be presumed that the complaint is pseudonymous and should accordingly be ignored. However, if it is proposed to look into any verifiable facts alleged in such complaints, CVO may refer the matter to the Commission seeking its concurrence, irrespective of the level of employees involved therein. CVC Circular No 98/DSP/9 dated 11th October 2002.)

Although, the Commission would normally also not pursue anonymous/pseudonymous complaints, yet it has not precluded itself from taking cognizance of any complaint on which action is warranted. In the event of the Commission deciding to make an inquiry into an anonymous or pseudonymous complaint, the CVO concerned, advised to look into the complaint, should make necessary investigation and report the results of investigation to the Commission for further course of action to be taken. Such complaint should be treated as a reference received from the Central Vigilance Commission and should be entered as such in the vigilance complaints register and in the returns made to the Commission.

Where the Commission asks CVO for an inquiry and report considering that the complaint is from an identifiable person, but it turns out to be pseudonymous, CVO may bring the fact to the notice of the Commission and seek instructions whether the matter is to be pursued further. The Commission will consider and advise whether, notwithstanding the complaint being pseudonymous, the matter merits being pursued.

5.4.5 Cooperation of Voluntary Public Organizations, Press and Responsible Citizens in combating corruption.

Co-operation of responsible voluntary public Organizations in combating corruption should be welcome. No distinction should, however, be made between one Organization and another; nor should any Organization be given any priority or preference over others.

Where a public Organization furnishes any information in confidence, the confidence should be respected. However, the identity and, if necessary, the antecedents of a person, who lodges a complaint on behalf of a public Organization, may be verified before action is initiated.

GOI Resolution on Public Interest Disclosure and Protection of Informer [Whistle Blower Protection)
The Government of India has authorized the Central Vigilance Commission (CVC) as the 'Designated Agency' to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.

The jurisdiction of the Commission in this regard would be restricted to any employee of the Central Government or of any corporation established by or under any Central Act, government companies, societies or local authorities owned or controlled by the Central Government. Personnel employed by the State Governments and activities of the State Governments or its Corporations etc. will not come under the purview of the Commission.

In this regard, the Commission, which will accept such complaints, has the responsibility of keeping the identity of the complainant secret. Hence, it is informed to the general public that any complaint, which is to be made under this resolution, should comply with the following aspects:

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

(ii) The envelope should be addressed to Secretary, Central Vigilance Commission and should be superscribed "Complaint under The Public Interest Disclosure". If the envelope is not superscribed 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.

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

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

Chief Vigilance Officers of the Ministries/Departments of the Government of India also have been authorized as the Designated Authority to receive written complaint or disclosure on any allegation of corruption or misuse of office by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or the Department.

Procedure for handling of complaints under Public Interest Disclosure and Protection of Informers (PIDPI) Resolution to be followed by the Chief Vigilance Officers of the Ministries/Departments of the Government of India have been issued under No. 371/4/2013-AVD-III Dated the 16th June, 2014 by Ministry of Personnel, Public Grievances and Pensions.

5.4.6 Association of Chief Vigilance Officer with work of Departmental Duties handling sensitive matters

Vide Office Memorandum No.321/77/91-AVD.III dated 3rd June 1992 Department of Personnel & Training has decided that vigilance functionaries should not be party to processing and decision making processes or in other similar administrative transactions of such nature which are likely to have a clear vigilance sensitivity. It is considered that participation in decision making or close association of vigilance staff in such matters over which they might be required at a later stage, to sit in judgment from vigilance point of view, may be avoided.

The CVO is the extended arms of the Central Vigilance Commission and are duty bound to implement the anti-corruption measures of the Government in the company completely and effectively. In order

to achieve the above objectives all Vigilance Officials are duly empowered by the Chief Vigilance Officer with the following authority:-

(a) All vigilance officials will have unrestricted access (including their official vehicles) to any location in the factories/departments Divisions/Office and their premises, Estate including buildings/ shops/establishments/welfare units/township/residential/Quarters/ sports & entertainment amenities, ancillary units/liaison offices/Guest Houses etc., at any time for carrying out Vigilance work.

(b) All Vigilance Officials are empowered to seize records/ documents/ files/information (contained in any electronic storage device in any form)/ articles, for the purpose of vigilance investigation;

(c) All Vigilance Officials are empowered to examine employees of the company for vigilance enquiries/investigation, record their statement, obtain their signature on such statements/obtain their signature on the samples etc.

(d) All Vigilance Officials are empowered to conduct surprise/random /routine checks/inspections etc of the points/places etc in any Department/ Office/Estate/Township including shops / establishments / residential quarters etc as part of either Preventive or Punitive Vigilance activity.

(e) All Vigilance Officials are empowered to collect/obtain samples of materials (in any form) for the purpose of testing etc during the course of inspection of civil/mechanical/electrical works and obtain photographs if required of the articles/points/places in question.

(f) All Vigilance Officials are empowered to draw inspection/surprise/ routine check report at the points/places of check and to obtain signature of the concerned in-charge, user/operator/custodian etc. as a token of confirmation that the same was carried out in their presence and that they are party to the details recorded.

(g) All Vigilance Officials and their vehicles are empowered for unrestricted movement (entry and exit) at their place of work at any time for the purpose of vigilance activities.

(h) All Vigilance Officials are empowered to meet their sources, or any officials of government/non-government/private/public etc. for vigilance verification/work or for liaison.

(i) All Vigilance Officials are empowered (under the supervision of CVO) for carrying out detective/surveillance as part of Vigilance work. Non cooperation/obstruction to Vigilance Officials in discharge of their duties by any employee of the Company would be deemed as misconduct and liable for disciplinary action as per the Rules of the Company.

5.4.7 Protection to Vigilance Officials for acts done in good faith

The Vigilance functionaries conduct enquiries/investigations on behalf of the CVO/Management. During the course of investigations/enquiries to unearth, the facts of the case or which is warranted to bring the case to a logical conclusion the acts of the functionary should not be treated prejudicial to good order and discipline or malafide intention. The acts of the Vigilance functionaries are to be treated as in good faith and in the best interests of the Company and no Disciplinary Action should be initiated against the Vigilance Functionary. Whenever disciplinary action against Vigilance Officer is contemplated, authority to sanction is the Chairman through CVO.

5.4.8 Functional and Administrative control over Vigilance Officials:

All matters pertaining to functional and administrative control over vigilance officials like induction, grant of leave, training, transfer/job rotation, promotion, movement/temporary duty/forwarding of applications/writing of Performance Appraisal Reports/Disciplinary action etc. would be exercised by the CVO.

(i) Quality

The Vigilance Department shall strive to maintain the highest standards of quality in its investigations, conduct and reporting.

(ii) Productivity

The Vigilance Department will contribute towards increased productivity by studying various systems and procedures. Identify time consuming, laborious and cumbersome procedures in consultation with the concerned departments and recommend changes where required.

5.4.9 Appointment of Vigilance officers in Departmental Enquiry.

Vigilance Officers will not be appointed as Enquiry Officer and Co-Officer. They may be appointed as Presenting Officer with the concurrence of the CVO.

5.5.10 Duties of the Vigilance Officers and Staff in Departmental Enquiry.

The Vigilance Officers and the Vigilance staff play a vital role in the Departmental Enquiry proceedings. The onus of proving the charges is on the prosecution. The prosecution is based on the investigation report prepared by the Vigilance Department. It is imperative that the Vigilance Officers should collect all the evidence before an investigation report is finalized and recommend the prosecution of the defaulting employees. The Vigilance officers must provide all assistance and evidence gathered by them to the Presenting Officer

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Chapter IV

6.0.0 Scope for Vigilance work in FACT

FACT Ltd is a Government Company (as defined in Section 617 of the Companies Act of 1956) under the Ministry of Fertilizers & Petrochemicals, Department of Fertilizers.

Familiarity with the Rules, Regulations, Procedures as laid down by the company as also the established ethical principles, enables the employees generally and the supervisory personnel in particular to perform their day-to-day functions within the laid down procedures in a free, fair, transparent and cohesive manner. This is expected to ensure proper compliance of the system and judicious exercise of the delegated powers; which in turn would appropriately take care of prescribed quality standards and vigilance health of an organization. However some of the common points of irregularities in various sensitive areas are:

By virtue of being a Govt. Company it is also a 'State' by legal entity and therefore it has a greater responsibility of ensuring accountability, transparency, equality, fairness and value for money in all its dealings by one and all.

Huge amount of public funds is invested in the Public sector Organizations. Needless to state that utmost vigilance and financial propriety is required for prudent utilization of the available resources. FACT Ltd., being a Govt. Company it is also bound by the rules and procedures formulated by Govt. of India/Ministry/CVC etc. from time to time on issues concerning various facets of management.

There is a need for constant and effective Vigilance mechanism in the company to undertake anti-corruption measures to increase the confidence of the stake holders.

The Constitution of India inter alia enshrines certain 'Fundamental Rights' which are available and enforceable against the State. The expression 'State' is widely defined (including PSU's). The State and Parliament respectively cannot act or pass any law contrary to or in violation of Fundamental Rights which would result in unequal or discriminatory or arbitrary treatment and unlike a private entity, the State is accountable.

In a leading case, *Erusian Equipment and Chemicals v. State of West Bengal*, the Supreme Court laid the foundation of the law by emphasizing on the entitlement to equal treatment with others who

offer tender or quotations for the purchase of goods and further reiterated that the activities of the Government have a public element and, therefore, there should be fairness in procedure and equality. Thus, the Government cannot act in a whimsical or capricious manner, nor can it act as a private giver. Its procurement policies must be in capricious formed by reason, be fair, transparent, non-discriminatory and non-arbitrary.

This landmark judgment underlines the very ethos of public procurement or any public activity by Government and its instruments.

Though all departments which enjoy sub delegated financial and administrative powers are prone to corrupt practices, the chances of such corrupt practices are more in some areas. Such areas are termed as sensitive areas. Few such areas are as follows

(a) Procurement of goods and services.

(b) Works and Contracts including plant maintenance contracts.

(c) Sub Contracting/External Sourcing

(e) Medical Reimbursement.

(f) Human Resources Department

(g) Stores Department

(h) Accounts Department (Finance, Pay rolls, Bills payable)

(i) Township Administration, Welfare

Following instances are some are illustrations of irregularities. These common irregularities have been made as a result of experiences gained/irregularities detected by the Vigilance/audit Departments of various Organizations in India over the years. The list is not exhaustive.

6.1.0 Procurement

(a) Sending Request For Quotation (RFQ) to firms non-existing to satisfy the requirement of number of firms and at the same time not sending RFQ to those firms not favoured.

(b) Not maintaining updated Vendor Lists (Over a period of time certain firms close down/stop dealing with the required items or

change their location. Due to non-maintaining of updated Vendor Lists the possibilities of obtaining competitive offers from firms actually dealing with the required items becomes less or nil). This may be due to ulterior motive to favour particular firms only.

(c) Procurement on Nomination basis and proprietary basis with flimsy justifications.

(d) Giving insufficient time for submission of quotations.

(f) Cartel formation of tenderers.

(g) Wrong practices while preparing comparative statements.

(h) Non-linking of payments of performance in the case of Trial Orders.

(i) Issue of tenders to blacklisted firms.

(j) Concealing and manipulating critical information while preparing proposals.

(k) Repetitive emergency procurement.

(l) Issue of inspection certificates without adequate checks and in some cases waiving inspection altogether.

(m) Splitting orders to reduce the level of approving authority.

(n) Certification of escalation of payments by manipulating records;

(o) Indiscriminate local purchase without proper justification or need;

(p) Change in specifications after tender is released.

(q) Not mentioning/enclosing General Conditions / special conditions /technical specifications etc.

(r) Leaking out information in advance to supplying firms regarding the requirements or, subsequently, information regarding developments in respect of the deal.

(s) Demand for illegal gratification in respect of bills passed for payment.

(t) Defective preparation of tender notices by omitting to mention complete specification of materials.

(u) Preparation of tender specifications tailor made to suit a particular firm.

(v) Non inclusion of standard terms like Liquidated Damages so as to favour firms.

(w) Limiting the deal to a single tender contractor or a selected few by standardizing specifications whereas a general specification could have invited more competition.

(x) Rejecting lowest quotations on unjustified and flimsy grounds.

(y) Re-tendering frequently by changing the specifications with a view to scuttle the award of tender to L1.

(z) Assistance to the supplying firms in the preparation of quotations or dispatching enquiry notices to firms not favoured, after date for submission of tender expires.

(aa) Making local purchases at higher rates by obtaining ghost quotations.

(ab) Alteration of rates after opening tenders.

(ac) Splitting up of requirements to bring them within the limits of local purchase.

(ad) Substitution of superior approved samples by inferior type after decision on the tender is taken.

(ae) Acceptance of material and stores, which are below standard specifications.

(af) Inserting papers of favoured firms in the correspondence files to benefit the firm.

(ag) Setting up friends and relatives as the agents of the supplying firms and procuring for them certain commission over the business deals and thereafter sharing the commission with the agents.

(ah) Harassing firms by not passing their bills in time, or putting hurdles in their way, if gratification is not paid

(ai) Favouring certain supplying firms by issuing them repeat orders for machinery and other stores.

(aj) Insistence on purchase of particular type of machinery/equipment to favour a particular firm.

(ak) Favouring certain firms by repeatedly purchasing small quantities falling within the purview of an individual officer.

(al) By-passing purchase committees by making small purchases more frequently instead of bulk purchases.

(am) Acceptance of unsolicited offers.

(an) Non refund or delay in refund of Security Deposit/Earnest Money to unsuccessful tenders;

(ao) Non recovery of money against defective supplies;

(ap) Unauthorized passing of information on tenders/requirements /rates/ estimates etc to persons who would be acting as agents/middlemen

(aq) Non incorporation of Liquidated Damages (LD) Clause in the terms and conditions. Failure to invoke the LD Clause wherever applicable. Waiving off LD without Competent Authority's approval or waiving off without proper justification.

6.2.0 Stores Department

(a) Holding up receipt note of supplies without any justification.

(b) Giving receipt for larger quantities than actually received.

(c) Pilferage and theft of stores lying in the salvage.

(d) Delivery of reduced quantities of stores on requisitions or retail issues and disposing or misappropriating the resultant surplus stocks.

(e) Excess delivery after auction of materials.

(f) Sale to favoured buyer of goods and serviceable material by showing it as scrap.

(g) Non disposal of Non-Moving inventory

(h) Manipulation of reserve price during auction of scrap;

(i) Fixing of reserve price lower than the best bids obtained in previous auctions;

(j) Clubbing of lots making them beyond the reach of smaller buyers thus restricting the competition to a few bigger purchasers who form a pool and give lower bids;

(k) Disclosing of particular lots containing better quality scrap to favoured firms.

(l) Affording opportunity to take out more weight by recording the tare weight of trucks less than actual;

(m) Unauthorized mixing of high value scrap in the scrap after finalization of tender.

6.3.0 Works and Contract Section

(a) Site leveling: Manipulation in initial levels before the actual work starts, so that the agencies would get more quantities in excavation, back filling etc. during site leveling where cut and fill operations are involved lead charts are manipulated.

(b) While executing piling work, the rates are different for boring of soil, soft rock, hard rock. False records can be created to benefit the agencies.

(c) Pilfering of cement.

(d) Not adhering to volumetric/gravimetric batching system so that right proportion of cement, sand and aggregate are not used during concreting.

(e) During construction, allowing substandard bricks, sand, aggregates, wood, paint, cables, earth-strips, waterproofing materials, fuses, welding electrodes, etc.

(f) Indiscriminate payment of advances;

(g) Payment for incomplete work;

(h) Postponing penal recoveries;

(i) Certification of sub-standard work

(j) Demanding and accepting of illegal gratification in respect of bills passed for payment.

(k) Favouritism by rejecting the lowest tender and awarding the contract at a higher rate, on flimsy grounds.

(l) Favouring certain contractors by entrusting them some small works initially, but later allowing them to execute big works in continuation of the earlier contract without calling for tenders.

(m) Showing large number of work force at the rolls in connivance with the contractors and sharing the excess wages.

(n) Grant of extension of time beyond the provisions of the Contract.

(o) Payment of higher rates than the prevalent market rates for labour or material.

(p) Misappropriation or pilferage of building materials, like cement, steel etc.

(q) Recording false measurements.

(r) Issuing false certificates such as test checks without verifying the basis for entries in the measurement books

(s) Excess payments to the contractors in connection with supply of materials.

(t) Delaying payments of bills/final bills beyond the time schedule of contract without any justification.

(u) Making payments for items not replaced after rejection or supplied.

(v) Non-deployment of qualified engineers at site and non-recovery of penalties towards such non-deployment.

(w) Releasing tender without proper working drawings and detailed estimates. It is essential to prepare Market Rate Analysis to check the reasonability of the tenders.

(x) Ambiguous and inadequate contract documents that permits the contractor to do sub standard work and get away with payment at full rates.

(y) Granting of secured advances for the materials brought by contractor to the site much in excess of actual quantities of materials brought.

(z) Unsound designs: sometimes unsound structural design is found to be inadequate and not in conformity with IS Codes or Practice. This may result in unsound structures.

(aa) Infructuous constructions: the designs or specifications do not serve the purpose for which a structure is built. This results in infructuous expenditure.

(ab) Acceptance of conditional offers.

(ac) Pre-Qualification of Contractors: No proper Pre-Qualification of contractor often gives scope for malpractices, favouritism and corruption.

(ad) Abnormal high and low freak rates: very often it is seen that contractors quote speculative rates with the intention of getting the quantities of abnormally high rates items increased and the quantities of abnormally low rated items decreased. This results in undue favour to the contractor and a loss to the organization. For this purpose the market rate estimate is very helpful in pinpointing the abnormally high and low rated items.

(ae) Very often Bank Guarantees are taken from the Contractor before the mobilization advance or security deposit is released. It is often found that these Bank Guarantees are not got revalidated on the due dates and the organization is unable to recover the advance or deposit.

(af) Granting various interest free advances such as mobilization advances, secured advances, adhoc advances, advances for purchase of materials etc. when such advances are not permissible under the terms of the contract.

(ag) Payment of bonus to architects or contractors when such payments are not admissible under the terms of the contract.

(ah) Changing the specifications or nature of work to be done without making corresponding financial adjustments;

(ai) Allowing 'rate only' items without any quantities in the tender documents. Contractors invariably quote exorbitant rates for such items because amounts corresponding to such rates are not reflected in the comparative statement. After the contract is awarded these alternate 'rate only' items are operated to give a huge undue benefit to the contractor.

(aj) Poor control and inadequate supervision;

(ak) The existing buildings and structures are demolished by the contractor and the serviceable materials are taken away resulting in considerable loss to the organization.

6.4.0 Human Resources Department

(a) Manipulation of number of vacancies (selection posts) so as to bring the favoured candidate within the field of choice;

(b) Postponement of regular selection on flimsy grounds so as to permit continuance of ad-hoc promotees;

(c) Discrimination in the treatment of candidates during examination;

(d) Discrimination in awarding marks under 'Record of Service' weightage being given to seniority;

(e) Manipulations in transcribing marks from written papers to the tabulation sheets;

(f) Not following any rational basis in deciding inter-se seniority of candidates for promotion to general selection posts;

(g) Deliberate violation or non-observance of prescribed Selection Board procedure;

(h) Failure to conduct proper trade tests for posts in skilled category;

(i) Not giving sufficient publicity in the Employment Notice regarding recruitment to certain category of posts;

(j) Deliberate failure to preserve or keep proper record of application received;

(k) Purposely violating instructions regarding minimum qualifications and experience;

(l) Arbitrary screening of applications received, better qualified candidates not called for selection;

(m) Not offering employment in the order of merit from the list of duly empanelled candidates;

(n) Failure to observe instructions regarding medical examinations and verification of antecedents;

(o) Accepting of late applications by predating them;

(p) Demand and acceptance of illegal gratification during the recruitment process;

(q) Impersonation of candidates in the written test;

(r) Leakage of question papers/answers before conduct of a written test;

(s) Leaking information about recruitment at various stages to vested interests for considerations;

(t) Holding of answer books for long periods without evaluation;

(u) Fabrication of answer sheets and insertion of duplicate answer sheets with same roll numbers;

(v) Absence of signature of invigilator/supervisor on the answer sheet;

(w) Non-maintenance of list of examiners;

(x) Incompetent Examiners;

(y) Awarding of marks for incorrect answers;

(z) Absence of distribution register of the answer sheets distributed by the organization to the examiners;

(aa) Increase of marks by examiners or others, subsequent to evaluation of answer sheets;

(ab) Deliberate change in the tabulation sheets to qualify certain candidates for interview;

(ac) Deliberate tampering in the award of marks in viva voce.

(ad) Malpractices in service matters, deputation of personal abroad for training.

(ae) Deliberate failure to preserve or keep proper records of applications received.

(af) Intentionally violating instructions regarding minimum qualification

(ag) Arbitrary screening of service records and purposely ignoring better qualified and experienced candidates.

(ah) Connivance of staff concerned who deliberately do not enter penalties, suspension etc in the relevant column of service records.

(ai) Deliberately ignoring orders of penalty of withholding increments.

(aj) Violating terms and conditions of the Company in granting various loans/grants/incentives;

6.5.0 Accounts Department

(a) Delay in payment of bills to the contractors to cause harassment to the latter by calling for clarifications on minor points.

(b) Non verification of Bank Guarantees.

(c) Passing of bills without exercising necessary and adequate checks;

(d) Not effecting recoveries promptly, regularly and correctly in case of advances.

(e) Non-refund or delay in refund of Security Deposit/Earnest Money to unsuccessful tenders;

(f) Non-recovery of rent, electric charges or water charges in respect of such facilities extended to contractors;

(g) Misappropriation of cash by cashiers;

(h) Misappropriation in the payment of unpaid wages, settlement dues, PF withdrawals etc;

(i) Non-maintenance of leave accounts;

(j) Tampering of leave records (for encashment purpose);

(k) Non-recovery of money against defective supplies;

(l) Duplicate payments made against same supply order;

(m) Non-observance of instructions about percentage check of vouchers;

6.6.0 Welfare Department

Misappropriation of money and commodities earmarked for providing amenities to the employees and their children, in schools, sports clubs, canteens,

6.7.0 Medical and Health Department

(a) Purchase of medicines whose shelf life is very less.

(b) Resorting to frequent small order purchases to avoid tendering process.

(c) Purchase of spurious quality of medicines.

(d) claiming reimbursement against bogus bills.

(e) Making false claims for treatment for non eligible relatives.

The above instances are illustrative and not exhaustive. The above compendium of common irregularities has been made as a result of experiences gained/irregularities detected by the Vigilance/audit Departments of various Organizations in India over the years.

7.0.0 Vigilance Check List for some sensitive Departments:

7.1.0 Procurements: - Check

(a) Purchase Request is a genuine source/authorized source

(b) Selection of sources is not spurious and deliberately included.

(c) if PR is approved by Competent Authority.

(d) Competent Authority's approval for mode of tendering

(e) whether the tender calls for a two-bid system.

(f) to ensure specification in PR have been correctly dispatched to sources.

(g) the Vendor list is approved by the Competent Authority.

(h) whether a proper tender summary sheet is prepared.

(i) if tenders are opened on the tender opening date.

(j) if tenders are opened as per purchase manual

(k) if quotations are accompanied by sealed covers.

(l) the mode of receipt of quotations

(m) if proper endorsements are made on the cover.

(n) if comparison statements are correct.

(o) comparative statements are properly vetted

(p) for endorsement of delayed tender and late tender are properly made in the comparative statement.

(q) for analysis on like to like basis in case of confusing offers.

(r) if tenders with conditional offers are rejected.

(s) to ensure the terms and conditions are stipulated as per rules and regulations.

(t) if the payment terms and conditions are in the interests of the company.

(u) to ensure proper deductions are mentioned for short fall in contract.

(v) to ensure Security Deposit and Bank Guarantee are provided by the tenderer.

(w) to ensure that the rates fixed are maintained throughout the contract.

(x) for experience of tenderer in performing similar contract wherever called for.

(y) to ensure that correct EMD is submitted by the firm.

(z) to ensure that the Purchase Order contains all the rules and regulations of company (Standard Terms and Conditions/Special Conditions etc) apart from tender specifications.

(aa) to ensure that the contract has been adhered to as per the terms and conditions before payment.

(ab) to check tender box is placed at the entrance / security gate and is easily accessible to all vendors.

(ac) to ensure closing date and opening date of tender are same.

(ad) to ensure contractor is remitting PF/ESI wherever applicable.

(ae) for genuineness of various challans submitted by the contractor.

(af) to ensure acceptance of PO/Contract from the firm.

(ag) to ensure that the Tender Opening Committee has been properly constituted

(ah)to open the Tenders on the opening date.

(ai) for availability of Proprietary Certificate issued by proper authority.

(aj) the urgency for spot tenders.

(ak) in case of single response, proof of delivery to other firms.

(al) if reasonable time is provided for submission of offers.

(am) if laid down procedures are followed for quotations received via fax/e-mail.

(an) if postponement of tenders is informed to all firms.

(ao) if tender box is maintained as per regulations.

(ap) for any alteration in the specification subsequent to receipt of tenders.

(aq) if LD clause is properly incorporated and invoked wherever called for.

7.2.0 Sub-Contracts - Check

(a) if Mode of tender is as per approved procedure.

(b) if materials are issued to Sub contractor free of cost or on chargeable basis.

(c) If supported by adequate security deposit when materials are issued free of cost.

(d) if the vendor has taken comprehensive insurance policy covering all the risks including fire, theft, damages, loss of materials etc while company materials are in his custody.

(e) if rework is carried out by the company appropriate recoveries/deductions are made on the vendor.

(f) to ensure raw material issued by company is properly accounted including wastages, balance material if any.

(g) to ensure that no post tender price make is done on flimsy grounds such as lack of understanding of drawings, technical requirements etc.

(h) to ensure that the tooling cost is properly amortized and should cease after the cost is reimbursed to the vendor.

(i) if material cost is recovered from the vendor for rejection due to faulty manufacturing.

(j) if the cost of sub-contracted item is less than in-house manufacturing cost to compare the man-hour rate of the firm with that of the Division.

(k) if rejections are repeated, orders are still placed.

(l) if tools/jigs/fixtures obtained from company by the sub-contractor are returned in time.

(m) if vendor directory is updated

(n) if vendor evaluation is properly carried out.

(o) if vendor rating is taken into account while finalizing orders.

(p) If alternate vendors are also available and efforts are made to empanel them.

7.3.0 Recruitment –

Check whether sanction and approval of Competent authority is obtained

(a) if reserved vacancies are operated if applicable.

(b) if recruitment is internal or external.

(c) if advertisement/employment exchange/ or other relevant authorities are Intimated as per company norms.

(d) details like eligibility, age, qualification, experience and reservation are addressed and advertised.

(e) if Government guidelines on reserved vacancies are followed.

(f) for receipt of applications and records.

(g) for the basis for short listing the applicants for written test.

(h) to ensure the confidentiality of answer papers (wherever applicable).

(i) for correction of papers in ink and signatures of the evaluators.

(j) for procedures adopted for declaration of results within the stipulated time duration.

(k) for preparation of list of successful candidates and if any undue delay in declaration of written results.

(l) for method of intimation for interview sent to candidates.

(m) for retention of rating sheets for interview in original or not.

(n) for submission of caste certificates of concerned candidates.

(o) for display of Statutory Notice Board during various recruitment related tests/interviews.

(p) for medical examination of the concerned candidates.

(q) for photocopies of all relevant documents regarding qualification, education, date of birth, experience/caste certificate at the time of interview as well as joining by the candidates with those of originals.

(r) for verification of character, antecedents and other mandatory certificates.

7.4.0 Civil Works: - Check

Estimate Preparation:

(a) if items are defined properly.

(b) if quantities of the items are calculated properly.

(c) if estimates are prepared on the basis of market rates/approved labour rates.

(d) if escalation is incorporated in rates as per standard practice/as per existing market rate.

(e) if rates considered and their source for the items not covered in MES-SSR.

(f) If whether financial concurrence is accorded for estimates.

(g) if approval is accorded by Competent Authority to invite tender and type of tendering being adopted.

7.5.0 Tendering: Check

(a) if estimates are concurred by finance department

(b) if competent authority has approved the proposal.

(c) for eligibility of the bidders for open tender

(d) if tender documents are dispatched by Registered Post.

(e) if procedures laid down in Work and Service Contract is followed.

(f) if CTE guidelines are followed.

(g) if approval of next higher authority is obtained for re-tendering.

(h) for any ambiguity in terms and conditions of the tender.

(i) if the specification/technical specification for all materials to be used in the work is well defined.

7.6.0 Execution: - Check

(a) if random test checks for high value materials are carried out.

(b) if concerned departments/officials make proper quality check and maintain record thereof.

(c) for records pertaining to quality of material supplied.

(d) if the work is executed as per specification.

(e) if the work conforms to the provisions of relevant IS standards.

(f) if manufacturers' test/quality certificate is available.

(g) laboratory test has been carried out and reports are obtained.

(h) if running account payment is permissible.

(i) for periodicity of RAR.

(j) if RAR bills are signed by all concerned officials/supervisors.

(k) whether the measurements are taken for various items vis-à-vis the items in Running bills.

(l) if the materials are perishable in nature.

(m) if materials are physically brought to the site.

(n) if materials are stored properly.

(o) for materials are insured.

(p) if materials are hypothecated.

(q) if advance paid is adjusted against the bills payable to the contractor.

(r) if defects occurred during construction/execution are recorded.

(s) if defects occurred during construction/execution are rectified.

(t) If defects occurred after construction/execution are recorded.

(u) If defects after consultation/execution are rectified.

(v) If sufficient amount is held for defect liability.

(w) If cement register is maintained properly.

(x) If material passing register is maintained properly.

(y) If site order book is maintained properly.

(z) If daily work is maintained properly.

(aa) If hindrance register is maintained properly

(ab) If attendance is marked as per physical verification.

(ac) If measurement book is maintained as required

(ad) If contractor furnished no claim and no demand certificate

(ae) If contractor has furnished Income Tax/Sales Tax Clearance certificate

(af) To ensure all recoveries are made.

8.0.0 Canons of Financial Propriety :

Every Officer / employee or authorizing expenditure from public funds should be guided by high standards of financial propriety (meaning of 'propriety – fitness, rightness, correctness of behaviour or morals – Oxford Dictionary)

The principles on which emphasis is generally laid are the following:-

(a) Every public employee should exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his/her own money.

(b) The expenditure should not be prima facie more than the occasion demands.

(c) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.

(d) No authority should sanction expenditure which is not as per the approved scheme of the Company.

(e) The amount of allowances, such as travelling allowance, granted to meet the expenditure of a particular type, should be so regulated that an allowance is not on the whole a source of profit to the recipient.

(f) Public Moneys should not be utilized for the benefit of a particular person or section of the community unless:

(i) The amount of expenditure involved is insignificant, or;

(ii) A claim for the amount could be enforced in a Court of Law, or;

(iii) The expenditure is in pursuance of a recognized policy or custom.

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Chapter V

9.0.0 Operational Aspects of Vigilance

The following consists of operation aspect of Vigilance.

9.1.0 Functions of Vigilance

The functions of Vigilance can be broadly classified into Preventive, Punitive and Detective or Surveillance.

9.1.1Preventive Vigilance

"Punitive action alone need not be the main function of Vigilance organizations. 'Prevention is better than cure' is a common adage, which is very relevant in the working of all Government organizations" (from the Message from CVC while releasing the book on 'Common Shortcomings observed in Contracts' published by the CTE during 2001). Prevention is often less costly also.

Preventive vigilance is also a pro-active vigilance which is the need of the hour. In the words of Dr. Samuel Johnson, "to punish and not to prevent is like labouring at the pump, leaving open the leak". From Vigilance perspective, toiling at the pump indicates high morale, motivation, hard work, creativity, team work, leadership, management and all that modern management teaches – the leak represents wastages, seepages, negligence, and even criminality. Vigilance is not a tool left to be operated by Vigilance functionaries alone but every employee including line Managers have to perform this responsibility.

Santhanam Committee while outlining the preventive measures, that should be taken to significantly reduce corruption had identified four major causes of corruption, viz;

(i) Administration 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;

(iv) Cumbersome procedures of dealing worth various matters which are of importance to citizens in their day to day affairs.

The salient features of Preventive vigilance as suggested by Santhanam Committee are as follows:-

(a) To undertake a study of existing procedure and practices prevailing in the organization with a view to modifying those procedures or 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;

(b) 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;

(c) 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;

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

(e) To identify the areas in the organization which are prone to corruption and to ensure that the officers of proven integrity only are posted in those areas?

(f) To prepare a list of officers of doubtful integrity (ODI) - 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

(i) 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;

(ii) 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;

(iii) 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

(iv) who was prosecuted but acquitted on technical grounds as there remained a reasonable suspicion about his integrity;

(v) 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;

(vi) To ensure that the officers appearing on the list of officers of doubtful integrity and the agreed list are not posted in the identified sensitive/corruption prone areas;

(vii) To ensure periodical rotations of staff; and

(viii) To ensure that the Organization has prepared manuals on important subjects such as purchases, contracts, etc. and that these manuals are updated from time to time and conform to the guidelines issued by the Commission.

Vigilance is not a standalone activity in the Organization. It should be an integral part of the Management. The main objective of Preventive Vigilance can be summed up as follows:-

(a) To assist and help the Management in bringing about and sustaining propriety and integrity concurrently with efficiency in the company at all levels of working;

(b) To function as a service/cerebral organization to the Management to help identify black spots and to make fair, objective and prompt investigations;

(c) Suggest ways and means of qualitative improvement in administration by plugging loopholes.

(d) Improving/simplifying procedures to curb scope for malpractices and corruption;

(e) To suggest ways and means to plug deliberate leakages of public funds;

(f) To conduct regular and surprise checks/inspections on its own or in association with CBI at sensitive spots with a view to detecting cases of malpractices, corruption, misuse of authority and other irregularities involving misconduct;

(g) To spread awareness among all the workforce of the Organization about the cardinal principle that Vigilance is a management function and everyone has responsibility in his/her sphere of activity;

(h) To protect and strengthen the hands of those that is efficient, honest and law abiding but who may be the victims of malicious complaints and also to correct gently and constructively those who may have committed genuine mistakes without malafide intention.

(i) To ensure implementation of the directives/guidelines of the Central Vigilance Commission in the matters of tenders/contracts/disciplinary matters etc received from time to time.

(j) To lay emphasis on improving Vigilance administration by leveraging technology in areas like tenders/contracts etc.

(k) To ensure that CVC guidelines issued from time to time are implemented in the company.

(n) To periodically conduct awareness sessions on vigilance matters to employees and other stake holders (as and when opportunity arises).

(p) To conduct an exercise to identify the weaknesses in the existing systems and policies and the lapses that may have arisen or like to arise due to the systemic flaws noticed.

9.1.2 Punitive Vigilance

Punitive Vigilance deals with actual Vigilance cases, which is investigated, enquiry is held and penalty is imposed. Following actions are to be taken on the punitive vigilance aspects:

(i) Take appropriate action on the complaints received as per CVC guide lines.

(ii) To maintain and reflect the complaints in appropriate registers and update them from time to time.

(iii) To investigate into such specific and verifiable allegations as involved a vigilance angle in accordance with CVC Guidelines.

(iv) To investigate into the allegations forwarded by the Commission or by the CBI;

(v) To complete investigations in a time bound manner as laid down by CVC.

(vi) To process the investigation reports expeditiously for obtaining orders of the competent authorities about further course of action to be taken and also obtaining Commission's advice on the investigation reports where necessary;

(vii) To ensure that the charge sheets to the concerned employees are drafted properly and issued expeditiously;

(viii) To ensure that there is no delay in appointing the inquiring authorities where necessary;

(ix) To adduce required/relevant evidence, (oral/documentary/ material) in the Departmental Enquiry as and when called upon as Management Witness.

(x) To provide full assistance to the Presenting Officer appointed for Departmental Enquiry in Vigilance Cases.

(xi) To examine the inquiry officer's report, keeping in view the evidence adduced by the prosecution and the defence during the course of inquiry, and obtaining orders of the competent authority about further course of action to be taken and also obtaining the Commission's second stage advice, where necessary;

(xii) 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;

(xiii) 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;

(xiv) To ensure that the time limits prescribed for processing the vigilance cases at various stages are strictly adhered to:

(xv) To take up review of final orders of disciplinary authority wherever felt justified;

(xvi) To be well versant with Court/Legal proceedings and their implications with respect to disciplinary matters, as there are possibilities that some employees affected by the action of vigilance may involve the Management in litigation.

9.1.3 Detective Vigilance

Detective vigilance deals with detection of cases in three ways.

(i) Better surveillance and intelligence coverage of areas /points which are susceptible to corruption.

(ii) Close watch over employees of doubtful integrity.

(iii) Verification and check of moveable and immovable assets of persons of doubtful integrity.

10.0.0 Receipt of Complaints

The Disciplinary Authority may receive information about the commission of misconduct by an employee through different sources, viz., by way of anonymous or pseudonymous petition or written complaint by an aggrieved person or on a departmental inspection, or audit or on perusal of the files handled by employee. Based on the information he may consider it necessary to make discreet enquiries about the truth or otherwise of the information. He may himself make such inquiry or may appoint another officer to conduct the inquiry and submit a report to him for taking further necessary action in the matter.

Further whenever allegations are made against a public servant either through complaint or otherwise, it is the duty of the Chief Vigilance Officer/ Vigilance Officer to study the allegations with a view to finding out whether the same can be verified departmentally or these require special investigation either by the Central Bureau Investigation or by the local Police. In cases where the information is verifiable from documents available in the department, the Chief Vigilance Officer/ Vigilance Officer should seize the documents as carefully as possibly. Seizure of documents at the earliest is an essential requirement because the likelihood of their being tampered with cannot be ruled out.

Preliminary inquiry is only for the satisfaction of the disciplinary authority to make up its mind whether to hold a departmental inquiry or not. It should not be mistaken for a regular departmental inquiry conducted after the issue of a charge sheet to the employee in order to inflict a formal punishment. The preliminary enquiry is only a fact-finding enquiry. Its object is only to find out whether there is prima facie substance in the information / complaint to collect sufficient material in support of the allegation of misconduct for the purpose of a taking decision whether a charge memo should be

issued to the employee and a regular disciplinary proceeding conducted against him.

Some irregularities may be observed during the normal course of scrutiny of files/relevant records, system inspection etc. by the Vigilance Dept/any other Dept which may be the source for initiation of investigation, suo motto.

10.1.0 Vigilance Angle

Vigilance angle is obvious in the following acts:

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

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

(iii) Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.

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

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

There are, however, other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt.

Gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible public interest is evident; failure to keep the controlling authority/ superiors informed in time – these are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

Para 11.4, Chapter X of the Vigilance Manual Volume I refers to the illustrative types of vigilance cases in which it might be desirable to initiate proceedings for imposing a major penalty. Sub-Para (iii)

thereof refers to the "Gross irregularity or negligence in the discharge of official duties with a dishonest motive". It has been observed that some of the disciplinary authorities did not initiate departmental proceedings for imposition of a major penalty in the cases involving gross negligence/ flagrant violation of systems and procedures on the consideration that there was no material to prove the element of "dishonest motive". The cases involving gross negligence/flagrant violation of systems and procedures to involve a vigilance angle and the involvement of "malafides" are to be inferred or presumed from the actions of the concerned employee depending upon the facts and circumstances of the case. However, with a view to remove the ambiguity, the Commission has decided to amend Para 11.4(iii) ibid as under:

"The case involving any of the lapses such as gross or willful negligence, recklessness, exercise of discretion without or in excess of powers/jurisdiction, causing undue loss to the organization or a concomitant gain to an individual and flagrant violation of systems and procedures". *CVC letter No 99/VGL/62 dt 29 Nov 99*

Any undue/unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case.

The raison d'être of vigilance 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. Thus, whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organization 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.

Absence of vigilance angle in various acts of omission and commission does not mean that the concerned official is not liable to face the consequences of his actions. All such lapses not attracting vigilance angle would, indeed, have to be dealt with appropriately as per the disciplinary procedure under the service rules.

(CVC Office Order No.74/41/2005 dated 21st Dec 2005)

Matters pertaining to disciplinary issues like proxy attendance, long absenteeism, and disorderly behaviour do not come under the purview of Vigilance angle and needs to be handled by the concerned Administrative Authority as per the extant rules of the Company.

It is therefore incumbent on part of all the Vigilance Officials to clearly understand the scope of Vigilance angle so that only those issues bearing clear cut Vigilance angle are taken up during vigilance work, lest the resources and time is spent in unproductive and non-core area defeating the scheme and purpose of vigilance in the Company.

10.2.0 Registration of Vigilance Case:

If the Investigating officer is convinced that there is a prima facie case to proceed with a full-fledged investigation, he would do so and the vigilance case is registered in the Vigilance Dept with approval of CVO.

10.2.1 Purpose of Preliminary Enquiry:

The purpose of Preliminary Enquiry is to confirm or otherwise the allegations made against an employee by scrutiny of relevant details through oral and documentary evidence. It enables the Disciplinary Authority to arrive at a decision whether disciplinary action is to be initiated or not. It is not always necessary to conduct Preliminary Enquiry.

Preliminary Enquiry Report will not form the part of the charge sheet, nor is a copy required to be given to the charge-sheeted employee. Honourable Supreme Court has in *Champaklal Chimanlal Shah Vs Union of India* elaborated the concept of preliminary enquiry. Preliminary inquiry is only for the satisfaction of the disciplinary authority to make up its mind whether to hold a departmental inquiry or not. It should not be mistaken for a regular departmental inquiry conducted after the issue of a charge sheet to the employee in order to inflict a formal punishment. The preliminary enquiry is only a fact finding enquiry. Its object is only to find out whether there is truth in the information / complaint to collect sufficient material in support of the allegation of misconduct for the purpose of a taking decision whether a charge memo should be issued to the employee and a regular disciplinary proceeding conducted against him.

10.2.2 Vigilance Investigation:

Investigation is the corner-stone of vigilance. It is a fact finding mission to enquire into the allegations leveled against an employee. The object of an investigation is not only to find full facts of the case

before a decision is taken to initiate departmental action but also that it is an important source of information for the authorities to identify weak areas and to take necessary steps to plug the loopholes in the system.

Investigation consists of all the steps by the Investigation Officer to discover truth with regard to any complaint made about the commission of an offence or with regard to an offence which has been committed.

a) Whether any offence has been committed.

b) If so, what offence has been committed?

c) Who has committed the offence?

d) What is the evidence available to prove the offence and then to decide.

e) Whether the evidence collected is sufficient to prove the case against the accused(s) in the Court of law.

10.3.0 **Attributes of an Investigator**

Normally an Investigator should have the following qualities:

1. He should have an open mind, thinking and sound judgment

2. He should have specialized knowledge of the subject matter of inquiry.

3. He should be conversant with the techniques of investigation

4. He should not be easily swayed by emotions and jump to conclusions. He should be honest and above board

5. He should not have subjective assumptions or pre-conceived notions and should not give Value judgment.

10.4.0 Conducting an Investigation

The preliminary enquiry/Investigation can be made in several ways depending upon the nature of allegations and the judgment of the Investigating Officer. To have a systematic and proper investigation, balanced approach and complete planning are essential/pre-requisites. Some of the steps in this direction are as under:

I. The Investigating Officer should thoroughly study the complaint and as far as possible should have detailed discussion with the Authority ordering Investigation.

II. The I.O. should segregate the allegation, Para-wise / account-wise.

III. He should have complete knowledge about the guidelines/procedures. In case, the same are not clear to him, he should update himself.

IV. He should also make the list of documents required to be examined along with the list of witnesses and relevant issues required to be examined.

10.4.1 Collection of Documents

If the allegations 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 enquiry. CVC Circular No.3/2/07 dated 23rd February, 2007

10.4.2 Summoning of witnesses

Vigilance dept is required to examine persons in connection with investigation to ascertain facts and other related clarifications. Vigilance Dept is authorized to call an employee having knowledge of the facts/dealing with matter to ascertain the facts by way of an 'Enquiry Notice'. The Head of the department of the concerned employee is required to direct him to report to the Vigilance Office at the time and date as mentioned in the notice. The reasons for summoning an employee will not be mentioned in the enquiry notice as the matters dealt are of confidential nature and the reasons would be made known to the concerned employee when he reports for the enquiry and all opportunity would be given to him to refer the records and clarify the facts. The summoning of witnesses by Vigilance Dept should not be interpreted that only suspect officials are being summoned. It may be to verify certain aspects relating to the allegations and to assist the Vigilance Dept accordingly, e.g. clarification in connection with a particular correspondence made in a Purchase Order file. 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. Wherever necessary, important facts disclosed during oral interrogation or in written statements should be sought to be corroborated.

10.4.3 Recording of Statement

(a) The Investigating Officer (IO) who is entrusted with the work of investigation has to examine certain persons in connection with investigations to verify facts. He may also be required to examine the person against whom the complaint is received. In this connection the individuals are required to be present before the IO on the given date & time as discussed above.

(b) The statement of the individual will be recorded by the IO, putting certain clarifications/questions and the same has to be signed by the individual who has given the statement.

(c) Providing copy of the Statements recorded. Statements are recorded in Vigilance Department at preliminary enquiry stage. This stage is a confidential process and no person will be supplied /provided with a copy of his/her statement or any documents at this stage.

10.4.4 Investigation Report

After the investigation has been completed; the I.O. should prepare a self contained report including the material available to controvert the defence. The report should contain the explanation of the suspect officer and the fact that reasonable opportunity was given to him to explain his position, even if the same was not availed by him. A report given by the I.O. should be complete and should give the correct picture of the whole matter. The I.O. should also make meticulous evaluation of actions of various officials with reference to the nature of their duties along with assessment of gaps between the various levels of the decision-making hierarchy. The I.O. can 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 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 their 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 Organization or outside it been caused any undue benefit?

(i) Have the norms or systems and procedures of the Organization been flagrantly violated?

Allegations substantive and not substantive should be clearly spelt out. The report should cover the points raised and report in tabular form is always desirable. The I.O. should also highlight the loopholes, if any, found in the procedures. Main aim of the I.O. is to find facts about the allegations but if any new angle emerges, the same should be brought to the notice of the Authorities.

The I.O. is not required to give his recommendations with regard to staff side action nor is he required to pass any value judgments. It is important that the lapses are not generalized and attributed to all the officials. Specific lapses and the officials responsible for said lapses need to be explicitly stated as this shall be the basis of charge sheet and all subsequent aspects.

10.4.5 CVC directive on Advance copy of CVO investigation reports to CVC

The Commission finds that there is a disturbing trend noticed in certain organizations under its purview to shield corrupt public servants especially at the senior levels. The modus operandi is not to respond to the CVC's communications and delay the report as far as possible. Secondly when the CVOs report is submitted, attempts are made to dilute the gravity of the offence before reference is made to CVC, if at all made.

In order to reduce such in-built safety nets for the corrupt public servants, it has been decided that with immediate effect all CVOs, *The CVO, while submitting his report/comments to the disciplinary authority in the Organization, should also endorse an advance copy of the investigation report to the Commission if a category 'A' Officer is involved, so that it may keep a watch over deliberate attempts to*

shield the corrupt public servants either by delaying the submission of investigation report to the Commission.

The CVC in turn would analyze the reports/comments and keep the course of action ready. As soon as the reference is received from the appropriate disciplinary authority, action could be taken for giving the advice after taking into account the specific advice of the disciplinary authorities. If attempts have been made to dilute the CVOs report and shield the corrupt, this would also become clear.

After the CVO gives the investigation report generally the appropriate authorities must be able to send the report to the CVC within one month of the submission of the report. It is quite possible that a series of queries can be raised by way of scrutiny of the CVOs report which can sometimes be a deliberate attempt to shield the corrupt. In such cases, the CVC will be constrained to draw appropriate conclusion about the action being taken by the CVO.

It is reiterated that notwithstanding the submission of advance copy by the CVO, a separate reference in accordance with the usual procedure needs to be made to the Commission to enable tendering of advice.

CVOs are to furnish advance copies to the Secretary, Central Vigilance Commission

The CVC circular dated 9.11.2000, Para 4.5.2 CVC Manual

10.4.6 Functions of Disciplinary Authority, on receipt of the Preliminary Enquiry Report:

(i) Satisfy himself whether he is the competent disciplinary authority under the appropriate rules.

(ii) Carefully study the preliminary enquiry / vigilance report and decide whether there is prima facie case to initiate disciplinary action or otherwise and pass suitable orders. The DA may get clarifications from the investigating officer regarding the evidences and witnesses.

(iii) Sign the charge sheet with the date and afford time limit for submission of written explanation as prescribed under the rules.

(iv) Carefully consider and pass suitable orders for extension of time for submission of written explanation or for providing copies of documents / inspection of documents if requested for by the charge sheeted employee.

(v) Careful consideration of the points brought out in the written explanation and decides whether the same is satisfactory or otherwise.

(vi) Order for departmental enquiry by appointing an independent officer as the Enquiry Officer. Further a suitable officer has to be appointed as the Presenting Officer.

10.4.7 Action on Preliminary Enquiry Report:

The Disciplinary Authority will scrutinize the report and come to conclusion whether there is material to conclude whether there had been any mala fide action on the part of the personnel against the complaint has been made.

(a) After Preliminary Enquiry is held, the appropriate authority to whom the investigation report is addressed, should decide whether to drop a complaint or to start disciplinary proceedings depending on the facts collected.

10.4.8 Processing of Preliminary Enquiry Report / Vigilance Investigation Report.

The Disciplinary Authority, on receipt of Preliminary Enquiry Report / Vigilance Investigation Report and, after deciding to proceed further, will have the assistance of HR Department in processing the Preliminary Enquiry Report / Vigilance Investigation Report for initiating further necessary action as per rules.

The test to be applied at this juncture is to see as to whether prima facie case has been built up on the basis of the evidence collected during the course of investigation. If the evidence on record falls short of establishing a prima facie case, the Disciplinary Authority may either

a) close the matter, or

b) may take recourse to other formal forms of disapproval, such as reprimanding

the concerned employee, issuing him an advisory memo or warning, or

c) Communicating the Organization's displeasure.

A warning or reprimand, etc., may also be administered when as a result of a preliminary investigation or inquiry the competent disciplinary authority comes to the conclusion that the conduct of the official is somewhat blameworthy, though not to the extent calling for the imposition of a formal penalty. In such cases the warning should be administered on the orders of the competent disciplinary authority only. In cases where a preliminary inquiry was started at the instance of an authority higher than the competent disciplinary

authority, the result of the inquiry should be shown to that authority also before the case is closed with the administration of a warning.

10.4.9 Role of the Disciplinary Authority

The role of DA at this juncture is of very vital importance as he is expected to apply his mind independently and judiciously to consider and decide the future course of action. The totality of circumstances at this juncture has to be looked into by him and in a just and unbiased manner. While he may draw upon the expertise or assistance on technical matters, the decision shall be solely of the DA and not on recommendations of others.

10.4.10 Investigation of cases by CBI:

The CBI has intimated that the bulk of the cases registered by them are of anticorruption nature. The hall-mark of anti-corruption work is in the registration, investigation and detection of cases of assets, disproportionate to known sources of income.

Disproportionate assets cases take a much longer time for investigation due to intensive field enquiries, study and analysis of voluminous documentary materials and computation of income, expenditure and assets over a long check period. The average time taken to finalize the investigation of one disproportionate assets case comes to 430 days.

Besides, in assets cases the Supreme Court has ruled that the statement of the accused should be recorded and taken into consideration while determining the extent of disproportion. Many a time the cooperation of the accused is not forthcoming. The dilatory tactics adopted by the accused results in delay of investigation because in these matters an ex-parte determination is not permissible. This delay also contributes to a great extent in impairing the rate of investigation the positive cooperation of the administrative Ministries; to cut short the delays therefore would go a long way to expedite completion of investigation of these cases.

DOPT O.M. No 371/10/90-AVD.III (ii) dated 11 Feb 91

10.4.11 Ratio Decidendi (Crux of the matter) of some of the attributes of Preliminary

Enquiry

(a) Preliminary Enquiry is not compulsory before taking departmental action, thought it is desirable for the purpose of enabling the Disciplinary Authority to satisfy himself whether there is prima facie case and sufficient justification for initiating a departmental inquiry. If there is sufficient material before the Disciplinary Authority showing prima facie evidence to initiate Disciplinary Action he may do so even without making a preliminary enquiry, but where the Disciplinary Authority feels that the material before him is not sufficient to initiate Disciplinary Action straightaway, he may himself make a preliminary enquiry or direct one of his subordinates to enquire and report and then decides as to whether disciplinary action called for or not. Krishna Chandra Tandon vs Union of India, AIR 1974 SC 589

(b) During the preliminary enquiry it is not at all necessary to examine witnesses in the presence of the delinquent employee and to give him opportunity to cross-examine witnesses. In fact the whole of the investigation, if necessary, can be conducted without the knowledge of concerned Public Servant. The Supreme Court held in Champaklal Chimanlal Shah Case that a preliminary enquiry is only for the purpose of collection of facts in order to decide whether or not to subject the delinquent employee to disciplinary action. The delinquent may or may not be associated with the enquiry which may even be held exparte. Champaklal Chimanlal Shah vs Union of India (AIR 1964 SC 1854).

The Calcutta High Court held in *A.R Mukherjee vs Deputy Chief Mechanical Engineer (20)* that a preliminary enquiry is not a formal enquiry and no rules are observed and there can be an exparte examination or investigation and an exparte report. *A.R Mukherjee vs Deputy Chief Mechanical Engineer (AIR 1961 Cal.40)* The Principles of natural justice do not apply and the employee is not entitled to the protection of Art.311 of the Constitution of India during preliminary enquiry. This position was clarified by the Supreme Court in Champaklal's case referred to above and also *in A.G. Bejamin vs Union of India(1967 S.L.R 185-Supreme Court) and Depot manager*

(c) During the stage of preliminary enquiry delinquent has no right to be heard. However, this is a matter to be decided by the officer conducting the preliminary enquiry on the facts and circumstances of the cases.

(d) The statement of witness recorded during preliminary enquiry cannot be relied upon during the disciplinary proceedings even if the delinquent employee had cross examined the witness during the preliminary enquiry. The reason is that a preliminary enquiry is only a prelude and not a substitute to the departmental enquiry. Its object is to decide and assess whether it is necessary to take departmental action against delinquent. The evidence given by a witness during the fact finding enquiry cannot be relied upon without producing the witness at the regular enquiry and giving the delinquent an opportunity to cross-examine the witness, *APSRTC, Meak vs Mohd. Ismail (1996(4) Andhra Law Times 502*)

(e) No penalty can be imposed straightway based on the material secured in the preliminary enquiry as stated earlier. A preliminary enquiry is made to find out whether there is any material to initiate Disciplinary Action against the delinquent. For imposing a minor penalty the procedure given in the Disciplinary & Appeal Rules/ Regulations has to be followed by the Disciplinary Authority. The Disciplinary Authority shall inform the delinquent in writing of the imputations of the misconduct against him and give him opportunity to submit his written statement of defence and after receiving the same he shall take into consideration the representation and pass orders imposing a minor penalty. In certain circumstances if the Disciplinary Authority is satisfied that an inquiry is necessary he shall follow the procedure for imposing a major penalty and take a decision.

(f) A preliminary enquiry does not always result in a Regular enquiry. If the Disciplinary Authority after going through the material collected during the preliminary enquiry is satisfied there is no evidence to initiate a regular departmental enquiry, he may drop further action against the delinquent. If he is satisfied that the material warrants Disciplinary Action he will have to consider whether action is to be taken for imposing a minor penalty or a major penalty depending on the gravity of the misconduct. On the other hand if the material discloses that the delinquent has committed a criminal offence he may take action for his prosecution

(g) The officer who conducted the preliminary enquiry is not barred from holding disciplinary inquiry provided he has not prejudged the issue and expressed definite opinion of guilt. If the preliminary enquiry officer mentioned that the employee is guilty and deserved to be punished he is barred from holding regular departmental enquiry. When E.O mentioned in his report that he had information that the employee had taken bribe or that his reputation was bad it was held that the enquiry conducted by him is vitiated.

(h) Copy of the statement of a witness recorded during preliminary enquiry has to be furnished to the delinquent employee only if the witness is examined during the regular inquiry. It is not necessary to supply copies of statements of witness who are not examined during regular inquiry.

10.4.12 VIGILANCE CLEARANCE

Vigilance is empowered to exercise proper observation on the administrative, financial and marketing operations of an organization. In order to attain administrative efficiency, financial discipline and marketing competency various posts in an organization shall be occupied by persons with exemplary service background and clean vigilance track records. Accordingly a system had been evolved for according vigilance clearance for promotions/ retirements/ foreign travel / passport application to encourage and promote the culture of honesty and integrity in the public sector enterprises. Vigilance clearance is not permission or an approval, but merely providing a Profile of the employee to the controlling authorities for taking decisions on promotions, approvals of various types, retirements etc.

REQUIRQMENT OF VIGILANCE CLEARANCE

Vigilance Profile is required to be obtained for the following purposes

1. Promotions for employees
2. Retirement of employees
3. Resignation of employees
4. Foreign travel of employees for private purpose
5. NOC (No Objection Certificate) for passport application
6. Recommendation for awards to employees in Republic day or Independence day celebrations
7. NOC (No Objection Certificate) for passport application.
8. Posting of employees in the Vigilance department and certain other similar

EXTANT INSTRUCTIONS ON VIGILANCE CLEARANCE OR NEGATIVE VIGILANCE PROFILE

Department of Personnel and Training have issued various Office Memorandums with comprehensive review of instructions pertaining to Vigilance clearance for employees. The Public sector undertakings also follow the guidelines issued by DoPT in dealing with Vigilance clearance of employees issues.

1. Public servant under suspension
2. Public sector employee in respect of whom a charge sheet has been issued and the Disciplinary proceedings are pending; and
3. Public sector employees in respect of whom prosecution for a criminal charge is pending.
   (Ref: F No. 22034/4/2012 – Esst. (D)
4. Inclusion of an employee in the Agreed list/ ODI list (Officers in Disputed Integrity)
   It, therefore follows that the Vigilance clearance of the employee shall be withheld by the Vigilance unit under the above situations only duly informing the competent authority about the circumstances that are applicable to the employees concerned.
   PROCEDURE FOR VIGILANCE CLEARANCE
   CVC and Do PT have issued various instructions from time to time to improve the Vigilance clearance procedure to streamline the process.
   All Vigilance clearance should be routed through Human Resources department only.

Vigilance clearance proposals for all purposes except personal requests such as Foreign travel, Pass port application / Application for external employment etc. shall be originated from the HR department. Vigilance clearance for personal purposes such as Foreign travel, Pass port application/ Application for external employment etc. shall be originated from the concerned employees through proper channel. Employees have to submit Vigilance clearance request in a prescribed form. Vigilance profile shall be granted as per schedule of delegation.

CVO: **For all levels of employees below Board level.**

GM(V)/DGM (V): For all levels of employees below and up to the level of GM / DGM

Vigilance profile or status shall be provided to the earliest to the HR department by the concerned officials in Vigilance. If clearance or profile is withheld or negative for any reasons, that reason shall be informed accordingly. In any case the reply in this regard shall not be delayed more than three working days.

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Chapter VI

10.5.0 DISCIPLINARY PROCEEDINGS

Discipline is the foundation of any orderly state or society or undertaking. In public service discipline is defined as orderly behaviour and obedience to the prescribed code of conduct in order to ensure that the employees discharge their duties honestly, efficiently, and effectively .Violation of the conduct rules amounts to misconduct and results in disciplinary action or prosecution depending on the nature of gravity of the misconduct.

A departmental enquiry proceeding is a branch of quasi-judicial proceedings in which certain fundamental principles of judicial proceedings are applicable. Though strict principles of CPC, Cr.PC and Evidence Act are not applicable to departmental enquiries, yet the fundamental principles embodied in them are applicable to departmental enquiries in so far as these are based on the principles of natural justice.

The Manual brings out the guidelines on disciplinary proceedings which officials dealing with the disciplinary matters, should know, to correctly and effectively deal with cases. Its objective is to supplement rather than substitute the provisions contained in the FACT Conduct, Discipline and Appeal Rules or in the Certified Standing Orders of various Divisions. If there is any variation between the guidelines in the Manual and the provisions of CDA Rules/Standing Orders, the provisions of the CDA Rules/Standing Orders shall have effect. In case of any clarifications regarding the contents of this Manual, the same may be referred to the CVO,

The term misconduct is not defined in any of the conduct rules regulations or enactments. The dictionary meaning of the word misconduct is given as *bad management, malfeasance or culpable neglect of an official in regard to office*. It is a wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts.

The good governance demands observance of the said rules by the employees not only in the discharge of their official duties but also on their conduct and character while dealing with the general public as also in their social and private life.

Though the term misconduct has not been defined in any of the Conduct Rule or the standing order or in any enactment, attempts have been made by courts to explain the term In *Union of India v/s J Ahmad the Supreme Court* has observed that 'a conduct which is blameworthy for the Government Servant in the context of conduct rules, would be misconduct and if a Government Servant conducts himself in a way inconsistent with the due and faithful discharge of his duty, it is misconduct'. In simple words we can define the term misconduct as an act a man does what he is not expected to do or does not do what he is expected to do. It is a wrong act committed intentionally.

In *State of Punjab V.Ramsingh 1992 4 SCC 54* the Supreme Court Observed that 'the word misconduct though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty .It may not involve moral turpitude it must be improper or wrong behaviour, unlawful behaviour, willful in character ,forbidden, a transgression of established and definite rule of action or code of conduct but not mere error of judgment ,carelessness or negligence in performance of the duty.'

10.5.1 Kinds of misconduct:

Misconduct could be of three kinds:

(1) Technical Misconduct which leaves no trail of indiscipline;

(2) Misconduct resulting in damage or loss to the employer's property and

(3) Serious Misconduct such as acts of violence against the management or other employee or riotous or disorderly behaviour in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline.

Test to decide whether an act amounts to misconduct for institution of departmental proceeding

(a) Can mala fide be inferred or presumed from the actions of any of the concerned officials?

(b) Could any of the officials be said to have engaged in a misconduct or misdemeanour?

(c) Was the conduct of any of the officials reflective of lack of integrity?

(d) Did the official(s) act in excess of their delegated powers/ jurisdiction and failed to report the same to the competent authority?

(e) Did they or any of them show any gross neglect of their official functions?

(f) Is their 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 Organization or outside it been caused any undue benefit?

(i) Have the norms or systems and procedures of the Organization been flagrantly violated?

If the act or omission is such that it reflects on the reputation of the officers for his integrity or good faith or the devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for activities. (*AIR 1979 SC 1022 S. Govinda Menon Vs Union of India AIR 1967 SC 1274)*

Rule 4 of FACT CDA Rules 1977 specifies the scope of Employees service as

(a) Every employee of the Company shall <u>at all times,</u>

(i) maintain absolute integrity,

(ii) maintain devotion to duty, and

(iii) do nothing, which is unbecoming of an employee of his/her status or of a public servant.

(b) Every employee of the Company holding supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all workmen for the time being under his control and authority.

(c) Unless in any case it be otherwise distinctly provided the whole time of an employee shall be at the disposal of the Company and he shall serve the Company in such capacity and at such place as he may from time to time be directed.

(d) Prohibition of sexual harassment of working women:

No Employee shall indulge in any act of sexual harassment of any woman at her work place.

Every Employee who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation: For the purpose of this rule, "sexual harassment" includes such unwelcome sexually determined behavior, whether directly or otherwise, as

(a) physical contact and advances;

(b) demand or request for sexual favors;

(c) sexually coloured remarks;

(d) showing pornography; or (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

The above is in lines with Rule 3 of Government Servants Conduct Rules, 1956.

The rule would appear to be couched in very wide terms. The expressions 'at all times' and 'implied orders of the Government' are important and have been held to mean that misconduct even in private life may be misconduct for the purpose of disciplinary action.

The relevant provisions and procedure for departmental inquiries are contained in the Constitution and under various disciplinary proceedings rules and in the principles of natural justice.

10.5.2 Disciplinary Proceedings:

Misconduct, or non-conforming behaviour, as it is sometimes called can be tackled in many ways such as counseling, warning, etc. In extreme cases such as, criminal breach of trust, theft, fraud, etc the employer is also at liberty to proceed against the employee, if the misconduct of the latter falls within the purview of the penal provisions of the law of the land. However such proceedings are generally conducted by the state agencies, are time consuming and call for a higher degree of proof. In addition to the above option, the employer also has an option to deal with the erring employee within the terms of employment. In such an eventuality, the employee may be awarded any penalty which may vary from the communication of the displeasure to the severance of the employer employee relationship i.e. dismissal from service. There was a time when the

employer was virtually free to hire and fire his employees. Over a period of time, this common law notion has gone. Today an employer can inflict punishment on an employee only after following some statutory provisions depending upon the nature of the Organization.

Every Public servant is entitled to three kinds of protection- Constitutional, legal and principles of natural justice,

10.5.3 Constitutional protection Constitutional protection is contained in Part XIV of the constitution of India under Articles 311, 14, 16 and 21of the constitution.

Article 311 clause (i) lays down that no person who is a member of the civil service of the Union or a state or an all India service holds a civil post under the union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed .Clause (2) provides that no such person shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges and stipulates that the evidence adduced during the enquiry alone should be the basis for imposing the penalty.

10.5.4 Government:

Part XIV of the Constitution relates to the terms of employment in respect of persons appointed in connection with the affairs of the State. Any action against the employees of the Union Government and state Governments should confirm to these Constitutional provisions, which confer certain protections on the Government servants. These provisions are applicable only to the employees of the various Ministries, Departments and Attached and Subordinate Offices. In addition to the constitutional provisions, these are certain rules which are applicable to the conduct of the proceedings for taking action against the erring employees. Central Civil Services (Classification, Control, and Appeal) Rules 1965 covers a vast majority of the Central Government employees. Besides, there are also several other Rules which are applicable to various sections of the employees in a number of services.

10.5.6 Semi Government Organizations:

By this we mean the Public sector Undertakings and Autonomous Bodies and Societies controlled by the Government. Provisions of Part XIV of the Constitution do not apply to the employees of these Organizations. However, as these Organizations can be brought within the definition of the term 'State' as described in Article 12 of

the Constitution, the employees of these Organizations are protected against the violation of their Fundamental Rights by the employees of these Organizations on the grounds of arbitrariness, etc. These Organizations also have their own sets of rules for processing the cases for conducting the disciplinary proceedings against their employees.

Officers in FACT are governed by FACT DA Rules 1977,

These Rules have been drafted on the Model Conduct, Discipline and Appeal Rules framed by the Central Vigilance Commission for adoption by PSUs

10.5.7 Purely private organizations:

These are governed by the various industrial and labour laws of the country and

the approved standing orders applicable for the establishment.

Although the CCS (CCA) Rules 1965 applies to limited number of employees in the Government, essentially these are the codification of the Principles of Natural Justice, which are required to be followed in any quasi judicial proceedings. Even the Constitutional protections which are contained in Part XIV of the Constitutions are the codification of the above Principles. Hence, the procedures which are followed in most of the Government and semi-governmental Organizations are more or less similar.

Difference between Judicial Proceedings and Disciplinary Proceedings is placed at Appendix "A"

10.6.0 FACT Conduct Rules 1977:

Although the above mentioned provisions are applicable as such to the employees of the Ministries, departments and attached and subordinate offices only, yet the same are relevant to the employees of Public Sector Undertakings and the autonomous bodies as well. This is so, because similar provisions exist in the service rules relating to a number of PSUs and Autonomous bodies.

The employees of public sector undertakings, which have been constituted as corporate bodies and constitute separate legal entities under the relevant statutes or which have been registered as companies under the Companies Act are not Government servants. They are governed by rules and regulations made by the respective

undertakings under the powers vesting in them under the relevant statutes/Articles of Memorandum.

FACT Conduct Rules 1977Amended from time to time) governed the matters relating to conduct and discipline of employees of FACT. Employees covered by the Industrial Employment (Standing Order) Act were dealt under the Certified Standing Orders of respective Divisions/Factories. With the introduction of the FACT CDA Rules in 1977 all Officers in the Company are governed by the said Rules (as amended from time to time).

10.6.1 FACT CDA Rules 1977 contains, inter alia,

Act which would be deemed to be misconduct

Any commission of misconduct as stipulated in the Rule would make the employee liable to disciplinary action as per the procedure prescribed therein.

Rule empowers the competent Disciplinary Authority to award minor/ major punishment. The minor & major punishments have been defined under clause 24 of the Rule.

Clause 34 and 35 envisage the provisions of Appeal (by the aggrieved officer) and Review (by the Appellate Authority suo moto) on the final order of the said Disciplinary Authority

Necessary Jurisdiction, for renewal of doubt regarding interpretation of or amending, the Rule vests with the Board of the Company.

10.6.2 Certified Standing Order:

A Certified Standing Order is framed on the Model Standing Order provided under the Industrial Employment (Standing Order) Act, 1946. The Act requires for such Standing Order in an establishment which consists more than 100 workmen. The terms and conditions of service are negotiated between trade union and the management whereupon the same is certified by the certifying officer designated as per the Act, and it becomes Certified Standing Order

The standing orders, therefore, amount to a statutory contract between the parties. When the standing orders are certified they bind not only all existing workmen in employment but also all workmen who may be employed in future. Thus the standing orders amount to a statutory contract between the parties as against agreed to by both the parties. It is also now well established that parties cannot enter into a contract inconsistent with the provisions of the standing orders.

The standing Orders define and settle the terms and conditions of employment of the employees. These include:

a) Classification of workmen e.g. permanent, temporary, apprentice, probationers.

b) Entry and exit of workmen and liability to search.

c) Manner of intimating hours of work, holidays, pay days and wage rates.

d) Shift working, leaves, Holidays, and change of address.

e) Attendance and late coming.

f) Duties and obligations of workmen during working hours.

g) Stoppage of work.

h) Essential services.

i) Termination or employment and payment at termination.

j) Acts of misconduct.

k) Punishment for misconduct.

l) Suspension pending enquiry and subsistence allowance.

m) Age for superannuation, medical examination etc.

n) Any other matter which may be prescribed.

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Chapter VII

PRINCIPLES OF NATURAL JUSTICE

11.0.0 The concept and evolution:

The Principles of Natural Justice can be put as vocate (call), interrogate (question) and judicate (decide judiciously). The sum and substance of natural justice is notice, reasonable opportunity for defence, unbiased consideration of the submission and solemn judgment.

Though there is no statue laying down the minimum procedure which administrative agencies must follow, while exercising decision making power, sometimes, the statue under which the administrative agency exercise power lays down the procedure which the administrative agency is left free to devise its own procedure.

However, the Courts have always insisted that the administrative agencies must follow minimum of fair procedure this minimum fair procedure refers to the principle s of natural justice. Natural justice is justice based on human values and good conscience following a just and fair procedure. These are principles analogous to principle of justice equity and good conscience.

The test to decide whether Principles of natural justice have been violated or not is whether there is such a manifest failure of justice to shock the conscience of a reasonable person. These principles are vital to ensure justice and give due protection to all employee where conduct is under consideration as they are deemed to govern the procedure of departmental enquiries even though not provided for.

11.0.1 Constitution and Principles of Natural Justice:

In the Constitution of India there are some rights which are recognized as fundamental rights and they are described in Part III of the Constitution. The fundamental rights are applicable against the State. Though the Principles of Natural Justice are not treated as Fundamental Rights yet it may be entirely out of context to stress here that Article 14 of the Constitution of India guarantees equality before law and protection against any discrimination by any law. Any act of arbitrariness is discursively a form of discrimination and as such this would tantamount to transgression of Article 14. Since the Principle of Natural Justice also forbid arbitrariness, in a way violation of principles of Natural Justice would also mean violation of Article 14 of the Constitution.

11.0.2 Principles of Natural Justice and Departmental Enquiries

The proceedings before the Civil Court are governed by the Civil Procedure Code and the proceedings before the criminal courts are governed by the Criminal Procedure Code. Both the codes have detailed guidelines how a civil or criminal court should act in different contingencies. As far as the departmental enquiry is concerned no such detailed guidelines are usually available.

The reason why the doctrines and procedure applicable to a Court of Law are not applicable to quasi-judicial proceedings is due to difference in the functions of the two bodies. The climate of the court, the pattern of judicial procedure, the judicial environment and the anatomy of judicial process are all basically different from those of the administrative court, the administrative agencies, the administrative process and the administrative technique. The quasi-judicial authorities are not bound to follow the procedure of courts or strict rules of evidence and therefore they can obtain information material for enquiry in any way provided they give a fair opportunity to the employee to explain the same.

The principles of natural justice are applicable to all quasi-judicial proceedings. The test to determine whether the act of a body may be said to be quasi-judicial or not is that the body must have legal authority to determine questions affecting the rights of the parties and it must have the duty to act judicially.

11.0.3 The principles

There are four basic well understood and established principles of natural justice that are meant to be minimum protection of the rights of individuals against arbitrary procedures, may it be judicial or quasi-judicial.

1. Nemo Debat Esse Judex in Propria Causa: No one should be judge of his own cause; Rule against Bias.

2. Audi Alteram Partem: No one should be condemned unheard. Right to be heard.

3. Uberima Fide: Speaking Order. Reasoned Decision

4. Decision in good faith.

11.0.4 Rule against Bias:

Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. Therefore, the rule against bias strikes against those factors which may improperly influence a judge in

arriving at a decision in any particular case. The requirement of this principle is that the judge must be impartial and must decide the case objectively on the basis of the evidence on record. A person cannot take an objective decision in a case in which he has an interest for, as human psychology tells us, very rarely can people take decisions against their own interests.

Central Vigilance Commission too has advised that the members of the Tender Committee should give an undertaking at the appropriate time, that none of them has any personal interest in the Companies/Agencies participating in the tender process. Any member having interest in any Company should refrain from participating in the Tender Committee. (CVC Office Order No 71/12/05 dt 09/12/2005)

The Disciplinary Authority acts like a judge. He takes administrative action with a judicial approach, which requires administration of justice according to rules, following just and fair procedure. He shall be independent, impartial, fair and objective. A person with a foreclosed mind or a person who has prejudged the issue or predetermined to punish the delinquent should not act as inquiry officer. Similarly a person who is a complainant, or witness or prosecutor cannot act as a judge.

AIR 1973SC 2701. The Honorable Court held, "The test of likelihood of bias which has been applied in a number of cases is based on the reasonable apprehension of a reasonable man fully cognizant of the facts.

The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. The reviewing authority must take a determination on the basis of the whole evidence before it whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principles that justice must not only be done but seem to be done. If right-minded persons would think that there is real likelihood of bias on the part of an enquiry officer, he must not conduct the enquiry; nevertheless there must be a real likelihood of bias.

Surmise or conjuncture would not be that the inquiring officer will be prejudiced against the delinquent. The court will not enquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision.

There are different facets of Bias which may affect the decision in variety ways.

a. Personal bias

It arises from a certain relationship equation between the deciding authority and the parties which incline him unfavourable or otherwise on the side of one of the parties before him. In case of allegation of such bias, it should be examined whether there is reasonable likelihood of apprehension of not getting fair trial as was defined by Supreme Court in S. Parthasarathy vs State of Andhra Pradesh 29.

b. Pecuniary bias

It envisages that any financial interest, howsoever small it may be, would vitiate administrative action. While ownership or share holding qualifies for pecuniary bias, mere trusteeship of society does not.

c. Subject-matter bias

Those cases fall within this category where the deciding officer is directly, or otherwise, involved in the subject-matter of the case. Here again mere involvement would not vitiate the administrative action unless there is a real likelihood of bias. Someone who has examined himself as witness should not be the inquiry officer.

d. Preconceived notion bias

Bias arising out of preconceived notions is another disqualification. However unless the strength of the preconceived notions is such that it has the capacity of foreclosing the mind of the judge, administrative action would not be vitiated.

In case of bias, the cardinal principle is that the question/doubt of bias should be raised at the first instance. Objections raised later are likely to be overruled.

11.0.5 Right to be heard:

The expression audi alteram partem simply implies that a person must be given an opportunity to defend himself. This principle is sine qua non of every civilized society.

"The laws of God and man both give the party an opportunity to make his defence, if he has any". 30 Byles, J. in Cooper vs Wandsworth Board of works 1861 All ER Rep Ext 1554. The Bible recites the story of Adam, who ate the forbidden (knowledge) fruit apple, at the instigation of Eve. God had forbidden the first man and first woman to eat it. However when He came to know of the event,

He did not straightway punish Adam and Eve. Instead He called both of them and gave an opportunity to explain their stand. God asked them, "Adam, Where art thou; Hast thou eaten the fruit of the tree where I commanded thee that thou shall not eat?" And the same question was put to Eve also. Moral of the story is that God, the almighty, adhered to the Principles of Natural Justice and did not think it proper to condemn them without being heard.

Art.311 (2) of the Constitution of India embodies the principles of reasonable opportunity. It reads as follows:

"No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges".

Thus Article 311(2) makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. Whenever, therefore, the service rules contemplate in inquiry before punishments is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.31 31 MD, ECIL, Hyderabad vs B. Karunakar AIR 1994 SC 1074

a. Right to Notice: The Charge sheet

Notice is the starting point of any hearing.

The object of issuing a charge sheet is to give opportunity to the Employee who is charged with misconduct to offer his explanation to defend himself. The rules of Natural Justice require that person charged should know the nature of the misconduct with which he is charged and should be given an opportunity to defend himself and to give a proper explanation.

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. *Para 20.1.5 Special chapter on Vigilance management in public Sector.*

b. Right to present case and evidence

The adjudicatory authority should afford reasonable opportunity to the party to present his case. The requirements of natural justice are met only if opportunity to represent in view of the proposed action.

Hon'ble Supreme Court had dealt with the above matter in detail in the case of Chandrama Tewari vs. Union of India wherein following guidelines were issued.

a. Copy of the documents, if any, relied upon against the party charged, should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded would contravene principles of Natural Justice rendering the enquiry and the consequential order of punishment illegal and void.

b. It is not necessary that each and every document must be supplied to the delinquent Government Servant facing the charges. Instead, only material and relevant documents are necessary to be supplied to him. The obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent official.

c. A delinquent official is entitled to have copies of material and relevant documents only, which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other documents which may have been relied in support of the charges.

d. If a document has no bearing on the charges or if it is not relied upon by the inquiry officer to support the charges, or if such document or material was not necessary for cross-examination of witnesses during the inquiry, the officer cannot insist upon the supply of documents, as the absence of copy of such document will not prejudice the delinquent official. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. *Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This lapse would vitiate the departmental proceedings unless* it was shown and established as a fact that non-

supply of copies of those documents had not caused any prejudice to the delinquent in his defence

11.0.6 The right to rebut adverse evidence

The right to rebut adverse evidence presupposes that the person has been informed about evidence against him. It is sufficient if the summary of the contents of the adverse material is made available provided it is not misleading. The opportunity to rebut evidence necessarily involves the consideration of two factors: cross-examination and legal representation.

A. Cross-examination

The right to cross-examination by the Charged Employee as an ingredient of fair hearing has been decreed by the Supreme Court.

B. Legal Representation

Normally representation through a lawyer in any administrative proceeding is not considered an indispensable part of the rule of natural justice as oral hearing is not included in the minima of fair hearing. It is further justified on the ground that the representation through a lawyer of choice would give edge to the rich over the poor who cannot afford a good lawyer.

However, the courts have held that in situations where the person is illiterate , or the matter is complicated and technical , or expert evidence is on record, or a question of law is involved or the person is facing a trained prosecutor, some professional assistance must be given to the party to make his right to defend himself meaningful.

C. No evidence should be taken at the back of other party:

The exparte statements taken in the absence of the other party, without affording an opportunity to rebut, is against the recognized principles of natural justice. Whatever information is obtained by the administrative authority must be disclosed to the other party and an opportunity to rebut it must be provided.

But there is nothing to prevent an administrator from collecting information before the hearing and he is not compelled to disclose it. Equally there is no compulsion to disclose information which is obtained after the hearing.

D. Report of the enquiry to be shown to the other party:

The question came before SC in Managing Director, ECIL, Hyderabad vs. B. Karunakar and the Supreme Court issued the following guidelines

i. that when the Inquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him and a denial of the right amounts to a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of Natural Justice.

ii. that the statutory rules, if any, which deny the report to the employee are against the principles of Natural Justice and therefore invalid. The delinquent employee will, therefore be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

iii. that it will not be proper to construe the failure on the part of the delinquent employee to ask for the inquiry report as the waiver of his right and whether the employee asks for the report or not, the report has to be furnished to him.

iv. that this rule is applicable to employees in all establishments whether Government or non-Government, public or private, whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject.

v. that in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to aggrieved employee if he has not already secured it before coming to the Court / Tribunal, and give the employee an opportunity to show how his or her case was prejudice because of the non-supply of the report. If, after hearing the parties, the Court / Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court / Tribunal should not interfere with the order of punishment and should not mechanically set aside the order of punishment on the ground that the report was not furnished. It is only if the Court / Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Whether the Court / Tribunal thus sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority / management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report.

11.0.7 Reasoned Decision:

The third principle of Natural Justice states that the final orders passed should be a speaking order. It is applicable both to the inquiry officer as well as the disciplinary authority – while giving the inquiry report for the former and for passing the penalty order or otherwise for the latter. A speaking order is one, which specifies the reasons for reaching the conclusions.

The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. A reasoned order is a desirable condition of judicial disposal. The requirement that reasons be recorded governs the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The appellate or reviewing authority, if it affirms such an order, need not give separate reasons if the appellate or reviewing authority agrees with the reasons contained in the order under challenge.

11.0.8 Decision in good faith:

Judges like 'Caesar's wife' should be above suspicion. It implies that the judge is impartial and without any interest. It further envisages that justice should not only be done but should manifestly appear to have been done. It implies that the judge has accorded due consideration to the evidence before him by not just counting the evidence but by weighing it and that he has arrived at decisions without indication of any favour to either of the parties during trial or inquiry.

In the case of Ashok Kumar Yadav vs State of Haryana was held as under; "It is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and commonsense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides exparte, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. It is also important to note that this rule is not confined to cases where

judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contenting parties."

11.0.9 Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.

It is a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC.

There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In another case, the disciplinary authority had imposed the penalty of removal from service of an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of kind by the concerned authorities.

Thus the Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order (*CVC circular 02/01/09 dated 15th January 2009 and 02/05/2014 dated 19th May 2014*)

11.0.10 Exceptions to the Rule of Natural justice.

Though the rules of natural justice have definite meaning and connotation in law and their content and implication are well understood and firmly established, they are nonetheless not statutory rules. Not only can the principle of natural justice be modified but in exceptional cases they can even be excluded. It is as much in public interest and for public good that employee who are inefficient, dishonest or corrupt or have become a security risk should not continue in service.

Furthermore these rules can operate only in areas not covered by any law validity made. Where disciplinary rules contain clear provisions about the conduct of inquiries at various stages, the rules of natural justice should not be invoked for going beyond or round the scope of the rules at any stage.

Chapter VIII

SUSPENSION

12.0.0 What is suspension?

Suspension is the Temporary deprivation of a person's power or privileges, especially of office or profession.

An employee when he is suspended is thus debarred from any privilege, from the execution of an office or from the enjoyment of an income. It is a temporary deprivation of office but by reasons of suspension the person suspended does not lose his office not does he suffer any degradation. He only ceases to exercise the power and to discharge the duties for the time being. He cannot draw his salary but be gets his suspension allowance and he is also subjected to the same disciplinary action and penalties as other employee. It only means a temporary deprivation of office.

The master and the servant relation continue to exist during suspension. The suspended employee cannot seek employment elsewhere though he does not perform his normal duties.

The suspended employee cannot be asked to render any service or perform any duty".

12.0.1 Rule 21 of the FACT CDA Rule 1977 provide as under:

i) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any authority empowered in that behalf by the Management by general or special order may place an employee under suspension.

(a) Where a disciplinary proceeding against him is contemplated or is pending; or

(b) Where a case against him in respect of a criminal offence is under investigation or trial.

ii) An officer, who is detained in custody on a criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of with effect from the date of detention by an order of the appointing authority and shall remain under suspension until further orders;

The Court has been held "A departmental inquiry is contemplated when on an objective consideration of the material the appointing authority considers the case as one which would lead to a departmental inquiry, irrespective of whether any preliminary inquiry, summary or detail, has or has not been made, or if made, is not complete" State of U.P vs Rajendra Shankar, 1974 1 SLR All 333

The holding of a preliminary inquiry is not an essential requirement before an order of suspension is made. Har Dev Pillai vs Union of India, GB CB 1987 p. 441: 1988 7 ATC 914

A disciplinary proceeding gets pending with the issue of charge sheet. *An order of suspension may be made at any time during the pendency of the proceedings and kept in force even if the departmental proceedings are suspended or postponed to a future date.* Binod Chandra vs Union of India, AIR 1960 Punjab 147

Equally, the order of suspension can be revoked at any time during the pendency of the proceedings

12.0.2 Implication of suspension

Following implications flow from an order of suspension:

a) Suspension is not a penalty. It is an interim order to keep powers, functions and privileges of the employee in abeyance.

b) Suspension does not put an end to the relationship of master and servant between the State and employee. The reason is that the contract of service is not terminated. It remains in a state of suspended animation.

c) There is no reduction in his rank, status or pay. But, since he does not discharge his duties, he cannot enjoy the privileges connected with his functioning in office.

d) Since no functions are discharged, the principle- 'no work, no pay' applies. But since relationship of master and servant continues and the public servant is subjected to Conduct Rules including the one that during the subsistence of employment he cannot work elsewhere, he is paid 'subsistence allowance' for livelihood of self and members of family.

e) The suspended employee continues to be governed by various Service Rules as before, including the Discipline and Conduct Rules. Thus, he remains subject to the same discipline penalties, and to the same authorities.

f) Suspension does not affect his status as a permanent or a quasi-permanent employee. Accordingly, if he is permanent he retains his lien on the post.

g) Since he remains subject to the Conduct Rules, which prohibit private trade or employment, an employee under suspension cannot supplement his subsistence allowance, which is only a fraction of his emoluments, by engaging himself in any other employment, business, profession or vocation.

h) Suspension is not a penalty though, no doubt, it has injurious effect on the suspended employee.

i) He cannot be asked to render any service or perform any duty. It is not even necessary for him to mark his attendance regularly at the place of work.

12.0.3 Purpose of Suspension

The object of placing a public servant under suspension is to keep him away from the work situation so that he cannot interfere with the conduct of inquiry or tamper with the documentary or oral evidence against him in any manner, or where, having regard to the nature of charges against him, it is felt that it would be unsafe to continue to vest in him the power of the post.

Resorting to suspension may become necessary in a case where a public servant is charged of a grave offence or a serious misconduct. The reason is that a criminal proceeding or a department inquiry is generally a time-consuming process and it may take quite some time before he either clears himself of the charge or is lawfully dismissed or removed from service. In the meantime, it may not be in the public interest to allow the officer under cloud to continue in a public office.

Then, in cases involving allegations of moral turpitude, it may not be expedient to keep the employee in the work situation until he absolves himself of those charges.

12.0.4 Suspension and show cause notice

Suspension pending a departmental or criminal proceeding against a government servant is not a punishment and does not amount to 'reduction in rank' in the sense the term is used in Article 311(2) of the Constitution. Mohd. Ghouse vs State of Andhra, AIR 1957 SC 246; Union of India vs P.K More, AIR 1962 SC 630. Therefore, it is not necessary to accord reasonable opportunity to show cause before an order of suspension is made against an employee.

12.0.5 Suspension is an administrative action

An order of suspension is not a quasi-judicial order. It is an administrative order. It is immaterial evil effects flow from such an order (M. Nagalakshmi vs State; Jammu University vs D.K Rampal. A mere contemplation of an inquiry or pendency of criminal trial will be sufficient to exercise the power without actually recording judicial or quasi-judicial satisfaction for making the order.

12.0.6 Need to make a speaking order

Normally, the requirement of making a speaking order exists in judicial or quasi judicial matters only. The order of suspension is neither judicial nor quasi-judicial: it is purely an administrative order. Thus there is no requirement of making a reasoned order while dealing with administrative matter unless such a requirement flows from the rules itself Union of India vs E.G Nambudiri, 1991 AIR SCW 1190.

However, an order of suspension must be based on an objective assessment of the situation by the competent authority himself and not as a result of dictation or direction by an extraneous authority. Furthermore an order of suspension cannot be issued blindly without application of mind or mechanically simply because the prosecuting agency had advised in its favour.

12.0.7 When suspension may be justified

Though suspension from service pending a departmental proceeding is not a penalty, it has far reaching adverse effects on the employee concerned. It leaves a deep stigma on the public servant's entire service career, even though he may be exonerated at a later stage, after conclusion of the Formal Inquiry. "There is no doubt that order of suspension affects a Public servant injuriously"- observed Supreme Court in *Khem Chand vs The Union Of India And Others on 13 December, 1957*

The reason is that by an order of suspension his emoluments get restricted and his anxieties increase as his fate hangs in balance. Since the Conduct Rules continue to apply to him, he cannot supplement his subsistence allowance, which is only a fraction of his emoluments, by engaging himself in any other employment, business, profession or vocation. Where suspension has been ordered during the criminal proceedings, it might have an adverse effect on his defence. Suspension also undermines the prestige of the employee and brings him down in public eyes. In fact, the effect of suspension on the morale of the Services is rather catastrophic. In the case of officers holding prestigious appointments, the suspension may give rise to a scandalous and sensational publicity which could

affect adversely the morale of the services as a whole. The Kerala High Court rightly observed in the case of N Subramanian that an order of suspension, though not a penalty, brings to bear on the employee consequences far more serious in nature than several of the penalties.

The employer is also a loser as it has to pay subsistence allowance, many a time, at an enhanced rate which may equal be to 75 percent of his emoluments, without utilizing his services. The long spell of suspension also results in discontinuity of acquaintance with work and is thus detriment to the efficiency of the employee concerned.

On the other hand, however officers charged of corruption, if not suspended, manage to get their inquiries delayed because delay in criminal /disciplinary /departmental proceedings enables them to continue in service even though the charges against them were grave enough to deserve the punishment of dismissal from service.

Such officials also use the continuance in office for earning money through illegal/corrupt means.

CVC circular No.000/VGL/70 dated 25th September 2000 on Suspension of public servants involved in criminal/departmental proceedings is reproduced below

Suspension is an effective tool for checking corruption. There have been many instances where senior officials, who had been trapped or were alleged to have disproportionate wealth or who were facing charge sheets on other serious charges, had not been suspended. It has also come to notice that officers charged of corruption, if not suspended, manage to get their inquiries delayed because delay in criminal/departmental proceedings enables them to continue in service even though the charges against them are grave enough to deserve the punishment of dismissal from service. Such officials can also use the opportunity of continuance in service for earning money through illegal/corrupt means. The Commission, therefore, is of the view that officers facing criminal/ departmental proceedings on serious charges of corruption should be placed under suspension as early as possible and their suspension should not be revoked in a routine manner.

It has been provided in Para 2.4, Chapter V of the Vigilance Manual, Volume- I, that public interest should be the guiding factor in deciding whether, or not, a public servant should be placed under suspension; or whether such action should be taken even while the matter is under investigation and before a prima-facie case has been established.

The instructions provide that it would be appropriate to place a person under suspension if: -

(i) the continuance of the public servant in office is likely to prejudice investigation, trial or inquiry [apprehending tampering with documents or witness]; or

(ii) where the continuance in office of the public servant is likely to seriously subvert discipline in the office in which he is working;

(iii) where the continuance in office of the public servant will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the public servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where the investigation has revealed a prima-facie case justifying criminal/departmental proceedings which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service; or

(v) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

12.0.8 Para 2.5, Chapter V of the Vigilance Manual, Volume-I also lays down that it may be considered desirable to suspend a public servant for misdemeanor of the following types: -

(i) an offence or conduct involving moral turpitude;

(ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gains;

(iii) serious negligence and dereliction of duty resulting in considerable loss to Government;

(iv) desertion of duty; and

(v) refusal or deliberate failure to carry out written orders of superior officers.

[In case of types (iii), (iv) and (v) discretion should be exercised with care].

It has also been provided in Para 17 of the "Directive on investigation of cases by the Special Police Establishment Division of the CBI" that the CBI would recommend suspension of the concerned employees in appropriate cases.

The Central Vigilance Commission has been empowered, vide para 3 (v) of the Government of India's Resolution No.371/20/99-AVD.III dated 4th April 1999, to exercise superintendence over the vigilance administration of various Ministries of the Central Government or Corporations established by or under any Central Act, Government Companies, Societies and local authorities, owned or controlled by that Government. Since the suspension of a public servant on serious charges, like corruption, is directly related to the vigilance administration, the Commission hereby desires that all disciplinary authorities should follow the instructions enumerated in Para 2, 3 and 4 strictly. It also desires that if the CBI recommends suspension of a public servant and the competent authority does not propose to accept the CBI's recommendation in that regard, it may be treated as a case of difference of opinion between the CBI and the administrative authority and the matter may be referred to the Commission for its advice. It also directs that if a person had been suspended on the recommendations of the CBI, the CBI may be consulted if the administrative authority proposes to revoke the suspension order.

Further, an official may also be placed under suspension, if,

1. In a case where a trap has been laid to apprehend a Public servant while committing an act of corruption (usually receiving illegal gratification) and the Public servant has been so apprehended; immediately after the Public servant has been apprehended.

2. In a case where on conducting a search it is found that a Public servant is in possession of assets disproportionate to his known source of income and it appears prima facie that a charge under Section 5(i)(e) of the Prevention of Corruption Act could be laid against him; immediately after the prima facie conclusion has been reached.

3. In a case where a Charge Sheet accusing a Public servant of specific acts of corruption of any other offence involving moral turpitude has been filed in a criminal court immediately after the filing of the Charge Sheet.

4. In a case where after investigation by the CBI a prima facie case is made out and pursuant thereto regular departmental action for imposition of a major penalty has been instituted against a Public servant and a Charge Sheet has been served upon him alleging specific acts of corruption or gross misconduct Para 2.5 Chapter V of the Vigilance Manual, Volume I involving moral turpitude immediately after the Charge Sheet has been served upon the Public servant.

12.0.9 What is meant by the term "Moral Turpitude?"

The term 'Moral Turpitude' has been defined as quality of crime involving grave infringement of the moral sentiments of the community (Webster's dictionary). It is an act which could shake the moral conscious of society in general and the perpetrator could be considered to be a person of a depraved character or; looked down upon by the Society. An act will be considered as involving moral turpitude if it involves baseness, vileness or depravity, when judged in the context of private and social duties which a man owes to his fellowmen or to the society in general.

In Mangali vs. Chhaki Lal, the tests to find out 'Moral Turpitude' were given as

(a) Whether act is such as would shock the moral conscience of society,

(b) Whether the motive which led to the act was a base one, and

(c) Whether on account of the act having been committed the perpetrator could be considered to be of depraved character or a person who was to be looked down by the society.

12.0.10 Caution by Supreme Court against suspension on trivial lapses

In M. Paul Anthony vs Bharat Gold Mines Ltd Honourable Supreme Court observed-

"Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by" suspension syndrome" and the employees have been found to place under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension".

12.0.11 Authorities competent to suspend

In Service Jurisprudence, the authority who appoints an employee is also competent to dismiss or remove him from service. It goes without saying that he can also impose the lesser penalties. This power of the appointing authority includes the power to place under suspension also.

An order to suspension made with the approval of the authority competent to suspend but signed by another officer for him is valid in law B Chakravarty vs Kaula In such a case, the presumption would be that the order has been passed by the authority specified in the order.

12.0.12 Suspension cannot take retrospective effect

In Hemanta Kumar vs Mukherjee1 the Calcutta High Court observed:

" There can be no meaning in suspending a man from working during a period when the period is passed and he has already worked or suspending a man from occupying a position or holding a privilege in the past when he has already of occupied or held it".

12.0.13 Date of effect of order of suspension

The normal principle is that an order of suspension takes effect from the date of its communication Amarsingh Harla vs State of Rajasthan

12.0.13 When the employee is on leave

The order of suspension may take effect from any date falling within his leave or unauthorised absence. The unexpected portion of his leave shall be cancelled. Supreme Court of India State Of Punjab vs Khemi Ram on 6 October, 1969

12.0.14 Change of Headquarters during suspension

Normally, the headquarters of the employee under suspension should be his last place of duty. He cannot leave that station without permission. A request for change of headquarters is usually granted where it is not likely to put the Government to any extra expenditure like travelling allowance, or raise other complications

12.0.15 Leave during suspension

Ordinarily, leave is not granted to a Public servant under suspension. The rule is justified in the interest of speedy finalization of disciplinary proceedings [Bank of India officer's Association vs Bank of India].

12.0.16 Lien

A Public servant having a lien on a permanent post retains it while under suspension.

12.0.17 Resignation during suspension

"Where a Public servant, who is under suspension submits a resignation the competent authority should examine, with reference to the merit of the disciplinary case pending against the Public servant, whether it would be in the public interest to accept the resignation. Normally an officer is placed under suspension only in cases of grave delinquency and it would not be correct to accept resignation of an officer under suspension.

Concurrence of the Government Central Vigilance Commission should be obtained before submission of the case to the Minister in charge/Comptroller and Auditor General, if the Central Vigilance Commission had advised initiation of departmental action against the Public servant concerned or such action has been initiated on the advice of the Central Vigilance Commission".

12.0.18 Voluntary Retirement

If an officer against whom an inquiry or investigation is pending (whether he has been placed under suspension or not) submits his resignation, such resignation should not normally be accepted Para 6.14.1 CVC Manual Vol I

In the case of notice of voluntary retirement by a public servant under suspension, It is open to the competent authority to withhold permission to retire.

12.019 Payment during suspension – Subsistence Allowance:

Para 22 of FACT CDA Rule 1977 provides as under:

(a) An employee under suspension shall be entitled to draw subsistence allowance equal to 50% of his basic pay and 50% of the Dearness allowance admissible to him provided the Disciplinary authority is satisfied that the employee is not engaged in any other employment or business or profession or vocation. In addition he shall be entitled to any other compensatory allowances in full of which he was in receipt on the date of suspension provided that the suspending authority is satisfied that the employee continues to meet the expenditure for which the allowances was granted.

(b) Where the period of suspension exceeds six months, the authority which made or is seemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-

i. The amount of subsistence allowance may be increased to 75% of basic pay and allowances thereon if in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the employee under suspension;

ii. The amount of subsistence allowance may be reduced to 25 percent of basic pay and allowances thereon if in the opinion of the said authority the period of suspension has been prolonged due to the reasons to be recorded in writing directly attributable to the employee under suspension.

(iii) If an employee is arrested by the police on a criminal charge and bail is not granted, no subsistence allowance is payable. On grant of bail, if the competent authority decides to continue the suspension, the employee shall be entitled to subsistence allowance from the date he is granted bail.

12.0.20 Non-payment of Subsistence allowance violates Article 21

In M. Paul Anthony vs Bharat Gold Mines Ltd the Supreme Court observed that Article 21 of the Constitution guarantees basic human right of life and livelihood therefore. The provisions for payment of subsistence allowance have been made in service rules to ensure non-violation of this very important right of the employee. This obligation can be fulfilled only by regular payment of subsistence allowance.

12.0.21 End of suspension: Revocation of Suspension

Suspension ends on Revocation:

The order of suspension may be revoked by the authority which passed that order; or its next higher authority or the concerned appointing authority as the case may be.

A specific order of revocation of suspension is necessary in all cases where an order indefinite in regard to duration was made by the suspending authority or where the suspension was automatic or deemed in terms of the provisions of the rules. This general rule is, however, subject to an exception as under.

Termination of suspension is automatic where it was ordered for a specified period

Where the order of suspension has specifically been made operative for a definite period only, the suspension will come to an end on the expiry of the said period. If it is extended, it must be done before the expiry of that period. It will be beyond the power of the suspending authority to extend it after the date of expiry is passed. Vardharao vs State SLR 1977 2 Kerala

Suspension ends when criminal case is finally disposed of

In the case of a Charged Employee who is under suspension pending some criminal proceedings against him, if he is not being proceeded departmentally also, suspension order comes to an end when the criminal proceedings are finally disposed of.

Scope of judicial interference

1. Where suspension is ordered by an authority not competent to suspend

2. Where suspensions in contravention of statutory rules

3. Where the order of suspension is mala fide

4. When the order of suspension is not justified

5. Where order of suspension gives unauthorized retrospective effect

6. Where suspension is ordered without proper application of mind

7. Where suspension is unduly prolonged or becomes oppressive

.....

Chapter IX

13.0.0 CHARGE SHEET

13.0.1 Object of Charge-sheet:

If (during the preliminary enquiry or otherwise) a prima facie case is made out and the competent authority or disciplinary authority, as the case may be, satisfies himself and decides to take further proceedings, then, a regular enquiry is started as per the rules and procedure. The first step in this direction is the framing and the issuance of a Charge-sheet. Charge-sheet in departmental enquiries is a written and formal intimation containing the alleged acts of misconduct which the delinquent has committed in the employment.

Absence of charge-sheet violates natural justice. The Principles of Natural Justice requires that the employee affected should have full and true disclosure of the facts sought to be used against him. He must also be given opportunity to defend himself and to give a proper explanation. The right of hearing is a right, no more and no less, to a hearing which is adequate to safeguard the right for which such protection is afforded. It must be hearing in substance and not form. If such hearing is denied the administrative action is void. It is therefore essential that the employee charged with misconduct must be told in the clearest terms and with full particulars what his alleged misconduct is. It should not be left to him to find out what are the specific allegations against him.

The object of issuing a Charge-sheet is to give opportunity to the employee who is charged with misconduct to offer his explanation to defend himself. The rules of natural justice require that person charged should know the nature of the misconduct with which he is charged and should be given an opportunity to defend himself and to give a proper explanation Bhupindar Pal Singh v. D.G. Civil Aviation; 2003 (98) FLR 1192.

13.0.02 Drafting of Charge-sheet:

A charge may be described as the prima-facie proven essence of an allegation setting out the nature of the accusation in general terms, such as, negligence in the performance of official duties, inefficiency, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule, etc. a charge should briefly, clearly and precisely identify the misconduct/ misbehaviour. Inadequate skill in drafting the charge-sheet is one of the reasons which help the charged officials to get

away with lapses/misconduct committed by them. Many cases fail before the Courts of Law just because of the defective framing of charge-sheets. It has been observed by the Commission that the charge-sheets are sometimes framed in a very general way and the existing practice with regard to framing of charges only pointing out that the official concerned has acted in an unbecoming manner or has shown lack of devotion to duty or has acted without integrity. Gupta Tobacco Co. vs Union of India AIR 1968 Del 64

The competent authority or disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehavior into definite and distinct articles of charge State of U.P. v. Chandra Pal 2003 (97) FLR 602

A Charge-sheet should be specific and must set out all the necessary particulars. A Charge-sheet contains

i. the substance of the imputations of misconduct or misbehavior into definite and distinct articles or charge;

ii. a statement of the imputations of misconduct or misbehavior in support of each article of charge which shall contain:

a) a statement of all relevant facts including any admission or confession made by the Government servant; and

b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

The allegations which contain the details of misconduct are called Imputations whereas specific misconduct is a charge.

13.0.03 Statement of Imputations:

The statement of imputation should give a full and precise recitation of the specific and relevant acts of commission or omission on the part of the Employee in support of each charge including any admission or confession made by the Government servant and any other circumstances which it is proposed to take into consideration. A statement that a Government servant allowed certain entries to be made with ulterior motive was held to be much too vague.

Rule 14(3) (i) of the CCS (CCA) Rules stipulates that "the substance of the imputations of misconduct or misbehaviour into distinct articles of charge" should be drawn up by the Disciplinary Authority whenever it is proposed to hold an enquiry against a Government servant. This would mean that no charge can be proper or complete without including therein elements of the main content of the allegations/imputations. Therefore, the spirit of all Conduct,

Discipline & Appeal Rules imply that there should be a specific finding on each allegation made against the officer. At the end, the IO must then apply his mind to come to a conclusion as to whether the charge as a whole has been proved wholly, partially or not at all.

A vague accusation that the Government servant was in the habit of doing certain acts in the past is not sufficient. It should be precise and factual. In particular, in cases of any misconduct/misbehaviour, it should mention the conduct/behaviour expected or the rule violated. It would be improper to call an Investigating Officer's Report a statement of imputations. While drafting the statement of imputations, it would not be proper to mention the defence and enter into a discussion of the merits of the case. Wording of the imputations should be clear enough to justify the imputations in spite of the likely version of the Government servant concerned.

13.0.04 Articles of Charges:

The framings of charges, the holding of an enquiry into them, the suspension of the employee during the enquiry, are all steps in the exercise of the disciplinary power.

All these steps are required to be taken by the disciplinary authority and not by a delegate of that authority. In the absence of a statutory provision permitting expressly or impliedly delegation of disciplinary power, an authority other than the disciplinary authority has clearly no power to frame on its own initiative charges against a civil servant and hold an enquiry into them.

i. it should be so drafted that it is well understood by the employee. Hence, it should be written in simple, unambiguous and unequivocal terms. The Charge sheet should be in a language which is understood by the employee concerned. If the accused is given Charge-sheet of allegation in a language which he cannot understand and he asks for it in a language which he can understand his request should be complied with.

ii. It should not be vague and suggestive. Here standard of vagueness in departmental enquiries is not the same as in criminal proceedings. It means facts narrated should be such that it discloses offence/acts of omissions or commissions. Vague can be considered to be the antonym of 'definite'. If the ground is incapable of being understood or defined with sufficient certainty it can be called vague. When the Charge-sheet gives the necessary particulars of the misconduct alleged, it cannot be characterized as vague. When the accused employee's explanation in reply to the Charge-sheet shows that he understood the charge, he cannot challenge the Charge-sheet

as Vague. If at all the charge is vague, such vagueness should be complained of at the earliest.

iii. Alleged offence/ acts of omissions or commissions should be such that are fitted in the enumerated list of misconduct in CDA Rules/standing order **N.S Makwana vs Union Bank of India and other** 1985 LIJ Vol.II p.296 .Misconduct or misconducts to be specified in clear and unambiguous terms. There should be reference to Para or Sub-Para of service rules with in which the particulars of misconduct falls. There are certain offences or misconducts which have got specific name such as theft, misappropriation, forgery, disobedience, strike, go-slow, negligence etc. It is desirable that in drafting a Charge-sheet, misconduct is called by the specific name which is given to it under the Service Rules though it is not necessary to mention section or rule constituting the misconduct. At the same time mentioning wrong Para of the service rules constituting misconduct is not a material defect and it does not vitiate the enquiry proceeding. **Goweri Thimma Reddy vs State of P.P**. AIR 1958 AP 318. There are certain misconducts such as defamation, threat, abuse, insult, giving false evidence or making false entries which have to be inferred from the words spoken or written, then actual words must be re-produced as they were rest.

iv. It should not be direct. It should not be such to indicate a conclusion. The charge or charges must not assume the guilt of the person concerned and no hint of punishment is to be given. Care should be taken to avoid repetition.

v. It should not be based on surmise or conjecture. Surmises means that although there is no evidence at certain points, but the point is deemed to exist on account of certain assumptions and thereby the mind is prone to fill a gap in the evidence for which there is no justification

vi. It should be specific. It means the date, time and place of occurrence to be invariably mentioned and the names of the person if any, in whose presence the incident has occurred. Each incident should be treated as a separate charge. Sometimes an employee is found to have committed a series of incidents. Each such act of defalcation is a separate charge.

vii. It should also mention the name of all those who are involved. Say for example, if Mr X is involved along with Mr. Y, so it should tell that you along with Mr. Y and so on.

viii. It should not be framed in closed mind A case in point for issuing charge sheet in closed mind is where it tends to show the conclusion already drawn by the Disciplinary Authority

ix. It should not leave any scope to consider it as step for victimization or an act of discrimination or unfair labour practice on the part of the employer.

x. Language should be carefully chosen and it should be very simple. Compound sentence should be avoided. If the charge sheet has been framed in a vague manner, it must be held that there has been no proper enquiry. If the charge sheet is framed on either/or basis, the employee may not be able to comprehend the exact nature of the alleged lapses and may claim that it is vague and thus giving rise to future complication.

xi. Charge-sheet should mention the facts instead of mere inference of judgment from the facts. It however, need not mention evidence, nor should it contain the names of witnesses or the list of documents on which the Charges rest.

xii. Time within which the delinquent is required to reply to the Charge-sheet should be mentioned including the consequences if no reply is received within stipulated time.

xiii. If previous record of the employee is relied upon to show his habit or is an aggravation factor, then sufficient particulars of the previous record and the word "habitual" must be mentioned in the charge-sheet.

xiv. The charge-sheet should not mention penalty.

General considerations regarding drafting of charge sheet is placed at **Appendix 'D'**

13.0.05 List of Witnesses

A number of witnesses are usually examined during the course of the preliminary inquiry and their statements are recorded. The list of such witnesses should be carefully checked and only those witnesses who will be able to give positive evidence to substantiate the allegations should be included in the statement for production during the oral inquiry. Formal witnesses to produce documents only need not be mentioned in the list of witnesses.

13.0.06 List of documents

The documents containing evidence in support of the allegations which are proposed to be listed for production during the inquiry should be carefully scrutinized. All material particulars given in the allegations, such as dates, names, figures, totals of amount, etc., should be carefully checked with reference to the original documents and records. Drafting a charge is an art. It is an art of framing traps

and slots and to fit the delinquent into such traps, slots and categories. In other words, to avoid flexibility and to fix rigidly on slots so that no amount of lubricant make it flexible. The Charge sheet should be issued on bonafide ground and in good faith and it should not be issued out of victimization or unfair labour practice. What is unfair labour practice may also be victimization and vice versa.

13.1.0 General considerations regarding drafting of charge sheet

13.01.01. Constituents of Charge.

(a) It is necessary that the charge should contain all the facts, which combined together make a particular misconduct.

(b) Each incident is a separate charge.

(c) It is desirable to mention the name of the offence.

(d) The place, date and time of incident should be mentioned in the charge sheet.

(e) When misconduct depends upon offending language, then actual words used should be specified in the charge sheet.

(f) When dishonesty or bad motive should be mentioned ingredient of the charge. Where dishonesty is the ingredient of any offence, it should be mentioned in the charge. The omission to mention dishonesty is not material where prejudice has been caused. When the charge was that he had altered the entries with ulterior motives, and then he must be told that precisely is the motive attributable to him, otherwise charge would be vague.

(g) In case misconduct is habitual then the word 'habitual' must be mentioned in the charge sheet. In addition to mentioning the word 'habitual', the past record showing the habit should also be given. In a charge of habitual absence, record should be set out.

(h) Language in which charge sheet should be given: In giving the charge sheet, care should be taken to see that the charge sheet is given in a language, which the concerned employee can easily understand.

13.01.02 General considerations regarding drafting of charge sheet.

(a) Care should be taken to see that there are no unnecessary words or unnecessary matters given in the charge sheet.

(b) The use of abbreviations like 'etc' or "any other document" should be avoided. It should be specific.

(c) Time of incident should always be preceded by the word "about".

(d) Improper description of the Charge: Sometimes the charges are mentioned so loosely that the statements are either inconsistent or they do not convey the correct sense. One of the reasons for mis-description in the charge arises from the fact that on occasions, the officer concerned is unable to distinguish between incriminating circumstances and the misconduct itself. Improper description of the charge is likely to prejudice the employee concerned.

(e) The charge should not refer to a large number of incidents without mentioning the specific instances. If otherwise, charges are said to be vague.

(f) Language of the charge sheet should not show that the employee is guilty. Charge sheet is merely a description of allegations against an employee which are still unproved and care should be taken that the language of the charge sheet should not show that the Management has reached the conclusion that the workman is guilty; otherwise it amounts to prejudice and violation of principles of natural justice.

13.01.03 Guidelines on preparation of Charge Sheet.

(a) Charge should contain particulars of the misconduct and should give the date, time, place, persons, or things involved.

(b) Language of the charge must be clear, precise, unambiguous, and free from vagueness.

(c) Separate charge should be framed in respect of each separate misconduct. Multiplication or splitting up of charges in respect of the same allegation should be avoided. If in the course of same transaction more than one misconduct is committed, each misconduct with imputation should be separately mentioned.

(d) Charge should not contain expression of opinion as to the guilt of the employees as it would mean that the disciplinary authority has prejudiced his mind, and prejudged the issue.

(e) The word 'that' should be used at the commencement of the Article of charge to mean that they are not conclusions but only charges or allegations.

(f) Charge should not relate to matter, which is already the subject matter of an enquiry.

(g) Charge should mention the nature of misconduct/misbehaviour.

(h) Charge should mention the conduct rule violated.

(i) Charge should be accompanied by statement of imputations of misconduct or misbehaviour and lists of witnesses and documents.

(j) Statement of imputations should contain all relevant facts, in the form of narration.

(k) Statement of imputations should not refer to the preliminary enquiry report unless it is sought to be relied upon in support of the charge.

(l) Statement of imputations should not refer to advice of Vigilance Commission, Vigilance Department or any such agency or functionary.

(m) Statement of imputations should include admission or confession made by the employee.

(n) Statement of imputation should not enter into discussion of the evidence or express a view on the merits of the case.

(o) List of witnesses should be complete. Only such of them, who are proposed to be examined in support of the charge, should be mentioned.

(p) List of documents should be complete. Specific documents should be mentioned and not mere files, unless the whole file is sought to be relied upon. Only such documents should be mentioned which are relied upon.

(q) Charge sheet should not indicate the penalty proposed to be imposed.

(r) Charge sheet may be withdrawn, if there are any flaws or for any other reason and a fresh charge may be framed.

(s) Competent authority should issue charge sheet.

(t) Charge Sheet should be served with a Memorandum, mentioning the Rule under which the employee is being proceeded against and requiring him to submit his explanation within a specified period considered reasonable or as provided in the Rules.

(u) In exceptional circumstances, charge sheet may be amended during the course of the enquiry, in which case, sufficient opportunity should be given to the delinquent employee to answer the amended charge.

(v) Charge should give details regarding name of the person or the object with which it is concerned. If this is not mentioned, then the charge is invalid as shown hereunder:

(i) Disobedience -The word "disobeyed" must be mentioned. What was the direction and what was the conduct, which contravened it, should be specified in the charge.

(ii) Theft - Full particular of materials stolen must be mentioned. When the charge was that the worker sold the waste paper belonging to the company, then the party to whom it was sold must be mentioned.

(iii) Threat, abuse, or incitement - Sometimes, some words are addressed to a person and they may constitute either threat or abuse. If the person addressed is a superior person, it amounts to insolence.

13.1.04 When such words are addressed to particular person, the name of such person to be mentioned. When such words are addressed to a large number of persons, then mentioning of names is not necessary. In the charge of inciting the workers to go on strike, it is necessary to give names of workers incited. Particulars of abusive language used must be given.

(i) Misappropriation -All particulars of amount misappropriated must be given.

(ii) Falsification of records - If details of particular items in respect of which the offence of falsification of records was committed are not mentioned, then the omission is fatal to the charge.

(iii) Rioting - In case of riotous incident involving several persons, it is sufficient to specify the particular incident, which amounts to misconduct.

(iv) Negligence - On charge of gross negligence involving the company into considerable financial loss it is not necessary that all the amount of financial loss should be mentioned because it is not relevant to charge. If it is not mentioned, the charge is not bad.

(v) Bribery - If the employee is charged of taking bribe with the object that he will use his influence with any other public servant, then the words "with any other public servant" must be mentioned in the charge.

13.1.05 Charge sheet should contain facts instead of mere inference or judgment from facts. Some very important defects in the charge in this respect are mentioned herein below: -

(a) Insolent - When the charge is that the worker behaved in an insolent manner and persuaded others to stop the work, it is vague since it is devoid of essential particulars.

(b) Instigation - The word 'Instigate' means something more than merely asking a person to do a particular act. It should amount to urging further or to provoke or encourage doing an act. In view of this, the stimulating words must come from a person exercising some kind of influence. When particulars of incitement were not given, then the charge is vague.

(c) Misbehaviour or Indiscipline - Absence of specific particulars as to when, where, with whom and the exact misbehaviour/indiscipline, the charge is said to be vague.

(d) Unsatisfactory work or Negligence - When the charge is that the work was unsatisfactory, then it is too vague a charge.

(e) Slow Down - The charge that worker was slow and irresponsible in performing his work is vague. It is incumbent on the employer under the Standing Orders to give him sufficient particulars, which would enable him to give a proper explanation and to defend himself, properly. By this charge sheet, employee does not know on what days he slowed down, what is the norm that the employer expects, how he has fallen below that norm.

13.1.7 CVC directive on Charge Sheet (No.3 (v)/99/8 Dated the 5th October, 1999)

"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 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 charge-sheet. The Courts have struck down charge-sheets on account of the charges framed being general or vague. *S.K. Raheman vs. State of Orissa 60 CLT 419*. If the charge is that the employee acted out of an ulterior motive that motive must be specified *Uttar Pradesh vs. Salig Ram AIR 1960 All 543*. Equally important, while drawing a charge sheet, special care should be taken in the use of language to ensure that the guilt of the charged official is not pre-judged or pronounced upon in categorical terms in advance. *Meena Jahan vs. Deputy Director, Tourism 1974* 2SLR 466 Cal. However, the statement merely of a hypothetical or tentative conclusion of guilt in the charge will not vitiate the charge sheet Dinabandhu Rath vs. State of Orissa AIR 1960 Orissa 26.

13.1.8 Preparation of charge-sheets for RDA in CBI cases:

It is for the organizations/disciplinary authorities concerned to prepare the charge sheets/ imputations (as also the lists of exhibits and prosecution witnesses) in those cases where the CBI recommended departmental proceedings and where CBI's recommendation is accepted by the disciplinary authority. Since the SP's reports are, generally speaking, exhaustive and self contained, preparation of the charge sheets/ imputations should not ordinarily be a problem, per se, for the internal Vigilance Departments/functionaries. In fact, all that is required here is a careful application of mind.

When charge-sheets are prepared by the vigilance functionaries themselves in departmentally-investigated cases, one finds no reason why this cannot be done in respect of the cases investigated by the CBI where, as mentioned above, the reports are well-structured and well made out.

Nonetheless, if the organization concerned faces a real/genuine problem or difficulty in preparing charge-sheets in a particular case, the same can be taken up with the CBI appropriately. Needless to say that such instances/exceptions should be a few and far between i.e. exceptions only. CVC letter No. 009/VGL/018 Dt. 1st April 2009

13.1.9 Issuance of Charge-sheet:

1. The appointing authority or any other higher authority has power to issue the charge-sheet.

2. Charge-sheet can be issued by the disciplinary authority

3. Officers other than appointing or disciplinary authority competent to issue charge sheet if authorized by Rules. Rajatkanti Godara vs State of W.B. (1962) 2 LLJ 553 (Cal HC)

4. Charge-sheet can be given by competent authority through others. *Laxmi Devi Sugar Mills Ltd. Vs Jadunandan Singh (1965) 2 LLJ 250 (LAT)*

Principle of bias is not applicable to the issue of charge-sheet:

If an authority is biased it cannot hold the enquiry. This however, does not affect his power to issue the charge-sheet.

It is not permissible to make any addition of charges in the original charge sheet during the course of the enquiry although some new facts and/ or allegation worth mentioning may crop up or found. The new allegations may have been the good ground for procuring dismissal even this new allegation have been mentioned and proved during the enquiry. In the said situation, the Enquiry Officer cannot

give his findings on new facts and /or allegations which were beyond the purview of the charge sheet. Supreme Court has observed in the case of Laxmi Devi Sugar Mills that it is not open to the employer to add any further charges to the original charges during or after the enquiry and charges framed. However, it does not preclude the industrial employer to frame additional charge sheet even after framing the original charge sheet if there are sufficient allegations. The Industrial Employer may issue even supplementary charge sheet, if the enquiry in terms of original charge sheet had not commenced. "It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported" and a person who is competent to issue charge sheet sign the charge sheet.

13.1.10 Reference to report of Preliminary Enquiry:

All documents, which find a mention in the charge sheet, are to be produced during the course of the enquiry and are subject to inspection by the delinquent employee. There should not be any reference to a confidential or secret document in the charge sheet. The police reports and the reports received as preliminary enquiry are normally confidential and are not to be mentioned in the charge sheet. CVC letter No. 009/VGL/018 Dt. 1st April 2009

Though an authority who is biased cannot hold the enquiry, it does not affect his power to issue charge sheet.

13.1.11 Charge should be specific and contain the necessary particulars:

It is an elementary principle that when misconduct is alleged, complete particulars must be given. The delinquent official can deny his guilt and establish his innocence only if he is told what the charges leveled against him are, and the allegations on which such charges are based.

A statement of imputation of misconduct on which the article of charge framed against the delinquent official is based shall accompany a charge. The object of furnishing the statement of imputation to the delinquent official is to give him all the necessary particulars and details relating to the charge so that he will have sufficient opportunity to put up his defence. Hence the statement of allegations should give all factual details. It is however, not necessary to discuss the oral and documentary evidence in the statement of allegations. It is sufficient if the facts, which have been revealed from the oral and documentary evidence, are narrated in the statement of imputation.

Failure to give the details of the misconduct in the charge with regard to the date, time and place of misconduct, with sufficient particularity results in prejudice to the charged government servant in the matter of his defence at the enquiry. Where the charge is vague and indefinite and statement of allegations containing necessary particulars is not furnished, the order-imposing penalty is liable to be quashed.

13.1.14 Charge should not express firm opinion:

The Charge should not contain any expression of opinion as that would create an impression in the mind of the charged official that the disciplinary authority is prejudiced against him. M.A.Narayana Setty Vs Divl. Manager, LIC of India, Cuddapah, 1991(8) SLR AP)

By Charge sheet Disciplinary Authority should neither purpose nor indicate what punishment would ultimately be awarded. There is absolutely no need to mention the proposed punishment in the charge sheet as the nature of the penalty to be imposed will have to be decided only at the end of the enquiry depending on the gravity of the misconduct that is ultimately established as a result of the enquiry. If any particular punishment is indicated in the charge sheet, it cannot be said that the proceeding was conducted in an unbiased manner. Kesharimal Vs State of Rajasthan 1979, SLR (3) P.

13.1.15 More than one charge can be included:

Where there are more transactions than one, it will be a mistake to frame only one charge. The reason is that such a charge shall be a heterogeneous one and it will not be easy for anybody, who reads the charge sheet, to understand it. The golden rule is to frame one charge for one incident. In case an employee has committed misconduct, more than once, in a similar fashion, despite the similarity in modus operandi, there is bound to be variations in the time, place, other material detail, and circumstances leading to the misconduct. In such cases, proper course of action shall be to allot to each such incident a separate paragraph in the statement of imputations, which should be a self contained and comprehensive one. In the Articles of charge, we can frame only one charge stating therein that he has committed misconduct by adopting such and such modus operandi, details of which are contained in such and such paragraph of the statement of imputations.

In Kapur Singh v. Union of India, it was held that the enquiry cannot be held bad merely on the ground that more than three charges were made the subject-matter of one enquiry. The Supreme Court, in Khem Chand v. Union of India, held that there are two definite stages in the Enquiry viz., the service of the charge-sheet and the action

proposed to be taken and that the second stage would arise only when the punishing authority has applied his mind to the entire evidence and arrived at a definite conclusion and that before that stage the charges are unproved and the suggested punishments are merely hypothetical.

13.1.16 Charge may be dropped and fresh charge framed:

It is open to the disciplinary authority to drop any charges framed in the first instance and to frame fresh charges which may be found necessary on further consideration. *In Binod Chandra Mazumdar v. Union of India, AIR 1960 Pun 147, after an Enquiry Officer was appointed, the Government stayed the proceedings, placed the delinquent Officer under suspension and after some time issued a fresh charge-sheet containing new charges. This was done when a writ petition was pending in the High Court challenging the earlier orders. The High Court upheld the action taken by the Government.*

13.1.17 Charge may be amended:

There is no objection to the Charge-sheet being amended by the Disciplinary Authority during the enquiry. In such a case the government servant should be given reasonable opportunity of meeting the amended charge by recalling the witnesses already examined or by producing new evidence. An alteration or addition or amendment of a charge is a matter of procedure and as long as sufficient notice of such alteration, addition or amendment is given and sufficient opportunity is given to the delinquent officer to meet the same, there will not be any violation of the principles of nature justice. It is in order to issue a supplementary charge-sheet or issuance of corrigendum. If a major amendment to the charge is required to be made then it is better to cancel the first charge and issue a fresh Charge-sheet.

However where charge is amended by the issue of a corrigendum during the course of the Enquiry, failure to permit the charged official to file a reply to the amended charge and give him an opportunity to defend himself vitiates the Enquiry proceedings and an order of termination is liable to be quashed.

13.1.18 Reference to Secret or Confidential Documents:

A charge sheet is a public document and, therefore, must not contain any reference to a secret or confidential document, which shall not be in public interest to disclose.

13.1.20 As soon as the charge sheet is issued, the delinquent official should be called upon to file a written statement of his defence within such time as may be prescribed under the rules. This is a mandatory provision and if the enquiry is proceeded without giving opportunity

to the delinquent to file his written statement of defence, the enquiry will be vitiated.

A minimum of fifteen days time will be given to the charge-sheeted employee to enable him to submit his written explanation. The charge sheet should be served in person and his signature obtained in the duplicate copy as acknowledged. In case of refusal to accept or acknowledge the receipt of charge sheet, the following actions are required to be taken:

(a) Endorsement of refusal to accept or acknowledge receipt of charge sheet by the serving officer in the presence of two witnesses.

(b) Sending a copy of the charge sheet to last known residential address of the charge-sheeted employee by registered post acknowledgement due and also under Certificate of Posting.

(c) Display of the copy of the charge sheet on the Departmental Notice Board and making an endorsement to that effect.

(d) Publication of the charge sheet in the local newspapers is also considered as the charge sheet having been served.

(e) Where the charged officer was not supplied with copies of relevant documents or allowed to inspect them or not furnished copies of statements of witnesses examined at the inquiry, it was held that effective exercise of the right to cross-examine witnesses was denied to him.

13.1.21 At the time of vetting of charge sheets following aspects will be kept in mind:

(a) There is no ambiguity in framing of Charge sheet. If there is one, the same may be removed and clarity brought out.

(b) All important aspects of irregularities/ deviations/ lapses are brought out in the misconduct of each individual in the "Imputation/ Articles of Misconduct'.

(c)The list of documents and witnesses on which case is to be relied upon are carefully scrutinized and annexed.

(d) It will be ensured that a note at the end of list of witnesses /documents is added as under: "Management reserves the right to produce further documents and witnesses as and when required the case is in progress".

(f) Issuance of Charge-sheet on transfer – The transferor division will initiate the disciplinary action by issuance of charge-sheet.

13.1.22 Response to the Charge Sheet:

On receipt of the charge sheet, the charge-sheeted employee may respond in the following manner:

(a) Submit his explanation refuting the charge.

(b) Submit his explanation admitting the charge and asking for mercy.

(c) Fail to submit the explanation.

(d) Submission of explanation with conditional admission of charges.

(e) Partial admission of charges.

Incase the charge-sheeted employee requests for grant of time for submission of written explanation, the same could be allowed if considered necessary. In any case, the time allowed for submission of explanation shall not exceed 30 days from the date of issue of charge sheet. In case the charge-sheeted employee makes a request for copies of documents / inspection of documents, the same could be allowed. If an employee fails to reply to the charge-sheet it does not lead to any presumption that he is guilty of the alleged misconduct. The enquiry is still necessary because the purpose of enquiry is to satisfy the Disciplinary Authority that charge can be substantiated through evidence.

13.1.23 Consideration of Explanation from Charge-sheeted Employee:

On receipt of written explanation from the charge-sheeted employee, the Disciplinary Authority has to consider the same with reference to the allegations as mentioned in the charge sheet. The disciplinary authority will have to consider whether the explanation submitted by the employee is satisfactory. If he finds that the explanation given by the employee is satisfactory, he may drop the charge and may not proceed further with disciplinary action. In case the charge-sheeted employee admits the guilt, the Disciplinary Authority could proceed to impose punishment if it is minor in nature.

Where the charge-sheeted employee does not submit any written explanation, or admits the guilt with certain conditions, or admits partially the charges or denies the charges in Toto, or the explanation is not found to be satisfactory, the Disciplinary Authority may order a domestic enquiry to ascertain the truth of the alleged misconduct.

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CHAPTER X

14.0.0 ENQUIRY PROCEEDINGS

If the officer accepts his guilt, no further enquiry is necessary. However, the acceptance of charge should be both unconditional and unambiguous. Similarly, where the Competent Authority comes to the conclusion after consideration of the explanation of the officer that only minor punishment is warranted in the case, he may award the appropriate minor punishment without conducting enquiry.

14.0.1 Constitution of Departmental Enquiry:

If no explanation is received from the officer charged within the time specified or in cases of conditional or denial without any convincing reason or where the Competent Authority on receipt of the explanation of the officer comes to the conclusion that further proceedings are called for, such authority may appoint in writing an Enquiry Officer to hold enquiry into the charge against the officer.

14.0.2 Appointment of Enquiry Officer/ Presenting Officer:

The Disciplinary Authority should consider all relevant aspects about the official to be appointed as I.O. /P.O. in a particular case, with particular reference to his/her continued availability to complete the inquiry proceedings. It should be ensured that only such officials, who are not likely to be transferred during the pendency of the inquiry proceedings, are appointed as P.Os./I.Os. In extreme cases where the transfers are unavoidable, it should be ensured that the I.Os./P.Os complete the inquiry proceedings as expeditiously as possible, before they are relieved or at the earliest after their relief. It should also be kept in view, that to the extent possible, an official of appropriate seniority, with reference to the status of the charged official, is appointed as the P.O .*CVC letter No. 006/PRC/1 Dt. 21st September 2006*

14.0.3 The Enquiry Officer:

The role of an Enquiry Officer is a fact finding one, in course of which evidence is produced by him in regard to the truth of allegation and the facts contained in the Charge Sheet. He has a duty to conduct the enquiry in an orderly manner, to act judicially and to apply his own mind to the evidence brought before him and give his findings after proper assessment of evidence.

The Enquiry Officer should be an open-minded person, a mind which is not biased against the delinquent or Management. He

should not pre-judge the issue and should not be an eyewitness of the incident relating to the alleged misconduct. He should act with the detachment of a judge and should strictly confine himself to the evidence before him. He should follow the principles of Natural Justice while conducting the enquiry.

An Officer who is a witness cannot be the enquiry Officer. This is contrary to rules of natural justice because a person who is entrusted with the enquiry cannot both be a judge and a witness.

Furthermore an Officer who has something to do with the case earlier or who had framed the charges or formed an opinion cannot be appointed as enquiry Officer. He would have bias in the case. It is equally well settled that it is not in such a case necessary that in fact there has occurred any prejudice to the delinquent Officer. If there is a likelihood of bias or even possibility or risk of it, is enough to quash the proceedings on the ground of bias. It goes to the very root of the jurisdiction of the enquiry Officer. The Enquiry Officer is a Quasi Judicial Authority. quasi" means "not exactly". A quasi judicial decision is one which has some attributes of a judicial decision but not all. An authority exercising quasi judicial function may depart from the usual forms of legal procedure or from the rules of evidence, but it cannot depart from the principles of natural justice. He is deemed to be appointed in his individual capacity and not by virtue of his office. In normal circumstances the Enquiry Officer should not be changed till the enquiry for which he is appointed comes to an end. However, in certain circumstances such as transfer or other unforeseen administrative reason, an Enquiry Officer can be changed.

An order appointing enquiry Officer should not be signed by anyone other than the Disciplinary Authority.

Where the disciplinary proceedings are initiated in constitution with or at the instance of Central Vigilance Commission, the Competent Authority may appoint a Commission nominated by the Central Vigilance Commission to conduct the enquiry.

14.0.04 Utilizing the services of outsiders including retired officers for conducting

Departmental Inquiries

The disciplinary authority may appoint outsiders including retired officer as

Enquiry Officer with the approval of the CVO.

In case the CVO does not agree to his appointment as Enquiry Officer and the DA/ management insist on his appointment, only then the approval of the Commission should be sought. CVC letter No. 98/MSC/23 Dt.25th March 2003

Further the departments/public sector undertakings/Organizations depending upon their need, and if they so desire, may maintain a panel of retired officers from within or outside the department or organization for appointment as inquiring authorities, in consultation with the Chief Vigilance Officer. In case, there is difference of opinion between the Disciplinary Authority and the Chief Vigilance Officer about the inclusion of any name in the panel or appointment of any one out of the panel as IO in any case, the CVO may report the matter to the next higher authority, or the CMD for the resolution of the difference. If still unresolved, the CVO may refer the matter to the CVC. A case of difference of opinion between the CVO and the CMD, if acting as Disciplinary Authority, may be referred to the Commission for its advice. *CVC letter No. 98/MSC/23 Dt. 1st August 2003*

In the case of Ravi Malik Vs. National Film Development Corporation Ltd., the Supreme Court in their judgment delivered on 23.7.2004 have inter-alia held that "the words 'public servants' used in Rule 23 (b) of the NFDC Service Rules and Regulations, 1982 mean exactly what they say, namely, that the person appointed as an Inquiring Officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of 'public servant' for the purpose of Rule 23(b)".

Rule 14(2) of the CCS (CCA) Rules, 1965 provides that "Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Public servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof". CVOs of organizations (other than those, which follow CCS (CCA) Rules, 1965) are required to review the service rules and regulations of their Organizations and take necessary measures to amend the provisions relating to appointment of Inquiring Authorities, if they are inconsistent with the provisions under Rule 14(2) of the CCS (CCA) Rules, 1965. If any Service/Departmental Rules are in conflict with appointment of retired persons as Inquiring Authorities, they should be suitably amended before any such appointments are made. The terms and conditions for appointing retired officers as EO are notified vide *CVC letter No 98/MSC/23 dated 16 Sep 1999,* CVC on appointment of Inquiry Officers.

The Central Vigilance Commission has issued instruction under its order No 8(1)/(h)/98(1) dated 18/11/98 to all Departments/Organizations to review all pending cases for departmental enquiries and appoint Inquiry Officers from amongst the retired honest employees / officers for conducting the enquiries (Para 2.3 of the said instruction refers). The Commission had also instructed therein that the names of the retired officers for conducting inquiries may be got cleared from the Commission.

The Commission has further examined the matter and the following decision has been taken for strict compliance:

(i) All Departments/Organization who are already having the panel of retired officers may utilize their services after ensuring that such officers possess a clean track record; and

(ii) All Departments / Organizations who do not have any panel of retired officers for conducting Departmental Inquiries may approach the Commission for the same.

3. However, it is to be ensured that the instructions to complete the inquiry within the stipulated time limit of six months has to be complied with invariably in all cases.

.The EO must also ensure that the conclusions reached by him must be reasonable and there must be identifiable relationship between:

a. The charges

b. The evidence led at the enquiry, and

c. The conclusions reached

For this, the Enquiry Officer has to:

a. Record the evidence

b. Make analysis

c. Record the findings, and

d. Submit his report to the DA.

14.0.5 Appointment of the Presenting Officer:

The Disciplinary Authority may appoint in writing an officer of the Company to present the case on behalf of such authority. Ordinarily an Employee belonging to the departmental set up who is conversant with the case will be appointed as the Presenting Officer except in cases involving

Complicated points of law where it may be considered desirable to appoint a legal practitioner to present the case on behalf of the disciplinary authority. An officer who made the preliminary investigation or inquiry into the case should not be appointed as Presenting Officer.

As the appointment of a Presenting Officer would help in the satisfactory conduct of departmental inquiry, the Central Vigilance Commission has advised that even in cases where the disciplinary rules do not contain a specific provision for the appointment of a Presenting Officers, the disciplinary authorities may consider appointing a Presenting Officer for presenting the case before the Inquiring Authority. Unlike in the past, it would now not be necessary to nominate a CBI officer to act as PO in the cases investigated by them. *Para 22.2.1 Special chapter Vigilance Management public Sector Enterprises*

The Functions of the Presenting Officer can be broadly summarized as under: The presenting officer should be fully conversant with the rules and procedures alleged to have been violated by the charged official/employee and also about the procedure to be followed at the enquiry regarding introducing evidence. Before the preliminary hearing he should understand the charges and analyze them to determine the facts to be proved and the evidence necessary for proving them.

He should identify all the oral/documentary evidence and also determine the purpose of each identified witness.

He should anticipate the possible defence that will be taken by the charged official/employee and decide the manner in which he will counter the defence.

He should, if necessary, collect the information/documents from appropriate officers for understanding the case. In case any additional evidence is considered necessary, immediate action should be taken to introduce the same.

He should ensure availability of originals of the listed documents and work out suitable schedule for inspection of documents. He should also contact all the witnesses well in advance and ask them to be in readiness to appear at the enquiry. In case there are several witnesses to prove a point, he should decide as to whether all the witnesses are required or some of them are sufficient.

He should observe the proceedings with regard to appointment of Defence assistant, ensuring conformity to rules. He should be present at the preliminary hearing and should be prepared to supply copies of statements of witnesses and other documents to the CO if

need arises. Inspection of additional documents that are demanded by the CO at the enquiry can also be taken care of by the PO.

He should ensure that documents presented for inspection are not tampered with. The same should be done in front of EO and no photocopies of documents should be given by him to CO/Defence Assistant without permission from the competent authority. 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 EO to cross examination that witness after he has been declared hostile. In such situations, the PO may, with the prior permission of the EO, also put leading questions to the witness so as to bring out the truth.

Where the PO has to provide written briefs, he should do so without delay. Since the rules provide for the submission of a written brief, he should be in a position argue out his case in his oral summing up and thereby avoid the delay in submission of a written brief.

The Presenting Officer should avoid taking adjournments without valid reasons. Failure to present the case properly is liable to be considered as dereliction of duty.

The presenting Officer should confine himself to the charge leveled against the delinquent in the charge sheet. The sole duty of the Presenting Officer is to make an honest effort to prove the charge, by identifying the documents and witness/es for each issue.

The Enquiry Officer may in his discretion, allows the Presenting Officer to produce evidence not included in the list of witnesses or may call for additional evidence recall or re-examine any witness. In such a case the charge-sheeted employee shall be given opportunity to inspect the documentary evidence before it is taken on record of cross –examine a witness has been so summoned.

14.0.6 Papers to be supplied to the Presenting Officer

The disciplinary authority shall supply the following papers to the presenting officer along with his order of appointment.

a) A copy of the article s of charge and the statement of the imputations of misconduct or misbehaviour.

b) A copy of the written statement of defence, if any, submitted by Charged Employee

c) Copies of the earlier statements of witnesses mentioned in the list of witnesses,

d) Evidence proving the delivery of the charge sheet to Charged Employee

e) A copy of the order appointing the inquiry officer

f) List of witnesses or list or documents by which the charges are proposed to be proved by the Management along with the documents.

In addition, the presenting Officer should be equipped with (i) the relevant Disciplinary Rules containing the prescribed procedure for inquiry and (ii) some manual or guide book containing law, procedure and guidelines relating to the holding of inquiry so that he can function in an effective manner.

In case the Presenting Officer desires that for his effective presentation of the case, certain documents lying with the outside agencies for collection of original documents or inspection of the said documents for comparison of copies by the defence representatives/ Enquiry Officer.

After studying the facts the Presenting Officer should co-relate each item of evidence and if necessary he may try to obtain more information on the subject matter of the case.

Presenting Officer's role is akin to that of a public prosecutor. His endeavor will be to establish the charges by leading evidence on behalf of the DA. While the EO is required to be impartial to the case, there is no such requirement in respect of the Presenting Officer. An Officer who has investigated the case and who is also a witness should not be appointed as the presenting Officer as the combination of three functions in one Officer, namely investigation, presentation and appearance as witness, is undesirable. Appointment of a Presenting Officer is not at all obligatory. Non-appointment of a Presenting Officer and examination of witnesses by the Enquiry Officer does not vitiate the Enquiry.

14.0.7 Documents to be forwarded to the Enquiry Officer:

As soon as the order of appointment of the Enquiry Officer is issued, the disciplinary authority will forward to him and the EO will take cognizance of the following papers along with that order:

i. A copy of the articles of charge and the statement of imputations of misconduct or misbehavior;

ii. A copy of the written statement of defence submitted by the Public servant. If the charged Public servant has not submitted a written statement of defence, this fact should be clearly brought to the notice of the Inquiring Authority;

iii. List of witnesses by whom the articles of charge are proposed to be sustained;

iv. A copy each of the statement of witnesses by whom the articles of charge are proposed to be sustained. In the case of common proceedings, the number of copies of the statements of witnesses should be as many as the number of accused Public servants covered by the inquiry;

v. List of documents by which the articles of charge are to be proved;

vi. A copy of the Covering Memorandum to the Articles of charge addressed to the Public servant concerned;

vii. Evidence proving the delivery of the documents to the Public servants. The date of receipt of the document by the charged officer should be clearly indicated. The date of receipt of the articles of charge by the Public servant will need to be taken into account by the Inquiring Authority in fixing the date of the first hearing;

viii. A copy of the order appointing the Presenting Officer;

ix. Bio-data of the officer in the prescribed form.

14.0.7 Initiation of proceedings of the Departmental Enquiry:

On receipt of the order for Departmental Enquiry, the EO will issue the enquiry notice addressed to the charge-sheeted employee with a copy to the Presenting Officer.

The date, time and place of the first meeting of the departmental enquiry committee will be indicated in the enquiry notice. The enquiry notice should also indicate that the charge-sheeted employee is permitted to take the assistance of a co-employee to defend his case before the enquiry committee if he so desires. The co-employee should be working in the Division where the charge-sheeted employee is working or in any other Divisions of the Company situated in the same Head Quarters. He shall not however take the assistance of any officer who has two pending disciplinary cases in which he is functioning as co-officer. Normally he shall not also be entitled to engage a legal practitioner for this purpose.

Cases involving more than one employee where the charges alleged are similar, the Disciplinary Authority may order for a common enquiry. The EO is required to maintain a record of the progress of the case in the form of Daily Order Sheet. A Daily order sheet is a brief narration of the day's happenings in the enquiry. Whenever there is a progress in the case, it is to be recorded in daily order sheet, further during the progress of the case also the EO will keep as

making daily order sheet indicating progress, such as, taking over of documents, examination of witness, receipt of any request from CSE etc.

14.0.8 Fixation of date and venue of hearings:

There is no strict rule for selecting the place where the enquiry s should be conducted. It may be fixed after taking into consideration the convenience of all the parties. Normally, the venue of the enquiry should be at the place of occurrence of the misconduct. The enquiry can be conducted at a different place, as long as it is reasonably possible for the employee to attend at that place.

The date, time and venue of the next hearing will ordinarily be fixed by the Enquiry Officer and intimated to both parties and their representatives under their written acknowledgement before the adjournment of hearing. If the Enquiry Officer has to make a change in the date, time or venue of the next hearing for any reason, he will send a notice of the next hearing to all parties concerned sufficiently in advance. Choosing of the venue of an enquiry against an employee suo moto by the enquiry Officer does not vitiate the enquiry and does not violate the principles of natural justice. There cannot be any hard and fast rules as to where the enquiry against an employee is to be held and the only thing to be seen is whether the employee is in any way denied the opportunity of defending himself because the enquiry Officer suo moto chose the venue of the enquiry.

The Enquiry Officer will also intimate the Presenting Officer in regard to the date, time and place of the preliminary hearing. The Presenting Officer will bring with him copies of the statements of the listed witnesses and the listed documents in the Divisions / office a separate room with necessary facilities like furniture, typist/Computer operator etc. has to be provided for the conduct of the case. The officer charged along with his co-officer will be entitled to be present during the hearing of witnesses. Evidence shall be taken in their presence except in ex parte proceedings. Should the officer so charged fail to attend the enquiry or after attending it, refuses to take part in the enquiry, the Enquiry Officer will conduct ex- parte proceedings after recording the reasons therefore.

14.0.9 Preliminary Hearing:

On the date fixed by the Enquiry Officer, the Charged officer office shall appear before that enquiry authority at the time, place and the date specified in the notice. The Enquiry Officer will explain the procedure that will be followed while conducting the enquiry i.e. the manner in which the evidence will be recorded, relying upon the documents in support of charges as well as defence. The enquiry

proceedings will commence with the reading out of the charge sheet to the charge-sheeted employee. Further the Enquiry Officer will explain to the charge-sheeted employee the various opportunities such as availing the assistance of co-employee, furnishing of copies of documents, list of witnesses in advance, cross-examination of the witnesses, production of witnesses, documents in defence, self examination and submission of final statement of arguments. Later, the charge-sheeted employee will be asked whether he has received and understood the contents of the charge sheet. The charge-sheeted employee is also required to be given another opportunity to either corroborate the explanation submitted by him or to alter the explanation already submitted and the same has to be recorded.

The Enquiry Officer/ Enquiry Committee shall ask the officer whether he pleads guilty or not. If the accused employee admits the charges in clear and unconditional terms, no further enquiry is required to be conducted. The Enquiry Officer shall record the same. Sign the proceedings and obtain the signature of the employee concerned thereon. The Enquiry Authority shall return a finding of guilt in respect of those articles of charge to which the officer concerned has pleaded guilty. However, such admission should be

a) with reference to the charges

b) both of facts and guilt

c) voluntarily without coercion

d) knowing clearly the consequences thereof

e) be unconditional and unambiguous

If the Officer charged does not plead guilty, the Enquiry Authority shall continue with the enquiry.

If the Public servant fails to appear on the date and time fixed for the hearing or appears but refuses or omits to plead or pleads not guilty, the Enquiry Officer will ask the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge and will adjourn the case to a another date. The disciplinary authorities should be kept posted with the progress of oral enquiries. The Presenting Officer should send brief reports of the work done at the end of each hearing to the disciplinary authority.

14.0.10 Allegation of bias against EO:

If the charged employee alleges bias against the E.O, the E.O 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 with the inquiry. In case, the C.O moves an application to the appellate/reviewing authority against the appointment of a particular Inquiry Officer, the proceedings should be stopped and the application along with other relevant material be referred to the appropriate appellate authority for consideration and appropriate orders.

14.0.11 Inspection of documents by the Charged Employee:

While adjourning the case, the Enquiry Officer will also record an order that the accused employee may, for the purpose of preparing his defence: i) inspect, within 5 days of the order of within such further time as the Enquiry Officer may allow, the documents mentioned in the list of documents sent to him with the articles of charge, and ii) submit a list of witnesses to be examined on his behalf together with their full addresses, indicating what issues they will help in clarifying. While asking for such documents, the Public servant will also include the relevance of the documents to the presentation of his case.

On receipt of such request, the Enquiry Officer may, for reasons to be recorded by him in writing, refuse to requisition such of the documents as are, in his opinion, not relevant to the case. However, with regard to those documents, about the relevance of which he is satisfied, the Enquiry Officer will forward the request of the Public servant to the authority or authorities in whose custody or possession the documents are kept with a requisition for the production of such documents of document or a specified date. On receipt of requisition from the Enquiry Officer, the authority having the custody of the requisitioned documents will produce them before the Enquiry Officer as the specific date. However, if the Head of Department is satisfied, for reasons to be recorded by it in writing, that the production of all or any of the documents will be against the public interest or prejudicial to the security of the State, it will inform the Enquiry Officer accordingly and the Enquiry Officer is bound by the decision of the authority claiming the Privilege. Such documents need not be produced. Documents of this category include the file dealing with the disciplinary case against the Charged Employee, advice of the Central Vigilance Commission, advice of the Law Department or the Legal Adviser of the Undertaking and Character Roll of the employee. After the inspection of the documents, the Charged Employee will report to the EO on the date and time fixed. The EO will ascertain the outcome of the inspection i.e. whether the Charged Employee disputes the genuineness of any of the documents.

14.0.12 Supply of copies of documents to the Charged Employee

The request of Charged Employee to take Photostat copies of the documents should not be acceded to as that would give a private photographer access to official documents which will not be desirable. However, if the documents of which Photostat copies are asked for by the Charged Employee are considered by the Enquiry Officer to be vitally relevant to the case of the accused, for example, where the proof of the charge depends upon the proof of the hand-writing or where the authenticity of a document is disputed, Enquiry Officer should himself get Photostat copies made and supply the same to the Charged Employee.

14.0.13 Documents held up in Courts:

In respect of documents which are required for the enquiry but are held up in a court of law, the CBI will persuade the courts to part with the documents temporarily or will get Photostat copies. Where the courts are not prepared to part with the documents and if the accused public servant insists on seeing the originals, the possibility of making arrangements for the accused to inspect the documents in the courts should be examined in consultation with the CBI.

14.1.0 CVC directives:

14.1.1 On Certified photocopies of documents

As per the extant instructions, while the CBI can pursue the prosecution cases in the Courts, simultaneously departmental inquiries can also be held. In order to ensure that the critical documents needed in the departmental inquiries are made available, the responsibility has been put on the CBI to make photocopies of seized documents within four days so that the departmental proceedings can be proceeded with. A large number of cases are pending for more than two years because of non-availability of documents for inspection, which are already before the Court.

Denial of access to documents which have a relevance to the case will amount to violation of the reasonable opportunity mentioned in Article 311 (2) of the Constitution. Access may not, therefore, be denied except on grounds of relevancy or in the public interest or in the interest of the security of the state.

The question of relevancy has to be looked at from the point of view of the Public servant and if there is any possible line of defense to which the document may be in some way relevant, though the relevance is not clear at the time when the Public servant makes the request, the request should not be rejected. The power to deny access on the grounds of public interest or security of State should be exercised

only when there are reasonable and sufficient grounds to believe that public interest or security of the State will clearly suffer. Such occasions should be rare.

The CBI should make legible certified photocopies of all the documents, which they seize, for launching the prosecution against the charged officer to concerned departments. It is also the responsibility of the CVOs to ensure that these certified legible photocopies of documents are made available when the CBI seizes the documents in any Government Organization. This is applicable to all Government Organizations, Public Sector Undertakings and Banks.

14.1.2 CVC on making availability of documents to CDIs/IOs

In many cases the concerned departments do not make the documents available during the departmental inquiries conducted by the Commissioner for Departmental Inquiries (CDIs). This may be either due to inefficiency or collusion. There have been a lot of cases where important/critical files have disappeared. As failure to safeguard documents is an offence it has been decided that henceforth the following practice will be adopted by all concerned,

The Enquiry Officer/CDI will ask the concerned departments to produce the documents within a time limit fixed by the IO/CDI. While doing so it will be indicated that if within the stipulated time frame the concerned department is not able to produce the documents the disciplinary authority will fix responsibility for the loss of the documents and compliance reported to the Commission within a period of 3 months. These documents would cover not only those listed in the charge-sheet but also additional documents as sought out by the charged officer and permitted by the Inquiring Authority. *CVC letter NO.3(v)/99/7 Dt. 6th September 1999*

14.1.3 Production of Witnesses/Documents:

The Enquiry Officer advises the Presenting Officer to lead the prosecution evidence by producing the prosecution witnesses and documents. Any document, which is relied upon by the prosecution, is taken on the record of enquiry committee as prosecution exhibits and marked as prosecution exhibit serially.

Example:

(i) Charge Sheet – Exhibit P-1,

(ii) Explanation from the Charged Employee– Exhibit P-2 and so on.

The EO has to affix his initials beneath the marking of the exhibits and it is advisable to obtain the initials of the Charged Employee also, so that later, allegations of tampering are not made. Where original documents cannot be parted with, the Photostat copy of the documents should be taken on record after verifying the same with the original if available. However the documents produced by either party are open to scrutiny by the EO. *CVC letter NO.3(v)/99/7 Dt. 6th September 1999*

14.1 .4 Witnesses in the enquiry

The following witnesses, as applicable, may be examined before the Enquiry Officer.

(a) Those upon whose testimony the charge was based.

(b) Those whom the officers charged may bring forward as witness in his defence. The persons charged will be required to indicate the points on which such witnesses give evidence and it is open to the Enquiry Officer on scrutinizing the list where it appears to be vexatious or frivolous, to restrict this number of witnesses only to the points of enquiry;

(c) Any other person, whose evidence being relevant, the Committee considers it necessary to record.

The EO may disallow witnesses for any of the following reasons**:**

1. Irrelevant to the charge sheet

2. Absconding/not available in India/not possible to communicate or for any such reason.

3. Reducing the number of witnesses due to similarity of evidence to be tendered

when it is left to the CO to select the persons from the list who should depose. The EO will have to exercise his discretion carefully; he should not be arbitrary in his decision. Unless, however, there are reasonable grounds to indicate prejudice on the part of the EO, his action or merely disallowing some witnesses on grounds of irrelevancy or repetition, cannot be said to violate the principles of natural justice

14.1.5 Summoning of witnesses:

Under Section 5(1) of the Departmental Inquiries (Enforcement of Attendance of the witnesses and Production of documents) Act, 1972 every Inquiring authority authorized under section 4 shall have the same powers as are vested in a Civil Court under the Code of Civil

Procedure in respect of summoning and enforcing the attendance of any witness and examining him on oath, requiring the production of any document or material which is producible as evidence, etc.

Thus he has the power to enforce attendance and it is his duty to take all necessary steps to secure the attendance of both sides. While the accused public servant should be given the fullest facilities by the Inquiring Authority to defend himself and with that end in view, the witnesses which he proposes to examine should ordinarily be summoned by the Inquiring Authority, it is not obligatory for the Inquiring Authority to insist on the presence of all the witnesses cited by the accused public servant and to hold up proceedings until their attendance has been secured. The Inquiring Authority would be within his right to ascertain in advance from the accused public servant what evidence a particular witness is likely to give. If the Inquiring Authority is of the view that such evidence would be entirely irrelevant to the charge against the public servant and failure to secure the attendance of the witnesses would not prejudice defence, he should reject the request for summoning such a witness. In every case of rejection, the Inquiring Authority should record his reason in full for doing so. The inability to secure attendance of a witness will not vitiate the proceedings on the ground that the Public servant was denied the reasonable opportunity.

The Supreme Court in the State of **Bombay vs. Narul Latif Khan** have observed that if the accused officer desires to examine witnesses whose evidence appears to the Enquiry Officer to be thoroughly irrelevant, the Enquiry Officer may refuse to examine such witnesses but in doing so, he will have to record his special and sufficient reasons. In many cases warranting initiation of major penalty proceedings, the main impediment is the distinct possibility that private witnesses, who are required to provide crucial evidence, are likely to evade appearance before the Inquiry Authority. The provisions of above Act of 1972 can be taken recourse to in such cases. This Act is applicable to all inquiry proceedings where lack of integrity is a charge or part of a charge. The inquiry authority authorized under the Act is conferred with the powers of a trial court to summon witnesses/documents and such summons shall be served through a District Judge. The authorization to summon under the Act can be issued only by the Central Govt. Therefore, wherever lack of integrity is a charge and witnesses have to be compelled to attend, a proposal will have to be made to the Central Govt. by the concerned inquiry authority for issue of a notification conferring the power under the Act.

There can be no objection in principle in accepting the request of the public servant under enquiry to summon the Presenting Officer or his

Assisting Officer as a defence witness, if in the opinion of the Inquiring Authority, their evidence will be relevant to the enquiry.

The notices addressed to the witnesses will be signed by the Enquiry Officer.

Those addressed to witnesses who are Public servant will be sent to the Head of the Department/Office under whom the Public servant who is to appear as witness is working for the time being with the request that the Head of the Department/office will direct the Public servant to make it convenient to attend the enquiry and to tender evidence on the date and time fixed by the Enquiry Officer. Non-compliance with the request of the Enquiry Officer by the Public servant would be treated as conduct unbecoming of a Public servant and would make him liable for disciplinary action.

The notices addressed to non-official witnesses will be sent by registered post A.D. in cases emanating from the CBI, the notices addressed to non-official witnesses may be sent to the Superintendent of Police, SPE Branch concerned for delivery to the witnesses concerned. The Presenting Officer, on behalf of the disciplinary authority, with the assistance of the Investigating Officer will take suitable steps to secure the presence of the prosecution witnesses on the date fixed for their examination. CVC *letter No 001/DSP/6 Dt. 02.11.2001*

14.1.5 Entitlement of TA/DA to the private witnesses and the retired employees appearing before departmental inquiry

The position regarding the payment of TA/DA to private persons or retired employees appearing as defence witnesses has been provided in the Ministry of Finance U.O. Note 3221-E IV(B)/61 dated 20.11.1961 and O.M. No. F.5(15) F.IV (B)/68 dated 15.09.1969 which inter-alia lay down that the private persons or retired employees appearing as prosecution or defence witnesses in departmental inquiries including those conducted by the Commissioner of Departmental Inquiries should be paid TA/DA. *CVC letter No. 002/MSC/15 Dt.10th Feb 2003*

14.1.6 Grant of immunity to `approvers' DOPT O.M. No 371/6/88-AVD.III dated 22 Mar 90

A procedure for grant of immunity/pardon to the officers/officials from departmental action or punishment has been laid down in respect of cases investigated by the CBI, vide Part VIII of `Directive' circulated vide this Department's OM No 371/13/87-AVD III dated 19 Sep 1988. However, no such procedure exists in respect of cases investigated by the CVO's agencies. It is felt that an analogous procedure could be utilized to considerable advantage in

departmental proceedings and the evidence of the `Approvers' would lead to considerable headway in investigation of cases. This would also facilitate booking of offences of more serious nature. It has accordingly been decided, in consultation with CVC/CBI and the Department of Legal Affairs, to prescribe the following procedure for grant of immunity/ leniency to an employee in the Departmental inquiries conducted by the CVOs :-

(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 to the CVC his recommendation regarding grant of immunity/leniency to such officer from the departmental action or punishment. The CVC will consider the recommendation of the CVO in consultation with the administrative Ministry concerned and advice that authority regarding the course of further action to be taken. (b) In cases pertaining to the officials against whom the advice of the CVC is not necessary, the recommendation for grant of immunity/leniency may be made to the CVO who will consider and advice the disciplinary authority regarding the course of further action to be taken. If there is a difference of opinion between the CVO and the disciplinary authority, the CVO will refer the matter to the CVC for advice.

It will be observed from the procedure prescribed above that the intention is not to grant immunity/leniency in all kinds of cases but only in cases of serious nature and that too on merits as indicated in Para above. It is not open to officer/official involved in a case to request for such immunity/leniency but it is for the disciplinary authority to decide, in consultation with the CVC or the CVO, as the case may be, in which case such an immunity/ leniency may be considered and granted in accordance with the procedure prescribed above in the interest of satisfactory prosecution of the disciplinary case.

Gazetted Officers:

If during an investigation, the S PE finds that a Gazetted Officer 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 SPE will send to the CVC its recommendation regarding grant of immunity to such Officers from the departmental action or punishment. The CVC will consider the recommendation of the SPE in consultation with the administrative authority concerned and will advise that authority regarding course of further action to be taken.

Non-Gazetted Officials:

In cases pertaining to non-Gazetted Officials, the SPE will send its recommendation for grant of immunity from the departmental action to the administrative Ministry concerned. If there is a difference of opinion between the SPE and the administrative Ministry, the SPE will refer the matter to the CVC for advice.

14.1.7 Examination-In-Chief:

Examination of a witness by the party, who calls him, is called as examination-in chief. The witness here may give his statement by himself or reply to the questions put by the party who has called him. The questions cannot be leading questions. *Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question or question containing an answer.* The examination-in-chief of a witness is followed by cross-examination, by the opposite party. If after the cross examination, the party who has called the witness desires to clarify points raised in cross-examination, he may put the witness to further examination which is called re-examination. After such re-examination the witness should be allowed to be further cross-examined if new facts are brought out in the Re-examination. Re examination should therefore not be on any new point. (a) The evidence of witnesses is recorded in narrative form or in the form of question and answer method during the examination-in-chief. Alternatively, the witnesses can rely upon the written statements recorded during the preliminary investigation and corroborate such statements.

(b) On completion of examination-in-chief, the prosecution witness will be offered for cross-examination by the charge-sheeted employee/ co- employee

14.1.8 Examination of a witness by the Enquiry Officer

After the examination, cross-examination and re-examination of a witness, the Enquiry Officer may put such questions to the witness as he may think fit. Such a witness may be cross-examined by or on behalf of the Public servant with the leave of the Enquiry Officer on matters covered by the questions put by the Enquiry Officer.

14.1.9 Self-Examination by Charged Employee:

On completion of the defence evidence, the charge-sheeted employee will have an opportunity to conduct self-examination to defend himself in which case he is liable for cross-examination by the PO. However, he has an option not to subject himself for self-examination in the enquiry but submit written brief. He can opt for any of the above.

14.1.10 Cross-examination:

On completion of the prosecution evidence, the Presenting Officer will declare that the prosecution evidence has been completed. Thereafter the enquiry officer will advise the charge-sheeted employee to commence the defence evidence by producing defence witnesses and documents. The Presenting Officer will be given an opportunity by the Enquiry Officer to cross-examine the defence witnesses and documents. Cross-examination of a witness is the most efficacious method of discovering the truth and exposing false-hood. The art of cross-examination lies in interrogating witness in a manner which would bring out the concealed truth.

The right of the Public servant to cross-examine a witness who has given evidence against him in a departmental proceeding is, however, a safeguard implicit in the reasonable opportunity to be given to him under Article 311 (2). The scope or modes of cross-examination in relation to the departmental enquiries have not been clearly set out anywhere. But there is no other variety of cross examination except that envisaged under the Evidence Act. It follows, therefore, that the cross-examination in departmental enquiries should, as far as possible, conform to the accepted principles of cross-examination under the Evidence Act. Usually considerable latitude is allowed in cross-examination. It is not limited to matters upon which the witness has already been examined-in-chief, but may extend to the whole case. The Enquiry Officer may not ordinarily interfere with the discretion of the cross-examiner in putting questions to the witness. However, a witness summoned merely to produce a document is not liable to cross-examination. A question about any matter which the witness had no opportunity to know or on which he is not competent to speak may be disallowed. The Enquiry Officer may also disallow question if the cross examination is of inordinate length or oppressive or if a question is irrelevant. It is the duty of the Enquiry Officer to see that the witness understands the question properly before giving an answer and of protecting him against any unfair treatment The rule of cross examination is based on the principles of natural justice. The delinquent in a departmental enquiry should be given a reasonable opportunity to defend, which includes not only a right to cross-examine the witnesses for the department but also to cross-examine them effectively.

The cross-examination need not be confined to the testimony of the witness in his examination-in-chief. The questions could cover the entire gambit of defence except, of course, the ones which are totally irrelevant, indecent, or without any base or relevance. In order to clarify any points, which are missed out in the cross-examination but brought out in the examination-in-chief or any contradictions in the

evidence adduced during the examination-in-chief and the cross-examination, the prosecution can re examine the witness. The charge-sheeted employee will have an opportunity to conduct cross-examination limited to the points brought out in the re-examination. Cross examination of a witness has to be completed before other witnesses are produced.

14.1.11 Extent of Control of Enquiry Officer (EO) over Cross-Examination:

(a) Enquiry Officer must give an opportunity to the delinquent employee to cross-examine the witnesses produced against him as well as to test their testimony.

(b) The delinquent employee should be specifically asked by the Enquiry Officer to cross-examine the witnesses even though he/she has the right to cross examine.

(c) When a delinquent employee does not wish to cross-examine the witness, even though he was asked by the Enquiry Officer to cross-examine him, it should be specifically recorded so, in the enquiry proceedings, otherwise, it would appear that employee was not given the opportunity to cross-examine the witness.

(d) Delinquent employee cannot ask for reservation of cross-examination till all the witnesses are examined. As soon as examination-in-chief is over, cross examination should be, generally done.

(e) Furthermore the delinquent Officer cannot insist that defence witnesses should not be examined before the cross-examination of the re-called prosecution witnesses.

(f) If a question is irrelevant then it can be disallowed. When the questions were relevant and the Enquiry Officer disallowed such questions, then it vitiates the enquiry as the defence is deprived of an opportunity. When the questions are disallowed Enquiry Officer must record the questions and his reasons for disallowing them.

(g) No doubt, cross- examination is one of the most important processes for elucidation of facts of a case and all reasonable opportunity should be allowed, but Enquiry Officer has always discretion as to how far it may go or how long it may continue.

14.1.12 When defence evidence should be closed?

After the charge-sheeted employee has produced his defence, it is customary to ask him to close defence evidence by making a formal statement that he has no more evidence or witness to produce. This

is very important because the delinquent cannot thereafter say that he wanted to produce his witnesses but it was not permitted.

14.1.13 Re-Examination of witnesses:

The purpose of re-examination is to clarify the points arising out of cross examination of the witnesses. The purpose is not to cover the deficiency or to bridge the gap in the evidence; otherwise it vitiates the enquiry.

After cross-examination of witness by or on behalf of the Public servant, the Presenting Officer will be entitled to re-examine the witness on any points on which he has been cross-examined but not on any new matter without the leave of the Inquiring Authority. If the Presenting Officer has been allowed to re-examine a witness on any new matter not already covered by the earlier examiner/cross-examination, cross examination on such new matter covered by the re-examination, may be allowed.

14.1.14 Recording of evidence

A typist will be deputed by the Enquiry Officer to type the depositions of the witnesses to the dictation of the Enquiry Officer.

The depositions of each witness will be taken down on a separate sheet of paper at the head of which will be entered the number of the case, the name of the witness and sufficient information as to his age, percentage and calling, etc., to identify him. The depositions will generally be recorded as narration but on certain points it may be necessary to record the questions and answers in verbatim.

As evidence of each witness is completed, the Enquiry Officer will read the depositions, as typed, to the witness in the presence of the Public servant and/or legal practitioner or the Public servant assisting the delinquent officer in his defence. Verbal mistakes in the typed depositions, if any, will be corrected in their presence. However, if the witness denies the correctness of any part of the record, the Enquiry Officer may, instead of correcting the evidence, record the objection of the witness. The Enquiry Officer will record and sign the following certificate at the end of the depositions of each witness:

“Read over the witness in the presence of the charged officer and admitted correct/objection of witness recorded”. The witness will be asked to sign every page of the depositions. The charged officer, when he examines himself as the defence witness, should also be required to sign his depositions. If a witness refuses to sign the deposition, the Enquiry Officer will record this fact and append his signature. The documents exhibited and the depositions of witness

will be kept in separate folders. If a witness deposes in a language other than English but the depositions are recorded in English, a translation in the language in which the witness deposed should be read to the witness by the Enquiry Officer. The Enquiry Officer will also record a certificate that the depositions were translated and explained to the witness in the language in which the witness deposed. Copies of the depositions will be made available at the close of the inquiry each day to the Presenting Officer as well as to the delinquent officer.

The oral evidence recorded during the enquiry has to be signed by the witness as well as by Presenting Officer and Co-employee and attested by the Enquiry Officer which is generally done by endorsement "Read over to the witness and accepted as Correct" (ROAC). The EO may, at his discretion, allow the PO to present any new evidence or recall or re-examine any witness, provided there is some inherent lacuna in the evidence already recorded. Fresh evidence will not be allowed just to fill up the gaps in the evidence on record. Where such evidence is allowed by the EO, Delinquent employee should also be given an equal opportunity to rebut it, including granting suitable adjournment if necessary. The only stage for production of fresh or new evidence or to recall a witness is when the PO has closed his case and the Defense case is still to commence. Copies of the deposition of the witness are supplied both to Presenting Officer & Delinquent employee and original is kept on the record of enquiry. Any party to the enquiry or the EO himself may like to bring on record Expert Evidence of the persons especially skilled to form an opinion on those matters. It is essential that the other party be afforded an opportunity to cross-examine the expert witness to clear their doubts. Sometimes, both the parties call experts to prove their respective viewpoints. In such cases, the opinions of the experts are recorded, as stated above, for final evaluation by the EO. It is important to note here that the expert witness produced by one party cannot, however, be cross-examined by the expert witness of other party.

The statement made by each witness shall be succinctly recorded by the Enquiry Officer/ Enquiry Committee and will be signed by the witness and countersigned by the officer charged. It is not necessary to write down question and answers except where absolutely necessary on a crucial point where the admission or denial must be recorded verbatim.

Wherever the Enquiry Officer after having heard and recorded the whole or any part of the evidence in an enquiry ceases to exercise jurisdiction and is succeeded by another Enquiry Officer/ Enquiry Committee, the authority so succeeding him may act on the evidence

already recorded by its predecessor or partly recorded by his predecessor and partly recorded by itself. If the succeeding officer/ Committee is of the opinion that further examination of any of the witnesses whose evidence is already recorded is necessary in the interest of juice recall, cross examination and re-examine such witness.

Before close of the prosecution case, the Enquiry Authority may, at its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or call for new evidence or recall or re-examine any witness. In such cases, the Charged Employee shall be given opportunity to inspect the documentary evidence if any before it is taken or record or to cross-examine a witness who has been so summoned.

14.1.15 Relevancy of Documents:

The Enquiry Authority is the sole authority to decide, whether the documents called for by the C.S.E are relevant for the enquiry. If these documents called for are relevant, he will arrange for inspection of such documents through the Presenting officer.

14.1.16 Privileged Documents:

It may happen that even though the Inquiring Authority has decided for the inspection of the documents by the charged employee, the custodian of the documents may decide that it would be against the public interest. In fact the authority having the custody or possession of the documents in question can claim privilege in the interest of the company. In such cases EO is bound by the decision of the authority claiming the privilege and such document s need not be produced. Privilege documents include;

a. Investigation report, preliminary/detailed reports by Police/CBI etc.

b. File of correspondence relating to the case

c. Any other document/record the production of which, in the opinion of t he DA, is considered to be against the interests of the company In the above situation, the EO should not question the plea/opinion of the authorities concerned having custody or possession and should not summon the documents in respect of which privilege is claimed. In such case, where the custodian of documents refuses access to any official document, he should give a letter to the effect. This letter should be made available for verification by charged employee, and recorded in the proceedings of enquiry.

"Privileged" documents are those that a party is not obliged to disclose during the disclosure and inspection process of enquiry proceeding. Documents in this category may include file dealing with the disciplinary cases against charged employee, advice of law department, character roll of the employee etc

14.1.17 Inspection of Documents:

The charged employee should be given all the facilities for inspection of relevant documents. The inspection should be either in his presence or in the presence of an Officer nominated by him. The charged employee is allowed to take down notes or extracts from the relevant documents in pencil. However, care should be taken that during the course of the inspection, documents are not tampered with or mutilated, destroyed or stolen. Charged employee will not be allowed to take Xerox copies of the documents. He may be supplied Xerox copies of such documents by the Inquiring Authority at a later date, if he (the Inquiring Authority) so decides.

At the time of inspection of documents the charged employee is expected to take down all relevant points from the original documents. When the employee was permitted to inspect and allowed to take notes from documents, then the enquiry is not vitiated because the copies of the documents, were not supplied. The reason is that the employee has no absolute right to be supplied with the copies of the documents in these circumstances. It is not necessary to allow the inspection of the same documents again. As a precaution it is desirable to take a letter from the charged employee that he has completed the inspection of documents.

The general practice is that if a document is not disputed by the opposite party or it is proved by the deposition of witness then it is exhibited. This means that a particular number is put on the document. All relevant questions about any document can be permitted.

It is the practice in departmental enquiries that the delinquent employee is required to sign beneath the enquiry proceedings on each day to attest the accuracy of enquiry records. The witnesses are also required to sign after their deposition is recorded.

However, there is no legal requirement of such signature. Charma Tiwari vs. Union of India 1988(7) SLR 699-SC.

14.1.18 Ensuring availability of documents in CBI cases CVC letter No. 006/VGL/5 Dt.18/01/2006

It has been observed that non-availability of documents relevant to the departmental inquiry proceedings continues to be a major

problem contributing to the delay in the finalization of the inquiry. The Disciplinary Authority is required to ensure that the P.O. is given custody of all the listed documents in original and certified copies thereof. In respect of the CBI cases, the CBI should make available to the organization, legible certified photocopies of all documents seized by them. It is, therefore, reiterated that CBI/CVO of the concerned organization should ensure that legible certified copies of the documents taken over by CBI are made available to the organization to pursue the departmental proceedings. CVC Order No. 3(v)/99/7 dated the 6th September, 1999.

Further the CVOs should ensure that charge-sheets are carefully drafted covering all lapses. It is seen that in some CBI cases, there is delay in obtaining the documents. It should be ensured that the listed documents are obtained from the CBI before issuing the charge-sheet and, where parallel proceedings are to be initiated, a set of listed documents, duly certified, is obtained from the CBI CVC letter No.06/VGL/065 Dt. 6th July 2006

14.1.19 Adjournment:

Grant of adjournment is discretionary with the enquiry Officer. It is not a right of the charge-sheeted workers to ask for as many adjournments as he likes but if in refusing adjournment the enquiry Officer failed to give reasonable opportunity to lead evidence then that may in a proper case be considered as an element of infirmity in the proceedings. Tata Oil Mills Co. v. Workmen, (1964) 2 LLJ 113 The adjournment has to be minimum necessary because justice to be effective has to be quick. It would be correct for EO to allow the PO or Charged Employee to dominate the proceedings by asking adjournments; what either party deserves is fair and reasonable opportunity to be heard and not an unfair and unreasonable opportunity to obstruct and hinder.

14.1.20 Part-heard inquiries:

If an Enquiry Officer after having heard and recorded the whole or any part of the evidence in an enquiry ceases to function as Enquiry Officer for any reason, and a new officer is appointed as Enquiry Officer for conducting the inquiry, the new Enquiry Officer in his discretion may proceed with the enquiry de novo, or from the stage left by the predecessor and act on the evidence already recorded by his predecessor or the evidence partly recorded by his predecessor and partly recorded by him, depending upon the stage at which the previous Enquiry Officer ceased to function.

However, if the new Enquiry Officer is of the opinion that a further or a fresh examination of any of the witnesses whose evidence has

already been recorded is necessary in the interest of justice, he may recall the witness or witnesses for examination, cross-examination and re-examination in the manner described earlier.

15.0.0 Various facets of enquiry proceedings:

15.0.1 Outside Witness:

Where witnesses are not in the employment of the Organization who has appointed the Enquiry Officer, then it is not possible for him to compel them to appear before him. In such circumstances both the parties should take steps to produce their respective witnesses. In the absence of the witness who is willing to come, other corroborative evidence may be produced.

15.0 .2 Expert Opinions:

The rule followed in judicial Courts is that the expert's opinion as to handwriting is opinion evidence and it can rarely; if ever take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstances evidence. If any such expert is to be examined then the employee should be given an opportunity to cross-examine him, otherwise the enquiry will be vitiated. This being so the defence cannot cross-examine a handwriting expert produced by the Presenting Officer by another handwriting expert. However the defence can bring their own handwriting expert as a witness.

15.0 .3 Administering oath

The Civil and Criminal Courts have got power to administer oath in view of the Indian Oaths Act. The said Act empowers all Courts and persons having by law or consent of parties, authority to receive evidence. The Enquiry Officer does not fall into any of the above classes and therefore the Enquiry Officer is not empowered to administer oath.

15.0.4 Hostile Witnesses:

A party calls a witness with the hope that the witness would depose the facts, which will favour the party concerned but sometimes the witness states something which is contrary to the earlier version of the witness. Such a witness is called hostile witness. The Evidence Act does not say anything about declaring a witness hostile but simply provides that a witness may be permitted to be cross-examined by the party who calls him in certain circumstances. A hostile witness can be cross-examined.

15.0.5 Action against public servants, serving as witnesses, but turning hostile in trap and other cases of CBI;

CBI often requisitions the services of Public servants from various Organizations in order to utilize them as witnesses in cases of search, trap, etc. The underlying objective behind such practice is to have reliable independent witnesses, who withstand the scrutiny during court trials.

However, in large number of cases, Public servants, who are engaged as such witnesses, are found resiling their original statements during trials, on pleas that they had signed the memoranda without reading the contents or they had not witnessed the real proceedings.

It is obvious that these public servants, whose services are thus utilized by the CBI, are turning hostile for ulterior reasons. It is surely not expected that educated and responsible public servants should resort to such devious behaviour, which undermines CBI cases and goes against public interest.

Rule 16, Chapter XIII of Vigilance Manual Vol. I, provides that if a Public servant, who had made a statement in course of a preliminary enquiry, changes his stand during evidence in the enquiry, and if such action on his part is without justification or with the objective of favouring one or the other party, his conduct would constitute violation of Rule 3 of the Conduct Rules, rendering him liable for disciplinary action. Such misconduct in the context of criminal cases becomes all the more grave. *CVC letter No. 000/VGL/154 Dt. 15th December 2005*

15.0.6 Admissibility of Evidence:

Assessment of the deposition of witnesses and documents and to come to the conclusion as to whether the charges are proved or not are called appreciation of evidence.

The Rule that unless the maker of a document is available for cross examination, the document should not be admitted into evidence is a rule from the Evidence Act and it has no application to domestic enquiries. It would be stretching the principles of natural justice to a breaking limit if it were to be held that evidence, though credible is inadmissible, because the maker of the document has not appeared at the inquiry. *Zonal Manager, LIC of India and others Vs. Mohanlal Saraf, 1978(2) SLR 861 (J&K).*

Evidence may be relevant but it may not be admissible according to the provisions of the Evidence Act. Before civil and criminal courts, evidence must be both admissible as well as relevant.

There is no such clear distinction in the evidence before enquiry Officer and it can be said that except in exceptional cases evidence which is relevant is always admissible.

The technical rules of the Indian Evidence Act are not applicable to departmental enquiries.

15.0.7 When hearsay evidence is not admissible:

There is no bar against receiving hearsay evidence provided it has reasonable nexus and credibility. All material which are logically probative for a prudent mind are permissible *State of Haryana vs Rattan Singh, 1977(1) SLR 750.*

According to Section 60 of the Indian Evidence Act "Oral evidence must, in all cases whatever, be direct" Hearsay evidence means all statements or declarations of persons not called as witnesses but repeated by third persons. Though the word 'hearsay' has not been used in the Evidence Act but such evidence is commonly known as 'hearsay evidence. The principle of this rule is also applicable to departmental enquiries. Some departmental rules expressly provide for exclusion of hearsay evidence and in that case if some documents containing information of hearsay nature are considered then the enquiry can be set aside for that reason. The principles laid down by the Supreme Court are well established that hearsay evidence is ordinarily no evidence. The exclusion of hearsay in substantially controversial question is not a mere technical rule; it is only an extension of the principle that no man will be condemned behind his back.

15.0.8 When the earlier statements of witnesses can be used as evidence**:**

(a) Previous statements are not substantive evidence:

In a number of cases the statements of witnesses are recorded at a stage prior to the formal departmental enquiry. They may be recorded during preliminary enquiry or enquiry by police or in other circumstances. If the employer or the department wants to rely on the evidence of such witnesses then the witnesses should again be produced during formal departmental enquiry and they must depose as to the facts which are mentioned in their previous statements. Such statements cannot be relied upon unless the witnesses making previous statements are again produced.

(b) Statements during preliminary enquiry are also not substantive evidence:

The statements made during preliminary enquiry are not part of the record of formal enquiry and, therefore, the statements cannot be relied upon unless the makers of the statements are again produced in final enquiry.

(c) Earlier statements can be used to contradict witnesses:

As observed by their Lordships of the Privy Council in Brijbhushan Singh v. Emperor, a statement made before the police cannot be used as a substantive piece of evidence. It can be used to cross-examine the person who made it and the result may be to show that the evidence of the witness is false but that does not establish that what is stated out of court is true. The earlier statements can only be used for the purpose of cross-examination and not for any other purpose.

15.0.9 Proof of hand-writing is necessary in case of disputed documents:

If a particular document produced either by the employer or by the Charge sheeted employee is disputed by the other then the signatures on the document or the handwriting in which the document is written has to be proved. The proof of handwriting is necessary because even though writing may be similar but in judicial proceedings findings cannot be based upon conjectures or strong suspicion. In departmental enquiry, it is necessary to prove the documents as in a judicial trial. It should be kept in mind that the test for disputed handwriting is not the extent of similarity but the nature and extent of dissimilarities noticed.

15.0.10 Direct evidence and circumstantial evidence:

Direct evidence is the evidence of eyewitnesses and the Enquiry Officer is required to decide whether evidence is believable or not. Circumstantial evidence means the evidence of connected circumstances which make probable that a particular incident would have happened. In the absence of direct evidence, Enquiry Officer is required to decide the case on the basis of circumstantial evidence. There is no rule of evidence that if direct evidence on a fact is rejected, then the circumstantial evidence upon that fact must be rejected. A fact has to be determined on the basis of such direct and circumstantial evidence as may be on record.

15.0.11 When the charge can be said to be established by circumstantial evidence:

In case of direct evidence there is no much scope of the enquiry officer acting merely on suspicion or surmises though there may be scope for deciding whether the evidence is trustworthy or not. But in the case of circumstantial evidence there is much scope of coming to

a decision that a delinquent employee is guilty even though circumstances are not sufficient to give rise to a reasonable inference that the delinquent is guilty and therefore, it is very essential to understand the mode of evaluating the circumstantial evidence. The mode of evaluating the circumstantial evidence is that the circumstances, from which the conclusion of guilt is to be drawn, should be consistent only with the hypothesis of guilt of the accused. The circumstances should be in-commutable with the innocence of the accused and incapable of the explanation on any other reasonable hypotheses. In evaluating the circumstantial evidence the various circumstances should not be viewed in isolation but an overall view is to be taken. If the Enquiry Officer finds a person guilty based on circumstantial evidence, then the circumstances should irresistibly lead to an inference of guilt and if the inference of guilt drawn from a circumstantial evidence is not the only irresistible inference, then the report is liable to be quashed. No one can be punished on the basis of suspicion alone.

15.0.12 Evidences to be weighted and not counted:

A fact is not to be held as acceptable simply because it has been stated by more witnesses. A case may be decided on the basis of the statement of a single witness provided he is reliable. Appeal (crl.) 112 of 2008 SC Kunju @ Balachandran vs State Of Tamil Nadu on 16 January, 2008

15.0.13 Status of the witness is immaterial for assessing credibility:

The acceptability or otherwise of a witness does not depend upon the official status of the witness because truth has no connection with status.

15.0.14 Brief by PO/Delinquent employee:

In the normal course, the charge-sheeted employee as well as the Presenting Officer is free to submit their written statement of arguments if they so desire.

The word 'Written Brief' is used in the departmental enquiries against Officer Employee. This is the nut shell summing up of case of each party, i.e. management and defence. It includes the information to be discerned from the evidence adduced during the enquiry. In workman's case we use the word 'arguments'-which denotes putting up in the case of each party to the Enquiry Officer to draw inference from evidence adduced during the enquiry. The Written Briefs need not be exchanged between the parties. The arguments are exchanged between the parties, if they are in writing.

After the completion of the production of evidence on both sides, the Enquiry Officer may hear the Presenting Officer and the Public servant or permit them to file written briefs of their respective case, if they so desire. It will be observed from the phraseology of Rule 14(19) of the CCA Rules, 1965 that the Inquiring Authority has to hear arguments that may be advanced by the parties after their evidence has been closed. But, he can, on his own or on the desire of the parties, takes written briefs. In case he exercises the discretion of taking written briefs, it will be but fair that he should first take the brief from the Presenting Officer, supply a copy of the same to the Public servant and then take the brief in reply from the Public servant. In case the copy of the brief of the Presenting Officer is not given to the Public servant, it will be tantamount to hear arguments of the Presenting Officer at the back of the Public servant. Collector of Customs vs. Mohgd. Habibul SLR 1973 (i) Calcutta 321. It is laid down therein that the requirement of Rule 14(19) of the CCA Rules, 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief. Though the decision of any High Court is binding on the courts and authorities in the state under the jurisdiction of that High Court, nonetheless, it has its persuading effect on other courts too.

15.0.14 Materials which a written brief of the PO should contain

1. The reference of his appointment as P.O. and brief of the charges on which inquiry was held. This should be in the introductory paragraph.

2. Brief of the Inquiry Proceedings i.e., number of witnesses examined including number of documents exhibited and whether the Inquiry was conducted ex parte.

3. The relevancy of oral and documentary evidence produced during the inquiry. This should be done for each article of charge separately.

4. If he has been able to get the line of the defence adopted by the delinquent, the same should also be discussed as also the materials to refute the defence.

5. To summarize the evidence produced during the enquiry and his opinion as to whether the allegation is proved.

15.0.15 Preparation and submission of Report by Enquiry Officer:

On conclusion, the Enquiry Officer will declare the enquiry proceedings having been completed. Thereafter, the Enquiry Officer will prepare the enquiry report and forward the same to the Disciplinary Authority. Where there are more than one charge which were leveled against the delinquent employee, the Enquiry Officer should give his findings in respect of each charge and the findings should not be in parts but consolidated.

15.0.16 Report of the Enquiry Officer:

An oral inquiry is held to ascertain the truth or otherwise of the allegations and is intended to serve the basis on which the disciplinary authority has to take a decision as to whether or not the imposition of any penalty on the Public servant is called for. The EO's first duty is to study and understand the department's case and the defence version thoroughly. He must endeavour to reconstruct the conduct expected of charged employee. He must ascertain all the details of the event or transaction and relevant circumstances attending on them. He must probe into what has happened, where and when. He must know who has done what and what he ought to have done.

He should ascertain, what was the role assigned to charged employee specifically in relation to the charge; what was expected of him and what he did or omitted to do. He should conclude whether and which of the imputations/ charges are proved. He should then judge whether charged employee within his knowledge and experience behaved with due care and attention, reasonably and honestly; whether he violated the law, rules and procedures, he was expected to follow; whether he knew or ought to have known the propriety and results of his acts. In other words, whether he behaved as a prudent man would have been expected to do. He cannot say that he violated the procedure in the interest of Government. Rules and procedures are laid down in the interest of the public and public servants are expected to follow them.

The findings of the Enquiry Officer must be based on evidence adduced during the enquiry. The report should clearly indicate the relation between the imputation, evidence and conclusions. While the assessment of documentary evidence should not present much difficulty, to evaluate oral testimony, the evidence has to be taken and weighed together, including not only what was said and who said it, but also when and in what circumstances it was said, and also whether what was said and done by all concerned was consistent with the normal probabilities of human behaviour. The Enquiry

Officer who actually records the oral testimony is in the best position to observe the demeanour of a witness and to form a judgment as to his credibility. Taking into consideration all the circumstances and facts the Enquiry Officer as a rational and prudent man has to draw inferences and to record his reasoned conclusion as to whether the charges are proved or not. The Inquiring Authority should take particular care while giving its finding on the charges to see that no part of the evidence which the accused Public servant was not given an opportunity to refute, examine or rebut has been relied on against him. No material from personal knowledge of the Inquiring Authority having a bearing on the facts of the case which has not appeared either in the articles of charge or the statement of allegations or in the evidence adduced at the inquiry and against which the accused Public servant has had no opportunity to defend himself should be imported into the case. The language should be sober, becoming and dignified. The report of the Enquiry Officer must be judicious, show poise and balance. It should contain:

i. an introductory paragraph in which reference will be made about the appointment of the Enquiry Officer and the dates on which and the places where the inquiry was filed;

ii. charges that were framed;

iii. charges which were admitted or dropped or not pressed, if any;

iv. charges that were actually enquired into;

v. brief statement of facts and documents which have been admitted;

vi. brief statement of the case of the disciplinary authority in respect of the charges enquired into;

vii. brief statement of the defence;

viii. points for determination;

ix. assessment of the evidence in respect of each point set out for determination and finding thereon;

x. finding on each article of charge;

xi. a folder containing:-

a) list of exhibits produced in proof of the articles of charge;

b) list of exhibits produced by the delinquent officer in his defence;

c) list of witnesses examined in proof of the charges;

d) list of defence witnesses;

e) a folder containing depositions of witnesses arranged in the order in which they were examined;

f) a folder containing daily order sheet;

g) a folder containing written statement of defence, if any, written briefs filed by both sides, application, if any, made in the course of the inquiry with orders thereon and orders passed on any request or representation made orally.

The findings and conclusion arrived at by the enquiry officer should be purely based on the oral and documentary evidence relied upon during the enquiry. Under no circumstances, extenuating factors, which are outside the purview of the enquiry of the charges, will be relied upon. Further, the Enquiry Officer should not give any findings based upon his own personal knowledge of the charge-sheeted employee or his own assumptions. The enquiry report should categorically state whether the charges are proved or not. However, the enquiry report should not contain any recommendation or proposal relating to imposition of any specific punishment.

If in the opinion of the EO, proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge provided that the findings on such article of charge shall not be recorded unless the Public servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

The 'malafides' should be used with great caution. It has to be judged from the circumstances of each transaction or event, powers and responsibilities vested in each officer and ultimately what a prudent and rational person would do in these circumstances with those powers and responsibilities.

The Enquiry Officer after signing the report becomes functus officio and cannot thereafter make any modification in the report.

15.0.17 **Ex-parte Enquiry:**

When the enquiry at a particular time, place and date is fixed and the charge sheeted employee does not turn up and seeks a postponement on genuine grounds, the same may be granted. If the charge-sheeted employee makes further attempts for adjournment and the Enquiry Officer is convinced that it is being done with a view to deliberately delay the proceedings, the Enquiry Officer may proceed with the enquiry exparte.

Every adjourned proceedings of the ex-parte enquiry should be duly notified to the charge-sheeted employee. If he presents himself and desires to participate he should be allowed to do so. In no case, the Enquiry Officer should proceed ex-parte on the first date of enquiry. One ex-parte hearing does not preclude giving notice of subsequent hearings to the Delinquent employee. Where an ex-parte enquiry is held, it should not be presumed that the misconduct as mentioned in the charge sheet, stands proved. The Enquiry Officer should still hold the enquiry and the Presenting officer prove the charge against the charge-sheeted employee and adduce evidence to that effect. If the Presenting Officer fails to prove the charge, the Enquiry Officer should give his findings, accordingly holding the delinquent employee not guilty.

15.0.18 Situations in which ex-parte proceedings can be conducted:

a. When Officer/employee Charged absents and does not attend the enquiry proceedings, despite being given reasonable opportunity to appear in the enquiry.

b. When Officer/employee Charged is keeping un-necessary adjournments on frivolous grounds simply to delay the enquiry proceedings and walks out of the enquiry.

c. When Charged Officer/ employee fails to intimate to enquiry officer, reasons of his absence or gives in writing that he does not wish to participate in the enquiry proceedings.

d. When Charged Officer/ employee is present, but is creating hurdles in smooth conduct of the enquiry by his behaviour.

15.0.19 Requirements for ex-parte proceedings:

The following are few instances, which are required to be complied with for conduct ex-parte proceedings:

1. Enquiry Officer should pass specific orders on record of the enquiry proceedings, clearly indicating the circumstances under which ex-parte proceedings are to be conducted. He should simultaneously record that it would be open to Charged Officer/employee to join the proceedings, if he so desires at any stage of enquiry subsequently.

2. In case the Charged Officer/employee wished to join the enquiry proceedings subsequently, he may be permitted to do so after recording his request and passing appropriate orders in the matter on record by setting aside ex-parte proceedings.

3. There is no bar to restart ex-parte proceedings, even after the charged officer/employee is allowed to join provided he creates circumstances as described above, but only specific order has to be passed for resumption of ex-parte proceedings.

4. The purpose of ex-parte proceedings is not to deprive the Charged Officer/employee in bringing his Defence on record, but to ensure that enquiry proceedings are conducted in time bound period and to stop the unnecessary attempt on the part of either party i.e. prosecution or Defence to delay the same.

5. Before conducting ex- parte proceedings, it should be specifically ensured that notice of enquiry has been duly served on the Charged Officer / employee.

6. It is desirable that once ex-parte proceedings are started, enquiry proceedings be held on day-to day basis.

7. In case any material facts or documents are submitted through post by Charged Officer/ employee, the same should be taken on record of enquiry treating them as submission of the Defence.

8. In case witness has been examined by the prosecution, it is obligatory on the part of Enquiry Officer to seek clarifications by way of asking questions from the witness (not cross examining)" in order to protect the interest of Charged Officer/ employee in exparte enquiry.

9. It should be ensured that day to day basis of enquiry, along with other evidences as taken on record, are sent to Charged Officer/ employee simultaneously and Charged Officer/ employee be advised that he is free to join the proceedings at any stage at any time in future.

10. In case request is received from Charged Officer/ employee to allow cross examination of witnesses, who have already deposed, the same can be examined on merits and facts and circumstances of each case and if there is not much difficulty in getting the witness cross examined, the right to cross examine be granted to the Charged Officer/ employee.

11. The Enquiry Officer has to ensure meticulous compliance of all the statutory requirements and entire procedure of enquiry what would have been carried out in the presence of Charged Officer/employee, has to be done even in his absence. No short cut methods are resorted to due to absence of Charged Officer/ employee.

15.0.20 Situations in which ex-parte proceedings have been held to be not justified by various Courts:

1. If message of absence has been received by telegram/letter seeking adjournment and reasons for absence were justified. Ex-parte proceedings are not justified. G. Krishna vs Hindustan Aeronautics Ltd. 44 FJR 349 (Mys) HC.

2. If workmen wants adjournment for 2-3 days to enable to contact his representatives to represent him and to bring the witnesses in his Defence. The request is rejected on the ground that in notice of enquiry, he was specifically asked to be ready with the same. Ex-parte enquiry is not justified. *Delhi Cloth & General Mills Co Ltd. vs Thejvir Singh AIR 1972 SC 2128*

3. If an employee cannot attend the enquiry at out station due to non- payment of subsistence allowance then ex-parte enquiry is not justified. *Ghanshyam Das Srivastava vs State of M.P. AIR 1973 SC 1183*

15.0.21 Situations in which ex-parte proceedings have been held to be justified by Courts:

In the course of statement, the workmen wanted the management to produce a file. The Enquiry Officer directed the management to produce the file on the next date of hearing. The workmen insisted that it should be produced immediately and when it was not produced, he left the enquiry under protest, and then ex-parte proceedings were justified. *Management of Ganges Printing Ink Factory vs Styapal Delhi Gaz dated 1.2.1973*

When workmen does not attend enquiry on a particular date fixed for enquiry without giving specific reasons, it is not necessary for Enquiry Officer to issue fresh notice and ex-parte enquiry in such a situation is held to be justified. *Management of Gautam Motors Ltd vs Kamal Nain (Del. RGaz Part VII dated 26.04.73)*

If the conduct of an employee is deliberate in not appearing and explaining charges against him with an eye to future legal remedy, such a situation goes against him and he cannot complain in future that he was not given reasonable opportunity to defend himself on account of ex-parte proceedings. *Crompton Greaves Ltd. vs SW Shinde 1973 ICR 401 BOM HC*

15.0.22 Common Proceedings:

Where two or more employees are involved in a case, disciplinary action may be taken against all of them in a common proceeding. Where such charge sheets relate to the same transaction or

occurrence and the nature of the evidence is common, the holding of common proceedings is lawful and valid. In other words, the holding of common proceedings is, per se, not invalid unless prejudice could be shown to have been caused to any Charged Employee on account of the joint trial. This should be based on the specific orders of the Disciplinary Authority. Such an order should specify:

i. the authority which may function as the disciplinary authority for the purpose of such common proceedings;

ii. the penalties which such disciplinary authority will be competent to impose;

iii. Whether the proceedings shall be initiated as for a major penalty or for a minor penalty.

15.0.22 Authority who can order Common Proceedings:

The authority competent to order the holding of common proceedings is the authority that has the power to impose the penalty of dismissal from service on the employees involved. In case the authorities competent to impose the penalty of dismissal from service on such employees are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities, with the consent of the others. Such consent is necessary even where one such authority is administratively subordinate to the other.

15.0.23 Procedural formalities in Common Proceedings:

Where it is decided to hold Common Proceedings, the competent authority shall make an order, which shall specify:

(i) The authority, which shall function as the Disciplinary Authority for the purpose of such Common Proceedings.

(ii) The Penalties specified in the service rules which such an authority shall be competent to impose; and

(iii) Whether the procedure prescribed in the rules for minor penalty action or for major penalty action shall be followed.

15.0.24 Drafting of Charge Sheet in Common Proceedings in certain cases:

Normally, in cases where Common Proceedings are considered necessary, the transaction or occurrence being the same, statement of imputation of misconduct or misbehaviour, and list of witnesses and documents in support of the charges, shall be common. As regards the Articles of Charge, earlier the role of each individual

employee in the misconduct committed jointly was brought out separately but now it is not necessary in view of the judgment of the of the Supreme Court in the *Union of India v. Tulsiram Patel AIR 1985, SC 141case* in which it was held that in cases of concerted and pre-planned action, it is not possible to particularize acts of each individual member who participated in the commission of those acts. A joint proceeding against the accused and accuser is an irregularity which should be avoided.

It may also happen that two or more Public servants governed by different disciplinary rules may be concerned in a case. In such cases proceedings will have to be instituted separately in accordance with the rules applicable to each of the Public servant concerned.

15.0.25 De-Novo Enquiry:

If the charge-sheeted employee makes a request for re-conducting the enquiry and the Disciplinary Authority feels on the merits of the case that the enquiry has to be conducted again in the interest of justice, the enquiry may be so conducted again based on the orders of the Disciplinary Authority. This is called De-Novo Enquiry.

15.0.26 Caution against dilatory tactics in common proceedings:

An interesting type of dilatory tactic has been noticed in common proceedings.

One of the accused employees makes a representation alleging bias on the enquiry officer; the moment it is disposed of, the enquiry is about to resume, another employee submits a similar presentation and so on. To frustrate such tactics, it is advisable that if a representation alleging bias against the enquiry officer is received from one of the Charged Employees, before it is considered, such representations, if any, from other co-accused should also be invited.

15.0.27 Cases Where CVC/ CBI to be Consulted:

The Central Vigilance Commission is empowered to exercise superintendence over the vigilance administration of the various Ministries of the Central Government or Corporations established under any Central Act, Government Companies, Societies and local authorities owned or controlled by that Government in terms of the Ministry of Personnel, Public Grievances & Pensions, DOPT Notification dated 12th September 2007 CVC Circular No 000/VGL/11 Dt. 18.10.2007 Para 22 of Chapter X of Vigilance Manual provides that all cases pertaining to Gazetted Officers (may be read as Group A Officers passing of CVC Act-2003), in respect of whom the Central Vigilance Commission is required to be consulted, will be referred to the Commission for advice (first/second stage

advice). The major penalty cases pertaining to such officers envisage consultation with the Commission at two stages. The first stage of consultation arises while initiating disciplinary proceedings, while second stage of consultation is required before a final decision is taken at the conclusion of the proceedings. It follows that the CVC should also be consulted in cases where the disciplinary authority have initiated action for major/minor penalty proceedings and propose to close the case on receipt of Statement of defence. CVC Circular no 002/VGL/61 Dt 16/3/2005

The Commission is to be consulted only in those cases which, prima-facie, have, or are likely to have, a Vigilance angle. *Vigilance Angle has been defined vide CVC office order No. 74/12/05 Dt. 21.12.2005.*171 and an element of corruption, criminal misconduct or malafides.

Further in view of the comprehensive jurisdiction of the Commission and instructions regarding handling of composite cases, irrespective of level of the public servant, Commission's second stage advice should be sought in the case of all employees where first stage advice has been rendered by the Commission. CVC letter No.000/VGL/187 Dt. 03.08.2001.

15.0.28 Disciplinary action against Board Level Appointees of PSEs.

The existing jurisdiction of the Commission over the Board level appointees of PSEs has been extended to two level below the Board level as per Para 3.2 of the Special Chapter on Vigilance Management in Public Sector Enterprises. All cases involving vigilance angle in respect of all officials of Board level as well two levels below the Board level will have to be referred to the Commission for its advice. CVC letter No. 98/VGL/51 Dt. 11.08.1999

15.0.29 Obtaining Commission's advice in composite cases

Para 16.2 of Special Chapter on Vigilance Management in Public Sector Enterprises provides that if an employee of a PSU involved in a case, falls within the Commission's jurisdiction, latter's advice would be required and any decision of the disciplinary authority at this juncture may be treated as tentative. Such a reference would be required to be made even in respect of an officer/staff who are not within the Commission's jurisdiction if they are involved along with other officers who are within the jurisdiction of the Commission, as the case would then become a composite case and falls within the Commission's jurisdiction. CVC letter No. 000/VGL/187 Dt. 08.02.2004

15.1.0 Reference to the Commission for first stage advice

As a matter of fact, the Central Vigilance Commission tenders advice at two stages, If upon preliminary investigation, it is found that prima facie there is some substance in the allegations, the CVC is to be consulted as to the future course of action(CVC Circular No 000/VGL/11 Dt. 18.10.2007.) to be taken. The Disciplinary Authority on considering the investigation report decides on the basis of the facts disclosed in the preliminary enquiry, whether the complaint should be dropped or warning/caution administrated or regular departmental proceedings launched for minor or major penalty as the case may be. The decision of DA at this juncture is considered to be 'Tentative' and complete records of the case along with 'Tentative Decision' of the DA is required to be referred to CVC for officials within its jurisdiction. The Commission will examine the matter and tender its 'first stage advice' which is considered by the DA before proceeding further.

15.1.1 Reference to the Commission for second stage advice

At the second stage, the advice of CVC is again to be sought before finalization of disciplinary proceedings after a copy of the Inquiry Report has been made available to the charged officer(s) and their representation/submissions have been obtained. On conclusion of the Enquiry proceedings and before passing any final order, the DA is required to consult CVC for its "Second Stage Advice" along with complete case records. CVC will examine the case records, including the Enquiry Report and tender its 'Second Stage Advice' which is required to be considered by the DA before passing final orders.

15.1.2 Other references

Advice of CVC is also required to be obtained when the Commission has referred a particular matter to the Company.

15.1.3 Documents required for first stage advice-CVC Circular 006/PRC/1dated 6th August 2009

(i) Annexure A. All vigilance reports of the CVOs should conform to the parameters prescribed in the above circular.

(ii) Annexure B. Assurance Memo,

(iii) Annexure –C Bio-data of suspect officials, figuring in the investigation reports.

(iv) Tabular statements, as prescribed vide the Commission's circular dated 1.12.2008,

(v) Draft charge-sheets and imputation of charge in respect of suspect officials where disciplinary action, such as major penalty or minor penalty proceedings, is proposed, would accompany the investigation reports.

15.1.4 Other Documents required to be sent for 1st stage advice:

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

(ii) Statements of witness and copies of the documents seized by the investigating officer;

(iii) Comments of the Chief Vigilance Officer and the disciplinary authority on the investigation report {including investigation done by the CBI and their recommendation}

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

15.1.6 Other Documents required for second stage advice:

(i) A copy of the charge sheet issued to the public servant;

(ii) A copy of the inquiry report submitted by the inquiry authority {along with a spare copy for the Commission' records};

(iii) The entire case records of the inquiry, viz copies of the depositions, daily order sheets, exhibits, written briefs of the Presenting Officer and the by the organization, it is on account of the Commission's perception of the seriousness of the lapses or otherwise. In such cases, there is no scope for reconsideration. The Commission has, therefore, decided that no proposal for reconsideration of the Commission's advice would be entertained unless new additional facts have come to light which would have the effect of altering the seriousness of the allegations/charges leveled against an officer. Such new facts should be substantiated by adequate evidence and should also be explained as to why the evidence was not considered earlier, while approaching the Commission for its advice. The proposals for reconsideration of the advices, if warranted, should be submitted at the earliest but within two months of receipt of the Commission's advice. The proposals should be submitted by the disciplinary authority or it should clearly indicate that the proposal has the approval of the disciplinary authority. *CVC letter No. 008/VGL/027 Dt. 24th April 2008*

15.1.7. Cases in which it is proposed not to accept the CVC's recommendation -Procedure to be followed regarding DOPT O.M. No 118/1/85-AVD-I dated 11 Dec 1985

The undersigned is directed to say that it is observed from the cases of non acceptance of the CVC's advice mentioned in the CVC's Annual Reports that many of these cases were not referred to the CVC for reconsideration of its advice before deciding not to accept the same. It may be mentioned in this connection that, whenever it is proposed to disagree with the advice of the CVC, an opportunity should be given to the CVC to reconsider its advice. Attention is invited in this connection to Secretary (Personnel)'s D.O letter No 134/2/83-AVD.I dated 02 May 1985 in which it has been provided that, in cases of disagreement with the advice of the CVC the matter should be referred to the CVC for reconsideration of its advice and once and only once.

15.1.8 Supply of copy of advice of CVC to Charged Employee:

The law of the land requires that though the first stage consultation could be confidential, the recommendation of the CVC on the report of enquiry has to be supplied to the Charged Employee, before a final decision is taken.

The CVC has since decided that a copy of their first stage advice be given to the employee along with the charge sheet. A copy of their second stage advice has to be supplied to the employee along with the copy of report of enquiry forwarded to him for his submissions/observations, vide their instruction No. 99/VGL/66 dated 28/9/2000. The relevant extract is given below:

(a) The Commission has reviewed the above instructions in view of its policy that there should be transparency in all matters, as far as possible. The Commission has observed that the Hon'ble Supreme Court had held a view in the case that non-supply of CVC's instructions, which was prepared in the absence of respondent without his participation, and one does not know on what material, which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just enquiry. *State Bank of India Vs. D.C Aggarwal and another [Date of Judgment: 13.10.1992]*

Further, the Hon'ble High Court of Karnataka, in writ Petition No. 6558/93, has also observed that if a copy of the report (CVC's advice) was furnished to the delinquent officer, he would have been in a position to demonstrate before the Disciplinary Authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC's report.

(b) The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of enquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission' s first stage advice may be made available to the concerned employee along with a copy of the charge sheet served upon him, for his information. However, when the CVC's second stage of advice is obtained, a copy thereof may be made available to the concerned employee, along with the EO's report, to give an opportunity to make representation against EO's findings and the CVC's advice, if he desires to do so.

(c) The Special Chapter on Vigilance Management in Public Sector Enterprises envisages that the enquiring authorities, including the Commissioner for Departmental Inquiries borne on the strength of the Commission, would submit their reports to the Disciplinary Authority who would then forward the EO's reports, along with its own tentative views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The Disciplinary Authority may, after examination of the enquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, along with the Disciplinary Authority's views, may be made available to the concerned employee. On receiving his representation, if any, the Disciplinary Authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along with the records of the case, to the Commission for its reconsideration.

(d) Thus, if on the receipt of the employee's representation, the concerned administrative authority proposes to accept the CVC's advice, it may issue the orders accordingly. But if the administrative authority comes to the conclusion that the representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission. CVC letter No 99/VGL/66 dt. 28th September 2000

15.1.9 Delay in implementation of Commission's advice

Subsequent to the Commissions' first and second stage advice the responsibility for finalization and award of punishment passes on from the vigilance to the personnel department.

Administration may impress upon all concerned and especially the Personnel Department that in view of the shift in responsibility from the vigilance to the personnel, any delay over and above the prescribed time limits for finalization of disciplinary cases will be viewed as misconduct by the Commission and will render the concerned officials of the personnel department and others concerned liable for being proceeded from the vigilance angle with its attendant ramifications. CVC letter No. 000/VGL/18 Dt.3rd March 2003.

Finally the orders of the Disciplinary Authority in the matter of disciplinary cases or affidavits to the courts, should in no case imply that any decision has been taken under the influence of the Commission; as the Commission is only an Advisory Body and it is for the Disciplinary Authority to apply its mind subsequent to obtaining the Commission's advice and take reasoned decisions on each occasion. CVC letter No. 003/DSP/3 Dt. 26th February 2004

15.1.10 Need for self-contained speaking and reasoned order by Disciplinary authorities:

There have been instances where the final orders passed in disciplinary cases by the competent disciplinary authorities did not indicate proper application of mind, but a mere endorsement of the Commission's recommendations which leads to an unwarranted presumption that the DA has taken the decision under the influence of the Commission's advice. Further, in practice, the DA's do not provide a copy of Commission's advice to the employee's concerned. The cases where the final orders do not indicate proper application of mind by the DA and or non supply of Commission's advise, are liable to be quashed by the courts. The CVC's views/advices in disciplinary cases are advisory in nature and it is for the DA concerned to take a reasoned decision by applying its own mind. The DA while passing the final order, has to state that the Commission has been consulted and after due application of mind, the final orders have been passed. Further, in the speaking order of DA, the Commission's advice should not be quoted verbatim. *CVC letter No. 003/DSP/3/31364 Dt. 15/01/09&CVC Letter 02/05/2014 dated 19th May 2014.*

15.1.11 Reducing Delays in Departmental Inquiries; Schedule of time limits in conducting investigations and departmental inquiries has been proved by CVC

One major source of corruption is that the guilty are not punished adequately and more important they are not punished promptly. This is because of the prolonged delays in the departmental inquiries procedure. One of the reasons for the departmental inquiries being delayed is that the Enquiry Officers have already got their regular

burden of work and this inquiry is to be done in addition to their normal work. The same is true for the presenting officers also.

One of the causes for delay in departmental inquiries is appointment of Presenting Officer. To avoid such delays, the Commission, in exercise of its powers conferred on it under Section 8(1) (g) of the CVC Ordinance 1999, directed all Departments/Organizations within its jurisdiction to indicate, the names of the Presenting Officer to be appointed while referring the cases to the Commission for 1st Stage advice and where the Disciplinary Authority proposes to initiate major penalty action. After the Commission endorses the proposed action, the Departments/ Organizations will ensure that the Enquiry Officer and Presenting Officer are appointed simultaneously after service of charge-sheet and immediately on denial of charges by the Charged Officer. The Departments/organizations should also indicate appropriate disciplinary authority in each case while referring the case to the Commission for first stage advice.

The Commission in turn will communicate its advice to the Disciplinary Authority/Secretary of the Ministries with a copy to the CVO for follow up action. CVC letter No-8(1)(g)/99(2) Dt 19th Feb. 1999

Disciplinary Authority should also ensure that the Presenting Officer(s) is/are given the custody of all the listed documents in original or certified copies thereof along with his appointment order so that the delay in disciplinary proceedings are reduced. CVC letter No. NZ/PRC/1 Dt. 26th February 2004

15.1.12 Reference of cases to CBI:

The Department / Organization, at the initial stage itself, depending on the facts of the case, should decide whether the case is to be entrusted to the local police or CBI CVC letter No. 98/DSP/9 Dt. 13th August 2003.

15.2.0 Sanction for Prosecution (under Section 19 of the PC Act):

CVC directive No.8 (1) (h)/98(3) dt 27th November 1998 provides as under;

(i) In respect of CBI reports/cases in which the Commission's advice is not necessary, the competent authorities may exercise their mind and give or refuse sanction for prosecution under the PC Act, within the time limit of 30 days from the date of receipt of request from CBI; and

(ii) In respect of the cases of Presidential appointees, in which the Commission's advice is required, the competent authorities may

furnish their comments within 30 days to the Commission and give the sanction of prosecution or otherwise, within a period of 60 days from the date of receipt of request from CBI.

If at the end of the above said time limits no decision had been given by the competent authorities, then the CVC will take an adverse view and deem it as a case of misconduct on the part of the competent authority.

15.2.1 Guidelines to be followed by the authorities competent to accord sanction for prosecution u/s. 19 of the PC Act189.

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

ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

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

iv) When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinized so many times at such high levels, there will hardly be any case where the Government would find it difficult to disagree with the request for sanction.*SC decision in Vineet Narain vs Union of India AIR 1998 SC 889*

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

vi) A representation subsequent to the completion of investigation is not known to law, as the law is well established that the material to be considered by the Competent Authority is the material which was

collected during investigation and was placed before the Competent Authority.

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

viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme Court in Vineet Narain's case.

15.2.3 Difference of opinion between CBI and Administrative authorities

The Commission has decided that where there is difference of opinion between the Deptt. /Organization and the CBI in cases where the latter have recommended prosecution under PC Act etc., the Commission would hold a joint meeting with the representatives of CBI and concerned Deptt./Organization. In such a meeting the CVO of the Deptt./Organization should take a brief from the disciplinary authority in this regard. However, if the DA wishes to attend the joint meeting, the Commission has no objection to it. *CVC letter No.. 003/DSP/9 Dt.8th January 2004.*

15.2.4 Refusal to sanction prosecution - reasons thereof. *CVC letter No 98/DSP/11 dated 03 Mar 1999* Ref: CVC's Instruction No 8(1)(h)/98(3) dt 27/11/98.

Please refer to the Commission's instruction referred to above regarding the time limit for Sanction of Prosecution. The Commission has further examined the matter with reference to the cases where Sanction of Prosecution were refused by the competent authorities. It is a fact that the provisions for Sanction of Prosecution is meant to grant reasonable protection to Public Servants and not to shield the guilty. The grant of sanction or refusal for Prosecution is made by the competent authority after a clear-cut application of mind, as the same is an administration function performed in quasi-judicial manner. It, therefore, logically follows that the competent authorities should record reasons even in cases where sanction for prosecution is not accorded.

In view of the above, it is brought to the notice of all concerned authorities that the reasons for not granting sanction for prosecution

should also be recorded by the competent authorities in the form of a speaking order, while communicating the same to the CBI.

15.2.4 Non-interference with investigation of CBI:

It has come to the notice of Commission that in a' trap' case, which was still under investigation by the CBI, the departmental authorities, based on representation of the accused, wrote to the CBI contending that it was a false/ cooked up case and claiming that the accused was 'innocent'. Viewing it seriously, the Commission has found it not proper – even objectionable- on the part of the Department to have written to the CBI questioning the fairness of investigation based on the version of the accused. This, in fact, amounted to undue interference with the due process of law. It needs to be kept in mind that the CBI is a professional agency and that in the course of its investigation the accused persons will also be afforded reasonable opportunity to explain their version of events. Interference by departmental authorities at a time when a case is still under investigation by CBI is, therefore, neither desirable not justified. CVC Circular No 20/7/08 dt 08-07-08

CVC directive on Action on CBI reports - revised time limit for furnishing comments to the commission

It has been decided that all Ministries/ Departments/Organizations would furnish their comments on CBI reports within 30 days of the receipt of the CBI reports by them.

It may therefore, be ensured in future that the comments are sent to the commission within the specified period. If no comments are received within 30 days, it will be presumed that the Ministry/Department/Organization has no comments to make and the Commission will thereafter, proceed with the examination of the case and tender advice without waiting further for the comments. *CVC letter No 98/VGL/7 dated 04 Jun 1998 read with CVC letter No 98/VGL/7 dated 12 Mar 98*

15.4.0 Standard of proof in Departmental Enquiry:

The standard of proof required is that of preponderance of probability and not proofs beyond reasonable doubt. Union of India vs Sardar Bahadur SLR 1972 P 355.

CVC letter No.001/VGL/82 Dated: 11th February 2002 - It has been brought to the notice of the Commission that in Indian Airlines, departmental proceedings have been initiated and brought to successful completion in a case which emanated from a complaint that an official had demanded illicit gratification from a user. The crucial witness in the proceedings was the complainant who could

not be personally present; a videotape of the complaint was utilized in the proceedings and it was considered sufficient to establish the case through preponderance of probability.

15.4.1 Preponderance of probability:

The phrase "burden of proof" is not defined in the Evidence Act. In respect of criminal, cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. The expression "burden of proof" has two distinct meanings: (1) the legal burden, that is, the burden of establishing the guilt and (2) the evidential burden, that is, the burden of leading evidence.

The criminal justice system follows the principle that the guilt of an accused should be proved beyond reasonable doubt it is for the prosecution to prove beyond reasonable doubt that the accused has committed an offence with requisite mens rea. The Civil Justice System stands on a bit different footing. In Civil cases the person who asserts a fact need not prove it beyond reasonable doubt. Instead we have “Preponderance of Probability” for him.

Evidence that persuades a judge to lean to one side as opposed to the other, during the course of litigation. The judge will perceive the evidence of one side as outweighing the other based on which side has the most persuasive or impressive evidence. The strength or "weight" of evidence is not decided by the sheer number of witnesses because the judge decides on the credibility of witnesses and give their testimony weight accordingly.

The standard of proof required in the departmental proceedings is that of preponderance of probability and not proof beyond reasonable doubt. Where there is some material which the authority has accepted and which material may reasonably support the conclusion that the employee concerned was guilty, it was not the function of the Tribunal to review the material and arrive at an independent finding Manerandan Das vs. Union of India, 1986(3) SLJ CAT CAL 139

The normal rule which governs disciplinary proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. A fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact

situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved.

15.5.0 Legal assistance to the Charged Employee:

Where the rules do not provide for the engagement of a professional lawyer and where the facts are simple and do not require any special legal expertise to cross examine witnesses, the charged official is not entitled to have a legal practitioner. He cannot also insist upon the services of a particular officer selected by him for assisting him *H.C.Sarin Vs. UOI, AIR 1976 SC 1686*

An employee does not have unconditional right of being represented by an advocate regardless of special circumstances. Denial of legal representation neither violates principle of natural justice nor it amount to denial of reasonable opportunity. *Ganedranath (Dr) vs State of Orissa AIR 1964 Orissa*

However, whenever a delinquent officer is pitted against a legally trained mind, refusal to grant permission to the delinquent officer to be represented through legal practitioner tantamount to denial of reasonable *opportunity Board Trustees of Court of Bombay Vs. Dilip Kumar, AIR 1983 SC*

Section 30 of the Advocate Act provides that an advocate is entitled as a right to practice before any tribunal or person legally authorized to take evidence. The word 'authorized to take evidence' denotes a capacity to call for evidence i.e. to summon witnesses and compel production of documents. When statutory rules do not empower Enquiry Officer to compel production of evidence then the lawyer has no right to appear before him by virtue of Section 30 of Advocate Act. Section 30 is in the same words a section 14 of Bar Counsel Act201. *LIC of India vs City Mint. Of Merrut AIR 1968 All 270* The right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or standing *orders. Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, 1993(7) SLR SC 408*

15.6.0 Stay of disciplinary proceedings under the order of the Court:

The question of stay or adjournment of oral inquiries in disciplinary proceedings conducted by the Inquiring Authorities, when the delinquent officer goes to a court of law has been considered in consultation with the Ministry of Law. The proceedings need not be adjourned or stayed in the following circumstances:

a) On receipt of notice under Section 80 of Civil Procedure Code;

b) On receipt of intimation that the impugned officer proposes to file a writ petition;

c) On receipt of a mere show cause notice (or Role NISI) from a court asking:-

i. why the petition should not be admitted; or

ii. why the proceedings pending before Disciplinary Authority/ Inquiring Authority should not be stayed; or

iii. why a writ or an order should not be issued?

iv. The proceedings should, however, be stayed only when a court of competent jurisdiction issues an injunction or clear order staying the same.

15.7.0 Simultaneous action of prosecution and departmental proceedings:

In serious cases involving offences such as bribery/corruption etc., action should be launched for prosecution as a matter of course. The Hon'ble Supreme Court had held in their various judgments, the important ones being, State of Rajasthan Vs. B.K. Meena & Others, Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited, Kendriya Vidyalaya Sangathan & Others Vs. T. Srinivas and Noida Entrepreneurs Association Vs. Noida, that merely because a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred.

15.8.0 Objects in Criminal and Departmental Proceedings:

Disciplinary proceedings and criminal proceedings operate in different fields and they have different objectives. The approach and objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. The object of the departmental proceedings is to ascertain whether an officer concerned is a person to be retained in service or to be otherwise dealt with, by imposing suitable penalty. The object of criminal prosecution is to find out whether the ingredients of the offence as defined in the penal statute have been made out. The holding of a departmental inquiry during the pendency of a criminal prosecution in respect of the same subject matter would not amount to contempt of court, unless there is a stay order issued by the court. In some cases the misconduct charged against an employee also constitutes an offence under Criminal Laws. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from

service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against the Public servant are established and if established, what sentence can be imposed on him. In serious nature of cases like acceptance of illegal gratification, the desirability of continuing the concerned Public servant in service in spite of the serious charges leveled against him may have to be considered by the Competent Authority to proceed with departmental action.

If criminal proceedings are held and the employee is convicted then the next question is, whether a departmental action can be taken against the employee on the said conviction; if the employee is on the other hand acquitted then whether departmental proceedings can be instituted against him notwithstanding his acquittal from the criminal court?

15.9.0 Stay of Departmental Enquiry on account of Criminal Proceedings:

If the material discloses a criminal offence, the alternatives open to the disciplinary authority are to

(1) initiate disciplinary proceedings in the first instance, or

(2) initiate prosecution in the first instance or

(3) initiate simultaneous disciplinary proceedings along with criminal proceeding.

The discretion in this regard entirely vests with the disciplinary authority. *S.Pratap Singh Vs. State of Punjab, AIR 1964 SC 72.*

15.9.1 It is not necessary to stay departmental proceedings during proceedings before criminal court:

In some cases proceedings before criminal courts are started against an employee either by the police or by the employer or one of his Officers in respect of an act, which also constitutes misconduct. Subsequently when departmental proceedings are sought to be taken in respect of the same act or omission then an objection is generally taken that the management ought to await the result of criminal investigation before starting disciplinary proceedings. Such an objection is generally rejected. The employer has the right to deal with the misdemeanour of the employees even when a criminal case is pending on the same subject matter. The pendency of criminal case on identical facts will not bar a domestic enquiry on the same facts because employer has an interest to see finality of the proceedings initiated by him and to ask the employer to wait till the finalization of the case before civil or criminal courts is hazardous.

15.9.2 No legal bar on departmental enquiry during police investigation:

There is no legal bar for the disciplinary authority to initiate disciplinary action pending investigation by the police. When the subject matter of the misconduct is an offence which is being investigated by the police, then the management is not obliged to wait the result of police investigation and departmental action can be taken against the worker concerned or enquiry can be instituted. B.Balaiah Vs. D.T.O. Karnataka SRTC, 1982(3) SLR Kar.675.

15.9.3 Company is not liable to wait for the outcome of the criminal proceedings before proceeding with departmental enquiries:

In the case of *Delhi Cloth and General Mills Ltd. v. Kushal Bhan*209 the Supreme Court made the observation that the company is not liable to wait till the final outcome of the criminal case unless the case is of grave nature or involves intricate question of law or fact. This case has been construed by some industrial tribunals to mean that if the case is of grave nature or involves intricate questions of law or fact then departmental enquiry should be stayed. When a person is prosecuted on an offence of grave character then it is fair that departmental enquiry should be stayed. It would be unfair to compel him to disclose the defence which he may take before the criminal court.

However, this will depend upon the nature of offence and the evidence and material collected against the Public servant during investigation or as reflected in the charge sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest, if the case so warrants.

15.9.4 If enquiry is held and worker is dismissed then subsequent acquittal from criminal court has no effect:

As stated above, the departmental authorities need not wait for the outcome of the criminal case. One of the corollaries of this principle is that if the departmental authorities do not wait for the outcome of the criminal case and hold an independent enquiry and as a result thereof the worker is dismissed or discharged then the decision of the departmental enquiry is not affected or is liable to be set aside by subsequent acquittal or discharge by criminal court. If it were

otherwise then this would mean that the departmental authorities must wait for the outcome of the criminal proceedings.

15.9.5 The legal position in respect of acquittal in criminal case and departmental action is summarized as under:

The normal rule is whenever the accused is honourably acquitted and totally exonerated in the criminal case; a disciplinary proceeding should not be initiated against him. But if the disciplinary authority is of the opinion that there is sufficient evidence and good grounds to proceed with the departmental action, the disciplinary authority can certainly initiate departmental action.

Where the accused is acquitted giving benefit of doubt, the disciplinary authority can initiate disciplinary action against the employee, because, the standard or proof in a departmental inquiry is lighter than that in a criminal proceeding. Whereas the criminal court insists on proof beyond all reasonable doubt, in a departmental action, proof of preponderance of probability is sufficient. Evidence, which may not be sufficient for a conviction by a court of law, may be sufficient to establish the charge in a departmental action. *The Delhi Cloth And General Mills ... vs Kushal Bhan on 10 March, 1959*

Even-though the case might have ended in acquittal, the evidence before the criminal court may disclose serous departmental lapses on the part of the accused in which case, the disciplinary authority may take departmental action against the accused employee for such lapses.

Where the criminal case ends in acquittal on technical grounds like defective charge or defective procedure or want of sanction for prosecution where necessary or where the complainant and witnesses are absent, in all such cases, the disciplinary authority may initiate disciplinary action against the employee in spite of his acquittal by the Criminal Court. *Laxman Lal Vs. State of Rajasthan, 1994(2) SLR Raj.600*

15.9.6 Effect of Conviction from Criminal Court on Departmental Proceedings:

a) When a person is convicted then it justifies the dismissal order:

When an employee is dismissed and subsequently on the same charge he is convicted, then the dismissal is justified and cannot be interfered. Ordinarily it is open to the owner to await the result of criminal court without holding enquiry and the principle is applicable even though the dismissal is prior to conviction. The employer may wait for the outcome of criminal proceedings and if in such circumstances the employee is held guilty by a competent criminal

court then the departmental enquiry by the company is superfluous. When the workers were found guilty by a criminal court it cannot be said that the facts which are at the basis of the charge admitted of an interpretation in favour of an accused person. Even if no Charge-sheet is served, that is immaterial.

b) Departmental action cannot be based on conviction alone in absence of rules:

In one case the rules required that the enquiry is not necessary if an employee is punished on the ground of conduct which led to his conviction on a criminal charge. It was held that the regulations required the disciplinary authority to impose the penalty on the basis of the conduct and not on the basis of conviction because there is no obliteration of the misconduct of the official concerned. There is distinction between dismissing an official for conduct and dismissing him for his conviction.

15.9.7. Effect on Departmental action when Conviction is set aside:

a) Doctrine of double jeopardy contained in Article 20(2) of the constitution does not apply to departmental enquiry:

Article 20(2) of the Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. In order that this article should apply the subsequent prosecution must be for the same offence and it is not applicable when the subsequent prosecution is for a distinct and different offence though based on substantially similar allegations of fact. The doctrine of autrefois acquit or double jeopardy as enunciated in Article 20(2) of the Constitution is limited to criminal proceedings only and does not extend to departmental enquiries.

b) If dismissal is based on conviction and the said conviction is set aside in appeal or revision then the dismissal becomes invalid:

c) When dismissal is due to conviction and conviction is set aside then the employee is entitled to full back wages:

d) If dismissal is based on departmental enquiry then it is not affected by conviction being set aside in appeal:

15.9.8 The Allahabad High Court discussed the entire case-law and came to the following conclusion:

a) Prosecution and departmental proceedings on identical charges can continue simultaneously.

b) The decision rendered in the criminal case is not binding on the Enquiry Officer who conducts disciplinary proceedings. Similarly, findings recorded in the departmental proceedings are not binding on the court as neither is the appellate authority of the other.

c) Normally on an honourable acquittal of the employee by the criminal court, the departmental proceedings, in deference to the findings recorded by the court, are not initiated but if the acquittal is based on a technical ground or the employee concerned is given benefit of doubt, the departmental proceedings on the same charges can still be initiated and if already pending can be concluded uninfluenced by the order of discharge or acquittal recorded in the criminal case or the said grounds.

d) The departmental and the criminal proceedings can be initiated simultaneously against the delinquent employee and he can, also be subjected to departmental proceedings as per rules; and that the disciplinary proceedings can also be continued and concluded without waiting for the conclusion of the criminal case against the employee on the same charges provided the case does not involve complicated questions of fact and law, or that the ultimate decision in the departmental proceedings would necessarily not be based entirely on the result of the criminal case itself.

e) If the case involves complicated questions of fact and law and the matter is pending in the criminal court, where the employee is to face his trial, the departmental proceedings, as the Supreme Court says, should be stayed.

f) In order to find out what is "complicated question" help can be taken from the meaning given to the phrase "substantial question of law" which means the question not settled by the Supreme Court in regard to which there is difference of opinion and so the question is debatable. The position with regard to complicated question of law cannot be different and it will depend upon the facts of each case.

In the case of Hindustan Petroleum Corporation Ltd. vs. Sarvesh Berry, it has been held in Para 9 that "it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the back drop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law." It is, therefore, clarified that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the

departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme Court, *DOPT OM No. 11012/6/2007-Estt. (A), dated 1st August, 2007*

15.9.9 Action to be taken in cases where government servants are convicted by criminal courts:

Legally speaking, when a person is convicted by a Criminal Court, the same shall remain in force until and unless it is reversed or set aside by a competent court in appeal. The mere filing of an appeal and / or stay of the execution of the sentence do not take away the effect of conviction, unless the appeal is allowed and the conviction is set aside by the appellate court. In the case of *Om Prakash Narang Vs Union of India and Ors (1990) 12 ATC365*the Full Bench of the CAT held that during pendency of appeal in a criminal case, only the sentence is suspended and not the conviction itself. In view of this, as already clarified in the instruction issued in the O.M. referred to in the preceding Para, the competent disciplinary authority may proceed with the instruction/completion of disciplinary proceedings, including imposition of the penalty as prescribed in the relevant disciplinary rules, on the basis of conviction imposed on a public servant by a criminal court, notwithstanding the fact that a higher court on an appeal filed by the public servant concerned, may order suspension of the "Sentence" passed by the trial court till the final disposal of the appeal. *DOPT O.M. NO 321/62/93-AVD.III DT 04 Mar 1994.*

15.9.10 Scope for court's intervention in disciplinary action:

The Court does not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it is in defiance of logic or moral standards. The Court would not go into the correctness of the choice made by the administrator and it should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

16.0.0 ORDER OF DISCIPLINARY AUTHORITY

Disciplinary Authority

As per clause 2 (vi) of FACT CDA Rules Disciplinary Authority means the Appointing Authority ,or any other authority empowered under the delegation of powers in force from time to time to take disciplinary action against the employees. Appointing Authority in relation to employee means the authority empowered under the delegation of powers in force from time to time to take make

appointment to the grade in which the employee is for the time being included or the post which the employee for the time being hold.(clause 2(i) of FACT CDA rules. In other words, Disciplinary Authority is the authority who is competent to punish an employee in disciplinary proceedings

An authority may be competent to impose minor punishment but not major. An authority to impose major punishment can also impose minor punishment. The various appointment authorities, disciplinary authorities/appellate authorities for officers and for the workmen are enumerated in detail in the Delegation powers.

16.0.1 Duties of Disciplinary Authority on receipt of Enquiry Officer's Report on conclusion of Departmental Enquiry proceedings:

(i) Examine carefully representation if any, against the Enquiry Officer for any bias and pass suitable orders to order for another enquiry or to continue with the same committee.

(ii) Forward a copy of the enquiry report to the charge-sheeted employee for comments.

(iii) Consider the comments of the charge-sheeted employee with reference to oral and documentary evidence, analysis of evidence, findings of the enquiry committee, past records and the gravity of proven acts of misconduct and decide the quantum of punishment to be imposed.

(iv) In cases of multiple charges each charge should be considered separately.

16.0.2 Action on the Enquiry Report by the Disciplinary Authority:

On receipt of the reply from the charge sheeted employee, or if no reply is received within the time allowed, the disciplinary authority will examine the report and record of the inquiry, including the points raised by the concerned Government servant carefully and dispassionately and shall satisfy itself as to the correctness of the findings by giving its independence attention to the weightage of evidence both for and against the charges. The following courses of action are open to the disciplinary authority on receipt of the Inquiry officer's report:

(a) If it is observed from the report that the Inquiry officer has deviated from the statutory provisions or the Principles of Natural Justice, the disciplinary authority may refer the case back to the Inquiry Officer for removal of the anomaly. e.g. If a document

requested by the Charged officer was not provided, which in the opinion of the disciplinary authority may amount to denial of opportunity of defence to the Charged officer, the disciplinary authority may direct the inquiry Officer to provide the same to the Charged Officer to continue the inquiry.

(b) If the disciplinary authority is not in agreement with the findings of the Inquiry Officer, he may record his reasons for disagreement and proceed accordingly. In case the Inquiry officer has held the Charged Officer guilty and the disciplinary authority, on the basis of the records of the case comes to the conclusion that the charged officer is not guilty, the case may be closed and an order passed to that effect.

(c) If the Inquiry Officer has held the Charged Officer not guilty and the disciplinary authority comes to the conclusion that the charged officer is guilty the report of the Inquiry Officer together with the note of disagreement of the Disciplinary authority is sent to the charged officer and he is allowed to make a representation against the same. On receipt of the reply from the charged officer, final orders are passed.

(d) In case the disciplinary authority is in agreement with the Inquiry Officer, depending upon the findings of the Inquiry Officer, the case is processed i.e. if the finding is to the effect of not guilty, the case is closed and appropriate order is passed. Alternatively, a copy of the Inquiry report is sent to the Charged Officer and he is allowed an opportunity to make representation. On receipt of the reply of the Charged Officer, final orders are passed taking the contents of the representation into account. In cases falling within the purview of the CVC, the matter is referred to the Commission along with documents of the case and the second stage advice obtained. Consultation with UPSC, where necessary, is also carried out. The recommendation of the Public Service Commission or the Vigilance Commission (where ever they are consulted) is not binding on the Disciplinary Authority. The Disciplinary Authority will have to apply his mind and arrive at his own decision, on findings and quantum of penalty. K.Abdul Gafoor Vs. High Court of AP, 1996(3) ALT 368 (AP)

16.0.3 It is also not necessary to give any opportunity to make representation on the penalty proposed to be imposed.

(v) Disciplinary authority is not bound to discuss all contentions raised by the delinquent employee and give detailed reasons for its conclusion and if he uses the word “consider”, it is adequate. The ordinary meaning of the word “consider” is to look attentively or carefully.

(vi) The Disciplinary Authority can differ from the Enquiry Officer. Even if the Enquiry Officer had held that the charges are not established, the findings of the Enquiry Officer are not binding on the Disciplinary Authority. Disciplinary Authority is not bound to act on the recommendations of the Enquiry Officer and the punishment awarded by the Disciplinary Authority even in case when the charges are not proved as per the Enquiry Officer's findings, cannot be challenged on the ground that it was made in total disregard of the recommendation of the Enquiry Officer.

The disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is necessary for the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will, therefore, not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings.

When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry. In *State Bank of India vs K. P. Narayanan Kutty AIR 2003 SC 1100 it was held the delinquent employee*

As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records

its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings *Punjab National Bank v. Kunj Behari Misra AIR 1998 SC 2713*

16.0.4 In case the Disciplinary Authority is of the view that certain important evidence has not been relied upon in the enquiry a De-Novo enquiry may be ordered.

(vii) Disciplinary authority should not impose penalty for acts outside the charges.

(viii) The Disciplinary Authority has full discretion to select appropriate punishment giving due regard to the gravity and nature of misdemeanor.

(ix) Order of punishment is not vitiated if the Disciplinary Authority consults other persons.

(x) DA then Issues final order imposing a specific punishment.

(xi) Offer comments on the points brought out by the charge-sheeted employee in the appeal preferred by him if any, before forwarding it to the Appellate Authority.

16.0.5 Forwarding Enquiry Reports to the Charged Employee:

When the Enquiry Officer submits his Inquiry Report to the Disciplinary Authority at the conclusion of the Inquiry, holding the delinquent guilty of all or any of the charges, the delinquent employee is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires. Non-furnishing of the report would amount to violation of rules of natural justice *UOI Vs Mohd.Ramjan Khan, AIR 1991 SC 471, Managing Director, ECIL, Hyd. Vs. B.Karunakar,*

In Karunakar case the apex court held as under:

"in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court / Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non supply of the report. If after hearing the parties, the Court / Tribunal come to be conclusion that the non-supply of the report would have made no difference to The ultimate findings and the punishment given, the Court / Tribunal should not interfere with the order of punishment. The Court / Tribunal should not mechanically set aside the order of

punishment on the ground that the report was not furnished. The courts should avoid resorting to short-cuts. Since it is the Court / Tribunal which will apply their judicial mind to the question and give their reasons for setting a aside or not setting aside the order of punishment, (and not any internal appellate or reviewing authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court / Tribunal find that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment".

16.1.0 action on Report of the Inquiry authority. Chapter XII CVC Manual

The report of the Inquiring Authority is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the Government servant. Its findings are not binding on the disciplinary authority who can disagree with them and come to its own conclusion on the basis of its own assessment of the evidence forming part of the record of the enquiry.

16.1.1 On receipt of the report and the record of the enquiry the disciplinary authority, if it is different from inquiring authority, will forward a copy of the inquiry report to the Government servant concerned, giving him an opportunity to make any representation or submission with the following endorsement:-

'The report of the Inquiry Officer is enclosed. The disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter.'

16.1.2 On receipt of his reply, or if no reply is received within the time allowed, the disciplinary authority will examine the report and record of the inquiry, including the points raised by the concerned Government servant carefully and dispassionately and after satisfying itself that the Government servant has been given a reasonable opportunity to defend himself, will record its findings in respect of each article of charge saying whether, in its opinion, it stands proved or not.

If the disciplinary authority disagrees with the findings of the Inquiring Authority on any article of charge, it will, while recording its own findings, also record reasons for its disagreement.

16.1.3 Further enquiry

(i) If the disciplinary authority considers that a clear finding is not possible or that there is any defect in the enquiry, e.g., the Inquiring Authority had taken into consideration certain factors without giving the delinquent officer an opportunity to defend himself in that regard, the disciplinary authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report.

(ii) The Inquiring Authority will, thereupon, proceed to hold the further inquiry according to the provisions of Rule 14 of the CCA Rules, as far as may be.

(iii)If the disciplinary authority comes to the conclusion that the inquiry was not made in conformity with principles of natural justice, it can also remit the case for further enquiry on all or some of the charges.

(iv)The discretion in this regard should be exercised by the disciplinary authority for adequate reasons to be recorded in writing. A further enquiry may be ordered, for example, when there are grave lacunae or procedural defects vitiating the first enquiry and not because the first enquiry had gone in favour of the delinquent officer. In latter type of cases, the disciplinary authority can, if it is satisfied on the evidence on record, disagree with the findings of the Inquiring Authority.

In this context the following observations of the Rajasthan High Court in Dwarka Chand Vs. State of Rajasthan (AIR 1959, Raj are relevant:-

.If we were to hold that a second departmental enquiry could be ordered after the previous one has resulted in the exoneration of a public servant the danger of harassment to the public servant, would in our opinion, be immense. If it were possible to ignore the result of an earlier departmental enquiry, then there will be nothing to prevent a superior officer, if he were so minded, to order a second or a third or a fourth or even a fifth departmental enquiry after the earlier ones had resulted in the exoneration of a public servant.

(v) Having regard to its own findings on the articles of charge, if the disciplinary authority is of the opinion that the articles of charge have not been proved and that the Government servant should be exonerated, it will make an order to that effect and communicate it to the Government servant together with a copy of the report of the

Inquiring authority if it has not been given to him earlier), its own findings on it and brief reasons for disagreement, if any, with the findings of the Inquiring Authority.

(vi). If the disciplinary authority is of the opinion that any of the minor penalties should be imposed on the Government servant, it is not necessary to give any further show cause notice to the Government servant in such cases in the interest of natural justice or otherwise.

(vii) If the disciplinary proceedings had been instituted by a higher authority competent to impose a major penalty and on receipt of the report of the Inquiring Authority, it appears that a minor penalty will meet the ends of justice, the final order imposing a minor penalty should be passed by the same higher disciplinary authority which had initiated the proceedings and not by the lower disciplinary authority though he may be competent to impose a minor penalty.

(viii) In a case in which it is necessary to consult the Union Public Service Commission, the disciplinary authority will forward the record of the enquiry to the Union Public Service Commission for its advice and will take the advice of that Commission into consideration before making an order imposing a minor penalty.

(ix) In cases in which it is necessary to consult the UPSC, the record of the enquiry, together with relevant documents will be forwarded by the disciplinary authority to the Commission for advice

16.1.4 Final Order on the Report of Inquiring Authority

(i) It is in the public interest as well as in the interest of the employees that disciplinary proceedings should be dealt with expeditiously. At the same time, the disciplinary authorities must apply their mind to all relevant facts which are brought out in the enquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. In cases which do not require consultation with the Central Vigilance Commission or the UPSC, it should normally be possible for the disciplinary authority to take a final decision on the enquiry report within a period of 3 months at the most. In cases where the disciplinary authority feels that it is not possible to adhere to this time limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases where consultation with the UPSC and the CVC is required, every effort should be made to ensure that such cases are disposed of as quickly as possible.

(ii). In every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty of removal or dismissal should be imposed. The disciplinary authority may, however, impose any other punishment in any exceptional case and for special reasons to be recorded in writing.

(iii). In determining the quantum of punishment, the disciplinary authority should take into account only that material which the Government servant had the opportunity to rebut. The object is to ensure that no material of which the Government servant was not given prior notice and which he was not given adequate opportunity of rebutting or defending himself against should be taken into account for deciding the extent of punishment to be awarded.

(iv). The order should be signed by the disciplinary authority competent to impose the penalty. In a case in which the competent authority is the President, the order should be signed by an officer authorized to authenticate order issued in the name of the President under Article 77(2) of the constitution.

(v) The Central Vigilance Commission tenders its advice in confidence and its advice is a privileged communication. No reference to the advice tendered by the Commission should, therefore, be made in any formal order.

(vi) It may happen that a charged public servant may go to a court of law either during the currency of the disciplinary proceedings or on their completion, pleading inter alia that a copy of the advice tendered by the Central Vigilance Commission to the disciplinary authority had not been made available to him and, therefore, the rules of natural justice were violated. In such cases, the Commission should be consulted and it would advice the disciplinary authority in regard to the drafting of the affidavit in opposition mainly with reference to the matters dealt with in the course of hearing before the Commissioner for Departmental Inquiries, about procedural aspects of departmental inquiries or advice tendered by it on the report of the Commissioner for Departmental Inquiries.
The Supreme Court in CA No.1277 of 1975- Sunil Kumar Banerji Vs. State of West Bengal and others have held inter alia that the disciplinary authority could consult the Vigilance Commission and that it was not necessary for the disciplinary authority to furnish the charged officer with a copy of the Commissions advice. This may also be kept in view for contesting cases of the type mentioned in the previous paragraph.

16.1.5 Consultation with CVOs.

The CVO has an important role in effective vigilance administration and functions as an extension of the Commission. While the Commission's jurisdiction is confined to Group `A' officers and other officials of and above the level notified, and the Commission's advice is only to the Disciplinary Authority, there is no such restriction on the CVOs. They are required to be consulted by the Disciplinary Authority/Appellate Authority, irrespective of the level of officers involved. Wherever the Appellate Authority has disagreed with the Commission's advice, which was accepted by the Disciplinary Authority, the CVOs should scrutinize the matter carefully to take up the matter with the reviewing authority and also report such cases to the Commission. In respect of officials not under the jurisdiction of the Commission, where the Disciplinary Authority has disagreed with the CVO's advice, such cases should be specifically brought to the notice of the Board. *CVC circular25/07/07 dated 6th July 2006*

16.1.6 Communication of order

(A) The order made by the disciplinary authority will be communicated to the Government servant together with:-

a) a copy of the report of the Inquiring Authority, if not supplied already;

b) a statement of findings of the disciplinary authority on the inquiring authority's report together with brief reasons for its disagreement, if any, with the findings of the Inquiring Authority, if not supplied already;

c) a copy of the advice, if any, given by the UPSC and where the disciplinary authority has not accepted the advice of the UPSC a brief statement of the reasons for such non acceptance.

(B) A copy of the order will also be sent to:-
(i) the Central Vigilance Commission in cases in which the Commission had given advice;
(ii) the UPSC in cases in which they had been consulted;
(iii) to the Head of Department or office where the Government servant is employed for the time being unless the disciplinary authority itself is the Head of the Department or office; and
(iv) The SPE in cases mentioned In all cases where disciplinary action was initiated on the basis of a report received from the SPE.

16.1.7 Supply of papers to the Special Police Establishment.

In all cases where disciplinary action was initiated on the basis of a report received from the SPE the following documents should be made available to the SPE soon after a final decision has been taken by the disciplinary authority:-
a) a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;

b) a copy of the advice, if any, given by the UPSC and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance; and

c) orders passed by the disciplinary authority.

16.1 8. Scope of order of punishment

When passing an order of punishment, the disciplinary authority should define the scope of the punishment in clear terms. It should be self-contained and in the nature of a reasoned speaking order.

(a) Censure

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

The order of Censure is intended to convey that the official concerned has been guilty of misconduct for which it has been found necessary to award him of formal punishment. This is recorded in the history sheet of the officer and the fact that he has been censured will have its bearing on his merit of suitability for promotion to higher post.

(b) Withholding of increment

The penalty of withholding of increment takes effect from the date of increment accruing to an officer after issue of orders. It is obligatory on the part of the Disciplinary Authority to specify the period for which the penalty should remain current and also whether the increments would be withheld with or without cumulative effect. The order should specify as to the number of increments to be withheld for the specified period instead of ordering that the next increment be withheld for a specified period. In case no period is specified in the order of penalty, same would remain current till the next due date of increment.

(i). **Without cumulative effect**: The increment will be withheld for the specified period and the same would be released as well as further increments would also be released on due dates.

(ii). **With cumulative effect:** In such cases, the withheld increments would be released on expiry of the specified period in the penalty and subsequent increments would be postponed to future dates.

The cases where more than one penalty of withholding of increments are imposed by different orders, the effect of first punishment order of withholding of increment will continue for the period specified in the punishment order. Thereafter, the pay of the officer will be raised by giving him increments but for the imposition of the penalty would have been admissible to him and only then the second order of stoppage of increments will be made effective which will continue for the period specified in the second punishment order for withholding of increment and so on.

(c) Withholding of promotion

(i) An order of punishment withholding a Government servant's promotion should clearly state the period for which the promotion is withheld. The order will debar him from being considered for promotion during that period, whatever be his seniority, merit or ability.

(ii) Promotion could be withheld permanently. The imposition of a punishment of a permanent nature should, however, be avoided as

far as possible as it is destructive of incentive for good work and improvement.

(d) Recovery of pecuniary loss from pay of a Government servant

The penalty of recovery of pecuniary loss caused to Government from the pay of a Government servant should be imposed only when it has been established that the Government servant was directly responsible for a particular act or acts of negligence or breach of orders or rules which caused the loss. When ordering such recovery the disciplinary authority should clearly state as to how exactly the negligence was responsible for the loss. The order should also specify the number and amount of installments in which recovery to be made. The amount of the installment should be commensurate with the capacity of the Government servant to pay.

(e) Reduction to a lower stage in the time scale of pay for a specified period.

Reduction to a lower state in the time scale of pay can be ordered for a specified period only. In compliance with the requirements of Rule 11(v) of the CCA Rules and FR 29(i), when ordering a penalty of reduction to a lower stage in the time scale of pay, the disciplinary authority will indicate:-

(i) the date from which the order will take effect;
(ii) the stage in the time scale of pay in terms of rupees to which the pay of the Government servant is to be reduced;
(iii) the period, in terms of year and moths, for which the penalty will be operative;
(iv) Whether the Government servant will earn increments of pay during the period of such reduction; and

(v) Whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.

(f) Reduction to a lower time scale of pay, grade, post or service

(a) The penalty of reduction to a lower time scale of pay, grade, post or service may be imposed by disciplinary authority for a specified period or for an unspecified period.

(b) The order will give:

(i) the lower time scale of pay, grade, post or service and stage of pay in the said lower time scale to which the Government servant is reduced;

(ii) the date from which the order will take effect;

(iii) where the penalty is imposed for a specified period, the period, in terms of years and months, for which the penalty will be operative;

(iv) if the penalty is imposed for an unspecified period directions

regarding conditions of restoration to the grade or posts or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

(c) If the order does not specify any period and simultaneously there is an order declaring the Government servant permanently unfit for promotion, the question of his promotion will not arise. In other cases where the order does not specify any period, the Government servant should be deemed to be reduced for an indefinite period, i.e. till such date as on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion.

16.1.9 Promotion during the currency of punishment of withholding of increment or reduction to a lower stage in the time scale of pay.

An officer whose increments have been withheld or who has been reduced to a lower stage in the time-scale cannot be considered, on that account, to be ineligible for promotion to a higher grade, as the specific penalty of withholding of promotion has not been imposed on him. The suitability of such an officer for promotion should therefore, be assessed by the competent authority as and when occasions arise for such assessment. In assessing his suitability the competent authority will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of imposition of the penalty, he should be considered as suitable for promotion. Even where, however, the competent authority may consider that, in spite of the penalty, the officer is suitable for promotion, effect should not be given to such a finding and the officer should not be promoted during the currency of the penalty.

16.1.10. Imposition of two penalties

While normally there will be no need to impose two statutory penalties at a time, the penalty of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or by breach of order could be imposed along with any other penalty.

16.1.11 Reduction in rank to a post lower than that on which one was Recruited

The Supreme Court of India in the case of Nayadar Singh Vs. Union of India [1989(1) SLJ 1] has held that one cannot be reduced in rank to a post lower than one to which he was actually recruited.

16.1.12 Procedure to be followed in case of 'Sexual Harassment at Work Place':

Following the judgment of the Supreme Court in case of Visakha & Ors vs State of Rajasthan & Ors AIR 1997 SC 3011, the national Commission for Women has formulated and circulated detailed Guidelines on 'Sexual Harassment at Work Place'.

The above Guidelines also factor in the law laid down by the Supreme Court in their judgment in case cited as Apparel Export Promotion Council vs A.K Chopra AIR 1999 SC 625

Following the subsequent judgment of the Supreme Court232 in the case of Medha Kotwal Lele vs Union Of India it has been laid down that the report of the Complaints Committee as envisaged in the judgment in Visakha case would be deemed to be an inquiry report under the relevant conduct rules, and the disciplinary authority would be required to act on the report in accordance with the Rules.233

17.0.0 Award of punishment:

The act of awarding punishment must be based on justice, equity and fair play. The Disciplinary Authority will have to consider many aspects before deciding on the punishment. It is necessary to consider the nature of the delinquency magnitude of the charges established and its consequences, aggravating or extenuating circumstances, if any, the nature of punishment generally inflicted for such misconduct, past record of the delinquent etc.

The penalty inflicted by the Disciplinary Authority should be proportionate to the gravity of the misconduct proved. It should not be too lenient or too harsh. Courts will be inclined to set aside the punishment if the same is shockingly disproportionate to the misconduct committed. UP Road Transport Corporation vs Mahesh Kumar (2000) 3 SCC 450. It was held " Not only the Supreme Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee that penalty shocks the conscience of the Court."

Further the Disciplinary Authority should not discriminate between the employees in the matter of punishment unless there is justifiable reason for such different treatment.

However, an employee can be discriminated if any aggravating/extenuating circumstances exist.

Lastly the order should disclose the process of reasoning by which the Disciplinary Authority arrived at the conclusion that the employee is guilty. The application of judicial mind has to be manifested in the order.

17.10.1 Rule 24 of the FACT CDA Rules on punishment:

The following penalties may be imposed on an employee as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons.

Minor Penalties

(a) Censure

(b) Withholding of increments of pay with or without cumulative effect.

(c) Withholding of promotion

(d) Recovery from pay of the whole or part of any pecuniary loss caused to the Company by negligence or breach of order.

(e) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his terminal benefits.

Major Penalties.

(f) Save as provided in Clause (e), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on expiry of such period, the reduction will or will not have the effect of postponing the future increment of pay.

(g) Reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time scale of pay, grade, post from which he was reduced, with or without further directions regarding conditions of restoration to the

grade or post from which the employee was reduced and his seniority and pay on such restoration to that grade or post.

(h) Compulsory Retirement

(i) Removal from service which shall not be a disqualification for future employment under the Government or the Corporation/Company owned or controlled by the Government.

(j) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or the Corporation / Company owned or controlled by the Government. Provided that, in every case in which the charge of possession of assets disproportionate to the known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (i) or (j) shall be imposed. Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

EXPLANATION: The following shall not amount to a penalty within the meaning of this rule:-

a. withholding of increment of an employee on account of his work being found unsatisfactory or not being of the required standard, or for failure to pass a prescribed test or examination;

b. stoppage of an employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;

c. non-promotion, whether in an officiating capacity or otherwise of an employee, to a higher post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

d. reversion to a lower grade or post of an employee officiating in a higher grade or post, on the ground that he is considered after trial to be unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;

e. reversion to his previous grade or post, of an employee appointed on probation to another grade or post during or at the end of the period of probation, in accordance with the terms of his appointment;

f. Termination of service:
i. of an employee appointed on probation, during or at the end of the period of probation in accordance with the terms of his appointment;

18.0.0 Difference of opinion between the CVO and the Chief Executive and between the Vigilance Officers and the Head of Office CVCMANUAL Chap. XIII

With regard to category .A. cases, i.e. the cases which are required to be referred to the Commission for advice, all relevant files, including the file on which the case has been examined, are required to be sent to the Commission. In such cases, the Commission would, thus, be in a position to examine all facts and view points of all the authorities concerned who might have commented on various aspects of the case. However, with regard to category .B. cases, which are not required to be sent to the Commission for advice, In case of difference of opinion between the CVO and the CMD in respect of corruption case, involving below Board level appointees in public sector undertaking, it is the responsibility of the CMD to bring the case to the Board.

19.0.0 Some Important Notes

(i) Grant of immunity to Approvers in Departmental Inquiries. *Para 36 Chapter XIII CVC Manual*

The procedure for grant of immunity pardon to the officers/officials from departmental action or punishment in respect of cases investigated by the CBI has been laid down in Para 7 Chapter IV of CBI Manual. An analogous procedure could be utilized to considerable advantage in departmental proceedings and the evidence of the .Approvers. would lead to considerable headway in investigation of cases. This would also facilitate booking of fences of more serious nature. The following procedure may be followed for grant of immunity/leniency to an employee in the departmental inquiries conducted by the CVOs:-

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 publics servants or members of the public and further that such statement is free from malice, the CVO may sent to the CVC his recommendation regarding grant of immunity/leniency to such officer from the departmental action or punishment. The CVC will consider the recommendation of the Chief Vigilance Officer in consultation with the administrative Ministry concerned and advice that authority regarding the course of further action to be taken.

b) In cases pertaining to the officials against whom the advice of the CVC is not necessary, the recommendation for grant of immunity/

leniency may be made to the Chief Vigilance Officer who will consider and advise the disciplinary authority regarding the course of further action to be taken. If there is a difference of opinion between the Chief Vigilance Officer and the disciplinary authority, the CVO will refer the matter to the Central Vigilance Commission for advice.

The intention behind the procedure prescribed above is not to grant immunity/ leniency in all kinds of cases but only in cases so serious nature and that too on merits. It is not open to officer/official involved in a case to request for such immunity/leniency but it is for the disciplinary authority to decide in consultation with the Central Vigilance Commission or the Chief Vigilance Officer, as the case may be, in which case such an immunity/leniency may be considered and granted in accordance with the procedure prescribed above in the interest of satisfactory prosecution of the disciplinary case

(ii) Effective punishment in disproportionate assets cases CVC letter No 4/3/75-R dated 24 Mar 1975, CVC letter No 99/VGL/82 dt 07 Feb 2000

The Central Vigilance Commission, on receipt of the report of the Inquiring Authority, advices the disciplinary authority to impose a major or a minor penalty depending upon the circumstances of each case. The specific major or minor penalty to be imposed on the delinquent officer is, however, left to the discretion of the disciplinary authority. This procedure has been followed to maintain a healthy balance between the advisory functions of CVC and the discretionary powers of the disciplinary authority.

2. The Commission has observed that in some cases of proved disproportionate assets/ acceptance of bribe, where it had advised the imposition of a major penalty, the disciplinary authorities have taken much too lenient a view of the matter and imposed only the lowest of the major penalties i.e., reduction to a lower time scale of pay or reduction in rank. The advice of the Commission can thus be said to have been complied with only technically but the penalty imposed in totally incommensurate with the gravity of the lapse committed, ineffective as a deterrent to others, thereby defeating the general objective of all disciplinary authorities to ensure that officers who have been found to be corrupt are not retained in service. Reduction to a lower time scale of pay or reduction in rank would obviously not serve the purpose of such a general objective.

The Commission would, therefore, suggest that in cases of all categories of officers against whom disproportionate assets/acceptance of bribe has been proved, the major penalty to be

imposed should be ordinarily be that of removal or dismissal from service or compulsory retirement.

(iii) Effective punishment of the corrupt through traps CVC letter No 4(v)/99/10 dt 1st Dec 1999

One of the main weaknesses in the present system of vigilance is that the corrupt public servants many a time escape punishment. Effective and prompt punishment of the corrupt is a sine qua non to change the present atmosphere of cynical apathy in the organizations under the purview of the CVC. There is a need to the issue of tackling corruption to create a healthy atmosphere that corruption will not be tolerated.

2. There are two courses of action possible against the corrupt public servant. The first is prosecution and the second is departmental action. So far as prosecution is concerned, once the papers go to the court, there is no way in which the action can be expedited. So far as departmental action is concerned, it is within the powers of the disciplinary authorities to ensure that the punishment is effectively meted out. The CVC has already issued instruction No 8(1)(h)/98(1) dated 18.11.98 that the departmental proceedings should be completed within a period of six months. In order to achieve this goal, the engagement of retired honest persons as inquiry officers has also been suggested.

3. While systematic application of these instructions will help in bringing down the overall pendency of corruption cases and also ensure that the corrupt public servants are punished, still the problem of the current atmosphere of cynicism and apathy against corruption remains.

(iv) In order to ensure that effective punishment is quickly meted out to the corrupt, the following instructions are issued under the powers vested in the CVC in Para 3(v) of DOPT Resolution No 371/20/99-AVD.III dated Apr 4, 1999.

(i) In every organization, those who are corrupt are well known. The Disciplinary Authorities and the CVOs as well as those who are hurt by such corrupt persons can arrange for traps against such public servants. The local Police or CBI can be contacted for arranging the traps.

(ii) The CBI and the Police will complete the documentation after the traps within a period of two months. They will make available legible, authorized photocopies of all the documents to the disciplinary

authority within two months from the date of trap for action at their end.

(iii) Once the photocopies of the documents are received, the disciplinary authority should initiate action to launch departmental inquiry. There will be no danger of double jeopardy because the prosecution will be launched by the CBI or the Police based on the trap documents would relate to the criminal aspect of the case and the disciplinary proceedings will relate to the misconduct under the Conduct, Discipline and Appeal Rules.

(iv) Retired, honest people may be appointed as special inquiry officers so that within a period of two months, the inquiry against the corrupt public servants involved in traps can be completed.

(v) On completion of the departmental process, appropriate punishment must be awarded to the trapped charged officer or public servant, if the charge is held as approved.

(vi) If and when the court judgment comes in the prosecution case, action to implement the court decision may be taken appropriately.
5. The intention of the above instruction is to ensure that there is a sharp focus on meting out effective punishment to the corrupt in every organization. Once these instructions are implemented, the atmosphere in organizations is bound to improve because the corrupt will get the signal that they could not survive as in the past banking on the delays taking place in the departmental inquiry process as well as in the prosecution process.

Further it has been provided in the instructions issued by the Commission, vide its communication No 3(v)/99/10 date 01.12.1999, that the disciplinary authorities, the CVOs, as well as those who are hurt by the conduct of corrupt employees, can arrange for traps against corrupt public servants and that the local police or CBI can be contacted for arranging the traps.

2. In terms of Section 17 of the Prevention of Corruption Act, 1988, an offence punishable under the PC Act can be investigated by a police officer not below the rank of an Inspector of Police in the case of Delhi Special Police Establishment, an Assistant Commissioner of Police in the Metropolitan areas of Mumbai, Calcutta, Chennai and Ahmedabad and a DSP or a police officer of equivalent rank elsewhere. Further, every person, aware of the commission of, or of the intention of any other person to commit any offence, punishable under various sections of IPC including Sections 7 to 12 of the PC Act, in the absence of any reasonable excuse, is required to give

information to the nearest Magistrate or Police Officer of such commission or intention in terms of Section 39 of the Cr.PC.

3. The Commission has observed that the number of traps conducted by the police officials, under the provisions of PC Act, do not commensurate with the level of corruption perceived in the country. This could be because (i) there may not be a branch of the CBI in the near vicinity of the complainant and (ii) the people, at large, have reservations in approaching the local police. Therefore, keeping in view the above provisions of Law, and in order to complement the Commission's instructions referred to in Para 1 supra, the Commission desires the CVOs to take the initiative in arranging a trap if a person gives a written complaint or a source information to him about the alleged demand of bribe by an official in his organization. For that purpose, he may take on record the complaint, approach the local police or the CBI for assistance in conducting a trap, coordinate closely between the police authorities and the complainant, and ensure secrecy of the entire exercise so that it does not end in a fiasco. Further action in the matter, may; however, be taken in terms of the Commission's instructions dated 242CVC letter No 3(v)/99/13 dated 28 Sept 2000.

(v) Amendment of Gratuity Rules for the executives of PSEs withholding/ forfeiture of gratuity. BPE O.M. No 15/33/84-GM dated 29 Aug 85.

'The undersigned is directed to state that the question of amending the Gratuity Rules of PSEs for those categories who are not covered by the Payment of Gratuity Act 1972 has been under consideration of this Ministry. This was in pursuance of the suggestion of the CVC who desired that orders need to be issued for providing for withholding/forfeiting of gratuity of the employees of PSUs, if the employees were found to be guilty of misconduct or disciplinary action was pending or contemplated against them. Several instances have been brought to the notice of the Government where certain officers against whom departmental proceedings though initiated or pending or contemplated, could not be processed as they left the company by invoking the contractual clause relating to three months' notice.

2. In order to implement the suggestion of the CVC, it has been decided that the gratuity rules may be amended, as follows, for such employees and officers who are not covered by the Payment of Gratuity Act, 1972:

"An employee against whom disciplinary action/proceedings are contemplated or pending at the time of resignation/retirement etc will

not be paid gratuity unless the action proceedings against him have finalized. On finalization of the disciplinary proceedings, the release of payment of amount of gratuity will depend on the final outcome of the disciplinary proceedings and keeping in view the orders of the disciplinary authority. Gratuity will not be admissible to an employee whose services are terminated for misconduct, insolvency or inefficiency."

The above amendment should form part of the rules and regulations of the undertakings concerned.

(vi) **Withdrawal of provisions regarding Second show cause notice.**

Prior to amendment of Article 311 of the Constitution, vide 42nd Amendment Act, 1976, a duty was cast on the disciplinary authority to afford a reasonable opportunity to the delinquent to show cause against the action which is proposed to be taken against him. On completion of the enquiry by the Enquiry Officer and after submission of his report, if the disciplinary authority is of the opinion that any major penalty should be imposed on the Government servant, it shall give the Govt. servant, a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a stipulated time such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry. But the need for giving such an opportunity of making representation on the penalty proposed was dispensed with by the 42nd Amendment of the Constitution.

(vii) Continuance of disciplinary proceedings/ imposition of penalty after retirement from service

As Public Sector undertakings (PSUs) are non-pensionable establishments, there is no possibility of imposing any penalty on such deviant employees after their retirement, who might have committed serious lapses while in service, just before their retirement. The gratuity amount also could not be with held unless the person had been terminated consequent to disciplinary proceedings and the question of terminating an employee or imposing a penalty retrospectively, after retirement is not legally tenable. The Central Vigilance Commission vide its circular Circular No.44/12/07 dt 28th Dec.2007 has advised all Public Sector Undertakings to amend their CDA Rules to incorporate provision similar to Public Sector Banks which reads as under:

"The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until

the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payments of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF".

However all vigilance/administrative functionaries in an organization must invariably keep in mind the date of superannuation of the SPS/CO while handling disciplinary cases and anyone found to have consciously ignored the fact should be held accountable for the delay that may lead to the eventual dropping of the proceedings. *CVC Circular No. 007/VGL/052 Dt. 27th September 2007.*

Rule -32(i) of FACT CDA Rules 1977 provides as under:

"Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

The Supreme Court of India upheld punishment of dismissal on a retired Bank employee on conclusion of departmental proceedings after his retirement, on the basis of the above provision. In its judgment dated 18.5.07 in the case of **Shri Ramesh Chandra Sharma vs Punjab National Bank**, it has further noted that-

"… it may be true that the question of imposition of dismissal of the delinquent officer from service he has already reached the age of superannuation would not ordinarily arise. However, as the consequence of such an order is provided for in the service rule, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law".

The Supreme Court has further held that- "The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect."

"The effect of a legal fiction is well-known. When a legal fiction is created under a statue, it must be given its full effect, as has been observed in **East End Dwellings Co. Ltd vs Fins bury Borough Council.**

This case however must be distinguished from the case of **UCO Bank and Anr. Vs Rajinder LalCapoor**, (IR 2007 Supreme Court 2129) where it was held that Disciplinary proceedings cannot be initiated against an officer after retirement. Only when a Disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed to continue on the basis of the legal fiction created thereunder, i.e., "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation.

(viii) Sealed cover procedure:

An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of mis-conduct cannot be placed on par with the other employees and his case has to be treated differently. Therefore, in the matter of promotion, he is treated differently.

When an employee is held guilty and penalised and is, therefore, not promoted, the denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified.

The procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose 253 CVC letter conduct is under investigation was reviewed in the light of the judgment dated 27.08.1991 of the Supreme Court in **Union of India etc. vs. K.V. Jankiraman etc.** The procedure to be followed in this regard by the authorities concerned is laid down as under;

(ix) Promotion of an officer under suspension. Para 6.15 of CVC Manual

Sealed cover procedure:

6.15.1 At the time of considerations of the cases of Government servants for promotion, details of Government servants in the

consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

(i) Government servants under suspension;

(ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and

(iii) Government servants in respect of whom prosecution for a criminal charge is pending.

6.15.2 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned in Para 6.15.1 along with other eligible candidates without taking into consideration the disciplinary case/ criminal prosecution pending. The assessment of the DPC, including "Unfit for Promotion", and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed "Findings regarding suitability for promotion to the grade/post of _____ in respect of Shri _____ (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri _____." The proceedings of the DPC need only contain the note. "The findings are contained in the attached sealed cover".

6.15.3 The same procedure outlined in Para 6.15.2 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

Action after completion of disciplinary cases/criminal prosecution:

6.15.4 On the conclusion of the disciplinary case/criminal prosecution, which results in dropping of allegation against the Government servant, the sealed cover or covers, shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and

circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.

6.15.5 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

6.15.6 In a case where disciplinary proceedings have been held under the relevant disciplinary rules, "warning" should not be issued as a result of such proceedings. If it is found as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of "censure" should be imposed.

Six-monthly review of 'sealed cover' cases:

6.15.7 It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. The appointing authorities concerned, therefore, should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of six months from the date of convening the first Departmental Promotion Committee, which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and further measures to be taken to expedite their completion.

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Procedure for ad-hoc promotion:

6.15.8 In spite of the six monthly review referred to in Para 6.15.7 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation, the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

a) Whether the promotion of the officer will be against public interest;

b) Whether the charges are grave enough to warrant continued denial of promotion;

c) Whether there is no likelihood of the case coming to a conclusion in the near future;

d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and

e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of investigations conducted by the Bureau.

6.15.9 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on adhoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

6.15.10 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:

(i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
(ii) the promotion shall be "until further orders". It should also be indicated in the order that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

6.15.11 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated

in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case, the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceeding kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in Para 6.15.4 above.

6.15.12 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the adhoc promotion granted to him should be brought to an end.

Applicability of 'sealed cover' procedure to officers coming under cloud after holding of DPC but before promotion:

6.15.13 Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in Para 6.15.1 arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions stated above will be applicable in his case also.

6.15.14 The Hon'ble Supreme Court in Delhi Jal Board Vs. Mohinder Singh [JT 2000(10) SC 158] has held, inter-alia, that "the sealed cover procedure permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officers would have to be given effect to as they obviously relate back to the date on which the charges are framed. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental inquiry was started by the department, would not come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection." Thus, in view of the Supreme Court's judgment, the provisions of Para 6.15.13 would not be applicable if by the time the seal was opened to give effect to the exoneration in the first enquiry, another departmental inquiry was started by the department against the government servant concerned. This means that where the

second or subsequent departmental proceedings were instituted after promotion of the junior to the Government servant concerned on the basis of the recommendation made by the DPC which kept the recommendation in respect of the Government servant in sealed cover, the benefit of the assessment by the first DPC will be admissible to the Government servant on exoneration in the first inquiry, with effect from the date his immediate junior was promoted. In case, the subsequent proceedings (commenced after the promotion of the junior) results in the imposition of any penalty before the exoneration in the first proceedings based on which the recommendations of the DPC were kept in sealed cover and the Government servant concerned is promoted retrospectively on the basis of exoneration in the first proceedings, the penalty imposed may be modified and effected with reference to the promoted post.

An indication to that effect may be made in the promotion order itself so that there is no ambiguity in the matter.

(x) Review:

The appointing authorities concerned should review comprehensively the case of said Government servants on the expiry of 6 months and subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion260.

In **Delhi Jal Board vs Mohinder Singh**261 the Supreme Court held as under: "The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officers would have to be given effect to as they obviously relate back to the date on which the charges are framed. ..... The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental inquiry was started by the department, would not come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection."262

The sealed cover procedure is to be resorted to only after the charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If the allegations are serious and the

authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. Moreover, if the charges are that serious, the

(xi) Good and sufficient reasons:

Any of the punishments specified in the CCA Rules can be imposed by the competent authority for .good and sufficient reasons. What is a good and sufficient reason is for the disciplinary authority to decide. Nevertheless, action to dismiss or remove a Government servant could not be taken if the reason was not good and sufficient, Arbitrary or capricious or manifestly unfair decisions cannot secure immunity from judicial review. Thus in **Kannia Lal, Vs. State** A.I.R. 1959 Raj. L.W. 392 **the** dismissal of a Government servant on the ground that he had received some money from one person for being paid over another, which he did, was set aside. The Supreme Court while delivering judgment in the case Union of India and others Vs. J. Ahmed (Civil Appeal No. 2152 of 1969 decided on 22.03.1979) has discussed as to what would constitute misconduct as distinct from lack of devotion to duty and deficiencies attributable to the Government servant. This judgment may be kept in view while deciding whether .good and sufficient reasons exist for the imposition of a penalty.

(xii) Appeals (Rule 34 FACT CDA Rules)

(i) An employee may appeal against an order imposing upon him any of the penalties specified in Rule 24 of FACT CDA Rules 1977 or against the order of suspension referred to in Rule 21. The appeal shall be to the authority specified in Rule 2 (ii) of these Rules.
(ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted through the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the appellate authority within 15 days. The appellate authority shall consider whether the findings are justified or Whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The appellate authority may pass order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the appellate authority proposes to impose is a Major Penalty specified in Rule 24 and an

inquiry as provided in Rule 26 has not already been held in the case, the appellate authority shall direct that such an enquiry be held in accordance with the provisions of Rule 26 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. If the appellate authority decides to enhance the punishment but an enquiry has already been held as provided in Rule 26, the appellate authority shall give a show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The appellate authority shall pass final order after taking into account the representation if any, submitted by the employee.

(xiii) Review (Rule 35 FACT CDA Rules)

Notwithstanding anything contained in these rules, the reviewing authority may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that if the enhanced penalty, which the reviewing authority proposes to impose, is a Major Penalty specified in Rule 24 and an enquiry provided under Rule 26 has not already been held in the case, the reviewing authority shall direct that such an enquiry be held in accordance with the provisions of Rule 26 and thereafter consider the record of the enquiry and pass such orders as it may deem proper. If the appellate authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of Rule 26, the reviewing authority shall give show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The reviewing authority shall pass final order after taking into the account the representation, if any submitted by the employee.
(a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the failure of justice;

xiv Powers and duties of the Appellate Authority:

Appellate Authority

Appellate Authority means an officer of the Company empowered to consider appeals and vested with power to confirm, set aside, reduce or enhance the punishment appealed against. Appellate Authority with respect to FACT CDA Rules is provided in Rule 2(ii) which read as *"Appellate Authority means Chairman & Managing Director of the Company and in cases where the Disciplinary Authority is the Chairman & Managing Director, the Board of Directors. "*

The Appellate Authority is under obligation to consider

(1) whether the procedure has been complied with and if not whether such non-compliance has resulted in violation of any Constitutional provision or in the failure of justice;

(2) whether the findings are warranted by the evidence on record and (3) whether the penalty is adequate, inadequate or severe. He can confirm, enhance reduce or set aside the penalty or remit the case with any direction he deems fit.

The Appellate Authority thus has power even to enhance the penalty in an appeal submitted by the affected employee for relief. While enhancing the penalty, the appellant should be given opportunity to make a representation against such enhancement and in case of enhancement to a major penalty; an inquiry should be conducted if not already held M.A.Kalam Vs. Registrar, High Court of AP.

(xv) Non-acceptance of the Commission's advice in the matter of appeals:)

The Commission tenders its second stage advice before the DA decides on the outcome of the inquiry in the case of major penalty or takes a view on the minor penalty proceedings after receipt of the explanation of the charged official. Sometimes after imposition of the punishment by the disciplinary authority, the charged official makes an appeal. The Appellate Authority is expected to keep the advice tendered by the Commission and decide on the appeal. In case the Appellate Authority decides to deviate from the advice given by the Commission on appeal, the CVO will report this to the Commission which will take an appropriate view whether the deviation is serious enough to be included in its Annual Report.

The Commission further wishes to stress that reconsideration of advice will be only in exceptional cases at the specific request of the DA, before a decision is taken by it to impose the punishment or otherwise. After a decision has been taken by DA or the Appellate Authority the Commission will not entertain any reconsideration proposal. Such cases will be treated only as "deviation" from the non-acceptance of Commission's advice. *CVC letter No. 000/*DSP/1 Dt. 10th Feb 2003* However, The right to the Appellate Authority to differ with the Commission, therefore, not interfered with. The Appellate Authority should satisfy himself that the DA has applied his mind and then take his own independent decision. The Commission, however, would take a view as to whether the 'deviation' in such cases is serious enough to warrant inclusion in its Annual Report. *CVC letter No. 98/DSP/9 Dt.13 August 2003*

xvi Dispensing with Enquiry:

Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, or where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, or where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry .*UOI, Vs. Tulsiram Patel, 1985(2) SLR 576.*

However a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The legal requirement is that the reason for dispensing with the inquiry should be recorded in writing in clause (b) of Second Proviso to Art. 311 (2)

There is no obligation to communicate the reason to the government servant. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated.

xvii Special procedure in certain cases: Rule 31 of FACT CDA Rules

Notwithstanding anything contained in Rule 26 or 27 or 28, (FACT CDA Rules) the Disciplinary Authority may impose any of the penalties specified in Rule 24 in any of the following circumstances:-

i. the employee has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial; or

ii. where the disciplinary authority is satisfied for reasons to be recorded by it in writing hat it is not reasonably practicable to hold an enquiry in the manner provided in these Rules; or

iii. where the Board is satisfied that in the interest of the security of the Company, it is not expedient to hold any inquiry in the manner provided in these rules.

The Judiciary has given the following illustrative cases where it would not be reasonably practicable to hold an Enquiry:

a) Where a Public servant, particularly through or together with his associates so terrorizes, threatens or intimidates the witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so

b) Where the Public servant by himself or together with or through others threatens, intimidates and terrorizes the Officer who is the Disciplinary Authority or members of his family so that he is afraid to hold Enquiry or direct it to be held, or,

c) Where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation.

xvii Lapses of authorities exercising quasi-judicial powers:

Criteria to be followed while examining the lapses of authorities exercising quasi judicial powers in accordance with the criteria laid down by the Honorable Supreme Court .*CVC Circular No.39/11/07 dt 1st November, 2007.*

There should be a uniform approach in examining such cases and it is important not to create an impression that the department was following a policy in targeting only few officials exercising such powers.

Honorable Supreme Court in **K.K. Dhawan's case** Union of India vs K.K. Dhawan AIR 1993 SC 1478 held that disciplinary action could be initiated against an official if there was gross negligence in disciplinary judicial or quasi-judicial functions, even where the element of culpability was absent.

The Apex Court laid down the following six situations when disciplinary action could be taken while exercising such power.

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

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

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

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

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

(vi) If he had actuated by corrupt motive, however, small the bribe may be because Lork Coke said long ago "**though the bribe may be small, yet the fault is great".**

However in the **Zunjarrao Bhikaji Nagarkar vs Union of India** 1999(112 ELT 772) the Court ruled that in quasi-judicial functions, an official could exercise discretion and observed that if an error of law was committed by an official, the Government always had a remedy by preferring an appeal.

The Nagarkar decision was thought to have become settled law on this subject until the Larger Bench Supreme Court in the **Union of India vs Duli Chand** overruled the Nagarkar decision and restored the ratio of KK Dhawan's case. 2006-TIOL-78- SC-MISC-LB

xviii. Epilogue:

(i) It is important that an investigation and /or enquiry into any irregularities or misconduct be completed within the shortest possible time. Delay in disposal of disciplinary cases is neither in the interest of the concerned employees nor the management. The Departmental Enquiry Committee should conduct regular hearing on a day to day basis and desist from granting adjournments on frivolous grounds as a matter of routine. It is also essential that the procedure laid down in the Conduct. Disciplinary & appeal Rules/other relevant rules are meticulously followed. This may be brought to the notice as and disciplinary Authority appoints an officer as an Enquiry Officer.

(ii) Divisions should monitor the pending disciplinary cases pertaining to vigilance aspects and ensure that these cases are disposed off at the earliest except where compelling circumstances such as stay by Courts etc. are prevailing. These cases should be disposed of within a period of six months from the date of issuance of charge sheet. General Managers are personally responsible for such delays.

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CHAPTER XI

CHECKLIST AND DO'S & DO'NTS FOR VARIOUS FUNCTIONARIES

Checklist for the Enquiry officer

a. On receipt of appointment order:

1. Check if the order has been signed and issued by the competent Disciplinary Authority.

2. Check of following are enclosed

(a) Annexure to the charge sheet

(b) Evidence that charge sheet has been served on charged officer

(c) Reply, if any of charged officer

(d) Appointment order of presenting officer

3. See if charges as stated are clear, unambiguous and emphatic-if not bring it to the notice of disciplinary authority

4. Make a daily order sheet mentioning receipt of appointment

5. Get hold of procedure for holding inquiry in a disciplinary case if not already familiar with in case of doubt consult colleague who has sufficient experience in this area.

6. Fix a Date for preliminary hearing within 10 days and issue notice.

7. Ascertain if presenting officer is legal practitioner.

8. Inform the charged officer in notice that as per rules he can avail the services of a fellow public servant or retired public servant as 'Defence assistant'. In case presenting officer is a legal practitioner even a legal practitioner can be hired as defence assistant.

b. During preliminary hearing:

1. Arrange for a separate room and steno so that proceedings could be recorded.

Ensure that there is no outside disturbance.

2. Receive the charged officer and his defence assistant, if any, warmly.

There is no need to be officious or rigid. It only hampers smooth conduct of proceedings.

3. In case charged officer has appeared along with a defence assistant, ask about his particulars i.e. name, Designation, and office, No of inquiries in hand, whether legal practitioner etc

4. Ask the charged officer to state in clear terms whether he has any objection to your being the inquiry officer clear the issue of bias.

5. In case charged officer has any objection- stay the proceeding and ask him to make a representation in writing to the reversionary authority and await his decision.

6. In case charged officer expresses confidence in you, proceed further and ask him- whether he

(a) Has received charge sheet

(b) Has understood the charge(s)

(c) Admit the charge(s)

Remember admission, if any has to be un qualified and unconditional otherwise it is to be treated as denial. Charges admitted are deemed to have been proved. Further inquiry is to be conducted only in respect of charges not admitted.

7. If all the charges are admitted record the same, get it signed and forward finding of guilt.

8. Fix a time schedule for inspection of listed documents within 5 days, extendable by maximum 5 days.

9. Fix a time schedule for submission of list of additional documents together with their particulars of custodian, and relevance and also list of defence witnesses-10 days extendable by maximum 10 days.

10. On receipt of list of additional documents/witnesses- consider their relevance from defence point of view be empathetic and positive think, " what is the harm in allowing" instead of "why should it be allowed" do not allow documents which you consider irrelevant.

11. Write to custodian of additional documents(s) to provide the document direct to you. Do not entrust this task to presenting officer.

12. Arrange inspection of additional document by charged officer and presenting officer- provide copies to both where possible

13. Prepare a daily order sheet giving details of action taken remember daily order sheet is a vital document. It tells whether requisite procedure is being followed

14. In case charged officer asks for pre-recorded statements of state witnesses and the same are available, ask presenting officer to provide. Allow clear 3 days gap between supply of statements and examination of witness concerned.

c. During regular hearing:

1. Take undisputed documents on record and mark them as Management exhibits (M1, M2, etc) or defence exhibition (D1, D2 etc) Obtain signatures of PO and charged employee the documents being taken on record disputed documents have to be produced through a witness.

2. Ask the presenting officer to conduct examination in chief of state/management witnesses.

3. Be alert seek clarifications from witness wherever necessary

4. Permit cross examination by charged officer/ Defence assistant. If no questions are asked in cross examination, mention in daily order sheet that the charged officer did not avail the opportunity.

5. During cross examination do not permit questions which are scandalous or which aim at solely annoying the witness. Ensure that due respect is given to witness.

6. Permit Re-examination only on new points, which have come up during cross examination.

7. Carefully watch and keep a note of the demeanour of witness. This will facilitate in drawing conclusion if he is trust-worthy or not.

8. Before the close of prosecution case, the presenting officer, may ask for production of additional document/witness. If such a request is made carefully consider.

(a) Nature of evidence to be adduced

(b) Purchase of evidence

(c) Why it was not included earlier at the time of drawing the charge sheet

(d) Is it vital to reach the truth?

(e) Is it in the nature of filling in the Gaps in the evidence already led- if yes, do not allow

(f) Hear views of charged officer to the request made by presenting officer.

(g) Whether introduction of new evidence facilitate justice.

9. If you consider introduction of new evidence will facilitate justice permit it and treat it like any other piece of evidence

10. Record reasons in daily order sheet for allowing new evidence

11. After close of prosecution's case, ask charged officer to state his defence. Tell him that he is at liberty to be his own witness.

12. Allow charged officer to conduct examination in chief of defence witness, if any permit cross examination by presenting officer and re-examination by charged officer.

13. Make daily order sheet for each day and obtain signature of presenting officer and charged officer/ defence assistant. Give them copy of daily order sheet

14. After close of the defence case, question the charged officer generally on the circumstance appearing against him. This requirement is mandatory when charged officer has not examined himself as witness.

15. Ask the charged officer specifically whether he is satisfied with the proceedings and whether he wants to say something more.

16. Throughout the proceedings demonstrate objectivity and unbiased/impartial attitude. Allow all reasonable requests. Reject firmly all unreasonable requests/ obstructions of either party.

17. After close of case of both parties, ask presenting officer to submit his brief n a reasonable time say, one week with a copy to charged officer against signature.

18. Ask charged officer to file reply to presenting officer's brief within reasonable time.

19. As far as possible conduct regular hearing on day to day basis. Allow adjournments only when inescapable.

20. Carefully segregate daily order sheets, record statements of witnesses, documents on record and correspondence in sequential order in separate folders.

d. Ex-parte inquiry:

1. In all notices please make clear that if charged officer fails to appear before you on the date fixed for hearing without valid cause and pre-intimation, proceedings will be held ex-parte.

2. Before commencing ex-parte inquiry, ensure that:

a) CO is not on sanctioned leave

b) Subsistence allowance is being paid to the CO is he is under suspension

3. In ex-parte proceedings follow all steps as if charged officer is participating – less cross examination

4. Send copies of daily order sheet and proceedings to charged officer by registered post.

5. Permit charged officer to participate in later proceedings if he so desires.

6. If charged employee shows satisfactory reasons for his non-participation in earlier hearings and requests for recalling a witness, decide on merit.

7 Remember your aim is to find out the truth during ex-parte you have to be extra vigilant.

e. Evaluation of evidence

a) Read the charges carefully

b) Break them into sequential steps (links)

c) Determine facts which are necessary to prove each link. In other words frame issues/questions which must be answered to prove a given fact

d) Carefully scan undisputed documentary evidence and link it with facts in issue.

e) Examine record of examination in chief, cross examination relating to disputed document(s) and determine how much reliance can be placed on it.

f) You have already observed demeanor of witnesses, who appeared before you.

To assess their reliability consider

(i) Their involvement and interest in the outcome of the case

(ii) Were they actually present on the scene of occurrence?

(iii) Have they come to know the details through someone; how reliable is that source

(iv) During examination in chief, were they repeating the story like a parrot

(v) What is the general reputation of witness?

(vi) What is his background?

Answer to above questions will enable you asses to what extent the witness is reliable.

Marshal all reliable evidence and link it to facts which you consider necessary to be proved.

Link proved facts to charge and give your finding based on preponderance of probability

Write your report. Each page of the report should be initialed apart from your full signature at the end. The report should be submitted with a covering letter to the Disciplinary Authority accompanying the following;

(a) Original Report

(b) List of Documents including charge sheet and explanation thereto.

(c) Deposition folder

(d) Daily Order Sheet File

(e) Written briefs of both the parties.

(f) Correspondence folder

EO should not hold back any paper relating to the enquiry. After submitting the report, Enquiry Officer becomes functus-officio as you have no further role to play in the matter.

Important don'ts for Enquiry Officer:

1. Do not delegate function of holding the enquiry to anyone else.

2. Do not hold enquiry according to your own methods. There is a prescribed procedure to follow.

3. Do not continue with the proceedings (it has to be stayed) if a representation of the Charged Employee alleging bias against the Enquiry Officer is pending consideration.

4. Do not postpone preliminary hearing simply because the Charged Employee could not arrange for defence assistance.

5. Do not call for the documents or examine a witness to decide the question of their relevance.

6. Do not requisition additional documents from the disciplinary authority. Do not ask the Presenting Officer to collect them. You have to write direct to the authority in whose custody or possession these documents lie.

7. Do not question the decision of a Head of Department to with-hold documents on grounds of public interest.

8. Do not throw responsibility of calling defence witnesses on the Charged Employee.

9. Do not enter into argument with a Controlling Authority if it is unable to relieve a particular employee, in the interest of Public service, to render defence assistance in the case pending before.

10. Do not insist that witnesses may be produced in any particular sequence before you. The order in which the witnesses may be examined has been left to the respective parties.

11. Do not administer oath to the Witnesses.

12. Do not question the witness extensively right at the outset. The witnesses should be examined in accordance with the prescribed procedure.

13. Do not interfere frequently when a witness is being examined, cross-examined or re-examined. The salutary principle in this regard is patience and graceful hearing.

You may clear your doubts and get clarifications from the witness at the end.

14. Do not allow leading questions, except in cross-examination. Do not' put leading questions to the witnesses yourself,

15. Do not allow adjournments on flimsy grounds.

16. Do not allow "New evidence" to fill up gaps. It should be allowed if there is an inherent lacuna in the evidence already recorded.

17. Do not proceed ex-parte, if the Charge-sheet has not been delivered to the Charged Employee.

18. Do not allow defence assistance when the Charged Employee is appearing as his own witness or when he is answering the mandatory questions, towards the close of enquiry.

19. Unless he opts to examine himself, do not examine a co-accused in a common proceeding as a witness against the other co-accused.

20. In a joint trial do not allow cross examination of a defence witness by the other Charged Employee. Only Presenting Officer can cross-examine a defence witness.

21. Do not go for local inspection of the site of the incident except when accompanied by the Charged Employee and the Presenting Officer. Better make a local inspection after the prosecution evidence has been recorded. Do not collect information there from persons who have not been cited as witnesses.

22. Do not supply copy of the written brief of the Charged Employee to the Presenting Officer.

23. Do not take into consideration the written brief of the Presenting Officer if filed after the expiry of the due date and receipt of the brief of the Charged Employee. If you do not wish to exclude it from consideration, you have to send a copy thereof to the Charged Employee with an opportunity to file a rejoinder.

24. Do not take into consideration any matter or evidence which was not adduced during the course of enquiry. No importance should be given to surmises, conjectures, whims or your personal knowledge of the matter not on record.

25. The Enquiry Officer shall not examine himself as a Witness. If he does so, he should cease to be the Enquiry Officer.

26. Statements of Witnesses examined at the Preliminary Enquiry cannot be relied upon without those witnesses deposing at the regular enquiry and presenting themselves for cross-examination by the Charged Officer or by the Defence Assistant.

27. Enquiry Officer cannot compel the attendance of any Witness. It is the duty of Presenting Officer and Defence Assistant to produce their respective Witnesses.

Guidelines for the Presenting Officer:

The aim of the inquiry officer, presenting officer and the defence is to bring out truth so that justice is secured to the Charged Employee. In order to discharge his duties efficiently, the presenting officer:

a) Should examine properly his order of appointment and that of the inquiry officer to satisfy himself that there is no legal flaw and that the orders have been attested by an authority competent to authenticate them. A useful hint in this regard is that in case these orders are signed by the authority who had issued the charge sheet, they are, normally, in order.

b) Should have discussion with the investigating officer and also have a look on the report of preliminary6 inquiry along with connected records to get firsthand knowledge of the case (it may again be pointed out that this exercise is to enable him to get firsthand knowledge of the case only. The report of preliminary inquiry cannot be used during the course of inquiry);

c) Should acquaint himself fully with the departmental rules and technical aspects of the issues n disputes.

d) Should attend the preliminary hearing along with the original records. In this hearing, he should assist the inquiry officer in framing of issues, where necessary, and also quickly to arrange for the inspection of listed documents by the Charged Employee and supply to him of the earlier statements recorded during investigation of the witnesses proposed to be examined I regular inquiry.

e) Should examine all documents to be produced in support of articles of charge and to arrange for proof of the documents which the charged employee does not admit to be correct and hence would need to be proved.

f) Should remember that on the first day of regular hearing, the various documents will be marked as exhibits and taken over by the inquiry officer. For the purpose he must be ready with such documents duly detached and separated from the main files, and arranged in proper sequence. It will save not only time of the court, but also himself from a lot of embarrassment.

g) Should b polite towards the Charged Employee and the defence witnesses and should not lose their sympathy.

h) Should refrain from attacking character of the Charged Employee unless it becomes absolutely unavoidable due to exigencies of the case.

i) Should before-hand decide what aspects of the case he wishes to be borne out by which witness (es) so that in the examination-in chief, he can restrict evidence of each prosecution witness to the facts best known to him. He should not examine him on other points which though exist in his knowledge do not depend upon his testimony.

j) Decide the proper sequence in which he wishes to examine his witnesses. It is not essential for him either to examine all the witness listed in the charge sheet or to examine them in the order in which they are mentioned therein. The presenting officer may examine them in the order he thinks best in the interests of presentation of the case. H may dispense with needless witnesses.

k) It shall be best for him to examine his witnesses in a logical sequence i.e. a witness whose evidence pertains to the earliest part of the prosecution story should be examined first. And so on. It shall help him to unfold the story in a proper sequence. The moment he feels that enough evidence has been brought on record to prove the charge against the delinquent employee he

may drop the remaining witnesses and close his case.

l) However, he must take care to lead all evidence at the proper time because to recall a witness or to introduce fresh evidence is a difficult process and can be resorted to only when there is an inherent lacuna in the evidence already recorded and that too with permission of the inquiry officer. But should it become necessary, he may make a request giving his reasons after he has produced all other evidence and the recording of defence evidence is yet to begin.

m) Examine the investigating officer as the last witness and, that also, if necessary,

n) Must follow the cross-examination of his witnesses carefully and to re-examine them to clarify any important point, or to put the records straight in deserving cases;

o) Should remember that re-examination ha a limited role only as pointed out above. We know a number of case in which reckless re-examination resulted in spoiling effectiveness of the witness which had been examined all the witnesses he had to and before the defence case begins.

p) Where necessary, to make timely request to the inquiry officer for production of some new or additional evidence not mentioned in the charge sheet. The right stage for making such a request s after he has examined all the witnesses he had to and before the defence case begins.

q) Must satisfy himself about trust-worthiness of the defence before their examination begins.

r) Must cross-examine the defence witnesses ably and tactfully to bring out truth and to expose hollowness of their testimony where necessary. He may discredit them by impeaching their trust-worthiness.

s) At the close of inquiry, sum up arguments or file a written brief. He must understand that since the burden of proof is on the prosecution, he should be able to show, with reference to the documentary and oral evidence produced during the inquiry, that the articles of charge have been proved substantially.

t) Take care that his written brief is based only on the evidence adduced during the course of inquiry. He should avoid reference to any extraneous matter. Any reference to a document or attaching it with the written brief which was not allowed during the inquiry must be avoided. The inquiry officer, invariably get annoyed by such short practice.

Checklist for Presenting Officers

1. Always keep a copy of the conduct rules and disciplinary procedure rules.

2. Always keep ready with you the complete file of the case.

3. Always remain vigilant on the charged Officer during inspection of files.

4. Your presence gives message to the charged official to desist from giving wrong or misleading answer.

5. Get your legitimate objections, recorded at the earliest opportunity.

6. Get your questions, if any, declared irrelevant during cross-examination recorded in the proceedings.

7. Please request the Enquiry Officer for his intervention as and when the charged Officer asks any leading questions.

8. Advise your witnesses not to utter anything in despair even in adverse circumstances.

9. Please tell the Enquiry Officer about the true ambit of mandatory questions.

10. Be courteous and respectful to the defence assistant and the Enquiry Officer.

11. Be truthful while talking to the Enquiry Officer and defence/charged Officer. Maintain your credibility in their eyes.

12. Be careful to include the names of material documents.

13. Encourage tactfully, the defence to examine charged official in his own defence.

14. Examine the locus standi of the defence assistant/co-worker, in a tactful manner, if you feel such examination hurts his ego.

15. Study Charge-sheet and explanation of the accused carefully.

16. Visit worksite where the incident took place to get a clear picture.

17. Check the Charge-sheet thoroughly to note any inherent defects and prepare suitable reply/ explanations.

18. Be alert when defence is re-examining the defence witnesses.

19. Resist with all your might any new evidence sought to be introduced after close of defence case.

20. Consolidate all your objections during the enquiry proceedings.

21. You must insist on getting a copy of the written briefs from the defence assistant.

22. Raise all the relevant law points (say, the allegations even if not proved don't amount to any non misconduct) during written arguments also.

23. Even if at any stage recourse to law court is unavoidable, manage the situation and advise the defence not to follow that course citing lengthy/expensive and compressive process of litigations.

24. Associate yourself, if possible, with the management at the stage of drafting the Charge-sheet.

25. Scrutinize very closely the list of documents and witnesses cited by the Disciplinary Authority along with Charge-sheet.

26. Keep your vital points of prosecution guarded from everybody.

27. Brief your witnesses well in advance and let them know what questions should be expected in examination and in cross-examination.

28. See your witnesses' tender evidence as per the narration in the Charge-sheet.

29. Tell your witnesses to maintain patience and not to get excited.

30. Ensure that important documents/letters, like arguments are signed by charged official.

31. Ensure that Co-Officer does not sit in the enquiry Officer's chamber during preliminary enquiry.

32. Please see to it that a superfluous document demanded by the charged official is declared "irrelevant" or privileged.

33. Plea strongly any claim of privilege in producing any document.

34. Cross the witnesses of defence effectively with all the skill at your command.

35. Please do not make any case a point of your prestige; otherwise you may be tempted to use foul means for winning the case.

36. Try to attend seminars or other meetings of experts on disciplinary proceedings.

37. Try to learn computer/internet and remain update on recent case laws.

38. While being respectful, do not be afraid of Enquiry Officer.

39. Keep abreast with law relating to service regulations.

40. Anticipate what the charged official is likely to admit; then, omit the evidence intended to prove admitted facts.

41. It would be desirable to meet them in advance and refresh their memory by referring to their statements recorded.

42. See your witnesses' tender evidence as per the narration in the Charge-sheet.

43. When accused is to be cross-examined, please check if there is any discrepancy in the explanation, given to the Charge-sheet and statement given later during the enquiry and cross-examine him on this basis.

44. Exercise your right of re-examination of your witness if you find that new point has come in cross-examination.

45. If your witness becomes hostile stop his examination and cross-examine him.

46. Keep an eye on the procedural aspect at different stages.

47. During Cross Examination the presenting Officer is advised:

a) To keep eye contact with the witness.

b) To begin cross-examination with a purpose and not to ask questions without an object or to ask relevant questions.

c) Not to put a material question straight away.

d) Not to repeat questions.

e) Not to get excited while asking questions.

f) To stop cross-examination when the desired version has come out from the witness.

Important don'ts for Presenting Officer

1. Do not go to attend the proceedings without doing your homework properly.

2. Do not hob-nob with the charged Officer.

3. Don't hesitate to consult other learned or experienced persons/advocates, if you have doubt.

4. Don't use your influence with Enquiry Officer in getting favourable verdict from him.

5. Don't accept undue hospitality from charged official.

6. Do not allow the forum for changing the service conditions, for amending certain special types of provisions existing in the department.

7. Don't consult the defence witnesses or approach them before their cross examination by you.

8. Don't demand adjournments unless extremely unavoidable.

Role and Functions of charge-sheeted employee / co-employee (defence assistant)

Following is the role and functions of Charge-sheeted employee / Co-Employee:

a) Scrutinize very closely the list of documents and witnesses cited by the DA along with charge sheet. Take this opportunity to lodge your objections in such a manner so as to eliminate / exclude all irrelevant document / witnesses by building up proper pleas. .

b) Inspection of documents for preparing defence.

c) Submission of written explanation to the charge sheet within the prescribed time.

d) Appear before the enquiry committee at the appointed time along with the co-employee.

e) Give proper reply during mandatory questions put to you by the Enquiry Officer.

f) Entitled to get the list of witnesses / documents relied upon by the prosecution.

g) Get your legitimate objections, wherever required, recorded at the earliest opportunity. Don't displease the EO while doing so.

h) Do not consult the witnesses or approach them before their cross-examination by you.

i) Examination of defence witnesses / documents.

j) Cross-examination of prosecution witnesses / documents.

k) Re-examination of defence witnesses / documents.

l) Request the EO for his intervention as and when the PO asks any leading questions to the prosecution witnesses.

m) Offering for self examination.

n) Participation in the enquiry proceedings without seeking adjournment on frivolous grounds or indulging in delay tactics.

o) Be courteous and respectful to the PO and the EO. Don't level allegations of bias against them without any ground.

p) Following will be Violation of the rights of C.O.

1. Non-supply of the relevant documents.

2. Not giving opportunity to cross examine

3. Non supply of a copy of the report of E.O.

4. Examining witnesses at the back of C.O.

5. Relying upon the materials/documents against C.O. without given him an opportunity to explain the same

Dos and Don'ts for witnesses

(a) Accept the responsibility of witness as part of your job

(b) Reply only to the questions asked, either in Examination-in-chief or during cross examination.

(c) Be brief in cross examination.

(d) While being respectful, do not be afraid of EO. Place your points politely nut forcefully.

(e) If reply is already given, say so and EO will read it out.

(f) Do not go beyond what you have seen as eye witness.

(g) Do not enter into an argument in cross examination.

(h) Come prepared when you are called to tender your evidence.

(i) Don't accept undue hospitality from charged official or accept any 'gift' from him.

(j) Remember your evidence is very important and case may depend on your evidence.

Role of HR staff

HR Dept has a major role to play in the conduct of the Departmental Enquiry proceedings. As already stated, they should assist the Disciplinary Authority right from the stage of processing the Preliminary Enquiry Report, preparation of charge sheet, consideration of explanation, assisting the Disciplinary Authority in finding a suitable

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Appendix 'A'

Judicial and Departmental proceedings; Difference

Judicial Procedings DEPARTMENTAL PROCEEDINGS

1. It is based on the principle that the accused is innocent till offence is "**proved beyond all reasonable doubt**."

2. This is a trial by statutory authority with power to punish. It delivers a judgment.

3. Procedure is sacrosanct. Law of procedure and law of evidence are applicable.

4. Objective of Judicial Proceeding is Protection of public.

5. Attendance of witnesses is compelled.

6. Magnitude of punishment is prescribed for each offence.

Departmental proceedings

1. It is based on the principle o f "**Preponderance of probability**".

2. This is a fact-finding exercise by advisory body to find out the truth. It gives a report to Disciplinary Authority.

3. All materials, logically probative are permissible. Procedure is based on principles of natural justice.

4. Its objective is Discipline in Organization.

5. Attendance of witnesses cannot be compelled.

6. Size of punishment left to Disciplinary authority.

Appendix 'B'

Common Misconduct applicable to Officers/Workmen of the Company.

Without prejudice to the generality of the term 'misconduct', the following acts of omission and commission shall be treated as misconduct:-

(a) Theft, fraud or dishonesty in connection with the business or property of the Company or of property of another person within the premises of the Company.

(b) Taking or giving bribes or any illegal gratification.

(c) Possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another person, which the employee cannot satisfactorily account for.

(d) Furnishing false information regarding name, age, father's name, qualification, ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment.

(e) Acting in a manner prejudicial to the interests of the Company.

(f) Willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superiors.

(g) Absence without leave or over-staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation.

(h) Habitual late or irregular attendance.

(i) Neglect of work or negligence in the performance of duty including malingering or slowing down of work.

(j) Causing damage to any property of the Company.

(k) Interference or tampering with any safety devices installed in or about premises of the Company.

(l) Drunkenness or riotous or disorderly or indecent behaviour in the premises of the Company or outside such premises.

(m) Gambling within the premises of the establishment.

(n) Smoking within the premises of the establishment where it is prohibited.

(o) Collection without the permission of the competent authority of any money within the premises of the Company except as sanctioned by any rules of the Company.

(p) Sleeping while on duty.

(q) Commission of any act which amounts to a criminal offence involving moral turpitude.

(r) Absence from the employee's appointed place of work without permission or sufficient cause.

(s) Purchasing properties, machinery, stores, etc. from or selling properties, machinery, stores etc. to the Company without express permission in writing from the competent authority.

(t) Commission of any act subversive of discipline or of good behaviour.

(u) Abetment of or attempt at abetment of any act which amounts to misconduct.

(v) Acting in a manner intended to bring discredit to the Company or its Management.

(w) Habitual breach of any law applicable to the Company or any rules of the Company or breach of any provisions of these rules.

(x) Pursuance of conduct unbecoming of an employee of his/her status or a public servant.

(y) Applying for a job outside without permission of the Management.

(z) Indulging in any act of sexual harassment of any women at her work place. For this purpose "sexual harassment" would mean the same as given in the explanation under clause 4(d).

Note: The above instances of misconduct are illustrative in nature, and not exhaustive.

VIGILANCE MANUAL

VIGILANCE DEPARTMENT
THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED
UDYOGAMANDAL, KOCHI 683501