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VIGILANCE MANUAL

VOLUME II

PART II

CENTRAL VIGILANCE COMMISSION

CONFIDENTIAL

C. C. D. A's Office

VIGILANCE MANUAL

VOLUME II

PART II

(THIRD EDITION)

CENTRAL VIGILANCE COMMISSION

First Edition—1968

Second Edition—1975

FOREWORD

The Central Vigilance Commission had initiated the publication of a comprehensive Vigilance Manual in two Volumes in 1968 for the guidance of officers dealing with disciplinary cases. Volume I of the Vigilance Manual was revised and its second and third editions were published in 1971 and 1974 respectively. The fourth edition corrected upto Dec 1982 is under print.

Volume II of the Manual is published in two parts Part I containing extracts from relevant laws, regulations, etc. and the prescribed Forms and Part II containing orders/circulars etc. issued by the Ministry of Home Affairs in the Department of Personnel and Administrative Reforms, the Central Vigilance Commission, the Ministry of Finance and other authorities. The second edition of this Volume (Parts I and II) was published in 1975. Since then some of the rules etc. have undergone amendments. A large number of orders/circulars have also been issued by the Central Vigilance Commission and the Department of Personnel and Administrative Reforms, necessitating revision of both parts of Volume II, and publication of their third edition. Opportunity has also been taken to indicate the previous reference and later reference in the margin against each communication, so that the previous and later communications are also kept in view.

It is hoped that the revised edition will prove useful as a ready reference book in regard to disciplinary matters.

As the publication contains documents of a confidential nature, it has been classified as 'CONFIDENTIAL'. It need hardly be emphasized that the security classification given thereto should always be kept in view and it should be ensured that it does not fall into unauthorised hands.

The Commission will be grateful if any inadvertent omissions or errors which might have crept in are brought to their notice from time to time.

NEW DELHI
31*st December*, 1982.

R. P. KHANNA
Central Vigilance Commissioner

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Copy of Ministry of Home Affairs O.M. No. 25/70/49-Ests., dated the 26th December, 1949 to all Ministries etc. etc.

[B (8)]

Attention is invited to rules 55 and 55A of the Civil Services (Classification, Control and Appeal) Rules and section 240(3) of the Government of India Act 1935 (of also Article 311 of the new Constitution) which provide that the procedure thereunder need not be followed in cases where a departmental penalty is to be imposed on a Government servant on the basis of facts which have led to his conviction in a criminal court. Dismissal etc. in such cases is not to be automatic each case should be examined on its merits and orders imposing the appropriate penalty passed only where the charges against the Government servant on which his conviction is based show that he was guilty of moral turpitude or of grave misconduct which is likely to render his further retention in service undesirable or contrary to public interest.

2. In order that the departmental authorities of a Government servant who has been convicted by a court of law may be in a position to consider his case and pass suitable orders thereon, every Government servant is ordinarily expected to inform his departmental superiors of such conviction, whether the offence is of a serious nature or is purely technical. Since, however, there is no specific requirement at present to do so, cases frequently occur in which Government servants concerned omit to inform their official superiors of the fact of their conviction which comes to light later from other sources. In these circumstances it has been decided, and it is hereby made clear, that it shall thereafter be the duty of a Government servant who may be convicted in a criminal court to inform his official superiors of the fact of his conviction and the circumstances connected therewith as soon as it is possible for him to do so. Failure on the part of any Government servant so to inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the penalty called for on the basis of the offence on which his conviction was based.

3. It is requested that the position as in para 2 above may kindly be caused to be explained to all Government servants with whom the Ministry of Finance etc. may be concerned.

(2B)

Copy of O.M. No. 39/40/52-Ests., dated the 4th October, 1952 from Government of India Ministry of Home Affairs to All the Ministries of the Government of India, etc. etc.

[B (11)]

There have been repeated references in Parliament and in Parliamentary committees to the delays in the disposal of departmental proceedings against delinquent Government Servants, and to cases in which, on technical and procedural grounds, the accused persons ultimately escape the punishments they deserve. The general impressions that the prescribed procedure is too elaborate and requires to be replaced by something more simple and summary.

2. After careful consideration the Ministry of Home Affairs have come to the conclusion that this impression is not wholly justified. The procedure prescribed in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules is applicable only to cases in which the charges are so serious as to call for one of the major punishments, *i.e.* Dismissal, Removal, or Reduction in Rank etc. (A more a summary procedure is already available for less serious cases). The provisions of Rule 55 are merely designed to ensure compliance with a salutory principle of justice and public policy which has also been incorporated in article 311 of the Constitution of India, *viz.* that no man should be condemned and punished without a reasonable opportunity to defend himself. The prescribed procedure therefore requires that the accused officer should be told in the form of written charges exactly what he is alleged to have done and on what evidence oral or documentary the allegations are based; that he should have an opportunity to inspect the documentary evidence, to test the oral evidence by cross examination and to furnish such evidence as he may wish to adduce in his own defence. If, as a result of the enquiry, it is decided that the officer should be dismissed, removed or reduced in rank, he has to be given a further opportunity to show cause, if any, against the actual punishment proposed. Anything less than this would amount to a denial of the 'reasonable opportunity' which is guaranteed by article 311.

3. There is, however, nothing in these minimum requirements which must necessarily lead to unduly protracted proceedings or to a failure to secure just punishment to the guilty. The officer conducting a departmental inquiry has to hold the balance even

between the interests of the State and the avoidance of injustice to the accused. He is free to take a responsible, reasonable and prudent view of the facts and circumstances of the case and is not bound by the rigid limitations regarding the admissibility of evidence and the degree of proof applicable to prosecutions before Criminal Courts. Provided the inquiry officer gives the necessary time and effort, confines his attention to the main points at issue and firmly resists any attempt by the accused officer to introduce irrelevancies or to adopt deliberate dilatory tactics—there is no reason why satisfactory expedition in disposal should not be achieved in all cases without departing from the prescribed procedure.

4. The various factors which may contribute to undue delays and faulty disposal are:—

(i) Officers conducting the departmental enquiries may be preoccupied with other duties that they can only spare a few hours at a time at long intervals for the enquiry itself.

(ii) Unfamiliarity with the procedure or inadequate appreciation of the difference between a departmental enquiry and a trial in a Criminal Court, may lead to over-elaboration, or lack of firmness in dealing with dilatory tactics.

(iii) Avoidable delay may some times occur at the stage when the enquiry officer has submitted his report and the appropriate authorities have to make up their minds whether the findings are to be accepted and if so what the punishments should be.

(iv) Where, under the rules, consultation with the Union Public Service Commission is necessary some undue delay may occur in making the reference to the Commission, and in the consideration of the case by that body.

5. As regards the factors mentioned in (i) and (ii) above the Ministry of Home Affairs have considered the feasibility of setting up separate adminstrative Tribunals for enquiring into the more important departmental proceedings. Although such bodies have worked satisfactorily in the States of Uttar Pradesh and Madras, it is felt that Central Government's machinery is so vast and so widely scattered that a similar experiment will hardly

justify the expenditure incurred. In cases of extreme complexity or importance it will always be open to Government to set up special committees of enquiry or to have recourse to the Public Servants Enquiries Act, 1850. For all other departmental enquiries the delays caused by excessive preoccupation or unfamiliarity with the procedure could be easily avoided by adopting the following measures:—

(i) In each Ministry or Department a specified officer or officers of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental enquiries arising within that Ministry/Department.

(ii) As soon as occasion arises for taking up such an enquiry the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiry and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officers.

(iii) The nominated officers should familiarize themselves with the rules and essential procedural requirements and appreciate the difference between Departmental Inquiries and Trials in the Criminal Courts. The maintenance of close personal contacts with the Ministry of Home Affairs will enable them quickly to rsolve any doubts or difficulties which may arise.

6. As regards the causes of delay mentioned in (iii) and (iv) of para 4, much improvement will be effected if, (a) it is impressed upon all concerned that both public interest as well as humanitarian considerations demand, that no avoidable delay should occur in the disposal of disciplinary cases; and (b) any failure to give such cases due priority is itself regarded as a dereliction of duty and suitably dealt with.

7. As to the possibility of delay occurring in the consideration of a case and tendering of their advice by the Union Public Service Commission the Ministry of Home Affairs are in correspondence with the Commission and they have every hope that satisfactory arrangements will be made to secure all possible expedition on the part of the Commission.

8. The Ministry of Finance/etc., are accordingly requested to take immediate action on the instructions contained in paras 5 and 6 above. The names of the officer or officers nominated in

term of para 5 may kindly be communicated to this Ministry by the 31st October, 1952.

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(3)

Ministry of Home Affairs O.M. No. 39/19/51-Ests., dated the 8th October, 1952

(Cancelled vide M.H.A. O.M. No. 39/19/63-Ests.(A), dt, 16-12-64)

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(4)

Ministry of Home Affairs O.M. No. 39/46/53-Ests., dated the 24th June, 1953

It has already been laid down that as soon as cases of loss of Government money due to fraud, embezzlement, etc., come to notice, prompt action should be taken to investigate and fix the responsibility both direct and indirect, for the loss on the persons involved and to decide as to whom among them should be prosecuted, or in whose case departmental proceedings only would suffice or are possible. It has also been laid down that irrespective of the decision to prosecute all or some of the delinquents, departmental proceedings against all of them should be instituted without undue delay and that such proceedings should be carried, as far as possible, short of the stage of recording of a finding and a sentence, before the case against those whom it is decided to prosecute, is put in court. In the case of those who are prosecuted, departmental proceedings cannot continue side by side with court proceedings and should be suspended as soon as the latter proceedings begin. They should be formally resumed and concluded or dropped according to the merits of the case after the decision of the court is available.

In the case, however, of subsidiary offenders, who are not to be prosecuted, the existing instructions are that the departmental proceedings should be conducted on the lines mentioned in the preceding para as in the case of those who are to be prosecuted. Some of the reasons why it may not be found advisable and practicable to continue the departmental proceedings against subsidiary offenders while the court case against the principal offenders is in progress, are as follows:—

(i) Most of the evidence in such cases is documentary. As soon as criminal proceedings begin in a case, the

documents usually go to the court as exhibits and are not available until the case is decided.

(ii) It may not be possible to take a final decision on the charges against the subsidiary offenders until the courts findings against the principal offenders are available.

(iii) The possibility that departmental proceedings against subsidiary offenders might be regarded as pre-judging the issue in the case of principal offenders in the court and being construed as a contempt of court.

(iv) It may happen that the departmental penalties inflicted on the subsidiary offenders, if passed before the court's decision becomes available, may not be co-related to the findings of the court and the sentences imposed by it on the principal offenders.

While the foregoing reasons may weigh in favour of suspending departmental proceedings against subsidiary offenders during the pendency of the court case aginst the principal offenders, in practice it has been found that by the time the court cases are decided, it becomes too late to take departmental proceedings against subsidiary offenders or to bring such proceedings to an effective conclusion. It is, therefore, highly undersirable to postpone *sine-die* the departmental proceedings against the subsidiary offenders. For these reasons, it is necessary to consider the cases where the fact of a fraud, embazzlement, defalcation, etc., is not in reasonable doubt, the only point in dispute being the guilt of a person or persons who are accused of major offences under trial in court, whether it is not possible immediately to produce adequate evidence against other offenders' charges against whom are of a minor nature, for example, negligence in the performance of their duties, non-observance or non-enforcement of rules or instructions on financial procedure, etc. It is difficult to lay down a hard and fast rule, but careful examination would probably reveal that in some cases, it might well be possible to take suitable deaprtmental action against such offenders without assuming or even referring to the guilt of the "principal offender", and without pre-judging the issues before the court, and thus steer clear of the contempt of court. For this purpose, the authorities may find that the evidence already available is sufficient, and in any case they may, retain copies (photostat copies, if necessary) of such documents as may have to be put in court. If action is taken accordingly and it is found later that there is a divergence in the penalties imposed by the court on the principal accused and those

imposed by the departmental authorities on the subsidiary offenders, further departmental action can be taken to suitably revise the penalties already imposed.

It is realised that in actual practice it may be difficult to draw the line at which stage contempt of court begins. If in spite of reasonable precautions, as explained in the preceding paragraph, such departmental proceedings are in any case called into question as running into the area of contempt of court, the departmental authorities should be able, in their defence and in support of their *bona fides*, to plead their duty as enjoined in the instructions, in particular, the observations made:

(i) in para 2 of the instructions issued in the Office Memorandum, dated the 15th November, 1935, *viz.*, that "The Public Accounts Committee in their report on the accounts of 1933-34 have agreed with the Auditor-General that departmental enquiries should not necessarily be delayed pending decision of criminal cases, as at a later stage the evidence might disappear and the departmental enquiry could not be brought to any conclusion at all."

(ii) in para 20 of the Report of the Public Accounts Committee on the Appropriation accounts for the year 1948-49, *viz.*, that "Ministries should ensure that action against the delinquent officials is taken promptly and the Ministry of Finance should see that the Ministries initiate necessary proceedings in each and every case in time. Remedial measures should also be devised against any defects that may have come to notice of that Ministry in the course of investigations."

Experience has shown that the real difficulty in some cases is not so much that arising out of the risk of contempt of court, as that resulting from a tendency for the head of the office or department to regard the institution of criminal proceedings as absolving him from the labourious task of conducting a departmental enquiry, or to carry it to as far a stage as possible. The administrative authority concerned should decide on the basis of the facts and records of each case how far and in what cases he can proceed departmentally at once against the subsidiary offenders. Care should also be taken to ensure as far as possible that the other offenders are not transferred to far places, removed from the scene of action, or permitted to retire in the meantime. If in any case it is not found feasible to proceed departmentally at once, a request should

be made to the Court for the expeditious disposal of the cases pending with them.

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(5)

Ministry of Home Affairs Notification No. 40/5/50-Ests. (B), dated the 8th September, 1954

[B(28)]

The following instructions for the submission, receipt and transmission of petitions addressed to the President in respect of matters arising out of civil employment under the Government of India or the termination of such employment, are published for general information. They supersede the instructions published with the notification of the Government of India, in the late Home Department, No. 106/38-Ests., dated the 24th August, 1939.

PART I—PRELIMINARY

Definitions

1. In these instructions—

(1) "petition" includes a memorial, representation, letter or an application of the nature of a petition.

(2) "prescribed authority" means the appropriate authority specified in the Schedule to these instructions.

Scope of instructions

2. (1) Save as hereinafter provided, these instructions shall apply:—

(i) so far as may be, to all petitions addressed to the President by persons who are, or have been, in the civil employment of the Government of India other than persons who are or have been under the administrative control of the Railway Board, and persons who are governed by the All-India Services (Discipline and Appeal) Rules, 1954, in respect of matters arising out of such employment or in respect of the termination of such employment;

(ii) so far as they are not inconsistent with the conditions of the Indian Army, Naval, or Air Force Service, to petitions addressed to the President by members of the Armed Forces, who are or have been in civil employment of the Government of India, in respect of matters arising from such employment.

(2) These instructions shall not affect any rules or orders made by the President in respect of representations submitted by associations or unions of Government servants.

PART II—*Form and Manner of Submission of Petitions*

Form of petitions

3. (1) Every petition shall be legible and may preferably be either in typescript or in print.

(2) Every petition shall be authenticated by the signature of the petitioner and shall be submitted by him in his own behalf.

(3) Every petition and the documents accompanying it shall be in the language used for the official purposes of the Union.

Contents of petitions

4. Every petition shall—

(a) contain all material statements and arguments relied upon by the petitioner;

(b) be complete in itself and include a copy of the order complained against, as well as copies of orders, if any, passed by subordinate authorities;

(c) contain no disloyal, disrespectful or improper language; and

(d) end with a specific prayer.

Method of submission of petitions

5. (1) Every petition shall be submitted to the prescribed authority through the head of the office or department to which the petitioner belongs or belonged, and shall be accompanied by a letter requesting the prescribed authortiy to transmit it to the President.

(2) The head of the office or department, on receipt of the petition submitted through him in accordance with sub-instruction (1), shall forward the petition through the usual official channel, to the prescribed authority, together with a concise statement of the facts, material thereto and all relevant papers, and, unless there are special reasons to the contrary, an expression of his opinion thereon.

PART III—*Withholding of petitions by the prescribed authority*

Circumstances in which petitions may be withheld

6. The prescribed authority may, in its discretion, withhold a petition when—

(1) the petitioner has not complied with any of the provisions of Part II; or

(2) the petition is a representation against an order communicated to the petitioner more than six months before the submission of the petition, and no satisfactory explanation of the delay is given; or

(3) a previous petition from the petitioner on the same subject has been disposed of by the President and the petition, in the opinion of the prescribed authority, discloses no new facts or circumstances which afford grounds for a reconsideration of the matter; or

(4) the petition is a representation against a decision which is declared to be final by any law or statutory rule; or

(5) the petition is an application for an employment under the Government not made in pursuance of any rule or announcement calling for applications for such employment; or

(6) the petition relates to a subject on which the prescribed authority is competent to pass orders and no application for redress has been made by the petitioner to the prescribed authority; or

(7) the petition is a representation against the non-exercise in favour of the petitioner of a discretion vested in the prescribed authority; or

(8) the petition is a representation against the discharge or termination of service by a competent authority of the petitioner; having been—

(a) appointed on probation, during or at the end of such probation;

(b) appointed, otherwise than under contract, to hold a temporary appointment, on the expiration of the period of such appointment; or

(c) engaged under contract, in accordance with the terms of such contract;

(9) the petition is a representation against an order—

(a) from which the petitioner has already exercised, or has failed to exercise, a right of appeal available under the rules or orders or the contract regulating his conditions of service;

(b) passed by a competent authority in the exercise of appellate or revisional powers conferred by any rule, order or contract regarding his conditions of service; or

(10) the petition is a representation against an order of a competent authority refusing to grant or recommend—

(i) a special pension; or

(ii) any pecuniary or other concession to which the petitioner is not entitled under any rules or orders or contract regulating his conditions of service.

Petitioner to be informed when petition is withheld

7. The prescribed authority shall, when a petition is withheld under instruction 6, inform the petitioner of the withholding thereof and the reasons therefor.

List of petitions withheld

8. (i) If the prescribed authority is other than the Secretary to the Government of India in the appropriate Ministry or Department, it shall submit to such Secretary a quarterly return specifying particulars of all petitions withheld by it under instruction 6 and the reasons for withholding the same.

(ii) If the Secretary to the Government of India in the appropriate Ministry or Department is himself the prescribed authority, he shall prepare a quarterly return specifying particulars of petitions withheld by him under instruction 6 and the reasons for withholding the same.

(iii) The returns prepared under sub-instruction (i) and (ii) shall be dealt with in the manner provided in the rules made by the President for the transaction of the business of the Government of India.

(iv) If the President on a scrutiny of the said returns or otherwise so directs, any or all of the petitions specified in the return under sub-instruction (i) shall be transmitted by the prescribed authority to the Secretary concerned, or any or all of the petitions specified in the return under sub-instruction (ii) shall be taken into consideration.

PART IV—*Procedure in respect of petitions not withheld*

Procedure for transmission

9. If the prescribed authority is other than the Secretary to the Government of India in the appropriate Ministry or Department, it shall transmit to such Secretary petitions not withheld under instruction 6 and petitions called for under instruction 8 together with a complete statement of the facts, material thereto and all relevant papers, and, unless there are special reasons to the contrary, an expression of the opinion of the prescribed authority thereon.

Consideration of the petitions

10. Petitions received in his capacity as the prescribed authority by the Secretary to the Government of India in the appropriate Ministry or Department and not withheld by him under instruction 6, petitions taken into consideration under sub-instruction (iii) of instruction 8, and petitions transmitted to such Secretary under instruction 9 shall thereafter be dealt with in accordance with the provisions of the Rules made by the President for the transaction of the business of the Government of India.

Action to be taken after final orders are passed on petitions

11. The prescribed authority shall himself give effect, or ensure that effect is given by the competent authority, to such

orders as the President may pass on any petition and, if the prescribed authority is other than the Secretary to the Government of India in the appropriate Ministry or Department, submit to such Secretary within a period of three months of the receipt of the orders a report of the action taken.

THE SCHEDULE

[*See* Instruction 1(2)]

List of the authorities included in the term "prescribed authority".

In respect of persons who are or have been employed:—

(1) in Ministries or Departments of the Government of India, the Secretary of the Ministry or Department;

(2) in Attached Offices of the Government of India or in offices subordinate to such Attached Offices, or in offices not subordinate to an Attached Office, Heads of Departments who are directly under the Government of India;

(3) in connection with the affairs of a Part 'C' State, the Chief Commissioner or Lieutenant Governor, as the case may be.

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(6)

Decision taken on Ministry of Home Affairs F. No. 39/74/54-Ests(A)

Departmental action can be taken against Government servants who are guilty of misappropriating funds of, or are guilty of other irregularities amounting to serious misconduct in connection with, institutions like the Co-operative Societies, Institutes, Clubs and other similar bodies which are subsidised by Government and established and run by Government servants.

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(7)

Ministry of Home Affairs O.M. No. 7/2/50-Ests(A), dated 16th December, 1954

In this Ministry's (Ministry of Home Affairs) Office Memorandum No. 7/2/50-Ests, dated the 13th July, 1951, it was proposed to include "Fines" in the list of recognised departmental

penalties. Similar proposals had been considered several times before and dropped, but it was felt that in the present circumstances there might be advantages in a system of fines for certain types of misconduct. Some of the Ministries who were consulted on this occasion have agreed to the inclusion of fines in the list of Departmental penalties for Class IV employees, though not for others, but the proposal has not found favour with a number of larger employing Ministries. There is also a divergence of views among those in favour of the proposal as to whether the imposition of fines should be made on a summary basis or fairly elaborate safeguards should be provided against a too ready recourse to it.

The matter has been fully considered in this Ministry in the light of the views expressed. On a balance of the conflicting considerations which may be urged for and against the proposal, this Ministry has come to the conclusion that the introduction of the penalty of "Fines" will be undesirable. It has, therefore, been decided not to pursue the matter further.

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(8)

Ministry of Home Affairs Office Memorandum No. 39/59/54-Ests.(A) dated the 25th February, 1955

[B(2A)] [B(9)]

It has been decided and it is hereby laid down that it shall be the duty of a Government servant who may be arrested for any reason to intimate the fact of his arrest and the circumstances connected therewith to his official superiors promptly even though he might have subsequently been released on bail. On receipt of the information from the person concerned or from any other source the departmental authorities should decide whether the facts and circumstances leading to the arrest of the person call for his suspension. Failure on the part of any Government servant to so inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him.

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(9)

Ministry of Home Affairs Memorandum No. 39/59/54-Ests(A), dated 25th February, 1955

[B(8)]

State Governments have been requested to issue necessary instructions to the police authorities under their control to send prompt intimation of arrest/or and release on bail etc., of Central Government servants to the latter's official superiors as soon as possible after the arrest or release indicating also the circumstances of the arrest etc., to enable them to decide what action, if any, should be taken against such employees.

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(10)

Ministry of Home Affairs letter No. 47/4/55-Police (I), dated 15th July, 1955

[B(37)]

In continuation of this Ministry's circular letter No. 22/1/50-P.II., dated the 26th of May 1952, I am directed to say that the views expressed by State Governments have been carefully considered and after consultation with the Comptroller and Auditor-General of India, it has been decided that the existing procedure laid down in paragraphs 3 & 4 of the circular letter under reference should be modified to the extent indicated below:—

(a) In cases where the Investigating Officer considers that it is not possible to proceed with the investigation without securing the original documents which are in the possession of Audit Offices, the matter should be reported by him to the Inspector General, Special Police Establishment or his Inspector General of Police, as the case may be. The Inspector General, Special Police Establishment or the Inspector General of Police after carefully examining the request of the Investigating Officer and satisfying himself that there is sufficient justification for obtaining the original documents should refer the matter to the Accountant General concerned with the request that the required documents be handed over to the Investigating Officer in original. He should expressly mention that copies including photostat copies would not serve the purpose of the Investigating Officer. The Accountant General will then arrange for the required

documents being handed over to the police, as early as possible after retaining photostat copies.

(b) The responsibility for preparing photostat copies will be that of the Audit Offices. Photo-copying machines have been installed in the audit offices at Bombay, Madras, New Delhi and Calcutta and it is likely that some more offices will be provided with these machines in the future. In the case of audit offices where these facilities do not exist at present such offices will have the photostat copies prepared in one of the offices where a photo-copying machine has been installed.

(c) Where the State Government has under its direct control a Handwriting or a Finger-print Expert and the Police wish to utilise his services rather than refer the matter to the Government Examiner of Questioned Documents at Simla, there would be no objection to this course being followed. Where, however, the Handwriting or the Finger-print Expert is under the control of the Police, the existing procedure will continue. The existing procedure laid down for the transmission of documents by post to the Government Examiner of Questioned Documents at Simla will apply *mutatis mutandis* in cases where such documents are transmitted to the Handwriting or the Finger-print Expert working under the control of the State Government.

2. A copy of the instructions issued by the Comptroller and Auditor General to give effect to the modifications indicated in this letter is enclosed for information.

(10-A)

Ministry of Home Affairs O.M. No. 6/8/56-AVD, dated 7th March, 1956

As a result of the Supreme Court's decision that Magistrates should not be parties to or be asked to witness Police traps, it has become difficult for the Special Police Establishment to get suitable or reliable witness for traps laid by them. It has also been their experience that Government officials are not always willing to assist them in such cases. Government wish to impress upon all officers that successful investigation of cases of corruption is of the utmost importance. They, therefore, expect all Govern-

ment servants, particularly all gazetted officers to co-operate with the Special Police Establishment whenever they are approached by them to assist or witness a trap. The Special Police Establishment are also being instructed to show a copy of this Memorandum to any officer whom they approach for assistance in these matters.

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(11)

Decision taken on Ministry of Home Affairs file No. 7/9/56-Ests.(A)

[B(25)]

[B(2B)]

There is no objection to the charges being framed by the disciplinary authority that has, in the preliminary inquiry, expressed its views on the conduct of the Government servant concerned, provided that such authority does not itself hold the inquiry.

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(12)

Ministry of Home Affairs O.M. No. 39/5/56-Ests(A), dated 8th September, 1956

A question recently arose whether an authority competent to order the suspension of an official has the power to prescribe his headquarters during the period of suspension. The matter has been examined at length in this Ministry and the conclusions reached are stated in the following paragraph.

An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such, the headquarters of a Government servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to competent authority changing the headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of T.A. etc., or other complications.

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(13)

Ministry of Home Affairs O.M. No. 39/21/56-Ests(A), dated 13th December, 1956

[B(14)]

The Ministry of Home Affairs Office Memorandum No. 51/1/54-Ests., dated the 12th February, 1954, sought to clarify the distinction between 'warning' and 'censure'. The contents of the Office Memorandum did not, however, define certain aspects of the two actions in clear terms and have given rise to certain doubts and misapprehensions. The position has, therefore, been examined again and is re-stated in the following paragraphs in supersession of the Office Memorandum referred to above.

The foremost aspect to bear in mind is the fundamental and formal distinction between the two terms. An order of 'censure' is a *formal* and *public* 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. And nothing can amount to a "censure" unless it is intended to be such a formal punishment and imposed for "good and sufficient reasons" after following the prescribed procedure. A record of the punishment so imposed *is* kept on the Officer's confidential roll and the fact that he has been 'censured' will have its bearing on the assessment of his merit or suitability for promotion to higher posts.

There may be occasions, on the other hand, when a superior officer may find it necessary to criticise adversely the work of an officer working under him, (*e.g.*, point out negligence, carelessness, lack of thoroughness, delays, etc.) or he may call for an explanation for some act or omission and taking all circumstances 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 informal action, such as the communication of a written warning, admonition or reprimand. If the circumstances justify it, a mention may also be made of such a warning etc., in the officer's confidential roll, however, the mere fact that it is so mentioned in the character roll does not convert the warning etc., into a "censure". Although such comments, remarks, warning etc., also would have the effect of making it apparent or known *to the person concerned* that he has something blame-worthy and, to some extent, may also affect the assessment of his merit and suitability for promotion, they do

not amount to the imposition of the penalty of 'censure' because it was not intended that any *formal* punishment should be inflicted.

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(14)

Ministry of Home Affairs O.M. No. 15/10/57-V, dated 13th November, 1957

[B(19)]

[B(13)]

Administration of a "Warning" is not a recognised penalty under the Central Civil Services (Classification, Control and Appeal) Rules 1957. It is an administrative procedure by which a superior authority expresses his criticism and disapproval of the work of the person warned and is designed to point out any defects noticed with a view to enabling that person to make an effort to remedy it. The warning may be administered verbally or in writing and in the latter case a copy may or may not be placed on (or the circumstances referred to in) the person's Confidential report.

2. It would follow that any superior authority has the power to administer a warning to an official subordinate to it. It is, however, desirable that the authority administering the warning is not normally one lower than that which initiates the Confidential Report on the officials so warned and it is only fair that the person concerned should be given a chance to explain the reasons if any which led him to do the acts of omission or commission disapproved of. Reference is invited to the Ministry of Home Affairs Office Memorandum No. 39/21/56-Ests(A), dated the 13th December, 1956.

3. A warning is also administered after regular disciplinary proceedings under the Central Civil Services (Classification, Control and Appeal) Rules are carried through to their conclusion when the competent Disciplinary Authority comes to the conclusion that the conduct of the official is somewhat blame-worthy but not to an extent which calls for a formal penalty, even of 'Censure'. In such cases the warning should be administered on the orders of the competent Disciplinary Authority only and not by any authority inferior to it acting without such orders.

4. Warnings are also administered as a result of preliminary investigations/enquiries into allegations of irregularity initiated with a view to determine whether regular disciplinary proceedings under the Central Civil Services (Classification, Control and Appeal) Rules should be started against any person or persons. Such preliminary investigations etc., are ordered by Government, the Head of the Department or the competent Disciplinary Authority and are usually conducted by an officer nominated to do so who may be superior in rank to the person whose conduct is investigated. Nothwithstanding the fact that the inquiring officer is so superior, such investigations/enquiries should not be closed with the administration of a warning without the results of the enquiry being shown to the competent disciplinary authority or in cases where the enquiry was started at the instance of a higher authority or the Government, to that authority or Government as the case may be so that Government or that authority may be satisfied that the enquiry revealed no cause for regular disciplinary proceedings. Otherwise the purpose of the enquiry is defeated.

5. As there seems to be still some misapprehensions on these points this is circulated for the information of all concerned.

[Note: Para 3 above has been modified partially by the Order dt. 16-2-79 at B(104)]

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(15)

Decision taken on Ministry of Home Affairs File No. 7/15/58-Ests.(A)

Where the Government servant who has been served with a charge-sheet does not understand the English language, arrangement may be made by the Administration to explain to him the contents of the charge-sheet and to accept his explanation in the language with which he is most familiar.

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(16)

Ministry of Home Affairs O.M. No. 39/6/57-Ests.(A), dated 6th May, 1958

[B(54)]

Questions have been raised from time to time regarding the authority competent to accept a resignation, the circumstances

under which resignation should be accepted, the date when a resignation becomes effective, and the authority competent to permit a Government servant to withdraw a resignation which he has already tendered. The following instructions are, therefore, issued for information and guidance of all Ministries:—

(a) *Authority competent to accept resignation.*—The appointing authority in respect of the service or post in question is the authority competent to accept the resignation of the Government servant.

(b) *Circumstances under which resignation should be accepted.*—It is not in the interest of Government to retain an unwilling officer in service. The general rule, therefore, is that a resignation from service should be accepted except in the circumstances indicated below:—

(i) Where the officer concerned is engaged on work of importance and it would take time to make alternative arrangements for filling the post the resignation should not be accepted straightaway, but only when alternative arrangements for filling the post have been made.

(ii) Where a Government servant who is under suspension submits a resignation, the competent authority should examine, with reference to the merits of the disciplinary case pending against the Government servant, whether it would be in the public interest to accept the resignation. Normally, as officers are placed under suspension only in cases of grave delinquency, it would not be correct to accept a resignation from an officer under suspension. Exceptions to this rule would be where the alleged offences do not involve moral turpitude or where the quantum of evidence against the accused officer is not strong enough to justify the assumption that if the departmental proceedings were continued, the officer would be removed or dismissed from service, or where the departmental proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation.

(c) *Date when a resignation becomes effective.*—The competent authority should decide the date with effect from which the resignation should become effective. In cases covered by (b) (i) above, the date should be that with effect from which alternative arrangements can be made for filling the post. Where an officer is on leave the competent authority should decide whether he will

accept the resignation with immediate effect or with effect from the date following the termination of the leave. Where a period of notice is prescribed which a Government servant should give when he wishes to resign from service, the competent authority may decide to count the period of leave towards the notice period. In other cases also, it is open to the competent authority to decide whether the resignation should become effective immediately or with effect from some prospective date. In the latter case, the date should be specified.

(d) *Authority competent to permit withdrawal of resignation.*— A resignation becomes effective when it is accepted and the officer is relieved of his duties. Where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation either to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation has become effective, the officer is no longer in Government service and acceptance of the request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break. As this would involve financial commitments, concurrence of the Ministry of Finance should be obtained before a request for withdrawal of resignation which has already become effective is accepted.

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(17)

Ministry of Home Affairs Office Memorandum No. 39/4/56-Ests(A), dated 3rd November, 1958

[B(18)]

As the various Ministries of the Government of India are aware, it has not so far been the practice for Departmental Promotion Committees in the case of selection posts and the competent authority in the case of other posts, to consider for promotion officers who are under supension or whose conduct is under investigation or against whom departmental proceedings are about to be initiated. In cases where the officer is completely exonerated on conclusion of the departmental proceedings, his earlier non-consideration for promotion affects his future prospects adversely. Even if he is promoted subsequently, he loses his seniority as compared to officers who were junior to him in the lower grade and were promoted during the period of his suspension.

2. It has therefore been decided in consultation with the Ministry of Finance and the Comptroller & Auditor General, that

in such case the officer's suitability for promotion should be assessed at the relevant time by the Departmental Promotion Committees or other authorities as the case may be and a finding reached whether, if the officer had not been suspended or his conduct had not been under investigation, he would have been recommended/selected for promotion. Where a select list is prepared, the competent authority should also take a view as to what the Officer's position in that list would have been but for his suspension. The finding as to the suitability and the place in the select list should, however, be recorded, not in the proceedings of the Departmental Promotion Committee or other authority, but in the personal file of the officer concerned. The proceedings of the Departmental Promotion Committee etc., need only contain the note "please see the personal file of the officer".

No action should be taken on the finding recorded in the personal file of the officer until after the conclusion of the departmental proceedings against him. If he is completely exonerated and it is held that the suspension was wholly unjustified, he should be promoted thereafter in the first vacancy that can be made available for the purpose and his seniority in the higher grade fixed as if he had been promoted in accordance with his position in the select list as given in his personal file. The seniority so fixed will, however, not affect the pay of the officer which will be fixed under the normal rules as from the date of actual promotion.

3. These orders will apply to future cases and past cases, which have already been decided, will not be reopened.

[Partially modified See B(24)]

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(18)

Ministry of Home Affairs O.M. No. F. 39/31/55-Ests.(A), dated 29th November, 1958

[B(17)]

[B(14)]

The question has been raised whether a Government servant whose increment has been withheld or whose pay has been reduced to a lower stage in the time-scale for a specified period as a measure of punishment, is eligible for consideration for promotion to a higher post during the period for which the punishment

has been inflicted. This question has been examined in consultation with the Ministry of Finance, the Union Public Service Commission, and the Comptroller and Auditor General.

2. It has been urged, on the one hand, that it would be inconsistent and anomalous to promote a person whose increments have been withheld or whose pay has been reduced as a penalty. The reasons for this view are as follows:—

(a) Withholding of increments amounts to a declaration that the Government servant is to be prevented for the specified period for advancing further in the grade held by him. Consequently, no question of allowing him to advance by promotion to a still higher grade can be considered at all.

(b) Promotion of an officer during the pendency of the penalty would amount to nullifying the order imposing such penalty.

3. On the other hand, the view has been put forward that withholding of increments or reduction to a lower stage in the time-scale is a less severe penalty than withholding of promotion. Consequently, if a Government servant on whom one of the two former penalties has been imposed is considered on that account, ineligible for consideration for promotion during the pendency of the penalty, it would result in the repeated supersession of the officer if he is already within the zone of promotion. These consequences are frequently not anticipated when it is decided to impose the penalty of withholding the increments or reduction to a lower stage in the time-scale. Further, suitability for promotion is assessed not on the basis of specified acts of good or bad work, but on an over-all assessment of the entire service record. If the record is such that in spite of the specific instance of misconduct or bad work for which the penalty was imposed, the officer is still considered suitable for promotion, there is no reason why he should be debarred therefrom.

4. After careful consideration, it has been decided that 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. It is expected that normally an officer on whom such a penalty has been imposed will not be considered 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.

5. The above instructions will have effect from the date of issue of the orders. Past cases which have been decided in the light of past practices and conventions need not be re-opened.

6. In so far as the employees of the Indian Audit and Accounts Department are concerned, these instructions issue with the concurrence of the Comptroller and Auditor-General.

(18-A)

Ministry of Home Affairs No. F. 45/5/53-Estt.(A), dated the 8th January, 1959

The question has been raised whether, and if so, under what circumstances, Government should provide legal and financial assistance to a Government servant for the conduct of legal proceedings by or against him. The following decisions, which have been taken in consultation with the Ministries of Law and Finance and the Comptroller and Auditor General are circulated for information and guidance.

(a) *Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government Servant.*

2. Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal instituted against him by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, Government will entertain his claim

for reimbursement of costs incurred by him for his defence, and if Government are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, they will consider whether the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence should be reimbursed to him.

(b) *Proceedings in respect of matters not connected with official duties or position of the Government servant.*

Government will not give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not arising out of, or connected with, his official duties or his official position, irrespective of whether the proceedings were instituted by a private party against the Government servant or *vice versa.*

(c) *Proceedings instituted by a private party against a Government servant in respect of matters connected with his official duties or position.*

(i) If the Government on consideration of the facts and circumstances of the case consider that it will be in the public interest that Government should themselves undertake the defence of the Government servant in such proceedings and if the Government servant agrees to such a course, the Government servant should be required to make a statement in writing and thereafter Government should make arrangements for the conduct of the proceedings as if the proceedings had been instituted against Government.

(ii) If the Government servant proposes to conduct his defence in such proceedings himself, the question of reimbursement of reasonable costs incurred by him for his defence may be considered in case the proceedings conclude in his favour. In determining the amount or costs to be so reimbursed, Government will consider how far the Court has vindicated the acts of the Government servant. The conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

To enable the Government servant to meet the expenses of his defence, Government may sanction, at their discretion, an interest-free advance not exceeding Rs. 500 or the Government servant's substantive pay for three months, whichever is greater,

after obtaining from the Government servant a bond in the form reproduced as Annexure B. The amount advanced would be subject to adjustment against the amount, if any, to be reimbursed as above.

The Government servant may also be granted any advance from any Provident Fund to which he is a subscriber not exceeding three month's pay or one-half of the balance standing to his credit, whichever is less; this advance will be repayable in accordance with the rules of the Fund.

(d) *Proceedings instituted by a Government servant on his being required by Government to vindicate his official conduct.*

A Government servant may be required to vindicate his conduct in a Court of Law in certain circumstances (*vide* Ministry of Home Affairs O.M. No. F. 25/32/54 Ests.(A), dated 8th January, 1959). The question whether costs incurred by the Government servant in such cases should be reimbursed by the Government and if so, to what extent, should be left over for consideration in the light of the result of the proceedings. Government may, however, sanction an interest-free advance, in suitable instalments, of any amount to be determined by them in each case on the execution of a bond by the Government servant in the form.

In determining the amount of costs to be reimbursed on the conclusion of the proceedings, the Government will consider to what extent the Court has vindicated the acts of the Government servant in the proceedings. Conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

(e) *Proceedings instituted by a Government servant* suo motu, *with the previous sanction of Government to vindicate his conduct arising out of or connected with his official duties or position.*

If a Government servant resorts to a Court of Law with the previous sanction of Government to vindicate his conduct arising out of or connected with his official duties or position, though not required to do so by Government, he will not ordinarily be entitled to any assistance but Government may, in deserving cases sanction advances in the manner indicated in sub-para c(ii) above, but no part of the expenses incurred by the Government

servant will be reimbursed to him, even if he succeeds in the proceedings.

3. Clause (d) of article 320(3) of the Constitution requires consultation with the Union Public Service Commission on any claim by a Government servant for the reimbursement of the costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty. In other cases consultation with the Union Public Service Commission is not obligatory, but it will be open to Government to seek the Commission's advice, if considered necessary.

4. The question whether a case falls under article 320(3)(d) of the Constitution so as to require consultation with the Commission may at times be difficult to determine. It may be stated generally that the consultation is obligatory in a case where a reasonable connection exists between the act of the Government servant and the discharge of his official duties, the act must bear such relation to the official duties that the Government servant could lay a reasonable but not a pretended or a fanciful claim that he did it in the course of the performance of his duties.

5. The appropriate authority for taking decision in each case will be the administrative Ministry of the Government of India concerned who will consult the Finance and Law Ministries, where necessary. The Comptroller and Auditor General of India will exercise the powers of an administrative Ministry in respect of the personnel of the Indian Audit and Accounts Department.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with the Comptroller and Auditor General.

(18-B)

Ministry of Home Affairs O.M. No. 25/18/59-Estt.(A), dated 28th August, 1959

The undersigned is directed to say that certain difficulties are being experienced by administrative authorities in interpreting Rules 15(1), 15(2) and 15(3) of the Central Civil Services

(Conduct) Rules, 1957, relating to transactions of movable and immovable property and submission of property returns, especially in regard to transactions entered into by members of the family of a Government servant.

2. In order to ensure that Government servants do not indulge in *benami* transactions or ostensible transfers and acquisitions to secret assets illegally earned, and at the same time to ensure that unnecessary restraint is not imposed on either Government servants or their dependents, or harassment caused to them, the following executive instructions are issued for the guidance of the administrative authorities.

(i) All transactions both of immovable and movable property *made out of the funds of the Government servant*

(Irrespective of the person in whose name the transaction is made) should be governed strictly by Rules 15(1), 15(2) and 15(3), *i.e.*

(a) *Transactions in immovable property*

In all cases, the transaction should be with the *previous knowledge* of the prescribed authority. If it is proposed to be made otherwise than through a regular or reputed dealer, it shall require the *previous sanction* of the prescribed authority.

(b) *Transactions in movable property*

In all cases a full report to the prescribed authority immediately *after* completion of the transaction, is necessary; but in respect of transactions proposed to be made otherwise than through a reputed or regular dealer or agent, *previous sanction* of the prescribed authority, is necessary.

Note: Cases falling under Sub-para (iv) below, will not be governed by these instructions.

(ii) All transactions of both immovable and movable property *made out of the funds (including stridhan, gifts, inheritance etc.) of the dependants of the Government servants*, irrespective of the person in whose name the

transaction is made, should be reported in the following manner:—

(a) *Transactions in immovable property*

These should be reported along with the annual property return, but in a separate form. No other report is necessary.

(b) *Transactions in movable property*

These should be reported immediately on completion or immediately after the Government servant comes to know of them.

In both the types of cases, prior permission of the prescribed authority is not necessary.

(iii) A Government servant who transfers any immovable property, or movable property exceeding Rs. 1000 in value, to a member of his family, should report or obtain sanction of the prescribed authority in accordance with Rules 15(1), (2) and (3) of the Central Civil Services (Conduct) Rules.

(iv) Transactions as members of Hindu undivided joint family do not require Government's prior permission. In such cases, transactions in immovable property should be included in the annual property returns and those in movable property should be reported to the prescribed authority immediately after completion or immediately after the Government servant comes to know of them.

If a Government servant is unable to give an idea of his share of such property, he may give details of the full property and the names of the members who share it.

3. The above instructions may be implemented liberally in order to avoid detailed probe into the private affairs of the Government servants or their dependants, but cases in which suspicious circumstances exist should be investigated with firmness and speed.

4. The above instructions may be brought to the notice of all concerned.

5. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India.

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(19)

Decision taken on Ministry of Home Affairs file No. 39/9/59-Ests(A)

B(21)

B(14)

Communication of "displeasure" does not amount to the imposition of a penalty. An entry regarding "displeasure" may be made in the character roll if the circumstances justify it.

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(20)

Decision taken on Ministry of Home Affairs file No. 59/1/59-Ests(A)

The services of a temporary Government servant can be terminated under rule 5 of the C.C.S. (Temporary Service) Rules, 1949 while he is under suspension or/and departmental proceedings are pending against him.

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(21)

Ministry of Home Affairs O.M. No. 39/12/59-Ests(A), dated 23rd April, 1960

[B(65A)]

[B(19)]

It has been decided that if as a result of disciplinary proceedings any of the prescribed punishments (*e.g.* censure, reduction to a lower post, etc.) is imposed on a Government servant, a record of the same should invariably be kept in his confidential roll. Further, if on the conclusion of the disciplinary proceedings it is decided not to impose any of the prescribed punishments but to administer only a warning or reprimand etc., a mention of such warning etc., should also be made in the confidential roll.

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(22)

Decision taken on Ministry of Home Affairs F. No. 39/12/60-Ests(A)

The evidence of witnesses proposed to be used against the Government servant in a departmental proceeding should be recorded in his presence. The evidence recorded in the fact finding inquiry in the absence of the Government servant concerned should not be brought on the proceeding.

(23)

Ministry of Home Affairs letter No. F. 16/122/56-AVD, dated 18th August, 1960

[B(30A)]

I am directed to say that for some time past the question of evolving uniform procedure in regard to the payment of Travelling Allowance and other expenses to persons appearing as witnesses in Departmental Inquiries to tender evidence has been under consideration of the Government of India. A copy of the instructions formulated on the subject, in consultation with the Ministries of Finance and Law and the Comptroller & Auditor General, is enclosed for information and guidance.

INSTRUCTIONS RELATING TO PAYMENT OF TRAVELLING AND OTHER EXPENSES TO WITNESSES IN DEPARTMENTAL INQUIRIES

The following instructions are issued to regulate the payment of travelling and other expenses to persons appearing as witnesses in Departmental Inquiries:—

1. Every person, whether he is a Central or State Government servant or not, who is called to give evidence in a departmental inquiry by either the Government or the Government servant against whom the inquiry is being held, shall be entitled to payment of travelling and other expenses as laid down in these instructions.

2. The Officer or Board holding the inquiry shall furnish a certificate in Form (See Section E) to every person appearing before him or it to give evidence.

3. (1) Where the witness is a Central Government servant, he shall be entitled to receive, in respect of the attendance before the authority holding the departmental inquiry, from the Depart-

ment or Ministry under which he is serving for the time being payment of a travelling allowance as on tour under S. R. 154.

(2) Where the Government servant is called in the departmental inquiry to give evidence as to facts which have come to his knowledge in the discharge of his public duties, the minimum time required to be spent by him on the journey to and from the place where the inquiry is held and the days on which he is required to remain present before the authority holding the inquiry shall be treated as duty :

Provided that if the Government servant is on leave, the entire time spent shall be treated as a part of the leave and he shall not be deemed to have been recalled to duty.

(3) Where a Government servant is called by any authority holding the departmental inquiry to give evidence as to facts which have come to his knowledge at a time when he was not in Government service, he may be paid travelling allowance as provided in sub-rule (1).

(4) Where the witness is a State Government servant, he shall be entitled to receive, in respect of the attendance before the authority holding the departmental inquiry, from the State Government such travelling allowance and/or daily allowance as may be admissible to him under the rules applicable to him in that behalf in respect of a journey undertaken on tour and the amount so paid shall be paid by the Central Government to the State Government, who shall raise a debit in respect thereof against the Central Government.

(5) Where a person who has been a Government servant is called to give evidence as to facts which have come to his knowledge in the discharge of his public duties, or a person who is not a Central Government or a State Government servant, is called to give evidence before any authority holding a departmental inquiry, such person shall be entitled to claim from the Ministry or Department under whom the Government servant against whom the enquiry is being held is for the time being serving, travelling allowance under S. R. 190.

(6) The foregoing instructions shall also apply to a person nominated by the Disciplinary Authority to present the case in support of the charge before the authority holding the departmental inquiry, or assisting the Government servant against whom the inquiry is held in presenting his case, as provided in sub-rule (5) of rule 15 of the Central Civil Services (Classification, Control

& Appeal) Rules, 1957. Such person shall be granted a certificate in Form (Section E) by the authority holding the departmental inquiry.

(7) All expenditure on travelling allowance paid to a Government servant under these instructions shall be charged to the head of account to which such Government servant's salary is debitable.

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(24)

Ministry of Home Affairs O.M. No. 39/3/69-Ests.(A), dated 31st August, 1960

[B(18)] [B(43)]

The attention of the Ministry of Finance etc., is invited to this Ministry's Office Memorandum No. 39/4/56-Ests.(A), dated 3rd November, 1958 in which it was stated *inter alia* that the Departmental Promotion Committee or other authority concerned with promotion or confirmation should consider the case, among others of an officer under suspension or an officer against whom departmental proceedings may be pending; but:—

(a) the findings as to the suitability and the place in the select list should, however, be recorded, not in the proceedings of the Departmental Promotion Committee or other authority, but in the personal file of the officer concerned. The proceedings of the Departmental Promotion Committee, etc., need only contain the note "please see the personal file of the officer"; and

(b) if the officer is completely exonerated and it is held that the suspension was wholly unjustified, he should be promoted thereafter in the first vacancy that can be made available for the purpose.

The position in this regard has since been reviewed and in partial modification of the office memorandum under reference the following decisions are brought to the notice of all concerned.

2. The findings as to the suitability and the place in the select list of the officer should be recorded separately and attached to the proceedings, in a sealed envelope superscribed "Findings regarding merit and suitability for promotion to/confirmation in (service/grade/post) in respect of Shri (name of the

officer)", and "Not to be opened till after the termination of the suspension of/disciplinary proceedings against Shri (name of the officer)". The proceedings of the Departmental Promotion Committee, etc., need only contain the note "The findings are contained in the attached sealed envelope". The authority competent to fill the vacancy should be separately advised (i) to fill the vacancy only in an officiating capacity, where the findings as to the suitability of the officer are for his promotion; and (ii) to reserve a permanent vacancy, where such findings are for his confirmation.

3. The vacancy that could have gone to the officer but for his suspension or the departmental proceedings against him should be filled only on an officiating basis by the next person in the approved list. If the officer concerned is completely exonerated and it is held that the suspension was wholly unjustified, he should be promoted thereafter to the post filled on an officiating basis, the arrangements made previously being reversed. Where however the post which could have gone to the officer but for his suspension of the departmental proceedings against him, ceases to exist before the conclusion of the departmental proceedings; he can only be promoted to the first vacancy that may be available in future and, if the officer concerned is found fit for promotion at that time.

4. The procedure laid down in paragraph 2 of the Office Memorandum under reference as modified by the decisions in the preceding paragraph should also be followed, in considering claims for confirmation of an officer under suspension, an officer whose conduct is under investigation, or an officer against whom departmental proceedings are about to be initiated. For this a permanent vacancy should be reserved for such an officer till a final decision is reached on the proceedings against him or where such an officer is reduced in rank for a specified period, till he is actually restored to his original rank.

5. In so far as personnel serving in the Indian Audit and Accounts Department are concerned, these orders have been issued after consultation with the Comptroller and Auditor General of India.

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(25)

Decision taken on Ministry of Home Affairs file No. 7/29/61-Ests.(A)

[B(11)]

[B(27)]

Where the officer who is the prescribed disciplinary authority is/will be the complainant and/or the witness in a departmental proceeding, another officer should be specified as disciplinary authority by a special order of the President under rule 14(2) of the C.C.S. (C.C. & A.) Rules, 1957 for the purpose of that proceeding.

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(26)

Decision taken on Ministry of Home Affairs file No. 39/2/61-Ests.(A)

A Government servant against whom departmental proceedings are pending but who is due to cross the efficiency bar prescribed in his time-scale of pay, may not be allowed to cross the bar until after the conclusion of the proceedings.

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(27)

Ministry of Home Affairs' O.M. No. F. 6/26/60-Ests.(A), dated 16th February, 1961

[B(25)]

[B(69-B)]

It is obviously desirable that only disinterested officers should be appointed as Enquiry Officers in departmental proceedings. There is no bar to the immediate superior officers holding an inquiry but, as a rule, the person who undertakes this task should not be suspected of any bias in such cases. The authorities concerned should bear this in mind before an Enquiry Officer is appointed in a disciplinary case.

[B(25)]

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(28)

Ministry of Home Affairs O.M. No. F. 6/26/60-Ests.(A), dated 16th February, 1961

The authorities dealing with petitions, memorials and appeals are expected to apply the instructions and rules relating to withholding of such petition, etc., in a liberal spirit and they should

ordinarily refrain from withholding any appeal, representation, petition or memorial except in rare cases where the justification for contrary action may be obvious.

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(29)

Ministry of Home Affair's Office Memorandum No. F. 2/9/59-Ests.(A), dated the 27th May, 1961, as amended vide O.M. No. F. 2/9/59-Ests.(A), dated 30th May, 1962

[B(36-A)]

The following questions in connection with the reinstatement of dismissed/removed/discharged Government servants or the Government servants whose services had been terminated, came up for consideration:—

(1) whether before the Government of India decide to reinstate an individual on grounds of equity, concurrence of the Ministry of Finance should be obtained for payment of pay and allowances for the intervening period; or whether the administrative authorities could themselves, after following the prescribed procedure (*e.g.*, consultation with the Union Public Service Commission etc.), re-instate the person and sanction payment of pay and allowances under F.R. 54.

(2) whether in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a court of law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution, payment of full pay and allowances for the intervening period is automatic and compulsory.

2. As regards question (1) above, it has been decided that the concurrence of the Ministry of Finance will not be necessary for reinstating a Government servant, if the authority which reinstates the Government servant is competent to appoint him. The question as to what pay and allowances should be allowed for the intervening period and whether or not the period should be treated as duty, will be dealt with under F.R. 54.

3. Regarding question (2) stated in para 1 above, it has been decided that F.R. 54 is inapplicable in cases where dismissal/removal/discharge from or termination of service held by a

court of law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution. In such cases—

(i) if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/discharge/termination under rule 12(3) or 12(4) of the C.C.S. (C.C.& A.) Rules, 1957 or a corresponding rule, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension;

(ii) if the Government servant is not 'deemed' to have been under suspension as envisaged under (i) above, the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory, provided that—

(a) the arrears should be paid subject to the law of limitation;

(b) where the reinstated Government servant has secured employment during any period between the dismissal/removal/discharge/termination and reinstatement, the pay and allowances admissible to him after reinstatement for the intervening period shall be reduced by the emoluments earned by him during such employment, if such pay and allowances exceed such emoluments. If the pay and allowances admissible to him are equal to or less than the emoluments earned by him, nothing shall be paid to him:

Provided that the amount to be paid under (i) and (ii) above will be determined subject to the directions, if any, in the decree of the court regarding arrears of salary.

4. As the termination of service of a Government servant without following the procedure laid down in the C.C.S. (C.C.&A.) Rules, 1957, the C.C.S. (T.S.) Rules, 1949, the C.S.R. or the terms of his appointment, etc., results in the payment of arrears by way of pay and allowances, the need for meticulously observing the 'proper procedure' in such cases is once again impressed on all concerned.

Attention is invited in this connection to the instructions contained in this Ministry's Endorsement No. 135/45-Ests., dated the

24th July, 1945 and Office Memorandum No. 26/11/48-Ests., dated the 8th June, 1949 where the need for giving a second opportunity to the accused Government servant before terminating his services has been emphasised.

Since the provisions of Article 311(2) of the Constitution are materially the same as those contained in section 240(3) of the Government of India Act, 1935, observance of the following procedure laid down in rule 15 of the C.C.S. (C.C.&A.) Rules, 1957/ Article 311 (2) of the Constitution is essential in all cases of termination of service except where such termination is in accordance with the terms of appointment or relevant rules:—

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based.

(b) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witness in support of his defence.

(c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the inquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict the penalty of reduction in rank, compulsory retirement, removal or dismissal and communicates the same to the Government servant.

5. In all cases where the circumstances leading to a Government servant's reinstatement reveal that the authority which terminated his services, either wilfully did not observe, or through gross negligence failed to observe the 'proper procedure', as explained above, before terminating his service, proceedings should be instituted against such authority under rule 16 of the C.C.S. (C.C.&A.) Rules, 1957 and the question of recovering from such authority the whole or part of the pecuniary loss arising from the reinstatement of the Government servant should be considered.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with the Comptroller and Auditor General.

(30)

Ministry of Home Affairs Office Memorandum No. F. 30/5/61-AVD, dated 25th August, 1961

The undersigned is directed to say that the question often arises whether a particular document or set of documents asked for by a Government servant involved in a departmental enquiry should be made available to him or not; and pending the decision of the question the submission of the written statement by the Government servant concerned is delayed, in some cases for months. In view of this and also of the judgment pronounced by the Supreme Court in Raizada Trilock Nath *Vs.* The Union of India, in which it has been decided that failure to furnish copies of documents such as the First Information Report, and statements recorded during investigation amounts to a violation of Article 311(2) of the Constitution, the whole question of the extent of access to official records to which a Government servant is entitled under sub-rule (4) of Rule 5 of the All India Services (Discipline and Appeal) Rules or sub-rule (3) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules has been examined in consultation with the Ministry of Law.

2. The right of access to official records is not unlimited and it is open to the Government to deny such access if in its opinion such records are not relevant to the case, or it is not desirable in the public interest to allow such access. The power to refuse access to official records should, however, be very sparingly exercised. The question of relevancy should be looked at from the point of view of the defence and if there is any possible line of defence to which the document may, in some way be relevant, though the relevance is not clear to the disciplinary authority at the time that the request is made, the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. Cases of the latter type are likely to be very few and normally occasion for refusal of access on the grounds that it is not in public interest should not arise if the document is intended to be used in proof of the charge and if it is proposed to produce such a document before the Inquiry Officer, if an enquiry comes to be held. It has to be remembered that serious difficulties arise when the Courts do not accept as correct the refusal by the disciplinary authority, of access to documents. In any case, where it is decided to refuse access,

reasons for refusal should be cogent and substantial and should invariably be recorded in writing.

3. Government servants involved in departmental enquiries often ask for access to and or supply of copies of—

(1) documents to which reference has been made in the statement of allegations;

(2) documents and records not so referred to in the statement of allegations but which the Government servant concerned considers are relevant for the purposes of his defence;

(3) statements of witnesses recorded in the course of—

(a) a preliminary enquiry conducted by the department; or

(b) investigation made by the Police;

(4) reports submitted to Government or other competent authority including the disciplinary authority, by an officer appointed to hold a preliminary inquiry to ascertain facts;

(5) reports submitted to Government or other competent authority including the disciplinary authority, by the Police after investigation.

4. A list of the documents which are proposed to be relied upon to prove the charge and the facts stated in the statement of allegation should be drawn up at the time of framing the charge. (This will incidentally reduce the delay that usually occurs between the service of the charge-sheet and the submission of the written statement). The list should normally include documents like the First Information Report if there is one on record. Anonymous and pseudonymous complaints on the basis of which inquiries were started need not be included in the list. The list so prepared should be supplied to the officers either along with the charge-sheet or as soon thereafter as possible. The officer should be permitted access to the documents mentioned in the list if he so desires.

5. If the officer requests for any official records other than those included in the list, the request should ordinarily be acceded to in the light of what has been stated in para 2 above.

6. While there is no doubt that the Government servant should be given access to various official records like documents to which reference has been made in the statement of allegations and documents and records which the Government servant concerned considers are relevant for the purposes of his defence though the relevancy is not clear to the disciplinary authority, doubts very often arise whether official records include the documents mentioned at items 4 and 5 in para 3 above. Reports made after a preliminary enquiry, or the report made by the Police after investigation, other than those referred to in clause (a) of Sub-Section 1 of Section 173 of the Code of Criminal Procedure, 1898, are usually confidential and intended only to satisfy the competent authority whether further action in the nature of a regular departmental inquiry or any other action is called for. These reports are not usually made use of or considered in the inquiry. Ordinarily even a reference to what is contained in these reports is not made in the statement of allegations. It is not necessary to give access to the Government servant to these reports. (It is necessary to strictly avoid any reference to such reports in the statement of allegations as if any reference is made it would not be possible to deny access to these reports; and giving of such access to these reports will not be in public interest for the reasons stated above).

7. The only remaining point is whether access should be given to the statements of witnesses recorded in the course of a preliminary enquiry conducted by the department or investigation made by the Police and if so, whether the access should be given to the statements of all witnesses or to the statements of only those witnesses who are proposed to be examined in proof of the charges or of the facts stated in the statement of allegations. These statements can be used only for the purposes of cross-examination and the Government servant is called upon to discredit only those witnesses whose statements are proposed to be relied upon in proof of the charges or of the facts stated in the statement of allegations. As such the Government servant concerned need not be given access to the statement of all witnesses examined in the preliminary enquiry or investigation made by the Police and access should be given to the statements of only those witnesses who are proposed to be examined in proof of the charges or the facts stated in the statement of allegations. In some cases, the Government servant may require copies of statements of some witnesses on which no reliance is proposed to be placed by the disciplinary authority on the ground that he proposes to examine such witnesses on his side and that he requires the previous statement to corroborate the testimony of

such witnesses before the inquiring authority. Previous statements made by a person examined as a witness is not admissible for the purposes of corroboration and access to such statements can safely be denied. However, the law recognises that if the former statement was made at or about the time then the fact took place and the person is called to give evidence about such fact in any proceedings, the previous statement can be used for purposes of corroboration. In such cases, it will be necessary to give access to the previous statements.

8. The further point is the stage at which the Government servant should be permitted to have access to the statements of witnesses proposed to be relied upon in proof of the charges or of the facts stated in the statement of allegations. As stated earlier, the copies of the statements of the witnesses can be used only for the purpose of cross-examination and, therefore, the demand for copies must be made when witnesses are called for examination at the oral enquiry. If such a request is not made, the inference would be that the copies were not needed for that purpose. The copies cannot be used at any subsequent stage as those statements are not to be taken into consideration by the disciplinary authority also. Copies should be made available within a reasonable time before the witnesses are examined. It would be strictly legal to refuse access to the copies of the statements prior to the evidence stage in the departmental enquiry. However, if the Government servant makes a request for supply of copies of statements referred to at (3) of para 3 above before he files a written statement, the request shall be acceded to.

9. Neither sub-rule (4) of Rules 5 of All India Services (Discipline and Appeal) Rules nor sub-rule (3) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules provide for supply of copies of documents. Therefore, it is not ordinarily necessary to supply copies of the various documents and it would be sufficient if the Government servant is given such access as is permitted under the rules referred to above. Government servants involved in departmental proceedings when permitted to have access to official records sometimes seek permission to take photostat copies thereof. Such permission should not normally be given especially if the officer proposes to make the photostat copies through a private photographer as thereby third parties would be allowed to have access to official records which is not desirable. If, however, the documents of which photostat copies are sought for are so vitally relevant to the case (*e.g.*, where the proof of the charge depends upon the proof of the handwriting or a document the authenticity of which is disputed),

the Government should itself make photostat copies and supply the same to the Government servant. In cases which are not of this or similar type (the example given above is only illustrative and not exhaustive), it would be sufficient if the Government servant is permitted to inspect the official records and take extracts therefrom as is provided for in sub-rule (3) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, Sub-rule (4) of Rule 5 of the All India Services (Discipline and Appeal) Rules does not specifically provide for the Government servant taking extracts from official records. The practice, however, is that officers governed by the All India Services (Discipline and Appeal) Rules do take such extracts from records. This practice should be continued and no restriction should be placed on such officers from taking extracts from official records.

(30-A)

Ministry of Home Affairs d.o. letter No. 15/25/61-AVD, dated the 16th October, 1961

[B(23)]

The Special Police Establishment have brought to our notice that in one of the cases recently put by them in court, certain employees of a public undertaking were summoned to give evidence before the court and that the public undertaking concerned turned down the claim of the employees for TA at rates applicable to Government employees and the request that the period of absence may be treated as duty. S. R. 154 governs the TA and DA admissible to a Government servant summoned to give evidence before a court in a civil or a criminal case or in departmental enquiries. In this connection I would also invite your attention to this Ministry's O.M. No. 16/122/56-AVD dated the 18th August, 1960, which was issued after obtaining the concurrence of the Ministry of Finance. Cases in which they are summoned may relate to matters pertaining to the affairs of the respective public undertaking of semi-Government organisation or cases in which the Government is a party though the public undertaking or semi-Government organisation may not be directly concerned. Employees of such organisation are likely to be summoned only in cases where their testimony is absolutely necessary and the absence of which is likely to adversely affect the result of the case. We, therefore, consider that employees of public undertakings or semi-Government organisations summoned to give evidence in a civil or criminal case or in a depart-

mental enquiry should also be treated to be on duty during the period spent in complying with the summon and that they should be eligible for claiming TA and DA admissible to them as on tour.

I shall, therefore, be grateful if you could kindly take up this question with the public undertakings or semi-Government organisations for which your Ministry is responsible and persuade them to extend to their employees the provision of S.R. 154.

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(31)

Decision taken on Ministry of Home Affairs file No. 7/5/62-Ests.(A)

[B(20)]

A Government servant placed under suspension while officiating in a higher post can be reverted to the lower post otherwise than as punishment even during his suspension.

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(32)

Decision taken on Ministry of Home Affairs file No. 7/9/62-Ests.(A)

Rule 20 of the CCS (CC&A) Rules, 1957 is not applicable for the purpose of instituting departmental proceedings, to a State Government servant whose services were borrowed by the Central Government and have since been replaced at the disposal of the State Government. The Ministry/Department of the Central Government concerned may in such a case complete such preliminary enquiry as they may consider necessary and forward the relevant records to the State Government for instituting departmental proceedings and further necessary action.

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(33)

Decision taken on Ministry of Home Affairs F. No. 7/12(A) 62-Ests.(A)

When a decision is recorded by a Disciplinary Authority (other than the Head of the State) at the conclusion of the departmental proceeding, the decision is final and cannot be varied by that authority itself or by its successor-in-office before it is formally communicated to the Government servant concerned. The deci-

sion taken by the Disciplinary Authority is a judicial decision and once it is arrived at it becomes final.

When a decision is to be taken by or in the name of the Head of the State as a Disciplinary Authority in a departmental proceeding, it is open to the Disciplinary Authority to vary or alter the opinions or advice. Once however, the decision is recorded in the name of the Head of the State, it cannot be varied or altered. This, of course, is subject to the exercise of powers of review or revision expressly conferred upon the Head of the State by rules.

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(34)

Ministry of Home Affairs O.M. No. 6/26/60-Ests.(A) dated 8th June, 1962

When proceedings are instituted by a "higher disciplinary authority", final orders should also be passed by such "higher disciplinary authority" and the case should not be remitted to a lower disciplinary authority, on the ground that on merits of the case it is sufficient to impose a minor penalty and such minor penalty could be imposed by a lower disciplinary authority. In such cases the appeal against the punishment order of the "higher disciplinary authority" shall lie to the authority prescribed under the C.C.S. (C.C.&A.) Rules as the appellate authority in respect of such order.

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(35)

Ministry of Home Affairs D.O. No. 34/57/62-AVD, dated 21st November, 1962

The question whether a formal order placing a Government servant under suspension with reference to sub-rule (2) of rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, should be issued has been under examination in consultation with the Ministry of Law. We have been advised by the Ministry of Law that it is desirable, for purposes of administrative record, to make a formal order with reference to rule 12(2) referred to above. A standard form of order to be issued in such cases, which has been seen by the Ministry of Law, is also enclosed.

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(36)

Ministry of Home Affairs No. 6/98/63-A.V.D., dated 13th June, 1963

In a recent case, two government employees working in the same office made complaints against each other. The disciplinary authority initiated departmental proceedings against both the employees under Rule 17 of the C.C.S. (C.C&A.) Rules. The question whether it is legally permissible to enquire into the conduct of both the accused and the accuser in one joint proceeding was examined in consultation with the Ministry of Law. Cross complaints arising out of the same or connected incident or transaction are not uncommon, and occur frequently in criminal cases. The Code of Criminal Procedure is silent with regard to the procedure to be adopted in such cases. The general principle as laid down by the Courts is that the accused in cross cases should be tried separately, and that both the trials should be held simultaneously or in quick succession so as to avoid conflicting findings and different appraisal of the same evidence. Several cases, however, have arisen where the cross complaints were tried together and disposed of by a common judgment. In such cases, the courts have held that this constitutes an irregularity which, however, does not vitiate the trial unless there was real prejudice to any of the accused or miscarriage of justice. By an amendment made to Section 537 of the Code of Criminal Procedure in 1955 it has been provided that no finding shall be reversed or altered in appeal or revision on account of any error, omission or irregularity in the charge including any misjoinder of charges. The Explanation to the said Section states that in determining whether any such error has caused failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

On the analogy of the criminal Law practice and procedure a joint proceeding against the accused and accuser is an irregularity which should be avoided. This should be noted for future guidance.

If there is any such case pending with you at present and if it is possible to correct the irregularity, steps may be taken to do so. If some progress has been made in such proceedings and the Government servants proceeded against have not raised any objection so far, the proceedings may be allowed to continue provided you are satisfied that there is no likelihood of miscarriage or failure of justice of one or the other of the accused or complaints being prejudiced. Even in such cases I would advise that

if the case has not progressed very far, the irregularity may be corrected. There may be such cases which have been completed and are pending at the appellate stage. If any of the appellants have raised an objection to such procedure, it may be considered whether (a) the objection was raised at the earliest opportunity, and (b) whether by holding the joint proceedings any prejudice has been caused to the appellant, or there has been any miscarriage or failure of justice. If the answers to the above points are in the affirmative, the appellate authority will no doubt consider the best possible methods of rectifying the irregularity.

(36-A)

Ministry of Home Affairs O.M. No. 7/36/63-Ests.(A), dated the 7th March, 1964

[B(29)]

The need for observance of proper procedure as required by the provisions of article 311(2) of the Constitution before dismissal, removal from service, etc. of a Government servant has been emphasised from time to time. In this connection attention is particularly invited to the instructions contained in para 1 of endorsement No. 135/45-Ests., dated the 24th July, 1945, para 2 of Office Memorandum No. 26/11/48-Ests., dated the 8th June, 1949, para 5 of Office Memorandum No. 39/30/54-Ests., dated the 7th June, 1955, and para 4 of Office Memorandum No. 2/9/59-Ests. (A), dated the 27th May, 1961, issued by this Ministry.

2. While reiterating that the requirements of the provisions of Article 311(2) of the Constitution must be strictly followed, the instructions issued in this Ministry's Office Memorandum of the 7th June, 1955, referred to above, also said that "A proposal to amend Article 311(2) is under consideration". Article 311(2) of the Constitution has since been amended by the Constitution (Fifteenth Amendment) Act, 1963, and its substantive part as amended reads as follows:—

> "(2) 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 and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:"

It will be observed that the requirements of Article 311(2) of the Constitution as amended are—

(a) the same as were the requirements of Article 311(2) of the Constitution before the amendment; BUT

(b) the representation against the penalty proposed to be imposed has to be only on the basis of the evidence adduced during the inquiry.

Accordingly, the representation by a Government servant, to whom Article 311(2) of the Constitution is applicable, on the penalty proposed to be imposed on him should be based only on the evidence adduced during the inquiry. If such representation contains statements, references, requests, demands, etc. not based on the evidence adduced during the inquiry, such statements, etc. should be ignored and this fact should be brought out in the final orders passed in the case.

3. Consequent upon the above-mentioned amendment of Article 311(2) of the Constitution, necessary amendment in rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 has also been issued *vide* this Ministry's notification No. 7/36/63-Ests.(A), dated the 7th March, 1964.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with the Comptroller and Auditor General.

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(37)

Ministry of Home Affairs letter No. 17/11/64-AVD, dated 13th March, 1964

[B(10)]

[B(46)]

In continuation of this Ministry's letter No. 47/4/55-Police (I), dated 15th July, 1955 I am directed to say in accordance with Para I(a) of the letter, only I.G., S.P.E. and Inspectors General of Police were authorised to requisition original documents from the Audit Offices. With the inception of the Central Bureau of Investigation with effect from 1st April, 1963, the Additional I.G., S.P.E., and Joint Director, C.B.I. is looking into most of the requests for requisitioning documents from Audit in connection with S.P.E. cases. It has, therefore, been decided, in consultation with the Comptroller and Auditor General of India, that Addl.

I.G., S.P.E. may also be authorised to requisition documents direct from the audit offices.

2. The Comptroller and Auditor General of India is being requested to issue suitable instructions to Audit Officers.

(37-A)

Ministry of Home Affairs No. 24/42/63-AVD, dated 21st May, 1964

Consequent to the judgment of the Circuit Bench of the Punjab High Court in Civil Writ No. 180-D of 1962, *Randhir Singh* Vs. *Union of India and others*, it has been under the consideration of Government for sometime whether in disciplinary proceedings the Presenting Officer before the Inquiring Officer could be the Investigating Officer, where the Investigating Officer is to be a witness. A copy of the note recorded by the Law Secretary on 22nd February, 1964 in this connection is enclosed. The implications of this note were considered at a meeting held with the Law Secretary on 30th April, 1964. A copy of the minutes of the meeting is enclosed for the information and guidance of the Ministries/Departments.

2. Attention of the Ministries/Departments is invited to paragraph 4 of the minutes of the meeting held on 30th April 1964 and they are requested to take action accordingly.

3. There are number of cases of disciplinary proceedings inquired into by the Commissioners for Departmental Enquiries who have now been placed under the Central Vigilance Commission. A separate reference is being made to the Central Vigilance Commission to consider what instructions, if any, they would like to issue to the Commissioners for Departmental Enquiries in such cases but there must be a large number of disciplinary cases dealt with in the Ministries/Departments where the Inquiring Officer is not a Commissioner for Departmental Enquiries. In respect of such cases suitable action may be taken by the Ministries/Departments in the light of the minutes of the meeting held on 30th April, 1964 where the Presenting Officer is a Departmental Officer and not an officer of the C.B.I. The Ministries/Departments may also like to advise the Inquiring Officer (where they are not Commissioners for Departmental Enquiries) suitably in respect of pending cases in the light of the concluding portion of para 2 of the minutes of the meeting dated 30th April, 1964.

The receipt of this may kindly be acknowledged.

MINUTES OF THE MEETING HELD ON 30TH APRIL, 1964, IN THE ROOM OF SHRI B. N. LOKUR, LAW SECRETARY

1. The implications of the Law Secretary's note dated 22nd February, 1964 were discussed at a meeting held in the room of Shri B. N. Lokur, Law Secretary at 4.00 p.m. on 30th April, 1964. The following were present:

1. Shri B. N. Lokur—Law Secretary.
2. Shri D. Sen—Joint Director and Additional Inspector General, S.P.E., C.B.I.
3. Shri V. N. Lokur—Legal Adviser, C.B.I.
4. Shri K. Sivaraj—Deputy Secretary, Ministry of Home Affairs.

2. Shri V. N. Lokur, Legal Adviser, CBI, mentioned that in a majority of the cases before the Commissioners for Departmental Enquiries the Presenting Officer who is the Investigating Officer is examined as a prosecution witness. Law Secretary, said that in all such cases the procedure adopted will be against the principles of natural justice and as such will be illegal. A witness cannot also be a prosecutor. If the Investigating Officer is to be a witness in support of or in defence of the charges, he should not be appointed as the Presenting Officer. If the Investigating Officer is appointed as a Presenting Officer, and, at any time in the course of the proceedings he is cited as a witness, he should cease to function as Presenting Officer. In cases where the inquiry is pending, if the Presenting Officer has been examined as a witness, the Inquiring Officer should not take into account the evidence of the Investigating Officer in reaching his findings and he should mention this fact in his report, the inquiry may not then be vitiated.

3. In respect of cases where the Inquiring Officer has already submitted his report and action is underway in the Ministries/Departments, it was felt that it may not be administratively desirable to order *de novo* inquiries in all cases where the Presenting Officer has been examined as a witness or where his examination as a witness was turned down on the ground that he was the Presenting Officer. But such cases will always be attended with a risk which may have to be taken. A fresh inquiry may have to be held if the orders in such an inquiry are set aside by a Court of Law.

4. It was felt that in all current cases which are pending with the Inquiring Officers, the Presenting Officer should be changed immediately if he was the Investigating Officer and is to be a witness. In future cases also, the Presenting Officer should be a person other than the Investigating Officer if he is to be examined as a witness.

A copy of the note recorded by the Law Secretary on 22nd February, 1964.

* * * *

2. The provision in section 495(4) of the Criminal Procedure Code that an officer of Police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted enunciates a sound policy and if that policy is introduced in departmental proceedings, it would be all to the good. But I am not convinced that the broad proposition that if the case in support of the charges in a disciplinary proceeding is presented by an Investigating Officer, the procedure is tainted with illegality, although it would be illegal if the Government servant concerned expresses a desire that he proposes to call the Investigating Officer as a witness or if the Investigating Officer is to give evidence in support of the charges.

3. Principles of natural justice no doubt are very wide, but, in my opinion, they are not defeated if the Investigating Officer himself presents the case. It is true that in a regular prosecution in a court of law, the prosecutor is expected to be impartial and lay before the court fairly such evidence as is available to the prosecution. But in a disciplinary enquiry, the person presenting the case is conferred the duty of supporting the charges and hence the presentation of a case in a court of law by a prosecutor is not a good parallel to the presentation of a case in a disciplinary proceeding.

(37-B)

Ministry of Home Affairs O.M. No. 24/50/63-AVD, dated the 4th July, 1964

[B(38A)]

The undersigned is directed to refer to Shri T. C. A. Ramanujachari's d.o. letter No. 36/14/61-AVD dated the 14th August,

1961 on the above subject and to say that the question of publicity was considered in the meeting held by the Home Minister with the Secretaries, on the 9th May, 1964. In the light of the discussions held in the meeting, the procedure regarding publicity has been revised. The following revised procedure may now be adopted :—

(1) Where a case is registered and an arrest made and a search carried out and *something substantial is found (this precaution is necessary)*, there should be no objection to publicity being given to the designation or status of the person involved, the department to which he belongs and the nature of the allegations but no name need be given.

(2) When cases are taken to a court against an officer, publicity may be given as soon as the case is put in the court regarding the nature of the offence and the designation of the officer. The name of the officer should not be published.

(3) In cases in which officers are prosecuted in a court of law and convicted, the main facts of the case and relevant details of the cases should be given as also the name and designation of the officer, and the sentence awarded.

(4) In cases which are not taken to a court but in which only departmental action is taken, no publicity should be given till the conclusion of such proceedings. However, the statistics of disciplinary action taken against gazetted officers should be published promptly.

(5) In disciplinary cases not ending in a major punishment, publicity may be given regarding the designation of the officers, details of the cases and the punishment awarded to them. In no case should the names be published.

In disciplinary cases ending in a major punishment the name, designation, department and all other particulars should be publicised.

(6) Publicity in respect of persons convicted or on whom a major punishment is inflicted should be done periodically over the radio and in the press, even by way of paid advertisements, under the Caption "Do you know?", "Corruption does not pay" etc.

Such publicity should be done in respect of some past cases also.

(7) In every case the information to be published will be cleared by the Central Bureau of Investigation and where they so advise it should be released unofficially.

2. The names of the firms which are blacklisted should not be publicised as the orders of blacklisting are executive orders which are not even communicated to the firms concerned.

3. It is requested that these instructions may be brought to the notice of all concerned for guidance and necessary action.

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(38)

Ministry of Home Affairs letter No. 18/9/63-Ests.(B), dated 4th August, 1964

[B(63), B(75), B(47)]

The undersigned is directed to invite attention to this Ministry's O.M. No. 18/18/48-Ests., dated the 20th August, 1949 which lays down the procedure to be followed by the Ministries while consulting the Union Public Service Commission, among other things, in disciplinary matters. In para 2 of Appendix II to the above O.M. it was stated *inter alia* that while referring to the Commission a disciplinary case in which an original order imposing a penalty has to be passed by the President, care should be taken as far as possible, to avoid expressing an opinion on the merits of the case but there was no objection to a Ministry forming a provisional opinion for the imposition of one of the major penalties and asking the officer to show cause why that penalty should not be imposed on him. In this Ministry's O.M. No. 39/25/54-Ests., dated the 18th June, 1954, it was decided that the Ministries should prepare a self contained note indicating clear findings on facts of the case, and the nature and degree of any misconduct, and forward the same to the Commission while referring disciplinary cases to the Commission. This requirement is also incorporated in Column 15 of the *proforma* which accompanies all disciplinary cases referred to the Commission for advice.

2. Reference have been received from Ministries in regard to the apparent inconsistency between the instructions contained

in Appendix II to this Ministry's O.M. dated the 20th August, 1949 and those contained in the O.M. dated the 18th June, 1954 referred to above. It has now been decided, in consultation with the Union Public Service Commission that the following procedure should be adopted for referring disciplinary cases to them for advice:

(a) *Original Cases*

(i) Where no enquiry has been held *i.e.*, so far as proceedings under rule 16 of C.C.S. (C.C.A.) Rules or a corresponding rule are concerned only the memorandum containing the allegations and the official's reply thereto should be sent to the Commission and it shall not be necessary to send a self-contained factual note as a rule. But a note should be sent where clarifications/comments have to be given to explain the points made in the official's explanation. These clarifications/comments should, however, be only factual and procedural and should form part of the record.

(ii) Where action under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules 1957 or a corresponding rule has been initiated and an enquiry has been held, but the Government consider in the light of the explanation furnished by the officer and the finding of the Enquiry Officer that there is no need to impose a major penalty, there may not be any need for preparing a self-contained note except where it is necessary to clarify the factual/procedural points in the light of any remarks contained in the enquiry report. In the letter forwarding the records to the Commission or in a separate note it may be mentioned that the Government have reached the provisional conclusion that no major penalty is called for. The note should, however, form part of the record.

(iii) Where an enquiry has been held and the Government consider that a major penalty is called for, it will be necessary for the disciplinary authority to record a provisional conclusion regarding the penalty to be imposed. While forwarding the reply of the officer to the show-cause notice and the other relevant records to the Commission it will be sufficient in such cases to deal with any factual/procedural points which may have been raised in the officer's reply to the show-cause notice, in a separate note which will form part of the record. The note should not, however, discuss the merits of the case and should not record any findings on the charges or express any opinion regarding the penalty to be imposed on the officer.

(b) *Cases of Appeal*

While forwarding an appeal to the Commission, there should not be any expression of opinion on the merits of the case; it should, however, be ensured that comments of the Disciplinary Authority as required under rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules or a corresponding rule are invariably sent to the Commission.

(c) *Cases of review on Memorials/Petitions or otherwise*

In terms of the provisions of the Union Public Service Commission (Exemption from Consultation) Regulations, the Commission are required to be consulted only when the President proposes to pass an order overruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the penalties made by him or by a subordinate authority, or an order imposing any of the penalties in exercise of his powers of review and in modification of an order under which none of the penalties has been imposed. In such cases, there is no objection to the Ministry indicating in a separate note or in the forwarding letter the considerations on account of which a modification of the order already passed in the case is called for.

In cases where, as a result of the review, it is proposed to enhance the penalty and a show-cause notice to this effect is issued to the officer, a note containing the Government's comments on any factual/procedural points raised by the officer in the reply to the show-cause notice should be forwarded to the Commission together with other relevant papers, without however expressing any view regarding the findings on the charges, or the penalty to be imposed on the officer.

(d) When a disciplinary case is referred to the Commission, all the documents in original as detailed in the *proforma* statement circulated with this Ministry's D.O. No. 8/33/56-AVD, dated 31st December, 1956 to all Vigilance Officers, together with all the important papers which are referred to in these documents, should be forwarded to the Commission for their perusal. A further communication will follow in regard to the consequential charges to be made in the *proforma*.

(38-A)

Ministry of Home Affairs O.M. No. 24/50/63-AVD, the 14th August, 1964

[B(37B)] [B(39)]

The undersigned is directed to refer to this Ministry's Office Memorandum No. 24/50/63-AVD dated the 4th July, 1964 on the subject noted above and to say that a question has arisen whether it is necessary to get the clearance of the Central Bureau of Investigation before publishing the information as provided in para 1(7) of the Office Memorandum dated 4th July 1964, in respect of cases which are initiated by the Vigilance Organisations of the Ministries/Departments on their own. The question has been examined in consultation with the Central Bureau of Investigation and it is clarified for the information and guidance of all concerned, that it is *not* necessary to get the clearance of the Central Bureau of Investigation before publishing the information regarding cases which have not been investigated by the C.B.I. and which are initiated by the Vigilance Organisations of the Ministries/Departments of their own. The Ministries/Departments may take necessary action themselves to publish the information in respect of these cases.

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(39)

Ministry of Home Affairs O.M. No. 43/125/64-AVD, dated 21st August, 1964

[B(38A)] [B(40B)]

The undersigned is directed to say that Recommendation No. 109, contained in para 11.7 of the report of the Committee on Prevention of Corruption, has been carefully considered in the light of the comments received from the Ministries. This recommendation consists of the following parts:—

(i) the Central and State Governments should scrutinise carefully all complaints and allegations appearing in responsible newspapers and investigate them thoroughly;

(ii) editors and reporters should be encouraged under a pledge of secrecy to communicate to the Chief Vigilance Officers or the Central Vigilance Commission about suspected corrupt practices;

(iii) the Press should be informed of the results of prosecution and departmental inquiries relating to corruption.

2. Part (iii) above has already been accepted and necessary instructions have been issued *vide* Ministry of Home Affairs' Office Memorandum No. F. 24/50/63-AVD, dated the 4th July, 1964.

3. As regards the recommendation that complaints and allegations appearing in responsible newspapers should be inquired into, it has been accepted on the understanding that the form and nature of inquiry would be determined according to the nature of each case.

4. In regard to part (ii) above, it may be stated that responsible newspapers do not usually publish allegations against individuals, and partly because of this those who have allegations to make for public or private reasons do not go to editors or reporters of the responsible papers. Some papers with national circulation, and many more with local circulation, do, however, publish allegations against individuals more or less regularly; and because they do so, reports about actual, suspected or sometimes even fabricated cases of corruption, etc., flow to them. Caution is therefore, indicated in expecting the editors and reporters of the latter group of newspapers to communicate information under pledge of secrecy to enable Government to initiate action thereon. But it may be that the editors and reporters of the more responsible newspapers also receive information about corruption, etc., because they have numerous contacts with people in different walks of life, and this is what the Santhanam Committee, perhaps, had in mind in making this recommendation. The Committee may also have thought that responsible persons generally, and those who are likely to be in the know of things in particular, should be enabled to help in the detection and prevention of corruption, and editors and reporters of responsible newspapers are certainly among such persons.

5. However, there does not appear to be any need to take any special steps in this regard. Even now when the editor or a reporter of a responsible newspaper gives an information about suspected corruption, in confidence, the confidence is respected. This may continue to be done. Whether a particular editor or reporter is a trustworthy and public spirited person is, however, a matter of judgment and depends on a number of factors and it will be difficult to lay down a general rule in this regard. After careful consideration, it has been decided to accept the recommendation only to the extent that Government and their

officers will welcome the help of editors and reporters of responsible newspapers, and of other responsible citizens, in checking and detecting corruption and they will deal with any information given to them in an appropriate manner, and where information is furished in confidence, the confidence will be respected.

6. Recommendation No. 110 regarding legal action against newspapers which publish unfounded allegations has also been examined in the light of the views expressed by the Ministries, and it has been decided to accept this recommendation. But here again it would not be advisable to lay down a rigid rule. In some cases, an authoritative contradiction of a report published in a newspaper should be sufficient; in some other cases the publication of an apology by the newspaper might do. In some cases, for instance, where the publication is in a newspaper with a very small circulation and with no standing, it might be best to ignore the publication altogether.

7. The law is being amended so that there may be no doubt left about the competence of Government to have a prosecution for defamation started even when the public servant himself does not wish to go to court. Government should not hesitate to get such a prosecution started in suitable cases; though here again it would not be desirable to lay down a rigid rule.

8. It is requested that these instructions may be brought to the notice of all concerned confidentially for guidance and necessary action.

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(40)

Ministry of Home Affairs O.M. No. 39/8/64-Ests(A), dated 4th September, 1964

The instructions issued in this Ministry's O.M. No. 39/30/54-Estt., dated the 7th June, 1975, provide that as soon as sufficient evidence is available in cases of criminal misconduct of Government servants, disciplinary proceedings under the appropriate rules should be initiated forthwith and that after the departmental proceedings are concluded and the penalty, if any, imposed as a result thereof, criminal proceedings should be initiated in suitable cases.

2. The above instructions have been reviewed in the light of the recommendations of the Committee on Prevention of Corrup-

tion contained in para 10.25 of their Report, and, in partial modification of this Ministry's O.M. of 7th June, 1955, it has been decided that prosecution should be the general rule in all those cases which are found fit to be sent to court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such cases, departmental action should not precede prosecution. In other cases involving less serious offences or involving malpractices of a departmental nature, departmental action only should be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved difference of opinion between the Central Bureau of Investigation and the administrative authority concerned as to whether prosecution in a court or departmental action should be resorted to, in the first instance, the matter should be referred to the Central Vigilance Commission for advice.

(40-A)

Ministry of Home Affairs O.M. No. 43/130/64-AVD, dated 21st October, 1964

The undersigned is directed to say that Recommendation No. 62, contained in paragraph 8.8 of the report of the Committee on Prevention of Corruption, has been carefully considered in the light of the comments received from the Ministries, etc. Proposals for withdrawal of prosecution may be initiated by the investigating agency, the Public Prosecutor, etc., for some legal reasons, or they may come up in the form of requests from the accused. In the former class of cases, the correct procedure would be to consult the Ministry of Law and accept their advice. In cases in which prosecution had been sanctioned on the recommendation of the Central Vigilance Commissioner, he should also be consulted before final decision is taken.

2. Requests for withdrawal of prosecution received from the accused should not be generally entertained. There may, however, be a few exceptional cases in which, for instance, attention is invited to some fresh, established or accepted facts which alter the whole aspect of the case. Even in such exceptional cases the Ministry of Law should be consulted in the first instance and then the Central Vigilance Commissioner, if the case is one in which prosecution had been sanctioned on his advice.

3. In this connection attention is invited to Rule 7 of the Government of India (Transaction of Business) Rules read with

item (g) of the Second Schedule to those Rules, which provide that any proposal to withdraw, otherwise than in accordance with competent legal advice, any prosecution instituted by or at the instance of the Government of India, should be brought before the Cabinet. In most cases, the "competent legal advice" would be the advice received from the Ministry of Law.

4. It is unlikely that there would be need to consider withdrawal of prosecution in cases of bribery or corruption on wider considerations of public policy. But it if in a rare instance such a need is felt, the Central Vigilance Commissioner should be consulted if the prosecution had been started on his recommendation, and orders of the Cabinet taken as required under the Government of India (Transaction of Business) Rules.

5. It is requested that these instructions may be brought to the notice of all concerned confidentially for guidance and necessary action.

(40-B)

Ministry of Home Affairs O.M. No. 24/50/63-AVD(Pt.), dated 5th October, 1964

[B(39)] [B(40C)]

In continuation of this Ministry's Office Memorandum No. 24/50/63-AVD, dated the 14th August, 1964, on the subject mentioned above, the undersigned is directed to forward herewith copies of the following communications for the information and guidance of all the Ministries etc.:—

(a) U.O. No. 7(45)/61/AVU, dated the 5th August, 1964 from the Department of Food to the Ministry of Home Affairs.

(b) Office Memorandum No. 24/50/63-AVD(Pt.), dated the 14th September, 1964 from the Ministry of Home Affairs to Department of Food.

Copy of Ministry of Home Affairs O.M. No. 24/50/63-*AVD(Pt.) dated* 14*th September,* 1964 *addressed to Deptt. of Food.*

The undersigned is directed to refer to the Department of Food's u.o. No. 7(45)/61-AVU dated 5th August, 1964, on the

above subject and to say that the points raised by the Department of Food have been examined in consultation with the Central Bureau of Investigation and it has been decided that the clearance may be obtained from the Central Bureau of Investigation in each individual case as and when it arises, otherwise periodical reference to Central Bureau of Investigation would result in delay and would defeat the very purpose of publicity. The information may be released to the Press in the form of Press communique, which may be issued in consultation with the Information Officer attached to each Ministry. In regard to the question whether publicity in respect of punishments awarded by the subordinate offices in the Regions should be given from the Headquarters of the Department or by the subordinate offices concerned to the Press locally, it is stated that the Ministry concerned may decide whether the publicity is to be given by the Headquarter of the Department or subordinate offices.

Ministry of Food and Agriculture

(Department of Food)

Vigilance Section

Will the Ministry of Home Affairs please refer to their Office Memorandum No. F. 24/50/63-AVD, dated the 4th July, 1964, regarding publicity to be given in the Press of the names and particulars of officers punished as a result of court proceedings/departmental proceedings? It has been provided in the Office Memorandum that in every case of publicity, the information to be published should be cleared by the Central Bureau of Investigation and where they so advise, it should be released unofficially. The following points need clarification:—

(i) Whether each case is to be referred to the Central Bureau of Investigation for clearance as and when it arises or whether the reference should be made to them periodically—say once in every month or quarter.

(ii) Whether the information should be issued through the Publicity Officer attached to the Ministry/Department concerned and if so in what form.

(iii) Whether publicity in respect of punishments awarded by the Subordinate offices in the Regions should be given from the Headquarters of the Department or by the Subordinate Offices concerned to the Press locally.

It will, perhaps, be better if a periodical return is prescribed by the Administrative Vigilance Division to ensure that no case is left out. This can be a consolidated return covering the Department and all its Attached and Subordinate Offices which should be got cleared through the Central Bureau of Investigation periodically. After clearance is obtained, it can be given to the Press either by the Central Bureau of Investigation or the Department concerned. Ministry of Home Affairs (AVD) may please see and clarify the position.

(40-C)

Ministry of Home Affairs O.M. No. 24/50/63-AVD(Pt.), dated 20th October, 1964

[B(40B)]

The undersigned is directed to refer to this Ministry's circular Office Memorandum No. 24/50/63-AVD dated 14th August, 1964, on the subject mentioned above and to say that the following points were recently discussed in the meeting of the Committee of Senior Officers held by the Home Minister on 24th September, 1964:—

(i) whether the Ministry of Defence should be consulted before giving any publicity to cases of Defence Personnel and whether clearance from security angle may be obtained from that Ministry in such cases.

(ii) whether publicity should not be given to cases convicted by Court Martial before the sentences are confirmed by appropriate authority.

(iii) whether the name of the officer on whom punishment of reduction in rank was imposed, should be published.

The following decisions were taken:—

(a) Prior clearance of the Ministry of Defence should not be insisted upon in every case, but it is open to the Ministry of Defence as to any other Ministry to bring to the notice of the C.B.I. when a case is going on that in that particular case publicity should not be given without prior clearance from the Ministry.

(b) No publicity should be given to the Court Martial cases of the Defence Ministry till the sentences are confirmed by the appropriate authority.

(c) No publicity should be given to the name of the officer reduced in rank as the person concerned will be still in service, but other particulars may be published in such cases.

These decisions are being circulated for the information and guidance of Ministries etc.

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(41)

Ministry of Home Affairs O.M. No. 43/56/64-AVD, dated 22nd October, 1964

[B(78), B(112)]

The undersigned is directed to say that Recommendation No. 61, contained in paragraph 8.5 of the report of the Committee on Prevention of Corruption, has been carefully considered in the light of the comments received from the Ministries. It has been decided that public interest should be the guiding factor in deciding to place in Government Servant under suspension, and the disciplinary authority, should have the discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory:—

(i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (*e.g.*, apprehended tampering with witnesses or documents);

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

(iii) where the continuance in office of the Government servant will be against the wider public interest other than those covered by (1) and (2) such as there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the

Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against the Government servant and the preliminary inquiry has revealed that a *prima facie* case is made out which would justify the prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

NOTE.—(a) In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is *under Investigation* and before a *prima facie*.

(b) Certain types of misdemeanour where suspension may be desirable in the five circumstances mentioned are indicated below :—

(i) any offence or conduct involving moral turpitude;

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

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

(iv) desertion of duty;

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

In respect of the types of misdemeanour specified in sub-clauses (iii), (iv) and (v) discretion has to be exercised with care.

(41-A)

Ministry of Home Affairs O.M. No. 43/81/64-AVD, dated 23rd October, 1964

The undersigned is directed to say that recommendations No. 82, 84 and 85, contained in paragraphs 10.12, 10.14 and 10.15 respectively, of the report of the Committee on Prevention of Corruption, have been carefully considered in the light of the comments received from the Ministries/Departments.

2. Recommendation No. 82 suggests that all records and documents required by the Special Police Establishment should be made available to them for inspection and scrutiny ordinarily within a fortnight and positively within a month from the date of receipt of the request. It has been decided that this recommendation should be accepted.

3. Recommendation 84 is to the effect that in case where the Special Police Establishment are investigating serious charges and request for the transfer of a Government servant such transfers should be made quickly. It has been decided that this recommendation should be accepted with the following amplification:—

(a) the Special Police Establishment should recommend transfer only when a transfer is absolutely necessary for purposes of investigation;

(b) the Special Police Establishment should give reasons while making requests for transfer, and

(c) where the Department concerned has some administrative difficulty in complying with the request, the matter should be settled by discussion at the local level. If differences persist, it can be discussed at higher levels. A discussion at the highest level between the Director, Administrative Vigilance Division and the Secretary of the Administrative Ministry concerned should be necessary only in exceptional circumstances.

While it is recognised that the discretion of the administrative Ministries should not be taken away in matters of this kind, it is equally necessary that there should be no impediments to proper investigation of allegations of corruption and lack of integrity. It is hoped that both these considerations would be borne in mind by all concerned.

4. Recommendation 85 provides that Government servants required for examination by the Special Police Establishment should become available for that purpose quickly. It has been decided to accept this recommendation.

5. The Ministries/Departments are requested to take appropriate action in the light of the above decisions.

(41-B)

Ministry of Home Affairs O.M. No. 43/107/64-AVD, dated 23rd October, 1964

The undersigned is directed to say that the parts (iii), (iv) and (v) of recommendation No. 75, contained in paragraph 9.23 of the report of the Committee on Prevention of Corruption (reproduced below) have been carefully considered in the light of the comments received from the Ministries/Departments—

"75. (iii) The Chief Vigilance Officers and the Vigilance Officers should have complete independence to investigate complaints of corruption and malpractices;

(iv) Those working in the Vigilance Organisation should have an assurance that good and efficient work in the Vigilance Organisation will enhance their opportunities for promotion and not become a sort of disqualification; and

(v) Those posted to the Vigilance Organisation should not have the fear of returning to their parent cadre after a short period with the possibility of facing the anger and displeasure of those against whom they made inquiries".

2. In regard to para (iii), it has been decided that the Secretary/Head of Department should ensure that the Chief Vigilance Officers and the Vigilance Officer are not subjected to any undue interference in the discharge of their duties. Government have considered part (iv) of the recommendation and decided that it should be ensured that work in the vigilance organisation should not be allowed to become a short of disqualification in the matter of promotion opportunities. "It has been decided to accept part (v) of the recommendation in principle. An officer should not, as far as possible, be posted under those against whom he may have had occasion to hold inquiries while functioning in the vigilance organisation".

3. It is requested that these instructions may be brought to the notice of all concerned for guidance and necessary action.

(41-C)

Ministry of Home Affairs O.M. No. 43/105/64-AVD, dated 9th November, 1964

[B (43-C)]

The undersigned is directed to say that Recommendations No. 70, 75(i), 75(ii), and 75(vii) and 77, contained in paragraphs 9.11 to 9.15, 9.23(i) and (ii) 9.23(vii) and 9.25 respectively, of the report of the Committee on Prevention of Corruption, have been considered in the light of the comments received from the Ministries/Departments.

2. In para 9.14 of their Report (Recommendation 70) the Committee have observed that they felt the time had come to put the entire Vigilance Organisation on a proper and adequate basis without in any way undermining the general principle that the Secretaries and Heads of Departments are primarily responsible for the purity, integrity and efficiency of their departments. This is a statement of policy, which is already being followed. It is requested that the Secretaries/Heads of Departments may make a review of the Vigilance Organisations in their Ministries/Departments, and introduce such changes, as may be considered necessary, in consultation with the Administrative Vigilance Division. The Committee have further recommended that it is essential to evolve and apply common standards in matters relating to prosecution, departmental action and the award of punishment. In so far as the award of punishment is concerned, a common standard already exists as in most cases the Union Public Service Commission has to be consulted. Thus in most cases, punishment is awarded on the advice of one single agency. As regards prosecutions and departmental action, with the establishment of the Central Vigilance Commission, a certain amount of uniformity has been introduced.

3. Recommendation No. 75(i) states that there should be a Chief Vigilance Officer in each Ministry/Department/Central Corporate undertaking and a vigilance officer in all subordinate and attached offices and in important departments of the Public Sector Undertakings. It is further stated that the Chief Vigilance Officer should be appointed in consultation with the Central Vigilance Commission and he should be responsible for coordinating and guiding activities of other vigilance officers in the attached and subordinate offices and the organisations for which his Ministry/Department is responsible. It has been decided to

accept this recommendation. It may, however, be clarified that in performing the coordinating function, the Chief Vigilance Officer has to act under the guidance of the Secretary or Head of Department, and an impression should not be created that the Chief Vigilance Officer is an independent functionary within the Ministry or Department.

4. Recommendation No. 75(ii) is to the effect that whole-time or part-time assistance of a Deputy Superintendent of Police from the Central Bureau of Investigation may be made available to the Chief Vigilance Officer(s) of each of the Ministries/Departments/Undertakings. It has been decided to accept this recommendation.

5. Recommendation No. 75(vii) states that the Chief Vigilance Officers and the Vigilance Officers in Departments and establishments having field organisations should have an adequate investigating staff, so that such of those complaints or cases which are not handed over to the Central Bureau of Investigation may be investigated by them and that the strength of the investigating staff should be determined by each Ministry in consultation with the Central Vigilance Commission. Normally, it should be possible to make a preliminary inquiry through the existing departmental staff, and except for certain Departments like C.P.W.D., P & T and Railways, separate investigation staff may not be generally necessary. The Ministry/Departments should, however, while making a review of the vigilance organisation, also keep in mind the need for such investigating staff. It may be pointed out that in cases which involve recording of statements of witnesses or investigation for unearthing evidence, it will be best to hand over the case to the C.B.I.

6. In their recommendation No. 77, the Committee have observed that the Special Police Establishment should be able to spare some officers for vigilance work and its strength should be reviewed for this purpose. It has been decided that this observation of the Committee should be kept in view and implemented wherever it is felt necessary to do so.

7. The Ministries/Departments are requested to take appropriate action in the light of the above decisions.

(41-D)

Ministry of Home Affairs O.M. No. 43/109/64-AVD, dated 18th November, 1964

The undersigned is directed to say that recommendation No. 75 (ix), contained in paragraph 9.23(ix) of the Report of the Committee on Prevention of Corruption, has been considered in the light of the comments received from the Ministries/Departments. The recommendation consists of the following two parts:

(i) The Chief Vigilance Officers should have the power to scrutinise the correctness of the findings and conclusions arrived at in a departmental inquiry and the adequacy of punishment and initiate action for review if he considers that the punishment awarded is inadequate; and

(ii) The Delhi Special Police Establishment should be authorised to move for review of findings and punishment in cases started on their report.

It is further stated that in all these matters the advice of the Central Vigilance Commission should be freely obtained.

2. As regards (i) above, a Vigilance Officer cannot obviously review findings accepted and orders passed by an officer in his own hierarchy to whom he is subordinate. For example, when a Secretary passes orders, there can be no question of the Vigilance Officer of the Ministry scrutinising the case, or if the Head of a Department passes orders, his Vigilance Officer cannot examine the correctness of the decision. The intention of the recommendation is that findings and orders in disciplinary cases should be scrutinised *at the next higher level*, and the Vigilance Officer at each such level should do this scrutiny on behalf of the officer at the level (Secretary, Head of a Department, etc.) who can decide whether the order passed by the lower authority needs to be reviewed.

3. In a case where there is an appeal in a disciplinary case, the findings and the orders of punishment have in any case to be scrutinised. Such scrutiny would normally be done by the Vigilance Officer though, of course, orders of the appropriate Appellate Authority (Secretary, Head of Department, etc.) would be taken. This class of cases does not, therefore, present any

difficulty. There are, however, cases in which a Government servent is either exonerated in disciplinary proceedings or is awarded punishment against which he considers it imprudent to appeal. In a certain percentage of these cases, it is desirable that the power of *review* should be exercised. The object of this is to ensure by a systematic arrangement of scrutiny that the power of review is exercised in all suitable cases.

4. As regards (ii) above, attention is invited to the procedure laid down in paragraph 6 of Central Vigilance Commission's Circular No. 9/1/64-D.P., dated the 13th April, 1964, which gives effect to this part of the recommendation.

5. The above decisions may be brought to the notice of all concerned for guidance and necessary action.

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(42)

Ministry of Home Affairs O.M. No. 43/126/64-AVD, dated 31st October, 1964

The undersigned is directed to say that recommendation No. 111 contained in para 11.9 of the Report of the Committee on Prevention of Corruption has been considered in the light of the comments received from the Ministries. It has been decided that the Government will welcome the co-operation of responsible voluntary public organisations in combating corruption, and where they furnish information in confidence, the confidence will be respected. The Ministries/Departments are requested to make use of the co-operation of responsible voluntary organisations in combating corruption.

(42-A)

Ministry of Home Affairs O.M. No. 43/71/64-AVD, dated 10th December, 1964

[B(83)]

The undersigned is directed to say that Recommendation No. 65, contained in paragraph 8.10 of the Report of the Committee on Prevention of Corruption, has been carefully considered in the light of the comments received from the Ministries/

Departments. It has been decided that the Ministries/Departments which deal with the grant of contracts and licences and which deal with assessment, collection and refund the taxes may carry out a *post facto* scrutiny of disposal of files to find out the nature of mistakes and irregularities so that such mistakes and irregularities are not repeated. Such an examination may be done on the basis of random selection of disposed of files.

2. It is requested that the above decision may kindly be brought to the notice of all concerned for information and necessary action.

(42-B)

Ministry of Home Affairs O.M. No. 39/19/63-Ests(A), dated the 16th December, 1964

As the Ministry of Finance etc. are aware, a presumption of corruption fairly and reasonably arises against an officer who cannot account for large accretion of wealth which he could possibly have saved from his known sources of income. This principle has received statutory recognition in Section 5(3) of the Prevention of Corruption Act, 1947, and its application in a departmental inquiry against an officer charged with corruption could not, therefore, be unjust or inequitable. In fact, this principle has recently been upheld by the Supreme Court in the case of Shri G. R. Mankar Vs. Union of India (Civil Appeal No. 160 of 1963).

2. Ministry of Finance etc. are requested to ensure, that, in a departmental enquiry against an officer charged with corruption and found to be in possession of assets disproportionate to his known sources of income, the Presenting Officer concerned brings the legal position, as set out in para 1 above, to the notice of the Inquiring Officer.

3. This Ministry's O.M. No. 39/9/51-Ests. dated 8th October, 1952 may be treated as cancelled.

(43)

Ministry of Home Affairs O.M. No. 7/28/63-Ests(A), dated 22nd December, 1964

[B(95), B(104)]

[B(24)]

Para 2 of this Ministry's O.M. No. 39/4/56-Ests(A), dated the 3rd November, 1958, read with their Office Memorandum No. 39/3/59-Ests(A), dated 31st August, 1960 *inter alia* provided that an officer under suspension, who on the conclusion of the departmental proceedings against him, is completely exonerated, the suspension being held to be wholly unjustified, should be promoted in the first vacancy that could be made available for the purpose and his seniority in the next higher grade fixed as if he had been promoted in accordance with his position in the select list.

2. A question has been raised as to how the seniority should be fixed to cases of the above type where, for promotion to the next higher grade, a minimum period of service is prescribed but which the Government servant concerned could not put in on account of his suspension, which was ultimately found to be wholly unjustified. It has now been decided that in such a case, the period during which any officer junior to the suspended officer concerned was promoted to the higher grade should be reckoned towards the minimum period of service referred to above for the purpose of determining his eligility for promotion to the higher grade. It has also been decided that the pay of such category of Government servants should, on promotion, be fixed by allowing the intervening period, during which the suspended officer could not be promoted due to his suspension, to be counted for increments in the higher grade, but no arrears would be admissible. These concessions will also be admissible to those Government servants who, though not under suspension, could not be promoted to the higher grade on account of their being implicated in departmental proceedings, or on account of their conduct being under investigation and who were subsequently completely exonerated.

3. These orders take effect from the date of issue *i.e.*, these orders will be applicable in cases wherein the suspended Government servants are reinstated in service (their suspension ultimately found to be wholly unjustified) or after the date of issue of this O.M. As for Government servant referred to in the last sentence of para 2. the concessions referred to therein will be

admissible in those cases only where the decision to exonerate them completely is taken by the competent authority on, or after the date of this Office Memorandum.

(43-A)

Ministry of Home Affairs O.M. No. 24/115/64-AVD, dated 7th January, 1965

[B(56)]

The undersigned is directed to invite a reference to the Ministry of Home Affairs letter No. 24/54/62-AVD, dated the 13th February, 1964 on the above noted subject and to enclose a copy of note No. 5458 64-Adv(B), dated the 9th October, 1964 from the Ministry of Law giving further clarification concerning the interpretation of the various judgements of the Supreme Court.

Copy of U.O. Note No. 5458/Adv(B), dated 9th October, 1964 from Ministry of Law, Department of Legal Affairs.

The question whether the action of Government servant in a particular case amounts to termination simpliciter or dismissal depends on the nature of inquiry and the contents of the order. The Law on the subject is now well settled by the two recent decisions of the Supreme Court in (1) Champaklal Chimanlal Shah *Vs.* Union of India (Civil Appeal No. 472 of 1962), and (2) Jagdish Mitter *Vs.* Union of India (Civil Appeal No. 718 of 1962).

2. In Jagdish Mitter's case Justice Gajendragadkar (as he then was) reviewed the entire case Law on the subject and observed:

"It is now well-settled that the protection of Article 311 can be invoked not only by permanent public servants, but also by public servants who are employed as temporary servants or probations.

.....Their tenure is no doubt of a precarious character and can be terminated either under the terms of contract or rules, or by punitive action.

.....That means that the appropriate authority possesses two powers to terminate the services of a temporary public servant; it can either discharge him purporting to exercise its power under the terms of the contract or the relevant rules, and in that case, it will be a straight-forward and direct case of discharge and

nothing more; in such a case Article 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straight-forward way; in such a case Article 311 will apply."

The learned Judge further observed that the Government does not terminate the services of a Public servant without any reason:

> "Almost in every case where the question of continuing the probationer or a temporary servant falls to be decided by the authority, the authority has necessarily to enquire whether the said probationer or temporary servant deserves to be continued and that may sometimes lead to an enquiry. In fact, it would be an act of fairness on the part of the authority to make such an enquiry and give a chance to the servant concerned to explain his conduct before the authority reaches a conclusion in the matter. Such an enquiry is actuated solely by the desire to decide the simple question as to whether the temporary servant or the probationer should be continued or not, and is undertaken for that purpose alone without any desire to attach any stigma to him. An enquiry of this character must be distinguished from the formal departmental enquiry where charges are served on the servant and which is undertaken for the purpose of punishing him, otherwise it would lead to this anomalous result that in the case of a temporary servant or a probationer, the authority must discharge him without enquiring into his alleged inefficiency or unsuitability, but if the authority chooses to act fairly and makes some kind of enquiry and gives an opportunity to the servant concerned to explain his alleged deficiency, the discharge becomes dismissal."

3. This case, therefore, clearly provides that a simple termination of service preceded by an informal inquiry into the suitability or otherwise of the Government servant to continue him in service does not attract article 311(2). But if a formal inquiry is made after framing charges and appointing an Inquiry Officer, than action must conform to the requirements of Article 311(2). Termination by resort to rule 5 in such cases would be construed as circumventing the protection of Article 311 (2) and merely calling the order as termination would be camouflaging dismissal. In other words, the nature of the inquiry which resulted in the final action would be the determin-

ing factor. If it is merely a preliminary and informal inquiry to ascertain the fact, it is open to the Government to terminate the services by simple notice. But if it is a formal inquiry to ascertain the guilt for misconduct it is not open to circumvent Article 311 by switching over to termination procedure.

4. The other determining factor is the form and content of the order. On the face of it, if the order contains stigma of inefficiency, unsuitability, etc., it would amount to a dismissal. But if it is a simple order of termination passed with or without preliminary inquiry, it would not be construed as dismissal. On the other hand, the same order would be construed as dismissal if it was a result of a formal departmental inquiry in which charges have been framed. Inquiry Officer has been appointed and the findings of guilt have been reached. Justice Gajendragadkar concluded his judgment by observing :

> "When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be : does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal."

5. The same view was expressed by Justice Wanchoo in Champaklal's case. The learned Judge observed that the preliminary inquiry to satisfy the Government about the suitability or otherwise of a Government servant to continue in Government service must be distinguished from a departmental inquiry in order to find out whether a Government servant is guilty of specific misconduct. Termination on the basis of preliminary inquiry does not attract Article 311 (2), but the termination after departmental inquiry does attract the said provisions as mere use of innocuous terms does not change the nature and character of the action.

6. From these decisions, the following propositions emerge:

(1) A simple termination without inquiry does not attract Article 311 (2).

(2) Termination even after informal preliminary inquiry to satisfy the Government regarding the suitability or otherwise of the Government servant to continue in service does not attract Article 311 (2), unless the order of termination contains some aspersions or stigma.

(3) Termination after formal departmental inquiry into specific charges of misconduct and finding of guilt amounts to dismissal notwithstanding the fact that the final order is couched in innocuous terms like "termination", "discharge", etc. Such action amounts to circumvention of the protection of Article 311 (2) and a camouflage to conceal the real nature of the action.

(4) Sometimes the sequence of events which led to termination of service would show that the real intention was to punish for specific charges of misconduct even though no formal inquiry was made. These are rare cases of *mala fide* action (Sukhbans Singh *Vs.* State of Punjab: AIR 1962 Supreme Court 711).

(43-B)

Ministry of Home Affairs No. 1/10/64-Ests(D), dated the 14th January, 1965

[B(55-E)]

The Committee on Prevention of Corruption have *inter alia* made the following recommendations in para 9.23 of their Report:—

"(vi) It should be the invariable practice to obtain integrity clearance from the vigilance organisation in matters relating to confirmation and promotion".

2. The Vigilance Unit in each Ministry will, normally, have ail the information bearing on the integrity of officers who are to be considered for confirmation or promotion. If the Vigilance unit in each Ministry remains alert and advises the officer in charge of administration of the inquiries under way, there should be no need to make specific reference to the Unit to clear all these who are within the range of consideration for confirmation/promotion, on particular occasion. It has, therefore, been decided that the Vigilance Units, the Central Bureau of Investi-

gation and the Administrative Vigilance Division of the Ministry of Home Affairs should ensure that the appropriate authorities have before them relevant information on the basis of which, confirmation or promotion may be denied or postponed.

3. The Ministry of Finance etc., are requested to bring the above decision to the notice of the authorities under their control.

4. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders have been issued after consultation with the Comptroller and Auditor General.

(43-C)

Ministry of Home Affairs O.M. No. 43/105/64-AVD, dated the 22nd January, 1965

[B(41-C)]

[C(3)]

The undersigned is directed to invite the attention of Ministries/Departments etc. to paragraph 2 of this Ministry's O.M. No. 43/105/64-AVD, dated 9th November, 1964 relating to recommendation 70 of the Committee on Prevention of Corruption. It was indicated therein that changes in the Vigilance Organisation as considered necessary may be introduced by the Ministries/Departments in consultation with the Administrative Vigilance Division. In this connection it may be stated that paragraph 3 of letter No. 2/16/64-Coord.. dated 7th September, 1964 of Central Vigilance Commission *inter alia* stated that any suggestion for strengthening the existing set-up by the Ministries/Departments should be forwarded, in the first instance, to the Central Vigilance Commission who would then forward the proposals to the Ministry concerned with its own recommendations. In order to avoid confusion in the matter it has been considered necessary to clarify that in the first instance the Central Vigilance Commission should be consulted in regard to the suggestions for strengthening the existing set-up in accordance with its circular No. 2/16/64-Coord.. dated 7th September, 1964 and thereafter the proposal may be forwarded to the Administrative Vigilance Division as laid down in paragraph 2 of Ministry of Home Affair's O.M. No. 43/105/64-AVD, dated 9th November, 1964. This procedure will also apply in regard to the proposals

for strengthening the investigating staff referred to in recommendation No. 75(vii) of the Report of the Santhanam Committee.

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(44)

Ministry of Home Affairs O.M. No. 34/19/64-AVD, dated 19th February, 1965

The undersigned is directed to invite the attention of the Ministry of Finance etc., to this Ministry's Office Memorandum No. 15/7/56-AVD, dated 8th March, 1956 and 7th February, 1958, which *inter alia* provided that it was not possible to lay down any hard and fast rule on the question whether a temporary Government servant should be debarred from future employment when he is discharged from service under Rule 5 of the C.C.S. (Temporary Service) Rules, 1949 on grounds of general unsuitability. All Ministries were therefore advised to see that whenever action is taken against a Government servant under Rule 5, whether in the light of particular facts and circumstances of the case, action is necessary in accordance with the procedure prescribed in this Ministry's Office Memorandum No. 31/14/51-NGS (III), dated 31st January, 1952.

2. The matter has been carefully re-examined in consultation with the Ministry of Law, who have advised that an order of discharge under Rule 5 of the C.C.S. (Temporary Service) Rules, 1949 is liable to be held an order of removal or dismissal from service if any penal consequences follow such an order, and, therefore, circulation of names is a wrong practice likely to be construed by the Court as converting orders of discharge into orders of dismissal and as such it is advisable to abandon this practice. In the case of termination of service under Rule 5 of the C.C.S. (Temporary Service) Rules, 1949, the reasons for such termination are not communicated even to the Government servant concerned in the formal order passed against him; those reasons are also not proved by giving an opportunity to the Government servant to rebut them. It would, therefore, be open to objection to convey those reasons to the prospective employer of the Government servant, through the police, as is the intention in this Ministry's Office Memoranda referred to above. It has, therefore, been decided that the practice of circulation of names and service particulars in such type of cases should be discontinued forthwith.

3. However, instances have come to notice that in some cases, the Temporary Government servant resigns when some disciplinary proceedings are proposed to be initiated against him. Temporary service is mutually terminable by notice. Just as the employer instead of holding a departmental inquiry into the adverse allegations may terminate the services, similarly the employee may instead of facing the adverse allegations resign by giving the due notice. Even in such cases, the Ministry of Law have advised, that it would be open to objection to communicate the names of such Government servants to the Police.

4. Past cases need not be reopened.

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(45)

Ministry of Home Affairs' O.M. No. 151/1/65-AVD, dated 19th February, 1965

[B(45 A)] [C(90)]

In supersession of all previous instructions on the subject mentioned above, the undersigned is directed to say that it has been decided that with immediate effect no action is to be taken on any anonymous or pseudonymous complaint. Wide publicity may please be given to this decision.

(45-A)

Ministry of Home Affairs O.M. No. 356/8/65-AVD-III dated 27th March, 1965

[B (45)]

[B(47 A)] [C(90)]

The undersigned is directed to refer to this Ministry's Office Memorandum No. 151/1/65-AVD, dated the 19th February, 1965, on the subject noted above, in which it has been decided that no action is to be taken on any anonymous or pseudonymous complaints. A question has, however, been raised whether in the light of the above instructions further action on anonymous/pseudonymous complaints which are already in the process of being enquired/investigated into either departmentally or through Special Police Establishment may be dropped. This has been carefully considered in this Ministry and it is felt that

this is a matter which can be decided by the Ministries/ Departments concerned in their discretion. It may be added that enquiries need be pursued only (a) where enquiries have made considerable progress and (b) it appears from the present stage of enquiries that there is substance in the allegations.

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(46)

Ministry of Home Affairs letter No. 24/108/64-AVD, dated 6th April, 1965

[B(37)]

[B(47)]

In continuation of this Ministry's letter No. 17/11/64-AVD, dated 13th March, 1964 on the subject noted above, I am directed to say that in the absence of any procedure, difficulties have been experienced with regard to the requisition of original documents in the custody of Audit Offices by the *Departmental Investigating Officers other than those of Police Department*. Necessity for such a procedure was, therefore, strongly felt.

The following procedure for the release of such documents to the Departmental Inquiry Officers is accordingly laid down in consultation with the Comptroller and Auditor General of India.

In cases where the Departmental Inquiry Officer of the department or the Commisisoner for Departmental Enquiries considers that it is not possible to proceed with the inquiry without securing the original documents which are in possession of the Audit Officers, the Inquiry Officer should report the matter to the Secretary to the Government in the Administrative Department, of the State Government or an Officer of Joint Secretary's *rank* in the *Ministry of the Government* of India as the case may be. The latter should after satisfying himself that there is sufficient justification for obtaining the original documents personally address the Accountant General by name to hand over the documents in original to the Inquiry Officer indicating that copies, including photostat copies would not serve the purpose of the Inquiry Officer. The Accountant General will then arrange for those documents to be handed over to the Inquiry Officer as early as possible after retaining photostat copies. The original documents should be returned intact to the Audit Office as soon as it has served the purpose of investigation.

The Comptroller and Auditor General of India is being requested to issue suitable instructions to Audit Officers.

(46-A)

Ministry of Home Affairs O.M. No. 5/1/65-Estt-(D), dated the 30th April, 1965

A question has been raised as to what action should be taken against individuals who produce bogus educational certificates or otherwise give false information regarding their educational qualifications for purposes of employment under the Central Government. So far, each such case was being decided on its own merits and no hard and fast rules for determining the degree of the offence or the punishment that should be inflicted were laid down.

2. The matter has been examined in consultation with the Ministry of Finance (Ests. Division). In this Ministry's Office Memorandum No. 3/5(s)/64-Est.(B), dated 5th June, 1964, it was decided to insert the following "WARNING" in the Attestation Form for verification/re-verification of character and antecedents of candidates for appointment/employees under the Government of India.

> "WARNING—The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for the employment under Government. If the fact that false information has been furnished or there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated."

Ministries/Departments are, therefore, expected to make full use of this provision and to take a serious view of the default when it is found out that candidates have either supressed factual information or furnished false information.

3. In regard to cases where the candidates are not expected to fill any Attestation Forms but where they produce false information or suppress factual information relating to their qualifications etc., these are cases of fraud where, if there is sufficient

material, a prosecution could be launched. In all such cases of proved guilt, deterrent action should be taken against the persons involved.

4. In so far as the employees of Indian Audit and Accounts Department are concerned, these orders issue in consultation with the Comptroller and Auditor General.

5. Ministry of Finance etc., may kindly bring the above to the notice of their attached and subordinate offices for strict compliance.

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(47)

Ministry of Home Affairs letter No. 242/41/65-AVD, dated 1st June, 1965

[B(46)]

[B (108)]

With reference to the State Government's letter No. 372-PLS, dated 22-12-1964.

(on the subject noted No. 320/AC/Lm-4/65, dated 3-2-1965.

above), I am directed to say that the Comptroller and Auditor General of India has agreed that the Additional Inspector General of Police, West Bengal, may also be delegated powers to requisition original documents from the Accountant General in the same manner as the Inspector General of Police viz., as laid down in the Government of India Ministry of Home Affairs' Secret letter No. 47/4/55-Police(I), dated 15-7-1955.

The Comptroller and Auditor General of India is being requested to issue suitable instructions to Audit Officers.

[B(46)]

As regards the oral examination of the staff of Indian Audit & Accounts Department by the enquiry officer or the delinquent officer, I am to say that according to the existing arrangements the Investigating Officer of the Police Department is permitted to interrogate and take statements from the A.G.'s staff in the presence of an officer of the Audit Department nominated by the Accountant General for the purpose. On the other hand the messenger who carries the original records for production before

the Departmental Enquiry Officer cannot be expected to give an oral evidence, as the Inspection Reports on Audit Reports are processed at various stages in the Indian Audit and Accounts Department and they represent the views of the office as a whole, and it will not be correct to identify any particular point raised in the course of inspection with any particular officer or set of officers. The Comptroller and Auditor General does not, therefore, agree to the proposals contained in the State Government's letter dated 3-2-1965 referred to above and feels that the existing arrangements in this behalf are adequate.

[B(108)]

(47-A)

Ministry of Home Affairs O.M. No. 356/13/65-AVD-III, dated 9th June, 1965

[B(45A)]

[B(48A)]

The undersigned is directed to refer to this Ministry's Office Memorandum No. 151/1/65-AVD, dated the 19th February, 1965 on the subject mentioned above in which it has been decided that no action is to be taken on anonymous or pseudonymous complaints. A question has been raised whether these instructions apply to complaints other than those against Government servants. It is clarified that the decision mentioned above applies only to anonymous/pseudonymous complaints against Government servants.

(47-B)

Ministry of Home Affairs Office Memorandum No. 51/4/64-Ests.(A), dated 21st June, 1965.

Instructions were issued in Ministry of Home Affairs Office Memorandum No. 51/7/59-Ests(A), dated the 7th January, 1959, that a column should be added in the Confidential Report Form, where it did not exist, in the following terms:—

"*Assessment of integrity*

(If anything adverse has come to your notice, please specify it also.)"

It was also provided that any adverse remarks made about the integrity of a Government servant should be communicated to him.

2. The Committee on Prevention of Corruption have made the following recommendations in paras 6.12 and 6.15 of their report:—

6.12 Every officer of superior status under whom a number of Gazetted officers are working directly should take steps to ascertain personally whether there is any reason to doubt or suspect the integrity of any of these officers. This would bring the superior officers in greater contact with their junior officers and this would help in ensuring that they do not astray from the path of virtue.

6.15 At present, there is a column in the annual Confidential Report regarding every public servant where the superior officer has to comment on his integrity. But under the present practice, it is difficult for him to fill this column even when he has reasonable grounds to be doubtful of the integrity of his subordinate in the absence of definite proof. So it is unusual to say something non-committal. We recommend that in cases where the reporting officer is not in a position to make a positive report about integrity, he should leave the column blank and submit a secret report if he has reasons to doubt the integrity of the officer on whom he is reporting stating the reasons for his suspicions. The Government or the Head of Department who receive such secret reports should take suitable steps to find out the correctness or otherwise of the report.

3. Government have accepted both the recommendations. Suitable provision has been made in the revised Conduct Rules to the effect that every Government servant holding a supervisory post shall take all possible steps to ensure integrity and devotion to duty of all Government servants serving under his control and authority. The following instructions are issued and confirmed **suspicious integrity cannot be immediately certified:—**

(i) Supervisory officers should maintain a Confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such

suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual confidential report, this diary should be consulted and the material in it utlised for filling the column about integrity; if the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following sub-paragraphs.

(ii) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.

(iii) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure that the follow-up action is taken with the expedition.

(iv) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned.

(v) There are occasions when a reporting officer cannot in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry, or even be in possession of any information which would enable him to make a secret report to the Head of the Department. Such instances can occur when an officer is serving in a remote station and the reporting officer has not had occasion to watch his work closely, or when an officer has worked under the reporting officer only for a brief period or has been on long leave, etc. In all such cases, the reporting officer should make an entry in the integrity column to the effect that he has not watched the officer's integrity as the case may be. This would be a factual statement to which there can be no objection. But it is necessary that a superior officer should make every effort to form definite judgment about the integrity of those working under him, as early as possible, so that he may be able to make a positive statement.

(vi) There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity, the inquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such a case the officer's conduct should be watched for a further period, and, in the meantime, he should, as far as practiable, be kept away from positions in which there are opportunities for indulging in corrupt practices. How such officer should be dealt with in the following matters will require particular consideration:—

(a) *Grant of extension/re-employment.*—There is a course of action Government adopts solely in the public interest and it is not a normal expectation in service. Therefore Government would be fully justified in refusing to consider extension in service or re-employment of officers about whose integrity there is any doubt whatever.

(b) *Compulsory retirement.*—The age of superannuation being 58 years an officer has the normal expectation to continue up to that age unless there is something positive against his integrity. It would no doubt, not be proper to retire a Government servant compulsorily at an earlier age merely on the basis of any suspicion, but if there is a provision for a fair and objective appraisal of an officer's total record of service at a sufficiently high level, there should be no objection to the record of any suspicion about an officer's integrity also being considered.

(c) *Promotion.*—The fact that inquiries are under away on the secret report—note should not affect an officer's chances of promotion unless the source of information, etc. or the result of inquiries made up to that stage is such that departmental proceedings or a criminal prosecution is likely to be started shortly against the officer. If the inquiries reveal sufficient cause for departmental proceedings, these can be undertaken even at a later date, if departmental proceedings are not feasible though the integrity of the officer is found to be unsatisfactory, he can be reverted from an officiating appointment on ground of unsuitability.

(d) *Confirmation.*—Confirmation stands on a different footing as compared to promotion. The confirmation of an officer against whom a departmental inquiry or even a confidential inquiry with regard to his integrity is going on, should be withheld, until the enquiry against him is completed, and if he is exonerated he should be confirmed and given his due place in the seniority list. But confirmation should only be denied if something specific has been proved against an officer's integrity and not on mere suspicion which may sometimes, still remain after the inquiries have been completed.

4. The Ministry of Finance, etc. are requested to bring these instructions to the notice of all the appropriate authorities concerned under their control for compliance.

5. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued with the concurrence of the Comptroller and Auditor General.

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(48)

Ministry of Home Affairs Notification No. 59/13/65-Ests(A), dated 22nd July, 1965

S.O. In pursuance of the provisions of Clause (a) of sub-rule (2) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the Central Government hereby specifies the authorities mentioned in column 1 of the Table below as the authorities by which the powers conferred by the said sub-rule may be exercised to the extent indicated against each such authority in column 2 of that Table, namely:—

Name of Authority	Extent of Powers
1	2
Comptroller and Auditor General of India	In respect of orders passed Under Rule 5(1) against the employees of the Indian Audit and Accounts Department. Other than those whose appointing authority is the President,

1	2
Deputy Comptroller and Auditor General of India. Additional Deputy Comptroller and Auditor General of India.	In respect of orders passed under Rule 5(1) against Class III and IV employees of the Indian Audit and Accounts Department, other than Class III employees of the office of the Comptroller and Auditor General of India.
The Administrator of each of the Union Territories of Delhi, Himachal Pradesh, Manipur, Tirpura, Goa, Daman and Diu, Andaman and Nicobar Islands.	In respect of orders passed under Rule 5(1) by any authority subordinate to him.
Director General, Posts and Telegraphs	In respect of orders passed under Rule 5(1) by any authority subordinate to him.
Member (Administration), Posts and Telegraphs Board.	In respect of orders passed under Rule 5(1) against Class III and IV employees of the Posts and Telegraphs Directorate, except to Librarian in the Posts and Telegraphs Directorate.
Chairman, Central Water and Power Commission.	In respect of orders passed under Rule 5(1) by any authority subordinate to him.
Chief Controller of Printing and Stationery	In respect of orders passed under Rule 5(1) by any authority subordinate to him.
Chief Engineer, Central Public Works Department.	In respect of orders passed under Rule 5(1) by any authority subordinate to him.

2. This notification shall come into force from the 1st May, 1965.

(48-A)

Ministry of Home Affairs O.M. No. 356/13/65-AVD-III, dated 22nd July, 1965

[C(90)]

[B(47A)]

The undersigned is directed to refer to this Ministry's O.M. No. 356/13/65-AVD, dated the 9th June, 1965. The decision

that no action is to be taken on anonymous/pseudonymous complaints conveyed in this Ministry's O.M. No. 151/1/65-AVD, dated the 19th February 1965, will apply to employees of all Corporate Central Undertakings also.

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(49)

Ministry of Home Affairs O.M. No. 221/18/65-AVD, dated 7th September, 1965

[B(52)]

The undersigned is directed to say that instances have been noticed where inordinate delay has taken place in filing charge sheets in courts in cases where prosecution is launched and in serving charge sheets in cases where disciplinary proceedings are initiated.

2. Even though suspension may not be considered as a punishment, it does constitute a very great hardship for a Government servant. In fairness to him, it is essential to ensure that this period is reduced to the barest minimum.

3. It has, therefore, been decided that in cases of officers under suspension, the investigations should be completed and a charge sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officer in cases of departmental proceedings *within six months* as a rule. If the investigation is likely to take more time, it should be considered whether the officer should continue to remain under suspension or whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence etc., or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order.

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(50)

Ministry of Home Affairs O.M. No. 242/96/65-AVD, dated 27th September, 1965

The undersigned is directed to say that delinquent official, against whom disciplinary proceedings are pending under C.C.S. (C.C.A.) Rules, 1957, is entitled to the inspection of records/documents etc., having a bearing on the case. On requisition by the disciplinary authority, the C.B.I. has to hand over the documents to him for purposes of perusal and inspection by the delinquent

official. Recently instances have come to notice, where the accused officers while inspecting the records/documents, tampered with materially vital documents. In another case, the accused officer tampered with the documents when the Inquiry Officer temporarily left the inquiry room during the course of the enquiry.

In order to obviate recurrence of such incidents Ministries/Departments are requested to consider the desirability of issuing instructions to the following effect :—

(i) that the accused officer should be allowed inspection of records/documents, etc., only in the presence of a responsible officer; and

(ii) that the Inquiry Officer should take sufficient precautions to ensure that the records/documents and other papers are not tampered with while the documents are under their custody or during the course of actual inquiry.

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(51)

Ministry of Home Affairs Office Memorandum No. 4/1/65-Ests(C), dated 18th October, 1965

The undersigned is directed to refer to the Ministry of Home Affairs O.M. No. 59/4/63-Ests (A), dated the 3rd October, 1963, with which revised standard forms of notice of termination of service under Rule 5 of Central Civil Services (Temporary Service) Rules, 1949, were circulated, and to say that the validity of Form I which provides for the termination of the services of an individual from the date of expiry of one calendar month commencing with immediate effect, has been examined by the Ministry of Home Affairs in the light of the recent judgment delivered by the Supreme Court in another context. (*Civil Appeal No.* 223 of 1964—*K. Narasimhian* Vs. *H. C. Singri Gowda*). In this case the Supreme Court observed as follows :—

> " 'Giving' is not equivalent to 'sending'. 'Giving' of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law, however, 'giving' is complete in money matters where it has been offered to a person but not accepted by him.

Tendering of a notice is in law, therefore, giving of notice even though the person to whom it is tendered refuses to accept. We can find however no authority or principle for the proposition that as soon as the person with the legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete."

Under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the services of a temporary Government servant who is not in a quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant. It is further provided in the said rules that the period of such notice shall be one month. If the principle enunciated in the judgment quoted above is applied to Rule 5, the notice of one month is not "given" to the Government servant unless it has reached his hands or is tendered to him. Mere despatch of the notice does not amount to "giving" of notice and if the period falls short of 30 days from the date of the notice is "given" i.e., the date on which it reaches the Government servant's hands or the date it is tendered to him, then it would not be in terms of rule 5 of the aforesaid rules. The Ministry of Finance etc., are, therefore, advised that period of one calendar month should commence from the date the notice is served on, or tendered to, the Government servant to avoid any ambiguity about its validity.

2. In view of the position stated above, Form I of the notice circulated with Ministry of Home Affairs Office Memorandum quoted above has been revised and a revised form is appended. The order to be issued in the case of termination of services forthwith under the proviso to rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 has also been revised slightly and is appended to this office memorandum. These forms may be adopted in future.

Ordinarily when Government servant is actually in service, there would not be any difficulty in serving the notice on him personally or tendering it in the presence of some other officer, if he refuses to accept the same. In these cases where it is apprehended that service is likely to be evaded e.g., when the officer is on long leave, service should be terminated forthwith with an offer to pay a month's salary in lieu of notice, as provided in the Rules.

(51-A)

Ministry of Home Affairs O.M. No. 43/103/64-AVD, dated 16th November, 1965

The undersigned is directed to say that recommendations No. 26(v) and 99, contained in paragraphs 6.13 and 10.33 respectively of the report of the Committtee on Prevention of Corruption, have been carefully considered in the light of the comments received from the Ministries/Departments. The recommendations are reproduced below :—

"26(v). A good deal of harm is done by vague talk about corruption. This can be reduced only if there are agencies which a person with a genuine complaint can approach for redress, with the assurance that he will be fully protected and that prompt and adequate action will be taken where found justified. The Central Vigilance Commission and the Vigilance Organisation should be able to meet this need in matters relating to complaints of corruption harassment, etc. It is essential that *bona fide* complainants should be protected from harassment or victimisation. The Ministry of Home Affairs should consider itself as having a special responsibility in this regard."

"99. Informants and witnesses should be afforded sufficient protection and should be saved from harassment."

2. With the setting up of the Central Vigilance Commission the first part of recommendation 26(v) may be deemed to have been implemented. Any person having a genuine complaint of corruption or lack of integrity on the part of a Government servant, can approach the Central Vigilance Commission with the assurance that prompt and adequate action will be taken when found justified.

3. The latter part of recommendation 26(v) *viz.*, that *bona fide* complainants should be protected from harassment or victimisation and recommendation 99 *viz.*, that informants and witnesses should be afforded sufficient protection and should be saved from harassment, have been accepted in principle. Ministries/Departments etc., are requested to ensure that appropriate measures are taken accordingly.

4. Attention is, however, invited in this connection to this Ministry's Office Memorandum No. 151/1/65-AVD, dated 19th February, 1965 in which it has been decided that no action is to be taken on any anonymous/pseudonymous complaint. Attention is also invited to para 8 of this Ministry's Resolution No. 25/7/64-AVD, dated 11th February, 1964, setting up the Central Vigilance Commission in which it has been stated that the Central Vigilance Commission will take the initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.

The Ministries/Departments are requested to bring this to the notice of all concerned and appraise the Central Vigilance Commission *directly* of the measures taken by the Ministries etc., in pursuance of paragraph 3 above.

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(52)

Ministry of Home Affairs O.M. No. 222/18/65-AVD, dated 16th February, 1966

[B(49)] [B(70.c)]

The undersigned is directed to invite a reference to this Ministry's O.M. No. 221/18/65-AVD, dated 7-9-65, on the above subject. The decision that in cases of officers under suspension, the investigation should be completed and charge-sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officers in cases of departmental proceedings within 6 months as a rule, has been considered with particular reference to the cases in which the Central Bureau of Investigation are also concerned with the investigation. In such cases, the time limit of 6 months will have to be reckoned from the date on which the cases are taken up by the C.B.I. for investigation.

2. So far as the C.B.I. is concerned the instructions contained in the above O.M. would involve two categories of cases namely:—

(i) Cases where the suspension order is passed before the cases are taken up by, or entrusted to, the C.B.I. for investigation ; and

(ii) Cases where the order of suspension is passed after the cases are taken up by, or entrusted to, the C.B.I. for investigation.

3. With a view to ensure that the C.B.I. is posted with information regarding the suspension of the concerned officers, it is requested that when an officer is placed under suspension either at the request of the C.B.I. or on their own initiative by the Ministries/Departments concerned in regard to a matter which is under investigation or enquiry by the C.B.I., or which is proposed to be referred to C.B.I. a copy of the suspension order may invariably be sent to the Director, C.B.I., with an endorsement thereof to the S.P. of the Special Police Establishment Branch concerned. As there is some time-lag between the placing of an officer under suspension and the reference of the case to the C.B.I. for investigation, it is also requested that such cases may be referred to the C.B.I. promptly after the suspension orders are passed, in case it is not possible to refer such cases before the passing of such suspension orders.

(52-A)

Ministry of Home Affairs O.M. No. 24/25/64-AVD, dated 22nd February, 1966

[C(131), C(140), C(141)]

The Committee on Prevention of Corruption has *inter alia* made the following recommendations :—

(i) The Chief Technical Examiner's Organisation should be attached to the Central Vigilance Commission so that its services may be easily available to the C.B.I. or in enquiries which are caused to be made under the directions of the Central Vigilance Commission. The jurisdiction of the Organisation should be extended to cover construction work which may be undertaken by any Ministry/Department/Central Corporate Undertakings (Annexure X, Paragraph 3).

(ii) There should be a Central Organisation to conduct examinations and inspections and to give technical opinion on all cases relating to constructions, works, digging, filling, etc., irrespective of the Ministry or Department to which they may relate. This Central Organisation should include other specialists and should be placed under the Central Vigilance Commission. (Recommendation No. 88).

2. The recommendation referred to in paragraph 1(i) above has been accepted and the C.T.E.'s Organisation was transferred to the administrative control of the Central Vigilance Commission

with effect from 1st November, 1964. With the transfer of the Organisation to the Central Vigilance Commission its jurisdiction has become conterminous with that of the Central Vigilance Commission and it could be entrusted at the discretion of the Commission with inspection of complaints, investigations, etc., relating to civil works pertaining to any Ministry/Department of Government of India and Central Corporate Undertakings, falling within the jurisdiction of the Central Vigilance Commission.

3. As regards para 1(ii) above, apart from the C.T.E.'s Organisation, separate engineering cells also exist under the Ministry of Railways and the Ministry of Defence for performing functions of a similar nature in respect of civil works pertaining to their respective Ministries. Whenever the technical opinion of a wood expert is required on wood and timber, help and advice is now sought from the Forest Research Institute, Dehra Dun. The question of setting up a single organisation to replace these separate cells has been considered in consultation with the Central Vigilance Commission, the Ministry of Railways and the Ministry of Defence and the Ministry of Food & Agriculture (Department of Agriculture) and it has been decided that as these cells have been rendering useful services in their own spheres it would not be advisable to supplant them. However, it would be open to the Central Vigilance Commission to draw upon the advice of any of these organisations at any time and also to have investigations made by the C.T.E.'s Organisation into any special cases pertaining to civil works of the Ministry of Railways and the Ministry of Defence on its own or at the instance of the Central Bureau of Investigation.

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(53)

Ministry of Home Affairs O.M. No. 234/18/65-AVD(II), dated 14th March, 1966

The undersigned is directed to invite reference to Annexures I and II to the standard forms of charge1sheet under Rule 14 of the C.C.S. (C.C.&A.) Rules, 1965 forwarded with this Ministry's Office Memorandum No. 234/18/65-AVD, dated the 13th January, 1966. It has been decided in consultation with the Ministry of Law that, in conformity with the language used in Rule 14 of the C.C.S. (C.C.&A.) Rules, 1965, the headings "Article of Charge I", "Article of Charge II", etc., in the said Annexures, should be amended to read as "Article I" , "Article II", etc. Revised forms of Annexures I and II to the Memoranda of charge-sheet under

Rule 14 of the C.C.S. (C.C.&A.) Rules, 1965 are forwarded herewith. It is requested that these may be substituted for the Annexures forwarded earlier and circulated to all the authorities concerned.

2. A doubt was also raised whether the Annexures to the covering Memorandum of charge-sheet under Rule 14 of the C.C.S. (C.C.&A.) Rules, 1965 should be signed by the disciplinary authority. The Ministry of Law have advised that the Annexures having been referred to in the Memorandum need not be signed.

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(54)

Ministry of Home Affairs O.M. No. 4/1/65-Ests(C), dated 25th May, 1966

[B(16)] [B(68]

Rule 5(1)(a) of the Central Civil Services (Temporary Service) Rules, 1965, provides that the services of a Temporary Government servant, who is not in quasi-permanent service, shall be liable to termination at any time by a notice in writing, given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant. According to Rule 5(1)(b) of the said Rules, the period of such notice shall be one month, provided that the services of any such Government servant may be terminated forthwith by payment to him a sum equivalent to the amount of his pay, plus allowances, for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of one month.

2. A question has been raised regarding the treatment to be accorded to a letter of resignation submitted by a temporary Government servant, in the light of the provisions of C.C.S. (T.S.) Rules, 1965.

3. The question has been considered in consultation with the Ministry of Law and it is clarified that when a temporary Government servant submits a letter of resignation, a distinction should be drawn between a letter of resignation purporting to be a notice of termination of service and one which is not. This is because a 'notice of termination of service' given by a temporary Government servant under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, is something different from a

mere 'letter of resignation' submitted by him without any reference, direct or indirect, to the said Rule. While the former is an exercise of the right conferred by statutory rules enabling a temporary Government servant to cease performance of his duties automatically on the expiry of the prescribed period of notice, the latter requires *acceptance by the competent authority* in order to become effective. Therefore, if a temporary Government servant submits a letter of resignation in which he does not refer to Rule 5(1) of the C.C.S. (T.S.) Rules, 1965, or does not even say that it be treated as a notice of termination of service, the provisions of Rule 5(1) *ibid* will not be attracted. In such a case, the resignation of the temporary Government servant will be dealt with under the provisions of this Ministry's O.M. No. 39/6/57-Ests(A), dated 6th May, 1958, and he can relinquish his post only when the resignation is accepted and he is relieved of his duties. It will, therefore, be possible in such circumstances to retain the temporary officer even beyond one month if it takes the time to make alternative arrangements. This will not be repugnant to the provisions of the C.C.S. (T.S.) Rules, 1965, in any way, because, when a temporary Government servant submits a letter or resignation without invoking the provisions of the said Rules, they will not come into picture, notwithstanding the fact that, being a temporary Government servant, he is governed by those rules.

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(55)

Ministry of Home Affairs letter No. 234/3/66-AVD-II, dated 4th August, 1966

[C(74)]

The undersigned is directed to say that the following forms have now been standardised in consultation with the Ministry of Law :—

(i) Order conveying the sanction of the President for taking departmental action against a pensioner under Article 351-A of the C.S.Rs.; and

(ii) Memorandum of charges etc., to be communicated to the pensioner concerned in a departmental action under article 351-A of the C.S.Rs.

[This has been replaced—see C(74)]

A copy each of the above forms is enclosed. (See Section E). It is requested that in cases of departmental proceedings against retired Government servants under clause (b) of the proviso to

Article 351-A of the C.S.Rs. the sanction of the President and the Memorandum of charges may kindly be issued in the standard forms sent herewith. It is requested that Ministries/Departments may kindly take necessary action to circulate these standard forms to all concerned.

(55-A)

Ministry of Home Affairs O.M. No. 43/57/64-AVD(III), dated 29th November, 1966

Please see 5. No. 58 of this Section.

(55-B)

Ministry of Home Affairs O.M. No. 252/4/67-AVD-II, dated 4th February, 1967

[B(63c)]

The undersigned is directed to say that a case has come to the notice of the Government of India in which a 'No objection' certificate was issued for grant of a passport to a Government servant against whom a vigilance case pending with the Vigilance Unit of the Department, without consultation with the Vigilance Unit.

2. With a view to avoiding recurrence of such cases, it has been decided that before a 'No objection' certificate is issued in favour of an employee, clearance should invariably be obtained from the Vigilance Unit of the Organisation concerned.

3. It is requested that these instructions may kindly be brought to the notice of all concerned for compliance.

(55-C)

Ministry of Home Affairs O.M. No. 39/1/67-Ests(A) dated, 21st February, 1967

The undersigned is directed to say that it has been recommended by the Joint Conference of the Central Bureau of Investigation and State Anti-Corruption Officers held in November, 1965, that a provision should be made in the rules of public

sector undertakings which would enable them to take disciplinary action against their employees appointed through direct recruitment, for acts done by them in their previous or earlier employment. After a careful consideration of this recommendation, Government have come to the conclusion that an employer is not precluded from taking action against an employee in respect of misconduct committed before his employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. A provision in the Discipline Rules that penalties can be imposed for 'good and sufficient reasons', as in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, would be adequate authority for taking action in respect of misconduct of the nature referred to above. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service.

2. Ministry of Industry etc. are requested to bring the above position to the notice of all public sector undertakings under their control and request them to make a provision in their Discipline Rules so as to enable them to impose penalties on their employees for 'good and sufficient reasons', as in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, if such a provision does not already exist.

(55-D)

Ministry of Home Affairs O.M. No. 7/4/64-Ests.(A), dated 18th April, 1967

Attention of the Ministry of Finance etc. is invited to this Ministry's Notification No. 7/4/64-Ests.(A), dated the 18th April, 1967 inserting a new sub-rule to rule 24 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, providing that an appeal against an order imposing any penalty specified in rule 11 of the said Rules shall lie to the President, where no such appeal lies to him under sub-rules (1) and (2) of rule 24, if such penalty is imposed by an authority other than the President, on a Government servant in respect of his activities connected with his work as an office bearer of an association or union participating in the Joint Consultation and Compulsory Arbitration Scheme. It is clarified that all appeals to the President under this provision should be placed before the Minister-in-charge for final orders, irrespective of whether the general dire-

ctions in various Ministries, relating to the disposal of appeals addressed to the President require such submission or not.

2. In respect of persons serving in the Indian Audit and Accounts Department, the appeals referred to in the preceding para shall be disposed of by the Comptroller and Auditor General of India.

3. The above instructions may be brought to the notice of all concerned.

(55-E)

Ministry of Home Affairs O.M. No. 1/18/66-Estt.(D), dated 18th April, 1967

[B(43B)] [B(74)]

The undersigned is directed to refer to this Ministry's Office Memorandum No. 1/7/64-Estt.(D) dated the 1st May, 1965 on the above subject and to say that it has been brought to the notice of this Ministry that difficulty is still being experienced by Ministries/Departments in getting the necessary integrity certificates from the sponsoring authorities for the following reasons :—

(a) the exact definition of the word 'sponsoring authority' used in this Ministry's office Memorandum No. 1/7/64-Estt.(D) dated the 30th July, 1964 is not clear and

(b) the certificate contemplated in Office Memorandum of 30th July, 1964 has been prescribed in a manner which a sponsoring authority may normally find rather difficult to give.

2. The matter has been reconsidered and it has been decided, in modification of the earlier instructions contained in this Ministry's Office Memorandum of 30th July, 1964 and 1st May, 1965 referred to above, that the certificate in the form prescribed in the O.M. of 30-7-1964 be dispensed with, and, instead, a certificate of integrity may, for the purpose of para I(iii) of that O.M. be recorded in the following manner.

(i) *Where the Union Public Service Commission is associated with the Departmental Promotion Committees.*

The Ministry/Department/Office, while processing and submitting names and particulars of the eligible officers to the Depar-

mental Promotion Committee will itself record a certificate (to be signed by an officer not below the rank of a Deputy Secretary to the Government or an officer of equivalent status) that the records of service of all those in the list of eligible names placed before the DPC have been carefully scrutinised to ensure that there is no doubt to their integrity. If however, in such a list, there are names of persons whose integrity is suspect or has been held in doubt at one stage or another, that fact should also be specifically recorded by the Department/Ministry/Office concerned.

On the basis of this certificate the D.P.C. should make a record at the end of its recommendation to the effect that the Department/Ministry/Office concerned has rendered the requisite integrity certificate in respect of those recommended by the Departmental Promotion Committee for promotion.

(ii) *Where the Union Public Service Commission is not associated with Departmental Promotion Committees.*

The Officer-incharge of the Administration Section in the Ministry/Department/Office concerned, which process and submit names and particulars of eligible officers to the D.P.C., should himself record a certificate that the records of service of all those in the list of eligible officers have been carefully scrutinised to ensure that there is no doubt about their integrity. If, however, in such a list, there are names of persons whose integrity is suspect or has been held in doubt at one stage or another, that fact should also be specifically recorded by the Ministry/Department/Office concerned. On the basis of this certificate, the D.P.C. should make a record at the end of its recommendations to the effect that the requisite integrity certificates in respect of those recommended by the D.P.C. for promotion were rendered by the Ministry/Department/Office.

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(56)

Ministry of Home Affiairs O.M. No. 4/10/66-Ests(C), dated 26th August, 1967

[B(43A)]

The undersigned is directed to say that under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 the services

of temporary Government servant, who is not in quasi-permanent service, can be terminated at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant. A question has arisen whether this rule should be invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) has been provided. The position is that the C.C.S. (T.S.) Rules do not specifically exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), it has been decided, in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer/person on probation in terms of the letter of appointment and not under rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965.

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(57)

Ministry of Home Affairs O.M. No. 118/7/66-AVD, dated 28th September, 1967

[C(32), B(119)]

In the Government of India Resolution No. 24/7/64-AVD, dated 11-2-64, setting up the Central Vigilance Commission, it has been stated that the powers and functions of the Commission would cover 'Corporate Central Undertakings'. Even though jurisdiction of the Commission thus covers all employees of Public Undertakings, the Commission is actually exercising its powers only in respect of a small percentage of these employees viz., officers of the status comparable to Gazetted Officers, and even here only in those cases where integrity is involved. Cases involving purely administrative or technical lapses for example, lack of supervision and irregularities etc., are not referred to the Commission.

2. In consultation with the Ministry of Industrial Development & Company Affairs and the Central Vigilance Commission, it has now been decided that only Vigilance cases of personnel of Public Sector Undertakings who could generally be regarded as belonging to the Officer Grade and drawing approximate basic pay Rs. 1000 p.m. or above and of Government servants on deputation to Public Sector Undertaking need be referred to the

Commission. The convention that the Commission will not normally deal with cases of persons drawing a salary of less than Rs. 1000 p.m. and that, therefore, these cases will not ordinarily be referred to the Commission, will not, in any way, curtail the jurisdiction of the Commission over the Public Sector as a whole as this jurisdiction has been assigned to the Commission by the Government by its Resolution setting up the Commission.

3. These instructions may kindly be communicated for compliance to the Public Sector Undertakings under the various Ministries. In cases where, it is considered necessary, the Boards of Public Sector Undertakings may be requested to pass resolutions to give effect to these instructions. As a last resort, if it becomes necessary to do so, Ministries concerned may kindly issue appropriate directives.

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(58)

Ministry of Home Affairs O.M. No. F.43/57/64-AVD(III), dated 29th November, 1966

[B(65)]

The undersigned is directed to refer to para 3 of this Ministry's Office Memorandum No. 43/57/64-AVD, dated 2nd November, 1955 on the above subject, and to say that it has been pointed out that if para 4 of this Ministry's Office Memorandum No. 15/15/57-AVD, dated 15th June, 1957 is completely superseded, no provision will be left to deal with cases where the conviction is for an offence which is not such as to render further retention in public service of the Government servant *prima facie* undesirable. This Ministry's Office Memorandum No. 43/57/64-AVD, dated 2nd November, 1965 does not supersede the instructions contained in para 5 of this Ministry's Office Memorandum No. 15/15/57-AVD, dated 15th June, 1957 which deals with the procedure to be followed in cases where Government servants are acquitted on appeals/revisions against their conviction in lower courts. Certain clarifications were also issued to para 5 of this Ministry's Office Memorandum No. 15/15/57-AVD, dated 15th June, 1957 under this Ministry's Office Memorandum No. 15/15/57-AVD, dated 1st July, 1960. It is considered that it may be advantageous to issue self-contained instructions incorporating the provisions of this Ministry's Office Memorandum No. 43/57/64-AVD, dated 2nd November, 1965 and such of the provisions of this Ministry's Office Memorandum No. 15/15/57-AVD, dated 15th June, 1957 (as clarified by Office Memorandum No. 15/15/57-AVD, dated 1st July, 1960) which should remain operative.

2. The undersigned is accordingly to say that in supersession of the instructions contained in this Ministry's Office Memorandum No. 15/15/57-AVD, dated 15th June, 1957 read with subsequent Office Memorandum of the same number dated 1st July, 1960 and Office Memorandum No. 43/57/64-AVD, dated 2nd November, 1965, the following principles should apply in regard to action to be taken in cases where Government servants are convicted on a criminal charge :—

(i) In a case where a Government servant has been convicted in a court of law of an offence which is such as to render further retention in public service of the Government servant *prima facie* undesirable, action to dismiss, remove or compulsorily retire him from service should not be taken before the period for filing an appeal has elapsed or, if an appeal has been filed, before the appeal has been decided in the first court of appeal.

(ii) In cases where the Union Public Service Commission have to be consulted in regard to the quantum of punishment to be imposed on the Government servant, the appropriate stage for seeking the advice of the Commission on cases in which departmental action is contemplated against an officer on the grounds of his conviction in a court of law, should be after the period for filing an appeal has elapsed, or if an appeal has been filed, after the appeal has been decided in the first court of appeal.

(iii) However, in cases in which Government are legally advised that there is little chance of conviction being reversed on appeal, Union Public Service Commission may be consulted without waiting for the final termination of the proceedings or for the expiry of period for filing an appeal in cases where no appeal has already been filed. Action to dispense with the services of an officer should, however, be taken only after the period for filing an apepal has elapsed, or if an appeal has been filed, after the appeal has been decided against the Government servant.

(iv) As soon as a Government servant is convicted on a criminal charge, he may, in appropriate cases, be placed under suspension, if not already suspended.

(v) Action to dispense with the services of the Government servant should be taken promptly as soon as the first

appeal is decided against the Government servant and before the second appeal is filed. This would obviate further loss to Government in the form of subsistence allowance to the Government servant. (Standard Form No. I for such an Order is annexed). (See Section E).

(vi) In a case where the conviction is not for an offence of the type referred to in sub-paragraph (i) above, the disciplinary authority should call for and examine a copy of the judgment with a view to decide on taking such further departmental action, as might be deemed appropriate. The principles enunciated in sub-paras (i) to (iv) above, shall apply *mutatis mutandis* in regard to the action to be taken in such cases.

3. (a) If an appeal/revision in higher court *i.e.,* the court higher than the first court of appeal, against conviction, succeeds and the Government servant is acquitted, the order imposing a penalty on him on the basis of conviction which no longer stands, becomes liable to be set aside. A copy of the judgment of the higher court should, therefore, be immediately procured and examined with a view to decide :—

(i) whether the acquittal should be challenged in a still higher court ; or

(ii) whether, despite the acquittal, the facts and the circumstances of the case are such as to call for a departmental enquiry against the Government servant on the basis of the allegations on which he was previously convicted.

(b) If it is decided to take the matter to a still higher court, action to institute proper proceedings should be taken with the least possible delay and the penalty imposed should not be set aside during the pendency of such proceedings.

(c) If, on the other hand, it is decided that a departmental inquiry may be held, a formal order should be made —

(i) setting aside the order imposing the penalty on the basis of the conviction; and

(ii) ordering such departmental enquiry. (Standard Form No. II for such order is annexed). (See Section E).

In cases where the penalty imposed on the basis of the conviction was dismissal, removal or compulsory retirement from service, the order should also state that under Rule 10(4) of the

C.C.S. (C.C.&A.) Rules, 1965, the Government servant is deemed to be under suspension with effect from the date of dismissal, removal or compulsory retirement from service.

4. For appreciating properly the scope and implications of the words "on the basis of the allegations on which he was previously convicted" occurring in para 3(a) (ii) above the point to be taken note of is that one identical set of facts and allegations may be sufficient to constitute a criminal offence as well as misconduct not amounting to criminal offence, but punishable under the C.C.S. (C.C.A.) Rules, or similar other rules. If the facts or allegations had come to be examined by a court of competent jurisdiction and the Court has given a finding that the allegations are not true, then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations. If, on the other hand, the court has merely expressed a doubt as to the correctness of the allegations, then there may be no objection to hold a departmental enquiry on the same allegations *if better proof than what was produced before the court or was then available is forthcoming.* Then again if the Court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant is charged, then also there would be no objection to hold a departmental enquiry on the basis of the said allegations if such proved allegations are considered good and sufficient ground for departmental disciplinary action. So also, it is permissible to hold a departmental enquiry after the acquittal, in respect of a charge which is not identical with or similar to the charge in the criminal case, and is not based on any allegations which have been negatived by the criminal court. Furthermore, if the allegations had not yet been examined by a court of law but are considered good and sufficient grounds for departmental disciplinary action, there is no bar to taking such action.

5. In cases where neither of the courses mentioned in para 3 is followed, a formal order should be issued setting aside the previous order imposing the penalty (Standard Form No. III for such order is annexed. See Section E). In cases where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowances will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowances will be allowed as directed by the competent authority under F.R. 54(2) or F.R. 54(3) and the period treated as duty or non-duty under F.R. 54(4) or F.R. 54(5) as the case may be.

6. It has been decided that the Union Public Service Commission should continue to be consulted, wherever such consultation is necessary, in all cases of conviction in a court of law including conviction for an offence involving corruption. Although in such cases, departmental action is taken on the ground of conduct which has led to an officer's conviction on a criminal charge, the quantum of punishment to be imposed on the convicted officer has to be considered in consultation with the Commission on the merits of each case.

7. The Union Public Service Commission will have discretion, even in cases where their advice is sought before the expiry of the period of the appeal or a decision on such appeal, to suggest that their advice should be sought only after the judgement of the appellate court is available, or on the expiry of the said period, as the case may be.

8. It is requested that these instructions may be brought to the notice of all concerned for guidance and necessary action.

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(59)

Ministry of Home Affairs O.M. No. 242/24/66-AVD-II, dated 13th December, 1967

The undersigned is directed to say that in connection with departmental proceedings against gazetted officers of the Central Government, a question was raised whether the personal appearance of an official of the Indian Audit & Accounts Department as a witness before the Inquiring Officer would be necessary to prove the pay and allowances drawn by the accused officer during the relevant period(s). The matter has been examined in consultation with the Ministry of Law, Comptroller and Auditor General of India and the Central Vigilance Commission.

2. It has been decided that it would not be ordinarily necessary to require the appearance of an official of the concerned Audit/Accounts office before the Inquiring Officer to prove the figures of salary/allowances furnished over the signature of a responsible officer of the concerned Audit/Accounts Office. It need hardly be stated that no particular officer of the Audit Department would be in a position to prove the correctness of numerous entries in a register made by various persons during the course of a period of years. It is also to be noted that the figures of salary/allowance are of relevance only in cases where

the charge relates to disproportionate assets. In such cases, the Investigating Officer would have satisfied himself about the correctness of the figures collected by him from Audit/Accounts Offices, and got the figures accepted by the delinquent official. It will, therefore, be only in very rare cases an official would question before the Inquiring Officer the correctness of the figures of salary furnished by the Accounts Officer. In such instances the delinquent official would indicate the figures not accepted by him, which can be got verified again by the presenting officer. In any case, where the figures of salary/allowance are disputed this dispute cannot be settled by merely requiring presence of the Accounts/Audit Officer before the Inquiring Officer. It would, therefore, normally be sufficient if the authenticated statement of pay and allowances furnished by the Audit/Accounts Office concerned is got produced before the Inquiring Officer.

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(60)

Ministry of Home Affairs O.M. No. 4/12/67-Ests(C), dated 8th January, 1968

In continuation of this Ministry's O.M. No. 4/1/65-Ests(C), dated 30th March, 1967 the undersigned is directed to forward herewith a copy each of two standard *pro formas* to be used for termination of services of temporary Government servants under proviso to sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Form I is meant for use in cases where the appointing authority is the President of India, whereas Form II is to be used in cases where the appointing authority is other than the President of India. Notice in the enclosed Form I or Form II, as the case may be, is to be given in cases where, after serving a notice of one month under the aforesaid proviso (*vide* Form I or Form III, as the case may be, enclosed with this Ministry's O.M. of 30th March, 1967, referred to above), it is decided to terminate the service of the temporary employee on payment of the pay and allowances for the period by which the notice falls short of one month.

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(61)

Ministry of Home Affairs O.M. No. F. 117/10/67-AVD, dated 10th January, 1968

The undersigned is directed to say that when a Government servant is compulsorily retired, removed or dismissed from ser-

vice, it should be ensured that gratuity and pension, if any, admissible to him are sanctioned in time, all Government dues are recovered from him, the identity card, the C.G.H.S. card and the library books are returned by him and that the Directorate of Estates is informed so that he may not be allowed to retain unauthorisedly in his possession any residential accommodation allotted to him by Government. For this purpose, copies of all orders of compulsory retirement, removal or dismissal from service should invariably be endorsed to the Sections/authorities concerned for prompt action.

Suitable instructions in the matter may kindly be issued to the Sections dealing with disciplinary cases and also to the attached and subordinate offices.

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(62)

Ministry of Home Affairs O.M. No. 7/3/67-Ests(A), dated 19th January, 1968

The undersigned is directed to say that it has been decided in the meeting of the National Council held on the 6th and 7th November, 1967, that in cases where increments are withheld for a period of more than three years or where increments are stopped with cumulative effect or where such stoppage is likely to affect adversely the pensionary entitlement, the procedure of holding an enquiry should invariably be followed.

2. As the Ministry of Finance, etc., are aware, clause (b) of sub-rule (1) of rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, makes provision for holding an enquiry in the manner laid down in sub-rules (3) to (23) of Rule 14 *ibid* in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary. In view of the decision of the National Council, mentioned in the preceding paragraph, it has been decided that, notwithstanding the provision contained in rule 16(1) (b) of the C.C.S. (C.C.A.) Rules, 1965, if in a case it is proposed, after considering the representation, if any, submitted by a Government servant, to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period or if the penalty of withholding of increments is likely to affect adversely the amount of pension payable to the Government servant, an enquiry shall invariably be held in the manner laid down in sub-rules (3) to (23) of rule 14 *ibid.*

3. Ministry of Finance, etc., are requested to bring the above decision to the notice of all concerned. Suitable amendments to the C.C.S. (C.C.&A.) Rules, 1965, are being issued separately.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders issue in consultation with the Comptroller and Auditor General of India.

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(63)

Ministry of Home Affairs O.M. No. 234/2/66-AVD-II, dated 18th March, 1968

[B(38)]

[B(75), B(117)]

The undersigned is directed to refer to this Ministry's Memorandum of even number dated the 30th March, 1966, on the subject mentioned above and to state that the Union Public Service Commission have observed that, despite the detailed instructions given therein, several Ministries are sending disciplinary cases to the Commission with incomplete records/documents and without furnishing all relevant information relating to the service particulars of the officers concerned. In order to eliminate unnecessary correspondence and expedite consideration of cases by the Commission, Ministries, etc., are requested kindly to refer the disciplinary cases to the Commission complete in all respects as indicated in this Ministry's Office Memorandum dated the 30th March, 1966 referred to above.

2. Attention is also invited to the requirement of prior personal discussion with the Secretariat of the Commission before referring a disciplinary case to the Commission as laid down in this Ministry's Office Memorandum No. 18/20/54-Ests. (B), dated the 8th September, 1954 and Shri S. B. Bapat's D.O. letter No. 31(7)-EO/55, dated the 12th March, 1955 to all Secretaries.

3. In the connection the following amendments may also please be made in the *pro forma* statement, enclosed with this Ministry's Circular Office Memorandum No. 234/2/66/AVD.II, dated the 30th March, 1966:

I. Item 14(A) (i) may be read as:

> Papers relating to preliminary enquiry, if any. In case the preliminary enquiry was done by S.P.E., their report together with all the depositions recorded by them.

II. Item 14(a) (ix) may be read as :

Miscellaneous documents regarding evidence such as exhibits, statements, etc., referred to in items (i) to (viii) above.

III. A new item *viz.*, item 14(d) may be inserted as under after item 14(C) :

Miscellaneous documents regarding evidence such as exhibits, statements referred to in items 14(B) and 14(C) and extracts of relevant rules, Codes, Acts, Judgments, Manuals, etc., referred to in the charge-sheet, statement of allegations, statement of defence, Inquiring Authority's report, reply to show-cause notice, appeal, petition, Ministry/Department's comments.

IV. The letter 'C' occurring in the second line of item 14(C) may be deleted and the letter '&' may be inserted in between 'A' and 'B'.

V. In the heading of item 14(b), the letter (b) be changed to **(B).**

4. The revised *pro forma* incorporating the above changes is enclosed.

(63-A)

Ministry of Home Affairs O.M. No. 39/2/68-Ests.(A), dated 14th May, 1968

Instances have been brought to the notice of this Ministry in which when orders of punishment passed by the subordinate authorities were reviewed under rule 29(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and a provisional conclusion reached that the penalty already imposed was not adequate, the authorities concerned set aside/cancelled the orders of punishment already passed by the subordinate authorities and simultaneously served show-cause notices for the imposition of higher penalties. Thereafter, the replies of the Government servants to the show-cause notices were considered and the Union Public Service Commission also consulted, wherever necessary, before the imposition of enhanced penalties.

2. It is clarified that in cases of the kind mentioned in the preceding paragraph, it is not appropriate to set aside/cancel

the penalty already imposed on the Government servants, more so when the reviewing authority is the President, as, strictly speaking, cancellation of the penalty, if done in the name of the President, amounts to modification by the President of the earlier order of the subordinate authority, for which prior consultation with the Union Public Service Commission is necessary under Regulation 5(1) (c) of the Union Public Service Commission (Exemption from Consultation) Regulations, 1958. The correct procedure in such cases will, therefore, be to take action in accordance with the first proviso to rule 29(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, without cancelling/setting aside the order of the subordinate authority. It is only at the final stage when order are issued modifying the original penalty, that it would be necessary to set aside the original order of penalty.

3. All Ministries/Departments, etc., are requested to bring the above clarifications to the notice of all authorities concerned.

(63-B)

Ministry of Home Affairs O.M. No. 134/20/68-AVD, dated 28th August, 1968

A question has arisen whether past bad record of service of an officer can be taken into account in deciding the penalty to be imposed on the officer in disciplinary proceedings, and whether the fact that such record has been taken into account should be mentioned in the order imposing the penalty. This has been examined in consultation with the Ministry of Law. It is considered that if previous bad record, punishment, etc., of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet itself, otherwise any mention of the past bad record in the order of penalty unwittingly or in a routine manner, when this had not been mentioned in the charge-sheet, would vitiate the proceedings, and so should be eschewed.

2. In this connection attention is invited to the following extract from the judgment of the Supreme Court in the State of Mysore *Vs.* K. Monche Gowda (AIR 1964 S.C. 506):—

> "We.....hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show-cause against the proposed punishment and if the proposed

punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.....

In the present case the second show-cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it proposed to dismiss him from service as the charges proved against him were grave..... the order of dismissal..... indicate that the show-cause notice did not give the only reason which influenced the Government to dismiss the respondent from service. This notice clearly contravened the provisions of Art. 311 (2) of the Constitution as interpreted by Court."

3. These observations were made by the Supreme Court in the context of the provisions of Article 311(2) of the Constitution before its amendment by the Constitution (Fifteenth Amendment) Act, 1963. Under the amended Article, at the stage of show-cause notice, the Government servant has to be given a 'reasonable opportunity' of making representation on the penalty proposed, but only on the basis of evidence adduced during the enquiry. This would indicate that at the second stage, the procedure should be limited only to the proposed penalty on the basis of the proved charges and additional material in the form of past bad record, etc., cannot be introduced. If such matter is to be introduced, the Government servant must have a right to make his representation on those matters and for that purpose to call for confidential record and even witnesses to establish mitigating circumstances like his subsequent good conduct. This will be contrary to amended Article 311(2) which clearly limits the right of representation "only on the basis of evidence adduced during such enquiry". This cannot be one-sided restriction and pre-supposes that the penalty is proposed only on the basis of the charges inquired into, without any additional factors being taken into consideration. Accordingly if past bad record is proposed to be taken into account in determining the penalty to be imposed, it should be made subject matter of a specific charge in the charge-sheet itself. If it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the disciplinary authorities, and/or at the time of imposition of penalty.

4. This may be brought to the notice of all Disciplinary Authorities for information and guidance.

(63-C)

Ministry of Home Affairs O.M. No. 39/17/63-Ests.(A), dated 6th September, 1968

[B(55B)]

[B(88)]

A case has come to the notice of this Ministry in which the application of a Government servant against whom departmental proceedings were pending was forwarded for an assignment under an international organisation. The propriety of such an action has been considered carefully and the following decisions have been taken:—

(a) Cases of Government servants who are under suspension or against whom departmental proceedings are pending:—

Applications of such Government servants should not be forwarded, nor should they be released, for any assignment, scholarship, fellowship, training, etc., under an international agency/organisation or a foreign Government. Such Government servants should also not be sent or allowed to go on deputation or foreign service to posts under an authority in India.

(b) Cases of Government servants on whom the penalty of withholding of increments or reduction to a lower stage in a time-scale or to a lower time-scale or to a lower service, grade or post has been imposed :—

Applications of such Government servants should not be forwarded, nor should they be released during the currency of the penalty, for any assignment under an international agency/organisation or a foreign Government. Such Government servants should also not be sent or allowed to go, during the currency of the penalty, on deputation or foreign service to posts under an authority in India. Even after the expiry of the penalty, it will have to be examined, having regard to the nature of the offence and the proximity of its occurrence, whether the Government servant concerned should be

permitted to go on foreign assignment/deputation to another Department/foreign service to an authority in India.

2. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions issue after consultation with the Comptroller and Auditor General of India.

(63-D)

Ministry of Home Affairs D.O. No. 109/6/67-AVD, dated 18th October, 1968

In a case of defalcation of Government money, a Cashier of an office was suspended in June 1959. A show-cause notice against dismissal was issued to him in January 1962. The disciplinary authority passed final orders on 20-10-1967, dismissing him from service.

2. A study of this case reveals that the main cause of delay after the issue of show-cause notice was that the Disciplinary Authority entertained the never ending demands made by the delinquent official for access to several additional documents which did not figure in the inquiry against him.

3. With the amendment of Article 311 by the Constitution (Fifteenth Amendment) Act, 1963 on 5-10-1963 the delinquent official has a right to make representation in reply to show-cause notice *only* on the basis of evidence adduced during enquiry. He, therefore, must confine his representation at this stage to the evidence already adduced, and no new evidence, documentary or oral, can be permitted to be produced, nor can he demand at this stage an opportunity of making an oral representation or a repetition of the earlier stages, such as examination or cross-examination of witnesses.

4. This may please be brought to the notice of all disciplinary authorities for general guidance.

(63-E)

Ministry of Home Affairs O.M. No. 9/4/69-AIS(III), dated the 23rd January, 1969

The undersigned is directed to say that it has been decided, in supersession of all previous orders on the subject, to delegate to each Ministry/Department, the powers of the Central Government under Rules 4, 6, 8, 11, 12, 14, 15, 16(3), 16(4) and 16(5) of All India Services (Conduct) Rules, 1968, in regard to All India Services Officers working in or under each Ministry/Department.

2. The cases of All India Services Officers of the rank of Joint Secretary and above falling under any of the aforesaid rules should be submitted to the Minister for orders.

Ministry of Home Affairs O.M. No. 39/1/69-Ests (A), dated 16th April, 1969 [B(107)]

The undersigned is directed to say that several points relating to Rules 12, 14, 15 and 29 of the C.C.S. (C.C.A.) Rules, 1965, are being frequently referred to this Ministry for clarification. These points are indicated below and the clarification given against each :—

Points raised	Clarification
1. (a) In cases where the disciplinary authority is the President, whether the case should be shown to the Minister before disciplinary proceedings are initiated;	(a) Having regard to the Transaction of Business Rules, it is necessary that in cases where the disciplinary authority is the President, the initiation of the disciplinary proceedings should be approved by the Minister.
(b) Whether it is necessary to show the file to the Minister every time before formal orders are issued in the name of the President under Rules 14(2), 14(4), 14(5), etc. of the C.C.S. (CCA) Rules.	(b) It would be sufficient if Minister's orders are obtained for taking action ancillary to the issue of the charge-sheet at the stage when the papers are put up to him for initiation of disciplinary proceedings. However, formal orders of the Minister should be obtained at the stage of issuing show-cause notice under Rule 15 4(i)(b) and at the stage of passing final orders imposing penalty under Rules 15(4)(ii)(b) and Rule 15(4)(iii).
	NOTE :—By virtue of Rule 3 of the Transaction of business Rules, it is competent for the Minister to delegate his functions to Secretary or any other officer by general or special orders and on such delegation it would not be necessary to take the Minister's orders in each case.

2. What happens to the disciplinary proceedings started by a disciplinary authority (A) in respect of a Government servant when the latter is transferred to the jurisdiction of another disciplinary authority (B) even though the said Government servant continues to be in the *same service?*

In such cases it is not necessary for disciplinary authority B to start *de novo* proceedings by framing and delivering fresh articles of charge to the concerned official. He can carry on with the enquiry proceedings at the point where the transfer of the accused officer was effected.

If however, the accused official is transferred to another service then the procedure laid down in Rule 12(4)(b) of the C.C.S. (C.C.A.) Rules will have to be followed.

3. (a) Rule 29 of the CCS (CCA) Rules authorises review of "any order made under these Rules". Do the words 'these rules' include an order passed under Rule 29 as well, *i.e.* can even an order of review under Rule 29 be further reviewed?

(a) A reviewing authority, as soon as he passes an order of review, would exhaust his power under the rule and would become *functus officio*. In view of the proviso (2) to sub-rule (1) of Rule 29 he cannot review his own order. However, a superior reviewing authority can review the orders by an inferior reviewing authority under the aforesaid rule.

(b) Can the President review an order passed by him under a rule other than Rule 29 ?

(b) The language of sub/rule (1) of rule 29 would show that the reviewing authorities, including the President can "review any order made under these rules". The words 'any order' and under these rules' indicate that any order passed by the President including an order passed as a result of review under Rule 29 itself, would be an order under these rules. The second proviso to this Rule limits the power of review in the case of certain reviewing authorities like the Auditor General, P & T Board, and Head of Department to the orders passed by subordinate authorities only. No such limitation has been made in the case of the President. The President, can, therefore, review his own orders passed by him including an order passed under Rule 29 itself."

(64-A)

Ministry of Home Affairs O.M. No. 118/14/69-AVD, dated 28th May, 1969

[C(21)]

The undersigned is directed to refer to the Central Vigilance Commission's letter No. 1/12/66-Coord, dated the 21st June, 1966 regarding expeditious issue of sanction for prosecution, and to say that in Recommendation No. 37 (para 5.40) of their Seventy-eighth Report presented to the Fourth Lok Sabha on the 26th March, 1969, the Estimates Committee on the Ministry of Home Affairs—Central Bureau of Investigation have made the following recommendation:—

> "The Committee are distressed to find that unconscionable delays continue to occur in Ministries/Departments in the issue of sanctions for prosecuting officers serving under them. They urge that the Ministry of Home Affairs should issue instructions to all the Ministries etc. drawing their pointed attention to this lapse on their part and requesting them to issue the sanctions within a specified time. In exceptional cases, where it is, for any reason, not possible to adhere to the specified time limit, the matter should be brought to the notice of the Secretary or Head of the Department/Public Undertaking concerned in writing and his specific approval for extension of time limit obtained".

2. The above recommendation of the Estimates Committee is brought to the notice of all the Ministries etc. for compliance. It is requested that the time-limit specified in the Central Vigilance Commission's letter referred to above may kindly be adhered to, and if in any exceptional case, for any reason, action cannot be completed within the specified time limit, the matter should be brought to the notice of the Secretary or Head of the Department/Public Undertaking concerned in writing and his specific approval for extension of time limit obtained.

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(65)

Ministry of Home Affairs O.M. No. 43/57/64-AVD(III), dated the 11th September, 1969

[B(58)]

[B(86)]

The undersigned is directed to invite attention to this Ministry's Office Memorandum No. 43/57/64-AVD(III), dated the 29th November, 1966 on the above subject. Paragraph 2(i)

thereof lays down that action to dispense with the services of a convicted Government servant should not be taken till the period of filing an appeal has elapsed or in case an appeal has been filed till it has been decided in the first Court of appeal. Paragraph 2(v) of the same Memorandum further provides that action to dispense with a Government servant's services should be taken promptly as soon as the first appeal is decided and before the second appeal is filed. A case has been brought to the notice of this Ministry in which the convicted Government servant filed his second appeal almost simultaneously with the disposal of his first appeal in which his first conviction had been upheld. Although it was not the intention of this Ministry's instructions that the result of the second appeal should be awaited or that decision should be taken between the period when first appeal is decided and before the second appeal is filed, it has been said that there was hardly any time to dispense with the services of the Government servant concerned before the second appeal was filed.

2. The matter has been further examined in consultation with the Ministry of Law and it is clarified that the intention of paragraphs 2(i) and 2(v) of the above mentioned Memorandum is to wait for the result of the first appeal, if it has been filed, or to wait till the period of filling the first appeal has elapsed, even though there is no legal requirement to do so, and not to wait indefinitely thereafter. The disciplinary authorities should make arrangement for getting the result of the first appeal very promptly and take due action thereafter without delay. It should also not be necessary to find out whether a second appeal is intended to be filed. If however a restraining order from an appellate court is produced action has to be withheld or taken according to Court's direction. In this connection the Ministry of Law have also advised that an order of conviction is operative so long as there is no contrary order from an appellate court.

3. These instructions may be brought to the notice of all disciplinary authorities for guidance. Past cases need not be reopened.

(65-A)

Ministry of Home Affairs O.M. No. 51/3/69-Ests.(A), dated the 27th September, 1969

[B(21)] [B(104)]

The undersigned is directed to refer to the Ministry of Home Affairs Office Memorandum No. 3921/56-Ests.(A), dated the

13th December, 1956 and to issue the following further instructions for guidance:—

(1) "Warning" or "displeasure of the Government" or "reprimand" which are recorded in the confidential report of a Government servant without these having been communicated to him earlier should be communicated to him as an adverse entry in the character roll.

(2) Representations against "warnings" or "communication of the displeasure of the Government" or "reprimand" which are recorded in the confidential report of the Government servant should be dealt with in accordance with the procedure laid down for dealing with representations against adverse entries in confidential reports vide paragraph 9 of Ministry of Home Affairs Office Memorandum No. 51/14/60-Ests.(A), dated the 31st October, 1961, unless—

(a) an opportunity had already been given to the officer concerned to make a representation in the matter relating to the relevant incident or faults and such representation had been duly considered and a decision taken before the "warning" or "reprimand" was administered or the displeasure of the Government communicated to him; or

(b) where the "warning", "reprimand" etc. had been administered as a result of disciplinary proceedings.

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(66)

Ministry of Home Affairs O.M. No. 118/17/69-AVD, dated the 28th November, 1969

The undersigned is directed to say that as a result of a review recently made, it has been observed that the Central Bureau of Investigation experience considerable difficulty in obtaining authentic information relating to pay and allowances drawn by the Government servants over a certain period in cases where such Government servants are alleged to possess disproportionate assets. With a view to eliminating delay on this account, the undersigned is directed to request that the Chief Vigilance Officers of all the Ministries/Departments, etc. may kindly ensure that information regarding pay and allowances, etc. of the concerned Government

servants for the required period is furnished to the Central Bureau of Investigation within a month of receiving the requisition from the Central Bureau of Investigation.

2. In the case of non-gazetted employees and Section Officers working in the Ministries/Departments whose pay etc. is drawn by the Drawing Officers of the Ministries/Departments concerned, the Drawing Officers should be able to furnish this information from the office records. In case, the official concerned had been previously working in some other office(s), reference should be made to all those office(s) simultaneously for furnishing the required information for the relevant periods under intimation to the Central Bureau of Investigation. Information regarding certain kinds of remuneration *e.g.* fees and honoraria, receipts from the Union Public Service Commission or for radio broadcasts etc. which may not be available in the personal file of the officer, may be called for from the concerned officer in suitable cases.

3. The Central Bureau of Investigation obtain information regarding pay and allowances of gazetted officers directly from the Accountants General concerned. The concerned Accountants General, or the Pay and Accounts Officer, may kindly furnish the required information immediately and in any case within a period of six weeks of receiving the request from the Central Bureau of Investigation. In cases where it is not possible to supply this information to the Central Bureau of Investigation within the specified period, the Accountants General may suitably indicate the position to the Central Bureau of Investigation and simultaneously take necessary steps to obtain and furnish the particulars to them as expeditiously as possible. In the case of officers serving under more than one Accounts Circle during the period under review, the Central Bureau of Investigation will address the concerned Accountants General/Pay and Accounts Officers simultaneously for furnishing the required information for the relevant periods. The Central Bureau of Investigation will also simultaneously send copies of their communications on the subject to the Chief Vigilance Officer of the Ministry concerned for furnishing information about honoraria, etc., if any, received by the officers.

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(67)

Ministry of Home Affairs O.M. No. 134/17/69-AVD, dated the 2nd February, 1970

The undersigned is directed to say that in the light of the analysis of certain cases recommended by the Central Bureau of

Investigation for departmental action it has been observed by the Commissioners for Departmental Enquiries that in cases involving technical aspects the presenting officers are not sufficiently equipped to effectively cross-examine the defence witnesses. With a view to overcoming this difficulty in the conduct of the departmental enquiries and for ensuring non-failure of cases on technical grounds, it is considered in consultation with the Central Bureau of Investigation that:—

(i) In complicated technical cases it would be helpful to the Inquiry Officer as well as the parties if the first witness to be called is an expert of the department concerned who will be able to explain the background and various technicalities of the matter.

(ii) The presenting Officer should familiarise himself well with the technical aspects of the matter :

(a) before the inquiry commences, and also

(b) before the cross-examination of defence witnesses after the defence has led evidence.

2. The Ministry of Health, Family Planning, Works, Housing and Urban Development etc. are requested to extend necessary help and facilities to the Presenting Officers of the Central Bureau of Investigation.

(67-A)

Ministry of Home Affairs, Letter No. 7/4/70-AIS, dated the 18th May, 1970, addressed to all State Govts.

Sir,

I am directed to refer to your letter No. 4942/Special/67-33, dated the 24th February, 1970 on the above subject and to say that the Director of Public Prosecutions who has been appointed as a Presenting Officer on behalf of the State Government may not technically speaking, be covered by the expression "Legal practitioner" as it does not appear to be his duty to act and plead in the courts. However, Rule 8(9) of the All India Services (Discipline and Appeal) Rules, 1969 contains a provision under which the disciplinary authority may, having regard to the circumstances, permit the delinquent officer to engage a legal practitioner. When on the side of the Government the case is being

presented by the Director of Public Prosecutions who belongs to the State Judicial Service and is of the rank of District Munsif, there are evidently good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in this case is likely to be held by the court as arbitrary and prejudicial to the defence of the officer. The Government of India are, therefore, of the view that this is a fit case in which the officer should be permitted to engage a lawyer to defend him in the proceedings before the disciplinary authority.

Copy of letter No. 4842/*Special*/67-33 *dated the* 24*th February,* 1970 *from Shri M. T. Raju, Bar-at-law, J.C.S. Chief Secretary to Government of Andhra Pradesh, General Administration* (*Special*) *Department, Hyderabad, and addressed to the Secretary to Government of India, Ministry of Home Affairs, New Delhi.*

Subject:—All India Services (Discipline and Appeal) Rules, 1969—Request of an Accused Officer for permission to engage a counsel to defend his case before the enquiry Officer—Reg.

I am to state that in a disciplinary case pending against an I.A.S. Officer of Andhra Pradesh Cadre, the State Government have framed charges against him and on receipt of his written statement of defence, appointed an Enquiry Officer under sub-rule (6) of Rule 9 of the A.I.S. (Discipline and Appeal) Rules, 1969. The Government have also appointed the Director of Prosecutions of Anti-corruption Bureau, who is a Government servant, as the Presenting Officer to present the case before the Enquiry Officer in support of the Articles of Charge. The Accused Officer has now requested for permission to engage a legal practitioner to defend his case before the Enquiry Officer. The Director of Prosecutions, Anti-Corruption Bureau, who has been appointed as the Presenting Officer, belongs to Judicial Service and is of the rank of a District Munsif. He has been appointed on transfer as Director of Prosecutions in the Anti-Corruption Bureau to conduct the cases on behalf of the Government before the Tribunal for Disciplinary Proceedings. He cannot be termed as a legal practitioner as he is only a Government servant belonging to the State Judicial Service. In the circumstances this Government consider that the member of the service (Accused Officer) need not be permitted to engage legal practitioner to defend his case before the Enquiry Officer and that it would be sufficient if he is per-

mitted to take the assistance of any other Government servant to present his case on his behalf, before the Enquiry Officer.

I am to request a clarification from the Government of India on the above point at an early date.

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(68)

Ministry of Home Affairs O.M. No. 39/17/69-Estt.(A), dated 18th June, 1970

[B(54)]

The undersigned is directed to invite attention to para 1(b)(ii) of the Ministry of Home Affairs Office Memorandum No. 29/6/57-Est.(A), dated 6th May, 1958 in regard to officers under suspension. It has been provided in para 1(b)(ii) thereof that as officers are placed under suspension only in cases of grave delinquency, it would not be correct to accept resignation from an officer under suspension except where the alleged offence(s) do not involve moral turpitude or where the evidence against the delinquent officer is not strong enough to justify the assumption that if the departmental proceedings were continued, the officer would be removed or dismissed from service or where the departmental proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation.

2. The Estimates Committee in their 87th Report (Fourth Lok Sabha) on the Ministry of Foreign Trade have recommended *inter alia* that where investigations, whether preliminary or regular, are pending against a Government employee, he should not be allowed to resign till he is cleared of the charges. This recommendation has been considered and it has been decided that in case 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. Where, however, the acceptance of resignation in such a case is considered necessary in the public interest, because one or more of the conditions laid down in paragraph 1 above are fulfilled, the resignation may be accepted with the prior approval of the Head of the Department in the case of holders of Class III and IV posts and that of the Minister incharge in respect of holders of Class I and II posts.

3. In so far as Class II officers serving in the Indian Audit and Accounts Department are concerned, the resignation of such officers shall not be accepted except with the prior approval of the Comptroller and Auditor General of India.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued after consultation with the Comptroller and Auditor General of India.

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(69)

Department of Personnel O.M. No. 7/11/70-Est.(A), dated the 24th September, 1970

Attention of the Ministry of Finance etc. is invited to sub-rule (14) of Rule 14 of the C.C.S. (C.C.A.) Rules, 1965, under which the witnesses produced by or on behalf of the disciplinary authority in a disciplinary proceeding shall be examined by or on behalf of the presenting officer and may be cross-examined by or on behalf of the Government servant, and the presenting officer would also be entitled to re-examine the witnesses on any points on which they have been cross-examined but not on any new matter without the leave of the inquiring authority. Doubts have been expressed in some quarters if cross-examination by or on behalf of the Government servant could be allowed after the presenting officer has re-examined the witnesses. It is hereby clarified that if re-examination by the presenting officer is allowed on any new matter not already covered by the earlier examination/cross-examination, a cross-examination on such new matters covered by the re-examination may also be allowed to meet the ends of natural justice.

2. In so far as the persons serving in the Audit and Accounts Department are concerned, these orders issue in consultation with the Comptroller and Auditor General of India.

(69-A)

Department of Personnel O.M. No. 226/35/70-AVD.II, dated 11th November, 1970

The undersigned is directed to say that it has come to notice that the Central Bureau of Investigation are not kept in the picture

about references made in the Audit Reports and the reports of the Public Accounts Committee to cases investigated by them or under investigation by them. It has also been observed that sometimes the information furnished by the administrative Ministries to the Public Accounts Committee is based on old records and is not up-to-date. The result is that when a reference is later received in the Central Bureau of Investigation on certain cases from the Public Accounts Committee, they are not able to ascertain and furnish full facts at short notice. In order to overcome this difficulty, the Chief Vigilance Officer in the Ministry of Finance etc. is requested to ensure that—

(a) A draft audit para which may have a reference to a Central Bureau of Investigation case should be shown to Central Bureau of Investigation by the administrative Ministry concerned before communicating comments to the Accountant General concerned.

(b) Notes sent to the Public Accounts Committee in respect of cases having a reference to an investigation by the Central Bureau of investigation should be shown to them before they are sent to the Audit Officer for vetting.

2. It is requested that the above instructions may kindly be brought to the notice of all concerned for compliance.

(69-B)

Department of Personnel O.M. No. 7/12/70-Est.(A), dated 6th January, 1971

[B(27)]

[B(76)]

The attention of the Ministry of Finance etc. is invited to the instructions contained in para 4 of the Ministry of Home Affairs O.M. No. 6/26/60-Ests.(A), dated 16th February, 1961.

2. The Committee on Subordinate Legislation (Fourth Lok Sabha) have recently examined the question of appointment of inquiry officers to conduct oral inquiry into the charges levelled against delinquent officers under CCS (CCA) Rules, 1965. The Committee has observed that though they agree that it may not be possible to entrust always inquiries against delinquent officers to gazetted officers the inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into as inquiry by a junior officer cannot command confidence which it deserves.

3. All the Ministries and Departments are requested to note the above observations of the Committee on Subordinate Legislation for compliance.

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(70)

Department of Personnel O.M. No. 39/43/70-Ests.(A), dated 8th January, 1971

The undersigned is directed to say that the following item sponsored by the Staff Side of the National Council of the Joint Consultative Machinery was discussed in the 9th ordinary meeting of the National Council held on the 25th and 26th September, 1970 :—

> "Suitable provisions should be made in Rule 15 of the C.C.S. (C.C.A.) Rules, 1965, to make it obligatory on the part of the Disciplinary Authority to pass orders on the enquiry report within a period of 15 days, to avoid delay."

After some discussion, it was decided that the Official Side might examine the feasibility of prescribing a time-limit of two months within which the disciplinary authority should pass the orders on the report of the inquiry officer, and requiring that authority to submit a report to the next higher authority in cases where the time-limit cannot be adhered to, explaining the reasons therefor.

2. The suggestion of the Staff Side has accordingly been examined further. It is felt that, while both in the public interest as well as in the interest of employees avoidable delay should occur in the disposal of disciplinary cases, it is necessary that sufficient time is available to the disciplinary authority to apply its mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. While therefore it has to be ensured that fixing of any time-limit on the disposal of the inquiry report by the disciplinary authority by making a provision in this regard in the C.C.S. (C.C.A.) Rules, should not lead to any perfunctory disposal of such cases, taking all relevant factors into consideration it is felt that in cases which do not require consultation with the Central Vigilance Commission or the Union Public Service Commission, it should normally be possible for the disciplinary

authority to take a final decision on the inquiry report within a period of three 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 requiring consultation with the Central Vigilance Commission and the Union Public Service Commission also, every effort should be made to ensure that such cases are disposed of as quickly as possible.

3. The Ministry of Finance etc. are requested to bring the contents of this Office Memorandum to the notice of all disciplinary authorities and also take suitable steps to ensure that avoidable delays in such cases do not occur.

(70-A)

Cabinet Secretariat Department of Personnel O.M. No. F. 323/11/(10)/70-AVD(III), dated 12th January, 1971

This Department have had under consideration the question of tightening up of steps for locating points of corruption in Government offices and taking remedial action. Two aspects of the problem, namely, the role of the superior officers and the place of inspections in this regard are dealt with in this memorandum.

Role of superior officers

2. It would be salutary and indeed the normal duty of a superior officer to make it a rule of his, whenever a case comes before him, to find-out whether it has been unduly held up at any stage, any unnecessary references have been made to delay its disposal or whether it has other features reflecting suspicious conduct. Alertness on the part of the officers in this direction is sure to unearth such cases even in the ordinary course. Detailed investigation later into such cases might bring to light certain corrupt practices which lie at the bottom of such delays etc.

Role of inspections

3. Similarly, the underlying causes of corruption could be more critically examined during the course of periodical inspections provided for in the Manual of Office Procedure. These inspections are designed to assess the quality of performance, the

intrinsic soundness and utility of procedures and their observance. Such inspections, among other things, could also serve to spotlight delays. The inspection officer should go deeply into such cases to see whether there are any unusual circumstances in their handling which would justify a suspicion that there has been an attempt either to hold up matters or to show undue favours to persons or the parties concerned.

4. Superior officers of Inspecting Officers, as soon as they come across cases of the kind mentioned in paras 2 or 3 above, either in their day-to-day handling of files, or at the time of inspections as the case may be, should make it a point to report the cases to the Vigilance Officers for more detailed investigations and further action, where called for.

5. It is requested that suitable departmental instructions on the above line be issued to all officers.

(70-B)

Department of Personnel Cabinet Secretariat O.M. No. 323/11/(9)/70-AVD(III), dated 18th January, 1971

While analysing the administrative procedures in order to minimise the scope of corruption, it has been noticed that a study and analysis of vigilance cases in courts and those conducted under the disciplinary rules reveal very useful information regarding the loop-holes in rules and procedures which provide scope for abuse of authority etc. It is therefore felt that a study of vigilance case should be made as soon as action is finalised and that the case should not be treated as closed until the scrutiny is over. While scrutinising such cases it may also be examined as to whether the rules and regulations prescribed for the transaction of the official business are adhered to in practice and whether effective steps are required to prevent lapses, if any, where they occur.

2. The Central Bureau of Investigation who are primarily concerned with the prosecution of SPE cases in Court are being requested to intimate to the Ministries/Departments concerned the result of the scrutiny of Court cases for follow-up action. The undersigned is therefore directed to request that Ministries/Departments may issue suitable instructions so that adequate arrangements are made for the scrutiny of such cases as and

when they are finalised. A copy of the instructions that may be issued in this connection may also please be sent to this Department for information.

3. The Central Vigilance Commission may also be kept informed of the result of the scrutiny made in respect of cases in which the advice of the Commission has been sought for.

4. This issues in consultation with the Central Vigilance Commission.

(70-C)

Cabinet Secretariat (Department of Personnel), O.M. No. 39/39/70-Ests.(A), dated 4th February, 1971

[B(52)]

[B(78)]

In the Ministry of Home Affairs O.M. No. 221/18/65-AVD, dated the 7th September, 1965, the attention of all disciplinary authorities was drawn to the need for quick disposal of cases of Government servants under suspension and it was desired, in particular, that the investigations in such cases should be completed and a charge-sheet filed in court, in cases of prosecution, or served on the Government servant, in cases of departmental proceedings, within six months. The matter was considered further at a meeting of the National Council held on the 27th January, 1971 and in partial modification of the earlier orders it has been decided that every effort should be made to file the charge-sheet in court or serve the charge-sheet on the Government servant, as the case may be, within three months of the date of suspension, and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay.

I am to add that the information requested for in the Department of Personnel O.M. No. 39/39/70-Ests.(A), dated December 14, 1970 will still be required and may please be sent to the Department of Personnel, as early as possible, if that has not been done already.

The Ministry of Finance etc. are requested to bring this to the notice of all disciplinary authorities.

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(71)

Department of Personnel O.M. No. 227/16/66-AVD.II, dated 19th February, 1971

[C(1)]

The undersigned is to invite a reference to para 7 of the Central Vigilance Commission circular letter No. 9/1/64-D.P., dated 13th April, 1964, addressed to all Ministries etc., according to which any proposal to blacklist a firm or to withdraw a black-listing order is required to be referred to the Central Vigilance Commission for advice before issue of final orders.

2. The Cabinet Secretariat (Department of Cabinet Affairs) have since issued instructions *vide* their O.M. No. 47/85/CF-69, dated 24th November, 1969 regarding the procedure to be followed in banning business dealings with the firms. According to these instructions banning will be of two types ; *e.g.* (i) banning confined to one Ministry; and (ii) banning to be implemented by all Ministries and that the use of the word 'blacklisting' should be avoided. It has also been laid down that before any banning orders relating to other Ministries are passed, the matter should be placed before the Committee of Economic Secretaries and their approval obtained.

3. In the light of these instructions, it has now been decided that, henceforth, advice of the Central Vigilance Commission need not be sought for blacklisting (now banning) of firms/contractors or for withdrawal of blacklisting (now banning) orders.

4. The Ministry of Supply and the Departments of Works, Housing and Urban Development are being requested to amend the Standardised Code suitably.

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(72)

Cabinet Secretariat, Department of Personnel's letter No. F. 107/1/71-AVD, dated 16th April, 1971

A case has come to notice in which a State Government quoted the views of the Central Bureau of Investigation and the contents of their report in an affidavit filed by them in reply to a writ petition of an officer in connection with action taken against him by the State Government on the basis of the C.B.I.'s report.

2. The report of the C.B.I. is a confidential document for which privilege can be claimed in a court of law under Section 123 or 162 of the Evidence Act. A direct reference in the affidavit to any material or views contained in the C.B.I.'s report would make it difficult to claim privilege for the production of the document before a court of law. I am, therefore, to request that whenever a reference has to be made to any material available in the report of the C.B.I., the reference may be restricted to the material contained in the statement of charges and allegations served on the officer.

3. I am to request that it may kindly be ensured that a direct reference to the report of the C.B.I. is not made in the statements/affidavits filed in the courts of law. In case such a reference becomes inevitable, the C.B.I. may please be consulted before quoting the contents of their report in the documents.

(72-A)

Cabinet Secretariat, Department of Personnel, O.M. No. 39/42/70-Ests.(A), dated 15th May, 1971

The undersigned is directed to say that in the meeting of the National Council held on the 25th and 26th September, 1970 the suggestion of the Staff Side that provision should be made in the C.C.S. (C.C.A.) Rules, 1965, to make it obligatory on the Appellate Authority to pass orders within a specified time-limit was considered. While the need for expeditious disposal of appeals was appreciated, it was pointed out that instructions already existed in this regard. It was also pointed out that it might be difficult on practical considerations for the appellate authorities to always dispose of appeals within a prescribed time-limit. However, it was agreed that the following suggestion might be examined in order to achieve quicker disposal of appeal:—

(a) the need for and the feasibility of appointing additional appellate authorities wherever the present workload of appellate authorities is unduly heavy; and

(b) the prescribing of a procedure by which the position regarding pending appeals could be reviewed by the

higher authorities at periodical intervals so as to take suitable and timely remedial action.

2. The two suggestions mentioned in para 1 have been examined. Although the appellate authorities are expected to give a high priority to the disposal of appeals, there might be cases in which the hands of the appellate authority are too full and it may not be able to devote the time and attention required for the disposal of appeals within a short period. In such cases the appellate authority can be relieved of his normal work to such an extent as would be necessary to enable him to devote the required time and attention to the disposal of the appeals pending before him by re-distribution of that work amongst other officers. If, however, the number of appeals received or pending with any particular appellate authority is very large, the appellate work itself could be re-distributed as far as possible among a number of officers of equivalent rank and in any case not below the rank of the appellate authority through a general order issued in exercise of the powers under rule 24 of the C.C.S. (C.C.A.) Rules, 1965.

3. As regards prescribing procedure for review of the position regarding pending appeals, it has been decided that, apart from the provisions laid down in the Manual of Office Procedure whereby cases pending disposal for over a month are reviewed by the appropriate higher authorities, a separate detailed statement of appeals pending disposal for over a month should be submitted by the appellate authority to the next higher authority indicating particularly the reasons on account of which the appeals could not be disposed of within a month and the further time likely to be taken for disposal of each such appeal, along with the reasons therefor. This would enable the appropriate higher authority to go into the reasons for the delay in the disposal of appeals pending for more than a month, and take remedial steps wherever necessary to have the pending appeals disposed of without further delay. In cases where the appellate authority is the President under rule 24 of the C.C.S. (C.C.A.) Rules, 1965, the aforesaid statement should be submitted to the Secretary of the Ministry/Department concerned for similar scrutiny.

4. The Ministry of Finance, etc. may please bring the contents of this Office Memorandum to the notice of all concerned for guidance.

(72-B)

Cabinet Secretariat, Department of Personnel, O.M. No. 118/28/70-AVD, dated 5th June, 1971

[C(18A)]

The undersigned is directed to say that the Central Vigilance Commission had issued instructions on the above subject in their letter No. 2/9/66-Coord, dated 20th May, 1966 (Copy enclosed for reference). A reference to the policy of periodic shifting of staff working in sensitive areas was made in the second Orientation Course for Chief Vigilance Officers held on 15—19th June, 1970, at the National Academy of Administration, Mussorie, and it was felt that there was need to follow these instructions more vigorously, and to ensure rotation of officials employed in such posts.

It is requested that suitable steps may kindly be taken to give effect to the instructions contained in the Central Vigilance Commission's letter dated 20th May, 1966, referred to above.

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(73)

Deptt. of Personnel's O.M. No. 6/1/(S)/71-Ests.(B), dated 21st June, 1971

Cancelled *vide* **Deptt. of Personnel, O.M. No. 34012/1(S)/75-Ests.(B), dated 21st August, 1975**

[B(85)]

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(74)

Department of Personnel, O.M. No. 1/9/71-Estt.(D), dated 22nd January, 1972

[B(55E)]

The undersigned is directed to refer to Ministry of Home Affairs (now Department of Personnel) O.M. No. 1/18/66-Estt. (D), dated 18th April, 1967 on the above subject and to say that in accordance with the instructions contained in the above Office Memorandum, in cases of promotions in which the UPSC are associated with the DPC, the Ministries/Departments record a certificate of integrity in respect of officers which runs as follows:—

"The records of service of the following officers have been carefully scrutinised to ensure that there is no doubt about their integrity."

2. It has now been decided, in consultation with the UPSC, that the certificate of integrity to be recorded by the Ministries/Departments in cases of promotion where UPSC are associated with the DPC should be worded as under:—

"The records of service of the following officers who are to be considered for promotion to the grade have been carefully scrutinised and it is certified that there is no doubt about their integrity."

A certificate on these lines may also be recorded by Ministries/Departments in cases of promotion where the UPSC is not associated with Departmental Promotion Committee.

3. As regards confirmation, attention is invited to Ministry of Home Affairs (now Department of Personnel) O.M. No. F. 1/10/64-Estt. (D) dated 14th January, 1965 according to which the Vigilance Units of various Ministries, the CBI, etc., should ensure that the appropriate authorities have before them relevant information on the basis of which confirmation or promotion may be denied or postponed. Thus, in the matter of confirmation, no integrity certificate on the lines of the one required for purposes of promotion, is at present being recorded. The matter has been considered further and it has been decided that in order to ensure that the recommendations of the Committee on Prevention of Corruption are fully implemented, an integrity certificate in the case of confirmation also, on the lines indicated below, should be recorded by the Ministries/Departments for being placed before the DPC:—

"The records of service of the following officers who are to be considered for confirmation to the grade have been carefully scrutinised and it is certified that there is no doubt about their integrity".

The procedure for recording the above certificate and the authorities which will record the above certificate in respect of officers to be considered for confirmation will be the same as prescribed in MHA's O.M. No. 1/18/66-Estt.(D) dated 18th April, 1967.

(75)

Department of Personnel, O.M. No. 23/28/72-Ests.(B) dated the 5th September, 1972

[B(63)] [B(117)]

The undersigned is directed to refer to the Ministry of Home Affairs (now Department of Personnel) O.M. No. 23/64/68-Ests. (B) dated the 28th August, 1969, on the subject mentioned above in which it was emphasised that—

(i) delays in making reference to the Union Public Service Commission or in taking action on their recommendations should be avoided :

(ii) reference made to the Commission should be complete in all respects.

2. It has been brought to the notice of the Department of Personnel by the Union Public Service Commission that, although some improvement was noticed during 1970-71 inasmuch as about 54% of the cases received by the Commission were complete in all respects, the position had somewhat deteriorated during 1971-72 inasmuch as only about 48% of the cases received by the Commission were complete in all respects. In other words, more than 50% of the cases received from the Ministries/Departments were incomplete and had to be kept in suspense pending receipt of certain documents or were returned to the Ministries/Departments for completion of records, etc. It has also been noticed that during 1971-72 there were as many as 13 cases in which the Government had not passed orders for a period of six months from the date of communication of the Commission's advice.

3. It is hardly necessary to emphasise the need for expeditious disposal of disciplinary cases at all stages, both in the interests of the Government as well as the Government employee proceeded against. Every effort should, therefore, be made to ensure that delays do not occur at any stage of the proceedings. In particular as has been pointed out in the Ministry of Home Affairs (now Department of Personnel) O.M. dated 28th August, 1969, if the reference made to the Commission is complete in all respects and expeditious action is taken on the Commission's recommendations, as soon as they are received, much of the delay could be avoided. It is therefore requested that the reference to the Union Public Service Commission in disciplinary cases should

be checked up very carefully to ensure that they are complete in all respects. The reference should invariably be accompanied by the revised *pro forma* statement enclosed with the Ministry of Home Affairs (now Department of Personnel) O.M. No. 234/2/66-AVD II, dated the 18th March, 1968 (Pl. see E-32) duly filed in; and it should be ensured that all the relevant documents listed *vide* items 14 to 17 of the *pro forma* statement are forwarded to the Commission in original. Again there should not be any delay whatsoever in taking a final decision on the advice of the Commission as soon as it is received; every effort should be made to take final action on the advice of the Commission within a month of its receipt and if any delay is anticipated in this respect, the case should be brought to the notice of the higher authority so that steps could be taken to dispose of the case with the least possible delay.

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(76)

Department of Personnel, O.M. No. 39/40/70-Ests.(A), dated 9th November, 1972

[B(69B)]

The undersigned is directed to say that one of the items considered by the National Council set up under the Scheme of Joint Consultation and Compulsory Arbitration in its meeting held in September, 1970 was a proposal of the Staff Side that the disciplinary inquiry should, as a rule, be conducted by a person who should be free from all influences, official or otherwise, of the disciplinary authority. It was further suggested that the rules should be amended suitably so that departmental inquiries are invariably conducted by a person belonging to another department. As a result of subsequent discussion in the National Council a Committee of the Council was set up to consider the matter in all its aspects. In the Committee the Staff Side urged that it was necessary in a departmental inquiry to ensure that the proceedings were conducted in an objective manner and that the requirement of natural justice would be watered down if the inquiry is held by the disciplinary authority itself or is entrusted to an Inquiry Officer who is subordinate to, or is under the direct influence of the disciplinary authority. According to them departmental inquiries should invariably be entrusted to an independent and impartial body or tribunal and that considerations of the expenditure involved in providing such an independent forum should not be the prime-factor in the dispensation of

justice. Alternatively, the Inquiry Officer should invariably belong to a wing/office/department different from the one to which the alleged delinquent employee belongs.

2. As regards the point raised by the Staff Side that the Departmental inquiry should be entrusted to an independent impartial body or tribunal, it was clarified that inquiries in disciplinary proceedings against gazetted officers of all grades involving lack of integrity or an element of vigilance are alone entrusted to Commissioner for Departmental Inquiries under the Central Vigilance Commission and other cases of disciplinary proceedings involving purely administrative or technical lapses, are not referred to the said Commissioner. It was also not possible to entrust the departmental inquiries against non-gazetted employees to the Commissioner for Departmental Inquiries in view of the very large number of disciplinary cases of each employees coming up every year. It was further pointed out that the existing instructions contained in Ministry of Home Affairs (now Department of Personnel) O.M. No. 6/26/60-Ests. (A), dated 16th February, 1961 (copy enclosed) already emphasise the desirability of only disinterested officers being appointed as Inquiry Officers in departmental proceedings. It is also provided therein that while there is no bar to the immediate superior officer holding an inquiry, as a rule, persons who undertake this task should not be suspected of any bias in such cases, and that the authorities concerned should bear this in mind before an Inquiry Officer is appointed in a disciplinary case.

3. A suggestion was made by the Staff Side that where a representation by the delinquent official against the appointment of a particular Inquiry Officer on grounds of bias, is rejected by the disciplinary authority, it should be open to the delinquent official, to prefer an appeal to the appellate authority. It was pointed out that though there was no provision in the C.C.S. (C.C.A.) Rules for filing an appeal against an order appointing a person as Inquiry Officer in a disciplinary proceeding, such an order could, nevertheless, be reviewed under the said Rules. The Staff Side desired that in view of this position, the Inquiry Officer should stay the proceedings if an application for review is filed by the delinquent official. It was agreed that obviously this should be done and the attention of the competent authorities could be drawn to the need for staying the proceedings once a review petition was submitted in such cases.

4. It has accordingly been decided that whenever an application is moved by a Government servant against whom

disciplinary proceedings are initiated under the CCS (CCA) Rules against the inquiry officer on grounds of bias, the proceedings should be stayed and the application referred, along with the relevant material, to the appropriate reviewing authority for considering the application and passing appropriate orders thereon. It has also been decided to re-emphasize to all Ministries/Departments the following instructions contained in paragraph 5 of M.H.A. O.M. No. 39/40/52-Ests. dated 4th October, 1952, on the subject for expediting and better disposal of departmental proceedings against government servants:—

(i) In each Ministry or Department specified officer or officers of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental inquiries arising within their Ministry/Department.

(ii) As soon as occasion arises for taking up such an inquiry, the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiries and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officers.

5. The Ministry of Finance, etc., are accordingly requested to bring to the notice of the various disciplinary authorities the need for staying the proceedings till such time as the review petition, if any, submitted by a Government servant against the appointment of the Inquiry Officer is disposed of, as agreed to in the Committee of the National Council *vide* paragraph 3 above. They are also requested to keep in view the instructions contained in the Ministry of Home Affairs (now Department of Personnel) O.M. No. 6/26/61-Ests.(A) dated 16th February, 1961 and No. 39/40/59-Ests. dated 4th October, 1952 referred to above in regard to the appointment of Inquiry Officers in disciplinary proceedings.

(77)

Department of Personnel, O.M. No. 39/32/72-Ests.(A), dated 13th December, 1972

[B(76)] [B(92)]

The undersigned is directed to state that the Administrative Reforms Commission in their Report on 'Personnel Administration' have made the following recommendation:—

"49. We recommend that, where the volume of work in connection with the departmental enquiries justifies the appointment of a separate officer for a department, or a group of offices, or for a region, a separate, whole-time officer fully trained for conducting disciplinary proceedings may be appointed".

[Recommendation No. 49]

2. The recommendation has been examined. In the Ministry of Home Affairs (now Department of Personnel) O.M. No. 39/40/52-Ests, dated the 4th October, 1952, the following measures had already been suggested to the various Ministries/Departments in regard to the appointment of Inquiry Officers in the context of avoiding delays in departmental proceedings caused by excessive preoccupation of the Inquiry Officer and his unfamiliarity with the prescribed procedures:—

(i) In each Ministry/Department, a specified officer(s) of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental enquiries arising within that Ministry/Department.

(ii) As soon as an occasion arises for taking up such an enquiry, the nominated officer will be relieved of his normal duties to such an extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiry and the submission of his report. During this time, the work of which the officer is to be relieved may be distributed amongst other officers.

(iii) The nominated officers should familiarize themselves with the rules and essential procedural requirements and appreciate the difference between departmental enquiries and trials in the criminal courts. The main-

tenance of close personal contact with the Ministry of Home Affairs (now Department of Personnel) will enable them quickly to resolve any doubts or difficulties which may arise.

3. If these instructions for expediting departmental inquiries are strictly followed it may not be necessary to appoint a whole-time officer for conducting departmental proceedings. Where, however, the volume of work in connection with the departmental inquiries is so large as to justify the appointment of a whole-time officer for the purpose of conducting departmental inquiries, the Ministry of Finance, etc., may consider the question of appointing a whole-time officer, fully trained in conducting disciplinary proceedings for a department or a group of Offices or for a region.

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(78)

Department of Personnel, O.M. No. 39/33/72-Ests.(A), dated 16th December, 1972

[B(41)] [B(81)]

The Administrative Reforms Commission, in their Report on Personnel Administration have made the following observations in Chapter IX (Conduct and Discipline) of the Report:—

"Officials remain, at present, under suspension for considerably long periods, because of the delays in the decision of their cases. Instructions exist that, as far as possible, investigation in disciplinary cases should be completed and a charge-sheet filed in the court of law in cases of prosecution or the memorandum of charges served in the case of departmental proceedings, within a period of six months; if cases are likely to be delayed, the question of revocation of the suspension order should be examined. These instructions have not been followed in very many cases, and this indicates a lack of a sense of urgency among those handling the cases.

We recommend that no person should ordinarily be kept under suspension for a period of more than three months except in cases pending in the courts. If reinstatement of the officials is considered to be fraught with risk of the evidence of the departmental case being tampered with or the departmental proceedings being

hampered, the official should be transferred to any other place where no such risk exists. Approval of a higher authority should be obtained for keeping officials under suspension beyond a period of three months".

2. This recommendation has been examined by the Government. The Ministry of Home Affairs (now Department of Personnel) Office Memorandum No. 221/18/65-AVD, dated the 7th September, 1965, had already emphasized the need for quick disposal of cases of Government servants under suspension and it was desired in particular that the investigation in such cases should be completed, and a charge-sheet filed in the court in cases of prosecution, or served on the Government servant, in cases of departmental proceedings, within six months. These instructions were further elaborated in Department of Personnel Office Memorandum No. 39/39/70-Estt. (A), dated the 4th February, 1971, as a result of discussion in the National Council of the Joint Consultative Machinery. It was laid down in these instructions that every effort should be made to file the charge-sheet in court or serve the charge sheet on the Government servant, as the case may be, within three months of the date of suspension and in cases in which it might not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay.

3. It would thus be observed that Government have already reduced the period of suspension during investigation, barring exceptional cases which are to be reported to the higher authority, from six months to three months. It has now been decided that while the orders contained in the Office Memorandum of 4th February, 1971 would continue to be operative in regard to cases pending in courts in respect of the period of suspension pending investigation before the filing of a charge-sheet in the court as also in respect of serving of the charge-sheet on the Government servant in cases of departmental proceedings, in cases other than those pending in courts the total period of suspension *viz.*, both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to this time limit, the disciplinary authority should report the matter to the next higher authority, explaining the reasons for the delay.

4. This decision may be brought to the notice of all administrative authorities in or under the Ministry of Finance, etc., for information and appropriate action.

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(79)

Department of Personnel and Administrative Reforms letter No. 5/4/74-AIS(III), dated the 21st February, 1974 addressed to all State Governments

I am directed to say that the Government of India have been receiving references from time to time regarding the applicability of sub-rules (3) and (4) of rule 16 of the All India Services (Conduct) Rules, 1968, to properties acquired by the members of the families of the officers borne on cadres of the All India Services. The position is clarified in the following paragraph for the information and guidance of all concerned.

2. Sub-rules (3) and (4) of rule 16 of the All India Services (Conduct) Rules, 1968, apply only to properties acquired, etc. by the members of the Service either in their own names or in the names of the members of their families. In other words, the properties either acquired by the members of the families of the officers *from out of their own funds* or inherited by them would not attract the provisions of the rules. As such, the movable/immovable properties owned, etc., by the members of the families of the officers, which are either inherited by them or acquired by them from out of their own funds, are not required to be included in the property returns envisaged in sub-rule (2) of rule 16 *ibid.*

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(80)

Department of Personnel and Admn. Reforms O.M. No. 7/4/74-Ests.(A), dated 9th August, 1974

The undersigned is directed to say that in its report on Personnel Administration, the Administrative Reforms Commission had recommended as under:—

"53(2).—All Supervisory Officers should be empowered to suspend a subordinate officer (in circumstances disclosing gross dereliction of duty), subject however to a review of the order of suspension, within a short time, by the next higher authority".

2. This recommendation has been accepted subject to the following modification:—

Only supervisory officers in offices located away from headquarters need be specially empowered to suspend a

subordinate officer in cases involving gross dereliction of duties. In order to prevent abuse of this power the suspending authority should be required to report the facts of each case immediately to the next higher authority, and all such orders of suspension should become *ab initio* void unless confirmed by the reviewing authority within a period of one month from the date of orders.

3. As the Ministry of Finance, etc., are aware, under rule 10 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the following authorities are competent to place a Government servant under suspension:

(i) Appointing authority;

(ii) Any authority to which appointing authority is subordinate;

(iii) Disciplinary authority ; and

(iv) Any other authority empowered in that behalf by the President by a general or special order.

4. Supervisory Officers in field offices located outside the Headquarters may, wherever necessary, be empowered to place officers subordinate to them under suspension, subject to the conditions mentioned in para 2 above, by issuing special orders in the name of the President in pursuance of rule 10 of the CCS (CC&A) Rules, 1965.

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(81)

Department of Personnel and Administrative Reforms O.M. No. 134/5/75-AVD, dated 26th May, 1975

[B(78)] [B(102)]

The undersigned is directed to refer to the Ministry of Home Affairs O.M. No. 43/56/64-AVD, dated the 22nd October, 1964 on the subject mentioned above, in which some circumstances were indicated where the disciplinary authorities may consider it appropriate to place a Government servant under suspension. Item (iv) of the aforesaid O.M. reads as follows :—

"Where allegations have been made against the Government servant and the preliminary inquiry has revealed

that a *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service".

The note at the end of the O.M. also enumerates certain types of misdemeanour involving "moral turpitude" and "corruption" for which suspension may not only be "appropriate" but also "desirable".

2. It has, however, been noticed that the disciplinary authorities, in many cases, have been reluctant to suspend the Government servants concerned even in cases of the type mentioned above. It may be that some disciplinary authorities may feel that suspension should not be resorted to in some cases because the preliminary inquiry has revealed that a *prima facie* case is made out, because often, at the stage of preliminary inquiry or the CBI investigation, the accused officer has not had a full opportunity to state his case in defence or explanation. But it is obvious that a Government servant who, after the conclusion of the formal inquiry into the charges against him has been proved to the satisfaction of the disciplinary authority to be corrupt or lacking in integrity and to whom a show-cause notice against the penalty of dismissal, removal or compulsory retirement is issued, should not be allowed to deal with the affairs of the State. It would, therefore, be desirable that at the stage after the completion of the formal departmental inquiry and after the disciplinary authority has substantially accepted the findings of the Inquiring authority to the extent of having issued a show-cause notice against the penalty of dismissal, removal or compulsory retirement, suspension may be restored to as a matter of course, except in rare cases where there may be strong reasons for not resorting to this course. Ordinarily, the order of suspension could be issued simultaneously with the issue of the second show-cause notice to the Government servant. At this stage, the only stages of the proceedings that would still remain to be gone through will be (i) the receipt and examination of the reply of the officer in response to the show-cause notice and (ii) obtaining the advice of the Union Public Service Commission in cases in which consultation with the Commission is required under the rules. These stages by themselves may not take a long time to finalise and the limit of six months regarding the total period of suspension, as laid down in O.M. No. 39/33/72-Ests.(A), dated the 16th December, 1972 could also be adhered to in most of these cases.

3. In the cases in which the Union Public Service Commission are required to be consulted, the fact of the officers concerned having been placed under suspension should be specifically brought to the notice of the Commission and the Commission may be requested to give its advice in those cases on priority basis.

4. These conclusions may please be brought to the notice of all administrative authorities in or under the Ministry of Finance etc. for information and appropriate action.

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(82)

Deptt. of Personnel & A.R. O.M. No. 11013/5/75-Estt.(A), dated 20th June, 1975

The undersigned is directed to say that the existing Form of report/application for permission to the prescribed authority for building of or addition to a house and Form of report to the prescribed authority after completion of the building of a house have been reviewed and it has been decided that the forms in question should also include a column to indicate the "source of finance" with full details thereof. Accordingly, in supersession of the existing Forms in this regard, the Form I and Form II enclosed with this Office Memorandum may be used. (Forms No. 37 and 38—Part I).

Ministry of Finance etc. are requested to circulate these Forms to all attached and subordinate offices under their control.

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(83)

Department of Personnel and Administrative Reforms O.M. No. F. 371/3/73-AVD III, dated 19th July, 1975

[B(42A)]

The undersigned is directed to say that the Ministry of Railways have suggested that the system of *ex post facto* scrutiny of files as laid down in Ministry of Home Affairs Office Memorandum No. 43/71/64-AVD, dated the 10th December, 1964, may be discontinued as such scrutiny reveals only routine lapses of deviation and non-observance of established procedure. After obtaining the comments of the various Ministries//Departments,

the matter has been re-examined in consultation with the Central Bureau of Investigation and the Central Vigilance Commission.

2. The instructions to conduct *post facto* scrutiny of disposed of files, with a view to finding out the nature of mistakes and irregularities committed in the grant of contracts, licences, etc., were issued in pursuance of a recommendation of the Committee on Prevention of Corruption. It is felt that if scrutiny of this nature is undertaken and insisted upon by the Ministries concerned, not only lapses in the award of contracts, licences, etc. come to light but also such a step would ensure a proper examination by the persons dealing with cases of contracts, licences, etc. While dealing with such cases, they will be conscious of the fact that the actions are subject to a further scrutiny at the later stage. It has, therefore been decided that the *post facto* scrutiny of disposed of files relating to contracts, licences, etc. may continue. With a view to making these instructions more effective and in order to reduce the work relating to scrutiny of files, it has been decided that only the files dealing with contracts, and licences, assessment, collection and refund of taxes which involve an amount of more than Rs. 5 lakhs may henceforward be scrutinised. At the same time a certificate may be given by the officers concerned in the file that the scrutiny had been done. It may be ensured that this practice of scrutiny does not peter out into a routine affair.

3. It is requested that the above decisions may be brought to the notice of all concerned for information and necessary action.

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(84)

Department of Personnel and Administrative Reforms O.M. No. 11013/6/75-Estt.(A), dated the 20th August, 1975

The undersigned is directed to say that according to the existing instructions regarding acceptance of gifts made by foreign dignitaries, all such gifts received by Government servants from foreign dignitaries should be produced before the officer incharge of the Toshakhana in the Ministry of External Affiairs, through the Ministry or Department administratively concerned, for valuation. If, on assessment by the Toshakhana, their value is found to be above the prescribed limit of Rs. 450, the gifts will be deposited in the Toshakhana and the recipients of the gifts will

have the option to purchase them from the Toshakhana by paying the difference between the value as estimated by the Toshakhana and Rs. 450. A question has been raised whether the same provision should be applied in the case of gifts received from foreign firms.

2. The question has been carefully considered in this Department. According to the normal policy, no permission is granted, save in exceptional circumstances, for acceptance of gifts made by firms, whether foreign or indigenous, with whom the Government servant concerned has had or has or is likely to have official dealings, either directly or indirectly by virtue of his official position. Permission is also not normally granted for acceptance of gifts by Government servants from firms which are contracting firms with the Government of India, even if the contract is entered into by a Ministry or Department other than the one in or under which the Government servant concerned is serving. The question of grant of permission for acceptance of gifts from a foreign firm would, therefore, normally arise only in those cases where the foreign firms concerned is neither a firm contracting with the Government of India nor one with which the Government servant concerned has had, has or is likely to have official dealings and there is no reason to doubt the *bona fides* of the gifts made by the foreign firm. In such cases, where it is proposed to grant permission for acceptance of the gift made by a foreign firm, the procedure indicated in para 1 above regarding retention of the gifts made by foreign dignitaries should be followed.

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(85)

Department of Personnel O.M. No. 34012/(S)/75-Estt.(B), dated 21st August, 1975

[B(73)]

The undersigned is directed to refer to the Department of Personnel (now Department of Personnel and AR) O.M. No. 6/1(S)/71-Estt.(B), dated the 21st June, 1971 on the subject mentioned above and to say that in a recent judgement in Shamsher Singh's case (AIR 1974 SC 2192), the Supreme Court has overruled their earlier decision taken in the case of Sardari Lal *Vs.* Union of India and others (Civil Appeal No. 576 of 1969). The Supreme Court has now clearly pointed out that the rules of

business and the allocation among the Ministers of the said business, indicate that the decision of any Minister or officer under the rules of the business made under these two articles *viz.*, "article 77(3) in the case of President and article 166(3) in the case of a Governor of the State, is the decision of the President or the Government respectively". In the said judgement, it has been held that neither the President nor the Governor has to exercise the executive functions personally. It would thus be clear that the requirement of proviso (c) to Article 311(2) of the Constitution would be satisfied if the matter is submitted to the Minister incharge under the relevant rules of business and receives the approval of the Minister. The matter has been examined in consultation with the Ministry of Law and in view of the recent judgement of the Supreme Court, the Department of Personnel and A.R.'s O.M. No. 6/1(S)/71-Ests.(B), dated 21st June, 1971, is cancelled. The procedure in respect of proviso (c) to Article 311(2) of the Constitution and Rule 19(iii) of the CCS(CCA) Rules, 1965, prescribed in the O.M. under reference, is not required to be followed now.

2. As a result of the cancellation of the O.M. referred to above, instructions contained in paragraph V(3) and (5) in Annexure I to the Department of Personnel O.M. Not Printed No. 4/15/70-Estt.(B), dated 30th June, 1972, in so far as they relate to the procedure for obtaining the prior approval of the President in such cases should be treated as modified.

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(86)

Department of Personnel and Administrative Reforms O.M. No. 371/3/74-AVD. III, dated 19th September, 1975

[B(65), B(58)]

In modification of the instructions contained in the Ministry of Home Affairs O.M. No. 43/57/64-AVD. III, dated the 29th November, 1966, on the subject mentioned above, it is hereby clarified that the disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed, without waiting for the decision in the first court of appeal. Before such an order is passed, the Union Public Service Commission should be consulted, where such consultation is necessary.

2. The modified instructions as indicated above may please be brought to the notice of all disciplinary authorities for guidance.

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(87)

Department of Personnel and A.R., O.M. No. 372/5/72-AVD. III, dated the 6th October, 1975

The undersigned is directed to say that the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 came into force on the 31st May, 1972. Section 7 of the Act empowers the Central Government to frame rules for the purpose of giving effect to the provisions of the Act. In consultation with the Ministry of Law, Justice and Company Affairs, it has been decided not to issue any rules under the Act, as it is considered that the provisions of the Act can be implemented effectively without making any rules.

2. Under section 5(1) of the Departmental Inquiries Act, 1972, every inquiring authority authorised under section 4 shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 in respect of the summoning and enforcing the attendance of any witness and examining him on oath, requiring the discovery and production of any document or other material which is producible as evidence, etc. The powers in relation to the summoning and enforcing attendance of a witness under the Code are dealt with in Order XVI. The procedure laid down in this order may be adopted *mutatis mutandis* for summoning and enforcing attendance of any witness and examining him on oath, etc. before a departmental inquiry. For the facility of the competent authorities mentioned in the Act, the undermentioned standard draft forms have been prepared and are enclosed :

(i) Form of Summons to Witnesses.

[*Cf.* Sub-section (3) of section 5 of the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972]. [Please see E-39].

(ii) Form of Request for Transmission of Summons to be served on a Witness in a Departmental Inquiry. [Please see E-40].

[*Cf.* Sub-section (3) of section (5) of the Act, 1972].

(iii) Form of Authorisation to the Inquiring Authority to exercise the Powers specified in Section 5 of the Act, 1972. [*Cf.* Sub-section (1) of section 4 of the Act, 1972]. [Please see E-41].

(iv) Form of Authorisation to an Authority not lower than the Appointing Authority to exercise the power specified in Sub-section (1) of Section 4 of the Act, 1972. [Cf. Sub-section (2) of section 4 of the Act, 1972]. [Please see E-42].

Forms (iii) and (iv) which pertain to statutory orders have been vetted by the Legislative Department.

3. It may particularly be noted that as provided in the Code of Civil Procedure, every summon issued by the authorised inquiring authority shall—

(a) be in duplicate,

(b) be signed by the officer constituting such authority,

(c) be sealed with the seal of such officer or bear a stamp bearing his name and designation.

(d) specify the date on, and the time and place at, which the specified person summoned is required to attend and also whether his attendance is required for the purpose of giving evidence or to discover and produce a document or material, or for both the purposes, and

(e) be endorsed and signed by such authority by post to the District Judge within the local limits of whose jurisdiction the specified person, on whom such summons is to be served, actually and voluntarily resides or carries on business or personally works for gain for service. To enable the District Judge to take cognizance of the summons, a copy of the notification issued under section 4 of the Act authorising the inquiring authority to exercise the powers specified in section 5 of the Act may also be enclosed.

4. It may please be noted that attendance of witnesses and production of documents before a departmental enquiry will continue to be secured in the manner as hitherto. Where, in the case of a departmental enquiry, the inquiring authority is satisfied

that it is necessary to summon a person as a witness or to call for for a document from him and that the attendance of such person as a witness or production of such document may not otherwise be secured, it may, after recording the reasons for doing so, make a reference to the competent authority, or , where there is no competent authority, to the Central Government seeking authorisation under section 4 of the Departmental Enquiries (Enforcement of attendance of Witnesses and Production of Documents) Act, 1972 to exercise the power specified in section 5 in relation to such person. The power to authorise an inquiring authority to exercise the power specified in section 5 of the Act *ibid* may be exercised by the Central Government/the competent authority *suo moto* also if it is of the opinion that for the purposes of any departmental enquiry it is necessary so to do.

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(88)

Department of Personnel and Administrative Reforms OM No. 11012/10/75-Estt(A), dt. 18-10-75.

[B(63-C)]

The undersigned is directed to say that the question of regulating the forwarding of applications for other posts has been under consideration by the Government and in partial modification of Ministry of Home Affairs (now Department of personnel and Administrative Reforms) Office Memorandum No. 39/17/63-Ests(A) dated 6th September, 1968. (Copy enclosed) following instructions are issued for guidance of all administrative authorities:—

(i) Applications of Government servants for other posts should not be forwarded when disciplinary proceedings against them are contemplated, whether for a major penalty or for a minor penalty. In other words, when the conduct of a Government servant is under investigation and the investigation has reached a stage at which a *prima facie* case can be made out against the Government servant but formal charge sheet is yet to be issued, the application of such a Government servant should not be forwarded. Thus where the disciplinary cases are actually pending, question of forwarding of application does not arise.

(ii) When the conduct of a Government servant is under investigation (by the Central Bureau of Investigation or by the Controlling Department) but the investigation

has *not* reached the stage when a *prima facie* case can be made out against the Government servant, the application of such a Government servant may be forwarded together with brief comments on the nature of allegations and it should also be made clear that in the event of actual selection of the Government servant, he would not be released for taking up the appointment, if the investigations have been completed and disciplinary proceedings have already commenced or are likely to be initiated shortly.

2. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions are issued after consultation with the Comptroller and Auditor General of India.

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(89)

Department of Personnel and A.R. OM No. 118/5/76-AVDI dt 24-1-76.

[B(94), B(114)]

In connection with a disciplinary case, which has come to the notice of the Prime Minister, she has expressed concern about the inordinate delays in the finalisation of such cases. The Central Vigilance Commissioner also has been drawing pointed attention to such delays; and instructions have been issued from time to time, stressing the need for prompt action at all stages of the disciplinary proceedings with a view to their expeditious finalisation.

2. In the disciplinary cases against Group 'C' and Group 'D' employees, which are not investigated by the Central Bureau of Investigation, no outside agency like the Central Vigilance Commission or the Union Public Service Commission comes into the picture. The progress of such cases being wholly under the control of the disciplinary authorities of the concerned Departments, there is no good reason, why these cases should not get finalised expeditiously, if proper supervision is exercised at higher levels and the relevant disciplinary rules are firmly and imaginatively observed keeping in view the objective of prompt conclusion of such cases. In some Departments where the number of pending disciplinary cases is very substantial, it may be necessary to have full-time CVO and to spare some officers to attend full-time to the pending investigations and oral enquiries.

3.1 In a disciplinary case, first stage is the investigations into the allegations: such investigations are either made by the Central Bureau of Investigation or departmentally. The number of cases in which the Central Bureau of Investigation makes the investigations is comparatively less. The Central Bureau of Investigation follows a self-imposed time-limit for the completion of investigations; and the progress of the cases, which remain pending beyond such time-limit, are reviewed every month at the highest level. Sometimes, the Central Bureau of Investigation is handicapped in its work for want of records and other assistance from the concerned Departments. As for the cases investigated departmentally no time-limt, as such, has been laid down. It is important, however, that these investigations should be completed as promptly as possible, say within a period of 3 months, and the progress of those which remain pending beyond this period is reviewed by the CVO or an authority higher in rank to the officer investigating the case. It should ordinarily be possible to observe this time-limit because unlike the cases which get referred to the Central Bureau of Investigation, in cases which are investigated departmentally, evidence is ordinarily not required to be collected from outside parties.

3.2 As for the subsequent stages in a disciplinary case, time-limits have been laid down in the various Disciplinary Rules and with respect to the stages for which Rules do not stipulate any such time-limit instructions have been issued by the Central Vigilance Commission from time to time. It is important for the early finalisation of these cases, that these time-limits are assiduously observed. The one important stage of a disciplinary case, for which no time-limit, as such, has been stipulated, is the submission of the report after the conclusion of the oral enquiry. Ordinarily, it should be possible for an Inquiry Officer to submit his report after the conclusion of the enquiry within a period of a fortnight to one month.

3.3 It is important not only for improving the discipline in the offices and maintenance of integrity in the public services, but also for the morale of the public servants, particularly those involved in such disciplinary cases, that such cases are finalised with the utmost speed. It is accordingly suggested that:

(i) the period from the date of serving a charge-sheet in a in a disciplinary case to the submission of the report of the Inquiry Officer should, ordinarily, not exceed 6 months;

(ii) the departmental instructions be issued where a case is delayed at a particular stage beyond the time-limit stipulated for that stage, it should be reported to the next higher authority with a statement of reasons for the delay; and

(iii) a quarterly statement of disciplinary cases of Group 'A' and Group 'B' officers (formerly Class I and Class II) which remain pending for over six months be furnished to the Administrative Vigilance Division of the Department of Personnel & Administrative Reforms in the enclosed proforma.

4. The Chief Vigilance Officers are requested to ensure compliance of these instructions.

Quarterly Statement of Pending Vigilance Cases in Respect of Gazetted Officers and Officers of Comparable Status for the Quarter Ending ————————

Period for which pending (from the date of commencement of preliminary inquiry/investigation)	Total No. of vigilance cases pending	Of the cases mentioned under Column 2, the stage at which pending					
		Under investigation	Pending for the issue of charge-sheet	Pending consideration on receipt of reply to charge-sheet where oral inquiry is not necessary	Pending with the Inquiry Officer	Pending consideration after receipt of Inquiry Officer's report	Remarks
1	2	3	4	5	6	7	8

A. 6—9 months
9—12 months
1—2 years
Over 2 years.

B. Details of cases which are pending for more than one year and reasons for delay.

(90)

Department of Personnel & Administrative Reforms OM No. 134/7/75-AVD-I dt. 1-6-76.

The undersigned is directed to say that the present procedure followed in departmental inquiries held under the Central Civil Services (C.C.&A) Rules, 1965 and other corresponding Disciplinary Rules is to disregard statements made by witnesses during the preliminary inquiry/investigation except for the purpose of contradicting the witnesses and to record the evidence of the witnesses *de novo* as examination-in-chief by the Inquiring Authority. The question whether statements made by the witnesses during the preliminary inquiry/investigation can be straightway taken on record as evidence in examination-in-chief at oral inquiries has been examined in consultation with the Department of Legal Affairs, the Central Vigilance Commission, and the Central Bureau of Investigation.

2. On considering the observations made by the Supreme Court in certain cases it may be legally permissible and in accord with the principals of the natural justice to take on record the statements made by witnesses during the preliminary inquiry/investigation at oral inquiries, if the statement is admitted by the witness on its being read out to him. It is felt that by adopting this procedure it should be possible to reduce the time taken in conducting departmental inquiries. It has, therefore, been decided that in future, instead of recording the evidence of the prosecution witnesses *de novo,* wherever it is possible, the statement of a witness already recorded at the preliminary inquiry/investigation may be read out to him at the oral inquiry and if it is admitted by him, the cross-examination of the witness may commence thereafter straightway. A copy of the said statement should however, be made available to the delinquent officer sufficiently in advance to at least three days before the date on which it is to come up at the inquiry.

3. As regards the statements recorded by the Investigating Officers of the C.B.I., which are not signed, it has been decided that the statement of the witness recorded by the Investigating Officer will be read out to him and a certificate will be recorded thereunder that it had been read out to the person concerned and had been accepted by him.

4. It is requested that the procedure set out in para 2 and 3 may be brought to the notice of all concerned, so that it is followed in the oral inquiries conducted under the C.C.S. (C C & A). Rules and other corresponding Disciplinary Rules.

(91)

Department of Personnel & A.R. letter No. 135/26/75-AVDI dt. 14-6-76 addressed to The Chief Secretaries to the Government of all the States and the Union Territories.

[B(106)]

I am directed to say that the question of delay in the issue of sanction for prosecution of public servants in cases investigated by the State Anti-Corruption Bureau came up for discussion at the Joint Conference of Central Bureau of Investigation and State Anti-Corruption officers held in July, 1975 and the Conference recommended that there should be administrative instructions to the effect that the sanction should be given or refused within a period of two months, as otherwise there is avoidable delay in putting the case in Court, and consequent injury to its proper presentation. I am to request that the State Government may consider the question of issuing necessary administrative instructions in the matter as recommended by the Joint Conference of Central Bureau of Investigation and State Anti-Corruption officers.

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(92)

Department of Personnel and Administrative Reforms OM No. 35014/1/76-Est(A) dated 29-7-76.

[B(76), B(77)]

The undersigned is directed to invite attention to the Department of Personnel and Administrative Reforms O.M. No. 39/40/70-Estt(A) dated the 9th November, 1972 which, inter alia, provides that only those Inquiry Officers who are free from bias should be appointed by the disciplinary authority to conduct departmental inquiries. It is, further been provided that whereever an application is moved by a Govt. servant, against whom disciplinary proceedings are initiated, against the Inquiry Officer on grounds of bias, the proceedings should be stayed and the application referred to the appropriate reviewing authority for considering the matter and passing appropriate orders thereon. In this connection, the Staff Side raised the following points, at the National Council (JCM) meeting held in Nov., 1975:

(a) The orders contained in the Department of Personnel and Administrative Reforms O.M. dated 9th November, 1972 are not being implemented in some Departments; and

(b) The O.M. dated 9-11-1972 did not contain instructions regarding disciplinary authority inquiring into the case itself.

2. Regarding (a) above, Ministry of Finance etc. are requested to observe and implement scrupulously the aforesaid instructions contained in this Department's O.M. of 9th November, 1972.

3. The second point raised by the Staff Side has been further examined in this Department. According to Rule 14(5) of the CCS (CCA) Rules, 1965, the disciplinary authority may itself inquire into the charges against the accused Government servant or appoint an Inquiry Officer for the purpose. However, it should be possible in a majority of cases, and the more serious ones at any rate, to ensure that the disciplinary authority himself does not conduct the inquiry. It may still be not practicable to ensure in all cases that the disciplinary authority himself would not be the Inquiry Officer. Such a course may be necessary under certain circumstances particularly in small field formations where the disciplinary authority as well as the Inquiry Officer may have to be one and the same person. It has accordingly been decided that unless it is unavoidable in certain cases as mentioned above, the disciplinary authority should refrain from being the Inquiry Officer and appoint another officer for the purpose. Ministry of Finance etc. are requested to note this information and compliance.

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(93)

Department of Personnel and Administrative Reforms OM No. 11012/10/76-Estt(A) dt. 6-10-76.

The undersigned is directed to say that in the case of Ghanshyam Das Srivastava Vs. State of Madhya Pradesh (AIR 1973 SC 1183), the Supreme Court had observed that where a Government servant under suspension pleaded his inability to attend the enquiry on account of financial stringency caused by the non-payment of subsistence allowance to him, the proceedings conducted against him *exparte* would be in violation of the provisions of Article 311(2) of the Constitution as the person concerned did not receive a reasonable opportunity of defending himself in the disciplinary proceedings.

2. In the light of the judgment mentioned above, it may be impressed on all authorities concerned that they should make timely payment of subsistence allowance to Government servants who are placed under suspension so that they may not be put to financial difficulties. It may be noted that, by its very nature, subsistence allowance is meant for the subsistence

of a suspended Government servant and his family during the period he is not allowed to perform any duty and thereby earn a salary. Keeping this in view, all concerned authorities should take prompt steps to ensure that after a Government servant is placed under suspension, he received subsistance allowance without delay.

3. The judgment of the Supreme Court referred to in para 1 above indicates that in that case, the disciplinary authority proceeded with the enquiry *exparte* notwithstanding the fact that the Government servant concerned had specifically pleaded his inability to attend the enquiry on account of financial difficulties caused by non-payment of subsistence, allowance. The Court had held that holding the enquiry *exparte* under such circumstances would be violative of Article 311(2) of the Constitution on account of denial of reasonable opportunity of defence. This point may also be kept in view by all authorities concerned, before involving the provisions of rule 14(20) of the CCS (CCA) Rules, 1965.

4. Ministry of Finance etc. are requested to bring the contents of this Office Memorandum to the notice of all concerned under their control.

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(94)

Confidential

Department of Personnel & A.R. OM No. 118/5/76-AVDI dt. 10-3-77.

[B(89), C(14)]

[B(114)]

The undersigned is directed to refer to this Department's O.M. of even number dated the 24th January, 1976, on the subject mentioned above and to say that the Prime Minister as again expressed her concern about the inordinate delays taking place in the finalisation of disciplinary cases. A study of the case in which the observation was made by the Prime Minister, indicates that it is not the procedure which has been at fault, but individual officers and sections concerned were found to have held up the papers for long periods without taking appropriate action. Accordingly, the Cabinet Secretary has noted that if the lists of pending cases had been scrutinised by sufficiently senior level officers, the delay would have been detected and disposal expedited. He has desired that the attention of all

Ministries/Departments may be drawn to the unconscionable delay that takes place in the disposal of vigilance cases and to the necessity of maintaining suitable registers for this purpose which could be scrutinised by sufficiently senior level officers at frequent invervals. He has also stressed the necessity of strict observance of routine checks like weekly arrears statements.

2. The CVC has already prescribed registers in which all complaints and vigilance cases are to be entered for the purpose of keeping a watch on their progress and disposal. Attention in this connection is invited to the CVC's letter No. 1/6/66-Coord, dated the 5th April, 1966 (reproduced at pages 168-171 of Vigilance Manual, Volume II, Part II). The Chief Vigilance Officers are requested to ensure that these registers are not treated in a routine manner and are maintained uptodate. The pending cases reflected therein need to be reviewed every quarter at a sufficiently higher level at the end of the each quarter when statements of pending cases are sent to the CVC and the Department of Personnel & A.R. At the same time it should be ensured that all the pending cases are correctly reflected in the weekly arrears statement and the monthly statement of cases pending disposal for over a month, so that the progress in the disposal of the pending vigilance cases is brought to the notice of higher officers through these lists. The necessity of strict observance of these checks cannot be overemphasised on the consideration that when the work done by the concerned officers gets scrutinised at the higher level, any laxity or inefficiency on their part will be focussed and get checked. At the same time, difficulties experienced will be identified and removed by directions and guidance of the superior authority.

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(95)

Department of Personnel & A.R. OM No. 22011/3/77-Estt(A) dt. 14-7-77.

[B(43), B(24),]

[B(104)]

The undersigned is directed to refer to the Ministry of Home Affairs O.M. No. 39/4/56-Estt(A) dated 3rd November, 1958 and O.M. No. 39/3/59-Estt(A) dated 31st August, 1960 regarding the procedure to be followed by the Departmental Promotion Committees in the case of officers under suspension and officers against whom inquiries are pending and to say

that this Department has been receiving references seeking clarification as to the interpretation of the expression 'officers whose conduct is under investigation' and whether a Government servant against whom a PE or a RC has been registered by the Central Bureau of Investigation can be promoted or confirmed.

2. The matter has been considered carefully and it has been decided that the 'sealed cover' procedure prescribed in the O.M. of 31st August, 1960, should be followed in those cases where after investigation, the evidence collected indicates a prima facie case against the officer concerned. The mere fact that a PE or a RC has been registered by the CBI against an officer or complaints are being looked into in a preliminary departmental inquiry or otherwise but no conclusion has been reached about the prima facie guilt of the officer, should not be a ground for treating the said official as one whose conduct is under investigation.

3. In the light of the above decision, it is clarified that in respect of officers whose conduct is under investigation, the sealed cover procedure as prescribed in the MHA O.M. No. 39/3/59-Estt(A) dated the 31st August, 1960 should be followed only after the conclusion of the investigation and when the competent authority, on consideration of the results of the investigation, either by CBI or any other agency, departmental or otherwise, has formed the opinion that a charge-sheet may be issued to him on specific imputations where departmental action is contemplated, or that sanction for prosecution may be accorded where prosecution is proposed. Until the competent authority arrives at such a conclusion, the officer may be treated on a par with others in the matter of promotion, confirmation, etc.

4. It is also clarified that if a Government servant is facing prosecution in a court of Law on any matter involving moral turpitude or lack of integrity, his case for promotion should also be dealt with in accordance with the procedure laid down in the Ministry of Home Affairs O.M. dated 31st August, 1960.

[B(24)]

5. Ministry of Finance, etc. are requested to bring the contents of this O.M. to the notice of all the authorities under their control for information and guidance.

6. Hindi version of this Office Memorandum will follow.

(96)

Department of Personnel & A.R. O.M. No. 35014/9/76-Estt(A) dt. 8-8-77.

The undersigned is directed to say that one of the items considered by the National Council (JCM) in its meeting held in January, 1977 was a proposal of the Staff Side that a Government servant who was deemed to have placed under suspension on account of his detention or on account of criminal proceedings against him, should be paid full pay and allowances for the period of suspension if he has been discharged from detention or has been acquitted by a Court.

2. During the discussion, it was clarified to the Staff Side that the mere fact that a Government servant who was deemed to have been under suspension, due to detention on account of criminal proceedings against him, has been discharged from detention without prosecution or has been acquitted by a Court would not make him eligible for full pay and allowances because often the acquittal may be on technical grounds but the suspension might be fully justified. The Staff Side were, however informed that if a Government servant was detained in police custody erroneously or without any basis and thereafter he is released without any prosecution, in such cases the official would be eligible for full pay and allowances.

3. It has accordingly been decided that in the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and reinstatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed.

4. Ministry of Finance etc. are requested to bring this to the notice of the disciplinary authorities under their control.

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(97)

Department of Personnel and A.R. OM No. 35014/1/77-Estt(A) dt. 24th August, 1977 as amended by OM No. 11012/19/77-Estt(A) dt. 3rd June, 1978.

The undersigned is directed to say that rule 14(8) of the CCS (CCA) Rules, 1965, provides that a Government servant involved in disciplinary proceedings may take the assistance of

any other Government servant to present the case on his behalf. A suggestion has been made that Government servants involved in disciplinary proceedings can be allowed to take the assistance of retired Government servants to present their cases on their behalf. This question has been considered by the Government and the President is pleased to decide that Government servants involved in disciplinary proceedings may also take the assistance of retired Government servants subject to the following conditions:—

(i) The retired Government servant concerned should have retired from service under the Central Government.

(ii) No retired Government servant can take up more than three cases at a time. At the time of appearance before the Inquiring officer the retired Government servant should certify that he has only three cases on hand at that time. (as amended by O.M. No. 11012/19/77-Estt(A) dt. 3-6-78).

(iii) A retired Government servant cannot assist a Government servant in disciplinary proceedings after the expiry of three years from the date of his retirement. The retired Government servant should produce before the Inquiring officer, a declaration regarding his date of retirement.

(iv) If the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a deliquent Government servant to present the case on his behalf, contained in rule 14(8) of the CCS (CCA) Rules, 1965, would apply.

(v) In the matter of payment of travelling and other expenses to the retired Government servant assisting a Government servant in disciplinary proceedings, the instructions contained in the Ministry of Home Affairs Office Memorandum No. 16/122/56-AVD, dated 18-8-1960 will apply. The retired Government servant concerned will deemed to belong to the grade of Government servants to which he belongs immediately before his retirement for the purpose of these instructions. The expenditure on account of travelling and other expenses will be borne by the Department or Office to which the delinquent Government servant belongs.

2. The formal amendment to the CCS (CCA) Rules, 1965 to give effect to above decision will be issued separately.

3. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions issue in consultation with the Comptroller and Auditor General.

4. The decision contained in this Office Memorandum may be brought to the notice of all concerned.

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(98)

Department of Personnel & A.R. O.M. No. 321/4/78-AVDIII dt. 14-2-78.

The undersigned is directed to invite attention to this Ministry's O.M. No. 130/1/66-AVD dated the 5th May, 1966 and subsequent communications on the subject of Programme for Vigilance and Anti-Corruption work. It was suggested in paragraphs 16 to 19 of the programme that the Departments, Undertakings and Administrations should regularly organise surprise checks at possible points and places of corruption and take other measures like selective scrutiny of files, detailed inspections and random checks of cases of discretionary powers exercised by junior officers. The special scrutiny and checks were to be carried out with secrecy with the assistance of the CBI as and when considered necessary.

2. The experience over the years has however indicated that these checks have now become routine and have lost their effectiveness. The main reasons for this may be that firstly the inspecting officers are not able to devote requisite time and effort to these measures and therefore, the inspections set carried out in a routine way. Secondly, the importance of maintaining the element of secrecy is not fully appreciated so that sometimes the programme of special checks becomes known to the persons concerned in advance. Thirdly, no effective and prompt follow up action is taken on the weaknesses noticed during the special checks. It need hardly be emphasised that the surprise checks, selective scrutiny and other such measures can go a long way in not only curbing the corrupt practices but also in promoting administrative efficiency.

3. During the high level review carried out recently, it was stressed that these inspections and special checks need to be pulled out of routine and made more purposeful and effective. In this the CVOs and heads of offices will have to play more active role.

4. It is requested that appropriate instructions may kindly be issued to the Heads of Departments and Organisations concerned to ensure that the instructions issued on the subject are strictly complied with and surprise checks conducted as frequently as possible so that corrupt and malafied practices wherever existing are curbed to the minimum level. The CBI is also being requested to organise surprise checks at the points of suspected corruption and undesirable activities. The concerned officers in the Department Organisation may kindly be advised to render active cooperation to the officers of the CBI so that maximum possible results are achieved.

Receipt of this O.M. may kindly be acknowledged.

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(99)

Department of Personnel & Administrative Reforms O.M. No. 11012/24/77-Estt(A) dt. 18-3-78.

As the Ministry of Finance etc. are aware, rule 10(4) of the CCS (CCA), Rules, 1965 provides that where the penalty of dismissal, removal or compulsory retirement from service imposed upon a government employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government employee shall be deemed to have been placed under suspension from the date of the original order of dismissal, removal or compulsory retirement. A question has been raised regarding the scope of the action that can be taken against a government employee whose dismissal, removal or compulsory retirement from service has been set aside or declared or rendered void in consequence of or by a decision of a court of law and the circumstances which a disciplinary authority should take into account while taking recourse to this rule. It is clarified for the information of all authorities concerned that the further inquiry contemplated in rule 10(4) of the CCS (CCA) Rules, 1965 should not be ordered except in a case when the penalty of dismissal, removal or compulsory retirement has been set aside by a Court of Law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the Court. A further inquiry into the charges which have not been examined by the Court can,

however, be ordered by the departmental authorities under Rule 10(4) *ibid* depending on the facts and circumstances of the each case.

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(100)

Department of Personnel & A.R. O.M. No. 140/2/76-AVDI dt. 26-8-78.

[C(88)]

[B(105)]

The undersigned is directed to say that according to the existing procedure, the Central Vigilance Commission is not consulted after conclusion of departmental proceedings, if the appellate/reviewing authority on consideration of an appeal or review petition decides to set aside or modify a penalty earlier imposed after consulting the C.V.C.

2. It has now been examined whether the advice of the Central Vigilance Commission should be obtained in appeal and review cases also, if the appellate/reviewing authority proposes to differ from the second stage advice of the Commission in departmental proceedings, and decides to set aside or modify the penalty already imposed.

3. No appeal lies against an order made by the President. The President being the disciplinary authority in respect of Group 'A' officers, no appeal would lie against an order of penalty imposed on such officers. In respect of certain categories of Group 'B' officers, where the President is the appellate authority, the appeal is to be decided in consultation with the U.P.S.C. The U.P.S.C. is also to be consulted where an order is to be made by the President, over-ruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the penalties, made by the President or by a subordinate authority.

4. There are, however, some Gazetted Officers of Group 'B' and officers of Public Sector Undertakings, whose appellate/reviewing authorities are subordinate to the President, or are Boards of Directors etc. of the Public Sector Undertakings. In such cases appeals, etc. are decided by the appellate/reviewing authorities themselves, and the U.P.S.C. is not required to be consulted. It has been decided that, in future, in such cases where the U.P.S.C. is not to be consulted, the cases at appeal/review stage should be referred to the Central Vigilance Commission, where the appellate/reviewing authorities propose to

modify or set aside the penalty imposed in a case in which the C.V.C. was earlier consulted. It will not be necessary to consult the C.V.C. in cases where the appellate/reviewing authority decides not to set aside or modify a penalty imposed by a disciplinary authority.

5. The Ministry of Finance, etc. are requested to bring this decision to the notice of all the concerned authorities and public sector undertakings under their control.

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(101)

Department of Personnel and Administrative Reforms OM. No. 11012/18/77-Estt(A) dt. 2-9-78.

The undersigned is directed to say that according to rule 14(19) of the CCS (CCA) Rules, 1965 the inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer if any, appointed, and the Government servant, or permit them to file written briefs of their respective cases, if they so desire. With reference to this rule, a question has been raised whether the written brief filed by the Presenting Officer should be made available to the accused Government Servant before he files his own written brief. The matter has been examined in consultation with the Ministry of Law and the position is explained in the succeeding paragraph.

2. It will be seen from the phraseology of rule 14(19) 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, take 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 Govt. servant, and then take the reply brief from the Govt. servant. In case the copy of the brief of the Presenting Officer is not given to the Govt. servant, it will be like hearing arguments of the Presenting Officer at the back of the Govt. servant. In this connection, attention is also invited to the judgement of the Calcutta High Court in the case of Collector of Customs *Vs.* Mohd. Habibul [SLR 1973 (1) Calcutta, 321] in which it is laid down that the requirement of rule 14(19) of the CCS (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.

3. Ministry of Finance etc. are requested to bring the above clarification to the notice of all concerned authorities under their control.

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(102)

Department of Personnel and Administrative Reforms O.M. No. 11012/7/78-Estt(A) dt. 14-9-78.

[B(112)]

[B(70-C), B(81)]

The undersigned is directed to say that in this Department's Office Memorandum No. 39/39/70-Estt(A) dated the 4th February, 1971, it is provided that every effort should be made to file the chargesheet in court or serve the chargesheet on the Government servant, as the case may be, within three months of the date of suspension, and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay. It is further provided in this Department Office Memorandum No. 39/33/72-Estt(A) dated the 16th December, 1972 that while the Office Memorandum of 4th February, 1971 would continue to be operative in regard to cases pending in courts in respect of the period of suspension pending investigation before the filing of a chargesheet in the court as also in respect of serving of the chargesheet on the Government servant in cases of departmental proceedings, in cases other than those pending in courts, the *total period* of suspension viz., both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to this time limit, the disciplinary authority should report the matter to the next higher authority, explaining the reasons for the delay.

2. In spite of the instructions referred to above, instances have come to notice in which Government servants continued to be under suspension for unduly long periods. Such unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistance allowance without the employee performing any useful service to the Government. It is, therefore, impressed on all the authorities concerned that they should scrupulously observe the time limits laid down in the Office Memoranda referred to in the preceding paragraph and review the cases of suspension to see whether continued suspension in all cases is really necessary. The Authorities superior to the disciplinary authorities should also exercise a

strict check on cases in which delay has occurred and give appropriate directions to the disciplinary authorities keeping in view the provisions contained in the aforesaid Office Memoranda.

3. Ministry of Finance etc. are requested to bring the contents of this Office Memorandum to the notice of all authorities under their control for information and appropriate action.

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(103)

Department of Personnel & Administrative Reforms O.M. No. 118/2/78-AVDI dt. 28-9-78.

[C(59), C(38A)] [C(125)]

The Central Vigilance Commission is consulted at various stages of departmental proceedings against gazetted officers of the Central Government and *officers of the Public Sector Undertakings drawing a basic pay of Rs. 1000 or more, as well as before a final decision is taken on complaints against such officers. A second reference to the C.V.C is also required to be made for reconsideration of its advice in cases in which the disciplinary authority proposes to disagree with its advice, *vide* CVC's letter No. 1/14/70-R, dated the 20th July, 1970. Thereafter the final decision is taken by the concerned disciplinary authority.

2. With a view to bringing about greater uniformity in examining on behalf of the President the advice tendered by the CVC and taking decisions thereon, it has been decided that this Department should be consulted before the Ministries/Departments finally decide to differ from/not to accept any recommendation of the Central Vigilance Commission in those cases which relate to Gazetted Officers for whom the appointing authority is the President. Such a reference to this Department in those cases should be made at the following stages:—

(i) Where the Central Vigilance Commission advises action on a complaint or an investigation report, or further investigation into any allegation against an officer,

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*Now Officers of the Public Sector Undertakings drawing salary in a pay scale the minimum of which is not less than Rs. 1800/- p. m.

but the concerned administrative Ministry/Department proposes not to take any further action on the complaint/investigation report, *and*

(ii) the concerned administrative Ministry/Department proposes not to accept the second stage advice of the CVC on (a) a report of an Inquiring Authority or (b) the explanation submitted by an officer in reply to a charge-sheet in minor penalty proceedings.

3. Cases in which the Heads of Departments of other authorities like Commissioner of Income Tax, Collector of Central Excise, Chief Engineer, etc. are the disciplinary authorities, need not be referred to this Department.

4. Similar cases relating to officers of the Public Sector Undertakings in which decisions are to be taken by the Board of Directors should also not be referred to this Department. However, in such cases, copies of the final orders passed by the concerned Public Sector Undertakings, together with a separate note giving reasons for differing from, or non-acceptance of, any recommendation of the Central Vigilance Commission should be sent to this Department for information as soon as possible.

(103A)

Department of Personnel & A.R. O.M. No. 140(7)/77-AVDI Dated 20-11-1978.

[B(115A)]

The undersigned is directed to say that Government has been considering, in consultation with CVC the measures for effective functioning of the office of CVO in the various Ministries. It is felt that the tempo and effectiveness of vigilance work in a department, particularly on the preventive side, depends mainly on the personality, integrity, initiative, drive and enthusiasm of this officer. Since the time the scheme of administrative vigilance was initiated and a decision was taken to appoint officer of the rank of Deputy Secretary as CVO there have been considerable changes in the organisation and functions of various Ministries/Departments necessitating appointment of officers of a higher status, as CVOs. It has accordingly been decided that henceforth at least those Ministries/Departments which have to handle large number of vigilance cases should have CVOs of the rank of Joint Secretary or at least Director.

The Departments concerned have been separately advised to take suitable action in the matter.

Besides, the following measures are also intimated for adoption by the various Ministries/Departments:

(i) It has been noted that the practice of recommending a single name to the Central Vigilance Commissioner for appointment as CVO had in some cases resulted in assigning these functions to an officer, who may not have displayed sufficient enthusiasm for vigilance work as compared to some others who may have a better aptitude for such work. Therefore, in future, while seeking approval of the CVC, the administrative Ministries, etc. should send a panel of names to the CVC listed in order of preference for appointment, as the CVO.

(ii) The CVC has also suggested that he would welcome Secretaries discussing their vigilance matters with him from time to time, as such meetings would facilitate exchange of views periodically and assist in taking appropriate action to tighten vigilance measures.

(iii) It will be useful if the CVO gives a brief note on vigilance matters in the organisation, particularly in regard to officers of doubtful integrity and those involved in vigilance cases during the last few years, whenever a new Secretary/Chief Executive joins the organisation. If this practice is not being followed already in any Ministries/Departments, as a part of information/internal communication system within the organisation, this may be introduced.

The Ministry of Einance, etc. are requested to implement the above suggestions in their Ministries and also bring them to the notice of their attached, subordinate offices and public sector organisations under their control.

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(104)

Department of Personnel and Administrative Reforms OM No. 22011/2/78-Estt(A) dt. 16-2-79.

[B(118)]

[B(24), B(43), B(95), B(65A), B(73)]

The attention of the Ministry of Finance etc. is invited to M.H.A. O.M. No. 39/3/59-Estt(A) dated 31-8-1960, O.M. No.

7/28/63-Estt(A) dated 22-12-1964, and O.M. No. 22011/3/77-Estt(A) dated 14-7-1977, which lay down the guidelines for following the 'sealed cover' procedure and for granting benefits with retrospective effect on the "complete exoneration" of the official concerned. The scope of the term "complete exoneration" was very wide, resulting in denial of benefits even to those who had not been awarded any of the prescribed penalties as a result of disciplinary proceedings but were only issued a warning. There is also in vogue the practice of issuing "recordable warning" to Government employees which affects their career prospects. The matter has, therefore, been examined carefully and the following decisions have been taken :

(i) As clarified in the Ministry of Home Affairs O.M. No. 39/21/56-Estt(A) dated 13-12-1956, warning is administered by any authority superior to a Government employee in the event of minor lapses like negligence, carelessness, lack of thoroughness, delay etc. It is an administrative device in the hands of superior authorities for cautioning the Government employees with a view to toning up efficiency and maintaining discipline. There is, therefore, no objection to the continuance of this system. However, where a copy of the warning is also kept in the Confidential Report dossier, it will be taken to constitute an adverse entry and the officer so warned will have the right to represent against the same in accordance with the existing instructions relating to communication of adverse remarks and consideration of representations against them.

(ii) Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he should be awarded one of the recognised statuory penalties as given in Rule 11 of CCS (CCA) Rules, 1965. In such a situation, a recordable warning should not be issued as it would for all practical purposes, amount to a "censure" which is a formal punishment and which can only be awarded by a competent disciplinary authority after following the procedure prescribed in the relevant disciplinary rules. The Delhi High Court has, in the case of Nadhan Singh vs. Union of India, also expressed the view that warning kept in the C.R. dossier has all the attributes of "censure". In the circumstances, as already stated, where it is considered after the conclusion of disciplinary proceedings that some blame attaches to the officer concerned which necessitates cognizance

of such fact the disciplinary authority should award the penalty of "censure" at least. If the intention of the disciplinary authority is not to award a penalty of "Censure", then no recordable warning should be awarded. There is no restriction on the right of the disciplinary authority to administer oral warnings or even warnings in writing which do not form part of the character roll.

(iii) Where the departmental proceedings have ended with the imposition of a minor penalty, viz., censure, recovery of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, the recommendation of the DPC in favour of the employee, kept in the sealed cover, will not be given effect to. But the case of the employee concerned for promotion/confirmation may be considered by the next DPC when it meets after the conclusion of the departmental proceedings. If the findings of the DPC are in favour of the employee, he may be promoted in his turn if the penalty is that of "censure" or "recovery of pecuniary loss caused to the Government by negligence or breach of orders". In the case of employees who have been awarded the minor penalty of "withholding of promotion", promotion can be made only after the expiry of the penalty.

(iv) If a recordable warning has been issued to an officer as a result of disciplinary proceedings before the issue of this Office Memorandum and the case of the officer concerned for promotion is still under consideration, he should be treated as having been "censured". The officer will also have the right of representation against such warning and such representation shall be dealt with by the competent authority as if it were an appeal under the relevant disciplinary rules.

2. In so far as personnel serving in the Indian Audit and Accounts Department are concerned, these clarifications have been issued after consultation with the Comptroller and Auditor General of India.

(105)

Department of Personnel & A.R. OM No. 118/2/78-AVDI dt. 19-2-79, addressed to the Department of Chemicals and Fertilizers and Copy to all CVOs

The undersigned is directed to refer to the Department of Chemicals & Fertilizers' O.M. No. 20(2)/78-Estt.(Vig.), dated the 28th December, 1978, (reproduced below) on the subject mentioned above and to clarify that, so long as the appellate authority, while modifying the penalty imposed by the disciplinary authority on the advice of the CVC, still remains within the parameter of the "major" or "minor" penalty, earlier advised by the CVC, there should be no need to consult the CVC again at the appellate stage in terms of this Department's O.M. No. 140/2/78-AVD.I, dated the 26th August, 1978, inasmuch as such a modification by the appellate authority does not have the affect of departing from the advice of the CVC. CVC generally gives advice for imposing a major or a minor penalty, and does not indicate any specific punishment.

2. As regards the second point raised in the O.M. under reference, reports on non-acceptance of the CVC's advice are required to be sent to this Department, in terms of para 4 of this Department's O.M. No. 118/2/78-AVD.I, dated the 28th September, 1978, only in those cases where the final decision is taken by the Board of Directors. Reports about non-acceptance of the CVC's advice are not normally required to be sent where the decision is taken at a lower level that the Board, say, by the Managing Director/Chairman of the Undertaking or an officer of lower status in their capacity as the disciplinary authority. If, however, in any public sector undertaking, the powers of the disciplinary authority at the highest level vest only in the Chairman/Managing Director and the Board of Directors do not exercise the powers of the disciplinary authority, then reports about the non-acceptance of the CVC's advice in the cases of those undertakings may also be sent to this Department where a decision is taken by the Chairman/Managing Director, that being the highest level of disciplinary authority.

O.M. No. 20(2)/78-Estt (vig) dt. 28-12-78 addressed to the Department of Personnel & A.R

The undersigned is directed to refer to the Department of Personnel and Adm. Reforms O.M. No. F. 140/2/78-AVD. I dated the 26th August, 1978 and their Confidential Circular No. 118/2/78-AVD (I) dated the 28th September, 1978 on the sub-

ject noted above and to say that two points of doubt have arisen with reference to the instructions contained therein.

In para 4 of the Department of Personnel and Administrative Reforms O.M. No. F-140/2/78-AVD. I dated the 26th August, 1978 it has been indicated that there are some Gazetted Officers of Group 'B' and officers of Public Sector Undertakings whose appellate/reviewing authorities are subordinate to the President or Board of Directors etc., of the Public Sector Undertakings. In such cases where the U.P.S.C. is not to be consulted, the cases at appeal/review stage should be referred to the Central Vigilance Commission, where the appellate/reviewing authorities propose to modify or set aside the penalty imposed on a case in which the Central Vigilance Commission was earlier consulted. Generally, in cases where charges are held to be proved, the Commission advises only the imposition of a major penalty or a minor penalty and leaves it to the disciplinary authority to decide the specific major or minor penalty to be imposed. The Department of Personnel are requested to indicate whether in such cases it would be necessary to consult the Central Vigilance Commission again if the appellate/reviewing authority proposes to modify the penalty strictly within the limits of the second stage advice of the Commission.

It has been indicated in para 4 of the Department of Personnel and Administrative Reforms Confidential Circular No. 118/2/78-AVD. I dated 28-9-1978 that cases of non-acceptance of the Commission's advice in which decisions are to be taken by the Board of Directors should not be referred to the Department of Personnel but copies of the orders passed should only be sent to that Department for information as soon as possible. The Circular of the Department of Personnel is, however, silent where the disciplinary authority is Managing Director or of a lower status. The Department of Personnel are requested to advise as to what will be the procedure to be followed in the non-acceptance of the advice of the Commission in respect of the officers of Public Sector Undertakings in which the decision are to be taken by the Chairman and the Managing Director and other lower disciplinary authorities.

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Department of Personnel & A.R. letter No. 136/43/79-AVDI dt 11-9-79 addressed to The Chief Secretaries of all the State Governments/Union Territories.

[B (91)]

Requests are received from the State Governments from time to time, for according Central Government's sanction under

section 6(1) of the Prevention of Corruption Act, 1947, for prosecution of All India Services Officers serving in connection with the affairs of the State Governments. Almost in all these cases besides the sanction of the Central Government under Section 6(1) *ibid*, sanction of the State Government itself under Section 197 Cr.P.C., is also required before a court could take cognizance of a case.

2. Cases received from the State Governments are generally those investigated by the State Anti-Corruption Departments. In cases investigated by the CBI also, investigation reports in respect of such officers are first sent to the State Governments for their consideration and comments. The Central Government generally consider the question of according their sanction in such cases only after the State Govts. move the Central Government for the purpose.

3. The State Governments would, no doubt, make a request to the Central Government for according sanction in such cases only after they have come to the conclusion on examination of the investigation reports that in their opinion, there is a case for prosecuting the officer. However, recently in a few cases received from some State Governments with the request for according Central Government's sanction under Section 6(1) of the Prevention of Corruption Act, it was indicated that the State Govt. would consider the question of according their sanction under Section 197 Cr.P.C., thereafter, in the light of the decision of the Central Govt.

4. As it is the State Governments who are primarily and administratively concerned in such cases, it would be appropriate that before moving the Central Government for their sanction in such a case, the State Government should themselves, take a firm decision that in their opinion, a case for prosecution is made out, and they should either issue their sanction under Section 197 Cr.P.C. or they should before moving the Central Government, obtain the firm orders of the competent authority in the State Government hierarchy that the State Government would issue their sanction simultaneously with the Central Government's decision to sanction the prosecution under the provisions of the P.C. Act. There is otherwise also the risk that Courts may take a view that the State Government had not really applied its mind before according sanction in terms of Section 197 Cr. P.C., in case the State Government's sanction just follows the Central Government's sanction under the provisions of the P.C. Act. This might result in a lacuna leading to the legal proceedings being

quashed or held up. The Government of India, therefore, request that the State Governments may kindly keep in view the considerations mentioned above before they approach the Central Government in this regard.

5. Incidentally, it is also suggested that in order to facilitate expeditious consideration of such cases by the Central Government and eliminate avoidable delays in asking for and obtaining the necessary documents/information from the State Governments, whenever such requests are made to the Central Government, the following documents may invariably be forwarded to the Central Government for examination of the case and issue of their sanction:—

1. Copy of the investigation report of the State authorities.

2. A gist of documentary and oral evidence (with a translation if they are in local language).

3. Copies of statements of witnesses recorded during investigation (with a translation if they are in local language).

4. Copy of the statement of the accused officer recorded during investigation (with a translated version, if recorded in local language).

5. Draft sanction order for consideration of Central Government.

6. Copy of the opinion of the State Law Department obtained by the State Government or any other legal opinion obtained by the investigating agency of the State Government.

7. Any other relevant or connected documents which may be of help in appreciating the case and in coming to a decision.

(107)

Department of Personnel and Administrative Reforms O.M. No. 11012/7/79-Estt(A) dated 7-9-79.

[B(64)]

The undersigned is directed to say that in this Department Office Memorandum No. 39/1/69-Estt(A) dated the 16th April, 1969, it is clarified as under:

Points raised	*Clarification*
(a) In cases were the disciplinary authority is the President, whether the case should be shown to the Minister before disciplinary proceedings are initiated;	(a) Having regard to the Transaction of Business Rules, it is necessary that in cases where the disciplinary authority is the President, the initition of the disciplinary proceedings should be approved by the Minister.
(b) Whether it is necessary to show the file to the Minister every time before formal orders are issued in the name of the President under Rules 14(2), 14(4), 14(5), etc. of the CCS (CCA) Rules.	(b) It should be sufficient if Minister's orders are obtained for taking action ancillary to the issue of the charge sheet at the stage when the papers are put up to him for initation of disciplinary proceedings. However, formal orders of the Minister should be obtained [at the stage of issuing show cause notice under Rule 15(4) (i) (b) and]at the stage of passing final orders imposing penalty under Rules 15(4) (ii) (b) and Rule 15 (4) (iii) [Bracketed portions no longer relevant in view of amended rule 15(4)] Note:- By virtue of Rule 3 of the Transaction of Business Rules it is competent for the Minister to delegate his functions to Secretary or any other officer by general or special orders and on such delegation it would not be necessary to take the Minister's order in such case.

2. It is also pointed out that according to entry 39(i) of the Third Schedule to the Government of India (Transaction of Business) Rules, 1961, cases relating to dismissal, removal, compulsory retirement or reduction in rank, of an officer of the All India Service or the Central Service Class I (Group A) holding a post, appointment to which requires the approval of the Appointment Committee of the Cabinet, are required to be submitted to the Prime Minister and the President.

3. All Ministries and Departments are requested to keep in view the aforesaid provisions of the Government of India (Transaction of Business) Rules, 1961, while dealing with cases of Group 'A' officers holding posts within the purview of the Appointments Committee of the Cabinet, in addition to the clarification contained in the Ministry of Home Affairs Office Memorandum of 16th April, 1969 quoted in para 1 above.

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(108)

Department of Personnel and Administrative Reforms O.M. No. 371/7/79-AVD III dt. 6-12-79.

[A(22), B(47), B(46), B(37), B(10)]

The undersigned is directed to refer to paragraph 8 of this Department's O.M. No. 371/5/73-AVD. III dated the 5th September, 1975, on the subject mentioned above, wherein the procedure for obtaining documents in possession of Audit Offices for the purpose of investigation by the SPE has been specified. According to paragraph 8.2 thereof, wherever the investigating officer considers that it is necessary to obtain original documents in the possession of audit offices, for the purpose of investigation, a requisition in this regard has to be made indicating the justification for obtaining the original documents at the level of the Special Inspector General, S.P.E. or the Additional Inspector General, S.P.E. Consequent upon the departmentalisation of accounts of the Ministries and Departments of the Central Government, such original documents relating to accounts will now be in the possession of the Ministries/Departments/Offices themselves and not with the Audit Offices. The question of the procedure to be followed in cases where the original documents relating to accounts which are in the possession of the Departments/Ministries etc., are required by the SPE for their investigation, has been examined in consultation with the Controller General of Accounts.

2. It has now been decided that keeping in view the importance of the original documents, relating to accounts and the role they may have in the conduct of court cases, the SPE will send a requisition to the appropriate authority, if any such original documents which form part of the records of the Departmentalised accounts organisations functioning under the Ministries/Departments are needed to be produced in original, at the level of not less than a Superintendent of Police. It should also be certified that copies of the required documents or photostat copies would not serve the purpose of the investigating officer. It will.

be the responsibility of the Principal Accounts Officer etc. of the Ministries/Departments concerned to obtain orders of any appropriate higher authorities, wherever necessary, before handing over the documents in original to the SPE.

3. Ministries of Finance etc. may kindly bring the above instructions to the notice of all concerned.

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(109)

Department of Personnel and Administrative Reforms O.M. No. 109/3/80AVD-I dt. 21-7-80.

The undersigned is directed to refer to the two prescribed standard forms to be used while issuing orders for placing Government servants under suspension under Rule 10(1) and Rule 10(2) of the CCS(CCA) Rules, 1965, viz. forms 9 & 9A at pages 336 and 337 of Vigilance Manual, Volume-II, Part-I (1975 edition). It has come to notice that these forms have been more or less mechanically followed by the various authorities without suitably modifying or adopting them to suit the requirements of individual cases, whenever required. In this connection it has been particularly noticed that when, at the time a Government servant was placed under suspension, apart from a criminal offence which was under trial against him, there were also certain other disciplinary cases under contemplation, as well as criminal cases, under investigation against him, which were also taken into consideration for placing him under suspension, the order of his suspension was issued in the standard form and in which it was only stated: "Whereas a case against.....in respect of a criminal offence is under trial" limiting the suspension only to the criminal case under trial. As a result of this, it happened that when the particular criminal case resulted in the acquittal of the Government servant and the question of regulating the period of his suspension was considered it was found that the period had to be regulated only on the basis of the outcome of that criminal case which was referred to in the order of suspension i.e. the one which was under trial at the time of issue of the order which ended in his acquittal and regulation of the suspension period could not be based on other cases which, though taken into account by the competent authority at the time of placing him under suspension were not referred to in the order of suspension. Thus, even though the other Departmental/Court cases which were under contemplation/investigation at the time the Government employee was placed under suspension, did end or could have ended on his being convicted or punished, the period of his

suspension had to be regulated only in the light of the specific case referred to in the order of suspension which ended in acquittal. Although the competent authority desired to take the results of the other cases also into account, this was not possible in view of the specific wording of the order of suspension which referred only to "a criminal case under trial". To obviate such a situation, it is clarified that if the two standard forms, forms 9 & 9A at pages 336 and 337 of the Vigilance Manual, Volume-II, Part-I (1975 edition), are not found fully to meet the requirements of any case, then the competent authority should amplify/modify the appropriate form suitably to meet the requirements of the case and should indicate all the cases (criminal/Departmental under investigation/trial/contemplation) on the basis of which it is considered necessary to place the Government servant under suspension so that in the event of re-instatement of the Government servant the out-come of all such case can be taken into account, while regulating the period of suspension.

2. In this context, attention is also invited to Rule 10(5)(b) of the CCS(CCA) Rules, 1965 which requires that, if during the course of suspension of a Government servant, whether in connection with any disciplinary proceedings or otherwise, any disciplinary proceeding is commenced against him, the authority competent to place him under suspension, for reasons to be recorded by him in writing, may direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings. Therefore, whenever an official is under suspension, and any other case is initiated against him and the competent authority considers it necessary that the official should remain under suspension in connection with that case also, then the competent authority should pass another order to this effect in accordance with the rule, so that in the event of reinstatement of the Government servant, the facts of the latter case can also be taken into account while regulating the period of his suspension.

3. The position as indicated above may please be brought to the notice of the concerned authorities for guidance/compliance

(110)

Department of Personnel and Administrative Reforms O.M. No. 134/10/80-AVD-I dt. 28-2-81.

The undersigned is directed to say that sub-rule (1) of rule 9 of the CCS (Pension) Rules, 1972 confers on the President the right to withhold or withdraw the pension or a part thereof,

either permanently or for specified period, and to order recovery from the pension; of the whole or a part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment or retirement. Sub-rule (2) of this Rule provides that the departmental proceedings, referred to in sub-rule (1), if instituted before the retirement of a Govt. servant or during his reemployment, shall after his final retirement, be deemed to be proceedings under this Rule and shall be continued and concluded. Accordingly, the minor penalty proceedings and the major penalty proceedings, which are instituted against a Govt. servant while in service and which do not get concluded before the date of retirement, automatically become proceedings under Rule 9 *ibid*. However, since grave misconduct or negligence cannot be established as a result of minor penalty proceedings, action under Rule 9 *ibid* for withholding or withdrawing pension etc., cannot be taken against a pensioner, in respect of whom minor penalty proceedings had been instituted while in service but which do not get concluded before retirement and have hence continued after retirement. Such minor penalty proceedings continued beyond retirement, therefore, do not literally have any effect on the pensioner in the matter of reducing or withholding of his pension. The disciplinary authorities under the Department of Agriculture etc., are, requested to take note of this position and take steps to see that minor penalty proceedings, initiated against Govt. servants, who are due to retire, are finalised quickly and in time before the date of retirement, so that the need for continuing such minor penalty proceedings beyond the date of retirement does not arise.

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(111)

Department of Personnel and Administrative Reforms O.M. No. 11012/2/79-Estt(A) dt. 12-3-81

The undersigned is directed to say that a question has been under consideration by this Department whether rule 14(5)(a) of the CCS(CCA) Rules, 1965, permits the dropping of charges by the disciplinary authority after considering the written statement of defence submitted by the accused Government servant under rule 14(4) *ibid*. The question has been considered in consultation with the Ministry of Law and the position is clarified as under:—

(a) The disciplinary authority has the inherent power to review and modify the articles of charge or drop some of the charges or all the charges after the receipt and

examination of the written statement of defence submitted by the accused Government servant under rule 14(4) of the CCS(CCA) Rules, 1965.

(b) The disciplinary authority is *not* bound to appoint an Enquiry Officer for conducting an enquiry into the charges which are not admitted by the accused official but about which the disciplinary authority is satisfied on the basis of the written statement of defence that there is no further cause to proceed with.

2. It may, however, be noted that the exercise of the powers to drop the charges after the consideration of the written statement of defence by the accused Government servant will be subject to the following conditions:—

(a) In cases arising out of investigations by the Central Bureau of Investigation, the CBI should be consulted before a decision is taken to drop any of, or all, the charges on the basis of the written statement of defence submitted by the accused Government servant. The reasons recorded by the disciplinary authority for dropping the charges should also be intimated to the Central Bureau of Investigation.

(b) The Central Vigilance Commission should be consulted where the disciplinary proceedings were initiated on the advice of the Commission and the intention is to drop or modify any of or all the charges on the basis of the written statement of defence submitted by the accused Government servant.

3. The Ministry of Finance etc. are requested to bring the contents of this Office Memorandum to the notice of all the authorities under their control for their guidance and compliance.

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(112)

Department of Personnel & Administrative Reforms O.M. No. 129/16/81-AVD-I dt. 23-3-81

B(41) B(78) B(81) B(102) The undersigned is directed to state that the Supreme Court in the case Niranjan Singh and others Vs. Prabhakar Rajaram Kharote and others (SLP) No. 393 of 1980) have made some observations about the

need/desirability of placing a Government servant under suspension against whom serious charges have been framed by a criminal court, unless exceptional circumstances suggesting a contrary course exist. The Supreme Court has further directed the Government to take suitable sensitized measures to pre-empt recurrence of the error highlighted in the judgement. A copy of the Supreme Court's judgement in the case is enclosed.

2. Rule 10(1)(b) of the CCS(CCA) Rules, 1965, already provides that the competent disciplinary authority may place a Government servant under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Similar provision exists under the All India Services (Discipline & Appeal Rules, 1969 and other corresponding rules. In this Department's O.M. No. 43/56/64-AVD dated the 22nd October, 1964 certain guidelines relating to the circumstances in which a disciplinary authority may consider it appropriate to place a Government servant under suspension have been broadly indicated. It will be seen therefrom that the "public interest" should be the guiding factor in deciding the question of placing a Government servant under suspension. Thus, the existing rules/instructions on the subject alreardy cover the cases which the Supreme Court have in view. Nevertheless the Supreme Court's judgment, the existing rules/instructions on the subject and the contents of this O.M. may kindly be brought to the notice of all concerned.

3. As and when criminal charges are framed by a competent court against a Government servant, the disciplinary authority should consider and decide the *desirability* of placing such a Government Servant under suspension in accordance with the rules, if he is already not under suspension, or otherwise. If the Government servant is already under suspension or is placed under suspension, the competent authority should also review the case from time to time, in accordance with the instructions on the subject and take a decision about the desirability of keeping him under suspension till the disposal of the case by the court.

Note:—A copy of this O.M. has been forwarded to all State Govts. and Union Territories vide letter No. 129/16/81-AVD. I dated 26-3-81.

COPY OF THE JUDGEMENT OF THE SUPREME COURT

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 393 OF 1980.

Niranjan Singh & Anr. — Petitioners

Vs.

Prabhakar Rajaram Kharote & ors. — Respondents.

ORDER

KRISHNA IYER, J.

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" is a part of the Universal Declaration of Human Rights. The content of Art. 21 of our Constitution, read in the light of Art. 19 is similarly elevating. But romance about human rights and rhetoric about constitutional mandates lose credibility if, in practice, the protectors of law and minions of the State become engineers of terror and panic people into fear. We are constrained to make these observations as our consience is in consternation when we read the facts of the case which have given rise to the order challenged before us in this petition for special leave.

The petitioner, who has appeared in person, is the complainant in a criminal case where the accused are 2 Sub-Inspectors and 8 Constables attached to the City Police Station, Ahmednagar. The charges against them, as disclosed in the private complaint, are of murder and allied offences under section 302, 341, 395, 404 read with section 34 and 120 B of the Penal Code. The blood-curdling plot disclosed in the complaint is that pursuant to a conspiracy the brother of the complainant was way laid by the police party on August 27, 1978, as he was proceeding to Shirdi. He had with him some gold ornaments and cash. He was caught and removed from the truck in which he was travelling, tied with a rope to a neem tree nearby, thus rendering him a motionless target to a macabre shooting. One of the Sub-Inspectors fired two shots from his revolver on the chest of the deceased at close range and killed him instantaneously. The policemen, having perpetrated this villainy, vanished from the scene. No action was taken by the State against the criminals. How could they, when the preservers of the peace and investigators of crime themselves become plained executors of murder? The victim's brother was an advocate and he filed a private

complaint. The learned magistrate ordered an inquiry under s. 202 Cr. P.C., took oral evidence of witnesses at some length and held: "Thus taking an overall survey of evidence produced before me, I am of the opinion that there is sufficient grounds to proceed against all the accused for the offences under section 302, 323, 342, read with s. 34 I.P.C." Non-bailable warrants were issued for production of the accused and the magistrate who refused bail, stayed the issuance of the warrants although we are unable to find any provision to end him to do so. The police-accused moved the sessions court for bail and in a elaborate order the sessions court granted bail subject to certain directions and conditions. The High Court, which was moved by the complainant for reversal of the order enlarging the accused on bail, declined to interfere in revision but added additional conditions to ensure that the bail was not to be abused and the course of justice was not thwarted.

It is fair to state that the case in the complaint, verified under s. 202 Cr.P.C. to have some veracity, does not make us leap to a conclusion of guilt or refusal of bail. On the contrary, the accused policemen have a version that the victim was himself a criminal and was sought to be arrested. An encounter ensured, both sides sustained injuries and the deceased succumbed to a firearm shot even as some of the police party sustained revolver wounds but survived. May be, the defence case, if reasonably true, may absolve them of the crime, although the story of encounters during arrest and unwitting injuries resulting in casualties, sometimes become a mask to hide easy liquidation of human life by heartless policeman when someone allergic to Authority resists their vices. The Police have the advantage that they prepare the preliminary record which may 'kill' the case against them. The disquieting syndrome of policemen comitting crimes of killing and making up perfect paper work, cases of innocent discharge of duty should not be ruled out when courts examine rival versions. Indeed we must be influenced by what we have said and shall confine himself to the evidence in the case when adjudging the guilt of the accused. We were constraine to make the observations above, because the Sessions Judge, quite unwarrantedly, discussed at prolix length the probabilities of the Police party's exculpatory case and held:

"So it is reasonable to hold that there was a scuffle and resistance offered by the victim Amarjeet Singh before shots were fired at his person by the accused No. 1" Detailed, examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party

should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed, but it is not the same as an exhaustive exploration of the merits in order itself.

Grant of bail is within the jurisdiction of the Sessions Judge but the court must not, in grave cases, gullibly dismiss the possibility of police-accused intimidating the witnesses with cavalier case. In our country, intimidation by policemen, when they are themselves accused of offences, is not an unknown phenomenon and the judicial process will carry credibility with the community only if it views impartially and with commonsense the pros and cons, undeterred by the psychic pressure of police presence as indicated.

Let us now get to grips with the two legal submissions made by the petitioner. The first jurisdictional hurdle in the grant of bail, argues the petitioner, is that the accused must fulfil the two conditions specified in S. 439 Cr.P.C. before they can seek bail justice. That provision reads:

439. (1) A High Court or Court of Sessions may direct—

(a) that any persons accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes, mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified.

Here the respondents were accused of offences but were not in custody, argues the petitioner, so no bail, since this basic condition of being in Jail is not fulfilled. This submission has been rightly rejected by the Courts below. We agree that, in one view an outlaw cannot ask for the benefit of law and he who flees justice cannot claim justice. But here the position is different. The accused were not absconding but had appeared and surrendered before the Sessions Judge. Judicial jurisdiction arises only when persons are already in custody and seek the process of Court to be enlarged. We agree that no person accused of an offence can move the Court for bail under S. 439 Cr. P.C. unless he is in custody.

When is a person in custody, within the meaning of S. 439 Cr.P.C.? When he is in duress either because he is held by the

investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of S. 439. This word is of elastic semanitics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek-niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straight forwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

Custody, in the context of S. 439, (we are not, be it noted, dealing with anticipatory bail under s. 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and may be, enabled the accused persons to circumvent the principal of S. 439 Cr.P.C. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrendering before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned to custody, but, in the jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail

but, sitting under Art. 136, do not feel that we should interfere with a discretion exercised by the two courts below.

We are apprehensive that the accused being police officers should not abuse their freedom and emphasise that the Inspector General of Police of the State of Maharashtra will take particular care of to take two steps. He should have a close watch on the functioning of the concerned police officers lest the rule of law be brought into discredit by officers of the law being allowed a larger liberty than other people, especially because the allegations in the present case are grave and, even if a fragment of it be true, does little credit to the police force. It must be remembered that the allegations are that the deceased was dragged out of a truck to a secluded place, later tied to a tree and shot and killed by the police officer concerned.

We hasten to make it clear that these are one sided allegations and the accused have a counter-version of their own and we do not wish to make any implications for or against either version. The accused policemen are entitled to an unprejudiced trial without any bias against the 'uniformed' force, which has difficult tasks to perform.

We conclude this order on a note of anguish. The complainant has been protesting against the state's bias and police threats. We must remember that a democratic state is the custodian of people's interests and not only police interests. Then how come this that the team of ten policemen against whom a magistrate, after due enquiry, found a case to be proceeded with and grave charges, including for murder, were framed continue on duty without so much as being suspended from service until disposal of the pending sessions trial? On whose side is the state? The rule of law is not a one-way traffic and the authority of the State is not for the police and against the people. A responsible Government, responsive to appearances of justice, would have placed police officers against whom serious charges had been framed by a criminal court, under suspension unless exceptional circumstances suggesting a contrary course exists. After all, a gesture of justice to courts of justice is the least, that a government does to the governed.

We are confident that this inadvertance will be made good and the State of Maharashtra will disprove by deeds Henry Clay's famous censure:

"The arts of power and its minions are the same in all countries and in all ages. It marks its victim denounces it ; and excites

the public odium and the public hatred, to conceal its own abuses and encroachments."

The observations that we have made in the concluding portion of the order are of our oment, not merely to the State of Maharashtra but also to the Other States in the country and to the Union of India, that we deem it necessary to direct that a copy of this judgment be sent to the Home Ministry in the Government of India for suitable sensitized measures to pre-empt recurrence of the error we have highlighted."

New Delhi,
March 10, 1980.

Sd/ V. R. Krishna Iyer, J.
Sd/- A. P. Sen, J.

(113)

Department of Personnel and Administrative Reforms OM No. 134/11/81-AVD-I dt. 13-7-81

The undersigned is directed to state that as is well known and settled by courts, disciplinary proceedings against employees conducted under the provisions of CCS(CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad Vs. State of U. P. (AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

2. However, instances have come to the notice of this Department where the final orders passed by the competent disciplinary/appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such orders may not conform to legal requirements, they may be liable to be held invalid, if challenged in a court of law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue

self-contained speaking and reasoned orders conforming to the aforesaid legal requirements.

3. Instances have also come to notice where, though the decisions in disciplinary/appellate cases were taken by the competent disciplinary/appellate authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate reviewing authorities exercise quasi-Judicial powers and as such, they cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order as issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in those cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President.

4. The contents of this O.M. may kindly be brought to the notice of all concerned for their information and guidance.

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(114)

Secretary, Department of Personnel and A.R. d.o. letter No. 129/20/81-AVD-I dt 28-9-81 addressed to all Secretaries to the Govt. of India

C (148)

B(89)
B(94)

I am inviting your attention to this Department's Office Memoranda No. 118/5/76-AVD. I dated the 24th January, 1976, and 10th March, 1977 impressing the need for minimising delay in finalisation of disciplinary proceedings. While inaugurating a Conference of officers of the Central Bureau of Investigation and the State Anti-Corruption agencies, in Madras, 1981, the Prime Minister observed that no vigilance case should be allowed to linger beyond one year.

2. In pursuance of the above observation of the Prime Minister, we have examined the matter in consultation with the Central Vigilance Commission and the Central Bureau of Investigation. This examination shows that where cases are not held up in the Courts, it should generally be possible to finalise disciplinary cases which are conducted departmentally within about

six months from their inception. In cases where CVC's advice is required to be obtained, it may perhaps need some more time. But with the time schedule usually followed for his advice being sought etc., it should still not be difficult to ensure that disciplinary cases are disposed of finally within a period of one year as observed by the Prime Minister. In the cases where a reference to the Union Public Service Commission is also necessary before the competent authority finally takes a decision, some more time may be required before the case is finalised. However, even in such cases, it should still be possible to adhere to this time-limit of one year in the finalisation of a disciplinary case.

3. In order to see that disciplinary cases are finalised as expeditiously as possible, within a time limit of one year suggested by the Prime Minister, you would agree that it is necessary that the progress of each disciplinary case should be closely monitored so that corrective measures as may be warranted by facts and circumstances of each case, are taken in time to obviate delays. For this purpose, I would suggest that—

(a) You may kindly have a detailed review made of all the pending disciplinary cases relating to your Ministry/ Department (including Attached Offices etc.) which are pending for over one year so that appropriate measures may be taken to expedite their finalisation.

(b) All disciplinary cases of your Ministry/ Department (including Attached Offices) pending over a year should be brought to your notice by the disciplinary authority through the CVO. The CVO should examine each case and obtain your specific directions regarding its expeditious finalisation.

4. This Department, being the nodal authority with regard to administrative vigilance, would be interested in knowing the result of the above reviews. I would, therefore, request you to kindly keep us informed by way of a report on the results of the review suggested in para (a) above, as early as possible but not later than 31-12-1981. This report should indicate the broad details of the cases, the reasons for the delay, and the corrective steps that have been or are proposed to be taken to have them expedited. In regard to para (b) I would request that a half yearly statement may be sent to us in the enclosed proforma indicating reasons for delay and steps taken towards early disposal of cases. These half yearly reports may kindly be made available to us by 15th August for the first half year and 15th

February for the second half year. This information should be in respect of your Ministry/Department (including Attached Offices etc.).

5. Similar instructions could also be issued to Public undertakings etc. under your Ministry and you may like to get corresponding reviews/statements from them to watch the progress of disposal of pending cases in these undertakings.

6. I shall be obliged to have a line in reply from you, acknowledging my letter and indicating the action you propose to take.

Ministry/Department

Particulars of Disciplinary cases over 1 year old
(for half year ending 30th June/31st December):

S. No.	Name and Designation of Officer proceeded against	Date of suspension if the officer is under suspension	Date of issue of chargesheet	Present stage of the proceedings	Reason for delay beyond one year	When was the case reviewed by Secy./ Head of the Deptt.and measures taken to expedite final disposal

(115)

Department of Personnel and Administrative Reforms OM No. 11012/1/80-Estt. (A) dt. 3-9-81

The undersigned is directed to invite the attention of the Ministry of Finance etc. to this Department Notification of even number dated the 6th August, 1981 amending Rule 29 of the CCS(CCA) Rules, 1965 and introducing Rule 29-A therein and to say that the amendment has been necessitated by the Judgement of the Delhi High Court in the case of Shri R. K. Gupta Vs. Union of India and another (Civil Writ Petition No. 196 of 1978 and 322 of 1979) in which the High Court has held that under Rule 29 of the CCS(CCA) Rules, 1965—

(1) The President has power to review any order under the CCS(CCA) Rules, 1965 including an order of exoneration, and

(2) The aforesaid power of review is in the nature of *revisionary power* and not in the nature of reviewing one's own order.

The matter has been examined in consultation with the Ministry of Law who have observed that the judgement of the Delhi High Court would indicate that the President cannot exercise his revisionary powers in a case in which the power had already been exercised after full consideration of the facts and circumstances of the case. There is, however, no objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Accordingly, Rule 29 of the CCS(CCA) Rules, 1965 has been amended to make it clear that the power available under that rule is the power of revision and a new rule, Rule 29-A, has been introduced specifying the powers of the President to make a review of any order passed earlier, including an order passed in revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. It may also be noted while the President and other authorities enumerated in Rule 29 of the CCS(CCA) Rules, 1965, exercise the power of revision under that rule, the power of review under Rule 29-A is vested in the President only and not in any other authority. With the amendment of Rule 29 and the introduction of Rule 29-A, the heading of Part VIII of the CCS(CCA) Rules, 1965 has also been appropriately changed as "Revision and Review".

2. Ministry of Finance etc. are requested to bring the above points to the notice of all the authorities concerned for their information and guidance.

(115-A)

Department of Personnel & Administrative Reforms OM No. 122/2/81-AVD-I dated 15-10-1981

[B(103-A) 1. MHA RESOLUTION No. 24/7/64-AVD, dt. 11-2-1964.
A(20) 2. CVC's letter No. 2/16/64-Coord., dt. 7-9-64.
C(3) 3. CVC's letter No. 2/26/64-Coord., dt. 24-8-65.
C(12) 4. CVC's letter No. 2/16/64-Coord., 25-9-65.
C(13) 5. CVC's No 1/15/73-R, dt. 30-7-73.
C(55)]
[C(152)
(CVO)]

The undersigned is directed to refer to the Resolution of the Government of India dated 11th February, 1964 setting up the Central Vigilance Commission and the further instructions on the subject mentioned above, as marginally noted, in terms of which—

(a) the Chief Vigilance Officers in the Ministries/Departments/Public Undertakings/Nationalised Banks are required to be appointed in consultation with the Central Vigilance Commission.

(b) no person whose appointment is objected to by the CVC should be so appointed, and

(c) suitable arrangements could, however, be made by the appropriate authority in short vacancies for a period up to 3 months due to leave or other reasons, without obtaining the concurrence of the CVC.

2. It has recently come to the notice of this Department that in a few cases, Chief Vigilance Officers in Public Undertakings had been appointed without prior consultation with the CVC, as required in the instructions on the subject. As the appointment of CVOs without prior consultation with the CVC is against the procedure prescribed in the Resolution of the Government of India and the further instructions on the subject referred to in paragraph 1 above, the undersigned is directed to draw the atten-

tion of all the Ministries/Departments to the requirement of obtaining the approval of the CVC before finalising the appointment of the Chief Vigilance Officers in the Ministries/Departments/Public Undertakings/Nationalised Banks etc. Ministry of Agriculture etc., are, therefore, requested kindly to issue suitable instructions to all concerned in this regard with a view to ensuring that the requirement of prior consultation with the Central vigilance Commission and obtaining his approval for the appointment of Chief Vigilance Officers is fully met.

3. In cases where the approval of the Appointments Committee of the Cabinet/Central Establishment Board is required for making such appointment of Chief Vigilance Officers, it should specifically be stated in the reference made to this Department (Establishment Officers) that the Central Vigilance Commissioner has been consulted in the matter and that the proposed appointment has his approval.

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(116)

Department of Personnel & Administrative Reforms OM No. 321/3/81/AVD-III dt. 3-12-81

The undersigned is directed to invite a reference to this Department's circular d.o. letters No. 321/3/73-AVD. III dated 13-12-1973, No. 321/4/79-AVD-III dated 22-6-1979 (addressed to the then Members of Council of Ministers in Ministry of Home Affairs) and No. 321/12/77-AVD-III dated 16-6-1978 (addressed to all Secretaries) on the above subject (copies enclosed) and to say that in spite of the position explained therein it is noticed that announcements are sometimes made on behalf of Ministries/Departments about entrusting of cases to the CBI for investigation without consulting this Department/CBI, when such cases have not actually been taken up by the CBI for investigation. As the Ministries/Departments are aware, the CBI is a specialised investigating Agency which has limitations, both of resources and jurisdiction. If, therefore, after making any announcements to the effect that investigation would be made by the CBI, it is later found that the CBI is not in a position or is not empowered to undertake it, there would be considerable embarrassment all round, more so, if any assurance for a CBI investigation is sought for and given in Parliament. In view of this position, Ministries/Departments etc. are once again requested to consult this Department/the CBI in advance before any public announcement is made or before any assurance is given in the Parliament about entrusting of any case to the CBI for investigation.

Department of Personnel and Administrative Reforms D.O. letter No. 321/3/73-*AVD III dated* 13-12-73 *addressed to then members of the Council of Ministers.*

I am writing this in connection with demands that are off and on made in Parliament or outside for entrusting the investigation into particular matters to the Central Bureau of Investigation. The Central Bureau of Investigation is meant to assist the Central Ministries and Central Government Departments to the maximum extent possible, but it has certain limitations like the limited resources and restricted jurisdiction. If any pronouncements are made in response to such demands for investigation by Central Bureau of Investigation and later it is found the Central Bureau of Investigation is either not empowered or otherwise not in a position to undertake a particular investigation it can cause considerable embarrassment alround. To save any such embarrassment I thought I should take an opportunity to explain the legal position with regard to the working of the Central Bureau of Investigation.

2. The Special Police Establishment Division of the Central Bureau of Investigation, which is responsible for all investigation work, functions under the Delhi Special Police Establishment Act. The functions, organisation and the types of cases to be taken up by the Special Establishment Division of the Central Bureau of Investigation are given in the 'Directive' which was circulated with M.H.A.'s confidential O.M. No. 371/13/66-AVD. III dated 25th June, 1969. From the said 'Directive' it will be seen that (i) the Special Police Establishment is a police agency and can legally investigate only those specific offences which have been notified by the Central Government under Section 3 of the D.S.P.E. Act and that (ii) it can take up only those cases which substantially and essentially concern the Central Government employees of the affairs of the Central Government. The S.P.E. Division also has an Economic Offences Wing which takes up for investigation cases relating to violations of Imports and Exports Control Act and other such economic offences of which the investigation, because of the complexities involved or because of offences falling within the jurisdiction or more than one agency, cannot be handled adequately by the normal departmental agencies.

3. Accordingly the Special Police Establishment cannot take up for investigation some matter when *prima facie* the facts do not indicate commission of an offence, notified for investigation by the Special Police Establishment. This rules out any kind of roving enquiry by the Central Bureau of Investigation. It

also cannot ordinarily investigate any case in which only State Government employees are concerned, or which is only against a private person and does not concern the affairs of Government of India. The latter type of cases can be taken up only at the specific request of the concerned State Government.

4. In the circumstances, it will be desirable that the Department of Personnel is consulted before any public announcement is made about entrusting any matter for investigation to the Central Bureau of Investigation particularly where there may be scope for doubt as to whether the Central Bureau of Investigation is empowered to investigate such matters and would be in a position to undertake the investigation.

Department of Personnel and Administration Reforms confidential D.O. letter No. 321/4/79-AVD III dt. 22-6-79 addressed to the then Members of the Council of Ministers.

Often announcements are made on behalf on Ministries and Departments about entrusting cases to the CBI for investigation. No doubt, the CBI, though functioning administratively under this Department is meant to assist all the Ministries and Departments of the Central Government to the maximum extent possible. The CBI has, however, limitations both of resources and jurisdiction. If, therefore, after making any announcements to the effect that investigation would be made by the CBI, it is later found that the CBI is not in a position or is not empowered to undertake it, there would be considerable embarrassment all round, more so, if any assurance for a CBI investigation is sought for and given in Parliament.

2. The legal position with regard to the working of the CBI was brought to the notice of all the Ministries in my predecessor's letter (Confidential D.O. No. 321/3/73-AVD. III, dated 13-12-73) addressed to all Members of the Council of Ministers. More recently again, in a D.O. letter addressed to all the Secretaries of Ministries/Departments on the 16th June, 1978 (Confidential D.O. No. 321/12/77-AVD-III) the contents of the earlier letter of the 13th December, 1973 were requested to be brought to the notice of the Ministers.

3. I am sure you will readily appreciate, in the circumstances the need and desirability of consulting the Department of Personnel in advance before entrusting any case for investigation to the CBI, or before making any announcement in this regard.

Department of Personnel and Administrative Reforms Confidential d.o. letter No. 321/12/77-AVD III dt. 16-6-78 addressed to all Secretaries.

I am desired to send herewith a copy of this Department's circular d.o. letter No. 321/3/73-AVD. III dated the 13th December, 1973 addressed to the then Members of Council of Ministers regarding the demands made off and on in Parliament and outside for entrusting investigation of particular matters to the Central Bureau of Investigation. It is requested that the position explained in the aforesaid letter may also kindly be brought to the notice of your Minister(s).

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(117)

Department of Personnel & A.R. O.M. No. 140/1/81-AVDI dt. 9-12-81

[B(63) B(75)]

The undersigned is directed to refer to the MHA O.M. No. 234/66-AVD. II dated the 18th March, 1968, forwarding a proforma to be used for consulting the UPSC in disciplinary cases and to say that as a sequel to the amendment of Art. 311(2) of the constitution and the provisions contained in rules 15, 27 and 29 of the CCS(CCA) Rules, 1965, and corresponding provisions of the rules applicable to railway employees and civil servants not governed by the CCS(CCA) Rules, it is no longer necessary to issue a show-cause notice in cases where the disciplinary authority proposes to impose any of the major penalties or where it is proposed to enhance an existing penalty. As a result, some changes in the proforma to be used for consulting the UPSC have been necessitated. It has also been found necessary to make certain modifications in items 10, 10A and 14 of the proforma. Revised proforma which may hereafter be used for consulting the UPSC is enclosed, and may be circulated to all concerned.

2. It has been observed by the Commission that even though the proforma clearly provides that it should be signed by an officer of the Ministry/Deptt. making the reference, in some cases, the proforma obtained by the Ministries/Deptts, from their subordinate/attached offices are being forwarded to the Commission without ensuring that the entries contained therein are appropriate and reflect the correct position. The importance of making correct entries in the proforma cannot be overemphasised. Ministries/Deptts. may therefore ensure that the proforma is signed by an officer of the Ministry/Deptt. and references to the Commission in disciplinary cases are complete to in all respects.

Note : The proforma enclosed with this Office Memorandum supersedes the one in A (32). The proforma in A (32) is now obsolete.

ANNEXURE

Particulars relating to the disciplinary case referred to the Union Public Service Commission with letter No.———————dated———————

1. Name of accused officer

2. Whether temporary/Permanent/ Contract Service

3. Post held substantively if in permanent Service

   (a) Designation

   (b) Scale of pay

   (c) Pay Drawn

   (d) Date from which pay shown against (c) drawn.

4. Post held at present in an officiating capacity.

   (a) Designation

   (b) Scale of Pay

   (c) Pay Drawn

   (d) Date from which pay shown against (c) drawn.

   (e) Whether the approval of the U.P.S.C. to the Officer's officiating appointment has been obtained in case such approval was necessary under rules (Give the No. and date of Commission's relevant letter.)

5. The next lower post the officer would have held but for his appointment to the present post, he is holding.

6. Post if any in which quasi-permanent.

7. *Increment :*

   (a) Date of next increment in post held substantively.

   (b) Date of next increment in post in which officiating at present.

8. Date of birth

9. Date of joining Government Service

10. Date when due to retire or date of actual retirement in cases of persons who have already retired.

10. (a) (i) Amount of monthly pension admissible.

(ii) Amount of monthly pension sanctioned.

(b) (i) Amount of gratuity admissible.

(ii) Amount of gratuity sanctioned.

(This information is required only in respect of cases of recovery from or with-holding of pension/ special additional pension).

11. (a) Appointing authority in respect of the post held at present or the authority which actually appointed the penson if that authority is higher.

(b) Punishing authority in respect of the post held at present.

(c) Appellate authority in respect of the post held at present.

12. Whether an oral enquiry if required under the rules has been held.

13. Name and designation of the Inquiry Officer appointed, if any.

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14. Whether all the relevant documents *in original*, particularly the following have been enclosed with the letter seeking the Commission's advice.

(A) *In the case of original enquiries :*

(i) Papers relating to preliminary enquiry, if any. In case the preliminary enquiry was done by S.P.E. their report together with all the depositions recorded by them.

(ii) Suspension Order, if any.

(a) Order revoking suspension, if any.

(iii) Order of the Competent Authority for joint/common proceedings where issued-if two or more Govt. servants are involved in the case.

(iv) Charge-sheet with the statement of imputations of misconduct or misbehaviour and other enclosures.

(v) Reply of the accused officer to the charge-sheet.

(vi) Orders appointing the Inquiry Officer.

(vii) Orders appointing the Presenting Officer.

(viii) Record of the oral inquiry:—

(a) Daily Order sheets.

(b) Correspondence file of the I.O.

(c) Depositions

(d) Questions put to the accused officer by the Inquiry Officer.

(e) Statement of Defence before the I.O.

(f) Written briefs of-

(i) the Presenting Officer.

(ii) the Charged Officer.

(g) Inquiry Officer's Report.

(ix) Miscellaneous documents regarding evidence such as exhibits, statement etc. referred to in items(i) to (ix) above.

(x) *Sanction of the President for institution of departmental proceednigs where necessary.

(xi) *Show cause notice for withdrawing/with-holding the pension/DCRG.

(xii) *Reply of the accused officer to the show-cause notice.

(B) *In the case of appeals :*
In addition to the documents specified under (A) above the following:—

*This information is required in case of pensioners only.

(i) Order of the punishing Authority.

(ii) Appeal, if any, of the accused officer.

(iii) Comments of the appeal as required under para 2(b) of the Ministry of Home Affairs O.M. No. 18/9/63—Ests. (B), dated 4-8-64 and Rule 26(3) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965.

Revised vide *MHA O.M.* 24/99/64—AVD dated 1-10-74)

(C) *In the case of petition/Memorials or suo Moto review*

In addition to the documents specified under (A) & (B) above, the following:—

(i) Orders if any on the appeal.

(ii) Petition or Memorial if any, from the accused officer.

(iii) Note indicating the reasons for modifying the existing order of penalty and the precise *extention* of such modification.

(D) Miscellaneous documents regarding evidences such as exhibits statements *referred* to in item 14(B) and 14(C) and extracts of relevent Rules, Codes, Acts, Judgements, Manuals, etc., referred to in the charge-sheet statement of allegations, statement of defence, Inquiring Authority's Report, reply to showcause notice, appeal, petition, Ministry/Department's comments.

15. Whether a note explaining the factual and procedural points mentioned in the Officer's explanation has been enclosed as required in paragraph 2(a) (i) of the Ministry of Home Affairs O.M.No. 18/9/63-Ests (B) dated 4th August, 1964.

16. Whether comments on procedural points, if any, raised by the officer in his explanation to the charge sheet/reply to show cause notice/ appeal/petition have been given.

References.

17. Whether complete and up-to-date confidential *roll* of the officer has been enclosed.

Signature———————————

Name in block letters of officer of the Ministry signing this Statement———————————

Designation———————————

Date———————————

Telephone Number———————————

(118)

Department of Personnel & Administrative Reforms O.M. No. 22011/1/79-Estt. (A) dt. 30-1-82

[B(104)]

The undersigned is directed to say that according to the existing instructions, cases of the officers (a) who are under suspension or (b) against whom disciplinary proceedings are pending or (c) a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings against them or, (d) against whom prosecution has been launched in a court of law or sanction for prosecution has been issued, are considered for promotion by the Departmental Promotion Committee at the appropriate time but the findings of the Committee are kept in a sealed cover to be opened after the conclusion of the disciplinary/court proceedings. While the findings are kept in the sealed cover, the vacancy which might have gone to the officer concerned is filled only on an officiating basis.

2. If, on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, and in case he was under suspension, it is held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the D.P.C. are acted upon. If the officer could have been promoted earlier, he is promoted to the post earlier, filled on an officiating basis, the arrangements made earlier being terminated. On his promotion, the officer also gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but no arrears are allowed in respect of the period prior to the date of actual promotion.

3. It has been noticed that sometimes, the cases in the courts or the departmental proceedings take unduly long time to come to a conclusion in spite of all efforts and the officers undergo considerable hardship, even where it is not intended to deprive them of promotion for such a long time. In the circumstances, Government have had under consideration, in consultation with the Union Public Service Commission, the question how the hardship caused by the long pendency of disciplinary/court proceedings to the Government servants, in whose case sealed cover procedure has been followed, could be mitigated. As a result, the following procedure is laid down for being adopted in the circumstances indicated in para 1 above:—

(i) (a) It may be ascertained whether there is any departmental disciplinary proceedings or any case in a court of law pending against the individual under consideration, or

(b) there is a *prima facie* case on the basis of which a decision has been taken to proceed against the official either departmentally or in a court of law.

(ii) The facts may be brought to the notice of the Departmental Promotion Committee who may then assess the suitability of the official(s) for promotion to the next grade/post and for the purpose of this assessment the D.P.C. shall not take into consideration the fact of the pending case(s) against the official. In case an official is found "unfit for promotion" on the basis of his record, without taking into consideration, the case(s) pending against him, the findings of the D.P.C. shall be recorded in the proceedings. In respect of any other kind of assessment, the grading awarded by the D.P.C. may be kept in a sealed cover.

(iii) After the findings are kept in a sealed cover by the Departmental Promotion Committee, subsequent D.P.Cs, if any, held after the first D.P.C. during the period the disciplinary/court proceedings may be pending, will also consider the officer's case and record their findings which will again be kept in sealed cover in the above manner.

In the normal course, on the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings against him may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted if necessary by reverting the junior-most officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion.

If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon. The officer's case for promotion may be considered in the usual manner by the next D.P.C. which meets in the normal course after the conclusion of the disciplinary/

court proceedings. The existing instructions provide that in a case where departmental 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 officer, then the penalty of ensure at least should be imposed. This may be kept in view so that no occasion arises for any doubt on the point whether or not an officer has been completely exonerated in the disciplinary proceedings held against him.

(iv) However, in some cases the disciplinary/court proceedings may not be concluded even after the expirty of two years from the date of the D.P.C. which first considered the officer for promotion and whose findings are kept in the sealed cover. In such cases, provided the officer concerned is not under suspension, the appointing authority may review his case to consider:—

(a) whether the charges are grave enough to warrant continued denial of promotion and the promotion of the officer will be against public interest;

(b) whether there is no likelihood of the case coming to a conclusion in the near future, and

(c) the delay in the finalisation of proceedings, whether departmental or in a court of law, is not directly or indirectly attributable to the official concerned.

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 official, his case should be placed before the next D.P.C. held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on *ad-hoc* basis. Where the officer is considered for *ad-hoc* promotion as above, the Departmental Promotion Committee should make its assessment on the basis of the totality of the officer's record of service and the fact that the disciplinary or court case is pending should not affect the assessment regarding the suitability for *ad-hoc* promotion. If the officer is recommended by the D.P.C., as a result of such consideration, for *ad-hoc* promotion, his actual promotion will be subject to the decision of the Appointing Authority which should take into account the seriousness of the charges, the nature of the evidence available, the stage which the disciplinary/court proceedings has reached, the probable nature of the punishment that may be imposed on the officer if the charges against him are established, the likelihood

of misuse of official position which the officer may occupy after his *ad-hoc* promotion and the record of service available upto date.

(v) (a) Where the departmental Proceedings or court cases have arisen out of investigations conducted by the Central Bureau of Investigation, the Appointing Authority should also consult the Central Bureau of Investigation and take their views into account.

(b) Where the appointing authority is an authority other than the President, such authority should take the orders of the Secretary of the Ministry/Department, or the Head of Department, as the case may be, before taking a decision on making the *ad-hoc* promotion.

(c) Where the appointing authority is a Head of Department, it should take the orders of the Secretary in the Ministry/ Department.

(d) Where the Secretary in the Ministry/Department is the appointing authority, he should take the orders of the Minister-in-charge.

(e) Where the President is the appointing authority, the final decision will rest with the Minister-in-Charge of the Ministry/ Department concerned.

(vi) After a decision is taken to promote an officer on an *ad-hoc* basis as indicated above, 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 orders that the Government will reserve the right to cancel the *ad-hoc* promotion and revert the officer to the post from which he was promoted, at any time.

4. If the officer concerned is acquitted in the court proceedings on the merits of the case or exonerated in departmental disciplinary 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 such cases, the sealed cover(s) may be opened and the official may be assigned his place in the seniority list as he would have got in accordance with the recommendation(s) of the D.P.C.

5. Where the acquittal in a court case is not on merits but purely on technical grounds, and the Government either proposes to take the matter to a higher court or to proceed against the officer departmentally, the appointing authority may review whether the *ad-hoc* promotion should be continued.

6. Where the acquittal by court is on technical grounds, if the Government does not propose to go in appeal to a higher court or to take further departmental action, action should be taken in the same manner as if the officer had been acquitted by the court on merits.

7. If the officer concerned is *not* acquitted/exonerated in the court proceedings or the departmental proceedings, the *ad-hoc* promotion already granted should be brought to an end by the issue of the "further order" contemplated in the order of *ad-hoc* promotion (Please see para 3(vi) above) and the officer concerned reverted to the post from which he was promoted on *ad-hoc* basis. After such reversion, the officer may be considered for future promotion in the usual course by the next D.P.C.

8. Ministry of Finance etc. are requested to bring the contents to the notice of all authorities under their control for their information, guidance and compliance.

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(119)

Department of Personnel & Administrative Reforms O.M. No. 118/6/81-AVDI dt 5-3-82

[B(57) C(32) C(33)]

The undersigned is directed to refer to the Ministry of Home Affairs' O.M. No. 118/7/66-AVD dated the 28th September, 1967 on the subject mentioned above (copy enclosed) according to which vigilance cases of only those personnel of public sector undertakings who can generally be regarded as belonging to the Officer grade and drawing approximate basic pay of Rs. 1,000/- p.m. or above and of Government servants on deputation to public undertakings need be referred to the Central Vigilance Commission. The instructions have now been reviewed in consultation with the Central Vigilance Commission.

2. Keeping in view (a) the large increase in the number of personnel coming under the jurisdiction of the Central Vigilance Commission, particularly, as a result of the nationalization of Banks and on account of number of other organisations also accepting the jurisdiction of the Commission; and (b) the revision of pay scales of employees in public sector, it has been decided that, in future, vigilance cases of only those employees of public enterprises, including nationalised banks, who are drawing pay in scales of pay whose minimum is not less than Rs. 1,800/- per month, need be referred to the Commission for advice. However, vigilance cases of Gazetted Government officers on deputation into public enterprises will continue to be referred to the CVC, as hitherto, for advice.

3. It is also clarified that the convention that the Commission will not normally deal with cases of employees of public undertakings who are in scales of pay, whose minimum is less than Rs. 1,800/- p.m. and that, therefore, those cases will not, ordinarily be referred to the Commission will not, in any way, curtail the jurisdiction of the Commission over the public sector as a whole.

4. These instructions may kindly be communicated for compliance to the public sector undertakings including nationalised banks under the various Ministries/Departments. Wherever it is considered necessary, the Boards of Public Sector Undertakings etc., may be requested to pass necessary resolutions to give effect to these instructions.

5. These instructions will apply to fresh cases, which become due for reference to the CVC. In regard to these cases, which have already been referred to the CVC and/or are in the process of correspondence with the CVC, the advice of the CVC should be obtained by the public undertakings and considered before taking a final decision.

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(120)

Department of Personnel and Administrative Reforms O.M. No. 35014/1/81-Ests (A) dt. 9-11-82

Subject:—CCS(CCA) Rules, 1965—Opportunity to the suspended Government servant to appeal against suspension.

The undersigned is directed to say that under Rule 10(1) of the CCS(CCA) Rules, 1965, the competent authority may place a Government servant under suspension—

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

(b) Where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interests of security of the State ; or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

The Government servant is also deemed to have been placed under suspension by an order of the competent authority in the circumstances mentioned in rule 10(2) of the aforesaid rules.

2. Where a Government servant is placed under suspension, he has a right of appeal against the order of suspension vide Rule 23(i) of the CCS(CCA) Rules, 1965. This would imply that a Government servant who is placed under suspension should generally know the reasons leading to his suspension so that he may be able to make an appeal against it. Where a Government servant is placed under suspension on the ground that a disciplinary proceeding against him is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial, the order placing him under suspension would itself contain a mention in this regard and he would, therefore, be aware of the reasons leading to his suspension.

3. Where a Government servant is placed under suspension on the ground of "contemplated" disciplinary proceeding, the existing instructions provide that every effort would be made to finalise the charges, against the Government servant within three months of the date of suspension. If these instructions are strictly adhered to, a Government servant who is placed under suspension on the ground of contemplated disciplinary proceedings will become aware of the reasons for his suspension without much loss of time. However, there may be some cases in which it may not be possible for some reason or the other to issue a chargesheet within three months from the date of suspension. In such cases, the reasons for suspension should be communicated to the Government servant concerned immediately on the expiry of the aforesaid time-limit prescribed for the issue of a chargesheet, so that he may be in a position to effectively exercise the right of appeal available to him under Rule 23(i) of the CCS(CCA) Rules, 1965, if he so desires. Where the reasons for suspension are communicated on the expiry of a time-limit prescribed for the issue of chargesheet, the time-limit of forty five days for submission of appeal should be counted from the date on which the reasons for suspension are communicated.

4. The decision contained in the preceding paragraph will not, however, apply to cases where a Government servant is placed under suspension on the ground that he has engaged himself in activities prejudicial to the interests of the security of the State.

5. Ministry of Finance etc. are requested to bring the contents of this Office Memorandum to the notice of all administrative authorities under their control for their guidance and strict compliance.

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[(1)

Central Vigilance Commission letter No. 9/1/64-D.P., dated 13th April, 1964

[A(20)]

[B(71)]

Please refer to the Ministry of Home Affairs Resolution No. 24/7/64-AVD, dated 11th February, 1964, which describes the powers and Functions of the Central Vigilance Commission. The procedural instructions contained in the following paragraphs will be observed in giving effect to the decisions contained in the Resolution.

Complaints information or cases received by or taken notice of by the Central Vigilance Commission

2. In such cases, the Central Vigilance Commission will decide the action to be taken which may be any of the following three alternatives:—

(a) The Central Commission may entrust the matter for inquiry to the administrative Ministry/Department concerned. In such cases, the Vigilance Officer of the Ministry/Department will immediately make a preliminary inquiry to verify the allegations and will submit his report, together with other relevant records, to the Central Vigilance Commission. The Commission will advise the Ministry/Department concerned as to the further action to be taken; or

(b) The Central Vigilance Commission may ask the Central Bureau of Investigation to make an inquiry. The Central Bureau of Investigation will furnish the report of the inquiry, together with other relevant records, to the Central Vigilance Commission who will then advise the administrative Ministry/Department as to the course of further action to be taken; or

(c) The Central Vigilance Commission may ask the Director, Central Bureau of Investigation, to register a case and investigate it. The Director will inform the Commission of the result of the investigation and if he is of the view that a prosecution should be launched—

(i) the Director, Central Bureau of Investigation, will forward the final report of his investigation to the

Ministry of Home Affairs through the Central Vigilance Commission if sanction for such prosecution is required under any law to be issued in the name of the President. Simultaneously, the Director, Central Bureau of Investigation, will forward a copy of the investigation report to the administrative Ministry/Department concerned for any comments which they may wish to make. Such comments will be forwarded by the Ministry/Department to the Central Vigilance Commission not later than 14 days from the receipt of the report. After considering the report of the Central Bureau of Investigation and other relevant records, if any, and also the comments, if any, received from the administrative Ministry/Department the Central Vigilance Commission will advise the Ministry of Home Affairs whether or not prosecution should be sanctioned. Orders will thereafter be issued by the Ministry of Home Affairs.

(ii) If any authority other than the President is competent to sanction prosecution, the Director, Central Bureau of Investigation, will forward the investigation report to such authority for sanction to prosecution. If such authority does not propose to accord the sanction sought for by the Director, Central Bureau of Investigation, it will forward the case together with its views and the reasons therefor and other relevant record to the Central Vigilance Commission for advice, through the administrative Ministry/Department concerned within a fortnight of the receipt of the report of the Central Bureau of Investigation. Further action will be taken by the authority concerned after considering the advice of the Central Vigilance Commission.

Complaints or information received by or cases arising in respective Ministries/Departments

3. Such complaints or cases will be dealt with by the administrative Ministry/Department concerned. The Central Vigilance Commission, however, has the responsibility for advising the Ministries/Departments in respect of all matters relating to integrity in administration. It has also the power to call for reports, returns, statements from all Ministries/Departments so as to enable it to exercise a general check and supervision over vigilance and anti-corruption work in Ministries/Departments.

It can also take over under its direct control any complaint or case for further action. In order to enable the Central Vigilance Commission to discharge its responsibility and to keep it fully informed—

(a) Every Ministry/Department will forward to the Central Vigilance Commission the following quarterly statistical returns:

(i) Statement showing the disposal and pendency of complaints vigilance cases and appeals and memorials, etc., in Forms No. CVC, 1(a), (b) and (c), copy enclosed.

(ii) Statement showing the disposal of anonymous and pseudonymous complaints in Form No. CVC. 2, copy enclosed, and

(iii) Statement showing the number of public servants under suspension for more than three months in Form No. CVC. 3, copy enclosed,

for the periods January-March, April-June, July-September and October-December by the seventh of the succeeding months. A copy of the returns should also be endorsed to the Administrative Vigilance Division of the Ministry of Home Affairs.

The first reports to be sent to the Commission should relate to the period of January-March, 1964 and should be sent by the 1st May, 1964.

(b) In respect of action initiated against a Gazetted Officer the administrative Ministry/Department concerned will forward a report in Form No. CVC. 4. copy enclosed, as soon as action is started. The further progress of the case will be reported in the same form every month till preliminary enquiry is completed and thereafter once at the end of every two months.

The Central Vigilance Commission may require at a later date similar reports in respect of specified categories of non-gazetted officers. Separate instructions will be issued in that regard in due course.

(c) In respect of criminal proceedings instituted against non-gazetted public servants the administrative Ministry/Department concerned will forward a report in

Form No. CVC. 5, copy enclosed, as soon as sanction for prosecution is given. Further progress of the case will be reported in the same form quarterly.

4. In all cases relating to gazetted officers the Central Vigilance Commission will be consulted during the progress of the case at the following stages:—

(i) If in any case the administrative authority does not think that a preliminary enquiry is necessary, the complaint (other than an anonymous or pseudonymous complaint in respect of which the procedure will be as in paragraph 9 below) together with the views of the administrative authority will be forwarded to the Central Vigilance Commission for advice.

(ii) Similarly, when an administrative authority has, after preliminary enquiry, come to the conclusion that no further action is necessary, the case will be reported to the Central Vigilance Commission for advice.

(iii) Where an administrative authority proposes, after a preliminary enquiry, to institute disciplinary proceedings, the report of the preliminary enquiry, together with other relevant record, will be forwarded to Central Vigilance Commission for advice as to the course of further action to be taken.

(iv) In cases which are enquired into by the Central Bureau of Investigation, the final report, together with other relevant records, will be sent by the Central Bureau of Investigation to the Central Vigilance Commission who will advise the administrative Ministry/Department concerned as to the course of further action to be taken.

(v) In cases in which the Central Vigilance Commission advises that formal disciplinary proceedings should be instituted, it will also advise whether proceedings should be instituted for impsoing a major penalty or a minor penalty. It will then be the responsibility of the Vigilance Officer of the Ministry/Department to draw up a chargesheet, statement of allegations, etc., and take all further steps according to the prescribed procedure and practice. It will be open to the administrative authority concerned to seek such further advice and guidance as may be considered necessary from the Central Vigilance Commission.

*(vi) The report of the Inquiry Officer conducting oral enquiry into any departmental proceedings should be forwarded, together with the full record of the case, to the Central Vigilance Commission who will advise the disciplinary authority concerned as to the course of further action to be taken.

The Central Vigilance Commission may extend the procedures outlined in the above sub-paragraphs to certain specified categories of non-gazetted officers also. Separate instructions will be issued in that regard later.

Commissioners for Departmental Enquiries

5. The Commissioners for Departmental Enquiries will hereafter function under the Central Vigilance Commission. If any Ministry/Department desire that the oral inquiry in any departmental proceedings should be entrusted to one of the Commissioners for Departmental Enquiries, the request for his services will be addressed to the Central Vigilance Commission. The Central Vigilance Commission may also indicate at the appropriate stage in any departmental proceedings whether oral inquiry should be entrusted to one of the Commissioners for Departmental Enquiries.

In all inquiries made by the Commissioners for Departmental Enquiries the report will be submitted by the Commissioner for Departmental Enquiries to the Central Vigilance Commission. The Commission will examine the report and will forward the record of the case to the appropriate disciplinary authority together with its advice as to further action.

Difference of opinion between Central Bureau of Investigation and the administrative authority in cases recommended for departmental disciplinary action

6. If in cases which are recommended by the Central Bureau of Investigation to the administrative authority concerned for departmental action a difference of opinion arises between the concerned administrative authority and the Central Bureau of Investigation regarding action to be taken, the matter will be referred to the Central Vigilance Commission for advice. Similarly, in cases in which the Central Bureau of Investigation consider that

*(Inserted *vide* C.V.C's. letter No. 1-1-64-Coord., dated 16-10-64.)

the findings in a departmental inquiry or the punishment imposed after a departmental inquiry should be reviewed and there is a difference of opinion between the concerned administrative Ministry/Department and the Central Bureau of Investigation, the case will be referred by the administrative Ministry/Department to the Central Vigilance Commission for advice.

Black-listing of firms

7. Any proposal to black-list a firm or to withdraw a black listing order will be referred to the Central Vigilance Commission for advice before the issue of final orders.

Mode of communication between the Ministries/Departments and the Central Vigilance Commission

8. The mode of communication between the Ministries/Departments and the Commission will ordinarily be by referring files. However, if in any case the Commission or the Ministry/Department may not wish to endorse the file, a self-contained note or letter may be sent.

Anonymous and pseudonymous complaints

9. The administrative Ministry/Department may seek the advice of the Central Vigilance Commission about action to be taken on such anoymous and pseudonymous complaints as might appear to be deserving of an inquiry or investigation.

(No longer operative, vide letter dt. 12-7-76).

10. Suitable instructions will be issued at a later stage in regard to matters covered by paras 2(x), (xi) and (xiii), 6, 7, and 8 of the Resolution referred to in paragraph 1.

Extension of the procedure to Corporate Central Undertakings

11. The power and jurisdiction of the Central Vigilance Commission as set out in the aforesaid Resolution extend to Corporate Central Undertakings. The Ministries/Departments are, therefore, requested to issue appropriate orders to the authorities in-charge of the respective undertakings extending, *mutatis mutandis*, the instructions conained in this letter and those which may be issued hereafter. A copy of the orders issued may

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NOTE:—Paras 7 and 9 have become superflous with the issue of O. M. No. 227/16/66-AVD II dated 19-2-76 and No. 151/165-AVD dated 19-2-65 respectively.

2. The statistical returns provided for in this letter have been superseded *vide* letter dated 21-6-78.

kindly be endorsed to the Central Vigilance Commission. If a Ministry/Department is in doubt in regard to any matter, the Commission may kindly be consulted for clarification.

12. Spare copies of this letter and the forms prescribed in it are under print. The estimated requirements of both may kindly be intimated to the Commission. The requirement for the forms should be given for one year.

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(2)

Central Vigilance Commission letter No. 2/14/64-Coord., dated 31st August, 1964

[C(1)] [C(4)]

Please refer to paragraph 3 (b) of Central Vigilance Commission letter No. 9/1/64-DP., dated 13th April, 1964, regarding submission of progress reports on Vigilance cases against gazetted officers in form CVC-4*.

2. Prior to the setting up of Central Vigilance Commission, progress reports in a similar form were required to be submitted by the administrative Ministries/Departments to the Administrative Vigilance Division of Ministry of Home Affairs but only after the stage of preliminary enquiry was over and a Vigilance case had been started.

3. As stated in para. 3(b) of Commission's letter dated 13th April, 1964 it is now intended that a report in the revised form CVC-4 should be made to the Central Vigilance Commission in respect of every case in which it is decided that a preliminary enquiry should be made as soon as such action is started. In order to enable the Commission to keep itself in closer touch with the progress of a case, the further progress is to be reported using the same form every month till the prelminary enquiry is completed and thereafter at the end of every two months.

4. Progress reports in form CVC-4 have not yet commenced coming from many ministries/departments. It is requested that the revised procedure may kindly be taken note of and action taken accordingly.

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*Since revised as included in Section 'E'.

5. It is also rquested that forms CVC-4* and 5* may kindly be prepared in quadruplicate for use as follows:—

(i) One copy for the Central Vigilance Commission;

(ii) One copy for the use of the organisation or office to which the delinquent officer belongs. (This copy may not be necessary if the officer belongs to the Ministry proper);

(iii) One copy for the Vigilance unit of the Ministry;

(iv) One copy to be in circulation between Central Vigilance Commission and the Vigilance Officer of the Ministry for reporting progress and conveying comments of C.V.C. and replies, etc., of the Ministry.

(3)

Central Vigilance Commission letter No. 2/16/64-Coord., dated 7th September, 1964

[B(43-C)] [C(12)]

Please refer to para 6 of the Ministry of Home Affairs Resolution No. 24/7/64-AVD, dated 11th February, 1964 regarding appointment of Vigilance Officers.

2. The following procedure will be followed in making appointments of Vigilance Officers in Ministries/Departments, and their attached and subordinate offices and in public undertakings:—

(a) *Designation and status.*—As contemplated in paras 7 and 8 of the Central Vigilance Scheme, the officer entrusted with vigilance work in a Ministry/Departments, will be designated as Chief Vigilance Officer. Necessary steps may kindly be taken to do so. Such officers in attached and subordinate offices will continue to be designated as vigilance officers.

The Chief Vigilance Officer will ordinarily be of the rank of a Deputy Secretary to the Government of India. While the

*Since revised as included in Section 'E'.

Form CVC-5 has also been revised vide Circular letter dt. 21-6-78.

primary responsibility for the maintenance of purity and integrity will vest in the Secretary of the Ministry/Department, the Chief Vigilance officer will provide a link between the Central Vigilance Commission and the Ministries/Departments and will act as a special assistant to the Secretary in Vigilance matters. He will deal with all vigilance work arising in the Ministry and will control and coordinate the work of the Vigilance Officers of the attached and subordinate offices of the Ministry. He will also ensure that an officer of appropriate status is appointed as vigilance officer in the attached and subordinate offices of the Ministry in consultation with Central Vigilance Commission where considered necessary.

In the public undertakings, the vigilance officer may be of such rank as may be decided upon by the Head of the Undertaking in Consultation with the Central Vigilance Commission.

(b) *Appointment.*—A Chief Vigilance Officer in a Ministry/Department, whether whole-time or part-time, will be appointed in consultation with the Central Vigilance Commission. No person whose appointment is objected to by the Central Vigilance Commission will be so appointed.

While the officers who are already in charge of vigilance work may continue no fresh appointment of Chief Vigilance Officer will be made without the prior approval of the Central Vigilance Commission. Every proposal for such appointment will be addressed to the Secretary to the Central Vigilance Commission, by name, and will be accompanied by the character roll of the officer proposed to be so appointed. (In the case of officers whose character rolls are maintained by the Ministry of Home Affairs, the roll will be obtained by the Commission direct from that Ministry).

The vigilance officers in the attached and subordinate offices will be appointed in consultation with the Chief Vigilance Officer of the respective Ministry/Department. No person whose appointment as vigilance officer is objected to by the Chief Vigilance Officer of the respective Ministry/Department will be so appointed.

3. The Chief Vigilance Officer in each Ministry may be requested to review the existing arrangements for vigilance work in the Ministry and in the attached and subordinate offices to

see if they are adequate to ensure expeditious and effective disposal of vigilance work. Any suggestion, for strengthening the existing set up should be forwarded, in the first instance, to the Central Vigilance Commission, who would then forward the proposals to the Ministry concerned with its own recommendations. [Partially modified. See letter dt. 1-8-78] [C(117)].

4. In Ministries/Departments having public undertakings under their jurisdiction, the Chief Vigilance Officer may be requested to take suitable steps for the appointment or designation of an officer of suitable rank as vigilance officer in each such undertaking in consultation with the Central Vigilance Commission. The management of the public undertakings may also be requested to review their existing vigilance arrangements with a view to strengthening them, wherever necessary.

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(4)

Central Vigilance Commission letter No. 1/1/64-Coord., dated 16th October, 1964

[C(2)] [C(5)]

Kindly refer to para 4 of Central Vigilance Commission letter No. 9/1/64-DP, dated the 13th April, 1964, which prescribes the stages at which the Central Vigilance Commission will be consulted in cases relating to gazetted officers.

2. Paragraph 5 of the letter further provides that reports of enquiries conducted by the Commissioner for Departmental Enquiries will be forwarded to the Central Vigilance Commission who will then advise as to the course of further action to be taken. However, a number of enquiries are entrusted to departmental officers appointed as Inquiry Officers by the Disciplinary authorities concerned. It is found that in a number of such cases, reports of such Inquiry Officers are not being sent to the C.V.C. and the advice of the Commission is not being sought in regard to action to be taken on them.

3. It is, therefore, requested that in all cases of gazetted officers which are under enquiry or which may be enquired into hereafter by an Inquiry Officer, other than a C.D.E., the report of Inquiry Officer may be forwarded to the C.V.C. together with

the full record of the case. The Commission will then advise as to the course of further action to be taken.

4. The following sub-para may kindly be added to para 4 of the Central Vigilance Commission letter referred to in paragraph 1 above to incorporate the above instructions:—

"(vi) The report of the Inquiry Officer conducting oral enquiry into any departmental proceedings should be forwarded, together with the full record of the case, to the Central Vigilance Commission who will advise the disciplinary authority concerned as to the course of further action to be taken."

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(5)

Central Vigilance Commission letter No. 1/1/64-Coord., dated 20th November, 1964

[C(4)]

[C(8)]

I am directed to invite a reference to paragraph 9 of the Central Vigilance Commission letter No. 9/1/64-DP, dated 13th April, 1964, regarding consultation with the Commission in respect of anonymous and pseudonymous complaints.

2. Inquiries have been received from several Ministries as to the stage or stages at which it is necessary to consult the Central Vigilance Commission in respect of anonymous and pseudonymous complaints against gazetted officers. In accordance with paragraph 9 of the letter referred to above, an administrative authority may, at its discretion, decide to make an enquiry into such a complaint or to drop it or may seek the advice of the Central Vigilance Commission. However, once an administrative authority has decided to make an inquiry into a complaint the result of such inquiry should be intimated to the Commission in accordance with the instructions contained in paragraph 4(ii) or 4(iii), as the case may be, for advice as to the course of further action to be taken.

3. It has been pointed out that for deciding whether a complaint was deserving of an inquiry, it is often necessary particularly when a complaint related to a subordinate organisation, to make an informal and confidential enquiry to find out

whether the allegations made in it have any substance in them. Such informal fact-finding, it has been suggested, should not be treated as a preliminary inquiry and the administrative authority should have the discretion, if it thought fit, to drop a complaint after such informal inquiry.

It would be difficult to make any distinction between one enquiry and another which precedes a formal charge sheet. Once a complaint or information is found worthy of being pursued, such action should be regarded as a preliminary inquiry and the report of such inquiry should under para 4(ii) of C.V.C. letter of 13th April, 1964, be sent to the Commission for advice in regard to further action.

(This has been partially modified by letter dt. 12-7-76)

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(6)

Central Vigilance Commission letter No. 2/26/64-Coord., dated 30th November, 1964

[C(90)]

While examining the reports of Inquiring Officers appointed under Rule 15(2a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the Commission has had occasion to observe that even on charges admitted by the delinquent officers, evidence is led by the prosecution resulting in considerable delay in inquiry proceedings. If the written statement of the delinquent officers had been examined by the Inquiry Officer or presenting officers in time, it would have been possible to eliminate such oral or documentary evidence as might have been originally intended to be adduced, but which became unnecessary in consequence of admissions or averments in the written statements.

2. Rule 15(4) of the C.C.S. (C.C.A.) Rules says:—

"On receipt of the written statement of defence, or if no such statement is received within the time specified, the Disciplinary Authority, or as the case may be, the Board of Inquiry or the Inquiring Officer may inquire into such of the charges *as are not admitted*."

The Inquiry Officer is thus not required to go into such of the charges as are admitted by the delinquent officer. As a necessary corollary the written statements of the delinquent officers need to be carefully examined at the outset of the enquiry and the presenting officers, who should be acquainted with the papers, should draw the attention of the inquiring officer to relevant admissions in the written statements. To enable the presenting officer to present the case properly it is necessary for the disciplinary authority to ensure that he is supplied copies of the statements of the charges and allegations and written statement of the delinquent officer well in time.

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(7)

Central Vigilance Commission letter No. 2/6/65-Coord., dated 17th February, 1965

[C(141)]

I am directed to say that the Committee on Prevention of Corruption had recommended *inter alia* that the Chief Technical Examiner's Organisation functioning in the Ministry of Works & Housing should be transferred to the Central Vigilance Commission so that its services may be easily available to the Central Bureau of Investigation and in enquiries which are caused to be made under the direction of the Central Vigilance Commission. The Government of India have accepted the recommendation and the Chief Technical Examiner's Organisation was transferred to the administrative control of the Central Vigilance Commission with effect from 1st November, 1964, *vide* Ministry of Works & Housing letter No. 52/3/64-Admn. I(i), dated 28th October, 1964.

2. Hitherto the functions of the Chief Technical Examiner consisted mainly of providing a system of internal and concurrent technical audit of the civil works of the Central Public Works Department and assisting the Central Bureau of Investigation in the investigation of cases of a technical nature. On occasions he was also called upon to assist in carrying out technical examination of specific works for certain Government Undertakings and semi-Government authorities. With the transfer of the organisation to the Central Vigilance Commission, the jurisdiction of the Chief Technical Examiner has become co-terminous with that of the Commission and he could be entrusted

at the discretion of the Central Vigilance Commission with investigation of complaints, etc., relating to civil works pertaining to any Ministry/Department of the Government of India including those relating to works of public undertakings and corporate bodies, etc., falling within the jurisdiction of the Central Vigilance Commission. Requests for the assistance of the Chief Technical Examiner in any investigation, complaints, etc., should be addressed to the Central Vigilance Commission.

3. Separate Engineering Cells, with functions similar to those of the Chief Technical Examiner, have been functioning under the Ministry of Railways and the Ministry of Defence and the Central Bureau of Investigation have been taking the assistance of these cells in respect of investigations into works pertaining to the two Ministries. The existing arrangements in this regard will continue for the present.

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(8)

Central Vigilance Commission letter No. 1/3/65-Coord., dated 10th March, 1965

[C(5)]

[C(9), C(22)]

Please refer to para 4(v) of the Commission's letter No. 9/1/64-DP, dated the 13th April, 1964 which states that in all cases relating to Gazetted Officers the Central Vigilance Commission would advise whether disciplinary proceedings should be instituted for imposing a major or a minor penalty. In respect of proceedings for imposition of a major penalty, the records are examined by the Commission again after the inquiry is concluded, as the inquiry reports have to come to the Commission. No clear instructions exist about the procedure to be adopted in cases where on the basis of the Commission's advice proceedings have been initiated for imposition of a minor penalty. In such cases, the appropriate course is to consult the Commission after the receipt of the written statement of defence of the delinquent officer before the case is referred to U.P.S.C., where this step is necessary. The disciplinary authority should indicate his provisional conclusions while making such a reference. Further, where statments have been made in the reply of the officer to controvert the allegations, the Commission's attention may specifically be drawn to the correct facts.

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(9)

Central Vigilance Commission letter No. 1/2/65-Coord., dated 20th March, 1965

[C(8)] [C(10)]

I am directed to refer to paragraph 3 of the Central Vigilance Commission letter No. 9/1/64-D.P., dated the 13th April, 1964 on the subject mentioned above and to say that in view of the instructions issued in the Ministry of Home Affairs O.M. No. 151/1/65-AVD, dated the 19th February, 1965 regarding treatment of anonymous and pseudonymous complaints, the quarterly statements showing the disposal of such complaints, in form CVC 2 need not be sent to the Commission in future. The words "(including anonymous Complaints)" appearing in the title of form CVC 1(a) may also be deleted.

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(10)

Central Vigilance Commission letter No. 2/17/65-Coord., dated 16th July, 1965

[C(9)] [C(20)]

I am directed to invite a reference to paragraph 3(a) of Central Vigilance Commission letter No. 9/1/64-D.P., dated 13th April, 1964, requesting Ministries/Departments to forward to the Central Vigilance Commission quarterly statistical returns of complaints and vigilance cases dealt with by them and by their attached and subordinate offices, etc.

2. On occasions a complaint pertaining to an employee of an attached or subordinate office is received in the Ministry proper and is forwarded for enquiry or investigation to the employing office. There is a likelihood of such a complaint or case being included in the statistics of both the Ministry proper and the office concerned. To avoid any duplication in statistics it has been decided that every case should be included in the report/return of the office in which the person concerned is employed. Thus cases relating to persons working in a Ministry proper should appear in its return while those relating to the

persons employed in the attached and subordinate offices, etc., under the Ministry should be shown in the return of the respective organisation. An exception to this procedure will be made only in respect of a case in which the Ministry receiving a complaint against an officer employed in any of its subordinate offices decides to conduct enquiry itself without informing the office concerned. Such a case should be included in the statistics of the Ministry proper only.

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(11)

Central Vigilance Commission letter No. 1/15/65-Coord., dated 20th July, 1965

[C(30)]

I am directed to say that according to the existing instructions which were issued by the Ministry of Home Affairs before the setting up of the Central Vigilance Commission (*vide* Ministry of Home Affairs Circular D.O. No. 42/14/63-AVD, dated the 2nd August, 1963) an oral enquiry against Gazetted Officers in whose case the President was the appointing authority could be entrusted to one of the Commissioners for Departmental Enquiries if the Administrative Ministry/Department so desired.

2. The matter has been considered further and it has been decided that departmental disciplinary proceedings against Gazetted Officers of all grades, involving lack of integrity or an element of Vigilance, in which an oral enquiry is to be made under rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 or under the corresponding disciplinary rules, such enquiry should hereafter be entrusted to one of the Commissioners for Departmental Enquiries. All requests for the services of the Commissioners for Departmental Enquiries for this purpose should be addressed to the Central Vigilance Commission.

3. It has further been decided that such enquiries in the case of officials of public sector undertakings, corporate bodies etc., having status comparable to that of Gazetted Officers should also be entrusted to one of the Commissioners for Departmental Enquiries in the Central Vigilance Commission. It is requested that necessary instructions may kindly be issued to all public sector undertakings, corporate bodies, etc., with which your Ministry is concerned.

4. If in any particular case, it is not proposed to entrust an enquiry for any special reasons to a Commissioner for Departmental Enquiries, the Ministry/Department/Public undertaking/corporate body concerned may approach the Central Vigilance Commission indicating the circumstances which would warrant exception being made together with the name and designation of the officer proposed to be appointed as Enquiry Officer.

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(12)

Central Vigilance Commission letter No. 2/16/64-Coord., dated 24th August, 1965

[C(3)] [C(13)]

Please refer to this Commission's letter No. 2/16/64-Coord., dated the 7th September, 1964, regarding appointment of Chief Vigilance Officers.

2. In accordance with paragraph 2(b) of the letter referred to above, it is necessary to consult the Central Vigilance Commission before an officer is appointed as a Chief Vigilance Officer. Occasions may, however, arise when it becomes necessary to make short-term arrangements in respect of such an appointment. It has been decided that suitable arrangements in vacancies for three months or any shorter period, due to leave or other reasons, may be made by the appropriate authority concerned and that the concurrence of the Central Vigilance Commission need not be obtained. The nature and duration of the vacancy and the name of the officer who is entrusted with the duties of Chief Vigilance Officer in such cases may, however, please be reported to the Commission.

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(13)

Central Vigilance Commission letter No. 2/16/64-Coord., dated 25th September, 1965

[C(12)] [C(45)]

Please refer to this Commission's letter No. 2/16/64-Coord., dated 24th August, 1965, in which the procedure for making short term appointment to the post of Chief Vigilance Officer

was intimated. The procedure indicated in para 2 of the letter, may also be followed, *mutatis mutandis* in the case of appointment of Vigilance Officers in the Attached/Subordinate Offices of the Ministries/Departments etc.

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(14)

Central Vigilance Commission letter No. 1/6/66-Coord., dated 5th April, 1966

[C(105)]

[Please see Note below]

Please refer to paragraph 10 of the summary of conclusions reached at the meeting of Chief Vigilance Officers held on 25th and 26th February, 1966, which was forwarded to you with this Commission's letter No. 5/5/65-Coord., dated 14th March, 1966.

2. A set of *revised forms of statistical returns and progress reports which have been adopted after taking into account the decisions taken at the meeting of the Chief Vigilance Officers and the comments and suggestions received is enclosed. These supersede the forms prescribed with the Commission's letter No. 9/1/64-DP, dated 13th April, 1964 and may kindly be brought into use from 1st April, 1966. An explanatory note (appended below) describing certain important changes incorporated in the new forms is enclosed.

3. Arrangements are being made to get the new forms printed in sufficient number. It is requested that the estimated requirement of your Ministry/Department/Union Territory including those of your attached and subordinate offices, public undertakings, corporate bodies etc., for a period of one year may kindly be intimated to the Commission as early as possible.

Explanatory note describing important changes incorporated in the revised forms of statistical returns and progress reports

1. *Types of the cases to be included in the statistical returns.*—Cases in which there is an allegation of corruption of

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*See Section 'E'.

Note: All the forms prescribed in this letter have been revised and will be found in the latest Volume II -Part I.

improper motive or if the alleged facts indicate an element of corruption or improper motive, should be included in the statistical returns. Cases involving purely administrative or technical lapses such as late attendance, disobedience, insubordination, negligence, lack of supervision, operational or technical lapses and irregularities etc. do not come within the purview of the Commission. However, difficulty sometimes arises in distinguishing vigilance cases from non-vigilance cases. In all such cases discretion has to be exercised by the administrative authority. Any case which *prima facie* has a vigilance angle or which has the potentiality of having a vigilance angle should invariably be referred to the Commission for advice and included in statistical returns.

Complaint and Vigilance Case

2. A clear distinction has been made between a 'complaint' and a 'vigilance case'. A complaint should be treated as such till the stage of enquiry/investigation is over. At that stage it will either be dropped or it will be decided to institute a regular departmental proceedings or to launch criminal prosecution. In either case it will be treated as having taken the shape of a vigilance case. This demarcation between the two stages will avoid overlapping.

The date of commencement of a vigilance case should, in cases in which Central Vigilance Commission is consulted, be the date on which the Commission tendered its advice. In other cases it should be the date on which disciplinary authority decides to initiate disciplinary proceedings.

In case, of criminal prosecution, the commencement of a vigilance case should be reckoned from the date of C.V.C's advice in cases in which consultation of C.V.C's. is prescribed and in the other cases from the date on which sanction is accorded to the launching of prosecution by the competent authority.

A case registered by the Central Bureau of Investigation as a 'PE' or 'RC' will be regarded as under enquiry/investigation and will be included in the return of complaints.

Register of Complaints (Form CVC-1)

3. Every Vigilance Unit will maintain a record of complaints etc. dealt with by it in form CVC-1.

Bigger departments having large number of complaints may have two registers, one for gazetted and the other for non-gazetted officers.

The date of receipt of complaints in an office and their registration in the register, may be shown across the page on the commencement of each day's entries as is done in the Section Diary of ordinary receipts.

At the end of each quarter an abstract of complaints received and dealt with and those which are pending should be prepared in form CVC-3 and pasted in the register. The abstract should be checked and signed by Chief Vigilance Officer/Vigilance Officer. Another copy of the form CVC-3 will, at the stage be forwarded to the Commission as a quarterly return.

Any anonymous or pseduonymous complaint sent by the Central Vigilance Commission to any administrative authority for enquiry and report should be included in the register and also in the quarterly statistical return.

Register of Vigilance Cases (Form CVC-2)

4. Each Unit will maintain a register of vigilance cases dealt with by it and of action taken on them in form CVC-2.

Bigger departments having a large number of vigilance cases may have two registers, one for gazetted and the other for non-gazetted officers.

At the end of each quarter an abstract should be prepared in form CVC-4 and pasted in the register. The abstract should be checked and signed by CVO/VO and a copy of it sent to the Central Vigilance Commission as a quarterly return.

Quarterly statistical returns of complaints and vigilance cases (CVC-3 and CVC-4)

5. These returns will be forwarded to the Central Vigilance Commission by the last date of the month following the quarter to which they relate.

Progress report on vigilance cases against Gazetted Officers (Form CVC-5)

6. This form should be started as soon as a decision is taken to institute departmental proceedings or criminal prosecution in

a case. It should be completed in triplicate and one copy sent to the Commission immediately it is started. Thereafter progress in the case should be reported by the middle of every alternative calendar month, i.e. by 15th February, 15th April, 15th June, 15th August, 15th October and 15th December.

The form provides for space for entering C.V.C.'s reference No. This should be done invariably to facilitate scrutiny in the Commission.

Quarterly return of prosecution cases against Non-Gazetted Officers

7. The progress report of criminal proceedings in respect of non-gazetted officers has been discontinued. Instead a quarterly statistical return will be furnished in respect of such cases in new form CVC-6. This return will also be submitted to the Commission along with other statistical returns by the last day of the month following the quarter to which it relates.

Quarterly statistical return of public servants under suspension

8. This return will be submitted along with the other return by the last day of the month following the quarter to which it relates.

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(15)

Central Vigilance Commission letter No. 1/7/66-Coord., dated 14th April, 1966

[C(50), C(122), C(126)]

Doubts have been raised by certain Ministries/Departments whether the Central Vigilance Commission should be consulted in cases involving administrative or technical lapses on the part of public servants. This question was also discussed at the meeting of CVOs held on 25th and 26th February, 1966.

2. In consonance with the spirit of the Scheme of the Central Vigilance Commission, only those cases in which there is an allegation of corruption or improper motive or if the alleged facts indicate an element of corruption or improper motive need be referred to the Commission. Cases involving purely administrative or technical lapses e.g., late attendance, disobedience, insubordination, negligence, lack of supervision or operational or

technical lapses and irregularities etc., need not, therefore, be referred to the Commission. However, difficulty sometimes arises in distinguishing vigilance cases from non-vigilance cases. In all such cases discretion has to be exercised by the administrative authority. Broadly speaking it may be stated that any case which *prima facie* has a vigilance angle or which has the potentiality of having a vigilance angle should be referred to the Commission for advice and included in the statistical returns.

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(16)

Central Vigilance Commission letter No. 2/10/66-Coord., dated 21st April, 1966

At the meeting of Chief Vigilance Officers held on the 25th and 26th February, 1966, the Central Bureau of Investigation drew attention to the need for—

(a) close liaison and co-operation between the Chief Vigilance Officers and Central Bureau of Investigation; and

(b) prompt reference to Special Police Establishment in matters involving corrupt practices.

2. Both the Central Bureau of Investigation and the Chief Vigilance Officers receive information about the activities of officers in various departments/offices from diverse sources. The need for close liaison and co-operation between the Chief Vigilance Officers and Central Bureau of Investigation in pursuing such reports is, therefore, obvious. It was accordingly agreed that such information should be cross-checked at appropriate intervals to keep officers in both the wings fully posted.

3. It was further agreed at the meeting that the Chief Vigilance Officers should go through the complaints etc., received by them quickly and concentrate on those which appear to have some substance. In cases which require investigation by the Central Bureau of Investigation, a prompt reference should be made to them to safeguard against the possibility of suspect officer tampering with or destroying incriminating evidence against him.

4. It is requested that suitable steps may kindly be taken in the above directions.

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(17)

Central Vigilance Commission letter No. 2/5/66-Coord., dated 18th May, 1966

Investigations often get held up or delayed on account of the reluctance or delay on the part of departmental authorities to make the records available for various reasons. Sometimes the departmental authorities express their inability to release the records without the prior permission of the superior authority. Sometimes the S.P.E. is requested to take photostat or attested copies of documents without realising that the Special Police Establishment necessarily require the original records for the purpose of investigation. The authenticity of attested or photostat copies could be contested by delinquent officer, thereby hampering the progress of investigation.

2. The matter was discussed at the meeting of the Chief Vigilance Officers held in February, 1966 and it was agreed that the arrangements obtaining in various departments/offices for making records available to the Central Bureau of Investigation may be reviewed by them and suitable steps taken to streamline them to ensure that records required by the C.B.I. are made available to them quickly. Where necessary, the departmental authority could keep an attested or photostat copy for meeting urgent departmental need.

3. It would be appreciated if appropriate action could kindly be initiated accordingly under intimation to the Commission.

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(18)

Central Vigilance Commission letter No. 2/5/66-Coord. (ii), dated 19th May, 1966

[C (39)]

One of the reasons for delay in initiating departmental proceedings on the basis of reports of investigation by Central Bureau of Investigation has been found to be the non-receipt or late receipt by disciplinary authorities of original documents from the C.B.I. The need for such documents being made available to the disciplinary authorities without delay has acquired added significance in view of the procedural changes introduced by the revised C.C.S. (C.C.A.) Rules, 1965, in the interest of expeditious processing of departmental proceedings.

2. An investigating officer who comes into possession of documents in the course of a search or when they are produced before him by a party or a witness is responsible for the safe custody of the documents and for their production in the court of law in posecution cases and finally for restoring the documents to the person from whose custody they were seized. The C.B.I. would therefore naturally not like to part with orignal documents. At the same time it is necessary that disciplinary authority should be able to look into them before coming to a conclusion regarding action to be initiated against a delinquent official.

3. The C.B.I. have taken certain steps to eliminate delays in this process. For example, every Superintendent of Police has been provided with a duplicate set of keys so that he could, if need be, make the documents available to the administrative authority concerned in the absence of the investigating officer.

4. The question was discussed at the meeting of the Chief Vigilance Officers held in February, 1966. It was agreed that the following further measures be adopted for avoiding delays in the matter:—

(i) The original documents which can be sent by the C.B.I. to the administrative authorities should be sent to them along with the report after retaining copies, if necessary.

(ii) In respect of documents which the C.B.I. would not like to part with for any reason, attested copies of them or extracts from them or gist of their contents may be supplied to the disciplinary authorities instead of the original. In case the disciplinary authority would still like to see the original documents, the C.B.I. may be requested to make them available for inspection.

(iii) If there are any documents which are not capable of being copied or even a gist of which cannot be prepared, the administrative authority may inspect such documents by arrangement with the C.B.I.

(iv) In the case of reports which are sent by the C.B.I. to the Central Vigilance Commission, copies of documents or extracts from them or a gist of their contents will be forwarded to the Commission along with the report. If the Central Vigilance Commission would like to see the originals of any document the same may be called for by the Commission from the C.B.I./administrative authorities.

(18-A)

Central Vigilance Commission letter No. 2/9/66-Coord., dated the 20th May, 1966

[B(72B)]

Every Government officer has a house-keeping section which generally deals with the local purchase of stores etc. This work entails dealing with the public and presents opportunities for corruption. It was agreed at the meeting of the Chief Vigilance Officers held in February, 1966 that as a preventive measure it would be useful to locate such focal points in each organisation and to take steps to ensure that the staff employed at such points was not allowed to continue there indefinitely.

The O & M Division had issued a circular in 1957 suggesting rotational transfers of staff every three years. However, it appears that the suggestion was not being observed in practice. It was agreed at the meeting of the Chief Vigilance Officers that such rotational transfers specially in sections which have to deal with the public should be effected as rule. The retention of a person in the same seat in such sections, beyond a term of three years should not be allowed except with the approval of the higher authority. It is requested that suitable steps may kindly be taken to give effect to the above decision.

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(19)

Central Vigilance Commission letter No. 2/8/65-Coord., dated 7th June, 1966

Case studies undertaken by the Commission have shown that the progress of oral enquiries in disciplinary cases conducted by the Commissioners for Departmental Enquiries is often held up due to the delay in nominating Presenting Officers by the disciplinary authorities. It has further been observed that the proceedings in many cases are interrupted by the (i) transfer of Presenting Officers in the course of the enquiry; and (ii) inability of the Presenting Officers to be present on the date and time fixed for enquiry due to their other official duties.

2. Public interest demands that such inquiries should be processed expeditiously. To this end it would be helpful if the Presenting Officers under rule 14(5)(c) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 could be nominated along with the appointment of Inquiry Officer under

rule 14(2) *ibid.* It would be appreciated if suitable action could kindly be taken by your Ministry/Department, etc., to eliminate, as far as possible, the causes which tend to protract the oral enquiries.

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(20)

Central Vigilance Commission letter No. 2/38/65-Coord., dated 8th June, 1966

[C(10)]

[C(21)]

I am directed to refer to the Commission's letter No. 9/1/64-DP dated the 13th April, 1964, laying down the procedure regarding consultation with the Central Vigilance Commission.

2. A point has been raised whether in respect of gazetted officers of Class II, in respect of whom disciplinary powers vest in the Head of an attached and subordinate Offices, should be referred to the Central Vigilance Commission for advice direct or through the administrative Ministry concerned. After due consideration it has been decided that in respect of such gazetted officers the Heads of Departments may correspond direct with the Central Vigilance Commission. A copy of the reference made to the Commission should, however, be endorsed to the administrative Ministry for information.

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(21)

Central Vigilance Commission letter No. 1/12/66-Coord., dated 21st June, 1966

[B(64A)C(20)]

[C(51)]

The procedure for dealing with prosecution cases was indicated in para 2(c) of the Central Vigilance Commission letter No. 9/1/64-D.P., dated the 13th April, 1964. It appears, however, that the procedure laid down therein is not being adhered to in practice.

2. Under section 6 of the Prevention of Corruption Act, 1947 and in cases covered by section 197 of the Code of Criminal

Procedure, prior sanction of the competent authority is required for launching prosecution in a court of law against a Government servant by Police authorities. The sanctioning authority is expected to satisfy itself whether a *prima facie* case exists or not and, if it does exist, whether the launching of the prosecution will be in public interest or not. The need and desirability of coming to a decision in the matter expeditiously is obvious. Any undue delay in giving the requisite sanction would hold up the launching of the prosecution in the court of law. The sooner the Government servant involved is brought to book or cleared of the charges, the better it would be for the morale of public services.

3. Under the instructions already in force, cases in which sanction for prosecution under any law for the time being in force is required to be given in the name of the President, the Special Police Establishment is required to forward its report of investigation to the Central Vigilance Commission and to send simultaneously a copy thereof to the administrative Ministry/Department concerned. The latter are required to send their comments to the Central Vigilance Commission within 14 days of the receipt of the report of the Special Police Establishment. The administrative Ministries/Departments are requested to forward their comments as soon as possible and in any case not later than 14 days after the receipt of the report of the Special Police Establishment. In cases in which they may have no specific comments to make, a reply to that effect should be sent to the Commission without delay so that the Commission could consider the matter further without waiting any further.

4. In cases where sanction for prosecution is required to be accorded by an authority other than the President, the Special Police Establishment is required to forward its report to such authority direct. The administrative Ministries/Departments may kindly impress upon subordinate authorities under their control the desirability of coming to a conclusion as to whether a *prima facie* case exists or not as soon as possible and to issue the sanction without delay if they agree with the recommendation of the Special Police Establishment. If it is not proposed to accord sanction to prosecution, the case together with the views of the competent authority and other relevant records should be referred by the authority concerned to the Central Vigilance commission as soon as possible, in any case not later than 14 days from the date of the receipt of the report from the Special Police Establishment. In such cases, further action should be taken in

the light of the advice tendered by the Central Vigilance Commission.

5. In exceptional cases in which the competent authority finds that it will take more than two weeks to come to a conclusion, the local head of the Special Police Establishment branch concerned should be informed about the time by which it would be feasible to communicate the decision.

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(22)

Central Vigilance Commission letter No. 1/13/65-Coord, dated 19th September, 1966

[C(8)]

[C(38A) C(59)]

A reference is invited to the Central Vigilance Commission letter No. 1/3/65-Coord., dated 10th March, 1965, laying down the procedure to be followed in consulting the Commission in cases in which proceedings have been initiated for imposition of a minor penalty on the basis of Commission's advice.

2. The procedure has been reviewed in the light of revised rule 16(1) (b) of the C.C.S. (C.C.A.) Rules, 1965, which provides for holding an enquiry in the manner laid down in sub-rules (3) to (23) of rule 14 *ibid,* in cases in which the disciplinary authority is of the opinion that such enquiry is necessary and it has been decided that in supersession of the instructions contained in the circular letter No. 1/3/65-Coord., dated 10-3-1965, referred to above, the following procedure should be followed in such cases in future.

3. In cases in which proceedings have been instituted for imposing a minor penalty on the basis of the advice of the Commission, the Commission should be consulted after the written statement of defence of the delinquent official has been received under rule 16(1) (a). In cases in which the disciplinary authority, after giving thought to the representation of the delinquent official, considers that an oral enquiry is necessary, such enquiry should be entrusted to one of the Commissioners for Departmental Enquiries. The Commission will advise the disciplinary authority as to the further course of action on the findings of the enquiry.

4. In cases in which the disciplinary authority does not consider an oral enquiry necessary, the proceedings should be referred to the Commission for advice with the written statement of defence and the provisional conclusions reached thereon by the disciplinary authority. Where any statements have been made in the reply of the Officer to controvert the allegations, it is requested that the Commission's attention may be specifically drawn to the correct facts.

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(23)

Central Vigilance Commission letter No. 1/8/66-Coord., dated 23rd September, 1966

[C(29)]

Para 8 of the Ministry of Home Affairs' Resolution No. 24/7/64-AVD, dated the 11th February, 1964, setting up the Central Vigilance Commission, provides that the Commission will take the initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.

2. Certain Ministries/Departments/Public Undertakings have gathered an impression that the Commission has some special machinery to initiate prosecution in such cases. The real object of this provision, however, is to see that the Commission, while its main function is to assist in the maintenance of integrity and morale on the part of public servants, also assists in taking steps against malicious, vexacious or totally unfounded complaints as they would result in harassment and demoralisation of the services.

3. A false complainant can be prosecuted under Section 182 of the Indian Penal Code. Under Section 195(1)(a) of the Code of Criminal Procedure, a court will take cognizance of an offence under Section 182 of the I.P.C. only on a complaint, in writing, of the public servant to whom such a false complaint was made or some other public servant to whom he is subordinate. Accordingly whenever any false complaint against a public servant is made to any officer of the Ministry/Department/Undertakings, a complaint will have to be lodged in writing with a court of competent jurisdiction by the public servant to whom such false complaint was made or by some other public servant to whom he is subordinate.

4. Having regard to the manner in which it functions, the object can be fulfilled by the Commission—

(i) by advising appropriate action on its own initiative when such cases of malicious, vexacious or totally unfounded complaints come to its notice while the Commission is dealing with the matters that come before it; and

(ii) when a Ministry/Department/Undertaking refers such a case to the Commission for advice.

In either case the administrative authorities should keep in mind that the Commission has to look into the circumstances of each case and after examining it arrive at the conclusion whether the matter is one which calls for prosecution or other appropriate action. In cases referred to the Commission for advice, the Commission does not proceed merely on the basis of a decision to prosecute already arrived at by the Ministry/Department/Undertaking but applies its own mind. It is, therefore, necessary that in such cases also the Commission is consulted. In matters of prosecution for a false complaint or other appropriate step, what the Commission does and can do is only to tender advice as to the course of action to be taken since it itself cannot initiate action.

5. If a complaint of corruption or lack of integrity against a public servant is found to be false, complete record should be sent to the Commission, who will advise whether the complainant should be prosecuted in a court of law or some other action be taken against him.

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(24)

Central Vigilance Commission letter No. 2/18/66-Coord., dated 27th September, 1966

The Central Civil Services (Classification, Control and Appeal) Rules under which departmental enquiries are conducted in disciplinary cases against Central Government employees provide for the appointment of a presenting officer by the disciplinary authority to present its case before the inquiring authority in support of the articles of charge.

2. The disciplinary rules of a public undertaking against one of whose employees an enquiry was entrusted to a Commissioner for Departmental Enquiries of the Central Vigilance Commission did not provide for the appointment of a presenting officer. The disciplinary authority accordingly did not nominate a presenting officer. The absence of a presenting officer would have deprived the inquiring officer of the benefit of his assistance on behalf of the disciplinary authority in the presentation of the case and cross-examination of defence witnesses.

3. The Commission has examined the disciplinary rules of the public undertaking concerned. Though the rules did not provide for the nomination of a presenting officer, there was nothing in them to preclude the nomination of such an officer in departmental enquiries. The Commission accordingly advised the undertaking to appoint a presenting officer as such an apopintment would be conducive to a satisfactory conduct of the enquiry. The Commission has also advised the undertaking that where the Special Police Establishment enquires into a case, they may be requested to provide a presenting officer and in other cases the undertaking might nominate a presenting officer from its own set-up to assist the inquiring authority. The advice has since been accepted by the public undertaking concerned.

4. It is requested that public undertakings, and statutory bodies under the administrative control of your Ministry/Department may be advised to take action on the above lines in regard to enquiries entrusted to Commissioners for Departmental Enquiries.

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(25)

Central Vigilance Commission letter No. 3/2/66-Coord., dated 14th November, 1966

Please refer to item No. 3 of the "Summary of conclusions" reached at the meeting of Chief Vigilance Officers held on 25th and 26th February, 1966 forwarded with this Commission's letter No. 5/5/65-Coord., dated 14-3-1966.

2. The matter was taken up with the Ministry of Home Affairs who, in consultation with the Ministry of Law, have advised against circulation of the names of Government servants whose services are terminated by notice who resign under Rule 5

of the Central Civil Services (Temporary Service) Rules, 1965. The object of circulating the names of such Government servants would obviously be to disqualify them from further Government service, because on enquiry they were suspected of misconduct. Imposition of such disqualification would amount to penalty under the guise of innocuous circular and would be struck down by court under Article 16(1) of the Constitution. The termination of services in such circumstances would also be struck down as disguised removal entailing disqualification from further Government service.

3. The Ministry of Home Affairs have, it may be added, recently amended the standard form for verification of character and antecedents providing therein a column requiring information, if any, about the past service and the reasons for termination and resignation. The suppression of this information by the entrants to Government service could not be ruled out, but in view of the legal position adumbrated above the modification of the existing instructions on the proposed lines would not be feasible.

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(26)

Central Vigilance Commission letter No. 1/11/66-Coord., dated 22nd November, 1966

[C(41)]

Under Rule 14(6) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the disciplinary authorities are required to forward the following documents to the inquiring authority:—

(a) a copy of the articles 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 the Government servant;

(c) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(d) evidence providing the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(e) a copy of the order appointing the "Presenting Officer".

It has been observed that quite often these documents are not forwarded to the Commissioners for Departmental Enquiries along with the orders appointing them as inquiring authority and there is inevitable delay in holding the equiries.

2. The following are some other omissions which tend to hold up the progress of enquiries:—

(i) In many cases, the Government servants do not submit the written statement of defence. This fact, however, is not communicated to the inquiring authority;

(ii) Copies of the statements of witnesses, if any, referred to in sub-rule (3) of Rule 14 are not sent to the Commissioners for Departmental Enquiries;

(iii) Under sub-rule (7) *ibid* the inquiring authority is to fix the date of the first hearing after taking into consideration the date of receipt of articles of charge, etc., by the accused officer. No authentic indication is given to the Commissioner for Departmental Enquiries to prove the delivery of these documents to the accused officer;

(iv) Sub-rule (14) of Rule 14 provides that the witnesses shall be examined by or on behalf of the Presenting Officer. If for any reason he is unable to come, some other suitable officer should be deputed to examine the witnesses on behalf of the Presenting Officer under intimation to the Commissioner for Departmental Enquiries concerned in advance.

3. The procedural omissions detailed above may kindly be brought to the notice of disciplinary authorities and they may be requested to comply with the provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, in the interest of the expeditious conduct of departmental enquiries.

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(27)

Central Vigilance Commission letter No. 2/25/66-Coord., dated 9th December, 1966

The Commission has been anxious about expeditious disposal of departmental enquiries and to this end suitable instructions have been circulated from time to time for the guidance

of disciplinary authorities. Where the persons involved in departmental enquiries are placed under suspension, there is all the more need for speedy action. It would be desirable, in order to avoid undue hardship to the public servants concerned, to deal with such enquiries on priority basis at all stages.

It is, therefore, requested that in regard to oral enquiries which are to be entrusted, in accordance with the prescribed procedure, to Commissioners for Departmental Enquiries, where an officer happens to be under suspension, the fact should be specifically mentioned in the reference to the Commission stating at the same time the actual date of suspension order so that Commissioners for Departmental Enquiries may be able to give priority to such a case.

2. It is further requested that the cases *pending* with Commissioners for Departmental Enquiries may kindly be scrutinised and particulars of officers under suspension, if any, involved in them together with the date of suspension order in each case intimated to the Commission *by the end of this month* to facilitate early disposal of such enquiries.

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(28)

Central Vigilance Commission letter No. 6/13/64-Coord. (C), dated 27th April, 1967

[C(1)]

The Committee on Prevention of Corruption in Recommendation No. 98 have recommended as follows:—

> "In cases investigated by the Special Police Establishment the inquiry record should be made available to the Special Police Establishment quickly so that they may be in a position to review the adequacy of the punishment if the Special Police Establishment recommend a review and, if there is a difference of opinion, the matter should be referred to the Central Vigilance Commission."

2. The recommendation has been considered carefully by the Central Vigilance Commission and the Ministry of Home Affairs and it is agreed that action on the lines indicated below would ensure expeditious decision in disciplinary matters.

3. In accordance with the procedure outlined in Commission's letter No. 9/1/64-D.P., dated the 13th April, 1964 final reports in all cases relating to Gazetted Officers investigated by the Special Police Establishment have to be sent by the Special Police Establishment to the Central Vigilance Commission, who will advise the administrative authority as to the further course of action to be taken. The administrative authority acts normally in accordance with the advice of the Commission. This procedure would not, therefore, leave room for a difference of opinion to arise between the Special Police Establishment and the administrative authority. Hence, in such cases, there would be no necessity for the Special Police Establishment to examine the records of inquiry relating to Gazetted Officers with the object of suggesting a review. As regards non-gazetted officers, if in any case the Special Police Establishment consider that the action taken by the administrative authority is inadequate, they should refer the case to the Central Vigilance Commission. The Commission will call for the records from the administrative authority, if it considers such a step necessary. After examining the proposal of the Special Police Establishment in the light of the circumstances disclosed by the records, or brought to its notice by the administrative authority, the Commission will tender appropriate advice.

4. It is, however, considered necessary that in all cases where disciplinary action has been initiated on the basis of a report received from the S.P.E., the following documents should be made available to the S.P.E. soon after a final decision has been taken by the disciplinary authority:—

(a) a copy of the report of the inquiring authority, if any, and, where the disciplinary authority is not the inquiring authority, a statement of its findings together with brief reasons for disagreements, if any, with the findings of the inquiring authority;

(b) a copy of the advice, if any, given by the Union Public Service Commission and where the disciplinary authority does not accept the advice of the Commission, a brief statement of the reasons for such non-acceptance; and

(c) orders passed by the disciplinary authority.

5. The Commissioners for Departmental Enquiries are being instructed to take out an extra copy of their report to enable the

administrative authority to forward a copy to the S.P.E. at the appropriate stage.

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(29)

Central Vigilance Commission letter No. 1/8/66-Coord. (C), dated 7th August, 1967

[C(23)]

Please refer to Commission's letter of even number dated 23-9-1966 on the above subject.

2. In view of the queries received from various authorities it is clarified that it is not obligatory to make a reference to the Commission before action is taken on false complaints. This would apply to cases of false complaints against Gazetted Officers as well as non-gazetted officers. At the same time it would be open to the concerned authorities to seek the advice of the Commission in any case and the Commission can, wherever it finds it proper or necessary, take the initiative in such matters and recommend the course of action.

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(30)

Central Vigilance Commission letter No. 66/3/67-C, dated 31st August, 1967

[C(11)]

Please refer to recommendations Nos. 75(viii) and 97 of the Report of the Santhanam Committee, which are reproduced below:—

Recommendation No. 75(viii)

"All departmental proceedings against Class I and Class II officers and other important cases should be entrusted to Commissioners for Departmental Inquiries attached to the Central Vigilance Commission. For this purpose, the number of Commissioners for Departmental Inquiries should be suitably increased and officers from different departments like Railways, Central Public Works Department, Income-tax, Central Excise and

Customs, Posts & Telegraphs should also be appointed as Commissioners for Departmental Inquiries."

Recommendation No. 97

"Departmental Inquiries against all Gazetted Officers should be conducted by Commissioners for Departmental Inquiries. Such inquiries against non-gazetted employees should also be conducted and completed expeditiously."

2. These two recommendations have been considered and the following decisions have been taken in consultation with the Ministry of Home Affairs:—

(1) In respect of Gazetted Officers (and officers of comparable status in public sector undertakings, corporate bodies, etc.), cases involving lack of integrity or an element of vigilance should be entrusted to a Commissioner for Departmental Enquiries for oral enquiries in accordance with this Commission's Circular No. 1/15/65-Coord., dated 20-7-65 (copy enclosed for ready reference).

(2) Oral inquiries in vigilance cases in respect of non-gazetted officers should be entrusted to departmental officers, unless the Central Vigilance Commission advises otherwise in any case. Where both Gazetted and non-gazetted officials are involved in common proceedings, oral inquiry would be entrusted to a Commissioner for Departmental Enquiries.

(3) Disciplinary proceedings without any vigilance angle should normally be entrusted to departmental officers for oral inquiry. However, in cases where the disciplinary authority feels that the issues are complicated, or have peculiar features the authority may approach the Central Vigilance Commission setting out the facts in detail and request for nomination of a Commissioner for Departmental Enquiries.

(4) Any suitable officer, possessing necessary qualifications and experience, belonging to All India Services, Central Services or State Government cadres will be eligible for appointment as Commissioner for Departmental Enquiries.

(5) Every effort should be made by Commissioner for Departmental Enquiries and by Departmental Inquiry Officers to conduct and complete all inquiries expeditiously.

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(31)

Central Vigilance Commission letter No. 61/3/67-C, dated 8th January, 1968

Rule 14(8) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, provides that the Government servant against whom disciplinary proceedings have been initiated may take the assistance of any other Government servant to present the case on his behalf. While no permission is needed by the official who is charge-sheeted to secure the assistance of any other Government servant, it is necessary for the latter to obtain the permission of his controlling authority to absent himself from office in order to assist the accused Government servant during the enquiry. It would avoid delay in granting such permission, if the Inquiry Officers take the initiative in the matter of informing the controlling authority in this regard. It is, therefore, suggested that as soon as an accused Government servant informs the Inquiry Officer of the name and other particulars of the Government servant who has been chosen by him to assist in the presentation of his case, the Inquiry Officer should intimate this fact to the controlling authority of the Government servant concerned. Further, the date and time of the hearing should be intimated to the said controlling authority sufficiently in advance adding that if, for any compelling reason it is not practicable to relieve the Government servant concerned on the due date or dates to attend the enquiry, the Inquiry Officer, the accused official and the Government servant chosen for assisting the accused official may be advised well in time.

2. It is requested that necessary action may please be taken to ensure that all Inquiry Officers follow the procedure outlined above. A copy of the circular is also being endorsed to the Commissioners for Departmental Enquiries.

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(32)

Central Vigilance Commission letter No. 61/2/68-C, dated 29th January, 1968

[B(57)] [C(33) B(119)]

In the light of the procedure of consultation with the Commission laid down in circular No. F. 118/7/66-AVD, dated 28th September, 1967, issued by the Ministry of Home Affairs, all public undertakings may be advised that for purposes of statistical returns to be forwarded to the Commission, they need include in the category of "Gazetted Servants" only "(1) *Gazetted* Govt. servants on deputation with them irrespective of their emoluments, and (2) other employees drawing Rs. 1,000 p.m. and above".

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(33)

Central Vigilance Commission letter No. 62/2/68-C, dated 20th February, 1968

[C(32)] [B(119)]

Please refer to your letter No. F. 5(20)/67-Vig., dated the 5th February, 1968. The circular of the Commission No. 61/2/68-C, dated the 29th January, 1968 had only the object of indicating who should be included in the "Gazetted category" of employees so far as public undertakings are concerned. It does not follow nor was it the intention that no returns need be sent by the public undertakings about the rest of their staff. As has been the practice till now the information in respect of the rest of the staff will be given in the column meant for "non-gazetted" employees. However, the *individual* progress reports in form CVC-5 need not hereafter be sent in respect of any employee of the public undertakings, who is not a Gazetted Government servant or is not drawing a pay of Rs. 1,000 or above per month.

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(34)

Central Vigilance Commission letter No. 60/2/68-C, dated 4th March, 1968

The Commission often receives queries from disciplinary authorities regarding progress of oral inquiries in cases pending

before Commissioners for Departmental Enquiries. To avoid unnecessary correspondence but at the same time to keep the disciplinary authorities posted with the progress of oral inquiries, the Commission considered that the best way would be for the Presenting Officers to send brief reports of the work done at each hearing to the disciplinary authority. Since cases investigated by the S.P.E., which are presented by their own officials, form a substantial portion of the cases for oral inquiry, a suggestion to this effect was first made to the Central Bureau of Investigation. They have accepted the suggestion and issued suitable instructions, a copy of which is enclosed. The Commission would request that instructions on the same lines may be issued by the Ministries in so far as Presenting Officers other than S.P.E. officials are concerned. The form prescribed by the C.B.I., after deletion of 1st and 3rd columns, may be adopted for use.

C.B.I. letter No. 21/2/64-PD, dated 5th February, 1968

Attention of the S.P.E. Branches is invited to para 2 of this office circular No. 22/13/68-III(v), dated the 11th January, 1961, in accordance with which Progress Reports are required to be sent to Head Office at monthly intervals in respect of cases reported for regular Departmental action until the case is closed. At present such reports are required to be sent to Head Office in respect of Gazetted Officers and for other cases where the Head Office consider this to be necessary for any particular reasons.

2. It has been intimated by the C.V.C. that frequent enquiries are being received by them from the disciplinary authorities about the stage of the enquiries pending with Commissioners for Departmental Enquiries. The Commission has suggested this could be avoided if Presenting Officers send brief reports to the disciplinary authority after each hearing of the case intimating the progress made.

3. This purpose would be served if a report regarding the proceedings on each date fixed for a departmental enquiry against a Gazetted Officer is sent in the enclosed proforma [revised *vide* C-34-A] by the Presenting Officer and a copy of it is also endorsed to the Vigilance Officer of the Ministry/Department concerned. This report will be sent to Head Office and V.Os. in case of disciplinary proceedings against all G.Os. whether these are conducted by the Commissioners for Departmental Enquiries

or some officer, nominated by the disciplinary authority, in which a C.B.I. Officer acts as a Presenting Officer.

(34-A)

CBI letter No. 21/33/69-PD dt 16th October, 1971 to all Supdts of Police, etc.

Attention of the S.P.E. Branches is invited to this Office circulars No. 21/2/64-PD dated 5-2-68 & 1-3-69 in accordance with which Progress Reports in respect of the cases pending before the C.D.Es. are required to be submitted by the Presenting Officer to Head Office (Zonal DIG) and the C.V.O. of the Ministry concerned in the prescribed proforma.

In order to ensure that the branch office case files contain a proper running record of the progress of *all* cases in RDA (G.Os as well as NGOs) it has been decided to modify this proforma slightly and make it cover *all* cases in RDA (both G.O. & N.G.O.) and include details for every date of hearing. A copy of the revised proforma is sent herewith for information [Please see E-35]. While the reports in respect of the cases pending before the C.D.Es. will continue to be sent to the Head Office and the C.V.O. of the Ministry concerned by the Presenting Officer, the reports in respect of cases pending RDA against NGOs will be placed on the case files in the branch office after perusal by SP and *need not* be sent to the Head Office.

While sending the reports to Head Office in respect of the cases pending before the CDE, the instructions contained in our circular No. 21/14/9-PD dated 8-6-1971 may be strictly followed. The progress reports should be filed in Part-II of the case file as already intimated in our circular No. 40/12/71-PD dated 18-8-1971.

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(35)

Central Vigilance Commission letter No. 60/11/68-C, dated 18th December, 1968

[C(46)]

At present no consistent principle is being followed in regard to the level at which references are made to the Commission for

advice/reconsideration of advice. Sometimes references are made in a routine manner by junior officers and it becomes necessary for the Commission to return them with a view to obtain the benefit of the views of the disciplinary authority before tendering advice. In order to ensure that cases falling within the purview of the Commission are referred to the Commission after due consideration at appropriate level in the establishment of the disciplinary authority, it is requested that references may be made only at the levels indicated below:—

(*a*) *Cases asking for advice*	
(*i*) Ministries and Departments of Government of India.	Chief Vigilance Officer. (Where Chief Vigilance Officer is of a status higher than that of a Deputy Secretary to Government and an officer of the status corresponding to a Deputy Secretary assists him in Vigilance work, references can be made by the said officer).
(*ii*) Attached and Subordinate Offices	Head of Department. (Where Head of Department is assisted in vigilance work by an officer corresponding to status of a Deputy Secretary in the Ministry, reference can be made by the said officer).
(*iii*) Union Territories	Chief Vigilance Officer/Director of Vigilance.
(*iv*) Public Undertakings, Statutoty Corporation, etc.	Chief Vigilance Officer.
(*b*) *Cases where reconsideration of advice tendered by the Commission is asked for*	
(*i*) Ministries and Departments of Government of India.	As in (a) (i) but only with the approval of Secretary.
(*ii*) Attached and subordinate offices	Head of Department.
(*iii*) Union Territories	Chief Secretary.
(*iv*) Public Undertakings, Statutory Corporations, etc.	Managing Director of the Head of the Undertakings, as the case may be.

2. The Commission would also request that when files are being referred to Commission, the name and designation of the officer referring the file may be indicated clearly.

(36)

Central Vigilance Commission letter No. 60/15/69-C, dated 23rd July, 1969

[C(38)]

The Estimates Committee in Para 3.16 of their 84th Report have expressed concern at the delay that occurs in the C.B.I./ Ministries in sending reports of enquiry or investigation in cases referred to them by the C.V.C. and have suggested that the Commission should devise a proper system of watching the progress of enquiries/investigation with a view to see that these are not unduly prolonged.

2. It is requested that reports of investigation into complaints or allegations should normally be sent to the Commission within three months from the date of the receipt of the reference from the Commission. This limit may be extended to six months in the case of complaints entrusted to the C.B.I. since cases entrusted to them involve detailed investigation. If due to unavoidable reasons it is not possible to complete the investigation within the specified period, the C.V.O. of the Ministry/Department of the D.I.G., C.B.I., as the case may be, should personally look into the matter and send an interim report to the Commission giving the progress of the investigation, reasons for delay and the date by which the final report could be expected.

3. In respect of references made by the Commission to C.B.I./ Ministries etc. for clarification and/or comments, it may please be ensured that the clarifications/comments requested by the Commission are sent within a period not exceeding six weeks, if such clarifications/comments are not received within this period, the Commission will tender advice on such material as is available.

4. Cases in which sanction for prosecution is required to be issued in the name of the President, the C.B.I. sends its reports to the Commission and simultaneously endorses a copy to the administrative Ministry/Department concerned. Under the instructions already in force, the administrative Ministry/Department are required to send their comments to the Commission within 14 days. It is requested that this time limit may be adhered to strictly.

(37)

Central Vigilance Commission, O.M. No. 1/1/70-R, dated 20th January 1970

The undersigned is directed to say that under the extant instructions, cases against officers of Public Undertakings, Statutory Corporations etc. drawing a monthly salary of Rs. 1,000 and above have to be referred to the Commission for advice at various stages set out in the Circular No. 9/1/64-D.P., dated 13th April, 1964, as amended from time to time. A point has been raised whether consultation with the Commission is obligatory in respect of an officer who may be drawing a salary of less than Rs. 1,000 p.m. when the complaint was received or disciplinary proceedings were initiated against him but during the pendency of the proceedings, his salary is raised to Rs. 1,000 per month. It is clarified that as a general rule even if the Commission has not been consulted at the time proceedings are initiated against the public servant concerned on the ground that he draws a basic pay of less than Rs. 1,000 the Commission should be consulted if by the time the Inquiry Officer's report is received, the public servant's basic pay exceeds Rs. 1,000 p.m. This is only logical because the Commission has to be consulted at two stages and there is no reason why the Commission's jurisdiction should not be attracted merely because at the earlier stage it was not obligatory to consult the Commission. It is accordingly requested that in all such cases the Inquiry Officer's report, together with connected records of the case, may be sent to the Commission for advice as to the further course of action to be taken

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(37-A)

Central Vigilance Commission O.M. No. 62/10/70-C, dated 18th June, 1970

[C(116)]

[Cancelled, vide letter dt. 1-8-78]

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(38)

Central Vigilance Commission O.M. No. 1/15/70-R, dated 2nd July, 1970

[C(36)]

I am to refer to para 3 of the Commission's circular letter No. 60/15/69-C, dated 23rd July, 1969 on the above subject and

to say that it has been brought to the notice of the Commission that the Ministries/Departments have often to collect information from their lower formations and in some cases they have also to examine the records in the possession of Central Bureau of Investigation with the result that they are not able to furnish their comments to the Commission within the stipulated period of six weeks.

2. The Commission considers that it should normally be possible for the Ministries/Departments etc. to furnish comments/clarifications to the Commission within a period not exceeding six weeks even where the original records in the possession of Central Bureau of Investigation are to be examined or some information is to be collected from lower formations, but if in any particular case, it is not possible to do so within the stipulated period, the Chief Vigilance Officer of the Ministry/Department or the Deputy Inspector General, Central Bureau of Investigation concerned should, after satisfying himself of the reasons for delay, write to the Commission for extension of time. If no such request is received within the stipulated period, the Commission will tender advice on the basis of the material before it without waiting for the comments.

(38-A)

Central Vigilance Commission letter No. 1/14/70-R, dated the 20th July, 1970

C(22)

[C(59)]

It has been observed that the Ministries/Departments etc. are not following any uniform procedure in making a second reference to the commission where it had occasion to advise on the report of Enquiry Officer. The following procedure is, therefore, indicated for observance in respect of cases in which the President is the disciplinary authority:—

(i) If, after considering the Enquiry Officer's report, the Central Vigilance Commission advises further action as for imposition of a major penalty, but the disciplinary authority disagrees with its advice, the case should be referred back to the Commission.

(ii) If the disciplinary authority has issued a show-cause notice to the accused public servant in accordance with

the advice of the Central Vigilance Commission in a case falling within the category (i) above but after considering the public servant's reply if the disciplinary authority is of the view that he should be exonerated, a reference to the Central Vigilance Commission should be made by the disciplinary authority before taking a final decision.

(iii) If, after considering the reply of the accused public servant, the disciplinary authority feels that a penalty should be imposed, the question of further reference to the Central Vigilance Commission should not arise as the case will have to be referred to the Union Public Service Commission and it is not the practice for the disciplinary authority to express any view, at that stage, on the quantum of penalty.

*(iv)

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(39)

Central Vigilance Commission O.M. No. 4/29/69-R, dated 31st August, 1970

[C(18)]

Please refer to para 4 of the Commission's Circular letter No. 2/5/66-Coord.(ii), dated the 19th May, 1966 on the above subject. The Commission has on further consideration decided that it is not necessary for the Central Bureau of Investigation to send the original documents as a matter of course to the disciplinary authorities. Few disciplinary authorities will have the time to go into detail and as the Commission communicates its advice to the disciplinary authority after full examination of the facts, there should be no real necessity for the latter to re-examine the same facts in detail. Besides, sending the records in original out of the C.B.I's custody also involves risk of loss in transit or pilferage of important documents from the Department. If in any particular case the disciplinary authority after the receipt of the Commission's advice feels the necessity of examining the records in original, it should make a request for the particular records to the C.B.I., and steps should be agreed upon between the requisitioning authority and the C.B.I. to ensure the safety of the records.

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*Superseded *vide* Commissions' letter No. 1/14/70-R, dated 20th September, 1973.

2. In respect of cases relating to non-gazetted personnel and employees of Corporate Central Undertakings drawing a salary of less than Rs. 1,000 p.m. which are ordinarily not referred to the Commission, disciplinary authorities will exercise their discretion in deciding whether the entire records should be called for or only those which relate to points which in their view need clarification.

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(40)

Central Vigilance Commission's O.M. No. 4/62/70-R, dated 28th January, 1971

[C(57)]

At the Third Orientation Course for Chief Vigilance Officers held at the National Academy of Administration, Mussoorie in November, 1970 it was suggested that the Central Vigilance Commission should invariably give to the disciplinary authority an opportunity of comments on the report of the Central Bureau of Investigation before the Commission records its advice on the report. The Commission does ask for the views of the disciplinary authorities in quite a number of cases but it is aggreeable to waiting for the comments of the disciplinary authorities before considering the Central Bureau of Investigation's reports. As all Departments are aware, considerable delay takes place at various stages in dealing with vigilance cases and in order not to hold up cases indefinitely, the undersigned is directed to state that if no comments are received from the disciplinary authorities within a fortnight of their receipt of the reports of the C.B.I., the Central Vigilance Commission will presume that the disciplinary authorities have no comments to make.

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(41)

Central Vigilance Commission O.M. No. 4/42/72-R, dated 21st November, 1972

[C(96)]

[C(26)]

The Commission in its circular No. 1/11/66-Coord., dated the 22nd November, 1966 had requested that the following documents should be sent to the Commissioners for Departmental En-

quiries along with the orders appointing them as Inquiring Authorities:—

(a) a copy of the articles of charge;

(b) a copy of the detailed statement of imputations of misconduct or misbehaviour;

(c) a copy of the written statement of defence, if any, submitted by the public servant;

(d) a copy of the list and statements of witnesses;

(e) evidence of the delivery of the documents to the public servant, and

(f) a copy of the order appointing the 'Presenting Officer'.

2. The Commissioners for Departmental Enquiries have, however, brought to the notice of the Commission that quite often these instructions are not followed and they have to enter, after the receipt of the orders appointing them as the Inquiring Authorities, into protracted correspondence with the disciplinary authorities to secure these documents and in the process, the departmental enquiries are held up. In order to expedite the progress of oral enquiries, it is therefore stressed that the Chief Vigilance Officers should ensure that the required documents are invariably forwarded to the Commissioners for Departmental Inquiries *along* with the orders appointing them as the Inquiring Authorities.

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(42)

Central Vigilance Commission No. 1/11/71-R, dated 22nd November, 1972

[C(100)]

Sometimes cases are referred to the Commission for advice a few days prior to the superannuation of the officer concerned without any specific mention about the event. Retirement is a relevant circumstance which has to be taken into account while deciding on the future course of action in a case. In order to facilitate appropriate action, it is requested that the following information may please be superscribed on all the reports/cases sent to the Commission for advice :

(1) Name of the officer.

(2) Service to which he belongs.

(3) Pay of the officer.

(4) Date of superannuation.

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(43)

Central Vigilance Commission O.M. No. 4/39/72-R, dated 12th December, 1972

The question of stay or adjournment of oral enquiries in disciplinary proceedings conducted by the Commissioners for Departmental Enquiries when the delinquent officer goes to a Court of Law on a writ petition or otherwise has been considered in consultation with the Ministry of Law. Such proceedings need *not* be adjourned or stayed in the following circumstances:—

(i) on receipt of a notice under Section 80 of Civil Procedure Code;

(ii) on receipt of intimation that the impugned officer proposes to file a writ petition;

(iii) on receipt of a mere show-cause notice (or Rule Nisi) from a Court asking:

(a) why the petition should not be admitted; or

(b) why the proceeding pending before Disciplinary Authority/Inquiring Authority should not be stayed; or

(c) why the writ or an order should not be issued.

2. The proceedings should be stayed only when a Court of competent jurisdiction issues an injunction or clear order staying the same.

3. No disciplinary proceedings, however, should be started subsequent to the initiation of the Court proceedings if they have the effect of deterring or intimidating the petitioner from proceeding with the court case.

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(44)

Central Vigilance Commission O.M. No. 4/5/71-R, dated 30th December, 1972

Minor penalty proceedings are initiated under Rule 16(1) of the C.C.S. (C.C.A.) Rules, 1965 by informing the Government

servant concerned in writing of "the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal". On receipt of the representation of the Government servant concerned, the disciplinary authority may record his findings on each imputations of misconduct or misbehaviour *or* decide to hold an oral inquiry as provided in Rule 16(1) (b) *ibid.* Holding of the oral inquiry under Rule 16(1)(b) is optional, *i.e.,* entirely according to the discretion of disciplinary authority.

2. If, however, the disciplinary authority decides that an oral inquiry is necessary, such an inquiry is to be held in the manner laid down in sub-rules (3) to (23) of Rules 14 *ibid.* Sub-rule (3) of Rule 14 provides that the disciplinary authority shall draw up or cause to be drawn up—

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charges;

(ii) a statement of the imputations of misconduct or misbehaviour 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;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

Under Sub-rule (4) of Rule 14, the above documents have to be delivered to the delinquent Government servant to enable him to submit his written statement of defence.

3. It is now confirmed in consultation with the Ministry of Law that in such cases a formal charge sheet, as required in the manner laid down in Sub-Rule (3) and (4) of Rule 14 of the C.C.S. (C.C.A.) Rules, 1965 should be issued to the Government servant concerned.

(45)

Central Vigilance Commission O.M. No. 1/5/72-R, dated 9th January, 1973

[C(13)] **[C(55), C(77)]**

Reference Commission's circular No. 2/16/64-Coord., dated 7th September, 1964 regarding procedure of consultation with the Commission about the appointment of Chief Vigilance Officers.

2. Most of the Chief Vigilance Officers in Ministries/Departments etc. are part-time and the Commission does not have any information about the duties, apart from vigilance work entrusted to them. While it will be desirable that a Chief Vigilance Officer should not have functions other than those of vigilance this cannot be avoided when the workload does not justify a whole-time Chief Vigilance Officer. It will not be expedient, for obvious reasons, to lay down any hard and fast rules in the matter. It will, however, be useful to have information in regard to various functions assigned to Chief Vigilance Officers in order to ensure that their ability to deal with vigilance work adequately is not impaired. It has accordingly been decided, in consultation with the Department of Personnel, that Ministries/Departments etc. while sending proposals to the Commission for appointment of Chief Vigilance Officers should also furnish information in regard to the duties entrusted/proposed to be entrusted to the officer concerned. If any change is desired to be effected in the duties of the Chief Vigilance Officer subsequent to his appointment, the Commission should be appraised of the same beforehand.

3. These instructions will also be applicable to Chief Vigilance Officers of Public Undertakings/Nationalised Banks.

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(46)

Central Vigilance Commission letter No. 1/2/73-R, dated 23rd January, 1973

[C(35)]

Please refer to the Commission's circular No. 60/11/68-C dated 18-12-1968 which indicates *inter* alia the level at which the cases should be referred to the Commission for re-considerations of its advice.

These instructions, as far as they relate to references made by Attached/Subordinate Offices, have been reviewed by the Commission in the light of actual experience. Such references for reconsideration should be made with the approval of the Secretary of the Ministry/Department if he is at the same station, and only otherwise with the approval of the Head of the Department concerned. However, if the Secretary of the Ministry/Department happens to be the appellate or Reviewing Authority, it will not be imperative for the Ministry/Department to offer comments on the references for reconsideration.

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(47)

Central Vigilance Commission letter No. 4/33/72-R, dated 15th February, 1973

The question whether officers and employees of the Nationalised Banks are 'public servants' for the purpose of the Indian Penal Code and the Prevention of Corruption Act, 1947 has been considered in consultation with the Department of Banking and the Ministry of Law.

2. For purposes of offences under Chapter IX of the Indian Penal Code, employees of the Nationalised Banks are clearly 'public servants' under Section 46-A of the Banking Companies Act, 1949 (added by amending Act No. 95 of 1966). Even after nationalisation, the 14 Nationalised Banks continue to operate under the 1949 Act and the officers/employees of Nationalised Banks are therefore 'public servants' for the purpose of Chapter IX of the I.P.C.

3. On the question whether employees of Nationalised Banks are 'public servants' for the purpose of the Prevention of Corruption Act, 1947, the Ministry of Law have advised that each of the 14 Nationalised Banks, set up under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 being a body corporate is a corporation established by a Central Act and that the employees of these Banks are therefore 'public servants' within the meaning of Section 21, clause 12(b) of I.P.C. read with Section 2 of the Prevention of Corruption Act, 1947.

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(48)

Central Vigilance Commission letter No. 4/41/72-R, dated 14th March, 1973

Delay in production and inspection of listed and additional documents often holds up the progress of domestic enquiries. In C.B.I. cases, the Investigating Officer takes into custody all the records by which each Article of Charge is proposed to be sustained. No uniform practice in this regard is, however, followed in cases emanating from the Ministries/Departments/Public Undertakings, etc. and there is avoidable delay in showing the listed documents to the Public servant under enquiry. It is, therefore, suggested that in cases where preliminary or fact-finding enquiries are conducted by departmental authorities, the Vigilance Organisation should take in possession all listed documents before serving the Articles of Charge on the public servant concerned. This arrangement would enable the Presenting Officer appointed by the disciplinary authority to make documents available for inspection of the officer under enquiry at the earliest opportunity during oral enquiry.

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(49)

Central Vigilance Commission letter No. 4/8/73-R, dated 27th March, 1973

The Fifth Orientation Course for the Chief Vigilance Officers held at the Lal Bahadur Shastri Academy of Administration, Mussoorie recommended as follow :-

> "Privilege of documents asked for by the Commissioners for Departmental Enquiries should be claimed with the approval of the Head of the Department".

Rule 14(12) of the CCS(CCA) Rules, 1965 provides that the Inquiring Authority shall call for the documents asked for by the accused officer for his defence from the authority in whose custody or possession the documents are kept. Under proviso to sub-rule (13) *ibid*, if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or the security of the State, it shall inform the Inquiring Authority accordingly.

2. The Ministry of Law have held that under the existing framework of the rules no authority other than the Head of Department can be said to have the custody or possession of documents of the Department though such custody or possession may be "constructive". In the circumstances a subordinate authority is not competent to claim privilege in respect of the requisitioned documents. The authority concerned should transmit the requisition to the Head of the Department for his decision and communicate the same to the Inquiring Authority as soon as possible.

(50)

Central Vigilance Commission letter No. 1/9/71-R, dated 29th March, 1973

[C(15)]

[C(71)]

Please refer to the Commission's letter No. 1/7/66-Coord., dated the 14th April, 1966 (copy enclosed for ready reference) on the above subject. Certain Ministries/Departments have enquired whether cases where officers commit procedural lapses in violation of the instructions laid down in the Manuals of their office procedure etc. resulting in extra expenditure or loss to Government need to be referred to the Commission for advice.

2. It is clarified that if there is negligence on the part of the officer, which has resulted in substantial loss to the Government, then irrespective of whether the case figures in the Audit Paras and also comes before the Public Accounts Committee of Parliament or not, the case should be referred to the Commission for advice. If, however, it is a case of simple procedural lapse without involving loss to the Government, it need not be referred to the Commission. In doubtful cases the administrative authority may seek further clarification from the Commission.

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(51)

Central Vigilance Commission letter No. 1/18/70-R, dated 30th April, 1973

[C(21)]

[C(53)]

Under the extant instructions in cases where the C.B.I. proposes to launch prosecution against any public servant who is not removable from his office except by or with the sanction of the Central Government (the President), the C.B.I. forwards its final report of investigation to the Central Vigilance Commission and

simultaneously endorses copy of the report to the administrative Ministry/Department/Undertaking concerned. The latter are required to send their comments to the Commission within 14 days from the receipt of the report. After considering the report of the CBI and the comments, if any, received from the administrative Ministry/Department/Undertaking concerned, and any other relevant record, the Commission advices the Department of Personnel whether or not prosecution should be sanctioned by the President. In cases in which the sanction for prosecution is to be issued by an authority other than the President, the CBI forward their final report of investigation direct to such competent authority. If the said authority does not propose to accord the sanction sought for by the CBI, it is required to refer the case to the Commission for advice.

2. In cases investigated by the CBI where public servants of different categories are involved, some of whom are removable by the President while others by an authority lower than the President, the C.B.I. has suggested that the cases should be referred to the Commission for advice as this would ensure uniformity. There are obvious advantages in the suggestion. It accordingly been decided in consultation with the Department of Personnel that in cases investigated by C.B.I., where there are several co-accused, and sanction for prosecution in respect of some of them is required under any law to be issued in the name of President and in respect of others by other authorities, the C.B.I. will send its final report in such a case in respect of all the accused officers to the Commission and will simultaneously endorse copies of reports to the administrative Ministries/Departments/Public Undertakings/Nationalised Banks concerned. The administrative Ministries/Departments/Public Undertakings/Nationalised Banks concerned should forward their comments to the Commission as soon as possible and in any case not later than 14 days from the receipt of the CBI report. In cases in which the administrative Ministry/Department/Undertaking/Nationalised Banks have no specific comments to make, a reply to that effect should be sent to the Commission without delay. In respect of officers for whose prosecution sanction of the President is required, the Commission will communicate its advice to the Department of Personnel who will issue the necessary sanction. In respect of other officers, the Commission will advise the competent authorities concerned to accord the necessary sanction for their prosecution. A copy of such advice will also be sent to the Department of Personnel for information. In such cases, the CBI will not file charge-sheets in the court piece-meal. The charge sheets will be filed by the CBI

in the court of competent jurisdiction against all the officers involved together after sanctions for prosecution have been received from the competent authorities concerned.

3. The above instructions also apply to the Public Sector Undertakings and the Nationalised Banks.

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(52)

Central Vigilance Commission letter No. 4/8/73-R, dated 9th May, 1973

Please refer to this Commission's letter of even number dated the 27th March, 1973 on the above subject.

In a recent case a High Court quashed the order of dismissal on the ground *inter alia* that the accused officer was not given a copy of the report of the Investigating Officer of the C.B.I. even though he had appeared as a prosecution witness. The Investigating Officers of the C.B.I. submit their detailed reports to the Branch S.P., C.B.I. The final report of the C.B.I. sent to Disciplinary Authority as also to the Commission, though based on the report of the Investigating Officer, is not the same document as the Investigating Officer's report. The report of the Investigating Officer as also the final report of the C.B.I. are confidential documents and are not produced before the Inquiring Authorities. If the accused officer makes a request for the production/inspection of the report of the Investigating Officer or the report of the S.P., S.P.E., the Inquiring Authority should, instead of dealing with it himself, pass on the same to the disciplinary Authority concerned, who may claim 'privilege' of the same in "public interest" as envisaged in proviso to sub-rule (13) of Rule 14 of C.C.S. (C.C.A.) Rules, 1965.

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(53)

Central Vigilance Commission letter No. 1/14/73-R, dated 24th July, 1973

[C(1), C(51)] [C(5)]

Reference is invited to para 8 of the Commission's circular letter No. 9/1/64-DP, dated the 13th April, 1964 in which mode

of communication between the Ministries/Departments and the Central Vigilance Commission has been laid down. The practice of referring files to the Commission for advice without a self-contained note has not been found very helpful as notings and counter-notings by various officers have to be studied in the Commission's office and sometimes, the final views of the Ministry are not clear. It has, therefore, been decided that a self-contained note should be sent to the Commission clearly mentioning the facts of the case and the specific point(s) on which Commission's advice is sought. It may be added that the self-contained note is not meant to be a substitute for the present practice of sending the files and records. All relevant documents/files of the case may also therefore be sent along with the self-contained note.

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(54)

Central Vigilance Commission letter No. 1/17/73-R, dated 27th July, 1973

The Commission has been receiving several references from the Nationalised Banks seeking its approval for referring cases to the Central Bureau of Investigation for investigation. The types of cases which should generally be entrusted to the C.B.I. are enumerated in Para 1.2 of Chapter III of Vigilance Manual. The Chief Vigilance Officers, subject to the administrative instructions issued by their Chief Executives, have complete discretion to refer these types of cases to the Central Bureau of Investigation and it is not necessary to seek Commission's prior permission. Such cases accordingly need not be referred to the Commission. Action on the report of the C.B.I. will, however, be taken by the Bank authorities only after obtaining the advice of the Central Vigilance Commission as per extant instructions.

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(55)

Central Vigilance Commission letter No. 1/15/73-R, dated 30th July, 1973

[C(3),(45)] [C(152)]

Please refer to para 4 of the Commission's Circular letter No. 2/16/64-Coord., dated the 7th September, 1964 under which Ministries/Departments were requested to take suitable steps to

appoint the Chief Vigilance Officers in the Public Undertakings in consultation with the Central Vigilance Commission. It has been observed that no uniform practice is being followed by the Public Undertakings in appointing the Chief Vigilance Officers.

2. In the Ministries/Departments an officer of the status of Deputy Secretary or above is appointed as C.V.O. An officer of suitable status has to be appointed as Chief Vigilance Officer in each Public Undertaking in consultation with the Commission. The Public Undertakings are not following any uniform method about the appointment of their Chief Vigilance Officers. It may be difficult to lay down any criteria for determining the status of the officer to be appointed as Chief Vigilance Officer as this depends on the size and the quantum of vigilance work in each Undertaking. While primary responsibility for the maintenance of purity and integrity vests in the Chief Executives of the Undertakings, the Chief Vigilance Officer provides a link between the Central Vigilance Commission and the Public Undertakings and acts as a Special Assistant to the Chief Executive in vigilance matters. It is, therefore, desirable that a senior officer is appointed as Chief Vigilance Officer to function directly under the Chief Executive of the Undertaking.

3. The Public Undertakings may please review the appointments of Chief Vigilance Officers in accordance with the above instructions. The Public Undertakings who have not so far appointed Chief Vigilance Officers in consultation with the Commission are requested to send their proposals to the Commission at an early date.

4. While forwarding proposals for the appointment of Chief Vigilance Officers, duties entrusted/proposed to be entrusted to the officer may also be indicated as laid down in Commission's letter No. 1/5/72-R, dated 9-1-1973. The proposals may be addressed by name to Shri V. S. Gupta, Director, Central Vigilance Commission and should be accompanied by the Confidential Record of the officer proposed to be appointed.

(Partially modified vide letter dt 24-3-81)

[C(136)]

5. The Government Resolution No. 24/7/64-AVD, dated 11-2-64 setting up the Central Vigilance Commission provides that the Central Vigilance Commissioner will have the powers to assess the work of the Chief Vigilance Officers and the assessment will be recorded in the Character Rolls of the officers.

6. Proposals regarding appointment of Vigilance Officers in the Units of the Undertaking need not be referred to the Commission unless the Chief Executives wishes to consult the Commission in any particular individual case.

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(56)

Central Vigilance Commission letter No. 6/3/73-R, dated 20th August, 1973

[C(145)]

It has been noticed that often the Ministries/Departments etc. omit to inform the Central Bureau of Investigation/Central Vigilance Commission in proper time in regard to writ petitions filed by public servants in disciplinary cases initiated on the basis of the C.B.I.'s reports and on which the Commission had occasion to tender its advice. In a few such cases, it had been observed that factual position/procedural aspects of the rules governing the disciplinary proceedings were not properly placed before the Courts and, in consequence, their adverse judgements have resulted in various administrative difficulties. To obviate such a situation, it has been decided in consultation with the Department of Personnel and Administrative Reforms that whenever a writ petition is field by a public servant, the affidavit-in-opposition should be filed in consultation with the Central Bureau of Investigation provided the case was investigated into by them. The C.B.I. should also be associated in defending the writ petition and for rendering such assistanace which may be useful in arguing the case before the Courts.

2. The Central Vigilance Commission tenders advice to the Disciplinary Authorities in confidence and its advice is a confidential communication. As laid down in para 3.3 of Chapter XI and para 10.4 Chapter XII of the Vigilance Manual (Volume I), the advice of the Commission should neither be shown to the accused public servant nor any mention of suc advice be made in any formal order. If the accused officer asks for a copy of the advice tendered by the Commission, it should be explained to him that even though the Commission's advice has been obtained, it is a confidential communication and in any case, the disciplinary authority had applied/was applying its own mind in arriving at the final decision.

3. In cases where the Central Vigilance Commission has tendered its advice on the Report of the Commissioner for De-

partmental Enquiries, or the oral enquiry is pending before a C.D.E. and in the event of Government servant going to Court for seeking redress of any grievance arising out of such proceedings, the Commission should be informed about writ petition field by the charged officer. The Commission would, *where considered necessary,* advise the Disciplinary Authority in regard to the drafting of the affidavits-in-opposition, mainly with reference to the matters dealt with in the course of hearing before the Commissioners for Departmental Enquiries; about procedural aspects of departmental enquiries or advice tendered by its on the C.D.E.'s report.

[This has been amplified by letter dated 13-8-81].

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(57)

Central Vigilance Commission letter No. 4/62/70-R, dated 10th September, 1973

[C(40)] [C(58)]

The Commission's Circular of even number dated 28-1-1971 provides that the Ministries/Departments, etc. may send their comments on the Central Bureau of Investigation report to the Central Vigilance Commission. In respect of the employees of the Public Undertakings and Nationalised Banks, the C.B.I. now sends its reports direct to the Chief Executives of the Undertakings/Nationalised Banks. The Public Undertakings/Nationalised Banks may, therefore, send their comments on the reports of C.B.I. to the Commission within 30 days from the receipt of such reports. If the Undertaking/Bank has no comments to offer, the Commission may be informed accordingly. If no comments are received within the specified time, it will be presumed that the Public Undertaking/Nationalised Bank has no comments to make.

[This has been partially modified by C(67)].

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(58)

Central Vigilance Commission letter No. 4/42/73-R, dated 19th September, 1973

[C(57),C(40)] [C(63)]

The Commission has been greatly concerned over delay in the disposal of disciplinary proceedings. Analysis of the different

reasons which lead to delay in departmental proceedings show that if the instructions issued by the Commission about the processing of disciplinary cases are followed, considerable part of the delay can be reduced. Some of the stages where delay can be cut short are discussed below :—

(i) In cases where major penalty proceedings are advised on the investigation reports, the delinquent officer is asked to submit his written statement of defence within 10 days from the receipt of the Memorandum of articles of charge. Generally delinquent officers make a request for inspection of listed documents for preparing their written statement of defence. According to the scheme of C.C.S. (C.C.A.) Rules, 1965 the delinquent officer need not be shown documents at this stage to enable him to prepare his defence statement in reply to charge-sheet. In this connection extracts from the advice of the Ministry of Law are reproduced below:—

"The scheme of rule 14 of the C.C.S.(C.C.A.) Rules is somewhat different from the scheme contained in rule 15 of 1957 Rules. The scheme contemplates that the statement of defence submitted under sub-rule 5(a) may be limited to admitting or denying the charges communicated to the Officer. *For such admission or denial, inspection of documents is not necessary.*"

The Disciplinary authorities are, therefore, advised that if a delinquent officer does not submit his statement of defence within the prescribed time, they may go ahead with the appointment of Inquiring Authority. While rejecting the requests for inspection of documents, it may be explained to the delinquent officers that they would get full opportunity to inspect the listed documents during the course of enquiry.

(ii) Another reason for delay is that the Ministries/Departments etc., do not send their comments to the Commission on the reports of C.B.I. within the time limit laid down in the Commission's Circular letters No. 4/62/70-R, dated 28-1-1971 and 10-9-1973. Disciplinary cases would be considerably expedited if the C.V.Os could ensure that the comments on C.B.I. reports are sent to the Commission within a month.

(iii) The third stage where delay often takes place is after the oral enquiry and the communication of the Commission's advice on Inquiring Authority's report. In cases where the Commission advises imposition of a major penalty, the second 'show-cause notice' should normally be issued within one month from the receipt of Commission's advice. A copy of the 'notice' may be endorsed to the Commission for information.

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(59)

Central Vigilance Commission letter No. 1/14/70-R, dated the 20th September, 1973

[C(22),C(38A)] [B(103),C(125)]

It has been brought to the Commission's notice that the procedure of consultation with the C.V.C. in cases where the Commission advises initiation of proceedings as for a minor penalty is not very clear.

2. In accordance with Commission's Circular No. 1/13/65-Coord., dated 19th September, 1966 in cases in which proceedings as for a minor penalty have been initiated on the basis of the advice of the C.V.C., the Commission has to be consulted after the written statement of defence of the delinquent has been received under Rule 16(1)(a) of the CCS(CCA) Rules 1965 or other corresponding Rules. In cases in which the disciplinary authority, after considering the representation of the delinquent official considers that an oral inquiry is necessary, such enquiry should be entrusted to one of the Commissioners for Departmental Enquiries. As per the extant practice, the Commission will also advise the disciplinary authority in such cases as to the further course of action on the findings of the Inquiry Authority.

3. In cases in which the disciplinary authority does not consider that an oral enquiry is necessary, the case should be referred to the Commission for advice with the written statement of defence and the provisional conclusions reached thereon by the disciplinary authority. Where any statement has been made in the written statement of defence to controvert the allegations, the disciplinary authority should specifically deal with it in their comments and point out the correct facts.

4. Para (iv) of the Commission's Circular No. 1/14/70-R, dated 20-7-1970 is superseded.

Note:—"In the case of public undertakings however this procedure has been somewhat modified. What is required in their cases is that they should inform the Commission about the minor penalty imposed by them as a result of the proceedings and shoult consult the Commission in case they intend to close the case without imposing any penalty at all."

[This has been partially modified, vide letter dt. 29-11-80].

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(60)

Central Vigilance Commiss'on letter No. 4/23/70-R, dated 8th October, 1973

[C(65)]

The Commission has observed that some of the cases in departmental enquiries have failed because the charge-sheets were not properly drafted. In one case, the charge-sheet ran into 110 pages. There are several cases where the charge-sheets have been found to be very lengthy running into 10 pages or more. Apart from typing errors of names, places and amounts, the facts are sometime not correctly stated in the charge-sheets. In one case, the articles of charge included two items which had already been the subject matter of enquiry and even punishments had been meted out.

2. The article of charge is the most important document in disciplinary proceedings and should be drafted very carefully. The Chief Vigilance Officers/Vigilance Officers should personally scrutinise the charge-sheets drafted by the Departmental Officers or by the Central Bureau of Investigation. Detailed guidelines have been provided for drafting the charge-sheets in paras 14 and 18 of Chapter X of Vigilance Manual Volume I.

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(61)

Central Vigilance Commission letter No. 4/27/72-R, dated 10th October, 1973

The Supreme Court in C. L. Subramaniam *Vs.* Collector of Customs (AIR 1972 SC 2178) has quashed the order of removal from service on the following grounds :—

(i) While the State was represented by a trained police prosecutor, he (Subramaniam) was not permitted to engage a lawyer.

(ii) He asked for the assistance of Shri Abraham Kurian, a Clerk, but on the two dates of enquiry the said Shri Kurian was not allowed to be present and assist the delinquent official.

2. The following observation of the Supreme Court in para 16 of the judgment is, however, significant:—

"Nor are we required to consider the principles of natural justice, as those principles are only relevant when the concerned procedure is *not* regulated by any statute or statutory rules".

The matter, therefore, will be guided entirely by the *express* provisions of relevant statutory rules.

Disciplinary proceedings against Central Government servants are regulated under statutory rules, namely C.C.S. (C.C.A.) Rules, 1965 Rule 14(8) of these rules prohibits the engagement of a legal practitioner by the Government servant except in two circumstances:—

(a) when the Presenting Officer appointed by disciplinary authority is a *legal practitioner* (No mention of a trained prosecutor has been made in the Rules):

(b) or when the disciplinary authority, *having regard to the circumstances of the case*, so permits.

3. The Rule further gives the Government servant the privilege of taking the assistance of any other Government servant to present the case on his behalf. Evidently, this privilege was not extended to Shri Subramaniam by the Inquiring Authority and the Court therefore held that he contravened Rule 15 [now Rule 14(8) *ibid*]. In this connection, it will be relevant to reproduce para 21 of the judgment:—

"From the facts set out above, it is clear that the Enquiry Officer did not afford the appellant necessary facility *to have the assistance of another Government servant* in defending him which assistance he was entitled to

under the rule. He was deprived of that assistance solely because of the *indifferent attitude adopted by the Enquiry Officer.* Therefore, we have no hesitation in coming to the conclusions that the Enquiry Officer had clearly breached R. 15(5)".

4. In quite a few cases, Government servants facing departmental enquiry have asked for the assistance of legal practitioners, citing the above judgment in support of their representation. The Commission has considered the judgment of the Supreme Court in consultation with the Ministry of Law and Justice who have advised that the judgment in question does *not* lay down any universally applicable proposition that in all cases in which a trained or experienced prosecutor is conducting the prosecution on the Government side, the delinquent Government servant is entitled to be allowed to engage a legal practitioner, *as a matter of right.* The Inspectors and Dy. S.Ps. of the C.B.I., who are appointed as Presenting Officers are not "legal practitioners" or Public Prosecutors as such. If, in any case, a Public Prosecutor (legal practitioner) of the C.B.I. is appointed as Presenting Officer, the accused will have the right to be represented by a legal practitioner only in such a case.

5. If the Presenting Officer is a legal practitioner or a Public Prosecutor, the accused may, therefore, be represented by a legal practitioner. In other cases, the Inquiring Authority should pass on the request of the accused Public servant to the Disciplinary Authority, concerned, who may examine such request on merits and pass an order accepting or rejecting the request in the light of Rule 14(8). If the request is rejected, belief reasons for the same should also be given.

(62)

Central Vigilance Commission letter No. 4/53/73-R, dated 31st October, 1973

[B(41B)]

At the time of Eighth Orientation Course for Chief Vigilance Officers, it was clarified by the Central Vigilance Commissioner that those posted to the vigilance organisations should not have the fear of returning to their parent cadre after a short period with the possibilities of facing displeasure of those against whom they had made enquiries. In this respect reference is also made to the recommendations of the Committee on prevention of

corruption which have already been accepted by the Government in principle and instructions were issued by the Ministry of Home Affairs *vide* their O.M. No. 43/107/64-AVD dated 23-11-64 for implementation of the recommendations. A copy of the above O.M. is sent herewith for information and necessary action.

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(63)

Central Vigilance Commisison letter No. 4/62/70-R, dated 3rd November, 1973

[C(40) C(57) C(58)] [C(67)]

The Commission in its circulars No. 4/62/70-R, dated 28th January, 1971 and dated 10th September, 1973, referred to the necessity of taking into account the views of the disciplinary authorities on the reports of the Central Bureau of Investigation before tendering its advice. It was, however, made clear that the Ministries/Departments, etc., should send their comments to the Commission within one month from the receipt of the C.B.I. report.

2. Some of the disciplinary authorities have sought clarification about the type of comments that they are expected to offer at this stage of the case. In one case, a Department wrote to the Commission that it had "no comments" to offer on the C.B.I. report but subsequently clarified that it agreed with the views expressed in the C.B.I. report. The Commission has also noticed that some disciplinary authorities call for the explanation of the accused *at this stage,* while others insist on seeing the entire original records before submitting their comments to the Commission on the C.B.I. reports. The Commission would like to emphasize that at this stage, it should not normally be necessary to either call for the explanation of the accused Officer or to see the original documents as the comments of the Department required are only on the CBI report. The comments of the Ministry/Department should specifically deal with the following matters:—

(i) If the C.B.I. report deals with *technical* matters, does not disciplinary authority agree with view taken by the C.B.I. on such questions?

(ii) If the C.B.I. report deals with Departmental procedures and practices, has the position been stated correctly?

(iii) Has the factual position as obtainable from the records of the Department correctly stated by the C.B.I.?

(iv) If the report deals with the use or abuse of discretion by the accused officer, what has the disciplinary authority to say about the discretionary powers and their use by the accused officer in the case(s) under discussion and also about the exercise of such discretion by other officers in similar situations?

(v) In the Department's views are there some material witnesses who should have been examined by the C.B.I. but whom the C.B.I. has not, in fact, examined.

(vi) Are there any extenuating circumstances in favour of the accused? If so, what are they?

(vii) Does the Department agree with the conclusion drawn by the C.B.I.? If not, what are its own conclusions/recommendations.

(viii) If the accused has submitted any representation to the Department relating to the C.B.I. report, the Department should also give its comments on such representation.

The above list is only illustrative and the Department is not precluded from offering comments of a general nature or bringing any other relevant matter to the Commission's notice that it may consider necessary.

3. Efforts should, however, be made to see that the comments of the disciplinary authorities are sent to the Commission within one month of receipt of the C.B.I. report as unnecessary delay is obviously harmful to the accused officer/officers.

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(64)

Central Vigilance Commission letter No. 4/5/71-R, dated the 19th November, 1973

A copy of form* for initiation of Minor penalty proceedings (in cases where disciplinary authority decides to hold the enquiry) is sent herewith for information and necessary action.

*See E-1-A.

(65)

Central Vigilance Commission letter No. 4/23/70-R, dated the 13th December, 1973

[C(60)]

[C(94)]

Please refer to the Commission's circular letter of even number dated the 8th October, 1973 on the above subject. The matter was further discussed by the Commission with the Director, Central Bureau of Investigation and the copy of Commission's D.O. letter No. 4/23/70-R, dated 29th September, 1973 and the reply received from the Director, Central Bureau of Investigation are enclosed for information.

The articles of charge drafted by the Chief Vigilance Officers, should first give the plain facts leading to the charge and then only at the end of it the nature of violation of the Conduct Rules should be added.

Copy

C.V.C's d.o. letter No. 4/23/70-R dt. 29-9-73.

During discussion in C.V.C's. room on 24th September, 1973, the C.V.C. suggested *inter alia* that the charge-sheets drafted by the Central Bureau of Investigation should first give the plain facts of the charge and only at the end of it should be added the nature of violation of the Conduct Rule, etc. It was not necessary to follow the form of charge-sheet applicable in Court cases. To illustrate this, a copy of the charge-sheet drafted by the .....and referred to by the C.V.C. is enclosed.

2. Please confirm that this suggestion is acceptable to the C.B.I.

COPY

CBI's d.o. letter No. 233/DCBI/73 dt. 23/24-10-73.

Please refer to your confidential D.O. letter No. 4/23/70-R, dated 29th September, 1973.

2. The form for the charge-sheet, of which a draft in case of so and so.....has been enclosed with your letter is acceptable to us and we are issuing instructions that the draft charges may be sent in this form by the Branches.

DRAFT CHARGE-SHEET

Statement of articles of charges framed against Shri.....

ARTICLE I

Shri....., while functioning as..... in the.....during the period.....to .....misused the Government vehicle No..... on irregular/private journeys and in order to suppress such misuse made false entries in his own handwriting in the log book of the said vehicle.

Shri.....by his above acts exhibited lack of integrity and conduct unbecoming of a Government servant thereby violating rule 3 of the C.C.S. (Conduct) Rules, 1964.

ARTICLE II

Shri..... claimed daily allowance for....., after furnishing incorrect particulars about his stay away from headquarters on that day.

Shri..... .....by his above acts exhibited lack of integrity and conduct unbecoming of a Government servant thereby violating rule 3 of the C.C.S. (Conduct) Rules, 1964.

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(66)

Central Vigilance Commission letter No. 4/56/73-R, dated the 27th December, 1973

The Vigilance Organisations of Departments/Public Sector Undertakings, etc., during the course of enquiries against their officers have quite often to get information from other Departments/Public Undertakings where the suspect officer might have

worked earlier or where some of the material witnesses are employed. The Vigilance Organisations may also require the assistance of other Departments/Public Undertakings in getting opinions of Technical Officers or for other information, verification, etc. Some Public Undertakings have suggested to the Commission that it would be very helpful if the Vigilance Officers of Department/Public Undertakings, etc. could give the requisite information/assistance whenever they receive a request from the Vigilance Officers of other Departments/Public Undertakings. The Commission agrees with this suggestion and it is requested that in future whenever you receive a request from the Vigilance Officer of any Departments/Public Undertakings or the Nationalised Banks for any assistance or opinion, the same may please be furnished to him except in cases where there may be special reasons to withhold such information/assistance. This will, of course, be on a reciprocal basis.

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(67)

Central Vigilance Commission letter No. 4/62/70-R, dated the 8th February, 1974 addressed to CVOs of Ministries of Defence, Finance and Railways

[C(57) C(63)]

[C(68)]

Reference is invited to Commission's letter No. 4/62/70-R dated 10th September, 1973 fixing a time-limit of one month for offering comments of the Ministries/Departments on the CBI's reports. It has been represented by some of the Ministries/Departments that as they have to obtain the views of their lower formations before they could offer any useful comments on the CBI reports, the period one month is not adequate for this purpose. The Commission has accordingly agreed to increase the period of one month to two months in the cases pertaining to the Ministries of Finance, Defence and Railways. It may kindly be ensured in future that the comments are sent to the Commission within the specified period from the date of receipt of the CBI reports.

[C(57)]

2. Commission's circular No. 4/62/70-R, dated 10th September, 1973 stands modified to this extent.

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(68)

Central Vigilance Commission letter No. 4/62/70-R, dated the 11th February, 1974 addressed to all CVOs

[C(58) C(63) C(67)]

[C(103)]

Reference is made to Commission's circular No. 4/62/70-R, dated 10th September, 1973, fixing the time-limit of one month for offering comments of the Ministries/Departments on the CBI reports, and subsequent Circular No. 4/62/70-R dated 3rd November, 1973, specifying guidelines, etc., for the comments of the Ministries/Departments, etc.

2. It has been found that in most of the cases not only are the comments not received within the prescribed period, but they are not received even in spite of repeated reminders thereafter. This delays the advice of the Commission. As the CVOs are aware Commission attaches great importance to the quick disposal of vigilance cases. The Commission has, therefore, decided that if the comments of the Ministries/Departments/Undertakings are not received within the scheduled time and there is no request for extension of time for submission of the comments, the Commission will presume that the concerned Ministry/Department/Undertaking have no comments to offer. The Commission will, thereafter, proceed with the examination of the case and tender its advice without waiting further for the comments of the Ministries/Departments, etc. This may be brought to the notice of all concerned.

[C(67)]

3. The cases pertaining to Ministries of Defence, Finance and Railways will, however, be guided by the time-limit prescribed in Commission's letter No. 6/62/70-R, dated 8th February, 1974.

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(69)

Central Vigilance Commission letter No. 1/20/73-R, dated the 11th March, 1974

Reference is invited to the provisions contained in para 15 of Chapter VII of Vigilance Manual, Vol. I, laying down the

guidelines for departmental action after the conviction of a public servant in a court of law. According to sub-para 15.3 if the offence for which the public servant has been convicted was such as to render his retention as a public servant *prima facie* undesirable, the disciplinary authority should impose upon him the penalty of dismissal or removal or compulsory retirement from service under Rule 19.1 of the CCS(CCA) Rules. Under sub-para 15.4 if the offence for which the Government servant has been convicted is not considered such as to render his retention in public service *prima facie* undesirable, the disciplinary authority should impose upon him penalty other than dismissal, removal or compulsory retirement. Thus, even in a case of conviction, the disciplinary authority has to decide the quantum of punishment having regard to the gravity of the offence proved in the court of law.

2. The Commission has, however, observed that in cases where Commission advises prosecution of a Government servant, the Ministries/Departments do not consult the Commission about the quantum of punishment under the disciplinary rules after the conviction of the officer by the courts. Various circumstances have to be considered in each case before deciding the quantum of penalty. It would accordingly be in conformity with the scheme of the Central Vigilance Commission that the Commission is consulted after the court's verdict has been announced if action under Rule 19(1) of CSS(CCA) Rules (corresponding provisions under other Rules) is contemplaced by the Disciplinary Authority.

3. The Commission would, therefore, direct that in future all cases against public servants, as are ordinarily required to be referred to the Commission for advice, should be referred to it as to the further course of action to be taken against such public servants after their conviction in a court of law.

The cases may, however be referred to the Commission after the lapse of the period of limitation for filing first appeal, or if the appeal has been filed against the conviction order, the decision on the first appeal has been received.

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(70)

Central Vigilance Commission letter No. 1/34/73-R, dated the 11th March, 1974

[C(108)]

The question of the Chief Vigilance Officers submitting a brief Confidential Report about the work done by them to the Central Vigilance Commissioner was discussed at the Eighth Orientation Course for Chief Vigilance Officers held at Lal Bahadur Shastri National Academy of Administration, Mussoorie, from April 2—6, 1973. The relevant extract from the Conspectus of Proceedings are reproduced below :—

"Since the CVOs are appointed in consultation with CVC, who also records their confidential records, it was suggested that CVOs should send a brief confidential report annually to the CVC, listing the work done by him and giving his suggestions as to how things could be improved in his department. This report will be different from the statistical reports that the CVOs send at present to the Commission for its Annual Reports. The proposed report, which should be prepared by CVO personally, should be analysed in the CVC. Guidance and advice of C.V.C. on the problems, CVO is facing in his Department will be of great help to the CVO to function effectively. CVC agreed that such confidential reports may be sent to the Secretary of the Commission and a special Cell in the Commission will scrutinise them. He will personally look into such reports and advise the CVOs."

2. The above recommendation of the Course has been accepted by the Commission. The Commission has decided that the Chief Vigilance Officer should, in future, send a Confidential Report to the Secretary of the Commission by name giving a resume of the work done by him during the year and particularly listing the following items of work done during the year:—

A—*Preventive vigilance*

(a) No. of studies made of sensitive spots and surprise inspections thereof.

(b) Suggestions, if any, made for improvement of procedures and practices which offered scope for corruption.

(c) Effectiveness of watch kept on officers of suspected lack of integrity.

(d) Supervision exercised over Vigilance Officers of attached/subordinate offices.

(e) No. of cases which have been unearthed by the CVOs *suo moto.*

B—*Vigilance cases*

(a) No. dealt with—average time taken in sending comments on CBI's reports.

(b) Action taken on Commission's suggestions regarding change of procedure, etc.

C—*Review of cases*

Where final orders have been passed by subordinate disciplinary authorities, indicating whether action has been taken to ensure that the rules regarding departmental enquiries are scrupulously followed and that undue leniency or excessively harsh punishment are not resorted to.

The difficulties, if any, encountered in dealing with the vigilance cases, should also be spelt out in detail in the Reports. This Report should be different from the Statistical Reports sent to the Commission for the purpose of the Annual Report of the Commission.

3. This Report should be sent to the Commission in the month of January every year and should cover the activities of the Vigilance Units for the preceding calendar year.

4. The action taken in the matter may please be indicated to the Commission.

[This report has been discontinued, vide letter dt. 15-3-78.]

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(71)

Central Vigilance Commission letter No. 1/9/71-R, dated the 21st March, 1974

[C(122) C(126)]

[C(50)]

Please refer to the Commission's letter of even number dated 29th March, 1973 on the above subject, clarifying that if there is

negligence on the part of an officer, which has resulted in 'substantial loss' to the Government, then irrespective of whether the case figures in the Audit Paras and also comes before the Public Accounts Committee of the Parliament or not, the case should be referred to the Commission for advice. Certain Ministries/Departments have suggested to the Commission that the term 'substantial loss' may be spelt out on the lines of the provisions of the General Financial Rules, under which losses below certain specified monetary limits are not required to be reported to the Audit or to the Police, etc.

2. The Commission would reiterate that, for the purpose of referring cases to the Commission from the vigilance angle, "monetary limit" cannot be the relevant criterion. The vigilance aspect of a case has little to do with the amount of loss. It has to be judged from the manner in which the officer responsible for the loss conducted himself. Negligence on the part of an officer which results in 'substantial loss' to the Government and in respect of which the case has to be referred to the Commission in view of Commission's Circular of 29th March, 1973, should, among others, include generally cases of the nature of (i) non-observance of Financial Rules; (ii) exercise of palpably wrong discretion in awarding of contracts on unfavourable terms, and (iii) in acceptance of substandard material/supplies, etc. The carelessness or negligence on the part of the Government Officer in such cases, should also be of such nature that a presumption of the existence of an element lack of integrity cannot be ruled out.

3. In cases of doubt the administrative authority may in specific cases seek further clarification from the Commission.

(71-A)

Central Vigilance Commission's letter No. 4/20/72-R, dated the 7th May 1974

C(1)

Please refer to para 8 of the Commission's letter No. 9/1/164-DP dated the 13th April, 1964 which states that the mode of communication between the Ministries/Departments and the Commission will ordinarily be by referring files; however if in any case if the Ministry/Department does not wish to endorse the file, a self contained note or letter may be sent.

2. It has however been noticed that the communications meant for this Commission are many a time addressed to the

Central Vigilance Commissioner *by name*. This is not an appropriate practice. It is therefore requested that all communication meant for the Commission should be addressed to the Secretary of the Commission by designation. If the communication is of a confidential nature or is in connection with an old reference, this should be addressed to the concerned officer of the Commission by name. D.O. letters on important matters should be addressed to the Secretary of the Commission. The practice of addressing D.Os to Central Vigilance Commissioner on even routine matters should stop forthwith. This may please be brought to the notice of concerned officers of your Department/Undertaking.

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(72)

Central Vigilance Commission letter No. 4/20/72-R, dated the 10th May, 1974

The question of facilities to be extended to the Presenting Officer for the expeditious disposal of oral enquiries and to effectively present the case before the Inquiry Officer was discussed at the Ninth Orientation Course for Chief Vigilance Officers held at Jaipur from November 2—6, 1973. The following remedial measures were suggested:—

(i) The Chief Vigilance Officers as a matter of course should send for the Presenting Officer at the time of his appointment and brief him well about the facts of the case.

(ii) All relevant documents, even though they are not being produced as exhibits, should be shown to the Presenting Officer so that he may be able to go through them thoroughly and thus be in a position to present the case effectively.

(iii) A proper coordination/communication between the Presenting Officer and the Chief Vigilance Officer is vital for the successful presentation of a case.

The Commission is of the view that if these measures are adopted by all concerned, the Presenting Officer can do his assigned job more successfully and forcefully and the delay in the completion of oral enquiries can be considerably reduced. It is, therefore, requested that these guidelines may please be brought to the notice of all concerned for their guidance.

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(73)

Central Vigilance Commission letter No. 4/12/74-R, dated the 27th June, 1974

[C(82)]

Rule 18(1) of the C.C.S. (Conduct) Rules, 1964 and the analogous rules in the Conduct Rules of other Services provides for submission of Returns in respect of assets and libilities; Rule 18(2) enjoins upon the government servants the responsibility of getting prior permission for acquisition or disposal of immovable property; and Rule 18(3) provides for information/prior intimation in respect of all transactions involving movable property exceeding Rs. 1000 in value.

2. According to the instructions contained in paragraph 2 of Ministry of Home Affairs O.M. No. 22/10/55-Est.(A), dated the 12th January 1956, these returns were to be treated as secret and kept in the custody of the authority which maintains the Character Rolls of the officers concerned, after such scrutiny as may be considered necessary. It has been brought to the Commission's notice that these returns are generally being filed without any scrutiny, in the Personal Files of the officers concerned, along with other miscellaneous papers like leave applications, applications for withdrawal from GPF, applications for Car or H.B. Advance etc. Sometimes these returns are not even readily available when there is ground for suspicion in any particular case and they are required for detailed scrutiny.

3. The purpose of prescribing the periodical returns of acquisition of assets is to ensure that government servants do not indulge in benami transactions or ostensible transfers and acquisitions of secret assets illegally earned. The intention underlying the provision in the rules that no transaction relating to immovable property shall be entered into except with the previous knowledge of the prescribed authority and in the case of transactions made otherwise than through a regular and reputed dealer, with the prior sanction of such prescribed authority, is to ensure that (a) the transaction is for a *bona fide* purpose; (b) it does not involve any element of profiteering or speculation; (c) there is no ground to hold that it is the result of the exercise of undue official influence; and (d) there is nothing otherwise objectionable in relation to it.

4. The Commission feels that the above purpose cannot be achieved if these returns are filed in a haphazard manner without scrutiny. In consultation with the Department of Personnel &

A.R. and the C.B.I., the Commission has decided that in future, these returns should be dealt with in the following manner:—

(i) The property returns and other intimations etc. shall be dealt with on the lines indicated in para 5 of Department of Personnel's O.M. No. 25/7/65-Estt.(A), dated 8th January, 1973.

(ii) The annual property returns received under Rule 18(1) and other statements/intimations under Rule 18(2) & 18(3) or the corresponding provisions of the conduct rules applicable to All India Service Officers, Railway employees and various Public Undertakings etc. should be kept in two separate folders for each officer;--one folder for the annual property returns and another for permission for acquisition/disposal of immovable property & intimation/prior intimation involving movable property.

(iii) The folders containing these returns/intimations should either be kept with the Chief Vigilance Officer *or be readily available to the Chief Vigilance Officer when required.*

(iv) It would also be a part of the responsibility of the Chief Vigilance Officer to scrutinise these returns annually or as soon as they are received or pass through him, from the possible vigilance angle.

(v) With regard to officers who are in the 'Agreed List', it would be the special responsibility of the Chief Vigilance Officer to scrutinise their returns very closely.

5. These instructions may please be brought to the notice of the Vigilance Officers of your various subordinate organisations/ offices.

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(74)

Central Vigilance Commission letter No. 4/31/73-R, dated the 28th June, 1974

[B(55)]

A copy of the standard form of sanction for initiation of departmental proceedings against pensioners under Rule 9 of the Central Civil Services (Pension) Rules, 1972 which has been stan-

dardised in consultation with the Department of Personnel and Ministry of Law is sent herewith* for information and necessary action. It is requested that this may please be brought to the notice of all the concerned authorities. This replaces the earlier form circulated with the Ministry of Home Affairs letter No. 234/3/66-AVD-II, dated 4-8-66.

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(75)

Central Vigilance Commission letter No. 1/11/74-R, dated the 28th August, 1974

It has been noticed that of late there has been an increasing tendency to refer cases to the Commission for reconsideration of its first stage advice. Even in cases where the advice was tendered after obtaining the comments of the Ministries/disciplinary authorities concerned and where only action as for a minor penalty was advised, a preliminary explanation is called for from the officer concerned as to why departmental action should not be initiated against him and a reference is made for reconsideration on the basis of whatever the officer may have said in his representation.

2. The CCS (CCA) Rules and other relevant Disciplinary Rules fully incorporate already all the requirements of natural justice and provide *several* opportunities to the accused officer to state and defend his case. But even these Rules do not envisage the calling for such a preliminary explanation. An opportunity is generally given to the officer concerned to explain his stand to the Investigating Officer of the CBI or the departmental officer who had looked into the allegations during the preliminary enquiry before the case is sent to the C.V.C./the disciplinary authority. All available material including the statement of the officer complained against and the comments of the disciplinary authority are carefully considered before any departmental action is advised by the Commission. If the material collected in this preliminary stage reveals a *prima facie* case for action, there should not be any hesitation to get the matter looked into by way of a formal Departmental Inquiry either under Rule 14 or Rule 16 of the CCA Rules and other relevant rules as the case may be.

3. In cases where only action as for a minor penalty has been advised, it would certainly be more expeditious to serve on the

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*See Section B-12

officer the statement of imputations of misconduct and allow the officer to explain his stand under Rule 16 of the CCA Rules than calling for a "preliminary" explanation and taking up the case for reconsideration. Such a procedure only leads to unnecessary delay in finalising the matter and is, therefore, not calculated to assist the officer. It is therefore requested that references for reconsideration of the Commission's advice where only action as for a minor penalty has been advised may be avoided as far as possible. While in very special cases such references may be made on the basis of any fresh facts or circumstances which came to light subsequently, references on the basis of material which has already been examined before the advice was tendered should be avoided.

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(76)

Central Vigilance Commission letter No. 4/26/74-R, dated the 19th September, 1974

A case has come to the notice of the Commission where after a Ministry had requested the Central Bureau of Investigation to investigate a case and the investigation had made sufficient progress, the Ministry reviewed the matter in a departmental meeting and decided that as the lapse committed by the firm was a "technical" one, no further action was called for. The CBI was not even consulted before this decision was taken. This not only resulted in wastage of time and efforts of the limited staff of the CBI but also placed them in an embarrassing situation.

It has, therefore, been decided in consultation with the Central Bureau of Investigation that before the administrative authorities decide to entrust a case to the CBI, they should in the first instance, thoroughly examine in detail whether the alleged breach of rules is merely "technical". After a case has been registered by the CBI, no review should ordinarily be made, and even if there is a case for review, the CBI should invariably be associated with such a review. If any meeting is to be held in the department where a case under investigation by the CBI is to be discussed/reviewed, a representative of the CBI should always be invited. It is requested that this may please be brought to the notice of all concerned.

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(77)

Central Vigilance Commission letter No. 4/31/74-R, dated the 24th September, 1974

[C(45)] [C(92)]

The Commission has noted with concern a recent report about a senior investigating officer of the Vigilance Department of the Delhi Municipal Corporation having been suspended on charges of Corruption.

Attention of all Chief Vigilance Officers is drawn in this connection to paragraph 3.3—Chapter I of Vigilance Manual Vol. I, wherein it has been indicated that Vigilance Officers of attached and subordinate offices will be appointed in consultation with the Chief Vigilance Officers of the respective Ministry/Department. No person whose appointment as Vigilance Officer is objected to by the Chief Vigilance Officers will be so appointed. Some of the Departments/Public Undertakings have a large number of Vigilance Inspectors who are utilised for making preliminary enquiries in cases which are not ripe for being handed over to Central Bureau of Investigation. It is hardly necessary to emphasise that persons appointed as Vigilance Inspectors should be carefully screened by the Chief Vigilance Officer/Vigilance Officer before their appointment. If officers of doubtful integrity infiltrate into the Vigilance Organisation itself, it is obvious that the overall purpose of maintaining integrity in administration will not be served.

The Commission would, therefore, instruct all Chief Vigilance Officers to review the existing recruitment rules/procedures in their respective organisations for filling up the posts of Vigilance Officers/Vigilance Inspectors, with a view to ensure that proper screening of candidates is done before they are considered for appointment in the Vigilance Organisation. In cases, where any person objected to by the Chief Vigilance Officer is taken into the Vigilance Organisation, Chief Vigilance Officer should send a confidential report to the Commission so that the Commission may consider taking up the matter with the Secretary/Head of the Department concerned.

(78)

Central Vigilance Commission letter No. 1/13/74-R, dated the 28th September, 1974

[C(1)]

The Commission has observed that of late a large number of cases are being referred to it for advice after the Banks have already taken a final decision whether to inflict punishment or to exonerate the delinquent officers. This would mean really that it is not the Commission's advice which is sought but only its *ex post facto* approval of the decision already taken. This is not in keeping with the procedure that should be followed.

2. Para 4 of the Central Vigilance Commission's letter No. 9/1/64-DP, dated the 13th April, 1964 states the stages at which the Commission should be consulted during the course of a vigilance case. It is requested that in future the Commission should be consulted in accordance with the provisions contained therein.

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(79)

Central Vigilance Commission letter No. 2/4/74-S, dated the 14th October, 1974

The Commission has noted with serious concern that in several cases, there is long delay on the part of Ministries/Departments concerned in issuing formal orders appointing the Commissioner for Departmental Enquiries nominated by the Central Vigilance Commission, as the Inquiring Authority. In one particularly bad case, the appointment letter has not issued, although the Commission's nomination was sent as early as on 22-12-1971. There are also several cases where the delay has been for a period of more than six months.

2. When the disciplinary authority takes a decision to start disciplinary proceedings for a major penalty, copies of the articles of charge, the statement of imputations of misconduct or misbehaviour and list of documents and witnesses, have to be served on the government servant concerned, who should be required to submit his written statement of defence by a specified date. On receipt of the written statement of defence, only if the disciplinary authority finds that any or all of the charges have not been admitted, the Commission should be requested, in all cases pertain-

ing to gazetted government servants and officers of Public Undertakings in receipt of pay of Rs. 1000 and more, to nominate one of the Commissioners for Departmental Enquiries as the inquiring authority. It is thus clear that by the time a request is made to the Commission to nominate a C.D.E., all the earlier stages must already have been gone through and once the Commission has nominated a C.D.E., his appointment as the inquiring authority by the disciplinary authority should be a mere formality. It should, therefore, be possible to issue the appointment order within a few days. At any rate, the Commission cannot find any reason why the formal order of appointment of the C.D.E. as inquiring authority should not issue within one month of nomination of the C.D.E. except in cases where the inquiry has been stayed by an order of the court.

3. The Commission would suggest that the Chief Vigilance Officer should immediately make a review of such delayed cases in his Ministry/Department and see that appointment letters are issued without further delay. In future, the Chief Vigilance Officer should take personal interest to ensure that in cases where the order of appointment has to be issued by the Ministry/Department itself, it is issued within one month of the date of nomination of the C.D.E. by the Commission. Each case where it has not been possible to stick to this time-limit should be accompanied by a note explaining why this time-limit could not be observed and whether responsibility has been fixed for the delay In cases where the order of appointment is to be issued by the Attached/Subordinate Offices of the Ministry/Department, or in the case of Public Undertakings by the subsidiary Plants, it will be the Chief Vigilance Officer's responsibility to ensure that his counterparts in these offices take similar personal interest to see that the appointment order is issued at least within two months of the date of nomination by the Commission.

4. The Commission would like that the time-limits indicated above are strictly adhered to in future. It will be constrained to take a serious view if delays continue to occur in the appointment of Commissioner for Departmental Enquiries as inquiring authorities.

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(80)

Central Vigilance Commission letter No. 4/29/70-R, dated the 4th November, 1974

A copy of the Standard form of order relating to the appointment of Inquiry Authority under the CCS(CCA) Rules, 1965 as

approved by the Ministry of Law and the Department of Personnel is sent herewith* for information and necessary action. It is requested that this may please be substituted for the existing form.

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(81)

Central Vigilance Commission letter No. 4/5/74-R, dated 13th December, 1974

[C(1)]

Please refer to para 5 of the Central Government Resolution No. 24/3/64-AVD, dated 11th February, 1964, under which the Central Vigilance Commission has been entrusted with responsibility for generally coordinating the work of and advising the Ministries/Departments/Undertakings in respect of all matters pertaining to maintenance of integrity in administration.

2. The Commission, in its very first circular No. 9/1/64-DP dated 13th April, 1964, had issued procedural instructions to be followed by all Ministries/Departments, to enable it to discharge its responsibilities under the Resolution. Under Para 4(i) of this circular, in any case, where the administrative authority does not think that a preliminary enquiry is necessary, the complaint together with the views of the administrative authority, has to be forwarded to the Commission for advice. The Commission would like to clarify that any information passed on by the CBI to the Ministry/Department regarding the conduct of any of its officers, should also be treated in the same way and it should be sent to the Commission with the views of the Ministry as early as possible. In the case of a Senior Officer, the Ministry's communication, enclosing the C.B.I. information may be sent confidentially to the Central Vigilance Commissioner.

3. It is requested that this procedure may be adhered to in future.

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*Please See E-3

(82)

Central Vigilance Commission letter No. 4/12/74-R, dated the 26th December, 1974

[C(73)]

Please refer to the Commission's circular letter No. 4/12/74-R, dated the 27th June, 1974 regarding scrutiny of property returns. The Ministry of Home Affairs *vide* their O.M. No. 25/2/64-Ests. (A), dated the 31st January, 1964, have prescribed two forms—one for permission/report of building a house and the other for Valuation Report of the house after construction.

2. The position has been examined in the Commission. The main point to be checked up when an application for permission is received is to see whether the Government servant concerned has the necessary means to afford construction of the house at the estimated cost given in the application. Similarly, when the Valuation Report if furnished after completion of the house, the main point to be checked up is whether the sources from which the construction of the house was financed has been satisfactorily explained.

3. In view of the position explained in para 2 above, the Commission would stress that at least in respect of the Valuation Report received after completion of the building, the C.V.O. should insist on the government servant concerned giving full details of the sources from which the construction of the house was financed, and satisfy himself that the government servant was in a position to build the house. Such details can be called for under the authority conferred by Rule 18(4) of the C.C.S. (Conduct) Rules, 1964.

4. It is requested that this may please be kept in mind while examining the property returns.

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(83)

Central Vigilance Commission letter No. 4/12/74-R, dated the 27th December, 1974

Rule 18(2) of the C.C.S. (Conduct) Rules and the corresponding Rule 16(4) of the All India Services (Conduct) Rules prohibits a government servant from entering into any transaction

with a person with whom he has official dealings, without previous sanction of the prescribed authority, in respect of any immovable property, acquired or disposed of by lease, mortgage, sale, gift or otherwise, either in his own name or in the name of any member of his family.

2. The purpose of this obligatory provision is obvious. It is to eliminate any possibility that the transaction in question might be a *quid pro quo* for any official favour conferred or likely to be conferred by the officer on the seller/buyer/lessee of the property —in other words, an indirect bribe.

3. It has recently come to the notice of the Commission that, in some cases, permission to government servants—particularly in the matter of leasing their houses to firms with whom the officers were known to have had official dealings—had been given in a rather routine manner and without proper scrutiny by the prescribed authority. From the vigilance angle, the importance of the matter, on the face of it, is so obvious that the Commission has no hesitation in suggesting that, as a rule, the prescribed authority should refuse permission in all such cases and advise the government servant to find some other buyer/seller or tenant, as the case may be, with whom he has no official dealings. In exceptional cases, permission may indeed be granted, but only after very careful enquiries into the officer's dealings with the firm have been made, and after it is satisfactorily established that the officer has not conferred, and is not likely to confer, any official favour upon the party concerned.

4. In this connection, your attention is also drawn to para 3 of O.M. No. 25/10/55-Ests.(A), dated 12th January, 1956 from the Ministry of Home Affairs.

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(84)

Central Vigilance Commission letter No. 1/17/74-R, dated the 18th January, 1975

The Commission has noticed that the disciplinary authorities while endorsing a copy of the final orders passed in a disciplinary case, in which the Central Vigilance Commission and the UPSC have tendered advice, do not generally endorse a copy of the UPSC's advice to the Commission. It is requested that in such cases, in future, a copy of the U.P.S.C.'s advice may

please be sent to the Commission for information along with the final orders.

2. It is requested that this may please be brought to the notice of all concerned authorities for necessary action.

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(85)

Central Vigilance Commission letter No. 4/3/75-R, dated the 24th March, 1975

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 dicretionary 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 is 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 ordinarily be that of removal or dismissal from service or compulsory retirement.

4. It is requested that this may please be brought to the notice of all the concerned authorities in organisation for information and necessary action.

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(86)

Central Vigilance Commission letter No. 7/9/75-R, dated the 15th September, 1975

[C(137)]

It has been brought to the notice of the Commission that Commissioner for Departmental Enquiries while on tour for holding oral enquiries are sometimes experiencing difficulties in getting transport and lodging at the places of enquiries. The C.D.Es while making enquiries against the officers actually act as the nominees of the respective Ministries/Departments. The Commission expects that the C.D.Es when they are on tour to conduct enquiries, should not face any inconvenience in regard to accommodation and transport for official work. It is, therefore, requested that you may please advise the field officers of your Ministry/Department/Public Undertaking that they should render all possible help to the C.D.Es in making arrangements for the lodging etc. when they are on tour to conduct enquiries in the cases of the officers of your Department.

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(87)

Central Vigilance Commission letter No. 4/36/75-R dated the 29-12-75

It has been brought to the notice of the Commission by the Central Bureau of Investigation that in many cases the delay in completion of their investigation is mainly attributable to the casual and indifferent attitude of the disciplinary authorities in making the relevant records available to the Central Bureau of Investigation. Para 2.3 of Chapter IV of the Vigilance Manual Vol. I clearly lays down that the disciplinary authorities should make available to the Central Bureau of Investigation all the required records *ordinarily within a fortnight and positively in all cases within a month from the date of receipt of the request.* The Commission would like to stress once again upon all the Chief Vigilance Officers/Disciplinary Authorities that they should ensure that the above time limit is adhered to in all cases in order to enable the C.B.I. to complete its investigaion expeditiously.

2. It has also been brought to the notice of the Commission that in some cases the accused officers had retired during the C.B.I. Investigation and no action could be taken against them after retirement as the impugned transactions took place more than 4 years before the date of retirement. Had the C.B.I. been made

aware of the date of superannuation of such officers, they could have made special efforts to complete their investigation before the superannuation dates by giving priority to such cases. The Commission suggests that in future, Chief Vigilance Officers/disciplinary authorities concerned should invariably inform the Central Bureau of Investigation of the date of superannuation of the accused officer immediately after receipt of a copy of the F.I.R. whenever the officer(s) concerned is/are due to retire within a year or so of the registration of the case.

3. This may please be brought to the notice of all concerned for compliance.

(87A)

Central Vigilance Commission letter No. 4/376-R dt 28-2-76

You are no doubt aware the maintaining close liaison with the Central Bureau of Investigation would help to a great extent in avoiding unnecessary paper work and in eliminating delays at various stages of processing cases. For this purpose, the Commission is of the view that periodical meetings between the Chief Vigilance Officers and the officers of the C.B.I. should be held regularly. The C.B.I. have already issued instructions to the Superintendents of Police of various branches to attend such periodical meetings with the Chief Vigilance Officers as part of their programme. You are, therefore, requested to ensure that such meetings are held regularly (about once a quarter and even within a shorter period) so that unnecessary correspondence and delay can be avoided.

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(88)

Central Vigilance Commission letter No. 4/44/74-R dated 19-4-76 as amended by letter of even Number dated 1-7-76

[C(93) B(100)]

Under the existing scheme the Commission tenders advice to disciplinary authorities about the action to be initiated and the penalty to be imposed at the conclusion of the enquiry in respect of vigilance cases against gazetted officers and officers of Public Undertakings drawing a pay of Rs. 1,000/- or more. The Commission is kept informed of the action taken by the disciplinary authorities on its advice. The Commission has to rely on this information for its statistical reports.

2. Sometimes it may so happen that the action taken by the disciplinary authority on the Commission's advice is later modified or reversed by the appellate or reviewing authority, No intimation is at present sent to the Commission about this. The Commission is naturally interested in the final outcome of a vigilance case which had been processed in consultation with it and would therefore appreciate if intimation is also sent regarding the changes made on appeal or review in the orders originally based by the disciplinary authorities on its advice.

3. It may please be noted that this information is required mainly for statistical purposes.

(89)

Central Vigilance Commission letter No. 4/8/76-R dated 10-6-76

[C(146)]

With a view to maintain integrity in administration, one of the most important steps to be taken by the vigilance machinery is to dedect officers who have acquiried assets disproportionate to their known sources of income or are living beyond their means and to take suitable action against them. It is well-known that it is very difficult to catch a person red-handed in the act of accepting illegal gratification. All the same, the money acquired by illegal means is usually reflected in the acquisition of luxurious assets, heavy invesments and expensive living habits. In cases in which the income from undisclosed sources is invested in immovable properties, it is the usual practice of the persons concerned to under-declare the cost of construction. In order to detect such cases, the Commission took up a survey of certain sensitive Departments and Ministries by selecting officers who were suspected to have acquired assets disproportionate to their known sources of income and this led to the detection of a number of cases being started for investigation. It is, however, felt that a wider impact could be made if such survey are taken up by each Ministry or Department in respect of its own officers and staff.

2. For taking up this survey, the Chief Vigilance Officers have to make full use of the annual property returns which are prescribed for all Government servants. In addition to that, they should also take advantage of the provision contained in Rule 18(4) of the C.C.S. (Conduct) Rules 1964 which enables the controlling authority to call for a complete statement of both movable and immovable assets including the sources of acquisition from any Government servant. For the present, they sur-

vey may be limited to Government servants who have acquired house properties and those who are in possession of cars in spite of the fact that they are in the low income group. For conducting this survey the Chief Vigilance Officers may proceed on the following lines :—

(a) They should scrutinise the annual property returns of the officers and staff under the Ministry or Department and prepare a select list of those whose cases need further probing.

(b) Those who are included in the select list should then be called upon under Rule 18(4) to furnish complete statements of their movable and immovable properties and also indicate the sources of acquisition. While doing so, information regarding the number of members in their family, number of dependent children and the educational institutions where they are studying and additional sources of income which they may have may also be obtained. From this it would be possible to form some idea as to what would be the likely savings of the Government servant and whether the acquisition of properties like houses and cars is reasonable possible from them.

(c) To find out whether the cost of construction of houses has been declared correctly, the plinth area of the house should be ascertained and from this the average cost of construction per sq. ft. should be worked out and should be compared with the normal cost of construction at the time. The C.B.I. in consultation with the D.D.A. and the Municipal Corporation of Delhi have calculated the averages cost of construction for Delhi as follows :—

Year of construction	Rate per sq. ft.
1969	Rs. 35/-
1970	Rs. 35/-
1971	Rs. 35/-
1972	Rs. 40/-
1973	Rs. 50/-

This may serve as a basis of comparison to determine whether the cost of construction has been declared in full.

3. If as a result of this scrutiny it is felt that any case requires further investigation, then the CBI may be asked to take

up the matter. The Commission may be kept informed of the progress made in the matter.

4. Care should be taken to ensure that such detailed Survey and scrutiny of property returns etc. may be confirmed only to those cases which raise ground for suspicion of disproportionate assets and do not degenerate two widespread *"witch-hunts.*

(90)

Central Vigilance Commission Letter No. 4/8/70-R dated 12-7-76

[C(1) B(45) C(5)]

In para 9 of the Commission's Circular No. 9/1/64-DP dated 13-4-64 it has been advised that the administrative Ministry/Department may seek the advice of the Commission on the action to be taken on anonymous and pseudonymous complaints which might appear to be deserving of inquiry or investigation. This circular was issued by the Commission prior to the AVD Circular No. 151/1/65-AVD dated 19-2-65 which categorically lays down that no notice should be taken of anonymous and psedonymous complaints. Hence para 9 of the Circular referred to above is no longer operative.

In para 2 of the Commission's subsequent Circular No. 1/1/64-Coord dated 20-11-64 it has been advised that once the administrative authority has decided to inquire into any *anonymous* and *pseudonymous* complaint, then the result of the inquiry should be intimated to the Commission's for advice as to the further course of action to be taken. This circular was also prior to the AVD Circular mentioned above.

The substance of these two circulars of the Commission has also been incorporated in para 5.6 of Chapter II of Vigilance Manual Vol. I that "if any Department or Public Undertaking, under any circumstances, conducts investigation or enquiry in respect of anonymous or pseudonymous complaints, the Commission has to be consulted as provided in the instructions issued from time to time, notwithstanding the fact that the complaint was *anonymous* or *pseudonymous* in character."

2. The Commission has carefully reviewed the matter with a view to see whether the existing procedure needs any modification. It has now been decided that in future the following

procedure may be adopted in partial modification of the existing instructions summarised above.

(a) It is not incumbent on any Ministry or Department to take any notice of anonymous and pseudonymous complaints and these are to be filed in accordance with the Government instructions.

(b) Even if, any administrative authority chooses to investigate into such an anonymous or pseudonymous complaint under the impression that it is a genuine signed complaint or for any other reason, the Commission need not be consulted if it is found that the allegations are without any substance. But if the preliminary investigation indicates that *prima facie* there is some substance in the allegations, then the Commission should be consulted as to future course of action to be taken.

(91)

Central Vigilance Commission letter No. 4/7/76-R dt 17-7-76

The Central Vigilance Commission has, in consultation with the Department of Personnel & AR., finalised two standard forms, for the appointment of Inquiring Authority and Presenting Officer respectively, for use in common departmental proceeding for disciplinary action against more than one public servant. Copies of the form are enclosed for the guidance and use of the Disciplinary Authority, etc., in appropriate cases.

(Standard form for appointment of Inquiring Authority in common proceedings)

No.————————

Government of India

Ministry/Department————————

New Delhi, dated the————————

ORDER

WHEREAS an inquiry under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against the officers specified below:—

1. Shri————
2. Shri————
3. Shri————

etc.

4. Shri————

WHEREAS common proceedings have been ordered against the said officers.

AND WHEREAS the President/the Undersigned considers that an Inquiring Authority should be appointed to inquire into the charges framed against the said officers.

NOW, THEREFORE, the President/the Under-signed in exercise of the powers conferred by sub-rule (2) of the said rule hereby appoints Shri (*name and designation of Inquiry Officer*) as the Inquiring Authority to enquire into the charges framed against the said Officers.

*By order and in the name of the President.

Disciplinary Authority/
*Authority competent to authenticate order in the name of the President.

Copy to :—

1. The accused officers.
2. Presenting Officer.
3. Inquiring Authority with the relevant documents.
**4. The Central Vigilance Commission.

Disciplinary Authority/
*Authority competent to authenticate order in the name of the President.

---

*Delete where not applicable.

**Note : to be used where applicable—not to be inserted in the copy sent to the accused officers.

(*Standard form for appointment of Presenting Officer in common proceedings*).

No.————

Government of India

Ministry/Department———

New Delhi, dated the————

ORDER

WHEREAS an inquiry under rule 14 of the Central Civil Services (Classification, Control and Appeal,) Rules, 1965, is being held against the officers specified below:—

1. Shri————

2. Shri————

3. Shri————

4. Shri————

etc.

WHEREAS common proceeding have been ordered against the said officers.

AND WHEREAS the President/Undersigned considers it necessary to appoint a Presenting Officer to present the case in support of the articles of charges against the said officers before the Inquiring Authority.

NOW, THEREFORE, the President/Undersigned in exercise of the powers conferred by sub-rule (5) (c) of the said rule, hereby appoints Shri (*name and designation of the Presenting Officer*) as the Presenting Officer to present the case in support of the articles of charges against the said officers before the Inquiring Authority.

*By order and in the name of the President.

Disciplinary Authority/
*Authority competent to authenticate order in the name of the President.

Copy to :—

1. The accused Officers.
**2. Central Bureau of Investigation.
**3. Central Vigilance Commission.
4. Inquiring Authority.
5. Presenting Officer.

Disciplinary Authority/
*Authority competent to authenticate order in the name of the President.

---

*Delete where not applicable.

**Note: to be used where applicable..

(92)

Central Vigilance Commission letter No. 12/57/75-R, dt 31-8-76

[C(3), C(55), C(77)]

[C(117), C(118)]

Please refer to this Commission's letter No. 2/16/64-Coord. dated 7-9-1964 and 1/15/73-R dated 30-7-1973, requesting that the bio-data and the C.R. dosier of an officer should be forwarded to enable this Commission to examine his suitability for appointment as Chief Vigilance Officer, before approval of the Commission is communicated. It is requested that in addition, while sponsoring such proposals the full-name of the officer and details of his parentage and the date of his birth may also please be furnished so that necessary verification can be made expeditiously.

(93)

Central Vigilance Commission letter No. 1/9/76-R, dt 28-9-76

[C(88)]

It has been brought to the notice of this Commission that in a case where the Commission had advised initiation of action as for a major penalty, and the disciplinary authority had initiated action against the officer accordingly, the disciplinary authority on receipt of the officer's reply to the charge sheet, finding it satisfactory had closed the case without further consulting the commission.

2. The scheme of consultation with the Central Vigilance Commission, in respect of major penalty cases, envisages consultation with the Commission at two stages. The first stage of consultation arises when initiating disciplinary proceedings while second stage consultation is required before a final discision is taken at the conclusion of the proceedings. It follows therefore, that the Commission should also be consulted for second stage advice in cases where the disciplinary authority, having initiated action for major penalty proceedings proposes to close the case on receipt of the statement of defence. In other words, the Commission's second stage advice is also necessary where the disciplinary authority, on receipt of the written statement of defence, feels for any reason that the case should be closed and there is no need to hold an oral enquiry. In all such cases the Commission should be consulted by forwarding the charge-sheet the officer's written statement of defence the provisional conclusion of the disciplinary authority thereon.

3. This may please be brought to the notice of all the concerned for information and necessary action.

(94)

Central Vigilance Commission letter No. 4/4/75-R, dt 4-1-77

[C(65)]

In the Commission's circular No. 4/23/70-R dated 13-12-73 it has been pointed out that the articles of charge should first state the *plain facts* leading to the charge and then only the particular provision in the Conduct Rules which has been violated need be mentioned. However, even, now it has often been noticed that the charge sheets do not contain all the essential *facts* on which the charge is based and instead, greater stress is laid merely on indicating which provision of the Conduct Rules has been violated. This stress on mentioning the specific sub-paragraphs of Rule 3 of the Conduct Rules is not so important as *the facts of the charge*, because a disciplinary proceeding can even be drawn up only for "good & sufficient reasons" (Part V of C.C.S. (C.C.A.) Rules 1965).

2. It is therefore requested that the guidelines indicated in the Commission's circular dated 13-12-73 should be kept in view while framing the charges.

(95)

Central Vigilance Commission Letter No. 1/11/74-R, dated 21-1-77 to the CVOs of all Nationalised Banks

The Central Vigilance Commission has come across several instances in which, after it has tendered advice in disciplinary cases against officers of Nationalised Banks, the matter has again been referred to the Commission for reconsideration, on the ground that a "Higher" disciplinary authority in the Bank concerned, before whom the matter was finally placed, was of a view different from that expressed by a "lower" one on whose advice the Commission may have tendered its advice This procedure not only leads to avoidable work, but also results in a situation in which this Commission's advice may be rejected or modified by the "higher" disciplinary authority, simply because the reference to the Commission had in the first instance come from a level lower than this "higher" disciplinary authority itself.

2. It is necessary, therefore, that before this Commissions advice is sought in any case, the matter should be first placed before the highest disciplinary authority for the officer(s) who may be involved in the case. The matter should be referred only thereafter to the Commission for its advice with the provisional conclusion of such a disciplinary authority. Before tendering its advice, the Commission would thus also have the benefit of the provisional conclusion of the disciplinary authority. On receipt of the Commission's advice, the disciplinary authority can then come to a final decision in the case.

3. It is requested that this procedure may be followed in future in all cases where the advice of the Central Vigilance Commission is necessary.

(96)

Central Vigilance Commission letter No. 4/3/77-R, dated 12-4-77

[C(26), C(41)]

[C(124)]

The Commission *vide* its circular No. 1/11/66-Coord, dated the 22nd November, 1966 and No. 4/42/72-R dated the 21st November, 1972 has prescribed that all the documents listed in Rule 14(6) of the CCS (CCA) Rules, 1965 should be sent to the Commissioner for Departmental Enquiry along with the order appointing him as the Inquiring Authority.

2. It has, however, been brought to the notice of the Commission that inspite of the above instructions copies of statements of listed witnesses as mentioned in Rule 14(6)(iii) are not always sent to the CDE along with the order appointing him as the Inquiring Authority. As a result, avoidable delays occur in obtaining copies of these statements from the disciplinary authority. *It is, therefore, reiterated that as soon as action for a major penalty is intiated against an officer, the CVO should take prompt action to obtain copies of the statements of the listed witnesses from the CBI so that these as well as the other documents mentioned in Rule* 14(6) *can be sent to the CDE along with the order appointing him as the Inquiring Authority.*

(97)

Central Vigilance Commission Letter No. 4/4/77-R, dated 25-4-77

The Commission has observed that in many cases, serious allegations of corruption like acceptance of illegal gratification,

cheating, misappropriation, possession of assets disproportionate to the known sources of income, etc, against officers of the Banks have been looked into "departmentally" by the Banks by conducting a preliminary enquiry and the cases are then referred to this Commission for advice with the suggestion that the impugned officers may be dealt with in major penalty proceedings. In such cases, where the allegations *prima facie* indicate commission of *offences* under the I.P.C. or the Prevention of Corruption Act by an employee of the Bank, it would be necessary in the interests of justice to prosecute him which may ultimately lead to his conviction and it would be quite wrong and improper to try and dispose of such matters "departmentally". Even if the prosecution does not result in conviction, departmental action can still be taken. In this connection, your attention is invited to para 4.8 of the directive issued by the Department of Personnel and A.R. in their O.M. No. 371/5/73-AVD(III) dated 5-9-75 which is reproduced below, for ready reference :—

> "When any complaint or communication containing some allegations of misconduct, etc. against a public servant, which merits an enquiry, is received by an administrative authority or comes to its notice it should be considered and decided whether the allegations should be looked into departmentally or whether a police investigation is necessary. As a general rule allegations involving offences of bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records or other serious criminal offences or those requiring an expert police investigation such as cases of possession of disproportionate assets or cases in which a number of non-official witnesses are to be examined, should be referred to the S.P.E. for investigation. In such cases a prompt reference to the S.P.E. is necessary to safeguard against the possibility of a suspect officer tampering with or destroying the incriminating evidence against him".

2. Para 1.2 of Chapter III of Vigilance Manual, Vol. I also indicates that investigation in such allegations should be entrusted to the C.B.I. It is, therefore, necessary that when the allegations prima facie indicate commission of a criminal offence by an officer or employee of the Bank, the matter should be entrusted to the CBI without avoidable delay so that a police investigation can be taken up expeditiously. After completion of the investigation the CBI would suggest whether a prosecution or departmental action is required in the case. It may please be noted that investigation in such cases should be entrusted to the CBI at the earliest opportunity, without the Banks themselves

conducting any lengthy or time-consuming preliminary enquiry, to prevent delays as well as to avoid forewarning the officers.

(98)

Central Vigilance Commission Letter No. 1/2/77-R dated 27-5-77 to the Chairman/Managing Director of Public Sector Undertakings

In several public sector undertakings, the Chief Vigilance Officer is assisted in his vigilance duties by one or more Vigilance Officers working under him. Frequently, these Vigilance Officers have also been entrusted with duties other than those relating to vigilance work. But, even in such cases, the Vigilance Officers work under the supervision of the C.V.O. in so far as vigilance work is concerned, although such part-time V.Os, may be under the general administrative control of their own Divisions, e.g. Personnel or Accounts etc.

2. The Central Vigilance Commission is of the view that even in cases where an officer is functioning as a Vigilance Officer on a part-time basis, the vigilance work done by him should be assessed by the C.V.O. by recording remarks in the annual confidential report. The work other than vigilance done by the V.O. will, of course, continue to be assessed by his superior officer in that field. Similarly, the entire work of the V.O., as assessed by the C.V.O. and any other officer, can continue to be reviewed by the Chairman or the Chief Executive of the undertaking, depending upon the practice in an Organisation.

3. There can be no doubt that if the C.V.O. writes the annual confidential report on the vigilance work of the V.Os. under him, this would further strengthen the vigilance machinery in public sector undertakings. The Commission, would therefore, suggest that this practice may please be introduced in your organisation with immediate effect, unless similar arrangements already exist.

(99)

Central Vigilance Commission Letter No. 4/21/76-R dated 2-9-77 to CVOs of all Nationalised Banks and the State Bank or India

Paragraphs 23.2 and 23.3 of Chapter X of Vigilance Manual, Vol. I read as follows :—

"23.2 In all cases pertaining to (i) Gazetted Government servants, and (ii) officers of public undertakings and banks in

receipt of a pay of Rs. 1,000/- p.m. and above, in respect of whom the Central Vigilance Commission is required to be consulted or in any other cases in which disciplinary proceedings for imposing a major penalty have been initiated on the advice of the Central Vigilance Commission, the Commission is authorised to require and usually does require that the enquiry will be entrusted to one of the Commissioners for Departmental Enquiries borne on the strength of the Commission. In case where non-gazetted officers are involved with Gazetted Officers, the departmental enquiry will also be entrusted ordinarily to a Commissioner for Departmental Enquiries.

Requests for the services of a Commissioner for Departmental Enquiries for the purpose will be made to the Commission as soon as the written statement of defence is received or if no statement of defence is received then after the lapse of the date specified in the charge-sheet. The Commissioner for Departmental Enquiries nominated by the Commission will be appointed as the Inquiring Authority by the disciplinary authority.

23.3 If in any particular case covered by the sub-para 23.2 above the disciplinary authority feels that for any special reasons the enquiry should not be entrusted to a Commissioner for Departmental Enquiries the disciplinary authority may approach the Central Vigilance Commission indicating the circumstances which would warrant an exception being made together with the name and designation of the officer proposed to be appointed as Inquiring Authority. If the Commission accepts the proposal of the disciplinary authority, it may appoint an officer other than a C.D.E. as Inquiring Authority. The officer selected should be of sufficiently senior rank and one who is not suspected of any prejudice or bias against the accused officer and who did not have an occasion to express an opinion on the merits of the case at an earlier stage".

2. By now, regular Discipline and Appeal Rules have been adopted by all the Nationalised Banks and the State Bank and these rules provide for the appointment of public servants as the Inquiring Authorities in disciplinary cases against their officers. By virtue of this provision, the Commissioners for departmental Enquiries can be appointed as Inquiring Authorities by the Banks in enquiries against their officers who are in receipt of Rs. 1,000/- or more as basic pay.

3. The Commission has received certain references from some Banks regarding the terms of appointment of the Cs.D.E.; payment of emoluments and T.A. and D.A. to them during the period they function as the Inquiring Officers in cases against officers of the Banks, and payment of T.A. and D.A. to witnesses appearing before the Cs.D.E. in such enquiries. The terms of appointment of the Cs.D.E. as the Inquiring Authorities will be the same as provided in the Bank's regulations. It is also clarified that all the emoluments of the Cs.D.E. including their pay, T.A. and D.A. are met from the Commission's budget and the disciplinary authorities who requisition their services for conducting enquiries are not required to bear any charges on this account. The payment of T.A. and D.A. to public servants who appear as witnesses before the Cs.D.E. will be borne by their respective Ministries and Organisations. As regards payment of T.A. and D.A. to private witnesses who appear before the Cs. D.E. as witnesses, this is also met by the Commission. Thus, there is no need to apprehend that the banks will be put to additional expenditure by appointing the Cs.D.E. as the Inquiring Officers in the proceedings against their officers.

4. Some banks have also raised the point that entrusting the enquiries to an "outside agency" like the Cs.D.E. may have an adverse effect on the morale of their officers. A Commissioner for Departmental Enquiries is appointed as the Inquiring Officer by the disciplinary authority itself, and for the purpose of conducting that enquiry he functions as the delegate of the disciplinary authority. There is, therefore, no question of treating him as an "outside agency". The Commissioner for Departmental Enquiries, of course, would always retain the utmost objectivity by reason of the above arrangement also, and this would naturally be welcomed by all concerned, including the disciplinary authority, the officers and unions etc. Besides, the experience of a large number of public undertakings who have been entrusting their enquiries to the Commissioners for Departmental Enquiries has shown that the appointment of Cs.D.E. as I.Os. has not only worked to the satisfaction of all, but has helped in keeping up the standards of integrity as well as the morale of officers.

(100)

Central Vigilance Commission Letter No. 1/6/77-R dated 3-10-77

[C(42)] [C(104) C(127)]

In this Commission's Circular No. 1/11/71-R dated 22nd November, 1972, it was mentioned that sometimes cases are re-

ferred to the Commission for advice shortly before the Superannuation of the officer concerned, without any specific mention regarding his date of retirement. The date of superannuation is an important circumstance which has to be taken into account by this Commission while advising on the future course of action in a case. In order, therefore, to facilitate appropriate action in all cases, it is desired that information in the enclosed form should invariably be furnished to this Commission when reports/cases are sent to the Commission for first-stage advice.

Particulars relating to the complaint/C.B.I. case against Shri.....

1. Name of the Officer
2. Service to which belongs
3. Date of superannuation
4. Post held:—
   (a) Designation:
   (b) Scale of Pay:
   (c) Present Pay:
   (d) Date from which pay shown against (c) is drawn.
5. Date of next increment.
6. Date of joining present service.
7. Whether borrowed from State Govt. or any other authority.
8. Which disciplinary rules are applicable to him.
9. Previous complaint(s), if any, against the officer and the results of inquiries into them.
10. Remarks about integrity in C.R.
11. (a) Brief particulars of similar cases if any, in the Ministry/Organisation in which the same or other officer(s) may have indulged in similar malpractices.

    (b) If so, steps taken to prevent recurrence of such malpractices.

Signature of
C.V.O.....

Date:

Tel. No.....

(101)

Central Vigilance Commission, letter No. 7 DSP 20(II) dated 11-10-77

[C(107), C(109)]

The Commission are anxious to minimise the delay involved in finalising departmental proceedings.

2. While communicating its advice to the disciplinary authority to initiate major penalty action, the Commission will indicate at that very stage the name of the C.D.E. who may be appointed as the Inquiring Officer in case the disciplinary authority decides upon major penalty proceedings. Therefore, in the covering memo, forwarding the charges and connected documents, the charged officer may be informed that in case he does not admit the charges, he may intimate the fact to the C.D.E. and appear before him on the date to be fixed by the C.D.E. who will take further action to conduct the enquiry into the charges. A copy of this communication may be sent to the CDE concerned along with all the relevant papers like the charge-sheet, order appointing the Presenting Officer, and the statement of witnesses recorded during preliminary investigation. The listed documents may be sent to the CDE direct. The Commission is issuing instructions to the CsDEs to ensure that inspection of documents is completed by the charged officers within one week.

3. For ensuring that the CDE submits his report within time, it has also to be ensured by the C.V.O. of the Ministry etc. concerned that whatever additional documents are asked for by the charged officer in his defence are made available without any delay. The CDEs are being asked to send all requests for additional documents to the CVO of the Department/Organisation to which the disciplinary proceedings relate. Thereafter, the CVO who gets this requisition should ensure that all documents which are available in his Department/Organisation or its lower formations are made available to the CDE immediately. In case any documents pertaining to other Departments/Organisations have been requisitioned by the CDE, then the CVO should get in touch with his counterparts in those Departments etc. and arrange for early production of the documents. All CVOs are requested to attend to this work personally and to ensure that disciplinary proceedings proceed without any holdup or delay. It is hoped that CVOs will appreciate the seriousness of any omission or delay in this regard.

4. The contents of this letter may please be brought to the notice of the Heads of attached and subordinate offices of your Ministry/Department/Organisation.

(102)

Central Vigilance Commission letter No. 3 DSP/23-R dated 12-10-77

Under para 5 of the Government of India's Resolution dated 11-2-1964 (at pp. 262-266 of the Vigilance Manual Vol. II Part-I) the Commission is responsible for advising the Ministries and Organisations etc. in all matters pertaining to maintenance of integrity in administration. While vigilance cases involving gazetted officers and officers* drawing a pay of Rs. 1,000/- and above p.m. in public undertakings and banks, are sent to the Commission for advice, no intimation is sent about suspension of such public servants in cases involving a vigilance angle. The quarterly statistical returns in form (this form has since been revised) CVC-7, which are sent to the Commission, cover only cases where public servants have been under suspension for more than 3 months. As the information in form CVC-7 is received long after the actual date of suspension, it is requested that whenever any gazetted officer or an officer drawing a pay of Rs. 1,000/- and above p.m. in public undertakings and banks is placed under suspension, in a case involving a vigilance angle, a copy of the suspension order may be endorsed to the Commission as well. This may please be brought to the notice of all concerned for guidance and necessary action.

(103)

Central Vigilance Commission, letter No. 7 VGL 9 dated 22-10-77

[C(68)] [C(149)]

Please refer the Commission's letter No. 4/62/70-R dated the 3rd November, 1973 (contained in Vigilance Manual Vol. II, Pt. II at pages 211-212) regarding comments to be furnished on the CBI report. The Commission would suggest that while furnishing these comments to the Commission the Chief Vigilance Officers may clearly indicate the respective functions duties and responsibilities of all the suspect officers involved in the case with regard to the impugned transaction. It is requested that this may please be noted for future guidance and brought to the notice of the heads of your subordinate officer also.

*New Officers drawing pay in a pay scale the minimum of which is not less than Rs. 1800/-pm.

(104)

Central Vigilance Commission, letter No. 7 VGL 6 dated 5-12-77

[C(100)]

[C(127)]

Please refer to this Commission's letter No. 1/6/77-R dated the 3rd October, 1977, on the subject noted above. This information would also be required in respect of old cases which are pending with the Cs.D.E. It is requested that the information as indicated in the proforma (enclosed) may please be sent to the Commission in respect of those cases also at a very early date and in any case by the 15th December, 1977.

Particulars relating to the case against Shri.....

1. Name of the Officer
2. Service to which belongs
3. Date of superannuation
4. Post held:—
   (a) Designation:
   (b) Scale of Pay:
   (c) Present Pay:
   (d) Date from which pay shown against (c) is drawn.
5. Date of next increment.
6. Date of joining present service.
7. Whether borrowed from State Govt. or any other authority.
8. Which disciplinary rules are applicable to him.
9. Previous complaint(s), if any, against the officer and the results of inquiries into them.
10. Remarks about integrity in C.R.
11. (a) Brief particulars of similar cases if any, in the Ministry/Organisation in which the same or other officers may have indulged in similar malpractices.
    (b) If so, steps taken to prevent recurrence of such malpractices.

Signature of C.V.O.....

Date:.....

(105)

Central Vigilance Commission Letter No. D 7 RTN 13 dated 19-12-77 to all CVOs etc. regarding Registers and Returns.

[C (14)] (Not Printed)

[C(106)]

(106)

Central Vigilance Commission letter No. 38 VGL 5 dated 7-3-78

[C(115), C(154)]

The Commission in its letter No. D7 RTN 13 dated 19-12-1977* prescribed a set of registers to be maintained by the Chief Vigilance Officers and a consolidated quarterly return to be sent by them to the Commission. After issue of the circular, certain difficulties in furnishing all the information in the return had been brought to the notice of the Commission. After discussing the matter with some of the CVOs, it has been decided to revise the return as in the 5 statements given in †Annexure II. The modifications effected in the registers given in Annexure III are slight.

2. The CVOs may now maintan the following registers:—

**(i) Register of complaints	CVO—IA and IB
**(ii) Register of reports of investigation	CVO—IIA and IIB
**(iii) Register of disciplinary proceeding for category A cases.	CVO—IIIA
**(iv) Register of disciplinary proceedings for category B cases.	CVO—IIIB

3. The proformae of these registers are self-explanatory and need no further comment. Category A includes cases involving gazetted officers of the Central Government and Union Territories and officers drawing Rs. 1,000/- or more as basic pay in the Public Undertakings and Nationalised Banks. Category B includes cases involving other officers of the Central Government,

*Not printed C(105).

†Not printed since it has been revised by latter dt. 21-6-78 (The latest statements are at S Nos. 27, 28, 29& 30, 31, 31A of Vol. II, Part I (Section E).

**Not printed since these have been revised *vide* letter dt. 21-6-78 and available in Vol. II Part I.

Union Territories, Public Undertakings and Nationalised Banks. A case involving officers of both categories will be treated as a category A case and entered in Register IIIA. The registers CVO-I and CVO-II are also to be maintained in separate parts for Category A and Category B employees. (CVO-IA/CVO-IB and CVO-IIA/CVO-IIB).

4. As regards the return, Statement I is the quarterly summary which indicates the opening balance, receipts, disposal and closing balance of complaints, cases under investigation by the CBI and by the departmental Vigilance Officers and reports of investigation sent by the CBI and the departmental Vigilance Officers to the CVO. A complaint includes not only a petition or a representation but all types of information involving public servants whether received from an outside source, detected by the Vigilance Organisation itself or brought to light in audit reports, inspection notes etc. These should find place in columns 1 to 4 of Statement—I, Column 5 should indicate the registration report in which the CBI have started a PE or a RC but have not submitted the final reports while column 7 should mention all complaints which are under investigation by the departmental Vigilance Officers. Columns 9 and 11 are meant for investigation reports sent by the CBI and the departmental Vigilance Officers.

5. Statement 2 indicates the different types of action taken on complaints and investigation reports while Statement 3 will furnish the details of the decision taken in the disciplinary proceedings. In Statement 3, all disciplinary proceedings in which a final decision has been taken by the disciplinary authority during the quarter should be given. The total as reflected in column 25 of Statement 3 would be the total number of disciplinary proceedings disposed of during the quarter. Statement 4 will indicate the break-up of pendency of FIRs under investigation by the CBI/ copmlaints under investigation by departmental Vigilance Officers/investigation reports pending with the department for decision as to further action and disciplinary proceedings in which no final decision has to be taken by the disciplinary authority. Disciplinary proceedings involving more than one officer and in which different types of action are advised against different officers will be classified as a minor penalty cases or a major penalty cases depending upon the severest type of action advised. Thus a CBI report in which major penalty action is advised against some officers and minor penalty action against certain others will be entered in column 13 of Statement 2. A disciplinary proceedings in which action was taken in a common inquiry against

several officers and in which the penalty of dismissal was imposed on one of the officers while lesser penalties were awarded to others would find place in column 23 of Statement 3.

6. In order to ensure that the return is correctly prepared, certain checks are to be applied and the details of pendency and disposal as reflected in Statements 2 and 4 should be compared with disposal and closing balance in Statement-I. Annexure I indicates how the three statements are to be tallied and cross-checked with one another.

7. Statement 5 which is important from the preventive vigilance angle deals with inspections of the Head Office and the lower and subordinate offices by all officers of the Ministry/Department or Organisation. The Commission is not aware whether the CVO is given copies of all inspection notes pertaining to his organisation. *In case no inspection note has been sent to him during the quarter. the CVO should send a certificate from the senior most officer incharge of inspections in the Ministry or Organisation that no case having a vigilance angle had been brought to light during inspections conducted in the quarter.* It *is sufficient if this fact is reported in Statement* 5.

8. It is requested that the returns in the revised form for the quarters ending 31st March, 1978 onwards may be sent so as to reach the Commission by 15th of the month immediately following the quarter. These instructions may be brought to the notice of the Vigilance Officers in your attached and subordinate offices and lower formations.

(107)

Central Vigilance Commission Letter No. 28 DSP 3 dated 15-2-78

[C(101)] [C(109)]

The Commission had issued certain guidelines in its circular No. 7 DSP 20(ii), dated 11-10-1977 for expeditious disposal of vigilance cases resulting in departmental action. It is felt that cases where a government servant is to be prosecuted should also be handled with the same sense of urgency. Normally it should be possible to issue the sanction for prosecution in about 2 months from the date of receipt of the Commission's advice. The Commission would, therefore, suggest that, as far as possible, this time limit may be observed in all cases of sanction of prosecution.

2. It is requested that this may please be brought to the notice of all concerned.

(108)

Central Vigilance Commission letter No. 38 VGL 7 dated 15-3-78

[C(70)]

Please refer to Commission's letter No. 1/34/73-R dated 11-3-1974 (incorporated in Vigilance Manual Vol. II, Part II at pages 218-220) on the above subject.

2. The Commission has now prescribed a consolidated quarterly return to be furnished by the CVOs which would give a complete picture of the vigilance work done by them in each quarter. It has, therefore, been decided that the resume now being sent to the Commission in accordance with letter referred to above *need not* be sent.

(109)

Central Vigilance Commission letter No. 7 DSP 20 dated 23-3-78

[C(101)]

Please refer to para 2 of the Commission's letter No. 7 DSP 20(II) dated October 11, 1977 in which it was indicated that Inquiring Officer may be appointed at the time of issuing the Charge-sheet in major penalty proceedings. The Commission has reconsidered the matter in the light of the judgement of the Orissa High Court in the case of Rabindranath Mohanty Vs. State of Orissa. In view of the ruling given by the Court, the CDI nominated by the Commission while tendering first stage advice may be appointed after the receipt of the officer's reply to the charge-sheet or on the expiry of the date by which his reply was to be received, whichever is earlier.

(110)

Central Vigilance Commission Letter No. 38 VGL 10 dated 11-4-78

[C(112)]

At present copies of the P.A.C. reports are sent to the Commission by the C&AG and if the reports indicate that any public servant may have acted for an improper purpose or in a corrupt manner, the matter is pursued by the Commission. It is how-

ever desirable, that action in such cases is taken at the earliest, and it would be helpful if the Commission is kept informed of such cases without waiting for the reports to be finalised. The Commission would therefore suggest that the Chief Vigilance Officers should scrutinise these reports in details even when such reports come to the organisation at the draft stage with a view to see if any public servant might have acted for an improper purpose or in a "corrupt manner or had exercised his powers for corrupt or improper purposes".

It is requested that this may be brought to the notice of all concerned.

(111)

Central Vigilance Commission Letter No. 7 VGL 2(1) dated 20-4-78

It has been noticed that a C.V.O. did not record his views on the work of VOs in the same department.

2. In this connection, attention is invited to para 7 of the Government Resolution No. 24/7/64-AVD, dated 11-2-1964, according to which the work of CVOs is assessed by the CVC. In a department in which there are CVO and VOs, it would be appropriate that the CVO gets an opportunity of recording his views on the vigilance work of VOs. It is presumed that normally CVOs do record their assessments of the work done by the VOs during the year. The Heads of Departments, however, may like to clarify this position to their CVOs if there is any doubt.

(112)

Central Vigilance Commission letter No. 38 VGL 10 dated 16-5-78

[C(110)]

In continuation of the Commission's earlier circular of even number, dated 11-4-78, it is requested that in cases where the scrutiny of PAC reports does not indicate any transaction having a vigilance angle, a 'nil' report may be furnished to the Commission.

(113)

Central Vigilance Commission Letter No. 58 DSP 10 dated 25-5-78

A question has been raised whether intimation about investigation of cases against officers who are on deputation. should

be sent to the organisations with whom such officers are on deputation. The Commission feels that it would be appropriate for the parent authority from which an Officer proceeds on deputation, to forward such information to the CVO of the organisation to whom the services of the officer have been sent. In all such cases the result of final investigation should also be sent to the borrowing organisation.

(114)

Central Vigilance Commission letter No. 58 VGL 13 dated 15-6-78

The Commission has come across some cases where the departmental investigation reports do not contain an explanation of the suspect officer. In the absence of such a statement, the charged officer is likely to be proceeded against unjustifiably. It is only proper, therefore, that the investigating officer tries to obtain the suspect officer's version of "facts" and why an inquiry should not be held. There is no question of making available to him any documents at this stage.

2. The fact that such an opportunity was given to the officer concerned should be mentioned in the investigation report, even if the officer did not avail of it.

3. This may please be brought to the notice of all concerned.

(115)

Central Vigilance Commission Letter No. 38 VGL 5 dated 21-6-78

[C(106)] [C(154)]

The Commission in its circular of even number dated 7-3-78 have prescribed a consolidated quarterly return to be sent by the CVOs. At the time of compiling the annual report of the Commission for 1977-78 it was felt that it would be helpful if the quarterly returns are furnished in modified form so that the report for the subsequent years can be compiled on the basis of the returns without having to request for additional information from the CVOs at the close of the year. Of course this implies timely despatch of quarterly reports. Considering this and after consultation with some experienced CVOs stationed in Delhi, it has been decided to revise the returns as indicated in Annexure I. The forms are self-explanatory. Statement 4 is the same as statement 5 of the earlier return and should be

prepared in accordance with the guidelines given in para 7 of the circular dated 7-3-78 referred to above.

2. It may kindly be noted that these revised statements can be compiled on the basis of the 6 registers CVO 1A, 1B, 2A, 2B, 3A and 3B prescribed in para 2 of the circular mentioned above. The registers need no change except modification of the headings of columns 5, 7 and 8 of Register IIIA and column 5 of Register IIIB. The forms of Registers IIIA and IIIB will now be as in Annexure II and Annexure III. It would be seen that the modification can be effected by correcting the column headings of the registers already opened and it will not be necessary to open new registers.

3. There may be cases where investigations ordered are by the heads of Regional Officers on their own. They may also be the disciplinary authorities in respect of certain employees. In compiling information about these cases care should be taken to see that such of the cases as become part of CVOs registers as well, are not counted twice.

4. It is requested that the returns in the revised form from the quarter ending 30-6-78 onwards may be sent so as to reach the Commission by 15th of the following month. The return for the quarter ending 30-6-78 may be sent by 31-7-78.

Note : Annuxeurs, viz statements and registers have not been printed here but are available in Vol II Part I (Section E).

(116)

Central Vigilance Commission letter No. 78 VGL 15 dated 1-8-1978.

[C(37A)]

Subject : — Quarterly statistical return showing the time taken by the Ministries/Departments/Union Territories/Public Undertakings/Nationalised Banks in furnishing reports on the Complaints sent by the C.V.C. for investigation.

The Commission's circular No. 62/10/70-C dated 18-6-70 (page 192, Vigilance Manual, Part II) prescribing the above return is hereby rescinded. No return as prescribed therein need be sent hereafter.

(117)

Central Vigilance Commission letter No. 784 CVO 2 dated 1-8-78

[C(3), C(92)]

It has been decided that the Commission need not be consulted on the proposals to strengthen vigilance arrangements as required in para 3 of the Commission's letter No. 2/16/64-Coord. dt. 7-9-64 (pages 160-161 of Vigilance Manual, Vol. II Part II), in regard to the appointment etc. of clerical and other subordinate staff.

(118)

Central Vigilance Commission letter No. 18 VGL 1 dated 6-10-78

[C(92)]

It is requested that while sending proposals for appointment of officers who are not already working in the Department/Organisation as Chief Vigilance Officers, it may please be indicated whether the cadre authority of the officers has agreed to spare them for deputation to the Department/Organisation.

(119)

Central Vigilance Commission letter No. 19 RNX 1 dated 2-1-79

The Commission has been issuing consolidated reminders in forms C.F. 14 to 18. These reminders are issued statewise and the duplicate copies of the list of cases enclosed to the reminders are to be returned to the Commission after indicating the date by which the action pending with the Department is expected to be taken, in the last column. It is, however, noticed that in some cases the replies sent by the Department are not specific. Extracts from the reply sent by one of the Banks which are enclosed will illustrate this point. In this case the C.V.O. has not indicated what exactly were the penalties imposed or the dates on which they were imposed. Without this information the Commission is unable to complete its records.

2. It is therefore requested that while returning the duplicate copies, the actual decision taken as well as the date on which it was taken may be indicated. If the fact had been intimated to the Commission earlier, then that reference may also be given. If a decision has not been taken, the date by which it is expected to be taken may be indicated in the list.

Extract

From the reply sent by one of the Banks

C.F. 18

S. No.	File No.	Name of officer(s) involved	Date on which sent by Commission	Date by which a report may be expected
1.		Shri A.J.C.P. Rodrigues,	29-6-78	Punishment already awarded. Appeal under process.
2.		Shri S.K. Majumdar	6-6-78	Punishment awarded.
3.		Shri K.P. Ranganathan	4-8-78	Punishment already awarded.

(120)

Central Vigilance Commission letter No. 7VGL 2(1) dated 11-1-79

The Commission has reviewed the work done by some of the Vigilance Officers and is of the view that the performance of vigilance staff should be assessed taking into account the items of vigilance work entrusted to them during the period under report. The Chief Vigilance Officer while recording the assessment in the Annual Confidential Report of the Vigilance Officer should cover all aspects of Vigilance Officer's work, entrusted to him and observe the following points in particular:—

(i) The time taken to complete investigations entrusted to the Vigilance Officers and whether the investigations are properly scheduled.

(ii) The time taken for completing oral inquiries and whether these have been scheduled and conducted properly.

(iii) Whether the recommendations after investigation and the findings after inquiry are well taken and the evidence collected has been apprised in an objective and intelligent manner.

(iv) The initiative shown in detecting misconduct and defects in procedure etc.

2. The assessment should be on the basis of the overall performance over the entire period under report and both good and bad work noticed during the period should be taken note of instead of relying upon the latest impression of the CVOs which would be unfair to the officer concerned.

(121)

Central Vigilance Commission letter No. 19 VGL 2 dated 12-1-79 to Chairman and Managing Directors of Public Sector Undertakings

The Commission has learnt from some of the participants who came for training courses being organised in the Commission that in many of the Undertakings there is no staff at the disposal of the CVOs to undertake investigations and inquiries into vigilance cases. It was suggested by the participants that some skeleton staff should be placed at the disposal of the C.V.Os to undertake this work. The Commission would suggest that undertakings may look into the matter and provide necessary staff who would be entirely at the disposal of the CVOs. The Commission will arrange the training required for such staff.

2. The Department of Personnel & AR have taken a policy decision to the effect that the CVOs in important Ministries/ Departments should be at least of the rank of Director. The Commission would request that a similar action may please be taken by your Undertakings. The action taken in the matter may please be intimated to the Commission.

(122)

Central Vigilance Commission letter No. 29 VGL 3 dated 9-4-79.

[C(126)]

[C(15), C(50), C(71)]

In the Commission's letter No. 1/7/66-Coord. dated 14-4-1966, it has been stated that only those cases in which there is an allegation of corruption or improper motive or if the alleged facts indicate an element of corruption or improper motive need be referred to the Commission. Para 2 (ii) of the Government Resolution dated 11-2-1964 setting up the Commission, however, makes it clear that the Commission should deal with not only cases where a public servant had exercised or refrained from exercising his powers for improper or corrupt

purposes but also cases of misconduct, lack of integrity or other kinds of malpractices or misdemeanour on the part of public servants. It is, therefore, felt that the above mentioned circular is at variance with the Government Resolution and is hereby rescinded.

2. The question whether any particular case will come within the Commission's purview will be decided in accordance with para 2 (ii) of the Government Resolution referred to above.

3. The Hindi version will follow.

[This letter has been withdrawn vide letter dt. 10-12-80.]

(123)

Central Vigilance Commission letter No. 79DSP7 dated 12-7-79

Commissioners for Departmental Inquiries sometimes experience difficulties in expeditious conduct of inquiries due to delay in selection of Defence Assistants by the charged officers. The Commission would, therefore, suggest that when the order of appointment of the Presenting Officer is issued, in the copy of the order endorsed to the suspect public servant, he should be asked to finalise the selection of his Defence Assistant before the commencement of the proceedings, in case he wishes to engage one. It is requested that all concerned may please be informed accordingly.

(124)

Central Vigilance Commission letter No. 20 DSEI dated 27-3-80

[C(96)] [C(143)]

In para 1 of the Hand Book for Inquiry Officers certain documents have been listed on receipt of which the Inquiry officers take cognisance of a case. Item (VI) of this list indicates that the disciplinary authority should send to the Inquiry officer a list of documents by which the articles of charge are to be proved. In para 1.3 it is mentioned that the Presenting Officer will bring copies of statements of the listed witnesses and the listed documents with him at the time of the preliminary hearing.

2. It has come to the Commission's notice that certain cases (investigated by CVOs) are referred to the Commissioners for Departmental Inquiries even at a stage when listed documents are not in the possession of the Presenting Officers or disciplinary authorities. As a result the action contemplated in para 1.4 of the above Hand Book at the Inquiry Officer's level gets stalled resulting in dislocation of the schedule. More particularly, if the Presenting Officer does not bring the listed documents with him, the Inquiry Officer is not in a position to fix the dates of regular hearing in consultation with both the parties because the fixation of these dates is dependent on the date on which the Presenting Officer can acquire the documents and offer them for inspection to the S.P.S.

3. It is, therefore, requested that before referring a case to the Inquiry Officer, the disciplinary authorities may ensure that they are in possession of the listed documents. While forwarding the case to the Inquiry Officer, the disciplinary authorities may specifically mention that all the listed documents are available with them or with the presenting officer concerned. The Commissioner's for Departmental Inquiries are being asked not to take cognisance of the case until this requirement is met with. All concerned may please be informed accordingly.

(125)

Central Vigilance Commission letter No. DSP 14 dated 29-11-80

[C(22), C(38A), C(59), B(103)]

I am directed to invite reference to Commission's letter No. 1/14/70-R, dated the 20th September, 1973, which elaborates, inter alia, the procedure of second stage consultation with the CVC in cases where the Commission advises initiation of proceedings as for a minor penalty, as follows:—

(a) In cases in which the disciplinary authority, after considering the representation of the delinquent official, under Rule 16(1)(a) of CCS (CC&A) Rules, 1965 or other corresponding rules considers that an oral inquiry is necessary, such inquiry should be entrusted to one of the CDIs to be nominated by the Commission. Where oral inquiry is advised and conducted, the Commission advises the disciplinary authority as to the further course of action on the findings of the inquiring authority

(b) In cases in which the disciplinary authority does not consider that oral inquiry is necessary, the matter has to be referred to the Commission for second stage advice along with the written statement of defence, the comments of the disciplinary authority thereon and the provisional conclusion reached thereon by the disciplinary authority.

2. In partial modification of the existing procedure, described above, which is applicable to cases relating to Ministries/Departments/Attached and Subordinate offices of Government of India, it has been decided that in cases in which the Commission advises proceedings as for a minor penalty, consultation with the Commission at the second stage would not be necessary, if the disciplinary authority imposes one of the minor penalties specified in Rule 11 of CCS (CC&A) Rules, 1965 or other corresponding rules, but a copy of the order imposing minor penalty should be endorsed to the C.V.C.

3. The new procedure outlined in para 2 above would, however, not apply

(a) to minor penalty cases where oral inquiry has been ordered. In such cases, the Commission would tender second stage advice after considering the report of the inquiring authority.

(b) to cases where the disciplinary authority decides not to impose any of the minor penalties specified in the aforesaid rules.

This follows that the cases in which the disciplinary authority decides to hold oral inquiry or to drop the proceedings, will have to be referred to the Commission for its second stage advice.

(126)

Central Vigilance Commission letter No. VGL 10 dated 10-12-80

[C(160)]

[C(122), C(15)]

On a re-appraisal of the implications of the instructions contained in the Commission's letter No. 29 VGL 3 of April 9, 1979 and on the basis of experience gained ever since, the Commission has, in consonance with the spirit of the Government

Resolution No. 24/7/64-AVD dated 11-2-64, decided to withdraw circular No. 29 VGL 3 dated 9-4-79 and restore the position as it obtained prior to the issue of that circular. In other words the Ministries/Departments/Public Sector Undertakings may hereafter refer only those cases to the Commission for advice which are covered by the guidelines given in the CVC's letter dated 14-4-1966 (not printed). It is re-iterated that only cases which *prima facie* have or are likely to have a vigilance angle should be referred to the Commission for advice and included in the statistical returns.

2. When in doubt as to whether or not a case has a vigilance aspect, the matter may be decided at the discretion of the administrative Ministry at a sufficiently high level—in any case not below that of a Joint Secy. In Public Sector Undertakings, such a decision may be taken by the executive Head of the Undertaking, such as the Chairman and/or the Managing Director, as the case may be.

3. Please acknowledge receipt of this letter.

[Note: Para 2 above has been partially modified—see C(160)]

(127)

Central Vigilance Commission letter No. 50 PRC 4 dated 11-2-80

[C(165)]

[E(43)]

According to the existing instructions, Ministries/Departments/Public Sector Undertakings while referring a case to the C.V.C. for advice, make available the service particulars of the SPS in form-I (copy available at page 49 of the Vigilance Hand Book). It has now been decided that this form should also indicate whether the SPS is under suspension and if so, from which date. Accordingly, the form has been revised and a copy thereof is enclosed on reverse for intimating the particulars of the SPS, in future. If an officer is placed under suspension subsequently at any time, the fact may be brought to the notice of C.V.C. Similarly whenever orders of suspension of such an officer are reviewed and the officer reinstated, this may also be brought to the notice of CVC.

2. This information regarding the date of suspension of the SPS may be sent to the Commission also in respect of all the

cases at present pending with the Commission and/or the CDIs. by 31-12-80.

FORM–I

Particulars relating to the complaint/C.B.I. case against Shri.....

1. Name of the officer
2. Service to which he belongs
3. Date of superannuation
4. Date of suspension
5. Post held:—
   (a) Designation
   (b) Scale of pay
   (c) Present by
   (d) Date from which pay shown against (c) is drawn.
6. Date of next increment.
7. Date of joining present service.
8. Whether borrowed from State Govt. or any other authority.
9. Which disciplinary rules are applicable to him.
10. Previous complaint(s), if any, against the officer and the results of inquiries into them.
11. Remarks about integrity in C.R.
12. (a) Brief particulars of similar cases, if any, in the ministry/organisation in which the same or other officer(s) may have indulged in similar malpractices.
    (b) If so, steps taken to prevent recurrence of such malpractices.

Signature of C.V.O.....

.....

Date.....

Tele No.....

(128)

Central Vigilance Commission letter No. DO DSP 16 dated 14-1-81.

The Central Civil Services (Pension) Rules, 1972 which apply to most of the Central Government employees provide inter-alia—

(a) A departmental proceeding if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceeding under Rule 9 of the above mentioned Pension Rules and shall be continued and concluded by the authority by which it was commenced in the same manner as if the Government servant had continued in service.

On retirement, the Government servant is paid provisional pension but not gratuity, the payment of which is authorised only after the conclusion of proceedings, and issue of final orders thereon.

(b) A departmental proceeding against a pensioner can also be instituted in respect of an event which took place not more than 4 years before such institution.

(c) The President has the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

The employees of the Public Sector Undertakings and Nationalised Banks are not governed by the CCS (Pension) Rules, 1972. In cases of many Public Sector Employees departmental proceedings if instituted during employment automatically abate on retirement and further, proceedings cannot be instituted after retirement. Also since most of the employees do not get pension and, therefore, the question of withholding or reducing it does not arise. Since it is not desirable that corrupt employees should go scot free just because they retire, the Commission

desires that the administrative Ministries and Bureau of Public Enterprises may ask all the Public Sector Undertakings and Nationalised Banks to examine their Conduct, Discipline and Appeal Rules and also Pension Gratuity and Provident Fund Rules with a view to introducing provisions similar to those of the CCS (Pension) Rules, 1972 to the extent possible.

2. The Commission also desires that the Ministries may ask the Public Sector Undertakings under their administrative control to adopt the Model Conduct, Discipline and Appeal Rules circulated by the Bureau of Public Enterprises, if this has not already been done.

3. A report on the results of action taken on the foregoing two paragraphs may be sent to the Commission by 30-6-1981.

(129)

Central Vigilance Commission letter No. DO DSP 18 dated 15-1-81 to Director, C.B.I.

It has come to the Commission's notice that in a case (RC 70/75-DLI) involving a charge of acquisition of assets disproportionate to the known sources of income, the disciplinary proceedings against the charged officer had to be quashed. One of the reasons for quashing the proceedings was that the precise calculations on the basis of which amounts under different subheads of income, expenditure and assets had been arrived at, were not on record and this affected the examination of the imputations and the charge by the Inquiry Officer. The Commission desires that in cases involving charge of disproportionate assets, this point may be kept in view while preparing the investigation report and draft charge-sheets etc.

(130)

Central Vigilance Commission letter No. 1K VGL 2 dt. 22-1-81

Addressed to The President, New Delhi Municipal Committee, The Director (Vigilance), Delhi Municipal Committee, The Chief Secretary, Delhi Administration, The Chairman, Delhi State In-

dustries Development Corporation, Vice-Chancellor, Delhi University, and Chief Secretary, Goa, Daman & Diu Administration.

It is found that comments of the Executive Engineers/Superintending Engineers/Chief Engineers on the inspection reports of the Chief Technical Examiners' Organisation are not received promptly. As a result, further examination of and action in the case gets delayed. In this connection a copy of the Director General of Works, C.P.W.D. Memo. No. 18/47/78-W(DG) Vol. II dated 23-8-79 containing instructions to his Chief Engineers etc. is enclosed. It is suggested that you may also issue similar instructions to your Engineers, under intimation to the Commission.

Copy of DG Works, CPWD Memo. No. 18/47/78-W (DG) Vol. II, dt. 23-1-79.

1. Attention of the Chief Engineers/Superintending Engineer/Executive Engineers is invited to para 5, 6, and 7 and also para 19 and 20 of Section 57 Chapter VI of C.P.W.D. Manual (Vol. II) (1972 Edition) laying down the drill for sending replies to the Chief Technical Examiner's observation memos depending upon the value of the work and the officer to whom the obervation memos are sent for initial reply.

2. With the commencement of intensive examination of works which comprises of four major Sub-heads, namely, preliminaries to the award of the work, deviations noticed in the N.I.Ts/Agreement, technical deviations in the execution of the work, deficiencies in the work in progress, the first two may have to be answered mostly by the Superintending Engineer or the Chief Engineer, in that the work selected for intensive examination are mostly above Rs. 15 Lakhs.

A random survey of the disposal of the observation memos by the Zones as at present, indicates that observations pertaining to preparation of N.I.T. document, award of work and discrepancies between the N.I.T. and the agreement, are replied by the Superintending Engineer/Chief Engineer between 2 and 3 months. Observations regarding deficiencies in the execution of work some times get delayed as much remarks are routed through the S.E./C.Es.

3. To streamline and to expedite the initial replies to these observation memos, the matter was discussed in a meeting of the

Chief Engineers and the Chief Technical Examiner when it was decided that a time limit of 3 months be adopted for replying to Chief Technical Examiner's memo's considering the changed procedure of intensive examination by Central Vigilance Commission. Chief Technical Examiner has now recommended a limit of 2 months in case of observation memos issued to S.E.'s and 3 months in the case of memos addressed to Chief Engineers.

4. Ministry of Works & Housing decided vide their letter No. 14012(9)/76-EWI (Vol. III) dt. 28-6-79 to create an Independent Quality Control and Technical Audit Wing under the control of Director General (Works). Consequently, the Chief Technical Examiner will discontinue the normal technical audit of the works done by C.P.W.D., and will investigate only those cases referred to him by the Central Vigilance Commission or the Ministry of Works & Housing for examination from the Vigilance angle. The number of such cases will, therefore, be few and it should be possible to dispose off their cases within the time limit indicated in para 3 above.

5. In view of above, the following guidelines are laid :—

(a) The Chief Technical Examiner while sending the intensive examination memo to the Chief Engineers, will endorse copies directly to the Superintending Engineer and the Executive Engineer concerned (instead of sending three copies to the Chief Engineer).

(b) The Executive Engineer should reply to points pertaining to the execution of the work and other factors regarding the discrepancies between the agreement and the N.I.T. within one month to the S.E./C.E. with copy to the C.T.E.

(c) The Superintending Engineer should submit his own report on preparation of N.I.T., acceptance of work and other aspects pertaining to him or relevant to the case, to the Chief Engineer together with his own directions to the Ex. Engineer for rectification of defects and their compliance, within a month thereafter.

(d) The Chief Engineer should send his final and consolidated report to the C.T.E. on the entire memo with compliance report on the deficiencies in the work in a further month thereafter (i.e. the final report to the

C.T.E. may go within 3 months from the Chief Engineer, from the date of its initiation).

6. C.Es/S.Es/E.Es should strictly adhere to these target dates and follow this drill meticulously. Failure to adhere to these dates would be viewed seriously.

(131)

Central Vigilance Commission letter No. 1K VGL 1 dated 22-1-81

[B(52A)] [C(140)]

It has been noticed that some organisations other than the Central Public Works Department object to entry and inspections by the officers of the Chief Technical Examiner's Organisation of this Commission, without a specific reference from the Commission. In this connection attention is invited to Ministry of Home Affairs O.M. No. 24/25/64-AVD dated 22-2-66 (copy enclosed) clarifying that the jurisdiction of the CTE's Organisation is coterminous with that of the Central Vigilance Commission. It is requested that this may be reiterated and brought to the notice of all concerned.

2. To enable officers of the CTE's Organisation to select and examine works from the point of view of vigilance, it is proposed to maintain lists of all major works (estimated cost of more than Rs. 15 lakhs each) undertaken by Ministries/Departments. It is, therefore, requested that quarterly information may be sent in the proforma enclosed on the 15th of January, April, July and October. Works executed through the CPWD need not be listed by the Ministries and Departments as these will form part of the statement sent by the CPWD; however, works executed through other agencies may invariably be shown.

3. Chief Vigilance Officers of all organisations are also requested to apply their minds to such major works and provide to the C.T.E. a list of approximately 10% of these works which, in their opinion, need to be or should be inspected by the C.T.E.'s Organisation purely from the vigilance angle.

Please acknowledge receipt of this letter.

(Proforma)

Ministry/Dept of.....

S. No.	Name of the work and location	Estimated cost of the work	Date of commencement of work	Percentage of progress
1	2	3	4	5

(132)

Central Vigilance Commission letter No. 1K CRD 4 dt. 3-2-81

Addressed to The President, New Delhi Municipal Committee, The Chief Vigilance Officer, Municipal Corporation of Delhi, The Chief Secretary, Delhi Administration, The Chairman, Delhi State Industrial Development Corporation Ltd., The Vice Chancellor, Delhi University, and The Vice Chancellor, Aligarh Muslim University.

The CTE's Organisation under the Central Vigilance Commission which has been examining the Civil/Electrical works under various Departments of your Organisation, from the vigilance angle, has reported that many irregularities occur in the process of preparing estimates/awarding of contracts/execution of works for want of rules/instructions. The Commission would advise that such of those Department of your Organisation which do not have set rules/procedures, etc. may adopt the code and instructions of the CPWD with suitable modifications as deemed necessary. Action taken in this regard may please be communicated to the Commission as early as possible.

(133)

Central Vigilance Commission letter No. 1K DSP 1 dt. 3-2-81

[C(1), C(125)]

Please refer to the Commission's letter No. 9/1/64-DP, dt. 13-4-64, on the subject noted above.

2. In a case, an officer at the time he committed a certain misconduct, held a gazetted post. On reference from the con-

cerned Department, this Commission advised initiation of major penalty proceedings and nominated a C.D.I. for appointment as the Inquiring Authority. Before however, the disciplinary proceedings could be instituted, the officer reverted to a non-gazetted post, otherwise than as a measure of penalty under CCS (CCA) Rules, 1965. The disciplinary proceedings were initiated and concluded by an authority which became his disciplinary authority after his reversion which was not correct. The CDI nominated by the Commission was not appointed as the Inquiring Authority and the Commission's second stage advice was also not obtained.

3. As per explanation II below Rule 12 of the CCS (CCA) Rules, 1965 "Where a Government servant belonging to a Service or holding a Central Civil post of any class, is promoted, whether on probation or temporarily to the Service or Central Civil post of the next higher class, he shall be deemed for the purposes of this Rule to belong to the Service of, or hold the Central Civil post of, such higher class". According to this, action under Rule 14 of the CCS (CCA) Rules, 1965 should have been taken by the disciplinary authority for the gazetted post and the inquiry should have been entrusted to the CDI and the Commission's second stage advice taken at the appropriate time. This clarification may be brought to the notice of all concerned.

(134)

Central Vigilance Commission letter No. IK DSP-3 dated 3-2-81

As you are aware, of late there is considerable delay in the finalisation of criminal cases against public servants and meanwhile employing departments are unable to take a view about utilisation of such public servants. In many cases, the charged person is under suspension and continues in that situation for year at a time. This state of affairs is also unfair to the public servant. In such cases, the Commission feels, especially where the charges are serious and the evidence strong enough, that simultaneous departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the public servant and final decisions can be taken about his further continuance in employment. You are, therefore, requested to immediately review such cases in your organisation and to take a view whether departmental proceedings may not also be started. In future also, when prosecution of a public

servant is sanctioned, a conscious view may be taken whether disciplinary proceedings may not be started at the same time.

2. There is a common misunderstanding that the institution of departmental proceedings in cases where criminal prosecution has been sanctioned may not be legal or might adversely affect the result of the criminal prosecution or vice versa. It is clarified that there is no legal bar to the initiation of disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already pending, and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency/misconduct in criminal prosecutions and departmental proceedings as well as the quantum of proof required in both cases are not identical. In criminal cases, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings proof based on preponderance of probability is sufficient for holding the charges to have been proved.

3. What might however affect the outcome of the subsequent proceedings may be the contradictions which the witnesses may make on their depositions in the said proceedings. It would, therefore, be necessary that all relevant matters be considered in each individual case while taking a decision on whether or not to start simultaneous departmental action.

Please acknowledge receipt of this letter.

(135)

Central Vigilance Commission letter No. DO DSP 15 dt. 26-2-81

[C(142)]

Cases have come to the Commission's notice in which employees of the Public Sector Undertakings and Banks got away scot free on account of retirement even though charges of corrupt practices had been prima facie found established against them. This happened because the applicable Conduct, Discipline and Appeal Rules did not provide for continuance or initiation of disciplinary proceedings after retirement. The Commission has also found that the public servants against whom disciplinary proceedings have been initiated go to the courts and get stay orders thus preventing completion of the disciplinary proceedings before the date of retirement. Similarly, the public servants employed by the Ministries/Departments etc. of the Govt. of India escape penalties provided in Rule 11

of the CCS (CCA) Rules, 1965 and in the other applicable rules because of delays in investigations, issue of charge-sheets, oral inquiries and consultation with this Commission and other bodies. Since it is undesirable that guilty should go unpunished. You are requested to please ensure that investigations in such cases are completed at least one year before the date of retirement and all further action expedited if necessary by personal contact.

(136)

Central Vigilance Commission letter No. 3K CVO 10 dated 24-3-81

[C (55)]

[C (152)]

I am directed to say that in modification of the instructions contained in this Commission's letter No. 115/73-R, dated 30-7-73, proposals for appointment of Chief Vigilance Officers in the Ministries/Public Sector Undertakings etc. accompanied by the C.R. dossiers may now be addressed by name to Secretary, Central Vigilance Commission (presently Smt. Kusum Prasad), No. 3, Dr. Rajendra Prasad Road, New Delhi-110001.

(137)

Central Vigilance Commission letter No. 3K DSP 13 dated 10-4-81

[C (86)]

I am directed to enclose a copy of this Commission's letter No. 7/9/75-R, dated 15-9-75 (not printed) on the subject noted above and to say that some instances of inconvenience suffered by the Commissioners for Departmental Inquiries in getting accomodation and transport for official work, have been brought to the Commission's notice. In this connection, I would like to point out that C. D. Is are actually the delegates of the disciplinary authorities and, therefore, are expected to be given all possible help in the matter of accommodation and transport facilities, while on tour. The Commision would request that all the field officers of your Ministry/Department/Public Sector Undertaking/Bank may be suitably advised so that accommodation, transport & other facilities as necessary are made available to the CDIs.

CONFIDENTIAL

(138)

Central Vigilance Commission letter No. DO CRD 22 Dated 16-4-81

The Commission has noticed considerable pendency of complaints reflected in the quarterly statistical returns of some Departments/Organisations. In this connection, it may be pointed out that as soon as a complaint is entrusted to an investigating officer for investigation or a decision is taken not to investigate it, the compliant should be treated as disposed of. Taking such a decision should not take more than 10 days, as per para 3.5 of the Vigilance Hand Book. The Commission would like to reiterate that this time-limit may be adhered to strictly.

CONFIDENTIAL

(139)

Central Vigilance Commission letter No. 4K DSP 23 Dated 16-4-81

It has been observed in many cases that disciplinary authorities "decide" to disagree with the Commission and then send the case back to the Commission for reconsideration of its advice. It is suggested that requests for reconsideration should be made at a stage prior to the final decision. It may be noted that once the authority concerned has 'decided' or 'resolved' to differ with the Commission, the case will be treated as one of non-acceptance of advice.

Please acknowledge receipt of this letter.

(140)

Central Vigilance Commission letter No. 1 K VGL 1 Dated 24-4-81.

[C (131) B (52A)]

[C(141)]

Please refer to the Commission's letter No. 1K VGL 1, dated 22-1-81, on the subject noted above.

2. A point has been raised whether the quarterly lists to be sent to this Commission should also include major works of the Public Sector Undertakings, Banks and other Organisations

which are under the Commission's jurisdiction. In this regard, I am to clarify that since the jurisdiction of the CTE's Organisation is co-terminus with that of the CVC, it follows that the lists should also include works of Public Sector Undertakings, Banks and other Organisations under the Ministry. The lists may be prepared accordingly.

CONFIDENTIAL

(141)

Central Vigilance Commission letter No. 4 K CRD 15 Dated 29-4-81

[B(52A), C(7), C(140)]

Please refer to this Commission's letter No. 2/6/65-Coord., dated 17-2-65 and the Ministry of Home Affairs O.M. No. 24/25/64-AVD, dated 22-2-66 regarding the CTE's Organisation (copies enclosed for ready reference).

2. It will be seen therefrom that the CTE's Organisation can be entrusted, at the discretion of the CVC, with investigation of complaints relating to civil works pertaining to any Ministry/Department of the Govt. of India, Public Undertakings and Corporate Bodies etc. falling within the jurisdiction of the Central Vigilance Commission. It has, however, been found that requests for assistance of the CTEs are rarely received. I am, therefore, to reiterate the availability of the assistance of the CTE's Organisation in the matter of investigation of complaints having vigilance angle, relating to civil works. Such requests could be addressed to the CTE, Block 10-A, Jamnagar House, New Delhi-110001.

(142)

Central Vigilance Commission letter No. DO DSP 15 Dated 6-5-81

[C (135)]

[C(151)]

Please refer to the Commission's letter No. DO DSP 15 dated 26-2-81, addressed to all the Chief Vigilance Officers, on the subject noted above.

2. It has been observed that some times the authorities concerned adopt a dilatory or lax attitude in processing disciplinary cases, thus knowingly or otherwise helping the suspect public servants, particularly in cases of officers due to retire. After the retirement of the officer, disciplinary proceedings are either otiose or difficult to initiate/continue.

3. It may, therefore, be ensured by the supervisory officers that in cases where the officials are due to retire and their conduct is under investigation specific steps are taken to see that disciplinary action, where necessary, is initiated in time. The Commission would emphasise that it is also the responsibility of the Chief Vigilance Officers/Vigilance Officers to ensure that orders passed in the cases of retiring officers are implemented in time. For this purpose, periodical statements may be obtained. The Commission would also suggest that administrative action should follow whenever there is a failure in this regard.

(143)

Central Vigilance Commission letter No. 4 K DSP 25
Dated 6-5-81

[C(124)]

Please refer to the Commission's letter No. 20 DSE 1 dated 27-3-1980, requesting that while forwarding cases to the Inquiry Officer, the disciplinary authorities may specifically mention that all the listed documents are available with them or with the Presenting Officer concerned.

2. It is, however, observed that quite a number of cases where the Commissioners for Departmental Inquiries are appointed as inquiry officers, the documents are not made available promptly. As a result, the Commissioners for Departmental Inquiries are at a loss to proceed with the inquires and the cases are delayed. The Commission would reiterate that it may be ensured, while issuing the orders appointing the inquiry officers, that all the relevant documents are available with the disciplinary authority or with the Presenting Officer. It may also be ensured that these are handed over to the inquiry officer at the earliest.

(144)

CONFIDENTIAL

Central Vigilance Commission letter No. 6 K VGL 11
Dated 14-7-81

It has been observed that in certain cases the disciplinary authority has issued the charge sheet without obtaining the Commission's first stage advice and later referred the case to the Commission for its ex post facto approval to the action taken and for nomination of a CDI for appointment as inquiry officer. The Commission is thus presented with a fait accompli. In this connection it is reiterated that reference to the Commission for its first stage advice is necessary before the formal action of issuing a charge sheet is taken. It may be noted that the cases referred to the Commission after issue of charge sheet etc. would be treated as cases of non-consultation and the Commission will not be obliged to nominate CDIs in such cases.

(145)

CONFIDENTIAL

Central Vigilance Commission letter No. 1K DSP 2
Dated 13-8-81

[C (56)]

Please refer to the Commission's letter No. 6/3/73-R, dated 20-8-73 intimating inter alia the Commission's advice to the disciplinary authority was of a confidential nature and was not to be communicated to the charged public servant. A copy of the letter is enclosed.

2. 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 and the proceedings against him vitiated etc. In such cases, as already mentioned in para 3 of the Commission's letter dated 20-8-73, the Commission should be consulted and it would advise 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 Commissioners for Departmental Inquiries, about procedural aspects of departmental inquiries or

advice tendered by it on the Commissioners for Departmental Inquiries report.

3. In this behalf, the Commission would like to further intimate that the Supreme Court in CA No. 1277 of 1975, Sunil Kumar Banerjee Vs. State of West Bengal and others, decided on 26-3-80, has 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 Vigilance Commission's advice. A copy of the judgment is enclosed. You are, therefore, advised that while contesting the aforesaid grounds of the charged officers, in any case, this Supreme Court judgment may be kept in mind.

SUPREME COURT OF INDIA

Before: V. R. Krishna Iyer, R. S. Pathak and C. Chinnappa Reddy, J.J.

Civil Appeal No. 1277 of 1975
Decided on 26-3-1980

Sunil Kumar Banerjee (Appellant)

Vs.

State of West Bengal and others (Respondents)

A. *Constitution of India, Article* 311—*All India Service (Discipline and Appeal Rules,* 1969, *rule* 8—*Departmental Enquiry—Failure of the Enquiry Officer to question the delinquent officer in accordance with rule* 8(19)—*Failure to comply the requirements of the rule not to vitiate the enquiry unless prejudice caused—No prejudice caused in the instant case—Enquiry proper.*

Failure to comply with the requirements of rule 8(19) of the 1969 rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned single judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allega-

tions against him and dealt with all aspects of the allegation in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with rule 8(19).

(Para 4)

B. *Constitution of India, Article* 311—*All India Service (Discipline and Appeal) Rules,* 1969, *rule* 8—*Natural Justice—Disciplinary Authority consulting Vigilance Commissioner—Conclusions of Disciplinary Authority arrived at independently on the basis of relevant record—Disciplinary authority not influenced in any manner by the advice of Vigilance Commissioner in the preliminary findings of disciplinary authority communicated to the delinquent officer—No illegality.*

We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Enquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commssioner and obtained his views on the very same material. One of the submissions of the appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the instant request made by the appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the views of the Vigilance Commissioner. In findings which were communicated to the appellant there was no reference to the views of the Vigilance

Commissioner. In findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commission. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here not there.

(Para 5)

C. *Constitution of India, Article* 226 *and* 311—*Natural Justice/ Bias—Enquiry officer himself prosecutor and Judge—Preliminary report of investigation considered by the Vigilance Commissioner for his views and for preparation of draft charges if disciplinary proceedings are recommended by him—Subsequently Vigilance Commissioner was appointed as Enquiry Officer—Not a case of enquiry officer himself being prosecutor and judge—No bias—No illegality.*

We find no basis for the contention of the appellant that there was a reasonable apprehension in his mind that the Enquiry Officer was prejudiced against him. Nor do we agree with the statement that the Enquiry Officer combined in himself the role of the prosecutor and the judge. It appears that when the preliminary report of investigation was considered by the Vigilance Commissioner with a view to recommend to the disciplinary authority whether a disciplinary proceeding should be instituted or not, the report of investigation was referred by the Vigilance Commissioner to Shri A. N. Mukherji for his views and for the preparation of draft charges if institution of disciplinary proceedings was to be recommended. Shri Mukherji expressed his opinion that there was material for framing five charges and he also prepared five draft charges and forwarded them to the Vigilance Commissioner. The Vigilance Commissioner in turn forwarded the papers to the Government who finally decided to institute a disciplinary proceeding against the appellant. Thereafter Shri A. N. Mukherji was appointed as Enquiry Officer. From the circumstances that Shri Mukherji considered the report of investigation with a view to find out if there was material for framing charges and prepared draft charges, it cannot possibly be said that Shri A. N. Mukherji, when he was later appointed as Enquiry Officer constituted himself both as prosecutor and judge. Anybody who is familiar with the working of criminal courts will at once realise that

there is nothing strange in the same Magistrate who finds a prima facie case and frames the charges, trying the case also. It cannot for a moment be argued that the Magistrate having found a prima facie case at an earlier stage and framed charges is incompetent to try the case, after framing charges.

(Para 6)

D. *Constitution of India, Article* 311—*All India Service (Discipline and Appeal) Rules,* 1969, *rule* 8—*Reasonable opportunity—Refused of enquiry officer to allow officer to be represented through lawyer—Discretion under rules to grant such permission—No prejudice caused—No inference of bias—No illegality.*

The rules give a discretion to the Enquiry Officer to permit or not to permit a delinquent Officer to be represented by a lawyer. In the present case the appellant cross-examined the prosecution witnesses and also examined defence witnesses. Thereafter when the matter was posted for arguments and was adjourned atleast once at the instance of the appellant, the appellant came forward with an application seeking permission to engage a lawyer. The Enquiry Officer rejected the application noticing that it was made at a very belated stage. We think he was right in doing so. Nor is it possible for us to infer bias from the circumstance that the Enquiry Officer did not allow the appellant to engage a lawyer. We may mention that the appellant who himself presented his case before us argued admirably and with such clarity and precision as would have done credit to the best of advocates. We cannot conceive of any prejudice resulting to him by the denial of a lawyer.

(Para 6)

Cases referred:

1. K. C. Mathew V. The State of Travancore-Cochin. (1955) 2 S.C.R. 257.

2. Bibhuti Bhusan Das Gupta and another V. State of West Bengal, (1969) 2 S.C.R. 104.

JUDGMENT

CHINNAPPA REDDY, J.—The appellant, a member of the Indian Administrative Service, while working as Divisional Com-

missioner, North Bengal, was served on May 2, 1970, with a memorandum of charges and was informed by another memorandum to which a list of documents and witnesses was attached, that it was proposed to hold an enquiry against him under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969, and that, if he so desired, the appellant could inspect the documents mentioned in the enclosed list. He was further informed that he should submit a written statement of defence within fourteen days from the date of completion of inspection. The appellant submitted his written statement of defence on June 9, 1970. On August 12, 1970 Shri A. N. Mukherjee, Commissioner for Departmental Enquiries, Vigilance Commission, West Bengal, was appointed as Enquiry Officer to enquire in to the charges against the appellant. After completing the enquiry, the Enquiry Officer submitted a report giving his findings on the various charges Charge Nos. 2 and 5 where held to be proved, charge Nos 3 and 4 partly proved and charge No. 1 also proved but considered to be a technical omission rather than a serious lapse. The Vigilance Commission which considered the Enquiry officer's report found that charge Nos. 1, 2, 3 and 5 were fully proved and charge No. 4 partly proved. On April 6, 1971, the disciplinary authority namely the Government of West Bengal issued a notice to the appellant informing him that, on a consideration of the report of the Enquiry Officer they had come to the conclusion that charges Nos. 1, 2, 3 and 5 were fully proved and that charge No. 4 was partly proved and calling upon the appellant to show cause why he should not be reduced in rank. The Union Public Service Commission was then consulted and their advice obtained. According to the Union Public Service Commission charge No. 3 had not been proved while charge No. 1 was proved but was considered to be a technical irregularity and charge Nos. 2, 4 and 5 were partly proved.

2. Thereafter the Government of West Bengal came to the final conclusion that charge No. 3 had not been proved, charge No. 1 had been proved but was only a technical irregularity and charge Nos. 2, 4 and 5 were partly proved. On these findings the punishment which was imposed on the appellant was reduction 'from the stage of Rs. 2,750 per month to the stage of Rs. 2,500 per month in the scale of Rs. 2,500-125-/2—2,750 with effect from the date of issue of the order'. This was, however not to be a bar to his earning increments from the stage of Rs. 2,500 from the date of reduction to the lower stage. Aggrieved by the order of the Government the appellant filed a Writ Petition in the High Court of Calcutta. A

learned Single Judge of the High Court went into the matter in great detail, almost as if he was hearing a regular appeal, perhaps because one of the arguments urged before him was that there was no evidence to sustain any of the charges. The learned Single Judge found that charge Nos. 2, 3 and 5 were not proved, charge No. 4 was partly proved, charge No. 1 was proved but was only a technical irregularity. He was, however, of the view that the punishment which was actually imposed on the appellant could be imposed in respect of charge No. 4 to the extent to which it was proved. He, therefore, dismissed the Writ Petition. On appeal under the Latters Patent a Division Bench of the Calcutta High Court came to the conclusion that charge No. 5 was proved, charge No. 1 was proved but was a technical irregularity and charge No. 2 was partly proved. There was a difference of opinion on the question whether charge No. 4 was proved. Both the learned Judges agreed in dismissing the appeal.

3. The appellant who argued the appeal in person raised several contentions. He contended that though the enquiry was to have been held under All India Services Disciplinary Rules, 1969 it was in fact held under the All India Services (Disciplinary & Appeal) Rules, 1955, which had been repealed. He was thereby prejudiced and in particular he pointed out that he was not questioned with reference to the circumstances appearing against him as provided by sub rule-19 of rule 8 of the 1969 rules. He was thus denied an opportunity of explaining the circumstances which weighed in the mind of the Enquiry Officer. The appellant also contended that the Vigilance Commissioner had no statutory status and he should not have been consulted by the Government. He made a grievance of the circumstance that the report of the Vigilance Commissioner was not furnished to him though the ultimate findings of the Government were based on the report of the Vigilance Commissioner. He further submitted that the Enquiry Officer was prejudiced against him and that he combined in himself the role of both Prosecutor and judge. He further submitted that he was denied a reasonable opportunity of defending himself as important witnesses were not called so as to enable him to cross examine them though the notings made by them in the files were relied upon against him. Some of the additional documents sought by him were not also made available. He was also not permitted to engage a lawyer.

4. There is no substance in the contention of the appellant that the 1955 rules and not the 1969 rules were followed. As

pointed out by the High Court, in the charges framed against the appellant and in the first show cause notice the reference was clearly to the 1969 rules. The appellate himself mentioned in one of his letters that the charges have been framed under the 1969 rules. The enquiry report mentions that Shri Mukherji was appointed as an Enquiry Officer under the 1969 rules. It is, however, true that the appellant was not questioned by the Enquiry Officer under rule 8(19) which provided as follows:—

> "The enquiring authority may, after the member of the service close his case and shall if the member of the service has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him."

It may be noticed straightaway that this provision is akin to section 342 of the Criminal Procedure Code of 1898 and section 313 of the Criminal Procedure Code of 1974. It is now well established that mere non-examination or defective examination under section 342 of the 1898 Code is not a ground for intereference unless prejudice is established, vide K. C. Mathew v. The State of Travancore Cochin (1), Bibhuti Bhusan Das Gupta and another V. State of West Bengal (2). We are similarly of the view that failure to comply with the requirements of rule 8(19) of the 1969 rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned single judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of rule 8(19). The appellant cross examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegation in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with rule 8(19).

5. We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant mate-

rial placed before the Enquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted which any irregality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the very same material. One of the submissions of the appellant was that copy for the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistant request made by the appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the views of the Vigilance Commissioner. In findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commission. That the preliminary findings of the disciplinary authority happended to coincide with the views of the Vigilance Commission is neither here nor there.

6. We find no basis for the contention of the appellant that there was a reasonable apprehension in his mind that the Enquiry Officer was prejudiced against him. Nor do we agree with the statement that the Enquiry Officer combined in himself the role of the prosecutor and the judge. It appears that when the preliminary report of investigation was considered by the Vigilance Commissioner with a view to recommend to the disciplinary authority whether a disciplinary proceeding should be instituted or not the report of investigation was referred by the Vigilance Commissioner to Shri A. N. Mukherji for his views and for the preparation of draft charges if institution of disciplinary proceedings was to be recommended. Shri Mukherji expressed his opinion that there was material for framing five charges and he also prepared five draft charges and forwarded them to the Vigilance Commissioner. The Vigilance Commissioner in

turn forwarded the papers to the Government who finally decided to institute a disciplinary proceeding against the appellant. Thereafter Shri A. N. Mukherji was appointed as Enquiry Officer. From the circumstance that Shri Mukherji considered the report of investigation with a view to find out if there was material for framing charges and prepared draft charges, it cannot possibly be said that Shri A. N. Mukherji, when he was later appointed as Enquiry Officer constituted himself both as prosecutor and judge. Anybody who is familiar with the working of criminal courts will at once realise that there is nothing strange in the same Magistrate who finds a prima facie case and frames the charges, trying the case also. It cannot for a moment be argued that the Magistrate having found a prima facie case at an earlier stage and framed charges is incompetent to try the case, after framing charges. This was one of the circumstances on which the appellant relied to substantiate his allegation of apprehension of bias. The other circumstances were that he did not permit the appellant to engage a lawyer and that he allowed the presenting officer to introduce extraneous matters. The rules give a discretion to the Enquiry Officer to permit or not to premit a delinquent officer to be represented by a lawyer. In the present case the appellane cross-examined the prosecution witnesses and also examined defence witnesses. Thereafter when the matter was posted for arguments and was adjourned atleast once at the instance of the appellant, the appellant came forward with an application seeking permission to engage a lawyer. The Enquiry officer rejected the application noticing that it was made at a very belated stage. We think he was right in doing so. Nor is it possible for us to infer bias from the circumstances that the Enquiry Officer did not allow the appellant to engage a lawyer. We may mention that the appellant who himself presented his case before us argued admirably and with such clarity and precision as would have done credit to the best of advocates. We cannot conceive of any prejudice resulting to him by the denial of a lawyer. The other circumstance regarding extraneous matters being allowed to be brought in is also equally weightless and we need say nothing more about it.

7. There is also no substance in complaint of the appellant that necessary documents and witnesses were not called. All necessary documents were called and there is nothing in the record to suggest that the appellant wanted any particular witness to be called and the request was turned down. The grievance of the appellant is that if the officers who made the notings on the file in connection with some of the charges had

been called, he would have been in a position to cross examine them and elicit statements to substantiate his defence. We do not think that there is any reasonable basis in the record for such a submission. We find no force in any of the contentions raised by the appellant and having given our earnest consideration to all the contentions raised by him we dismiss the appeal, but, in the circumstances of the case, without costs. The appellant made a complaint before us that his pension and other retirement benefits have not yet been finalised though it is quite a considerable time since he voluntarily retired from service. Shri Mukherji learned counsel for the State of West Bengal stated at the Bar that all steps would now be taken to finalise the matter. We hope the Government will take immediate steps to redress forthwith this grievance of the appllant.

Appeal Dismissed

CONFIDENTIAL

(146)

Central Vigilance Commission letter No 70 PRV 1(A) dt 14-8-81 addressed to CVOs of all Nationalised Banks.

[C(89)]

A copy of this Commission's letter No. 4/8/76-R, dated 10-6-1976 addressed to the Chief Vigilance Officers of the Ministries/Departments on the subject noted above is enclosed with the request that you may also take action on the lines indicated therein, with reference to the employees of your Bank. Reports on the action taken and results thereof upto the end of December each year may please be sent to the Commission by 15th January of the succeeding year.

CONFIDENTIAL

(147)

Central Vigilance Commission letter No 901 CVO 55 dt 13-10-81.

I am directed to say that as per the existing instructions, CVOs in the Ministries/Departments of the Government of India, Public Sector Under takings or Banks are to be appointed in consultation with this Commission and no person whose appointment as Chief Vigilance Officer is objected to by the Commission will be so appointed. Instances have come to notice where-contrary to the existing instructions regular appointments have been made without prior approval of the Commission. In such cases, reference to the Commission for approval to the appointment becomes meaningless and if the appointment is of a whole-time

Chief Vigilance Officer, dis-approval by the Commission would normally lead to unnecessary expenditure and embarassment to all concerned. All the Ministries/Departments, Public Sector Undertakings and Banks are, therefore, requested to send their proposals for appointment of Chief Vigilance Officers on regular basis in the manner prescribed by the Ministry of Home Affairs/this Commission from time to time and take further action for making the appointment only after receipt of the Commission's approval.

CONFIDENTIAL

(148)

Central Vigilance Commission letter No 5K CRD 22, dt 2-11-81.

[B(114)]

Please refer to D.O. No. 129/20/81-AVD I dated September 28, 1981, from Shri A.C. Bandopadhyay, Secretary, Department of Personnel and Administrative Reforms, on the subject noted above.

2. The Central Vigilance Commissioner desires that copies of the report of review required by the Department of Personnel and Administrative Reforms and of the half-yearly statements prescribed by them may please be sent to the Commission also.

CONFIDENTIAL

(149)

Central Vigilance Commission letter No OKVGL 17, dt. 3-11-81.

[C(68) C(103)]

Please refer to the Commission's letter No. 4/62/70-R dated 11-2-74 (pages 216-217 of Vigilance Manual Volume II Part II), on the subject noted above.

2. It is laid down therein that the comments of the Ministries/Departments etc. on the CBI reports should be furnished to the Commission within one month of the receipt of the CBI report, failing which the Commission would presume that the Departments etc. have no comments to offer, unless there is a specific request for extension of time for submission of the comments. The Commission would reiterate the instructions and will be proceeding with the examination of the cases without waiting for the comments of the Departments etc. beyond one month.

(150)

CONFIDENTIAL

Central Vigilance Commission letter No NK DSP 33 dt. 9-11-81 addressed to CVOs of all Nationalised Banks.

It is being noticed by the Commission that the Chief Vigilance Officer (of Banks) while seeking the Commission's 2nd stage advice make available to it only a copy of the Inquiry Officer's report—but no other related documents. On receipt of such references, the Commission has been writing to the Chief Vigilance Officers asking for the full records/documents for a proper examination of the Inquiry Officer's report as the Commission considers it essential that all the relevant documents are also gone through minutely—and not the Inquiry Officer's report alone. As a matter of fact, the Commission does not tender its second stage advice without perusing these documents also. So, when references for second stage advice are received without these documents, the Commission is made to write to the Chief Vigilance Officer concerned, first, asking for these documents. It goes without saying that this leads to unnecessary correspondence and avoidable delay. It may also be recalled here that the Vigilance Manual itself lays down that references for Commission's advice should be accompanied by the related documents and records (reference: para 5.13, Chapter I, Vigilance Manual, Volume I). In spite of all these, however, it is noticed that most of the Chief Vigilance Officers still do not make available to the Commission the full records of the inquiry while seeking its advice on inquiry reports.

2. It is, therefore, once again made it clear to all concerned that the Commission would not entertain references for advice unless these are accompanied by all relevant documents. As for references meant for second stage advice, the following documents should invariably be made available to the Commission:—

(i) Inquiry Officer's report

(ii) Charge-sheet folder

(iii) Depositions of witnesses

(iv) Written briefs of the Presenting Officer and the Charged Officer

(v) Exhibits relied upon by the Inquiry Officer.

(vi) Bio-data of the Charged Officers (if not already sent).

3. Another point on which the Commission would like to draw the attention of the Chief Vigilance Officers is the imperative of a self-contained note. References for second stage advise (as in the case of those for first-stage advice) should invariably be made in a truly self-contained manner, giving-*inter-alia*-a gist of the charges that have been held as proved by the Inquiry Officer and also indicating whether the Disciplinary Authority is in agreement with the Inquiry Officer's findings (if it is not, reasons for disagreement to be explained) in respect of each charge/individual Charged Officer and also clearly specifying what action, precisely, is sought to be taken on the basis of the Inquiry Officer's findings. It may be clearly noted here that sending of documents is not the substitute/alternative for a self-contained reference, or vice-versa.

4. Chief Vigilance Officers are therefore once again requested to take due note of these and ensure that references are made, invariably, in the manner prescribed above.

(151)

Central Vigilance Commission letter No DO DSP 15, dt. 5-1-82

[C(142)]

Please refer to the Commission's leter No. DO DSP 15 dated 6-5-81, emphasising the need for expeditious initiation and finalisation of cases where the officials are due to retire.

2. Cases are still coming to the notice of the Commission where due to the delay in investigation/disciplinary proceedng cases linger on and delinquent officers retire without cases having been finalized.

3. The Commission is of the view that it is the special responsibility of CVOs to ensure that vigilance cases are processed promptly at all stages so that delinquent officers do not go scot free in the manner aforesaid. It may be made clear to the Chief Vigilance Officers that where a case has perforce to be closed because of such reasons, adverse notice will be taken of this fact at the time of recording annual remarks on their performance.

Please acknowledge receipt.

(152)

CONFIDENTIAL

Central Vigilance Commission letter No 1L CVO 6 dt. 17-2-82

[C(156)]

[C(55) C(136) B(115-A)] [B(103A)]

Please refer to Resolution dated 11-2-64 of the Government of India setting up the Central Vigilance Commission and further instructions on the subject noted above, as given below:—

1. MHA Resolution No. 24/7/64-AVD-A(20) dt. 11-2-64.
2. CVC's letter No. 1/15/73-R dt. 30-7-73.
3. DOP&AR's OM No. 140(4)77-AVD.I dt. 20-11-78.
4. DOP & AR's OM No. 122/8/81-AVD.I dt. 15-10-81.

As per the instructions contained therein:—

(a) The Chief Vigilance Officers in the Ministries/Departments/public undertakings/nationalised banks are required to be appointed after prior consultation with the Central Vigilance Commission.

(b) The Ministries/Departments which have to handle large number of vigilance cases should have CVOs of the rank of Joint Secretary or at least Director. In the public sector also it is desirable that a senior officer is appointed as CVO to function directly under the Chief Executive.

The Commission feels that in big Departments/Organisations, a CVO should be whole-time i.e. he should not be burdened with other responsibilities, furthermore in order to be effective, he should normally be an outsider and should not have been an employee of the organisation in the past. Officers of all services and cadres should be considered and the field of selection should not be restricted to officers of a particular service or state.

It has now been decided that all proposals for appointment of CVOs in public sector undertakings may also be sent to the Commission through the Administrative Department concerned.

The Commission would reiterate that the prescribed procedure for consultation with it for appointment of Chief Vigilance Officers should be scrupulously followed.

(153)

CONFIDENTIAL

Central Vigilance Commission letter No. 1L TRG 5 dt. 4-3-82

As you are aware, Chief Vigilance Officers and investigating personnel working in vigilance organisations, are required, from time to time, to conduct surprise checks, seize records and/or interrogate people. To facilitate them in this kind of work, it is considered desirable that identity cards are issued to Chief Vigilance Officers and investigating staff working under their control. This would also obviate the possibility of impersonation and mala fide action by others in the garb of Vigilance Officers. You may, therefore, kindly consider issuing identity cards, as suggested under intimation to the Commission.

Receipt of this letter may kindly be acknowledged.

(154)

Central Vigilance Commission letter No. 3L CRD 26 dt. 24-3-82

[C(106), C(115)]

Please refer to the Commission's letters No. 38 VGL 5 dated 7-3-78 and 21-6-78, prescribing a set of registers to be maintained by the Chief Vigilance Officer and a consolidated quarterly returns to be sent to the Commission.

2. In view of the recent Government decision regarding consultation with the Commission in Vigilance cases of the personnel of public sector, the category 'A' will now include cases involving Gazetted Officers of the Central Government and Union Territories and officers of public enterprises, including nationalised banks, who are drawing pay in scales of pay whose minimum is not less than Rs. 1,800/- per month. Category 'B' will include cases involving other officers of the Central Government, Union Territories, public undertakings and nationalised banks. In future, the prescribed CVO registers may be maintained accordingly and the information in the statistical returns be furnished keeping this in view.

3. It is requested that the returns for the quarter ending June 1982 onwards may please be prepared on the basis of the modified categorisation as above.

4. The return for the quarter ending March 1982, due to reach the Commission by 15-4-82, may, however, be sent on the earlier pattern. Please ensure that this is furnished to us on time.

(155)

CONFIDENTIAL

Central Vigilance Commission letter No. 1L TRG 2 dt. 31-3-82

A suggestion has been received that recognition should be given to meritorious work done by the personnel working in the vigilance set-up of Departments/undertakings/banks, in the form of awards/commendation certificates. The Commission feels that if there is a system in the organisation of rewarding their personnel for good work done in any field, such a system may be made equally applicable to the persons working in their vigilance cells as well. In particular, if a good piece of preventive vigilance work is detected, the same should be given due recognition immediately. This will not only focus attention on good vigilance work in an organisation but will also encourage its vigilance personnel.

2. This may be brought to the notice of all the organisations/undertakings under your administrative control.

3. Action taken in the matter may please be intimated to the Commission early.

(156)

CONFIDENTIAL

Central Vigilance Commission letter No 1L CVO 6 dt. 14-5-82

[(C152)]

[C(163)]

Please refer to the Commission's letters No. 18 VGL 1 dated 6-10-78 and 1L CVO 6 dated 17-2-82, on the subject noted above.

2. As per the extant instructions, before sending a proposal to the Commission for appointment of an officer who is not already working in the Department/Organisations, as Chief Vigilance Officer, the cadre authority concerned of the officer is required to be consulted if it is agreeable to spare his services. Similarly the Ministries/Departments and the public sector organisations, through their administrative Departments, have to send a panel of names to the CVC, listed in order of preference, for selection of a CVO. It is, however, observed in many cases that a lot of time is wasted and appointment of CVOs is delayed due to non-compliance with these instructions. When a panel is not sent, the Commission has to write back asking for it, and sometimes after selection of an officer as CVO or while the selection is under process, it is found that the cadre authority is not prepared to spare his services for deputation. The Commission would reiterate that the above factors may be kept in mind while formulating proposals for appointment of CVOs, to obviate delays.

3. The Chief Vigilance Officer functions as a special assistant to the Head of the Organisation/Chief Executive and normally reports directly to him. He may be called upon to handle cases against the senior most officers/executives. In the interest of effective and efficient discharge of duties by him, it is desirable that he enjoys complete confidence of the Head/Chief Executive who should be consulted before making the proposal. It is, therefore, requested that while sending proposals for appointment of CVOs in public sector Organisations, banks, insurance companies, registered societies etc., the views & preferences of the head of the organisation/Chief Executive are also included.

Please acknowledge receipt of this letter.

(157)

Central Vigilance Commission letter No 5L JRN 3 dt. 17-5-82

You are aware that the Commission is bringing out a quarterly Bulletin containing digest of important case law and articles/information etc, having a bearing on vigilance matters. I am desired to say that you may like to forward to the Commission details of any interesting case dealt with by you or any articles

connected with vigilance matters written by you, for inclusion in the Commission's forthcoming Bulletins.

(158)

Central Vigilance Commission letter No 5L CRD 23 dt. 29-5-82

The Chief Technical Examiners of this Commission, in the course of their inspections, have observed that in many Public sector Undertakings, Banks and other similar organisations, technical works are being supervised by persons not properly qualified for the purpose; for example, electrical works being supervised by Civil Engineers and Civil works by Electrical Engineers. In some cases, it was found that while the work was supervised by an Engineer of a particular discipline, the bill was finalised by an Engineer of an entirely different discipline.

2. You will agree that an Engineer not belonging to the proper discipline is not properly equipped to enforce and implement contracts and structural works and incorrect supervision can lead to considerable financial loss.

3. You are, therefore, requested to ensure that technical works are supervised by properly persons.

(159)

CONFIDENTIAL

Central Vigilance Commission letter No 8L CDI 18 dt. 26-8-82

Rule 14(2) of the CCS(CCA) Rules 1965 and corresponding rules of public undertakings/nationalised banks provide that the disciplinary authority may, if it considers it necessary to do so, appoint an inquiring authority to inquire into the articles of charge not admitted by the charged officer or if no defence statement has been received. A standard form of the order relating to appointment of inquiring authority is given at S. No. 3 in Section E of Vigilance Manual Volume II—Part I.

2. It has, however, come to the Commission's notice that in many cases, disciplinary authorities are not signing the formal orders appointing Commissioners for Departmental Inquiries etc. as inquiring authorities. The inquiring authority merely receives a letter from the Chief Vigilance Officer indicating that the disciplinary authority has approved the appointment of the Com-

missioner for Departmental Inquiries as inquiring authority. The Commission would request therefore that a formal order appointing the public servant concerned as inquiring authority may invariably be issued to obviate any legal complications. This may please be brought to the notice of all your subordinate formations also.

(160)

CONFIDENTIAL

Central Vigilance Commission letter No VGL 10 dt. 14-9-82

[C(126)]

The Commission vide its letter No. DO VGL 10 dated 10-12-80 had desired that only cases having a vigilance angle are to be referred to it for advice.

2. Para 2 of this letter lays down the procedure for deciding whether a case has a vigilance angle or not, in cases of doubt. In partial modification of this para, it has now been decided that in regard to category 'A' employees, a decision as to whether the case has a vigilance angle, shall, in every case, be taken by the Chief Vigilance Officer of the organisation, who, when in doubt, may refer the matter to his administrative head i.e. Secretary in the case of Ministries and Departments of Government and Chief Executive, i.e. Managing Director or Chairman, in the case of public sector organisation.

3. Please acknowledge receipt.

(161)

CONFIDENTIAL

Central Vigilance Commission letter No IL CVO 3 dt. 7-10-82

Please refer to the Commission's O.M. No. 63/41/71-C dated 30-8-1971 and leter No. 9/5/77-R dated 16-5-1977 (copies enclosed) *vide* which the Commission had requested all the Ministries/Departments/Union Territories/Public Undertakings and Nationalised Banks to furnish the particulars of Chief Vigilance Officers/Vigilance Officers with their designations, telephone numbers and addresses at regular intervals, i.e., by the second week of April, August and December every year. It is, however, noticed that this information is not being received from many organisations regularly. It may be ensured that this information is furnished to the Commission regularly.

CONFIDENTIAL

Copy of Central Vigilance Commission OM No 63/41/71-C dt. 30-8-81

To enable the Commission to maintain an up-to-date list of Chief Vigilance Officers/Vigilance Officers, all the Ministries/Departments/Union Territories are requested to furnish to it particulars of Chief Vigilance Officers/Vigilance Officers with their designation, Telephone number and address at regular intervals i.e., by the second week of April, August and December.

So far as the list pertaining to the month of August, 1971 is concerned, it may please be submitted latest by the 15th September, 1971.

CONFIDENTIAL

Copy of Central Vigilance Commission letter No 9/5/77-R dt. 16-4-77

For maintaining an up-to-date list of Chief Vigilance Officers, the Commission vide its O.M. No. 63/41/71-C, dated the 30th August, 1971 (Copy enclosed) had requested all the Ministries/Departments/Union Territories to furnish the particulars of the CVOs/V.Os with their designation, Telephone Number and address at regular intervals, i.e., by the second week of April, August and December. It has, however, been noticed that barring a few organisations this information is not being received regularly in the Commission. It is, therefore, requested that it may please be ensured that this information is furnished to the Commission regularly.

(162)

CONFIDENTIAL

Central Vigilance Commission letter No 8L DSP 18 dated 11-10-82

Cases have come to the notice of the Commission where the penalty of withholding of increment is proposed to be imposed on a delinquent official who is already at the maximum stage in his scale of pay thus the penalty is not enforceable.

2. It is, therefore, requested that disciplinary authorities, before suggesting a penalty, may first verify whether it is possible to implement the same. In the cases to be referred to the Commission also for its second stage advice, this verification may be done and the details of pay scale and pay actually being drawn by the official indicated.

(163)

CONFIDENTIAL

Central Vigilance Commission letter No 1L CVO 6 dt. 22-10-82

[C(156)]

Please refer to the Commission's letter No. 1L CVO 6 dated 14-5-82 on the subject noted above.

2. It is seen that after an officer working as C.V.O. has relinquished the charge, it takes long time to appoint a new incumbent and in many cases the post is not filled up on regular basis for years together. Consequently the vigilance work in the Undertaking etc. suffers. The Commission would therefore suggest that the proposal for appointment of a new C.V.O. as per the prescribed procedure should be moved well in advance before the present incumbent is likely to relinquish the charge due to retirement, reversion to parent cadre, transfer etc. so that the post of C.V.O. does not remain vacant.

(164)

CONFIDENTIAL

Central Vigilance Commission letter No 3L PRC 1 dt. 12-11-82

The Chief Technical Examiners' Organization under the control of the Commission has had occasion to examine & comment upon works undertaken by Public Sector Undertakings, Banks etc. under the advice & guidance of consultants. Common lapses noticed as a result of these inspections are enumerated below:—

(i) Employment of consultant without verifying his credentials and capacity or capability to do the work assigned to him.

(ii) Inadequate planning of work and incorrect preparation or non-preparation of detailed estimates by consultants.

(iii) Non-preparation of justification statement for the rates quoted in tender, resulting in contract being awarded at very high rates.

(iv) Rejection of the lowest tender without adequate justification, on the ground that the contractor is not reliable or lacks capacity to execute the work, even though he was included in the original prequalification list.

(v) Improper evaluation of tenders, leading to allotment of works wrongly with ultimate loss to the public undertaking.

(vi) Allowing upward revision of rates in some cases by contractors on very flimsy grounds during the process of negotiations, so that the lowest tenderer manages to make up the difference of cost between his quotation and the second lowest quotation.

(vii) Payment of money to contractor outside the terms of contract. For example, in a large number of cases contract is for fixed price, but substantial payment is made on the ground of escalation of prices.

(viii) Use of inferior material in the construction, while payment is made at full rates on the approval of the consultant without making any financial adjustment.

(ix) Substitution of low-rated items by higher-rated items beneficial to contractor.

(x) Lack of proper supervisory arrangement by the undertakings placing total reliance on the consultant for even preparation of the bill which leads to incorrect measurement of works and payment for the items of work not done.

In view of these factors, it is recommended that while consultans may be engaged for the purposes of original planning & designing, scrutiny of tenders and execution of work should, as far as possible be done by technical officers directly and fully answerable to the Public Undertaking/Bank etc. concerned. For this purpose engineers may be taken on deputation from Govt. Deptts. or the work may be entrusted to established engineering Deptts. such as the CPWD. To the extent a consultant is engaged, it is also necessary to ensure that the relationship between the undertaking and the consultant is correctly defined so that the consultant can be held legally & financially responsible for the work entrusted to him.

It is requested that suitable arrangements may be made for properly awarding works and exercising effective supervision and control in their execution with a view to ensure timely and systematic completion. Care may also be taken to guard against the types of irregularities indicated above.

(165)

Central Vigilance Commission letter No DO PRC 4 dt. 12-11-82

[C(127)]

As per the existing procedure, while referring a case to Central Vigilance Commission, the Department/Public Undertaking are required to send service particulars of the officers involved in the case in Form-1, as revised vide the Commission's letter No. DO PRC 4 dated 11-12-80.

2. It is, however, observed that in many cases the bio-data of the officer is not being sent by the Departments etc. In the absence of the same, it is not possible to know the details about the officer, particularly regarding date of superannuation/suspension and scale of pay and basic pay. For want of these details, it becomes difficult for the Commission to examine the cases and tender appropriate advice as also to accord priority to deserving cases. At times, back references have to be made to obtain the service particulars which entails delay. It is, therefore, again requested to particularly ensure that the bio-data of officers may please be sent to the Commission invariably while sending a case for its advice.

(166)

Central Vigilance Commission letter No 1L CVO 6 dated 21-12-82

Please refer to the Commission's letter No. 1L CVO 6 dated 14-5-1982, on the subject noted above.

2. In Public Sector, Chief Vigilance Officer should be a senior officer who would report directly to the Chief Executive in Vigilance matters. At times, proposals are received for appointment of Chief Vigilance Officers in Public Sector Undertakings in which the officers included in the panel sponsored for the purpose are not sufficiently senior. Further, according to the D.O.P. circular No. 118/6/81-AVD-I dated 5-3-1982 vigilance cases of the officers of Public Undertaking including nationalised banks drawing pay in the scale minimum of which is Rs. 1,800/- or above, are only required to be referred to the Commission for advice. It has therefore been decided that an officer who is in a scale of pay, the minimum of which is less than Rs. 1,800/- should not be recommended as Chief Vigilance Officer.

(167)

Central Vigilance Commission's letter No NL CRD 36 dated 22-12-82

A difficulty is commonly expressed that economy circulars stand in the way of sanctioning adequate staff for the vigilance work.

2. A copy of the Ministry of Finance's O.M. No. F. 7(17)-E (Coord) 81 dated 12-6-81 is given below, for information, according to which creation of posts connected with security and vigilance functions are exempt from the ban on creation of posts.

Ministry of Finance, Deptt. of Expenditure No. 7(17)*E(Coord)* 81, *dated* **12-6-81.**

Instructions issued vide this Ministry's O.M. No. F. 7(2)-E (Coord)/79 dated 6-7-1979 and O.M. No. F. 7(18)-E (Coord)/79 dated 7-9-79 provided, *inter alia,* that no additional posts on the non-plan side can be created except with the specific approval of the Cabinet indicating corresponding savings. The posts required for new organisations, the need for which was specifically accepted, were, however, exempted from the ban orders. Exemptions from the ban orders was also allowed in the case of creation of operational posts according to approved yardsticks in Railways, P & T, Civil Aviation & Meteorological Department. Similarly, creation of posts required for *fulfilling* statutory requirements and posts connected with security and vigilance functions are also exempt from the ban vide this Ministry's O.M. No. F. 7(16)-E(Coord)/79 dated 3-10-1979. The procedure for creation of plan posts was also indicated in this Ministry's Office Memoranda No. F. 7(16)-E(Coord)/79 dated 20-11-1979 and 10-3-1980.

2. After the issue of the orders referred to above, cases for some other categories of posts also came up for consideration and it was decided that the same could also be exempted from the operation of the ban orders. An up-to-date list of exempted posts and the procedure to be followed for creation of such posts is given in the Annexure to this O.M. and the same is being circulated for the information and guidance of all Minstries/Departments.

COPIES OF OFFICE MEMORANDA ETC., ISSUED BY OTHER AUTHORITIES

D—ORDERS/INSTRUCTIONS ISSUED BY OTHER AUTHORITIES

Pages

1. Ministry of Finance U.O. No. D. 2776/EV/52 dated the 8-5-52 regarding pension. 395

2. C.A.G.D.O. No. 132 Admn/51-Pt. III dated 26-5-52 regarding grant of facilities by Audit Authorities to the Investigating Officer. 395—397

3. Decision on Ministry of Finance File No. 19(4)E. IV/55 regarding furnishing of certificate for claiming subsistence allowance. 397

4. Ministry of Finance O.M. No. 7(3)/Coord. 56 dated 10-5-56 regarding extension of the term of the post held by a temporary officer who is placed under suspension. 397—398

5. Ministry of Finance O.M. No. F. 27(100)EGI/57 dated 19-12-57 regarding the suspended officer by officiating arrangements by reservists. 398

6. Ministry of Finance O.M. No. F. 19(4)/Est. IV/55 dated 17-6-58 regarding clarifications on the payments of subsistence and compensatory allowances to Government servant under suspension. 398—401

7. Ministry of Finance O.M. No. F. 19(4)E.IV/58 dated 17-11-58 regarding calculation of subsistence allowance. 401—402

8. Ministry of Finance U.O. No. 58-EVA/59 dated 7-2-59 regarding consultation with the UPSC in respect of cases initiated under Article 351-A of C.S.Rs. 402

9. Ministry of Finance O.M. No. F. 15(16)EIV/58 dated 16-2-59 regarding reviewing of subsistence allowance after one year of suspension. 402—403

10. Ministry of Finance O.M. No. 15(8)EIV/57 dated 28-3-59 regarding suspension during pendency of criminal proceedings or proceedings for arrest for debt or during detention under a law providing for preventive detention. 403—405

11. Ministry of Finance O.M. No. 15(5) Est.IV/57 dated 18-9-59 regarding recoveries from subsistence allowance. 405—406

Pages

11-A. Ministry of Finance Memo No. 5(79)Est. IV/59 dated 20-10-59 regarding T.A. to Govt. servants undertaking journeys to peruse official records for the preparation of their defence. 406—407

12. Ministry of Finance Memo No. F. 7(73)EV/58 dated 12-3-60 regarding rate of recovery from pension. 407—408

13. Ministry of Finance U.O. No. 2497/60-ADV(B) dated 21-5-60 regarding Government's right to withdraw full pension. 408

14. Ministry of Finance O.M. No. F. 15(5)Est.IV/57 dated 20-8-60 regarding recoveries of overpayments from subsistence allowance. 408—409

15. Ministry of Finance O.M. No. F. 5(75)EIV/59 dated 6-10-60 regarding action against accused in disproportionate assets cases under Art. 351-A and Art. 470 of C.S.Rs. 409—410

16. Ministry of Finance Order No. 5(15)EIV(A)/60(II) dated 4-1-61 regarding creation of supernumerary post in the event of reinstatement of an officer dismissed, removed or compulsorily retired. 410

17. Ministry of Finance O.M. No. 15(5)EIV/57 dated 20-11-61 regarding recoveries of overpayments from subsistence allowance. 410—411

18. Ministry of Finance O.M. F. 15(14)EIV/59 dated 25-5-62 regarding clarification in regard to the application of F.R.54. 411—412

19. Ministry of Finance O.M. No. 5(1)EIV(A)/62 dated 20-12-62 regarding regulation of compensatory allowance during the period of suspension. 413

20. Ministry of Finance O.M. No. 1(2)EIV(A)/63-III dated 29-8-63 regarding clarification on F.R. 58. 413—414

21. Ministry of Finance Memo No. F. 4(47)EV(C)/63 dated 4-10-63 regarding retirement of officers under suspension. 414—415

22. Ministry of Finance Memo No. F. 17(22)EV(B)/64 dated 2-4-64 regarding passing of final orders under article 351-A of C.S.Rs. 415

23. Ministry of Finance Memo No. F. 11(23)EII(A)/64 dated 19-9-64 regarding intimating the Audit/Accounts Office about the institution of proceedings under article 351-A of C.S.Rs. 415

Pages

24. Ministry of Finance Memo. No. 17(2)EV(B)/64 dated 30-10-65 regarding show-cause notice under Article 351-A. 415

25. Ministry of Finance O.M.No.1(1)EIV(A)/66 dated 30-6-66 regarding clarification in regard to the rate of subsistence allowance admissible under F.R.53. 416

26. Ministry of Finance O.M.No.2(37)EII(B)/66 dated 24-9-66 regarding rent free concession during the period of suspension. 417—418

26-A. Ministry of Finance O.M. No.19(9)EV/66 dated 6-6-67 regarding proceedings under Art. 351-A, C.S.Rs. 418—419

27. Ministry of Finance O.M.No. 5(30)EIV/67 dated 20-11-67 regarding grant of T.A. to a Government servant against whom an enquiry is held under CCS (CCA) Rules. 419

28. Ministry of Finance O.M.No. F. 9(19)/EIV(B)/67 dated 2-12-67 regarding payment of TA/DA to non-official members (of Committees etc.) 419—421

29. Ministry of Finance O.M.No. F. 5(15)EIV(B)/68 dated 15-9-69 regarding payment of T.A./DA to private persons appearing as witnesses in departmental enquiries. 421—422

(1)

Ministry of Finance U.O. No. D-2276/E.V./52, dated 8th May, 1952

Pensions are not in the nature of rewards but there is a binding obligation on Government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. Before a pension is sanctioned, the sanctioning authority can reduce the amount due under Article 470 of the Civil Service Regulations and after it is sanctioned, its continuance depends on future good conduct *vide* Article 351 of C.S.R., but it cannot be stopped for other reason.

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(2)

Office of the Comptroller and Auditor General D.O. No. 132-Admn./51-Pt.-III, dated 26th May, 1952

Will you kindly refer to my secret D.O. No. 132-Admn./51-Pt.II dated the 23rd February, 1952, regarding the grant of facilities to the police or other investigating officers?

2. It was represented to the comptroller and Auditor General that the existing instructions did not fully cover two particular aspects connected with the police investigations, namely (i) the transmission of original documents to the Government Examiner of Questioned Documents (at Simla) for expert opinion, and (ii) the use of the original documents by the police for identification by witnesses. These aspects have since been examined in detail by the Comptroller and Auditor General, in consultation with the Ministry of Home Affiairs, and the following supplementary instructions are issued, for your information and guidance.

3. Where the investigating officer in the course of his investigation finds it necessary to have the opinion of the Government Examiner of Questioned Documents, Simla, there should be no objection to the documents being sent in original by the Accountant General direct to that officer. In such cases, the investigating officer will furnish the Audit Officer with a list of the documents in the latter's possession on which the opinion of the Government Examiner of Questioned Documents is required and also indicate the particular points on which the Government Examiner of Questioned Document's opinion is being solicited. A copy of

this communication will be addressed by the investigating officer direct to the Government Examiner of Questioned Documents. The Audit Officer, while forwarding the original documents to the Government Examiner of Questioned Documents, will give a cross reference to the investigating officer's communication so as to enable the Government Examiner of Questioned Documents to link up the documents with the particular police case, and if he is also interested in knowing the opinion of the Government Examiner of Questioned Documents on the points on which reference has been made, he will, in forwarding the documents to the Government Examiner of Questioned Documents, request that officer to furnish him with a copy of the opinion he may send to the police Investigating Officer. The Government Examiner of Questioned Documents will communicate his opinion direct to the investigating officer and will return to the Audit Officer the documents received from the latter, and where he has made a request for a copy of the opinion, also furnish him with one.

4. Care should be taken to ensure that the documents are not lost or damaged in transit; and for this purpose, the standing instructions should be most carefully followed.

5. Regarding the point referred to at (ii) of para 2 it is held that in the majority of cases, the facility of inspection of the original documents within the Audit Office and the taking of copies (including photostat copies) should be adequate for the purpose of police investigation including identification of handwriting. But some very exceptional cases may arise in which, for particular reasons the police may find themselves unable to proceed with their investigation without obtaining the documents in original. In respect of such cases the Government of India have issued instructions to the State Governments as contained in their para 4, copy enclosed.

6. As regards the apprehension expressed by some Accountants General that the provision in Section 94 Cr. P.C., empowering the police to call for the production of documents at the time and place at which they want them, might result in their having to produce them with embarrassing frequency and at inconvenient places, the Government of India have further informed the State Governments, as you will see, that it would, in their opinion, be in any event wholly unnecessary and inappropriate for the police to exercise these powers in relation to an Audit Officer acting under the instructions of the Comptroller and Auditor General.

7. It will be noticed that the instructions issued by the Government of India are confined only to cases under investigation by the police officers. The Comptroller and Auditor General desires, however, that the directions contained in para 3 to 5 above should be applied *mutatis mutandis* to the facilities to be granted to other investigating officers also.

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(3)

Decision taken in 1955 on Ministry of Finance File No 19(4)-EIV/55

The subsistence allowance shall not be denied on any grounds except when a Government servant is unable to/does not furnish a certificate that he is not engaged in any other employment, business, profession or vocation during the period of suspension.

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(4)

Ministry of Finance Officer Memo, No. 7(3)-Coord-56, dated 10th May, 1956

The question whether it is necessary to extend the term of the post held by an officer who is placed under suspension pending enquiry into his conduct, if he is in temporary service, has been engaging the attention of the Government of India for sometime past. This question will arise only if it is decided to pursue the enquiry against the suspended officer to its logical conclusion, instead of terminating his services under Rule 5 or Rule 6 of the Central Civil Services (Temporary Service) Rules, 1949. Where an individual is due to be discharged from service on account of the expiry of the sanction of the post held by him, or otherwise becomes liable to be retrenched when he is under suspension, the question whether he should be so discharged, or whether, to enable disciplinary proceedings being continued, special steps should be taken to provide a post for him should be examined on the merits of each case, and his post extended for an appropriate period. In these circumstances, the vacancy caused by the extension should not, however, be filled.

The authority competent to dismiss or remove the officer concerned from service, may, in such circumstances, issue orders extending the post without reference to the higher administrative

authority ordinarily competent to sanction such extension or to the Finance Ministry, if delay is anticipated in obtaining sanction, before the expiry of the term of the post, under the normal procedure. Otherwise the sanction of the competent authority should be obtained as usual.

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(5)

Ministry of Finance Office Memorandum No. F.27(100)-E.G.I./57, dated 19th December, 1957

On a case recently brought to these notice of the Ministry of Finance (Department of Expenditure) where the administrative authority had created extra posts for carrying the work previously done by Government servants placed under suspension, the question whether, it is necessary to create extra posts under such circumstances has been examined in consultation with the Ministry of Home Affairs and the Comptroller and Auditor General. It has been held that in an establishment where provision for leave reserves exists, any vacancy caused on account of suspension of a Government servant should be filled by a 'reservist' and where a 'reservist' is not available, the post should be filled by an officiating appointment. It is, however, not necessary to create an extra post.

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(6)

Ministry of Finance Office Memorandum No. F.19(4)-Est.IV/55, dated 17th June, 1958

The undersigned is directed to invite a reference to this Ministry's Notification No. F. 19(4)-Est.IV/55, dated the 21st October 1957, revising Fundamental Rule 53, and to convey the following clarification in regard to certain points which have been raised in connection with the application of the revised rule :—

Points raised	*Clarification*
(*i*) Whether the revised F.R. 53 applies also to persons who were under suspension on the date of issue of the Notification referred to above.	(*i*) The orders contained in this Ministry's Notification No. F. 19(4)-E-IV/55 dated the 21st October 1957 take effect from the date of issue and are also applicable to Government servants who were under suspension prior to that date.

Points raised	*Clarification*
(*ii*) What would be the basis of calculation of the rate of dearness allowance to be granted to a Government servant after the expiry of the first twelve months of his suspension under the revised F.R. 53? In other words would the amount of dearness allowance also be increased/decreased correspondingly to the percentage increase/decrease in the subsistence allowance payable to the period of first twelve months.	(*ii*) The subsistence allowance referred to in clause (1)(ii) of F.R. 53 is not intended to be taken as a composite amount consisting of leave salary and dearness allowance. The intention underlying that clause is that the subsistence allowance during the first twelve months will be equivalent to the leave salary admissible to the Government servant concerned if he were on leave on half average pay or on half pay. During this period he will receive, in addition, dearness allowance which would have been admissible to him if he were on such leave. The 50% increase/decrease referred to in the proviso to clause (1)(ii) (a) *ibid.* is applicable to the subsistence allowance *per se* as clarified above and not also to the dearness allowance. The dearness allowance admissible after the expiry of the twelve months of suspension will be calculated on the increased/decreased amount of subsistance allowance payable from time to time. In other words, the dearness allowance admissible to a Government servant under suspension will be equal to the amount admissible had he been on leave, on leave salary equivalent to the subsistence allowance payable from time to time.
(*iii*) In a case where a Government servant has already been under suspension for a year on a date prior to the issue of the notification referred to above and has been in receipt of subsistence allowance at the rate in force prior to 21-10-57 (the date of issue of the notification referred to) is the authority referred to in the proviso to the revised F.R. 53(1)(ii) (a) competent to alter the rate of subsistence allowance.	(*iii*) The suspending authority is competent to alter the rate of subsistence allowance in all cases where the Government servant was already under suspension for more than one year on 21st October, 1957.

Points raised	*Clarification*
(*iv*) Would an officer who had already been under suspension for over one year on 21-10-57 and in whose case the competent authority did not pass an order under the proviso to F.R. 53(1)(ii)(a) continue to draw subsistence allowance at 3/4th of his leave salary on half pay or half average pay which he was drawing before 21-10-57 or would be automatically begin to draw it at a rate equal to leave salary on half pay or half average pay until the competent authority passes the necessary order under the aforesaid rule?	(*iv*) The suspended officer in such a case would become subject to the substantive provisions of F.R. 53(1)(ii)(a) and would become entitled to draw with effect from the 21-10-57 subsistence allowance in accordance with those provisions until the competent authority passes an order under the proviso to that rule increasing or decreasing the amount of subsistence allowance.
(*v*) What would be the position in the case of an officer who completes one year suspension after 20-10-1957 but in whose case also the competent authority does not pass an order under F.R. 53(1)(ii)(a) immediately after the former has been under suspension for one year?	(*v*) The suspended officer would continue to draw subsistance allowance at the rate of his leave salary on half pay or half average pay until the competent authority passes an order under F.R. 53(1)(ii)(a).
(*vi*) Whether in the matter of payment of other compensatory allowances to Government servants who are under suspension from a date prior to the 21-10-57 the competent authority should certify in each claim the fulfilment or otherwise of the condition embodied in the proviso to F.R. 53(1)(ii)(b).	(*vi*) The competent authority should certify in each claim for compensatory allowance relating the period from and after the 21-10-57 the fulfilment of the condition stipulated in the proviso to F.R. 53(1)(ii)(b) even in the case of Government servants who are under suspension from a date prior to 21-10-57.
(*vii*) Whether in respect of claims for subsistence allowance preferred on or after 21-10-57 both the Government servant and the authority which ordered the suspension should give a certificate in each bill as contemplated in F.R. 53(2).	(*vii*) Each claim for subsistence and compensatory allowances should be supported by a certificate by the Government servant concerned to the effect that he was not engaged in any employment, business, profession or vocation during the period to which the claim relates. [Sub-rule (2) of F.R. 53 since amended *vide* Notification No. 19(4)-E. IV/55 dated 10-9-59 dispensing with the requirements of suspending authority being satisfied in regard to the new employment of the Government servant during

Points raised	*Clarification*
	the period of suspension.] This certificate should be countersigned by the suspending authority in token of his having satisfied himself regarding its correctness.

2. With a view to clarifying the position regarding subsistence and dearness allowance, as indicated in para 1(ii) above, necessary amendments to Fundamental Rule 53 have been issued under this Ministry's Notification No. F. 19(4)-Est.IV/55, dated the 17th June, 1958.

3. In view of the fact that any failure on the part of the competent authority to pass an order under F.R. 53(1) (ii) (a) as soon as the suspended officer has been under suspension for one year, can either involve serious hardship to the officer concerned or involve unnecessary expenditure to Government. Ministries are requested to issue instructions to all authorities under them having powers to suspend Government servants employed under them with a view to ensure that action is initiated in all such cases in sufficient time so that the requisite order can take effect as soon as the suspended officer has completed one year under suspension.

Government of India do not consider it advisable that any orders revising the amount of the subsistence grant should be given retrospective effect.

4. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders are being issued in consultation with the Comptroller and Auditor General.

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(7)

Ministry of Finance Memorandum No. F.19(4)-EIV/58, dated the 17th November, 1958

I am directed to state that the question whether in the event of an increase in the subsistence allowance after the first twelve months of suspension, under the proviso to F.R. 53(1) (ii) (a), the maximum and Minimum limits on leave salary in respect of leave

on half average pay prescribed in F.Rs. 89 & 90 or on half pay leave prescribed in Rule 15(2) of the Revised Leave Rules, will or will not apply, has been considered in consultation with the Comptroller and Auditor General. Since the initial grant of subsistence allowance will have been fixed at an amount equal to leave salary on half average pay or on half pay subject to the prescribed maxima and minima limits those limits will not apply when it is increased or decreased after the first twelve months. In other words, when the subsistence allowance is increased or decreased by 50% under the proviso to F.R. 53(1) (ii) (a), the increase or decrease will be calculated on the amount of subsistence allowance initially fixed and will not be subject to any maximum or minimum limits on leave salary on half average pay or on half pay.

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(8)

Ministry of Finance U.O. No. 58-EVA/59, dated 7th February, 1959

A question was raised whether the U.P.S.C. has to be consulted under Article 351-A of the C.S.Rs. only in cases which involve gazetted officers. It was held in consultation with the Ministry of Home Affiairs that the U.P.S.C. should be consulted in all cases before final orders to withhold or withdraw a pension or any part of it in terms of this article are passed. This is measure of safeguard for pensioners. Similarly the provision of departmental proceedings if not instituted while the officer was on duty should not be instituted save with the sanction of President is also for the pensioner's safeguard.

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(9)

Ministry of Finance Office Memorandum No. F. 15(16) EIV/58, dated the 16th February, 1959

The following further clarification is issued for information of all concerned :—

Points raised	*Clarification*
Whether on the expiry of the first year of suspension, it is open to the com-	It is obligatory under F.R. 53 that in sufficient time before the expiry

Points raised	*Clarification*
petent authority referred to in the revised F.R. 53 not to alter the amount of subsistence allowance, at the expiry of the first year of suspension or whether it is incumbent upon him to pass orders either reducing the amount of subsistence allowance or increasing it.	of the first year of suspension the competent authority should review each case in which the period of suspension is likely to exceed one year, and even if it comes to the conclusion that the rate is not to be altered having regard to all the circumstances of the case, specific orders to that effect are to be passed placing on record the circumstances under which the decision had to be taken.

(10)

Ministry of Finance Office Memorandum No. 15(8)-EIV/57, dated 28th March, 1959

The Administrative Instructions issued under this Ministry's order No. F. 19(2)-EIV/51, dated the 10th April, 1951 (inserted as Section IV of Appendix 3 to the P. & T. Compilation of Fundamental and Supplementary Rules Vol. II) define the circumstances in which Government servants to be placed under suspension or should be considered as under suspension :—

(a) during the pendency of criminal proceedings or proceedings for arrest for debt ; or

(b) during detention under a law providing for preventive detention ;

and the manner in which the subsistence allowance while under suspension and the pay and allowances, on reinstatement, in respect of such periods of suspension should be regulated. The circumstances in which a Government servant may be placed under suspension or shall automatically remain under suspension have now been defined in Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It has also been decided that, irrespective of the circumstances which lead to or result in suspension, the subsistence allowance during suspension and the pay and allowances, on reinstatement, in respect of the period of suspension should be regulated under Fundamental Rules 53 and 54 respectively. In view of this, it has been decided that the Ad-

ministrative Instructions referred to above should be cancelled. A copy of an Order No. F. 15(8)-EIV/57 dated the 28th March, 1957 issued in this connection is enclosed.

2. The undersigned is also directed to state that the cases which could have been dealt with under the Administrative Instructions referred to shall be dealt with in the following manner hereafter :—

(a) A Government servant who is detained in custody under any law providing for preventive detention or as a result of proceeding either on a criminal charge or for his arrest for debt shall, if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension from the date of detention until further orders as contemplated in Rule 12(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. A Government servant who is undergoing a sentence of imprisonment shall also be dealt with in the same manner—pending a decision on the disciplinary action to be taken against him.

(b) A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (*e.g.* a person released on bail) may be placed under suspension by an order of the competent authority under clause (b) of Rule 12(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course.

(c) A Government servant against whom a proceeding has been taken for his arrest for debt but who is not actually detained in custody may be placed under suspension by an order under clause (a) of Rule 12(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, *i.e.* only if a disciplinary proceeding against him is contemplated.

(d) When a Government servant who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in the circumstances mentioned in clause (b) is re-instated without taking disciplinary pro-

ceedings against him, his pay and allowances for the period of suspension will be regulated under F.R. 54, *i.e.* in the event of his being acquitted of blame or (if the proceeding taken against him was for his arrest for debt) of its being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under F.R. 54(2); otherwise it may be dealt with under F.R. 54(3).

3. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders are being issued in consultation with the Comptroller and Auditor General.

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(11)

Ministry of Finance Office Memorandum No. F.15(5)-Est-IV/57, dated 18th September, 1959

The undersigned is directed to state that at present there is no provision in any rules or orders issued by the Government of India for the recovery of Government dues from the subsistence allowance granted to a Government servant under suspension. The question of making such recoveries from the subsistence allowance has accordingly been under consideration for some time past. The permissible deductions fall under the two categories :—

(a) Compulsory deductions.

(b) Optional deductions.

2. The President has been pleased to decide that the recovery of following deductions which fall under category (a) above, should be enforced from the subsistence allowance :—

(i) Income-tax and super-tax (provided the employee's yearly income calculated with reference to subsistence allowance is taxable).

(ii) House rent and allied charges *i.e.*, electricity, water, furniture, etc.

(iii) Repayment of loans and advances taken from Government at such rate as the Head of the Department deems it right to fix.

3. The deductions falling under category (b), which should not be made except with the Government servant's written consent, are as under :—

(a) Premia due on Postal Life Assurance Policies.

(b) Amounts due to Co-operative stores and Co-operative Credit Societies.

(c) Refund of advances taken from General P. F.

4. It has further been decided that the deductions of the following nature should not be made from the subsistence allowance :—

(i) Subscription to a General Provident Fund.

(ii) Amounts due on Court Attachments.

(iii) Recovery of loss to Government for which a Government servant is responsible.

5. As regards recovery of overpayments, there is no bar to effect the same from the subsistence allowance, but the competent administrative authority will exercise discretion to decide, whether the recovery should be held wholly in abeyance during the period of suspension, or it should be effected at full or reduction rate, depending on the circumstances of each case.

6. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders are being issued in consultation with the Comptroller and Auditor General.

(11-A)

Ministry of Finance Memo. No. 5(79)-Est-IV/59, dated the 20th October, 1959

The Government of India have had under consideration the question whether and, if so, at what rates, T.A. should be allowed to Government servants who undertake journeys to out stations to peruse official records for the preparation of their defence in connection with the disciplinary proceedings instituted against them. The President is pleased to decide that T.A. as for a journey on tour without any allowances for halts on journeys at the

out-station may be allowed to the Government servants, whether on duty or on leave or under suspension, for the journeys undertaken by them to the stations where the official records are made available. The T.A. will be allowed from the headquarters of the Government servant or from any other places where the Government servant may be spending his leave or where the suspended officer has been permitted on his own request to reside but not exceeding what would be admissible had the journey been undertaken from the headquarters of the Government servant. The grant of the travelling allowance will be subject to the following further conditions :—

(i) the inquiring officer certifies that the official records to be consulted are relevant and essential for the preparation of the defence statement;

(ii) the competent authority certifies that the original records could not be sent to the headquarters station of the Government servant or the bulk of the documents ruled out the possibility of copies being made out, and sent; and

(iii) the Head of office under whose administrative control the Government servant is, certifies that the journey was performed with his approval.

It has also been decided that, in the case of officers not under suspension at the time of undertaking of the journey, the period spent in transit to and from and the minimum period of stay required at the place where official records are made available for perusal should be treated as duty or leave, according as the officer is on duty or on leave at that time. In case of officers under suspension, who are subsequently re-instated in the service, the period will be treated as duty, leave or otherwise in accordance with the orders passed by the competent authority under F.R. 54(1).

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(12)

Ministry of Finance Memo No. F. 7(73)-EV/58, dated the 12th March, 1960

Besides the right of ordering recovery from a pension of the amount of any pecuniary loss caused to Government, the President has also reserved to himself the right of withholding or withdrawing a pension or any part of it, whether permanently

or for a specified period. The authority which institutes proceedings of the nature referred to in Article 351-A, Civil Service Regulations should without delay intimate the fact to the Audit Officer concerned.

It has also been decided that in a case in which a pension as such is not withheld or withdrawn but the amount of any pecuniary loss, caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one third of the gross pension originally sanctioned including any amount which may have been commuted.

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(13)

Ministry of Finance U.O. No. 2497/60-Adv.(B), dated 21st May, 1960

There is nothing in the language of Article 351-A to restrict the right of the President to withhold only a part of the pension in the case dealt with by this provision. On the other hand, the words "withholding or withdrawing a pension" clearly convey that it is competent to the President to withhold or withdraw the full pension. The Government of India's decision No. (1) below Article 351-A in the 3rd Edition related to the extent to which deduction was to be enforced from pension for recovery of loss caused to Government by the officer. It was an administrative decision based more on equitable considerations that any interpretation of the provision for, in strict law, it was permissible under the old article and remains permissible under the new article to appropriate the pension in full towards the recovery. While "to restrict the amount of withheld pension to one-third of the pension originally sanctioned" in the decision may be applied under the new Article in case where the order is for recovery of losses from the pension, it has no bearing on the question of Government's right to withhold or withdraw the pension and Government may order the full pension to be withheld or withdrawn.

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(14)

Ministry of Finance O.M. No. F. 15(5)-Est.IV/57, dated 20th August, 1960

The question whether the provisions of Treasury Rule 215 should be made applicable to recoveries of overpayments from

the subsistence allowance of a Government servant under suspension has been considered and it has been decided, in partial modification of para 5 of the Ministry's Office Memorandum No. F. 15(5)-EIV/57, dated the 18th September, 1959 that Treasury Rule 215 should apply by analogy in such cases and the recoveries of overpayments falling under that paragraph should not ordinarily be made at a rate greater than one-third of the gross amount of subsistence and other allowances admissible under F.R. 53.

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(15)

Ministry of Finance Memo. No. F. 5(75)-EV/59, dated the 6th October, 1960

The Ministry of Home Affiairs Office Memorandum No. 39/9/51-Ests., dated the 8th October, 1952 explains that in case an officer against whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf *e.g.*, dependants, of pecuniary resources or property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him. A doubt has been expressed whether cases of the above category come within the purview of Articles 351-A and 470 of the Civil Service Regulations. The position is that the service of an officer against whom a charge of corruption has been proved, whether in a specific case or by the presumption stated above, cannot be considered to be thoroughly satisfactory. As such, failure on the part of the officer concerned to explain satisfactorily the possession of wealth disproportionate to his known sources of income is sufficient to warrant a reduction being made in the amount of his pension under Article 470 of the Civil Service Regulations. Such action under Article 470 should, however, be taken only after a charge of corruption has been proved in the above manner in a formal departmental enquiry. Similarly the term "grave misconduct" used in Article 351-A of the Civil Service Regulations is wide enough to include "corrupt practices". In cases where the charge of corruption is proved only after pension has been sanctioned, and it is not, therefore, possible to invoke the provisions of Article 470 of the Civil Service Regulations, action to withhold or withdraw pension may be taken under Article 351-A *ibid.* In this connection the provisions of sub-para (a) (ii) and para (b) of the proviso to Article 351-A of the Civil Service Regulations are to be noted carefully. The property or pecuniary resources in respect of which the depart-

mental or judicial proceedings are instituted under Article 351-A of the Civil Service Regulations or Rule 9 of the CCS (Pension) Rules 1972 should have been in possession of the person concerned or of any other person on his behalf, any time within the period of four years before the institution of such proceedings, if the same were not instituted while the officer was on duty either before his retirement or during re-employment.

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(16)

Ministry of Finance, Department of Expenditure, Order No. 5(15)-E.IV(A)/60(II), dated 4th January, 1961

The President is pleased to direct that the following Administrative Instructions shall be substituted for the Administrative Instructions (below F.R. 54) in connection with the Fundamental Rules, issued in Government of India late Finance Department letter No. F. 28-R.I/28, dated the 22nd May, 1928:—

"A permanent post vacated by the dismissal, removal or compulsory retirement of a Government servant should not be filled substantively until the expiry of the period of one year from the date of such dismissal, removal or compulsory retirement, as the case may be. Where on the expiry of the period of one year, the permanent post is filled and the original incumbent of the post is reinstated thereafter he should be accommodated against any post which may be susbtantively vacant in the grade to which his previous substantive post belonged. If there is no such vacant post, he should be accommodated against a supernumerary post which should be created in this grade with proper sanction and with the stipulation that it would be terminated on the occurrence of the first substantive vacancy in that grade."

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(17)

Ministry of Finance O.M. No. 15(5)-S.IV/57, dated 20th November, 1961

In supersession of this Ministry's Office Memorandum No. F. 15(5)-E.IV/57, dated the 20th August 1960, on the subject indicated above, it has been decided that the recoveries of overpayments from a Government servant under suspension should not

ordinarily be made at a rate greater than one-third of the amount of the subsistence allowance *i.e.*, exclusive of dearness allowance, if any, admissible to him under F.R. 53(1) (ii) (a).

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(18)

Ministry of Finance Office Memorandum No. F. 15(14)-EIV/59, dated 25th May, 1962 (as amended vide Corrigendum No. F. 15(14)-E.IV/59, dated 9th August, 1962)

The undersigned is directed to convey the following clarifications in regard to certain points which have been raised in connection with the application of F.R. 54:—

Points raised	*Clarification*
(1) Whether the term proporation used in F.R. 54(3) can be taken to mean 'whole'.	(1) the term 'proporation, used in F.R. 54(3) does not mean 'whole'.
(2) Where the period of absence is treated as 'duty' for all purposes under F.R. 54(5), whether it will be in order to limit the Government servant's pay to the subsistence allowance already paid.	(2) & (3) : The decision of the competent authority under F.R. 54 is in respect of two separate and independent matters *viz.*, (a) pay and allowances for the period of absence, and (b) whether or not the period of absence should be treated as duty.
(3) Where the period of absence is treated as 'non-duty' under F.R. 54(5), whether the competent authority can pay full pay and allowances for this period.	It is not necessary that the decision on (a) above should depend upon the decision on (b) above. The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose(s) or only to pay the proportionate pay and allowances. It has no discretion to pay full pay and allowances when the period is treated as 'non-duty'. If no order is passed under F.R. 54(5) directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as 'non-duty' In such event the past service (i.e.

Points raised	*Clarification*
	service rendered before dismissal, removal, compulsory retirement or suspension) will not be forfeited.
(4) How to regulate the pay & allowances and the period of absence. (*i*) where a Government servant under suspension is acquitted by a Court of Law and the order reinstating is passed some time after the date of acquittal; (*ii*) when the penalty of removal/dismissal from service imposed upon a Government servant is set aside by a Court of Law on grounds other than non-observance of the procedure required under article 311 of the constitution and the order reinstating him is passed some time after the date of acquittal.	(4) Full pay and allownaces have to be paid from the date of acquittal to the date of re-joining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal he is to be allowed pay and allowances as directed by competent authority under F.R. 54(2) or F.R. 54(3) and the period treated as duty or non-duty under F.R. 54(4) or F.R. 54(5), as the case may be.
(5) Whether it is necessary to invoke the law of limitation for restricting the payment to a period of three years prior to the date of reinstatement while paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement in respect of persons who are reinstated under F.R. 54 and whose pay & allowances are regulated either under F.R. 54(2) or under F.R. 54(3) as the case may be.	(5) As F.R. 54 is absolute the law of limitation need not be invoked at the time of paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement in respect of cases where the pay and allowances are regulated on reinstatement in accordance with the provisions contained in F.R. 54(2) or F.R. 54(3) as the case may be.
(6) Whether the amount earned by a Government servant through an employment during any period between the date of dismissal/removal/compulsory retirement and the date of reinstatement shall be recovered from the pay and allowances admissible to him under F.R. 54(2) or under F.R. 54(3), as the case may be, for the intervening period on his reinstatement under F.R. 54.	(6) Where the emoluments admissible under F.R. 54 exceed those earned during such employment the former shall be reduced by the latter. Where, however, the emoluments admissible under F.R. 54 are equal to or less than those earned during the employment, nothing shall be paid to the Government servant.

(19)

Ministry of Finance O.M. No. 5(1)-EIV(A)/62(II), dated 20th December, 1962

The undersigned is directed to state that this Ministry has been considering for sometime past how to regulate the compensatory allowances of Government servants during the period of suspension.

The President is now pleased to decide that in such cases, compensatory allowances should be as admissible from time to time on the basis of pay which the Government servant was in receipt of on the date of suspension.

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(20)

Ministry of Finance O.M. No. 1(2)-EIV(A)/63-(III), dated 29th August, 1963

The undesigned is directed to convey the following clarifications in regard to certain points which have been raised in connection with the application of Fundamental Rule-53:

Points raised	*Clarification*
(1) Should a Government servant, in whose case the order of suspension is deemed to have been continued in force or who is deemed to have been placed under suspension from the date of original order of dismissal/removal/compulsory retirement from service, under rule 12(3) or 12(4) of Central Civil Services (Clarification, Control and Appeal) Rules, 1957, respectively be paid subsistence and other allowances under F.R. 53 with retrospective effect from the date of order of such dismissal/removal/compulsory retirement?	(1) Yes, subject to the provisions of F.R. 53(2) and the proviso thereunder.
(2) In the case of a Government servant referred to in point (1) above, is it necessary to invoke the law of	(2) A Government ervant under suspension is entitled to subsistence and other allowances from the

Points raised	*Clarification*
limitation while paying the arrears of susbsistence and other allowances for the period of deemed suspension?	date and during the period of supension under the statutory provisions of F.R. 53. It is, therefore, not necessary to invoke the law of limitation while paying the arrears of subsistence and other allowances in such a case.

(21)

Ministry of Finance Memo. No. F. 4(47)-EV(C)/63, dated 4th October, 1963

Government of India's decison : Prior to the deletion of clause (d) of F.R. 56 with effect from the 22nd August, 1962, a Government servant under suspension on a charge of misconduct was not required or permitted to retire on reaching the age of superannuation but was retained in service until the enquiry into the charge was concluded and a final order was passed thereon by the competent authority. Consequent on the deletion of this clause all such Government servants, who were not retired or permitted to retire under the aforesaid clause, would be deemed to have retired from service with effect from the 22nd August, 1962. Pending proceedings against them if the proceeding had already been instituted prior to this date will be deemed to be proceeding under Article 351-A C.S.Rs. and shall be continued in accordance with the provisions of this article. If no proceedings were instituted they shall be instituted under Article 351-A C.S.Rs. Such officers shall be paid provisional pension under Article 351-B C.S.Rs. till the final orders are passed upon the conclusion of the proceedings.

Instances have, however, been brought to the notice of the Government of India where some of the officers of the abovementioned category were not retired from service with effect from the 22nd August, 1962 but were continued in service and paid subsistence allowance etc., notwithstanding the deletion of clause (d) of F.R. 56. Since their retention in service is irregular, any payment made to them by way of subsistence allowance beyond 22-8-1962 will not be in order as they are entitled to provisional pension only under Article 351-B C.S.Rs. Since the subsistence allowance is generally more than the provisonal pension, it is likely that some overpayments might have resulted in

these cases. The question whether and how such overpayments should be recovered has been carefully considered and it has been decided to effect recoveries in all such cases from the gratuity admissible to them in the event of finalization of their pension claims. Cases where no gratuity is admissible or where the gratuity sanctioned is not sufficient to cover the overpayments may be referred to Finance Ministry for orders.

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(22)

Ministry of Finance Memo. No. F. 17(2)-EV(B)/64, dated 2nd April, 1964

Deleted.

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(23)

Ministry of Finance Memo. No. F. 11(23)-E.II(A)/64, dated 19th September, 1964

When a pensionable Government servant is concerned in any irregularity or loss, the authority investigating the case shall bear in mind the provisions contained in Articles 351-A and 351-B of the Civil Service Regulations as amended from time to time and immediately inform the Audit Officer and/or the Accounts Officer, as the case may be, responsible for reporting on his title to pension or death-*cum*-retirement gratuity and the authority competent to sanction pension or death-*cum*-retirement gratuity and it will be the duty of the latter to make a note of the information and see that in accordance with the provisons contained in Article 351-B of Civil Service Regulations gratuity or death-*cum*-retirement gratuity is not paid before a conclusion is arrived at as regards the Government servant's culpability and final orders are issued thereon.

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(24)

Ministry of Finance Memo. No. 17(2)-EV(B)/64, dated 30th October, 1965

Deleted

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(25)

Ministry of Finance O.M. No. 1(1)-E.IV(A)/66, dated 30th June, 1966

The undersigned is directed to convey the following clarifications in regard to certain points which have been raised in connection with the rate of subsistence allowance admissible under F.R. 53 to a suspended Government servant:

Points raised	*Clarification*
(*i*) Whether it is open to the competent authority to make further review (s) and to vary the amount of subsistence allowance, after the first review has been done in term(s) and if so, whether there is any restriction as to the period after which the second or subsequent review can be made.	(*i*) Though the proviso to F.R. 53 (1)(ii)(a) does not specifically provide for a second or subsequent review there is no objection to such review(s) being made by the competent authority. Such authority shall be competent to pass orders to increase or decrease the rate of subsistance allowance upto 50% of the amount of the subsistence allowance initially granted, according to the circumstances of each case. A second or subsequent review can be made at any time at the discretion of the competent authority.
(*ii*) Whether in a case where the subsistence allowance has been increased upto 50% of the initial amounts as a result of the first review in terms of sub-clause (i) of the proviso to F.R. (1)(ii)(a) it can be reduced again in terms of sub-clause (ii) of the said proviso upto 50% of the subsistence allowance initially granted.	(*ii*) It is permissible to reduce the amount of subsistence allowance once increased on the basis of the first review, upto 50% of the amount of the subsistence allowance initially granted, if the period of suspension has been prolonged for reasons directly attributable to the Government servant *i.e.*, by his adopting dilatory tactics.
Or	
Whether it has been reduced as a result of the first review it can be enhanced again on subsequent reviews.	Similarly, in a case where the amount of subsistence allowance has been reduced after the first review, the same can be increased upto 50% of the amount initially granted, if the period of suspension has been prolonged for reasons *not* directly attributable to the Govt. servant and the Government servant has given up dilatory tactics.

(26)

Ministry of Finance O.M. No. 2(37)-EII(B)/66, dated 24th September, 1966

A question has been raised whether a Government servant enjoying rent-free concession at the time of suspension will continue to enjoy that concession during the period of suspension. After careful consideration, the President has been pleased to decide as follows:—

(i) The rent-free concession will cease from the date of suspension.

(ii) The Government servant under suspension will not be required to vacate the rent-free accommodation unless the accommodation is specifically attached to any particular post. However, from the date of suspension, rent will be recovered from him on the assumption that he was not in occupation of rent-free accommodation at the time of suspension *i.e.*, for the purpose of recovery of rent, his emoluments will be taken as laid down on F.R. 45-C(vi).

(iii) If, subsequently, the Government servant is allowed for the period of suspension full pay and allowances under F.R. 54(2), the concession of rent-free accommodation will stand restored to him and the rent, if recovered for the period of suspension, will be refunded to him.

(iv) If the period of suspension is treated as one spent on leave, the officer will be refunded the rent charged for the first month only. The difference between the rent recovered on the basis of the subsistence grant and the rent due in terms of para 1(i) of the Ministry of Works, Housing & Urban Development's Office Memorandum No. 2/52/64-Acc 1, dated 20-3-1965 shall be recovered in respect of the period exceeding one month.

(v) If such a Government servant is made to vacate the rent-free accommodation either because it is specifically attached to a particular post or for any other reason, he will not be allowed to draw house rent allowance prescribed in lieu of rent-free concession. But if his headquarters, at the time of suspension is at a place which is a classified city or a hill station at which house rent allowance is admissible to other Central Government

servants, then he will be allowed to house rent allowance at the rates and subject to the conditions applicable to other Government servants. The house rent allowance will be calculated with reference to the pay that he was drawing at the time of suspension.

(26-A)

Ministry of Finance O.M. No. F. 19(9)-EV/66, dated 6th June, 1967

According to proviso (a) of Article 351-A, C.S.Rs., Departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment shall, after the final retirement of the officer, be deemed to be proceedings under the said article and shall be continued and concluded by the authority by which it was commended in the same manner as if the officer had continued in service. A question has been raised whether in the case of an officer whose case falls within the purview of the aforesaid proviso and proceedings against whom were instituted by an authority subordinate to the President, order for withdrawal/withholding of pension can be passed by the subordinate authority on the conclusion of the proceedings, or that authority should refer the case to the President for final orders. The matter has been considered in consultation with the Ministry of Home Affairs and the Law Ministry and the undersigned is directed to clarify that the function of the Disciplinary Authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take a final decision under Article 351-A, C.S.Rs. In case, Government decide to take action under Article 351-A, C.S.Rs., in the light of the findings of the Disciplinary Authority, the Government will serve the person concerned with a show-cause notice specifying the action proposed to be taken under Article 351-A, C.S.Rs. and the person concerned will be required to submit his reply to the show-cause notice within the such time as may be specified by the Government. The Government will consider the reply and consult the Union Public Service Commission. If as a result of such consideration in consultation with the Commission, it is decided to pass an order under Article 351-A, C.S.Rs., necessary orders will be issued in the name of the President.

2. The procedure outlined in the preceding paragraph in regard to the issue of show-cause notice will also apply to a case where the President functions as the disciplinary authority.

3. This Ministry's Office Memoranda No. F. 17(2)-EV(B)/64, dated the 2nd April, 1964 and the 30th October, 1965 may be treated as cancelled.

4. In their application to the persons serving in the Indian Audit and Accounts Department, these orders have been issued after consultation with the Comptroller and Auditor General.

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(27)

Ministry of Finance O.M. No. 5(30)-EIV(B)/67, dated 20th November, 1967

A question has arisen regarding the admissibility of travelling allowance to a Government servant aginst whom an oral enquiry is held under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and who is required to proceed from one station to another to appear before the officer conducting the enquiry. The President has been pleased to decide that in such cases the Government servant concerned may be allowed T.A. as on tour under S.R. 154.

2. No travelling allowance will, however, be admissible to the charged person if the enquiry is held at a place other than his headquarters expressly at his own request.

3. In their application to the staff working in the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

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(28)

Ministry of Finance O.M. No. F. 9(19)-EIV(B)/67, dated 2nd December, 1967

The undersigned is directed to refer to this Ministry's Office Memorandum No. F. 6(26)-E. IV/59 dated the 5th September, 1960, as amended from time to time, and to say that paragraph 4 thereof may be substituted as follows:—

"4. (i) The Travelling Allowance bills of non-official members (including Members of Parliament and Members of State Legislatures) shall not be pre-audited except in

cases where all payments relating to a particular Ministry/Department are made after pre-audit. The bills prepared and signed by the members will be countersigned by the officer authorised by the Secretary of the Ministry or the Head of the Department concerned and payment made on the last day of the meeting by the Ministry/Department out of the advance drawn for the purpose [*vide* sub-para (iii) below]. These bills will be carefully scrutinised by the Ministry/Department before making the payment. Daily Allowance may be claimed in the bill for the full period admissible. The Travelling Allowance for onward journey and return journey will be included in the bill and the payment will be treated as final irrespective of the date of completion of the journey. However, the Administrative Ministry or Department will obtain a formal intimation to the effect that the return journey has, in fact, been completed. The provisions of Rule 224 of the Central Treasury Rules will apply *mutatis mutandis* in the case of over-payments made on account of travelling allowance. In order to enable the Accounts Officers to scrutinise the travelling allowance bills of non-official members of the Committees and Commission's etc., the names, designations and specimen signatures of the officers authorised to countersign the T.A. bills should be communicated to the Accounts Officer concerned. It is to be understood that the certificates to be furnished by the non-officials along with their claim should be in conformity with the certificates furnished by Gazetted Officers along with their travelling allowance bills and the scrutiny to be exercised by the Controlling Officer with reference to Supplementary Rule, 195 should be made to verify the claim and satisfy himself, among other things, that the journey has been performed by the class by which travelling allowance is claimed. The instructions may be supplemented by relevant detailed instructions contained in the Supplementary Rules in regard to the preparation, scrutiny and acceptance of travelling allowance claims.

(ii) If a member desires payment to be made at his place of residence, the Administrative Ministry or Department will arrange for payment by demand draft.

(iii) The total amount of T.A. intended for payment to the Members may be drawn in advance by the Ministry/Department concerned on a simple receipt or T.A. bill form by debit to the final head of account as in the case

of advance of T.A. on tour after getting the sanction of competent authority. Copy of the sanction for the drawal of the advance should be attached to the bill. The amount to be drawn in advance should be worked out on the basis of the entitlements of T.A. to each member who is expected to attend the meeting and it should be restricted to the amount required for disbursement of T.A. for each meeting. After the amount is disbursed to the members, the Ministry/Department concerned should render an account setting forth the particulars of the amount of T.A. drawn in advance from the Treasury, giving reference to voucher No. and date of the encashment of the bill, and the amount disbursed to each individual member who attended the meeting duly supported by the detailed T.A. bills countersigned and passed for payment by the competent authority. Amounts drawn in excess, if any, should be immediately refunded to the Treasury and challan enclosed along with the account rendered to the Accountant General.

(iv) The Ministry/Department concerned should ensure that a second advance is not drawn unless the account of the first advance has been rendered to the Accountant General."

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(29)

Ministry of Finance O.M. No. F. 5(15)-EIV(B)/68, dated 15th September, 1969

The President is pleased to decide that the procedure for the payment of TA/DA laid down in the Ministry of Finance O.M. No. F. 9(19) EIV (B)/67, dated the 2nd December, 1967 (please see D-28) shall apply *mutatis mutandis* in the case of private persons appearing as prosecution or defence witnesses in departmental enquiries including those conducted by the Commisisoner for Departmental Enquiries.

2. If an inquiry is held by a Ministry/Department other than the Ministry/Department under whom the Government servant, against whom the inquiry is held, is for the time being serving,

the Ministry/Department holding the inquiry will make on the spot payment of TA/DA to a private person called as a witness in a departmental inquiry and bear the charges in relaxation of the general instructions contained in para 5 of Government of India's Instructions below S.R. 190.

3. In the cases where the enquiry is ordered by an administrative Ministry/Department to be conducted by a Commisisoner for Departmental Enquiries, who is an officer of the Central Vigilance Commission, the Commissioner conducting the enquiry will determine the grade to which the witnesses may be considered to belong for the purpose of T.A./D.A. under S.R. 190(a), and the expenditure on T.A./D.A. of the witnesses will be debited to the Central Vigilance Commission and not to the Ministry/Department to which the enquiry relates.

MGIPCBE—S7—1 CVC/ND/83—8-9-84—7,500 Bks.