

CHAPTER III

CENTRAL BUREAU OF INVESTIGATION

301. Evolution:

- 301.1 Anti-corruption efforts of the Government of India were initiated during World War-II, when it was realized that the vast increase in expenditure for war efforts had provided enormous opportunities for bribery and corruption. It was felt that the Police and other Law Enforcement Agencies under the State Governments were not in a position to cope with the situation. An executive order was, therefore, passed by the Government of India in 1941, setting up the **Special Police Establishment (SPE)** under a DIG, in the then Department of War, with the mandate to investigate cases of bribery and corruption in transactions with which the War and Supply Department of the Government of India was concerned.
- 301.2 At the end of 1942, the activities of SPE were extended to include cases of corruption on the Railways also, because Railways were vitally concerned with the movement and supply of war materials.
- 301.3 In 1943, some doubt was felt about the legal powers of Police officers working with SPE and, therefore, an Ordinance was issued by the Government of India, by which a Special Police Force was constituted for the investigation of certain offences committed in connection with the departments of the Central Government, with powers to investigate such offences anywhere in British India.
- 301.4 Even after the end of World War II, the need for a Central Government Agency to investigate cases of bribery and corruption was felt and, therefore, the Ordinance issued in 1943, which had lapsed on 30th September, 1946, was replaced by the Delhi Special Police Establishment Ordinance of 1946. This was subsequently replaced by the Delhi Special Police Establishment Act, 1946. After promulgation of the Act, the superintendence of SPE was transferred to the Home Department and its functions were enlarged to cover all departments of the Government of India.
- 301.5 The jurisdiction of SPE encompassed all Union Territories, which could be further extended to States with the consent of State Governments. The organisation was initially put under the charge of Director, Intelligence Bureau. However, in 1948, a post of Inspector General of Police, SPE, was created and the organization was placed under his charge.
- 301.6 With the passage of time, this organization was entrusted with more responsibilities. In 1953, an Enforcement Wing was added to the SPE to deal with offences under the Import and Export Control Act.
- 301.7 In due course, the need was felt for a Central Police Agency, at the disposal of the Central Government, which would investigate not only cases of bribery and corruption,

but also those of breach of Central fiscal laws, major frauds, crimes on the high seas, crimes on the Airlines and serious crimes committed by organised gangs and professional criminals. Therefore, the Government of India set up the **Central Bureau of Investigation** by a resolution dated 1st April, 1963, with the following six divisions:

- (i) Investigation & Anti- Corruption Division (Delhi Special Police Establishment)
- (ii) Technical Division
- (iii) Crime Records and Statistics Division
- (iv) Research Division
- (v) Legal and General Division
- (vi) Administration Division

301.8 The Investigation & Anti Corruption Division (Delhi Special Police Establishment) was entrusted with the responsibility to investigate and prosecute :

- (i) Cases in which public servants under the control of the Central Government are involved either by themselves or along with State Government servants and/or other persons.
- (ii) Cases in which the interests of the Central Government, or of any public sector project or undertaking, or any statutory corporation or body set up and financed by the Government of India, are involved.
- (iii) Cases relating to breach of Central Laws e.g. Import and Export Control Orders, Foreign Exchange Regulation Act, Official Secrets Act, etc.
- (iv) Serious cases of cheating or fraud relating to the Railways, and Posts & Telegraphs Department,
- (v) Crime on the High Seas and Airlines
- (vi) Serious cases in Union Territories, particularly those by professional criminals.
- (vii) Serious cases of fraud, cheating and embezzlement relating to Public Joint Stock Companies.
- (viii) Other cases of a serious nature, when committed by organised gangs or professional criminals, or cases having ramifications in several States and Union Territories. These cases were to be taken up only at the request of or with the concurrence of the State Governments/Union Territories concerned.

301.9 This division was also expected to collect intelligence about corruption in public services and projects and undertakings in the public sector.

301.10 With time, the scope of CBI's operations increased, as new areas of crime emerged. This led to addition of new divisions and wings.

302. Present structure, jurisdiction & functions of CBI:

302.1 At present, CBI has the following Divisions:-

1. Anti Corruption Division
2. Economic Offences Division
3. Special Crimes Division
4. Directorate of Prosecution/ Legal Division
5. Administration Division
6. Policy & Coordination Division
7. Central Forensic Science Laboratory

302.2 CBI derives its power of investigation from the Delhi Special Police Establishment (DSPE) Act, 1946. As per section 2 of the Act, DSPE has the jurisdiction to investigate offences in Union Territories only. However, its jurisdiction can be extended by the Central Government to other areas, including Railways and States. As per section 3 of the Act, the Special Police Establishment is authorised to investigate only those cases, which are notified by the Central Government in the Official Gazette from time to time. Besides notifying offences under 69 Central and 14 State Acts, 231 offences under the Indian Penal Code have also been notified by the Central Government in this regard. Cases under the Prevention of Corruption Act, 1988, are investigated by CBI under the superintendence of the Central Vigilance Commission.

302.3 Director, CBI, as Inspector General of Police, Delhi Special Police Establishment, is responsible for the administration of the organisation. He has been provided security of tenure of two years by the CVC Act, 2003. The CVC Act also lays down the mechanism for selection of Director, CBI, and other officers of the rank of SP and above in CBI.

302.4 CBI functions under the Department of Personnel, Ministry of Personnel, Pension & Public Grievances, Government of India. The following broad categories of criminal cases are handled by the CBI:

1. Cases of corruption and fraud committed by public servants of all Central Government Departments, Central Public Sector Undertakings and Central Financial Institutions.

2. Economic crimes, including bank frauds, financial frauds, Import, Export & Foreign Exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items, etc.
3. Special Crimes, such as cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/ underworld.

303. Investigation by CBI:

- 303.1 Investigation is taken up by CBI on the basis of information collected from its own sources, or obtained from the members of the public or from public servants, or cases referred to them by CVC and administrative authorities.
- 303.2 CBI has to take the Head of the concerned Department/Office into confidence, before taking up any inquiry or soon after starting the inquiry, as per circumstances of the case. This stipulation also applies in case of a search at the premises of an officer. As regards officers of the rank of Joint Secretary, or above, in the Central Government, CBI has to consult the Secretary of the concerned Ministry/Department (Concerned Board Member) before taking up any inquiry, including ordering search – no inquiry can be initiated without concurrence of the Secretary. This is commonly known as the ‘**Single Directive**’. (However, in cases of search, when there is no time for such consultation, the Secretary should be immediately informed of the proposal to search the premises of the concerned officer). In case of difference of opinion, the Director, CBI may refer the case to the Secretary, Ministry of Personnel, Public Grievances and Pensions for decision. However, if it is necessary to examine the officer with regard to an inquiry against another officer, then the CBI can examine him without consultation with or concurrence of the Secretary of the Ministry/Department.
- 303.3 In case the available information appears to require verification before formal investigation, a **preliminary enquiry (PE)** is made. If the PE reveals some substance in the allegations, then a **regular case (RC)** is registered for formal investigation, under Section 154 of the Criminal Procedure Code. In case the information appears to have enough substance, then an RC is registered straightaway. When a case is taken up for PE or RC, a copy of the PE registration report or the first information report (FIR), as the case may be, is sent by the CBI to the Head of the concerned Ministry/Department. In the case of gazetted officers, a copy of the FIR is also sent to CVC.
- 303.4 The results of investigation of the PE and/or RC would be one of the following:
 - (a) The results are grave enough to launch prosecution – in such cases, sanction for prosecution will be processed. This aspect has been dealt with in detail under Para 212 of the Vigilance Manual.
 - (b) Sufficient evidence may not be available to launch prosecution but facts of the case may warrant departmental action – in that case, CBI will forward its report to CVC and the concerned Department/Ministry (in case of gazetted officers), and to

the concerned Department/Ministry only (in case of non-gazetted officials). Details are spelt out in Para 313 of the Vigilance Manual.

- (c) No irregularity is observed – CBI decides to close such cases and advises CVC and the concerned Department/Ministry (in case of gazetted officers), and the concerned Department/Ministry only (in case of non-gazetted officials) about it.

303.5 The administrative authorities also receive complaints/information regarding alleged irregularities of public servants working in their jurisdiction. These authorities have to decide whether the allegations should be looked into departmentally or by the CBI. As a general rule, trap cases, allegations involving offences of bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, cases involving outsiders or other serious criminal offences or those requiring 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 CBI for investigation. A prompt reference is necessary in such cases to safeguard against the possibility of a suspect officer tampering with or destroying incriminating evidence against him.

303.6 Once a case is referred to and taken up by CBI for investigation, further investigation must be left to CBI. Parallel departmental investigation should be avoided. Further action by the Department should be taken on completion of investigation by CBI, on the basis of their report.

304. Co-operation with CBI:

Administrative authorities are expected to cooperate fully with CBI, especially with regard to the following aspects:

(a) Records

Utmost cooperation is required in the matter of supplying necessary records. In case of **other than classified records**, the Head of Department should ensure that the SP/CBI or his authorized representative is shown all relevant records. In case CBI asks for original documents, this should be ordinarily made available, while keeping in view that day-to-day departmental work is not hampered – if required, the departmental authority may keep an attested or photostat copy of these documents. Records should be made available promptly – within 15-30 days of receiving CBI's request – in order to avoid delay in CBI's investigations. If it is not possible to hand over records within a month owing to some special reasons, then the matter should be brought to the notice of CBI by the authority which has the records, specifying reasons for such delay. The authority should also inform the Chief Vigilance Officer of the concerned Ministry.

In case of **classified/graded documents/records**, sanction of the competent authority to release these documents should be obtained promptly by the concerned administrative authority. Then, the following guidelines should be adhered to:

- (a) Top secret documents should be handed over only to gazetted officers of CBI (it may be noted that inspectors of CBI are not gazetted officers).
- (b) Secret and confidential documents should be given to gazetted officers of CBI or an inspector of CBI, if he is specially authorized by SP/CBI for this purpose.
- (c) A temporary receipt should be obtained whenever any graded document is handed over to an officer of CBI, who will be asked to comply with provisions of Para 27 (a, b, c & e) of the pamphlet, 'Classification and Handling of Classified Documents, 1958.
- (d) The originator of the graded documents/record should also be informed.
- (e) Where original documents cannot be made available to the Investigating Officer, he should be given photostat/attested copies, along with a certificate by an officer that the original documents are in safe custody, out of the reach of the suspect official and that these will be produced whenever required.

(b) Witness

If the CBI requests for the presence of any official for examining him during an investigation, the administrative authority should direct him accordingly. If it is not possible for him to be present on the specified date and time, then the administrative authority should inform CBI about it and direct the official to appear before CBI at the earliest opportunity. The CBI ordinarily examines a gazetted officer at the place where he is posted, unless he has to be shown a number of documents, the movement of which is considered hazardous.

(c) Accommodation, communication and transport facilities

The investigating officers of CBI should be provided with suitable accommodation in Rest Houses on payment, as applicable in case of officers on duty. They should also be provided with transport and communication facilities at extant rates.

305. Action to be taken when bribe is offered:

- 305.1 Occasions may arise when a public servant is offered or is likely to be offered bribe. It is not enough for him to refuse the bribe and later report the matter to higher

authorities. When he suspects an offer of bribe, he should tactfully postpone meeting the bribe-giver and contact SP/CBI, or SP/senior most police officer of his district, for laying a trap. The Head of the Department should also be informed about it. If it is not possible to lay a trap, the bribe-giver may be detained for sometime and any person (s) who are readily available may be requested to witness the transaction and overhear the conversation between the bribe-giver and the public servant.

305.2 The Head of the Department should maintain an impartial position. He should not act as an agent of the CBI, either by arranging for money or by being a witness to the transaction.

306. Trap cases:

- (a) Whenever CBI desires to lay a trap for a public servant who is expected to accept a bribe, it will give prior information to the concerned Head of the Department/Office. In case circumstances do not permit, CBI will furnish details of the case to the Head of the Department/Office immediately after the trap.
- (b) During the trap, it is essential that responsible and impartial person(s) witness the transaction and/or overhear the conversation of the suspect public servant. All public servants, particularly gazetted officers, should assist and witness a trap, whenever they are approached by the CBI to do so. Refusal to assist or witness a trap will be regarded as breach of duty, making the officer liable to disciplinary action. On the request of CBI, the Head of the Department/office will depute a suitable person(s) to be present at the scene of the trap.
- (c) The Government servants who are caught accepting a bribe in a trap case by the CBI/Police should invariably be placed under suspension. The total period of suspension will not exceed 6 months in normal circumstances.

306.1 **Revocation of Suspension:** Suspension may be revoked after a maximum period of 6 months from the date on which the official is placed under suspension, subject to the following conditions:

- (i) CBI should be consulted about the proposed revocation of suspension, well before expiry of the period of 6 months.
- (ii) Where the proceedings (Court/Disciplinary) lodged against the public servant are not likely to be concluded shortly, say within 2 to 3 months.
- (iii) Where delay in finalization of proceedings is not attributable to the charged officials.
- (iv) After the official's suspension is revoked, he should be transferred to a place which is sufficiently far-off from the place where he was trapped, so that he does not hamper the proceedings.

(v) This will apply to all Railway Servants, gazetted or non-gazetted. The cases of revocation of suspension in case of gazetted officers only need to be referred to Railway Board for decision.

306.2 The revocation of suspension in case of gazetted officers involved in CBI trap cases may, however, be done with the approval of **Board** after satisfying the conditions mentioned above.

307. Departmental Trap cases - Procedure & Guidelines:

307.1 The Railway Vigilance department also carries out decoy checks. These checks require careful planning, selection, execution and documentation for success. The need for a very good information network and regular flow of information from the field cannot be over emphasized, for it is only this that leads Vigilance to the right person at the right time.

307.2 The spot for the trap should be selected very carefully after thorough ground work. If one has studied the field conditions well, then one would know which are the vulnerable locations and who are the regular extorters. For example, checks on booking windows are most rewarding when there is a huge rush at the windows and the booking clerks help themselves to extra cash by way of keeping the change, dropping of cash etc. Similar would be the case in an overflowing train during the vacation period.

307.3 The selection of the decoy has also to be done very carefully. If he is a Government Servant, he should have a clear past and should not have any enmity against the person who is to be trapped. If the decoy is a non-Government person, then he should be adequately informed of the purpose of this trap. The decoy should be one who would always stand with the Vigilance agency under all circumstances and not be bought over or pressurized by the trapped person. He would have to be told before-hand that his commitment in the case would last a long while, he would face cross examination in the subsequent inquiry process and, hence, should be willing to cooperate with the Vigilance till the very end.

307.4 In addition, the Investigating Officer/Inspector should immediately arrange one or more officials (gazetted or non-gazetted or a combination of gazetted & non-gazetted) to act as independent witness/witnesses. It is imperative that all Railway employees should assist and witness a trap, whenever they are approached by the Vigilance branch. Refusal to assist or witness a trap without sufficient reason can be construed as breach of duty, making the person liable to disciplinary action.

307.5 Proper execution of the trap is very important. The following important points should be kept in view:

- (i) One or more responsible and impartial witness/witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification. This would squarely meet the likely defence of the accused that the money was actually received as a loan or something else.
- (ii) The transaction should be within the sight and hearing of the independent witness/witnesses.
- (iii) There should be an opportunity to catch the culprit red-handed immediately after the bribe money has changed hands so that the accused may not be able to get rid of it.
- (iv) The witnesses selected should not have appeared as witnesses in earlier cases of the department. It is safer to take as witness a Government employee who belongs to some other department.
- (v) It is preferable to take a written complaint from the decoy. The complainant must specifically give the name of the person receiving the money, motive for receipt, the actual amount, date, time and place of the transaction.

307.6 Prior to the trap, the decoy should present the money, which he will give to the target officer/employee as bribe money on demand. A memo should be prepared by the investigating officer/inspector in the presence of the independent witnesses and the decoy indicating the numbers of the Government Currency (GC) Notes for legal and illegal transactions. This memo should be signed by the decoy, independent witness/witnesses and the investigating officer/inspector. Another memo, for returning the GC notes to the decoy, should be prepared for paying the bribe to the delinquent employee on demand. This memo should also be signed by the decoy, witnesses and the investigating officer/inspector.

307.7 At the time of the check, the independent witness/witnesses should take up position in such a place where they can see the transaction and also hear the conversation between the decoy and the delinquent employee, so as to satisfy themselves that money was demanded, given and accepted as bribe.

307.8 After money has been passed by the decoy to the delinquent employee as bribe, the investigating officer/inspector should disclose his identity and demand, in the presence of witnesses, to produce all money including private, Railway and bribe money. Then, the total money produced should be verified from relevant records and a memo be prepared for seizure of money. The recovered notes should be kept in an envelope, sealed in the presence of the witness, decoy, the accused and his immediate superior, who should be called as witness, in case the accused refuses to sign the recovery memo and sealing of notes in the envelope. It is crucial to seize supporting relevant documents immediately after the trap.

- 307.9 A site plan should also be prepared indicating the important features of the trap, namely, where the trap was laid, the position of witnesses, the delinquent official, the position of decoy and the relative distance from each other.
- 307.10 It is essential to follow the due procedure in cases of decoy checks. Procedural lapses enable the accused to get the benefit of doubt in the inquiry proceedings. Several cases of decoy checks have finally not resulted in the desired punishment on the employee because of these lapses.
- 307.11 It is essential that a successful decoy check should be followed to its logical conclusion, namely - the issue of a major penalty charge sheet which should eventually entail imposition of penalties of compulsory retirement, removal or dismissal from service. Rule 6 of the RS(D&A) Rules specifies dismissal/removal for proven cases of bribery & corruption. The disciplinary authority should not take up a position of misplaced sympathy for people who don't deserve it. If not, then the message that is conveyed to delinquent employees - present and potential - is that 'anything goes' (*sab chalta hai*) and they can get away with just about anything. The Executive and Vigilance wings need to cooperate in making the tool of decoy checks a very effective deterrent to the wrongdoer, and not take up a confrontationist approach which would ultimately benefit him.

308. Transfer of an officer on the request of CBI:

- 308.1 CBI may request for the transfer of a public servant when it is investigating serious charges against him. This recommendation is made when it is absolutely necessary for the purpose of investigation. CBI specifies reasons for the request, which is made by an officer, not lower in rank than SP.
- 308.2 When the concerned Department has administrative difficulties in meeting this request, then the matter should be discussed and settled at the local level. However, if differences remain, then discussion should be done at a higher level. If differences still persist, then the matter should be discussed by the Administrative Ministry with the Joint Secretary, Administrative Vigilance Division, Department of Personnel.
- 308.3 Such transfers should be tackled by balancing the need for discretion on the part of the concerned Ministry and facilitating smooth investigation by CBI.

309. Assistance to CBI by Technical Officers:

CBI may require assistance of technical officers, e.g. engineers, accountants etc., in cases which are of technical nature. The concerned Administrative Ministry/Department/Undertaking should fully cooperate with CBI in this matter, when a request is received from it. In the Vigilance Department of Indian Railways, separate Vigilance Cells exist to deal with matters pertaining to Engineering, Traffic, Stores, Accounts and Mechanical Engineering – personnel of these cells should assist the CBI, when asked to do so. CBI also takes the assistance of the Chief Technical Examiners'

Organization, which functions under the CVC, in cases of Civil & Electrical works, and Stores purchase contracts.

310. Suspension:

310.1 CBI may recommend to the concerned Disciplinary Authority, either during the course of investigation or while suggesting prosecution/departmental action, that the suspect officer may be suspended. A decision in this matter should be taken after careful examination of the case. Public interest should be the sole guiding factor and the Disciplinary Authority should take into account all relevant factors before deciding whether or not to suspend the official. However, it may be appropriate to place a Government servant under suspension in the following conditions:

- (i) Where continuance in office of the Government servant will prejudice the investigation, trial or inquiry (e.g. apprehended tampering with witnesses or documents);
- (ii) Where the continuance in office of the Government servant is likely to adversely affect discipline in his office;
- (iii) Where the Government servant is involved in a public scandal and it is necessary to place him under suspension to demonstrate the policy of the Government to deal strictly in such matters;
- (iv) Where serious allegations have been made against the Government servant, and the preliminary inquiry has revealed a *prima-facie* case against him, that would justify his prosecution or major penalty departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

310.2 Suspension may also be desirable in certain cases of misdemeanor, for example, moral turpitude, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain, serious dereliction of duty resulting in considerable loss to the Government, desertion of duty, refusal or deliberate failure to carry out orders of superior officers, etc.

311. Prosecution:

Prosecution should be the general rule in cases of bribery, corruption or other criminal misconduct, or cases involving substantial loss to public funds, which are found fit to be sent to Court after investigation. Details of sanctioning prosecution have been spelt out in Para 212 of the Vigilance Manual.

312. Withdrawal of prosecution:

312.1 Once a case has been lodged in a Court for prosecution, it should be allowed to proceed to its logical end. However, the investigating agency or the public prosecutor can

initiate a proposal for withdrawal of prosecution for some legal reasons. In such cases, the Ministry of Law should be consulted and its advice accepted.

- 312.2 The accused can also request for withdrawal of prosecution. This request should generally not be entertained, except when certain fresh facts have arisen or attention is drawn to hitherto unnoticed facts, which might alter the contours of the case. The Ministry of Law should be consulted in such cases.
- 312.3 In cases in which prosecution was sanctioned on the advice of CVC, the Commission should be consulted again before the matter is referred to the Law Ministry.
- 312.4 Rule 7 of the Government of India (Transaction of Business) Rules, read with item (g) of the 2nd Schedule to these Rules, provides that any proposal to withdraw prosecution (which was instituted by the Government of India) in contravention of the competent legal advice (i.e. advice of the Ministry of Law), should be brought before the Cabinet.

313. Departmental Action:

CBI's investigation report recommending departmental action

- 313.1 In cases where the available evidence is insufficient for criminal prosecution and offences are less serious, the CBI forwards its investigation report to the concerned Ministry/Department, recommending Regular Departmental Action (RDA).
- 313.2 In case of **gazetted officers**, one copy of the report, along with copies of relied upon documents (or their gist/extracts), is sent by CBI to CVC. The CBI also sends copies of the report to Railway Board and to GM (Vigilance) of the concerned Zonal Railway. The Railway Board has to furnish its comments on the report to CVC within one month. In such cases, the Zonal Railway should furnish its comments to Railway Board within 15 days, along with relevant service particulars of all the concerned officers. CVC examines the report, as well as Railway Board's comments, and advises Board about the action to be taken. No further departmental fact-finding should normally be necessary in such cases. If Board's comments do not reach CVC within the stipulated time frame, then CVC can tender its advice on the basis of documents available with it. If there are any special circumstances, then Board can approach CVC for extension of the time-limit for furnishing its comments.
- 313.3 In case of **non-gazetted officials**, CBI forwards its report to the concerned Disciplinary Authority. No further departmental fact-finding should normally be necessary in such cases. However, should any clarification/additional information be required, CBI may be requested to furnish it.

313.4 The CBI's report is a confidential document and should not be produced before the Inquiry Officer or a Court of Law. Privilege can be claimed in a Court of Law under Section 123/124 of the Evidence Act. No direct reference should be made about the CBI's report in the statements/affidavits filed in the Courts of Law. Reference to these statements/affidavits may be restricted to the material which is contained in the charge sheet served on the accused public servant.

314. Supply of documents by CBI to the Disciplinary Authority:

In order to avoid delay in initiating action on CBI's report, the concerned SP/CBI sends the Relied Upon Documents to Railway Board in cases involving gazetted officers, and to the Chief Vigilance Officer of the concerned Zonal Railway in cases against non-gazetted officials, as soon as CBI's report is dispatched to the Railway Board/Zonal Railway. Ordinarily, these are original documents, with CBI keeping photostat copies thereof. However, in case the CBI does not wish to part with the original documents, it sends attested copies of these documents, or their extracts or a gist of their contents. In case the disciplinary authority wishes to see the original documents, CBI may be requested to make them available for inspection. In case these documents are not capable of being copied or of getting a gist prepared, the disciplinary authority may inspect these documents in consultation with CBI. In case certain documents, required for the RDA, are held up in a Court of Law, CBI will persuade the Court to part with the documents temporarily or to give photostat copies thereof. However, if this is not possible and if the accused public servant insists on seeing the original documents, then the possibility of inspecting these documents in the Court should be examined, in consultation with CBI.

315. Draft charge sheet:

In cases where RDA is recommended by CBI, its investigation report is accompanied by the draft Articles of Charges, statement of imputations, list of relied upon documents and witnesses. A copy of the charge sheet, as served on the charged official, will be endorsed to CBI. This will enable the Presenting Officer of CBI to acquaint himself with changes, if any, made in the charge sheet.

316. Appointment of Presenting Officer:

316.1 In cases of RDA on CBI's recommendation, the Disciplinary Authority should appoint the officer nominated by CBI as the Presenting Officer (PO) simultaneously with the appointment of the Inquiry Officer (IO), in order to avoid delays. The investigating officer should not be appointed as the Presenting Officer. In most of the cases, CBI is not in a position to nominate its PO & asks Railway to nominate its own PO. However, in the following types of cases, it has been decided that CBI will nominate its own PO:-

- (i) Cases in which outsiders have to be produced as prosecution witness.

- (ii) Cases of disproportionate assets.
- (iii) CBI trap cases.

The PO needs to attend every hearing, but in case he cannot be present on any occasion, the DA has to appoint a substitute PO. He may be an employee of CBI/Railways, not below the PO's rank, to present the case. This substitute PO should not have associated himself with investigation of the case at any stage.

- 316.2 In case CBI requests that the Investigating Officer of the case should be associated with the departmental inquiry, then the IO will inform the local Head of the CBI about the date of inquiry and ask the investigating officer to meet him on a suitable date in advance, along with all relevant records, so that he can assist the IO by explaining the case and clarifying points of doubt. The Investigating Officer will be shown the written statement of defence and asked to offer his remarks thereupon. His assistance may also be taken to secure relevant records and ensure the presence of witnesses. However, it is not appropriate to associate the Investigating Officer formally with the inquiry process, as this would not let the inquiry process remain purely departmental. However, if the IO considers it useful, without any prejudice to the defence, then he may ask CBI to depute any officer, other than a lawyer or the Investigating Officer, to be present at the inquiry. This officer will lead the evidence by examining witnesses and cross-examining defence witnesses.

317. Examination of witnesses as cited by CBI by the IO:

The IO is free to decide whether all the witnesses mentioned in the CBI's list should be called for examination or not. In case he does not call all the witnesses mentioned in this list, it will be open to CBI to point out before the inquiry is concluded that attendance of the said witness was necessary, with a request that he may be examined. The IO will carefully examine this request and if he finally decides not to examine him, his reasons for doing so should be recorded, and the concerned SP/CBI informed about it. In such cases, CBI may inform the disciplinary authority that, if this witness is not examined, then it might be difficult to establish the charges. The disciplinary authority will carefully consider this aspect and decide as per his judgment.

318. Documents to be made available to CBI after Departmental proceedings:

The following documents should be made available to CBI on conclusion of Departmental proceedings:

- (i) A copy of CVC's advice
- (ii) A copy of IO's report and disagreement memo, if any.

- (iii) A copy of UPSC's advice and the Disciplinary Authority's view on it.
- (iv) A copy of the final order passed by the Disciplinary Authority.

319. Difference of opinion between CBI and Administrative Authorities:

- 319.1 In case of **gazetted officers**, CBI sends a copy of its investigation report to CVC, which advises the concerned Administrative Ministry about the form of action, after obtaining its comments (1st stage advice). Also, on conclusion of the DAR inquiry, the IO's report, along with disagreement memo, if any, and DA's provisional views are sent to CVC, which advises about the final action to be taken in the matter (2nd stage advice). The Disciplinary Authority normally acts in accordance with CVC's advice, in which case there would not be any difference of opinion between CBI and the Administrative Authority (i.e. if CVC has agreed with CBI's recommendation). However, in case there is a difference which persists, then ultimately the view of the Disciplinary Authority will prevail. In case his view is different from that of CVC, then it shall be the prerogative of CVC to include it as a case of non-compliance of its advice, in its Annual Report, which is tabled on the floor of both Houses of Parliament.
- 319.2 In case of **non-gazetted officers**, if there is a difference of opinion between CBI and the concerned Administrative Authority, then the case will be referred to CVC. CVC will examine the case thoroughly, and after going through all relevant records and evidence, it will tender its advice in the matter.

320. Grant of immunity/pardon:

- 320.1 In case of **gazetted officers**, if the CBI finds during an investigation that a public servant has made a full and true disclosure implicating himself and others, and that such statement is free from malice, it may recommend to CVC that the person may be granted immunity from departmental action or punishment. CVC will consider CBI's recommendation, in consultation with the concerned Administrative Authority, and will tender its advice in the matter. CBI will follow CVC's advice.
- 320.2 In case of **non gazetted officials**, CBI may send a similar recommendation to the concerned Ministry. If there is a difference of opinion between CBI and the Ministry, then the matter will be referred to CVC for resolution.

321. Liaison between CBI and the Administrative Authorities:

It goes without saying that there is a strong need for close liaison and cooperation between CBI and Vigilance Officers of Ministries/Departments. This is required both at the macro level (to monitor progress of cases in totality) and the micro level (i.e. on a case-to-case basis). Also, both the CBI and Vigilance officers receive information about activities of officials from various sources – such information should be cross-

checked, so that officials of both wings are well informed about developments. Both agencies should move in tandem to combat the menace of corruption.

322. Agreed List/Secret List:

322.1 One of the measures to combat corruption is to maintain watch on the activities of public servants who are of doubtful integrity. For this, two lists namely 'Agreed List' and list of public servants of gazetted status of doubtful integrity also known as 'Secret List' are prepared by Railway Board Vigilance annually in accordance with the directives of Department of Personnel and Training and Central Vigilance Commission.

322.2 The Secret List is prepared in the light of criteria laid down for the purpose namely

- (a) Officers convicted in a Court of Law on a charge of lack of integrity or for an offence involving moral turpitude but on whom in view of exceptional circumstances, a penalty other than dismissal, removal or compulsory retirement is imposed.
- (b) Officers awarded departmentally a Major Penalty :
 - (i) On charge of lack of integrity or
 - (ii) On charge of gross dereliction of duty in protecting the interests of Government although the corrupt motive may not be capable of proof; or
- (c) Officers against whom proceedings for a Major Penalty or a Court Trial are in progress for alleged acts involving lack of integrity or moral turpitude; or
- (d) Officers who were prosecuted but acquitted on technical grounds, and in whose case, on the basis of evidence during the trial, there remained a reasonable suspicion against their integrity.

322.3 **Exceptions:**

The following will be excluded for this purpose:

- (a) Officers who have been cleared or honorably acquitted as a result of disciplinary proceedings or court trial.
- (b) Officers against whom an enquiry or investigation has not brought forth sufficient evidence for recommending even a disciplinary case.
- (c) Officers who have been convicted for offences not involving lack of integrity or moral turpitude.

- (d) Officers against whom disciplinary proceedings have been completed or are in progress in respect of administrative lapses, minor violation of Conduct Rules and the like.
- 322.4 Names once included in Secret List will not be removed until a period of three years has elapsed. The period of three years, for which the name will be current on the list, will count from the date of punishment in disciplinary proceedings or from the date of conviction in a Court Trial.
- 322.5 Due to issue of this list on annual basis, names of those officers, who are advised major penalty action by CVC in the intervening period, do not find place in the Secret List. Similarly, some officers may continue to be on the Secret List even when either exonerated or taken up for minor penalty action subsequent to inquiry. Such cases should be brought to the notice of GM/PHOD by the concerned SDGM/CVO. In case of major penalty action, the General Manager/PHOD should shift such officers from sensitive seats, if occupied by them. Likewise, in case of exoneration or minor penalty action on an officer already borne on Secret List, PHOD/General Manager may consider his posting on a sensitive seat on the advice of SDGM.
- 322.6 Agreed List is prepared annually in consultation with CBI and contains the names of such Officers whose integrity and honesty is under a cloud.
- 322.7 The Agreed List is prepared in consultation with the CBI every year. The Agreed List is meant only for the purpose of intensive vigilance and carrying out preventive checks. As regards the procedure, CBI/Railway Vigilance at the Branch/Zonal levels respectively should make out preliminary Agreed Lists and also the list of officers on which there is no agreement. After they are signed by both of them, they would be transmitted to their respective Head Offices viz. CBI Headquarters Office at New Delhi and Vigilance Directorate, Railway Board. These lists will be further discussed by Vigilance Directorate with CBI Headquarters and final Agreed List will be communicated to the CBI Headquarters Office and the Zonal Railways. The CBI will in turn also send list to their concerned local units.
- 322.8 The purpose of maintenance of these lists is to take such administrative action as is necessary and feasible in the type of cases mentioned below :-
- (a) Transfer from a “Sensitive” post.
 - (b) Non nomination to Selection Committees
 - (c) Non nomination to Tender Committees
 - (d) Non appointment as Arbitrators
 - (e) Non nomination as Inquiry Officers

- (f) Non sponsoring of names for foreign assignments/deputations
 - (g) Refusal of permission for commercial re-employment after retirement.
 - (h) Refusal for re-employment in Public Sector Undertakings.
- 322.9 In the event of an Officer whose name is borne on the lists being transferred to another Railway, the General Manager/SDGM concerned should intimate to his counterpart in the other Railway the fact of the Officer's name being on the list, endorsing a copy of the letter to Railway Board Vigilance.
- 322.10 While giving vigilance clearance for various purposes like Promotions, Deputations, and Training etc. the fact that the officer is borne on current Agreed List or current Secret List should also be intimated.
- 322.11 One of the administrative actions required to be taken in case of Agreed List/Secret List borne officers is transfer from sensitive posts. For this purpose, all posts of Head of Departments and posts as per list enclosed in Annexure III/11 are to be considered as "Sensitive". This list is not exhaustive and General Managers on their own may also treat any other post not mentioned in the list as "Sensitive" and inform Railway Board Vigilance. Officers borne on Agreed/Secret List should not be posted to these sensitive posts and in the event of an officer included in these lists holding such a position, his immediate transfer should be arranged. However, where inescapable, the following conditionality should apply:
- (a) Officers borne on Agreed/Secret List should not be nominated on any Selection/Screening Board/Committee, Tender Committee or as Arbitrators or Inquiry Officers.
 - (b) Such officers should not deal with important financial matters where there is scope for improper exercise of discretion. Such cases can either be dealt with by the next higher authority himself or marked to some other officer in the equivalent grade, but not borne on Agreed/Secret List. They can, however, be permitted to deal with financial matters of small value subject to test check by the next higher authority to the extent possible.
- 322.12 In order to prevent the incidence of the Officers borne on Agreed List/Secret List being nominated to serve as members of selection committee/tender committees, the following steps may be taken :-
- (a) List of officers borne on Agreed List/Secret List may be sent to PHODs/DRMs/CWMs concerned. The list of entire Railway will be maintained by the SDGM.
 - (b) For nomination of any officer on a tender committee or selection, this list should invariably be referred to before nominations are made in the Division. DRM may

also advise the co-ordinating branch officers, names of such officers as soon as the Agreed/Secret list is received from Headquarters.

- (c) In the Headquarters Office, where selection committees, tender committees are nominated by HODs they may be advised that the same should be done in consultation with PHOD, who is provided with a list of the officers of his department figuring either on Agreed List or Secret List. This will avoid the situation of any of the officers on either of these lists getting nominated as a member of either the selection committee or the tender committee.
- (d) The appointment of arbitrators, inquiry officers and nomination of selection committee for Group 'B' exams are done by the General Manager. These nominations/appointments should be routed through SDGM/CVO who should scrutinize the same and bring to the notice of General Manager if any of the appointed/nominated officers figure on either Agreed List or Secret List so that timely remedial action can be taken.

322.13 The Zonal Vigilance should conduct some checks on the work done by Officers borne on these lists while they were working on sensitive posts.

322.14 The extant instructions arbitrate that the Agreed List should be kept strictly confidential.

322.15 **Lists of suspected non-gazetted staff:**

A decision has been taken by the Board to prepare a 'list of suspected non gazetted staff' also to enable the Railways for organizing preventive checks more fruitfully by concentrating on them where suspicion is aroused. The following procedure has been adopted for the preparation of these lists by the Railways.

- (i) The lists should generally include staff working in grade Rs. 5000-8000 and above. Staff in lower grades employed in posts of sensitive nature and dealing with public especially in Commercial, Stores, Engineering, S&T, Electrical, Bill passing staff of Accounts Departments etc. are also to be covered.
- (ii) The lists are to be drawn personally by DRM/Head of Departments, of the staff working under them, about whose integrity there is some suspicion or complaints and these will thereafter be passed on to the CVOs of the Railways every year.
- (iii) The lists will be scrutinized by the CVOs/Dy. CVOs who can supplement by additional names, if required. These lists will be sent to Board's office for information every year.
- (iv) SP/SPE/CBI concerned, can also be consulted while drawing these lists to suggest any addition. These lists are meant only for preventive checks on the staff's (borne on the List) activities, where they are posted.

- (v) The Head of Departments/DRMs will scrutinize the various transactions reported in Rule 13 and 18 of relevant Service Conduct Rules by the staff included in the lists.
- (vi) These lists will be revised every year.

322.16 Unscrupulous contact-men/women (UCMs):

The CBI will prepare list of unscrupulous contact-men/women who are suspected of resorting to corrupt or irregular practices in their dealings with officials agencies. The names of persons on these lists will be communicated by the CBI to the Ministries. SDGMs/CVOs may also suggest the name of any such person operating in the Zonal Railways for inclusion in the list to Railway Board which shall give all such names to CBI, Departments and Public Undertakings concerned. The list of such UCMs are communicated to all GM's of Zonal Railways & PU's by CVO of Ministry of Railways. These lists are being compiled with the following objectives:

- (i) The information contained in this list will be utilized when considering cases for accrediting representatives.
- (ii) The Ministries, Departments, Undertakings concerned will issue directions to their officers to be careful and cautious in dealings with unscrupulous contact-men/ women whose names are on this list, avoid associating with them socially and accepting entertainments and gifts from them.
- (iii) The CBI will exercise an in-obtrusive check on the activities of such contact-men/women and try to collect information, about specific instances of malpractices in which they are involved.
(Letter No.79/Vig-1/Meet/1/2 dated 25.1.1980)

323. Railway Sectional Officers (RSOs):

In order to provide technical assistance to CBI, the institution of Railway Sectional Officers (RSOs) is in vogue. There are at present 16 posts of Railway Sectional Officers i.e. one in each Zone on Railways. These posts are in the cadre of the Railway, but administrative control rests with the CBI. The posts of RSOs are filled by Railway personnel belonging to various disciplines of railway working, the selection to which is done by the CBI. The procedure followed by the CBI in selecting the RSOs is as follows:-

- (i) A reference should be made to the Railway authorities with the request to send a panel against the existing or possible vacancies during the year.
- (ii) In calling for panels from the Railway authorities, they should be requested to intimate the scales of pay of various categories of staff. In making selection of candidates from the panel nominated by the Railways, due regard should be paid

to the scales of pay, qualifications, experience, present pay and status. It is desirable that the scales of pay may be more or less analogous to the scale of pay of RSO i.e. Rs. 6500-10,500.

- (iii) Service particulars of the nominees showing educational qualifications, services in various posts and ranks, experience, present pay and allowance, scale of pay in which the pay is being drawn, whether permanent or temporary, should be obtained from the railway authorities.
- (iv) Normally selection should not be made of those officials who have already served in the CBI and have come back to Railways.
- (v) The tenure of officers selected for the post of RSO with CBI should normally be 4 years. Beyond that period, the deputation period may be extended upto 6 years in exceptional circumstances with the approval of Railway Board. After expiry of 4 years, the deputation would automatically stand terminated unless proposals for the extension of tenure is sent to Board's office at least 3 months before the expiry of 4 years' tenure and sanction for extension is received by due date. (No proposal for post-facto approval for extension of deputation period will be entertained.)

List of References

1. Ministry of Home Affairs O.M. No.105/1/66-AVD dated 29.10.1969
2. Railway Board's letter No.13-22/69-DGV-C-Br dated 22.12.1973
3. Adv(Vig) Railway Board's letter No.95/Vig-1/16/2 dated 19.10.1995
4. Railway Board's letter No.95/Vig.(C)/16/2 dated 01.02.2000
5. Railway Board's letter No.2000/Vig.(C)/Secret list dated 21.2.2000
6. DOTP's O.M. No.371/20/2003-AVD-III dated 31.12.2003
7. Railway Board's circular No.2005/Vig-1/ALSL/1 dated 02.12.2003
8. Railway Board's letter No. 79/Vig-1/Meet/1/2 dated 25.01.1980.
9. 2005/V-1/CVC/1/15 dated 22.1.2006.

List of Sensitive Posts

1. Engineering Department (JAG & above)

I. Zonal Railway Headquarters

PCE, CAO, CTE, CBE, CETP, CETM, CE (Const), Dy. CE (Const), Dy. CE (Works), Dy. CE(TM) , Dy. CME(TP), Dy. CE (Bridges)

II. Division Level

Sr. DEN (Coord) , Sr. DEN (Line), Dy. CE(TM), Dy.CE (Const)

III. Engineering Workshops

CWM, Dy. CE (Bridge Workshop)

IV. RDSO

ED(QA) Civil, Dir (QA) Civil, Director (Civil)

In some of the Railways, some of the SAG, JAG officers who are holding the post of CE (Planning), CGE or Dy. CE (Planning) or Dy.CE (Works) might also be dealing with the tenders, and then they will also come under the category of **sensitive post**.

2. Electrical Department (JAG & above)

I. At Headquarter level

- (i) CEE
- (ii) CEE/RS
- (iii) Dy. CEE/RS
- (iv) CECE & CESE (Some Railways do not have the post of CESE)

II. At Divisional level

- (i) Sr. DEE/ Loco shed
- (ii) Sr. DEE/G

III. In Construction

- (i) CEE/ Construction
- (ii) All Dy. CEE/ Construction but for posts in HQ Construction.

IV. CLW

- (i) CEE dealing with tenders.

V. COFMOW

- (i) CEE

3. Mechanical Department (JAG & above)

I. In the Zonal Railway

CME, CWE, CRSE (Coaching), CRSE (Freight), CMPE (Diesel), CME (Planning), Dy. CME (Diesel), Dy. CME (Coaching), Dy. CME (Freight), Dy. CME (Workshop).

II. In the Division.

Sr. DME (Diesel), Sr. DME (Power), Sr. DME (Coaching)

III. In the Workshops

CWM, Dy. CME

IV. In the Production Units.

CME, CME (Production), CME (Design), Dy. CME

V. In RDSO

EDS/MP, EDS/ Carriage, EDS/ Wagon, EDS/ QA, EDS/ Testing ,Director/ Coaching, Director/ Wagon, Director/ Motive Power,Director/ I & L (Delhi, Bombay, Kolkata and Lucknow).

VI. In COFMOW

CME, Dy. CME

At some of the places, some of the SAG/ JAG officer may not be dealing with any tender/ contracts. In such cases, the posts may be excluded from the list of sensitive posts.

4. S & T Department (JAG & above)

I. At Headquarters

CSTE, CSTE (Construction), CSTE/ Projects, CCE, Dy. CSTE/ Micro-Wave/ Maintenance, Dy. CSTE/ Management Information System.

II. At Field level

Sr. DSTE, DSTE, Dy. CSTE/ Construction, DSTE/ Construction, Dy. CSTE/ Projects, Dy. CSTE/ Tele/ Projects, DSTE/ Projects.

III. In RDSO

ED/QA/S&T, Director/S&T/ Inspection, Bangalore, Director/S&T/ Inspection, Mumbai, Director /S&T/Inspection, Kolkata, Director/ S&T/ Inspection, Delhi, Director/ I&L/ Delhi, Director/I&L/ Kolkata, Director/ I & L/ Mumbai

5. Traffic & Commercial Department

I. Zonal Railway Head Quarters

COM, CCM, CFTM, CCO, Dy. CCM (Claims), Dy. HOD/ HOD allotting Catering and leasing contracts.

II. Divisional Level

Sr. DOM, Sr. DCM, CTM/ Dy.CTM/ Area Superintendent.

III. Training Centres

Principal, ZTC

* Sensitive posts involve dealing with customers, contractors and selections.

* Officer debarred from sensitive posts should not be nominated as Convenor of Tender Committee and Selection/ Screening Committee.

6. Accounts Department (JAG & above)

I. Zonal Railway Headquarters

All FA&CAOs i.e. FA&CAO, FA&CAO (Const), FA&CAO(WST), FA&CAO(F&B)

Dy. FA&CAO(Stores), Dy. FA&CAO(Workshop), Dy. FA&CAO (Traffic Accounts), Dy. FA&CAO(F&B), Dy. FA&CAO(Const), Dy. CAO(G), Chief Cashier.

II. Divisional level

Sr. DFM

III. In RDSO

ED/ Finance
Dir/ Finance
Jt. Dir/ Finance

Note :

* All Finance & Accounts Officers on Zonal and Divisional levels are on sensitive posts.

7. Stores Department (JAG & above)

All posts are sensitive except the following posts:

1. Secretary to COS
2. Posts manned by Stores Officer in EDP Centre.
3. Dy. CMM/ IC in Headquarters, wherever he is not dealing with purchase work also.

8. Security Organization (JAG & above)

Zonal Headquarters : CSC/Addl. CSC, Staff Officer to CSC

Division : Sr. DSC, DSC

9. Medical Department

- a) Posts on which Doctors are nominated for conducting PME and medical examination for new recruits
- b) Posts on which Doctors are made in charge of Hospital Medical Stores

10. Personnel Department

- a) CPO
- b) CPO (A)
- c) Dy. CPO (Gaz)
- d) Dy. CPO (HQ) or (NG)
- e) Dy. CPO (Rectt)
- f) Dy. CPO(Constn)
- g) All posts in Divisions/PUs like Sr. DPO/DPO are sensitive

11. Railway Board

Adv/Loco, Adv/LM, Adv/Finance, ED/LM, EDF/C, EDF/S, ED/FX-I, ED/FX-II, EDE(GC), EDE(RRB), ED/Health, EDTk(P), EDTk(M), EDTk(MC), EDME/Coaching, EDME/Freight, ED/Traction, ED/RE, EDEE(G), ED(TD), ED(Signal), Director/LM, DF/Stores, DF/Comml., DE(GC), Director/Health, DME/Coaching, DME/Traction, DME/Freight, DME/PU, Director/Tele, DIG/Admn, DIG(RS), JS, DS(G), DS(D), DS (Confdl), Director/Sports, Director (I&P), DD/JD E(GP), SO/DD (Sports), SO/Stationery, SO/DD (Development Cell), SO/DD (Track Branch), SO/DD/JD Training, DD/Public Relations, DDF(LM), DD/Sports, DD/Finance (Stores), US/Protocol, US (Admn), DD/Finance (Stores), PAO, SO/Transport Cell, OSD/Sr. PPS/PPS/PS to CRB, Board Members, AMs, DGs, Secretary, Railway Board

All Posts in Stores Directorate except DRS(IC), DDS(G), SO/RS(IC), SO/RS(G)

All Posts in Traffic Directorate

All gazetted and non gazetted posts in Vigilance Directorate

12. Vigilance Department

All Gazetted and non-gazetted Posts in Vigilance Department of Railways/Production Units

13. Railway Recruitment Boards

Chairman, Member Secretary/RRB

14. General Management

GM, AGM, DRM, ADRM