

**No.98/VGL/62**  
**Government of India**  
**Central Vigilance Commission**

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Satarkta Bhavan, Block – A,  
General Pool Office Complex,  
INA, New Delhi-110023  
Dated the 15th October 2001

**Subject:- Special Chapter on Vigilance Management in Public Sector Insurance Companies vis-à-vis the Role and Functions of the CVC.**

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The Central Vigilance Commission had issued the Vigilance Manual first in 1968 and subsequently issued revised Editions. It was, however, felt that the Vigilance Manual had been prepared with the original jurisdiction of the Commission, i.e. government employees in mind. The commercial and social justice endeavors of the Government of India which were increasingly perceived as instruments of state activism could not be measured by the same yardsticks that were applied to government servants. In recognition of the distinction and the specific relevance of the existing manual to government departments, the preparation of Special Chapters was taken up by the Commission in consultation with the concerned industry. Having already issued the Special Chapters for the Public Sector Banks and Public Sector Undertakings, this Special Chapter on Insurance Companies is a logical sequence. The experience gained in preparation of the previous two chapters has been useful in preparing this third Chapter since all of them are commercial enterprises in the Public Sector.

2. Current wisdom emphasises the importance of Public Sector Insurance Companies functioning as self-reliant and profitable units, building themselves around their competitive strengths so as to meet challenges from the private sector particularly w.r.t. the induction of multi national companies into the Insurance Sector. In the achievement of this objective, however, there has to be greater transparency and accountability within the functioning of these Companies.

3. In the changed and liberalised scenario, vigilance functions have to be organised along proactive, rather than negative lines: their performance should not detract from, impair or inhibit commercial decision making. On the contrary, it must assist the management in the achievement of its organisational goals and objectives.

4. The present Special chapter on Vigilance Management in Insurance Companies has been prepared, keeping these objectives in view. It takes into account the special micro-level needs of managers in Insurance Companies and addresses the complex problems faced by them in their day-to-day functioning. Since the rules governing vigilance have now been made transparent, managers need only to shed their inhibitions and contribute their best to the organisations they work for.

5. The Special Chapter has been prepared in consultation with the Insurance Regulatory and Development Authority (IRDA) and Financial Sector of the Department of Economic Affairs in the Ministry of Finance. Special care has been taken to ensure that the provisions of this Chapter are in conformity with the other Chapters of the Vigilance Manual. However, if there is any inconsistency between the provisions of this Chapter and the provisions of the extant Vigilance Manual, the matter should be referred to the CVC for decision.

6. In terms of the powers conferred under para 3(v) of the Government's Resolution dated 04.04.1999 and the Order of the Supreme Court dated 18.12.1997 in the case of Vineet Narain and others v. Union of India (Criminal Writ Petition Nos. 340-343 of 1993) the Commission is pleased to notify the enclosed Special Chapter on Vigilance Management in Public Sector Insurance Companies. The Provisions of this Chapter will come into force w.e.f.. 15.10.2001 and will be deemed to form an integral part of the Vigilance Manual, Volume-I.

7. This order as well as the enclosed Special Chapter is available on web site of the CVC at <http://cvc.nic.in>

8. Hindi version will follow.



15.10.01

(N. VITTAL)  
CENTRAL VIGILANCE COMMISSIONER

**To**

- (i) The Secretary, Department of Personnel & Training.
- (ii) The Secretary, Ministry of Finance(Financial Sector)
- (iii) The Secretary, Department of Administrative Reforms & Public Grievances.
- (iv) The Director, CBI
- (v) The Chairman, Insurance Regulatory and Development Authority.
- (vi) All Chief Executives of Public Sector Insurance Companies.
- (vii) Chief Vigilance Officers of Ministry of Finance (Financial Sector).
- (viii) All Chief Vigilance Officers of Insurance Companies.

# SPECIAL CHAPTER

ON

## VIGILANCE MANAGEMENT IN PUBLIC SECTOR INSURANCE COMPANIES VIS-À-VIS THE ROLE AND FUNCTIONS OF THE CVC

### 1. INTRODUCTION

This chapter deals with the application of the principles of vigilance to insurance companies in the public sector. Insurance Companies handle large sums received from **Policyholders** for long periods. Since the nationalisation of the life insurance industry in January 1956 and general insurance industry in 1973, life insurance has been handled exclusively by the Life Insurance Corporation (LIC) and non-life insurance by General Insurance Corporation (GIC), which is primarily in the business of reinsurance, and New India Assurance Co., National Insurance Co., Oriental Insurance Co. and United India Insurance Co. This was so until very recently when the insurance sector was opened up to other participants. Now with the liberalized insurance sector, the public sector insurance companies continue to exist in open competition with private sector insurance companies. The nationalisation of insurance companies had its genesis in the huge funds available at the disposal of insurance companies from the premium collected from the general public; it was felt that the funds of such magnitude being held in trust ought to be properly secured in the interest of the public. In the context of liberalization, the security of funds collected from the insured public is ensured by a regulatory authority with statutory status, i.e. the Insurance Regulatory and Development Authority (IRDA) through its regulatory and supervisory/monitoring activities. It functions in a manner similar to that of the Reserve Bank of India vis-à-vis the banks. However, this regulation does not include the personnel policies and administrative machinery of the individual companies. Concomitantly, the implication is that service related matters of the employees of the insurance companies, including penal action against erring/delinquent employees, is left to the companies/corporations themselves. Each company/corporation has its own Staff Regulations incorporating an inventory of *dos* and *donts* and laying down the procedure for imposition of penalty for deviations from the established code of conduct. While these form the framework, the manner of compliance is detailed in the vigilance manual to ensure uniformity and equity. It also provides a reference to ensure that the principles of natural justice are not ignored and also to protect honest officials while weeding out corruption from the ranks. The instructions in this Chapter are based upon the general instructions of Government of India / Central Vigilance Commission for ensuring probity in Public Administration taking into account the special features of the insurance industry in the public sector applicable to all employees of the insurance companies in the public sector and is to be supplemented by the vigilance manual should there be any matter not covered by this chapter.

### 2. HISTORICAL BACKGROUND

The Central Vigilance Commission was set up by the Ministry of Home Affairs, Government of India by its resolution dated 11.2.1964 in pursuance of the recommendations made by the Santhanam Committee on Prevention of Corruption. Consequent to the judgement of the Hon'ble Supreme Court in Vineet Narain vs Union of India, generally known as the *Jain hawala* case, which recognized the special role of the Central Vigilance Commission in ensuring probity in public life, the Commission was accorded statutory status with effect from 25.8.1998 through "**The**

**Central Vigilance Commission Ordinance, 1998.**" The bill introduced in Parliament to replace the ordinance lapsed owing to dissolution of the Lok Sabha and the ordinance was re-promulgated. After the constitution of the Thirteenth Lok Sabha, the bill was introduced once again and owing to procedural constraints, the ordinance lapsed without a replacement statute and the Central Vigilance Commission continues to exist by resolution dated 4<sup>th</sup> April, 1999 of the Government of India in Department of Personnel & Training. The Central Vigilance Commission Bill was considered by a Committee of both houses of Parliament and, in its reported form, is before the Lok Sabha for enactment.

### 3. THE CENTRAL VIGILANCE COMMISSION – THE FRAMEWORK

#### 3.1 In accordance with the Resolution:

(a) The Commission is a multi-member body comprising of the Central Vigilance Commissioner (CVC) and Vigilance Commissioners (VC).

(b) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under hand and seal.

(c) The powers and responsibilities of Commission are as under:

(i) To inquire or cause an inquiry or investigation to be made on a reference made by the central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation, established by or under any Central Act. Government company, society and any local authority owned or controlled by that Government, has committed an Offence under the Prevention of Corruption Act- 1988.

(ii) To cause an inquiry or investigation to be made into any complaint against any official belonging to the following category of officials, namely:-

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

(b) such level of officers of the Corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf, wherein it is alleged that such official has committed an offence under the Prevention of Corruption Act, 1988;

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

(iv) 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;

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

#### 4. JURISDICTION:

4.1 The jurisdiction of the Commission is co-terminus with the executive powers of the Union. In terms of its powers and responsibilities, the Central Vigilance Commission is competent to investigate, to review the progress of cases pending for sanction for prosecution, to tender advice and to exercise superintendence over vigilance administrations of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government. In its advisory role, as far as the insurance industry is concerned, the Commission has restricted its jurisdiction to officers of and above the rank of ASSISTANT MANAGER or equivalent.

#### 5. APPOINTMENT OF CHIEF VIGILANCE OFFICER

5.1 As in other organisations within the jurisdiction of the Commission, every insurance company has a Vigilance organ headed by a Chief Vigilance Officer (CVO). These are full-time functionaries drawn from the insurance sector but from outside the respective company and appointed by the Government of India in the Insurance Division of the Ministry of Finance with the approval of the Central Vigilance Commission. The Chief Vigilance Officer is recognized as a key advisor to the management of the Insurance Company in carrying out its vigilance function. The independence of the CVO is ensured by the supervisory responsibility of the Central Vigilance Commission over vigilance administrations, its role as an arbitrator in the event of disputes between the management and the CVO and the appraisal of the performance of the CVO.

#### 6. RATIONALE FOR THIS SPECIAL CHAPTER

6.1 For reasons already enumerated, the Central Vigilance Commission issued the Vigilance Manual first in 1968. Subsequently, revised editions were issued. It was, however, felt that the Vigilance Manual had been prepared with the original jurisdiction of the Commission, i.e. government employees in mind. The commercial and social justice endeavours of the Government of India which were increasingly perceived as instruments of state activism could not be measured by the same yardsticks that were applied to government servants. In recognition of this distinction and the specific relevance of the existing manual to government departments, the preparation of Special Chapters was taken up by the Commission in consultation with the concerned industry. Having already issued the Special Chapters for the Public Sector Banks and Public Sector Undertakings, this Special Chapter is a logical consequence. The experience gained in preparation of these chapters has been useful in preparing this Chapter since all of them are commercial enterprises in the Public Sector.

#### 7. APPROACHES TO VIGILANCE

7.1 Despite the distinctive features of the insurance industry, it is reiterated that there are essentially two approaches to vigilance: PREVENTIVE and PUNITIVE.

7.2 Since “*prevention is better than cure*”, preventive vigilance is accorded a very important role in the scheme of vigilance administration. The philosophy of prevention acknowledges the need for continuing review of systems and procedures to eliminate the corruption potential. In performing this task, the CVO is required to place the results of review of systems before the competent management functionary and if there is no response, the matter is to be brought to the notice of the Central Vigilance Commission. There can, however, be no detailed guidelines about the manner of handling preventive vigilance but this is an area where the CVOs can demonstrate initiative. The philosophy of prevention, while acknowledging the need for review of systems and procedures, acknowledges the efficacy of deterrence by punitive action. Thus, notwithstanding the regularity of system studies, vigilance activity is characterised by swift detection of aberrations, speedy investigation into the role employees responsible and imposition of appropriate penalty. This is the primary responsibility of the CVO. In the area of deterrent punishment, which is the punitive facet of vigilance administration, the CVO acts in close collaboration with the Commission and since that comprises the major work of the Commission, detailed instructions have been issued.

7.3 A secondary means of reducing corruption is through greater transparency in the day to day working of the organisation, codification of procedures in manuals, informing the public through brochures, laying down guidelines for coverage of risk, pricing mechanism, procedure of settlement of claims etc. which in the present context calls for use of information technology and ease of access by the public to senior officials. This is to be implemented by the management and the CVO should be able to make specific recommendations in this direction.

## 8. WHAT IS A VIGILANCE ANGLE?

8.1 The Chief Vigilance Officers in the concerned organisations have been authorised to identify, at the time of registration of the complaint, the existence of a vigilance angle in each case. Once a complaint has been registered as a vigilance case, it will be considered to be such till its conclusion, irrespective of the outcome of the investigation. Although formulation of a precise definition is not possible, generally such an angle could be perceptible in cases characterised by:

- (a) commission of criminal offences such as demand and acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, abuse of official position with a view to obtaining pecuniary advantage for self or for any other person; or
- (b) irregularities reflecting adversely on the integrity of the public servant; or
- (c) lapses involving any of the following ;
  - (i) gross or willful negligence;
  - (ii) recklessness;
  - (iii) failure to report to competent authorities, exercise of discretion without or in excess of powers/jurisdiction;
  - (iv) cause of **undue** loss or a concomitant gain to an individual or a set of individuals/a party or parties;
  - (v) flagrant violation of systems and procedures.

## 9. VIGILANCE ANGLE IN THE INSURANCE COMPANIES:

9.1 Business in Insurance is a risk transfer mechanism by which an organisation/ individual (called “ the insured”) can exchange uncertainty for certainty. The insured agrees to pay a fixed premium and, in return, the insurance company agrees to meet any losses which fall within the terms of policy. In life insurance business where the contract is for a longer period, the repayment of the sum assured and the solvency of the insurer are vital to being able to fulfill its obligations. If the insurer fails to keep its promise of indemnification or there is undue delay in settling it, it can be a cause of public grievance. At the same time, being in the public sector and thus not guided by the overriding concern of profit, it is possible that claims that are not otherwise eligible are settled to the detriment of the interests of the insurer. The insurer, while meeting its obligations to the insured by spreading the risk of few claims across the larger mass of premium paying insured, it also fulfills its commercial obligations by placing the funds at its disposal in various investment portfolios. Funds management is an integral part of the insurance industry and the interests of the organisation requires optimization of these investment decisions. Juxtaposed with this optimization, the trusteeship concept is a key element of insurance management. It is appreciated that there cannot be any general rule for such placements but any action that is a breach of trust revealed by improper investment also needs to be acted against. Vigilance cases, which arise in the insurance industry, inter-alia, relate, to

- a. Pre-dating of cover notes;
- b. Settlement of bogus claim in collusion with the insured;
- c. Payment of an exaggerated amount as a claim;
- d. Disposal of salvage etc.;
- e. Cases of misappropriation of cash, purchase of inferior material at inflated cost, hiring and releasing of premises without observing set norms and irregularities in awarding contract.
- f. Acceptance of a bad risk for insurance cover.
- g. Collusion with doctors and others on medical examination of prospects;
- h. Deliberate bad underwriting practices;
- i. Acting against the interest of the company in placement of funds.

**9.2 It is the responsibility of the Chairman and other Senior Officers of insurance companies to nip such activities in the bud through effective monitoring and supervision, and periodical inspection and last but not the least, by streamlining of procedures.**

9.3 A Chief Executive Officer of an organisation is not only expected to set a personal example of honesty, uprightness and effectiveness, but is also expected to ensure the same on the part of officers and staff in his organisation by suitable motivation, streamlining of procedures, and by having in place an effective and receptive public grievances redressal machinery. A Chief Executive Officer can ensure the moral fibre of the organisation by according an important place to vigilance in the scheme of management. Therefore, even though this chapter bespeaks the role of the CVO in particular owing to the executive responsibility of the CVO and the Commission's concern in the matter, it is reiterated that vigilance is essentially a function of the top management and it is for the management to respond appropriately to the advisory functioning of the CVO. The Chief Executive Officer has a variety of functions to perform and the status accorded to the CVO and its functioning, vis-à-vis the other functions, would send out the appropriate message across the organisation.

## 10. COMPLAINTS AND ACTION THEREON

10.1 Investigation is a primary task of vigilance. The necessary pre-requisite for an investigation is information about corruption, malpractice or misconduct on the part of public servant and that is brought to the notice of the CVO through various sources, such as

- a. Complaint received from the public, or through the administrative Ministry, CBI and CVC;
- b. Inspection reports and stock verification surveys of investigation and inspection teams.
- c. Scrutiny of property returns and the transactions reported by the concerned employee under the Conduct Rules,
- d. Audit reports,
- e. Media reports,
- f. Reports of parliamentary committees etc.,
- g. Decisions of the insurance ombudsmen.

10.2 Oral information should be reduced in writing before being proceeded with. The role of intelligence gathering by the vigilance wing cannot be overemphasized. It has been observed that there is tendency to place undue reliance on complaints as sources for investigation; complaints are often biased or motivated and the success rate of investigations into complaints is not very high. The vigilance wing should, in addition to the secondary sources of information such as reports, ombudsmen's findings etc., should develop a network among the employees to obtain real-time information about activities detrimental to the organisation. Complaints, too, cannot be ignored. In the first instance, the CVO or vigilance officer, in consultation with the disciplinary authority, should decide if the information from any of the sources listed above involves vigilance angle as outlined at para 5 above. If so, the information would be registered as a complaint in the Vigilance Complaint Register. The information would be assessed to decide whether the allegations are general or vague and, therefore, to be filed or if the matter requires further investigation. In the later case, it would have to decided whether the information is to be passed on to the CBI or local police or is to be investigated by the vigilance unit. The CVO is expected to review the complaint register regularly for proper monitoring of the vigilance staff.

10.3 The information may, with the approval of the Chief Executive, be forwarded to the CBI if the allegations:

- a. are criminal in nature (e.g. bribery, corruption, forgery, criminal breach of trust, possession of assets disproportionate to known sources of income, cheating, etc; or
- b. require inquiries to be made from non-official persons; or
- c. involve examination of records other than that of the insurance company; or
- d. need expert police investigation for arriving at a conclusion; or
- e. need investigation abroad.

### 10 A. ANONYMOUS / PSEUDONYMOUS COMPLAINTS

The CVC has issued instructions that cognizance should not be taken of anonymous and pseudonymous complaints; these are to be filed.



## 10 B. ACTION AGAINST PERSONS MAKING FALSE COMPLAINTS

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

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

*to do or omit anything which such public servant out to do or omit if the true state of facts respecting with such information if given were known by him, or  
to use the lawful power of such public servant to the injury or annoyance of any person;*

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

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

If the complainant is a public servant, disciplinary proceedings under the service regulations may also be considered against such public servants. The Commission, on coming across any such complaint in the normal course of its functioning, would advise the concerned administrative authority about appropriate action to be initiated. However, in cases which do not fall within the Commission's normal jurisdiction, the organisation concerned may decide the matter as deemed fit.

## 11. INVESTIGATION BY CBI:

11.1 The Special Police Establishment, generally known as the Central Bureau of Investigation, was constituted by the Government of India, under the DSPE Act, 1946. It inquires and investigates into offences pertaining to corruption and other malpractices involving public servants. The SPE takes up cases for investigation on the basis of the information collected by them from their own sources or received from members of the public. It also investigates cases referred to them by the Commission and the administrative authorities. If the information discloses, prima facie, commission of a cognizable offence, a regular case (RC) is registered u/s 154 Cr. PC. But if the information prima facie discloses commission of irregularities, which call for further enquiry, a preliminary enquiry (PE) is first registered. If the PE reveals commission of a cognizable offence, a regular case is registered for further investigation. As soon as a PE or a RC is registered, a copy thereof is sent to the Head of Department and/or the administrative Ministry. A copy of PE/RC is also sent to the Commission if the public servant concerned comes within the advisory jurisdiction of the Commission. The SPE generally does not take up inquiries or register a case where minor procedural flaws are involved. They are also expected to take note of an individual officer's positive achievements while recommending RDA so that a single procedural error does not cancel out good work of a life-time.

## 12. ADVISORY BOARDS

12.1 Considering the complexities involved in commercial decisions taken by employees of insurance companies, the CBI may find it worthwhile to obtain the benefit of expert advice about insurance matters before registration of PE/RC. To render this assistance in cases pertaining to banking sector, an Advisory Board on Bank, Commercial and Financial Frauds (ABBCFF) was constituted and it has persons of eminence as its members. When dealing with cases of PSU employees, CBI refers them to this Board, with experts co-opted from PSUs. This Board with a nominee of IRDA and of Insurance Division of Ministry of Finance co-opted for this purpose could advise the Central Bureau of Investigation about cases pertaining to the insurance sector.

12.2 Full cooperation and facilities should be extended by the public sector insurance companies to the CBI during the course of investigation. This would include making available to them the requisite documents with the least possible delay, directing such employees as are to be examined to appear before the investigating officer and making suitable accommodation in the bank's guest houses, available to touring officers (subject to availability), in accordance with their entitlement and on payment of the prescribed charges. When the companies make reference to the CBI for investigation, they should also make available duly certified photocopies of all relevant documents along with the complaint so that there is no delay in initiating action on the part of the CBI. The originals may be handed over to them only at the time of the actual registration of the case. Similarly, when CBI seizes documents, authenticated copies of all the documents, should within four days of the seizure, be made available to the CVO of the insurance company.

## 13. INVESTIGATION REPORTS RECEIVED FROM THE CBI:

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

13.2 The CBI generally recommends prosecution in cases of bribery, corruption or other criminal misconduct; it also considers making similar recommendations in cases involving a substantial loss to the Government or public body. The Commission's advice for prosecution however is required only if the sanction for prosecution is necessary under any law promulgated in the name of the President. In such cases, CVOs should furnish the department's comments within a month of the receipt of the CBI report by the competent authority. In other cases, as directed by the Supreme Court, the matter should be processed expeditiously to ensure that the required sanction is issued within a period of three months (the instructions issued by the Department of Personnel & Training vide O.M. dated 14.01.1998 also refer). However, in case of difference of opinion between the CBI and the administrative authority, the matter may be referred to the Commission for its advice irrespective of the level of the official involved.

13.3 Prosecution proposals should be able to meet the technical requirements laid down by the Courts. Apart from adequate evidence to establish that offence has been committed under the relevant provision of the law, there should be some facts on record from which it should be possible to infer or presume a criminal or guilty intention behind the omission or commission. In the absence of *mens rea* violation of rules or codal formalities could at worst be considered as transgressions of systems and procedures of the organisation and the same would, as such, be more suitable

as the subject matter of RDA rather than criminal prosecution. In *Maj. SK Kale v/s State of Maharashtra*, 1977 Cri. L.J. 604 and *Shri SP Bhatnagar v/s State of Maharashtra*, 1979 Cri. L.J. 566, the Supreme Court ruled that irregularities *per se* may not amount to indication of criminal intent even if third parties had benefited.

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

13.5 The law of the land permits prosecution as well as RDA to proceed simultaneously (*Jang Bhagdur Singh v/s Baijnath Tewari*, 1969 SCR, 134). Where the suspect officer is primarily accountable for conduct which legitimately lends itself to both criminal prosecution in a court of law as well as RDA, as a general rule, both should be launched simultaneously after consultation with the CBI or other investigating agencies charged with conducting the prosecution. Such simultaneous conduct of RDA and criminal prosecution should be resorted to especially if the prosecution case is not likely to be adversely affected by the simultaneous conduct of RDA. Keeping RDA in abeyance should be an exception rather than rule. The copies of all the relevant documents authenticated by the charged employees may be retained, for the purpose of RDA, before the original documents are sent to the Court. If the documents have already been sent to a Court of Law for the purpose of criminal proceedings, certified copies may be procured for the purpose of RDA. Care, however, should be taken to draft the charge-sheet for the purpose of RDA in such a manner that it makes the suspect official accountable for violation of various provisions of Conduct Rules without reference to criminal misconduct.

#### 14. INVESTIGATION BY CVOs

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

14.2 The preliminary enquiry may be made in several ways depending upon the nature of allegations and the judgment of the investigating officer, e.g. (a) If the allegation contain information, which can be verified from documents, files or other departmental records, the investigating officer should, without loss of time, secure such records etc. for personal inspection. If any paper is found to contain evidence supporting the allegations, it should be taken over by him for retention in his personal

custody to guard against the possibility of available evidence being tampered with later on. If the papers in question are required for any current action, it may be considered whether the purpose would be served by substituting authenticated copies of the relevant portions of the record, the originals being retained by the investigating officer in his custody. If that is not feasible, the officer requiring the documents or papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of enquiry;

(b) In cases where the alleged facts are likely to be known to any other employee of the department, the investigating officer should interrogate them orally or ask for their written statement. In case of oral interrogation, a full record of interrogation may be kept and the person interrogated may be asked to sign as a token of his confirmation of his statement.

(c) Wherever necessary, important facts disclosed during oral interrogation on in written statements should be sought to be corroborated.

(d) If it is necessary to make enquiries from the employees of any other Government department or bank or PSU the investigating officer should seek the assistance of the concerned CVO for providing the necessary facilities.

14.3 During the course of preliminary enquiry, the concerned employee may as a fundamental administrative requirement also be given an opportunity to tender his version of the facts so as to find out if he has any plausible explanation. In the absence of such an explanation, the concerned employee may be proceeded against unjustifiably. There is, however, no question of making available to him any document at this stage. Such an opportunity, need not be given in cases in which a decision to institute department proceedings is to be taken without any loss of time, e.g. in cases in which the public servant is due to retire or superannuate soon and it is necessary to issue the charge sheet to him before retirement.

14.4 After the preliminary enquiry has been completed, the investigating officer should prepare a self-contained report, containing **inter alia** the material to controvert the defence, and his own recommendations. This should be forwarded to the disciplinary authority through the CVO. The investigating officer/CVO or his nominee should make a meticulous evaluation of the actions of various officials with reference to the nature of their duties. They are also required to assess the gap between what the managers at different levels of the decision-making hierarchy actually did and what they were required to do. They may follow the following criteria for the purpose and highlight in the report if the answer to any of the questions is in the affirmative:-

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

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

14.6 Timeliness in the conduct of the preliminary inquiry cannot be over-emphasised. Both courts as well as administrative instructions have indicated that there should not be an inordinate delay between the occurrence of the impugned events and the issue of the charge sheet. The current instructions of the Government are that the preliminary inquiry should be completed within 3 months. In the State of MP Vs. Bani Singh, 1990 Suppl. S.C.C. 738 it was held that an inordinate and inexplicable delay in finalisation of the charge sheet can itself be a ground for quashing of the same on the ground of denial of reasonable opportunity. Similarly, delayed charge-sheets can also be legally challenged on grounds of staleness. Further, in State of Punjab Vs. Chaman Lal Goyal SLR (1995) (1) 700 S.C. it was held that in the case of inordinate delay the burden of proving that the delay was due to a reasonable cause would be on the department. Thus, although it may not be desirable to indicate a time limit for staff accountability, the need to ensure that the same is done at the earliest, needs to be reiterated.

## 15. ACTION ON INVESTIGATION REPORT

15.1 On receipt of the investigation report and recommendations thereon, the disciplinary authority is to decide, on the basis of the facts disclosed by this preliminary inquiry, whether the complaint should be closed, warning/ caution is to be administered or regular disciplinary proceedings launched. Regular disciplinary proceedings are required for imposition of major and minor penalties. The statutory penalties are classified as under:

### **Major penalties:**

- 1) Dismissal
- 2) Removal from service
- 3) Compulsory Retirement
- 4) Reduction to lower time-scale of pay grade, post or service

### **Minor penalties**

- 1) Withholding increments of pay
- 2) Reduction to a lower stage in the time scale for a period not exceeding 3 years without cumulative effect
- 3) Recovery from pay
- 4) Censure

15.2 Proceedings for imposition of a major penalty involves holding of oral inquiry if the employee has not admitted to the charges framed. It is expected that this classification is clearly incorporated in the discipline and appeal regulations of the insurance companies.

15.3 Having considered the investigation report of the preliminary inquiry, and if it involves officials of the level of Assistant Manager and above, the Disciplinary Authority is obliged to seek the advice of the Commission on further course of action.

Cases involving officials below the level of Assistant Managers are to be referred to the Commission if the preliminary inquiry shows that one official of the level of Assistant Manager is also involved in the case. While forwarding a case for the advice of the Commission, the following need to be sent.

- 1) The investigation report on the allegations that were inquired into.
- 2) The documents and records connected with the case.
- 3) A self-contained note clearly indicating the facts on which the Commission's advice is sought.
- 4) The disciplinary authority's own tentative recommendations about suitable action.
- 5) The bio-data of the officials concerned.

15.4 Since the CVO is also an expert on insurance, the above should invariably include their analysis and assessment of the facts of the case so that the commission can have the benefit of this expertise.

15.5 The action taken on the advice of the Commission for initiation of disciplinary proceedings should be reported to the Commission on issue of the charge-sheet.

15.6 Reconsideration of the Commission's Advice:

Having obtained the advice of the Commission, if the Disciplinary Authority does not propose to accept the Commission's advice, the case may be referred back to the Commission, with prior approval of the Chief Executive within two months for reconsideration.

16. PROCEDURE FOR IMPOSING MAJOR AND MINOR PENALTY:

16.1 ISSUE OF CHARGE - SHEET

16.1.1 Once the disciplinary authority decides to initiate major penalty proceedings against an employee, on the basis of the Commission's advice or otherwise, it should take immediate steps to issue a charge-sheet. A properly drafted charge-sheet is the sheet anchor of a disciplinary case, it should be drafted with utmost accuracy and precision based on the facts gathered during the investigation (or otherwise) and should specify the misconduct on the part of the employee.

16.1.2 The charge-sheet includes the memorandum, informing the concerned employee about initiation of proceedings and granting an opportunity to admit or deny the charge(s) within a period not exceeding 15 days. The memorandum is to be signed by the disciplinary authority himself. The memorandum should be supported by annexures, namely, Article(s) of charge, Statement of imputations of misconduct or misbehavior in support of each article of charge, List of documents relied upon and List of witnesses relied upon.

16.1.3 Special care has to be taken while drafting a charge-sheet. A charge of lack of devotion to duty or integrity or unbecoming conduct should be clearly spelt out and summarised in the Articles of charge. It should be borne in mind that ultimately the Inquiry Authority is required to give specific findings only on the Articles as they appear in the charge-sheet.

16.1.4 All relevant details supporting the charges should be separately indicated in the statement of imputation.

16.1.5 The concerned employee is not expected to furnish a detailed reply to the charge sheet. He is required only to state his defence and admit or deny the charge(s). Therefore, there is no provision for making the relevant documents available 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, may, as far as possible, be supplied to the employee along with the charge-sheet. If the documents are bulky and copies cannot be given, an opportunity may be given to inspect those documents to enable the submission of reply within 15 days.

## 16.2 DEFENCE STATEMENT

### 16.2.1 ADMISSION OF CHARGE

If the charged employee admits unconditionally and unambiguously to all the charges, the disciplinary authority shall record its finding on each charge. Where it is obligatory to obtain the advice of the Commission, the case may be referred to the Commission, along with the comments of the disciplinary authority, for second stage advice. In cases where advice of the Commission is not required to be sought, the disciplinary authority should proceed to pass a self-contained and reasoned speaking order imposing a commensurate penalty; the order should define the scope of the penalty to be imposed in accordance with the relevant rules in clear terms.

### 16.2.2 ACCEPTING DEFENCE STATEMENT OR MODIFYING CHARGES.

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

### 16.2.3 CHARGES NOT ADMITTED/ DEFENCE STATEMENT NOT SUBMITTED

If the disciplinary authority finds that any or all the charges have not been admitted by the charged employee, or the written statement of defence has not been submitted by the specified date, it may cause an inquiry to be made into the charges framed against the employee. The procedure for conducting the inquiry is indicated in the succeeding paragraphs.

## 16.3 PROCEDURE FOR INQUIRY

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

## 16.4 APPOINTMENT OF INQUIRING AUTHORITY / OFFICER

16.4.1 Under the disciplinary rules, the disciplinary authority may itself inquire into, or appoint an inquiring authority/officer (IO) to inquire into such of those charges against the charged employee/officer (CO) that have been admitted to in the reply to the charge-sheet. It should, however, be ensured that the officer so appointed is not

considered to be biased against the charged employee and had no occasion to express an opinion at any stage of the process upto issue of the charge-sheet. The inquiring authority should also be directed to ensure submission of the report mandatorily within a period of six months of his appointment. This time limit should be invariably adhered to.

16.4.2 Generally, the Commission nominates one of the Commissioners for Departmental Inquiries (CDI), borne on its strength, for appointment as inquiring authority in proceedings against such employees in whose cases the Commission has advised initiation of major penalty proceedings. However, because of limited resources, the Commission cannot nominate a CDI in each and every case in which it tenders advice. Therefore, the Commission may advise that officials of the company may be required to conduct the inquiry. Because of similarity in rules, procedures and norms, insurance companies in the public sector will, in future have a common pool of inquiry officers, whose details will be maintained in the Commission. The rationale behind the proposed pool is to ensure absence of bias and expediting the conduct of the inquiry proceedings. Wherever applicable, the Commission would also nominate the inquiring authority while tendering its first stage advice.

16.4.3 Those organisations which have a large number of inquiries pending may form a panel of full-time inquiry officers to complete inquiries within the specified time limit. The disciplinary authority may also consider appointing retired officers, on payment of honorarium on case to case basis, to carry out inquiries from a duly approved panel if permitted under the extant rules. Adherence to the stipulated time-limit cannot be overemphasized and the appointment of full-time inquiry officers as well as retired officers to conduct inquiries have that objective.

## 16.5 APPOINTMENT OF PRESENTING OFFICER

The disciplinary authority should also appoint an officer, designated as Presenting Officer (PO), to present the case on its behalf before the inquiring authority. It is now not necessary to appoint a CBI Officer to act as PO in the cases investigated by them.

## 16.6 DEFENCE ASSISTANT

The charged employee has the right to take assistance of an employee, generally termed as defence assistant (DA), to help in the presentation of the case before the inquiring authority. Most rules provide that the CO may not engage a legal practitioner to present the case of the defence unless the PO appointed by the disciplinary authority is also a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits. It is, however, clarified that if the case is being presented, on behalf of the disciplinary authority, by a "Prosecuting Officer" of the CBI or by the Law Officer of the Department, such as a Legal Adviser etc., that would evidently be good and sufficient reason for the disciplinary authority to exercise its discretion to allow defence by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held as arbitrary and prejudicial to the defence of the delinquent employee.

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



## 16.7 PRELIMINARY HEARING

16.7.1 On the date fixed for the purpose, the inquiring authority (IO) shall offer an opportunity to the CO to admit to or to deny the charges framed. If the CO pleads guilty to any of the articles of charge, the IO will record the plea, sign the record and obtain the signature of the CO thereon. The IO will then return a finding of guilt in respect of those articles of charge admitted to by the delinquent employee. In respect of other charges, the IO would ask the PO to prove the articles of charge and adjourn the case to a date within 30 days of the preliminary hearing.

16.7.2 While adjourning the case, the IO would also record the order permitting the CO to inspect the listed documents. The order should also direct the CO to submit a list of witnesses to be examined and the list of additional documents required for the defence. For reasons to be recorded by him in writing, the IO may refuse to requisition such documents, or allow such witnesses, as are in his opinion, not relevant to the case. On the other hand, where IO is satisfied that the documents required by the defence are relevant, these may be requisitioned from the custodian, through the PO or otherwise, by a specified date. Denial of access to documents, which have a relevance to the case, may amount to violation of reasonable opportunity. Therefore, the power to deny access on grounds of public interest, should be exercised only for reasonable and sufficient grounds to be recorded in writing.

## 16.8 REGULAR HEARINGS

### 16.8.1 General:

Once the preliminaries are over, the IO is to fix the date and venue of regular hearing. As a general rule, the case should be heard on a day to day basis without granting any adjournments, save in unavoidable and exceptional circumstances. Admitted documents may be taken on record and facts in the charge-sheet are to be deemed as admitted unless specifically denied. The guiding principle in an inquiry is that the CO has a right to admit to the charges at any stage and that allegations are to be construed as denied unless specifically admitted.

### 16.8.2 Presentation of Prosecution case:

In the first instance, the PO would be asked to present the case of the disciplinary authority. The IO does not have the discretion to deny admission of listed documents if the CO has had an opportunity to inspect them in original. Should the veracity of the documents be disputed by the defence, the PO should have them testified to by introduction through witnesses. In the examination-in-chief of the witnesses listed by the disciplinary authority, the case should be set forth in a logical manner by establishing facts detailed in the charge-sheet, bringing out norms or rules and the deviations of these norms or rules. The IO should ensure that the witness understands the question properly and should protect the witness from any unfair treatment or harassment. The IO should also disallow leading questions in the examination-in-chief or if they are irrelevant. It would be appropriate for the IO to decide on such questions only if an objection is raised. As far as possible, all evidence should be recorded in narrative form. Previous statements admitted by the witness should also be taken on record. After the examination of a witness is over, the witness may be cross-examined by the CO or the defence assistant to bring out further facts or to rectify discrepancies or to discount the reliability of the witness. After the cross-examination, the PO may re-examine the witness on any point which had been introduced in the cross-examination but not on any new matter unless

specifically allowed by the IO. In the latter case, the CO would have a right to further cross-examine the witness. The IO may also put such questions to a witness, as he thinks fit, at any time during the inquiry, to bring out the truth and for the emergence of a fair and clear understanding of the case. With this end in view, both sides may be allowed to cross-examine such a witness on any response to questions of the IO.

#### 16.8.3 Hostile Witness:

If during the examination-in-chief of a prosecution witness, the PO feels that the witness is hostile or that his testimony is likely to affect the prosecution case or that the witness is knowingly not telling the truth, permission of the IO may be sought to cross-examine that witness who is declared as hostile. In such situations, the PO may, with the prior permission of the IO also put leading questions to the witness so as to bring out the truth.

#### 16.8.4 Admission of Guilt

The CO may decide to plead guilty to any of the charges at any stage of the inquiry. If that be the case, the IO may accept the plea and record the findings. The proceedings should nonetheless, be carried to its logical conclusion if, in the opinion of the IO, the admission is conditional or relates only to a part of the charges.

#### 16.8.5 Introduction of additional evidence

Before the close of the case on behalf of the disciplinary authority, the IO may, in his discretion, allow the PO to produce evidence not included in the list given to the CO, or may call for new evidence, or recall and re-examine any witness. In such situations, the CO would be entitled to have a copy of such evidence, an adjournment of at least three clear days, and an opportunity for inspecting the relevant documents. The IO, however, should not allow such evidence for filling up any gap in the evidence on record but only when there has been an inherent lacuna or defect in the evidence originally produced.

#### 16.8.6 Defence Statement:

After closure of the case on behalf of the disciplinary authority, the IO shall ask the CO to state the defence. If the C.O. submits the defence statement in writing, every page of it should be signed. If the statement is made orally, the IO should record the same and get it signed by the CO. A copy of the statement of defence should be given to the PO.

#### 16.8.7 Presentation of Defence Case:

The CO would, thereafter, be asked to produce evidence in support of the defence. The CO or the Defence Assistant would proceed to examine the defence witnesses, who will be cross-examined by the PO, and re-examined by the CO as detailed in the procedure relating to examination of witnesses on behalf of the disciplinary authority.

#### 16.8.8 CO Appearing as Witness:

The CO has the option to appear as a defence witness.

#### 16.8.9 Mandatory Questions to CO:

If the CO has not exercised the option to appear as a witness, the CO shall be examined generally by the IO to afford an opportunity to explain the circumstances appearing against the CO. The IO may conduct this general examination even if the CO has appeared as a witness.

#### 16.8.10 Written Briefs by PO/CO

After the completion of the production of evidence on behalf of both sides, the IO may hear the PO and the CO, or permit them to file written briefs of their respective case, if they so desire. If they are permitted to submit written briefs, the PO may submit the brief within a week of the last hearing of the case and also certify that a copy of the brief has been given to the CO. The CO may thereafter, furnish the defence brief within a further period of one week.

#### 16.8.11 Daily Order Sheets

The IO should maintain a daily order sheet to record in brief the business transacted on each day of the hearing. Requests and representations made by either side should also be dealt with and disposed of in this sheet. Copies of the recorded order sheet will be given to the PO and CO with their signatures thereon, if they are present. If they are not present, these will be sent by post.

#### 16.9 Ex-parte Proceedings

If the CO does not submit a written statement of defence within the specified time, or does not appear before the IO on the dates fixed for the inquiry or refuses to comply with the provisions of the rules, the IO may hold the inquiry *ex-parte*. In that event the copies of the depositions, daily order sheets etc. may be sent to him at his last known address. A copy of the written brief submitted by the PO may also be sent to him so as to afford a reasonable opportunity to the CO to submit a defence brief. The CO has the option to participate in or join the inquiry at any stage.

#### 16.10 Alleging Bias against IO

If the CO alleges bias against the IO, the IO should keep the proceedings in abeyance and refer the matter to the disciplinary authority. The inquiry should be resumed only after the disciplinary authority has advised that matter be proceeded with.

#### 16.11 Change of IO

Whenever for any reason the IO is changed and a new IO is appointed to continue the inquiry, the evidence recorded or partly recorded by the predecessor may be taken into account by the successor IO. If the successor IO is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, such witnesses may be recalled, examined, re-examined and cross-examined.

#### 16.12 SUBMISSION OF THE INQUIRY REPORT

16.12.1 After considering the oral and documentary evidence adduced during the inquiry, the IO may draw inferences, as a rational and prudent person, and record the findings on each charge. Only such material as has been brought on record

during the inquiry thus granting the CO an opportunity to refute should form the basis of the inferences. It has been observed that, generally, the CO raises a plea of absence of *mala fide*. It is clarified that the PO is not expected to prove *mala fide* in cases where the act itself indicates a dishonest motive e.g. a person traveling without ticket in a train or a person who has been unable to explain his assets satisfactorily. It is clarified that *mala fide* is not relevant in proving a misconduct if it does not form an essential ingredient of the charge itself. Further, every act of a public servant is expected to be honest, *bona fide* and reasonable. An act is not bona fide if it is committed without due care and attention. While assessing the evidence, the IO should also bear in mind that the proceedings are civil rather than criminal or quasi-criminal in nature. Accordingly, the standard of proof required in a disciplinary inquiry is that of “preponderance of probability” and not “proof beyond reasonable doubt”. The IO should confine the conclusion only upto the stage of recording whether the charge is proved, partially proved or not proved. The conclusion should be derived from the facts and circumstances of the case and not on any extenuating circumstances adduced by the defence. The IO should not recommend the punishment to be imposed on the CO. The IO is also not required to comment on the quality of drafting of the charge-sheet, the conduct of the disciplinary authority in framing the charges or of the PO in arguing the same. The IO becomes *functus officio* on submission of the inquiry report; no changes can be made thereafter nor can any clarifications be called for.

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

16.12.3 The report of the IO should contain:

- 1) A reference to the order of his appointment as IO.
- 2) Articles of charge in brief, indicating those which are dropped, or admitted, or have been inquired into; and
- 3) For each charge inquired into
- 4) The case in support of the charge;
- 5) The case of defence;
- 6) Assessment of evidence; and
- 7) The finding as proved, partly proved or not proved;

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

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

## 17. ACTION ON INQUIRY REPORT.

17.1 The inquiry report is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the CO. The disciplinary authority has the inherent powers to disagree with the findings of the IO and come to his own conclusions on the basis of its own assessment of the evidence recorded in the inquiry.

17.2 In view of the judgement of the Supreme Court in *re Ramzan Khan*, if the disciplinary authority has entrusted the inquiry to an authority, and if the latter has held all or any of the charges against the CO as proved, the disciplinary authority should ask the CO for his representation, if any, within 15 days. In case the IO has held any or all the charges against the CO as “not proved”, the disciplinary authority should consider the inquiry report in the first instance. If the disciplinary authority disagrees with the inquiry report, the reasons for disagreement should be communicated along with a copy of the inquiry report to the CO while asking for his representation. The disciplinary authority may take further action on the inquiry report on consideration of the CO’s representation or on the failure of the CO to submit the same within the specified time.

17.3 The disciplinary authority, in exercise of its quasi-judicial powers, may issue an order imposing a major or a minor penalty on the CO; the disciplinary authority may exonerate the CO of the charges, if in its opinion, none of the charges have been proved or if the charges proved are non-actionable. The case may be remitted for further inquiry if there have been grave lacunae or procedural defects which vitiate the inquiry. The fact that the inquiry has gone in favour of the CO or the evidence led in the inquiry has gaps should not be a reason for remitting the case for further inquiry (*Dwarka Chand Vs State of Rajasthan – AIR 1959 Raj. 38*). If such be the case, the disciplinary authority may exercise the option to disagree with the inquiry report. The final order passed by the disciplinary authority should be a well-reasoned speaking order.

17.4 In cases where the disciplinary authority is obliged to seek the advice of the Commission, a self-contained note, along with the following documents, should be forwarded to the Commission:

- a. The inquiry report and the connected records;
- b. Tentative findings of the disciplinary authority on each article of charge;
- c. The representation of the CO on the inquiry report; and
- d. Tentative conclusions of the disciplinary authority and CVO.

17.5 Wherever the inquiry proceedings have been delayed, the CVO shall specifically comment on the delay fixing accountability for the delay and the action taken/proposed against those responsible for the same.

17.6 While imposing a penalty on the officer, the disciplinary authority should ensure that the penalty imposed is commensurate with the gravity of the misconduct proved against the CO. The following factors may be borne in mind while deciding the quantum of penalty:

- a. The extenuating circumstances, as they emerge from the inquiry;
- b. The track record of the charged officer;
- c. That the penalty imposed is not to be academic or ineffective; for example, there is no point in imposing a penalty of withholding of an increment, if the CO has already been drawing pay at the maximum of the pay scale.

Similarly, there is no point in imposing a penalty of withholding of promotion for a specified period if the officer is not due for promotion.

#### 18. PROCEDURE FOR IMPOSING MINOR PENALTIES

18.1 Compared to the procedure for imposing a major penalty, the procedure for imposing a minor penalty is much simpler. For the imposition of the latter, the disciplinary authority is only required to serve a Memorandum on the concerned employee, enclosing therewith a statement of imputations of misconduct or misbehaviour and asking for a reply within a specified period, generally 10 days. On receipt of the written statement of defence, if the disciplinary authority is satisfied that the misconduct imputed to the CO has not been established, the charges may be dropped by issue of a written order. On the other hand, if the disciplinary authority considers the CO guilty of the misconduct in the charge-sheet, a commensurate minor penalty may be imposed. The disciplinary authority may, in its discretion, also decide to conduct an inquiry following the same procedure as stipulated for the imposition of a major penalty, if in its opinion, holding of an inquiry is necessary to come to a definite conclusion about the guilt or innocence of the CO.

18.2 In cases, where minor penalty proceedings were instituted against an employee on the advice of the Commission, the Commission need not be consulted at the second stage if the disciplinary authority, after considering the defence statement, proposes to impose a minor penalty.

#### 19. APPEAL AND REVIEW

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

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

#### 20. DIFFERENCE OF OPINION BETWEEN THE CVO AND THE CMD

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

21. GRANT OF IMMUNITY TO 'APPROVERS' IN DEPARTMENTAL INQUIRIES:

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

21.2 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 member of the public and further that such statement is free from malice, the CVO may send his recommendation to the CVC regarding grant of immunity/leniency to such officer from departmental action or punishment. The Commission would consider the CVO's recommendation and advise that authority regarding the further course of action;

21.3 In cases pertaining to officials against whom the Commission's advice is not necessary, the recommendation for grant of immunity/leniency may be made to the CVO who would consider and advise the disciplinary authority regarding the further course of action. If there is a difference of opinion between the CVO and the disciplinary authority, the CVO would refer the matter to the Commission for advice.

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

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

| S. No | State of Investigation or Inquiry   | Time Limit  |
|-------|---|---|
| 1     | Decision as to whether the complaint involves a vigilance angle.  | One month of receipt of the complaint.                        |
| 2     | Submission of Preliminary investigation report as per para 7 above.   | One month.  |
| 3     | Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action. | One month of receipt of the complaint.                        |
| 4     | Conducting investigation and submission of report.  | Three months.   |
| 5     | Department's comments on the CBI reports in cases requiring Commission's advice.  | One month from the date of receipt of CBI's report by the DA. |
| 6     | Referring departmental investigation reports to the Commission for advice.  | One month from the date of receipt of investigation report.   |
| 7     | Reconsideration of the Commission's advice, if required.  | One month for the date of receipt of Commission's advice.     |

|     |  |   |
|-----|--|---|
| 8   | Issue of charge-sheet, if required.  | (i) one month from the date of Commission's advice.<br>(ii) Two months from the date of receipt of investigation report.  |
| 9   | Time for submission of defence statement.  | Ordinarily ten days.  |
| 10  | Consideration of defence statement.  | 15 (fifteen) days.  |
| 11  | Issue of final orders in minor penalty cases.  | Two months from the receipt of defence statement.   |
| 12  | Appointment of IO/PO in major penalty cases.   | Immediately after receipt and consideration of defence statement.   |
| 13  | Conducting departmental inquiry and submission of report.  | Six months from the date of appointment of IO/ PO.  |
| 14  | 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.<br>(ii) 15 days is all charges held as not proved. Reasons for disagreement with IO's findings to be communicated. |
| 15. | Consideration of IO's representation and forwarding IO's report to the Commission for second stage advice. | One month from the date of receipt of representation.   |
| 16. | Issuance of orders on the Inquiry report.  | (i) one month from the date of Commission's advice.<br>(ii) Two months from the date of receipt of IO's report if Commission's advice was not required.   |

## 23. INSTITUTIONAL MEETINGS:

The CVC would conduct quarterly meetings with the CVO of the Insurance Division, the CVO of the Insurance Companies, and a representative each of the IRDA and the CBI with a view to sharing information and discussing matters of common interest.

## 24. REPORTING AND CONFIRMATION.

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



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

25. PROPER IMPLEMENTING OF INSTRUCTIONS IN THIS CHAPTER:

The above instructions should be brought to the notice of all Officers and Staff. CEOs of Public Sector Insurance Companies should also issue supplementary instructions to take suitable steps for simplifying procedures, and reducing undue discretion in issuing/ settling of policies, and to avoid undue delays in issue / settling of policies by laying down and enforcing **pragmatic feasible timeframe for the same**. CEOs should also monitor and revamp public grievance redressal machinery at various levels for ensuring that customers get honest, prompt and courteous service at all times and to ensure that any deviations from the expected standards of service are detected and remedied in time.