

NAI DISHA

(e-Newsletter of Vigilance)

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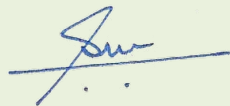
Message from Joint Secretary & CVO, DoC



I am happy to note that Corporate Vigilance is bringing out the 7th issue of its quarterly e-Newsletter – “NAI DISHA”.

In today's diverse and complex business environment, where transparency and ethical business practices are the fundamental tenets of any business, it has become extremely crucial that organizations follow ethical standards and responsible ways of doing business.

I find the Newsletter very informative and educative for the employees of the Corporation. I compliment the Vigilance Department for bringing out this e-newsletter, which, I hope, will immensely benefit all the employees of the Corporation.



Shyamal Misra
Joint Secretary & CVO
Deptt. of Commerce, MOC&I

18.04.2018

“My Experiences as a Representative of People”: Smt. Sumitra Mahajan

The 27th lecture of the “Lecture Series” organized by the Commission was delivered by Smt Sumitra Mahajan, Hon'ble Speaker, Lok Sabha, on 18th January, 2018 on the topic “*My Experiences as a Representative of People*”.



The Speaker, Lok Sabha, Smt. Sumitra Mahajan delivering the 27th lecture of the “Lecture Series”

The distinguished speaker spoke about the need for society to introspect and look within itself in order to change attitudes towards corruption, and to further the positive ideal of ethical conduct. In her address she drew inspiration from India's traditional ideals and discussed a wide range of issues using examples from traditional Indian spiritual thought as well as from her experiences as a representative of the public. She opined that society must look inwards at itself for inspiration in order to promote good conduct, both in the public as well as private spheres of life. The importance of prevention as being more effective than punishment was emphasized in her lecture. She also spoke of the need to examine instances of spending more than known sources of income in order to detect corruption.

She shared with the audience many interesting instances and experiences as a public

representative, which served to highlight the need for society to introspect upon the decline in ethical values and the need to promote integrity in public life. The duties and responsibilities of a public representative were also explained using many examples from interactions with people from all walks of life. She felt that we ourselves are collectively responsible for this social change and must draw inspiration from our own culture and ideals in order to do so.

Her initiatives towards setting up the Speakers Research Initiative in Parliament and the importance of training members of Parliament were also discussed during the course of the lecture. The lecture was followed by a lively question and answer session.

Invited dignitaries from the Government of India, CMDs, Directors and senior executives of Central Public Sector Enterprises and full time and part time CVOs based in Delhi/NCR attended the lecture along with other officers of the vigilance administration.

Litigation Management

All business organizations at one time or the other face litigation in one form or another even after adopting/following all fair trade practices, against its wish and desire. As such, an Organization, apart from doing its business, has to be alert and diligent in order to face litigation. The effective handling of litigation by an organization contributes to the overall performance of an organization whether in terms of financial aspect or human resources.

STC being a business organization, apart from doing trade, is also embroiled in litigation which takes toll on the financial resources as well as human resources of the STC. As such, the Organization has to be proactive in order to avoid any litigation and if it has to face litigation, then the key to success is effective, efficient, diligent and time bound handling of all the cases.

The most effective way to win litigation against defaulting business associates is to be thorough and aggressive in one's approach to the legal

proceedings. The following precautions, amongst others, are needed to ensure effective litigation management of legal proceedings:

1. **Systematic record keeping:** To win any legal proceedings, it is imperative that the Corporation keeps all the records pertaining to the transactions in a systematic manner so that all the claims/allegations raised in the claim petition/recovery suit are amply corroborated by documents without loss of time.
2. **Thorough officials:** Officials handling litigation work discharge most crucial role. They should be well versed with facts and operational aspects of the matter etc. In those proceedings where the Corporation Witnesses who have complete knowledge of the transaction so that their cross examination does not lead to any doubt in the mind of the arbitrator/judge as to their trustworthiness.
3. **Close coordination between CO and Branches:** Sometimes dealings with business associates span more than one branches of the Corporation, as a result of which documents pertaining to a transaction are kept at different branches and the officials dealing with them are also in different locations. It is imperative that at the time of filing claims or counter claims or defence statements, there is perfect synergy between difference branches as well as between CO and the branches so that there are no self contradictory statements which may imperil the claims/stand of the Corporation. Also, officials deployed in the branches should actively take part in the arbitration/legal proceedings so that they can assist the advocate of the Corporation during the proceedings.
4. **Aggressive approach:** The Corporation should always file its pleadings and documents well within the stipulated time period and should make sure that there are no delays on the part of the Corporation. The corporation should also make sure that any dilatory tactics employed by the business associate is not successful and should press the arbitrators/judges for imposing heavy costs for any delay on their part.

5. **Briefing Advocates:** The advocates be briefed with all the facts and circumstances related to the cases well within time.
6. **Staying out of litigation:** Although the corporation should effectively defend its cases, but it should also be open to any out of court settlement which the business associate may request the Corporation. Out of court settlement should always be the first method to recover the money and costly litigation should always be used as a last resort.

(Contributed by Sh. Sanjive Rohatgi, GM-Law)

Common Irregularities in Public Procurement

General irregularities: In course of Intensive Examinations, a number of irregularities and lapses in the award and execution of the works/stores/purchases have been observed. Some of the areas of concern where irregularities in procurement cases have been observed on regular basis are as follows:

- (i) **Improper estimation of cost:** Cost estimation without due regard to detailed specifications, site conditions and other procurement specific requirements; without due reference to market survey, appropriate last accepted rates, inputs cost analysis for the tendered item. It may result in incorrect decisions in respect of cost-benefit analysis, fund requirement assessment, competent authority for project sanction and assessment of rate reasonableness of the price bids.
- (ii) **Engagement of consultant:** Engagement of the consultant on nomination basis and, at times, without due regard to its competence in view of specific nature of the procurement and other technicalities; over dependence and lack of scrutiny and appreciation, with due diligence, of the advice tendered by the consultant, in spite of availability of in-house expertise; agreement with consultant lacking in specifics regarding deliverables and performance related payment.
- (iii) **Bid eligibility conditions:** Deviation from the laid down instructions on the subject either due to ignorance or vested interest, making eligibility criteria either too lax or restrictive; at times,

eligibility conditions fail to address specific requirements of procurement deliverables, by way of proper assessment of the capacity-cum-capability of the prospective bidders.

- (iv) **Bid evaluation criteria:** Bid evaluation criteria, i.e. attributes of the prospective bidders and the bids, to be weighed into consideration while looking at the suitability of the bids, are decided without due regard to the nature and performance of the procurement agreement; not brought out, at times, upfront in transparent manner. Marking scheme, i.e., bench marking of measurable parameters, correlated to the desirable attribute, is not brought out in fair and transparent manner in the NIT.
- (v) **Verification of the credentials submitted by the bidders:** Verification of documents, submitted by the bidders in support of their credentials, is not undertaken with due diligence, making a reference back to the document issuing authority, before adjudging suitability of an offer and arriving at a decision as to the successful tenderer(s) for award of contract.
- (vi) **Participation by JVs:** Just to meet the requirements of the bid eligibility conditions, constituent firms of a joint venture, join together in a loose manner without bringing out specific credentials and roles to be played by each one of them in contract execution; at times, the constituent firm signing the contract or the employer may really not have legally binding power to ensure that all the JV partners play their respective roles, at the time of contract execution, as envisaged while evaluating the bids.

In an endeavour to introduce system improvements to avoid recurrence of different lapses/irregularities and to achieve better technical and financial control in the execution of contracts, instructions highlighting the lapses/irregularities in different types of procurement contracts, as observed in course of Intensive Examinations, have been issued.

(Extract from Chapter 9 of Vigilance Manual 2017)

Do's & Don'ts for Trade Transactions

DO's

1. Select a product that is easily saleable/tradeable in the market and not meant for specialized requirement of any particular associate.
2. A comprehensive analysis of product/market be done by Trade Division before submitting the proposal to Finance for concurrence, vetting by Legal Division and consideration of Management.
3. A comprehensive analysis of associate's financial capability/experience/ competence be done in-house and also by obtaining reports from specialized agencies like D&B, Crisil, etc.
4. Verification of antecedents/ credentials of overseas party be done, whether STC's funds involved or not.
5. MOU/MOA/Tripartite Agreement be signed only after approval of Finance/Legal/ Competent Authority.
6. Financial assistance shall commensurate with the net worth of the associate/company.
7. Trade Division should draw a Standard Operating Procedure in consultation with Finance & Legal and due approval of Director (Mktg.), for detailing steps involved in the trade transactions including signing of documents, responsibility of officials, etc.
8. Underlying documents for any MOA/MOU/trade transaction, especially security documents, complete in all respects should be collected and be verified by Trade, Finance & Legal before accepting them for grant of financial assistance/opening of L/C.
9. Wherever STC has financed purchase of material for import/export/domestic trade, the goods should be stored in CWC/SWC godown. In case CWC/ SWC godown is not available, the godown hired shall be under the control of CWC.
10. Goods shall always be purchased in STC name and kept under STC's physical custody.
11. The goods should be stored in the godowns in such a way that the same can be identified/computed easily, exhibit STC's

- ownership and are placed under the control of CMA. The lifting of goods from the godowns to be strictly as per Delivery Order issued by STC.
12. Comprehensive insurance cover be taken by STC for 110% value of the goods showing STC as sole beneficiary and premium shall be recovered from the party immediately.
13. Where STC's funds are involved, there should be regular appraisal of the transactions/ associate by Trade/Finance & Director (Mktg.) and in case of default by the Associate, the matter shall be reported to Management.
14. Branch/Division's officials from Trade and Finance should periodically inspect the stocks for verification of quantity and quality.
15. The prices of goods financed and stored should be regularly verified by Trade/Finance and if required, additional security be taken from associate.
16. The roll-over of L/C implies that Associate has defaulted in payment. In case of default in payment/liquidation of stocks, etc, timely action be taken for invoking underlying securities with approval of competent authority to recover STC funds.
17. File reply within stipulated time in legal/Arbitration cases.

DON'TS

1. Trading of tailor-made products, products having short life and those whose value cannot be objectively determined (e.g. scrap, sophisticated equipments etc.) shall be avoided.
2. Business transactions with parties referred to BIFR or otherwise known to have significant defaults in repayments shall be avoided.
3. Don't establish new L/Cs ignoring the delay in payments against old L/Cs.
4. Don't sign contracts/MOAs/MOUs with the party without obtaining audited account of the Associate.
5. Storage of goods in the premises of business associates without unhindered control of STC/CMA on the stocks/godown shall not be agreed to.

6. Do not accept Insurance policy(s) from business associates where STC is not shown as sole beneficiary.
7. Don't extend further financing facility after the incident of default, whether in lifting of goods, making payment or any other commitment given by associate, even if the sanctioned limit is not utilized. In such cases, competent authority be approached for future course of action/fresh appraisal.
8. Don't enhance exposure limit of the associate in case of default by the Associate.
9. Don't delay in initiation of recovery action against the Associate in case of default.

(Contributed by Sh.S.K.Meena, JGM-Vig.)

Swiss Challenge

To achieve and maintain the targeted rate of growth, development of infrastructure is important. Bottleneck in infrastructure development has been mainly due to non-availability of adequate financial resources, appropriate technical know-how and administrative mechanism to undertake big projects. This calls for active participation from private sector. Swiss Challenge has come up as one of the innovative forms of public procurement, facilitating participation of private sector.

Under this method, a public procurement entity receives unsolicited proposal for a public project or service; this proposal is made open by the procuring entity to other parties to match or exceed.

In today's perspective, there have been issues involved in Swiss Challenge method and some of them are as follows:-

- (a) Consideration of unsolicited offer from an original private proposer, if it has not been so invited;
- (b) having adequate appreciation of the original proposal vis-à-vis actual requirements/ public needs of the project;
- (c) the very scheme of receiving unsolicited proposal from one private agency may result in information asymmetries in the

procurement process and absence of equal opportunities to all other parties making matching/better proposals, leading, in turn, to lack of transparency, fair and equal treatment of potential proposers in the procurement process;

- (d) setting a reasonable time limit for completion of efficient bidding phase;
- (e) dealing with counter proposals from other parties, especially so when they offer specifications very much different from those included in the original proposal;
- (f) looking into reasonableness of the proposals ensuring that all the risks involved are duly taken care of and no undue benefit is extended to any of the proposers, at the cost of others;
- (g) suitable compensation to the original proposer, if any, for his original concept/intellectual property.

Keeping in view all the issues, as listed above, a strong legal and regulatory framework to award projects under Swiss Challenge method needs to be in place, before this method of procurement is adopted.

UNCAC

The United Nations Convention against Corruption (UNCAC) is a landmark, international anti-corruption treaty adopted by the UN General Assembly in October 2003. It represents a remarkable achievement: a global response to a global problem. With 183 countries bound by UNCAC so far (as of October 2017, which includes 178 UN Member states, the Cook Islands, the Holy See, the State of Palestine and the European Union), it is unique not only in its worldwide coverage but also in the extent of its provisions, recognizing the importance of both preventive and punitive measures. It also addresses the cross-border nature of corruption with provisions on international cooperation and on the return of the proceeds of corruption. States Parties (countries that have ratified the Convention) are also obliged to help each other to prevent and

combat corruption through technical assistance (defined broadly to include financial and human resources, training and research). The Convention further calls for the participation of citizens and civil society organisations in accountability processes and underlines the importance of citizens' access to information. The UN Office on Drugs and Crime (UNODC) in Vienna serves as secretariat for the UNCAC.

Corruption Undefined

UNCAC does not define corruption, it rather defines specific acts of corruption that should be considered in every jurisdiction. These include bribery and embezzlement, but also money laundering, concealment and obstruction of justice. Also, in defining who might be considered as possible participants in corruption, UNCAC uses a functional approach to the term 'public servant': it covers anyone who holds a legislative, administrative, or executive office or provides a public service, including employees of private companies under government contract.

Beware of Cyber Crimes

With the increasing use of Computers for various activities of day to day life by every class and age of individuals, the cyber crimes have also started increasing manifold, affecting every individual using internet for such purposes as internet banking, payment of utility bills using credit cards etc.

Internet is not owned by any agency/organization. As such responsibility cannot be fixed on any particular organizations for the misuse of internet. However, looking at the gravity and the increasing number of crimes committed through internet, the Government has enacted IT Act 2005 to tackle the menace of Cyber crimes.

Cyber crime

Cyber Crime is where computer is the target of a crime or is the means adopted to commit a crime.

Most of these crimes are standard criminal activities such as fraud, theft, blackmail, forgery and embezzlement using Internet as the medium. Anonymity and lack of awareness of laws are the lethal weapons used by cyber criminals.

Types of Cyber crimes

E-Mail bombing: Sending a large amount of e-mails to the victim resulting in interruption in the victims' e-mail account or mail servers.

Data diddling: This kind of an attack involves altering the raw data just before it is processed by a computer and then changing it back after the processing is completed.

Salami attacks: These attacks are used for committing financial crimes. The key here is to make the alteration so insignificant that in a single case it would go completely unnoticed e.g. a bank employee inserts a program into bank's servers, that deducts an amount of ten paisa from the account of every customer every month.

Denial of Service: This involves flooding computer resources with more requests than it can handle. This causes the resources to crash thereby denying authorized users the service offered by the resources.

Phishing: Derived from the word "fishing", it means luring or enticing an unwary customer of a Banking or Financial Institution to pass on sensitive information pertaining to their account. Scammers then use this information to siphon off funds or, undertake transactions that are billed to the original customer.

Hacking: Hacking in simple terms means an illegal intrusion into a computer system and/or network.

Cyber Stalking: Cyber Stalking can be defined as the repeated acts of harassment or threatening behavior of the cyber criminal towards the victim by using internet services.

Fake Web Sites: Creation of fake websites specially of banks for the purpose of Phishing Account Numbers, Username & Passwords of net users.

E-Mail Spoofing: Spoofing means a hacker logs-in to a computer illegally using a different identity from his own.

Prevention of Cyber Crime

- Never arrange meetings with strangers.
- Don't respond to inappropriate messages or emails.
- Remember what you put online will be there forever.
- Always keep a watch on the sites that your children are accessing.
- Use only authentic address to access bank sites. (Store the address in favourites).
- Do not open unidentified e-mails/ attachments.
- Remember that people online may not be who they seem to be.
- Use the latest version of a good anti-virus software package.
- Use strong passwords for internet accounts with a combination of uppercase and lowercase letters, and special characters such as !,@,# and,. Do not use easily guessable names as passwords.
- Ensure https url and the locked yellow padlock.

(Contributed by Ms.Vilma Mukha, AM-Vig.)

CVC Internship Scheme

Central Vigilance Commission had started an **Internship Scheme in 2016**. This Scheme seeks to engage Indian Nationals, who are Graduate (awaiting final year results)/Post Graduate or Research Students enrolled in reputed University/Institution in India or abroad and preferably studying Law, IT, MBA, Social Sciences and associated subjects as "Interns". The "interns" shall be attached within the Commission and would be expected to supplement the process of analysis within the Commission through desirable empirical collection and collation of in-house and other information. For the "Interns" the exposure to the functioning of the Commission may be an add-on in furthering their own career goals in the other Sectors or International Organizations.

The Commission has invited applications for up to three slots of "interns" for its office located at New Delhi for the Financial Year 2018-19. The

Terms and Conditions along with the eligibility criteria for the applicants will be as per the provision of the Scheme. (CVC Website: <http://www.cvc.nic.in>).

Interested candidates may send their applications in the enclosed Performa by post or by hand to **Sh. Nitin Kumar, Director, CVC, Room No. 406 Satarkta Bhawan, GPO Complex, Block A, INA, New Delhi – 110023** or through email at nitin.72@gov.in

"To make your children capable of honesty is the beginning of education"

-John Ruskin

Important Circulars

I-Grant of Vigilance Clearance for obtaining Passport.

(DOPT Circular No.11012/7/2017-Estt.A-III dt.28.03.2018)

... matter regarding guidelines for granting vigilance clearance to members of the Central Civil Service holding Central Civil Posts have been reviewed and it has been decided to lay down guidelines for grant of vigilance clearance to the Government servant for obtaining Indian Passport.

2. Ministry of External Affairs (MEA) has issued the guidelines for issuance of ordinary Passport to the Government servant vide O.M. No.VI/401/01/05/2014 dated 26.05.2015 in connection with procedures to be followed in case of passport to be issued to Government servant.

3. In view of the above, it is mandatory for the administrative Department / Controlling Authority to check whether any provision of the Section 6(2) of the Passport Act, 1967 are attracted in the case of employee, who are working under them, while obtaining Indian Passport. As such, it is required to check the vigilance clearance of such Government servant.

4. Accordingly, it has been decided that vigilance clearance can be withheld only under the following circumstances:

- (i) The officer is under suspension;
- (ii) A charge sheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending.
- (iii) Charge sheet has been filed in a Court by the investigating Agency in a criminal case and the case is pending.
- (iv) Sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter.
- (v) An FIR has been filed or a case has been registered by any Government entity against the officer, after a preliminary fact finding inquiry.
- (vi) The officer is involved in a trap/ raid case on charges of corruption and investigation is pending.

5. Vigilance clearance shall not be withheld due to an FIR filed on the basis of a private complaint unless a charge-sheet has been filed by the investigating agency provided that there are no directions to the contrary by a competent court of law. However, the information regarding FIR may be provided to the Passport Office. The final decision will be taken by the concerned Passport Issuing Authority.

6. There may be situations wherein wards and relatives of the civil servants residing abroad (for education and other purposes) could be having medical emergencies or family events. The officer himself/ herself may require to visit abroad for medical reasons. Therefore, as a policy, ordinarily, a passport will not be granted if a disciplinary proceeding is pending against the officer. However, the competent authority can take a view wherein a foreign travel is necessitated due to extreme urgent situation like medical emergencies etc. on case to case basis.

7. All Ministries/ Departments/Offices are requested to bring the above guidelines to the notice of all Disciplinary Authorities under their control.

From Archives

I-Rotation of Officials working in sensitive posts (CVC Circular No.03/09/13 dt.11.09.2013)

Central Vigilance Commission and the Department of Personnel and Training have issued instructions for effecting rotational transfers of officials posted on sensitive posts. As per Commission's instructions issued vide letter Nos. 98/VGL/60 dated 15.04.1999, 02.11.2002 and 004/VGL/90 dated 04.01.2008 and 04.01.2012 (for public sector banks) on this issue, it was prescribed that Ministries/ Departments/Organisations and CVOs are to identify the sensitive posts and staff working in these posts and also ensure that they are strictly rotated after every two/three years to avoid developing vested interests.

2. The Commission in the superintendence of vigilance administration over the years has observed that such rotational transfers are not effected in many organisations due to which officials continue to remain in the same posts for long periods. Such overstay and continuous postings afford scope for indulging in corrupt activities, developing vested interests etc. which may not be in the interest of the organisation. The Commission would therefore, emphasize that periodical rotation of officials holding sensitive posts/jobs needs to be ensured. As such, officials should not be retained in the same place/position for long by the Ministries/ Departments/PSUs/Banks/ Organisations etc.
3. CVOs of all Departments/ Organisations are advised to ensure strict compliance of the Commission's guidelines and implement the same in letter and spirit. Further, the CVOs should specifically report the action taken indicating the number of officials rotated/transferred in the respective organisations in the Monthly Report of CVOs submitted to the Commission.

II-Foreign visits by Government employees (CVC Circular No.16/07/09 dt.06.07.2009)

Reference is invited to Commission's Circulars 25/10/2004, 8/12/2004 & 27/9/2005, on the aforementioned subject.

2. The Commission had, vide its circular, dated 25.10.2004, directed the CVOs of all Organizations/Departments to furnish the lists of employees of their organizations, who had undertaken "private foreign visits" during the preceding calendar year, to the Commission by the end of January every year.

3. The matter has been re-examined in the Commission and it has been decided that, henceforth, the related information and the data bank in respect of employees of each organization would be maintained by the CVO of the organization concerned, in the format prescribed by the Commission, vide office order ibid above.

4. Further, the CVOs should inform the Commission, mandatorily every year by the end of February that the updated information alongwith all details are available with them. Such information would be made available to the Commission at a short notice, as and when required, by the CVOs concerned.

Reader's Feedback

I would like to acknowledge the E-Newsletter - 'NAI DISHA' and express my sincere thanks to you and entire Vigilance team for such a welcome initiative. This type of knowledge sharing will definitely helps us all, to know more about latest development in the field of Vigilance Administration and trade related issues.

SANDEEP GONDALE
AM (Law)-STC HYD

Q & A

Q. What is the justification for imposition of penalty in case of sexual harassment, based on the report of the Complaints Committee without initiating any proceedings under Rule 14 of the CCA Rules ?

Ans. Cases relating to sexual harassment are covered under the proviso the Rule 14(2) which is extracted hereunder:

Provided that where there is complaint of sexual harassment within the meaning of Rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

As the employee had been provided reasonable opportunity of defence before the Complaints Committee he cannot complain of denial of reasonable opportunity of defence.

Any suggestion(s)/query/article(s) may be mailed to: - cvo@stclimited.co.in