

No.99/VGL/66
Government of India
Central Vigilance Commission

Satarkta Bhavan, Block "A",
GPO Complex, I.N.A.,
New Delhi-110023
Dated the 28th September 2000

To

All Chief Vigilance Officers of Ministries / Departments of Government of India/ Nationalised Banks / PSUs / Autonomous Bodies, Societies etc.

Subject: - Consultation with the CVC - Making available a copy of the CVC's advice to the concerned employee.

Sir,

Para 3.6 (iii), chapter XI and para 8.6, Chapter XII of the Vigilance Manual, Vol. I, provide that the advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the concerned employee. It also mentions that the Central Vigilance Commission tenders its advice in confidence and its advice is a privileged communication and, therefore, no reference to the advice tendered by the Commission should be made in any formal order.

2. The Commission has reviewed the above instructions in view of its policy that there should be transparency in all matters, as far as possible. The Commission has observed that the Hon'ble Supreme Court had held a view in the case - State Bank of India Vs. D.C. Aggarwal and another [Date of Judgement: 13.10.1992] - that non-supply of CVC's instructions, which was prepared behind the back of respondent without his participation, and one does not know on what material, which was not only sent to the disciplinary authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. Further, the Hon'ble High Court of Karnataka at Bangalore, in writ Petition No. 6558/93, has also observed that if a copy of the report (CVC's advice) was furnished to the delinquent officer, he would have been in a position to demonstrate before the disciplinary authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC's report.

3. The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of inquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge

sheet served upon him, for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report, to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

4. In view of the position stated above, para 3.6 (iii), Chapter XI and para 8.6, Chapter XII of the Vigilance manual, Vol. I, and also para 2 of the Commission's letter No. 6/3/73-R dated 20.08.1973 may be treated as deleted.

5. Para 12.4.4 of Special Chapter on Vigilance Management in Public Sector Banks and para 22.6.4 of the Special Chapter on Vigilance Management in Public Sector Enterprises envisage that the inquiring authorities, including the CDIs borne on the strength of the Commission, would submit their reports to the disciplinary authority who would then forward the IO's reports, along with its own tentative views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The disciplinary authority may, after examination of the inquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, along with the disciplinary authority's views, may be made available to the concerned employee. On receiving his representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along with the records of the case, to the Commission for its reconsideration.

6. Thus, if on the receipt of the employee's representation, the concerned administrative authority proposes to accept the CVC's advice, it may issue the orders accordingly. But if the administrative authority comes to the conclusion that the representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission.

Yours faithfully,


(K.L. Ahuja)
Officer on Special Duty