

CHAPTER 17

DIRECTIVE ON INVESTIGATION OF CASES BY S.P.E. AND FACILITIES/COOPERATION TO BE EXTENDED BY ADMINISTRATIVE AUTHORITIES

INTRODUCTORY

17.1 A set of instructions on the subject had been issued by the Ministry of Home Ministry in the form of a directive in January, 1954. Separate directives had also been issued by the Army, Navy and Air Headquarters and the Defence Production Organization of the Ministry of Defence during 1959 to 1962. The Railway Board have also issued instructions on the subject from time to time to administrative authorities under their control. The Committee on Prevention of Corruption recommended that these separate directives should be reviewed by the Central Vigilance Commission and a single directive should be issued by the Ministry of Home Affairs in their place. This recommendation was accepted by Government. The present directive is issued in pursuance of the above recommendation and seeks to consolidate the instructions issued from time to time by various authorities and describes the procedure followed by the Special Police Establishment/Central Bureau of Investigation in the investigation of various cases handled by the agency pertaining to Anti-Corruption, Special Crimes, Economic Offences and other Acts or laws and facilities cooperation to be extended to them by the administrative authorities.

FUNCTIONS AND POWERS OF THE SPECIAL POLICE ESTABLISHMENT

17.2 The Special Police Establishment is an agency which has been constituted by the Government of India under the Delhi Special Police Establishment Act, 1946, to enquire and to investigate into certain offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants with a view to bringing them to book. Section 3 of the Act provides that the Central Government may, by notification in the Official Gazette, specify the offences or class of offences which are to be investigated by the Special Police Establishment.

17.3 The Delhi Special Police Establishment Act, 1946 was amended in 1952 to enlarge its scope and to make it possible for the S.P.E. to investigate offences involving employees of statutory corporations and other similar bodies in the proper administration of which the Central Government was concerned, particularly from the financial point of view. Section 5 of the Act was further amended by the Anti Corruption (Laws) Amendment Act, 1964, to enable Officers of the SPE, not below the rank of a Sub-Inspector of Police to exercise the power of an Officer-in-charge of Police Station.

17.4 The Special Police Establishment enjoys with the respective State Police Force concurrent powers of investigation and prosecution under the Criminal Procedure Code. However, to avoid duplication of the effort, an administrative arrangement has been arrived at with the State Governments according to which:

- (a) the cases which substantially and essentially concern the Central Government employees or the affairs of the Central Government, even though involving certain State Government employees are to be investigated by the S.P.E. The State Police is, however, kept informed of such cases and will render the necessary assistance to the Special Police Establishment during investigation; and
- (b) the cases which substantially and essentially involve the State Government employees or relating to the affairs of a State Government, even though involving certain Central Government employees are investigated by the State Police. The S.P.E. is informed of such cases and it extends assistance to the State Police during investigation, if necessary.

17.5 The Central Units under the Anti-Corruption Division and the Special Crimes Division and Economic Offences Division located at Delhi have All India jurisdiction, and generally take up only important cases against senior Public Servants or cases having interstate or international ramifications or offences of national importance.

INVESTIGATION BY SPECIAL POLICE ESTABLISHMENT

17.6 The Special Police Establishment takes up cases for investigation on the basis of the information collected by them from their own sources or received from members of the public, as also cases referred to them by the Central Vigilance Commission and the administrative authorities.

17.7 When the information discloses, *prima facie*, Commission of a cognizable offence, a Regular Case (RC) is registered straightway u/s 154 Cr.P.C.

17.8 If the information *prima facie*, discloses, commission of irregularities, which call for an open enquiry, a Preliminary Enquiry (PE) is first registered. If the PE reveals commission of a cognizable offence, a Regular Case is registered for further investigation.

17.9 As soon as a case is taken up for a Preliminary Enquiry (PE) or a Regular investigation (RC) under Section 154 of the Code of Criminal Procedure, a copy of the PE registration report or of the First Information Report (FIR), as the case may be, will be sent by the SPE to the Head of the Department and/ or the Administrative Ministry concerned. In the case of Gazetted Officers, a copy of the FIR will also be sent to the Central Vigilance Commission.

17.10 If investigation into a case registered as a PE or RC shows that sufficient evidence is not available to launch a prosecution but that the facts of the case warrant a Departmental action, further action will be taken as indicated under the Head "Departmental Action" of this Manual.

17.11 In cases in which Preliminary Enquiry (PE) discloses that there is no substance in the allegations or that sufficient material is not available for registering a case (RC) or for initiating Departmental action, the S.P.E. may decide to close the case. Such cases pertaining to Gazetted Officers will be reported to the Central Vigilance Commission. In other cases, the decision to close a case will be communicated to the administrative authority concerned.

17.12 The SPE should not take up inquiries or register a case where minor procedural flaws are involved. They should also take note of an individual Officer's positive achievement so that a single procedural error does not cancel out a lifetime of good work.

17.13 The SPE will normally take into confidence the Head of the Department or office concerned before taking up any inquiry (PE or RC) or soon after starting the inquiry as may be possible according to the circumstances of each case. This will also apply in case a search is required to be made of the premises of an Officer.

17.14 The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to—

- (1) The employees of the Central Government of the level of Joint Secretary and above; and
- (2) Such Officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

17.15 No such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to Section 7 of the Prevention of Corruption Act, 1988.

17.16 When any complaint or communication containing some allegations or misconduct etc. against a public servant, which merits an enquiry, is received by an administrative authority or comes to its notice, it should be considered and decided whether the allegations should be looked into departmentally or whether a Police investigation is necessary. As a general rule, allegations involving offences of bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records or other serious criminal offences or those requiring an expert Police investigation such as cases of possession of disproportionate assets or cases in which a number of non-official witnesses are to be examined, should be referred to the SPE for investigation. In such cases, a prompt reference to the SPE is necessary to safeguard against the possibility of suspect Officer tampering with or destroying the incriminating evidence against him.

17.17 Once a case is referred to and taken up by the CBI/SPE for investigation, further investigation must be left to them. A parallel investigation by the Administrative Ministry/Department, Organization should be avoided. Further action by the Department should be taken on the completion of the investigation by the CBI/SPE on the basis of their report.

FACILITIES AND COOPERATION TO BE EXTENDED TO THE CBI/SPE BY THE ADMINISTRATIVE AUTHORITIES

17.18 Full cooperation and facilities should be extended by the administrative authorities and the individual public sector servant to the CBI/SPE during the course of investigation. Certain matters in which the CBI/SPE will need the assistance of the administrative authorities, are given in the succeeding paragraphs.

Records other than classified ones

17.19 The Head of Departments/Offices, etc. will ensure that during investigation, whether preliminary or regular the Superintendent of Police of the CBI/SPE and his authorized representatives are given full cooperation and facilities to scrutinize all relevant records. Investigation are often held up or delayed on account of reluctance or delay on the part of the Departmental authorities to make the requisite records available for various reasons. Sometimes the Departmental authorities express their inability to release the records without the prior permission of the superior authority or ask the CBI/SPE. to take photostat or attested copies of the documents without realizing that the CBI/SPE necessarily require the original records for the purpose of investigation. In this connection it has to be borne in mind that the authenticity of the attested or photostat copies can be contested by the delinquent official thereby hampering the progress of investigation.

17.20 In asking for original documents, particularly those forming part of the current files, the CBI/SPE will exercise due discretion so as to ensure that the day-to-day work in the Department concerned is not impeded. On the other hand, the Departmental authorities should ensure that the documents asked for by the CBI/SPE should be made available to them with the least possible delay. Where necessary, the Departmental authorities may keep attested or photostat copies of the records for meeting the urgent Departmental needs or for disposing of any action that may be pending on the part of the Department, without prejudice to the investigation being carried out by the CBI/SPE.

17.21 The records required by the CBI/SPE should be made available to them ordinarily within a fortnight and positively within a month from the date of receipt of the request. If, for any special reasons, it is not possible to hand over the records within a month, the matter should be brought by the authority in possession of the records to the notice of the Superintendent of Police of the CBI/SPE Branch concerned pointing out the reasons for not making the records available within the specified period and also to the notice of the Chief Vigilance Officer of the Administrative Ministry concerned for such further direction as the Chief Vigilance Officer might give.

17.22 Even before registration of PE or RC, if the CBI/SPE wishes to check the veracity of information in their possession from the official records, on receipt of a request from the SP SPE, the same should be made available.

Classified/ Graded Documents/Records

17.23 When the CBI/SPE desires to see any classified documents/records, sanction of the Competent Authority to release such documents/records should be obtained promptly by the administrative authority incharge of the records and the records should be made available to the CBI/SPE in the following manner:—

- (1) “Top secret” documents should be handed over only to Gazetted Officers of the CBI/SPE (Inspectors of CBI are not Gazetted Officers) or to an Inspector of Police of CBI if he is specifically authorized by the SP to obtain such documents.
- (2) “Secret and Confidential” documents should be given to Gazetted Officers of the CBI or to an Inspector of CBI if he is specially authorized by the Superintendent of Police of the CBI/SPE to obtain such documents.
- (3) A temporary receipt should be obtained whenever any graded document is handed over to an Officer of the SPE/CBI who will be asked to comply with the provisions of Para 27(a), (b), (c) and (e) of the pamphlet entitled “Classification and Handing of Classified Documents.
- (4) Where original document cannot be made available to the Investigating Officer for any reasons, he should be supplied with photostat copies or attested copies thereof and a certificate should be given by an Officer of appropriate rank that the originals are in safe custody and out of the reach of the suspect official and will be produced, whenever required.

Documents in Possession of Audit officials

17.24 The Comptroller and Auditor- General has issued instructions to his lower formations that original documents should be made available to the CBI/SPE at the Audit Offices for purpose of perusal, scrutiny and copying (including taking of photostat copies). Normally, the facility of inspection of documents within the Audit Offices and taking copies (including photostat copies) should be found to be adequate for the purpose of investigation.

17.25 There may be some very exceptional cases in which mere inspection of the documents at the Audit Office or examination by the G.E.Q.D. will not be adequate and it may be necessary to obtain temporary custody of the original documents to proceed with the investigation. The CBI/SPE would not take recourse to Section 91 Cr.P.C. for the purpose. In each such case, the matter should be reported to the Head Office. The Head Office after carefully examining the request and satisfying itself that there is sufficient justification for obtaining the original documents will refer the matter to the Accountant-General concerned with the request that the required documents may be handed over or sent to the Investigating Officer in original. The concerned Joint Director, and Special Inspector-General, CBI will personally request the Accountant-General concerned to make available the original records to CBI for investigation. It should be expressly mentioned in requisition that copies, including photostat copies would not serve the purpose of investigation. The Accountant-General concerned will then arrange for the required documents being handed over or sent to the Investigating Officer as early as possible after retaining photostat copies.

17.26 The responsibility for preparing photostat copies of such records will be that of Audit Office. Photocopying machines have been installed in all major Audit Offices. In the case of Audit Offices where such machines have not been installed, the Audit Office concerned will have photostat copies prepared in one of the offices where a photocopying machine has been installed.

Documents required to be referred to the Government Examiner of Questioned Documents, etc.

17.27 The original documents, when required by the CBI/SPE, for getting opinion of the Government Examiner of Questioned Documents, should be made available to the CBI by the administrative authorities concerned without delay.

17.28 The documents on which the opinion of the Government Examiner of Questioned Documents or a Handwriting or Fingerprint Expert under the direct control of the State Government is considered necessary by the Investigating Officer should be sent in original by the Accountant General concerned direct to the Government Examiner of Questioned Documents or the Handwriting or Fingerprint Expert on receipt of such a request from the Investigating Officer along with a list of the documents and the particular point or points on which the opinion is necessary. The Investigating Officer will also endorse a copy of his communication to the Government Examiner of Questioned Documents/Handwriting or Fingerprint Expert. While forwarding the original documents to the Examiner/Expert, a cross-reference to the Investigating Officer's communication should be given by the Accountant General so as to enable former to link up the documents with the particular Police case. The Government Examiner of Questioned Documents/Handwriting or Fingerprint Expert will communicate his opinion direct to the Investigating Officer and will return the original documents to the Accountant General together with a copy of his opinion, if that is specifically desired by the Accountant-General. It is necessary that the transmission of documents to and from the Government Examiner of Questioned Document/Handwriting or Fingerprint Expert should be executed with extreme care.

NOTE: The requisition of the documents on which the Investigating Officer of Police requires the opinion of the Handwriting or Fingerprint Expert under their own control or under the control of the State Criminal Investigation Department shall be sent by the Inspector General of Police or any other Competent Authority in accordance with the procedure.

17.29 Whenever the CBI desires the presence of an official for examining him in connection with any investigation, the administrative authority will direct the official concerned to appear before the CBI on the appointed date and time. If, for any reason, it is not possible for him to appear on the specified date and time a request if made by him for postponement, such request may be given due consideration by the administrative authority concerned and he may be directed to appear at the earliest possible opportunity.

17.30 The CBI may, when the interest of Government work so requires, examine a Gazetted Officer occupying or holding a responsible position at the place where he is located unless he has to be shown any documents during the recording of his statement and the movement of such documents is considered to be hazardous.

Accommodation, communication facilities and transport

17.31 The Investigating Officers of the CBI, if they so require, may be provided with such suitable accommodation in rest houses, service messes, etc. as may be available, on payment at such rates as may be applicable in the case of Officers on duty. Where civil communication facilities are not available, they should be allowed to use military signals and other communication facility available. They may also be provided with Government transport on payment at the prescribed rate.

Action to be taken when a bribe is offered

17.32 Dishonest and unscrupulous traders, contractors etc. frequently attempt to bribe public servants to get official favours or to avoid official disfavours. The public servants must, therefore, always be on their guard and should avail themselves of the assistance of the CBI/SPE or the local Police for apprehending such cases. A failure on the part of a public servant to take correct and timely action may result in the escape of the guilty person. It is, therefore, not enough for the public servant to refuse the bribe and to report the matter to the higher authorities later on. As soon as he suspects of an attempt to bribe him, action should be taken on the following lines:—

- (1) The proposed interview should, where possible, be tactfully postponed by the public servant to some future time. Meanwhile, the matter should be reported by him to the Superintendent of Police of the SPE Branch. If there is no Branch Office of the SPE in

that location, then to the Superintendent of Police or to the senior most Officer of the local Police available in the station. The SPE or the local Police, as the case may be, will arrange to lay a trap. If for some reasons, it is not possible to contact the SPE or the local Police authorities, the matter should be brought to the notice of the senior-most district Officer in the station who may arrange to lay a trap. The Head of the Department/Office/Establishment should also be informed as early as possible.

- (2) Should it not be possible to follow the above course of action, the bribe-giver may be detained for a short time and some person or persons, who may be readily available, may be requested to witness the transaction and to overhear the conversation between the bribe-giver and the public servant.

17.33 The Head of the Department/Office/Establishment will take care to maintain an impartial position and will in no case act as an agent of the CBI/SPE or the local Police either by arranging for money or other instrument of offence subsequently to be passed on to the suspect or by being a witness to the transaction.

Trap Cases

17.34 Whenever the CBI/SPE desires to lay a trap in the office for any public servant, who is suspected to be about to accept a bribe, the Special Police Establishment will give prior information to the Head of the Department/Office concerned. If the circumstances of the same cannot permit this being done, the Special Police Establishment will furnish details of the case to the Head of the Department/Office immediately after the trap.

17.35 In trap cases, it is necessary that some responsible and impartial person or persons should have witnessed 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 Special Police Establishment. The Head of Department/Office will, when requested by CBI/SPE, detail a suitable person/persons to be present at the scene of the trap. Refusal to assist or witness a trap on the part of a public servant will be regarded as a breach of duty and disciplinary action may be taken against him.

Transfer of an Officer at the request of the Special Police Establishment

17.36 In cases where the Special Police Establishment are investigating serious charges and request for the transfer of a public servant, such requests should be complied with. The CBI/SPE will recommend transfer only when it is absolutely necessary for the purpose of investigation and will give reasons while making such requests which will be made by an Officer not lower in rank than an SP.

17.37 Where the Department concerned has some administrative difficulty in complying with the request, the matter should be settled by discussion at the local level. If the difference persists, it should be discussed at a higher level. In exceptional cases, the matter should be discussed by the Administrative Ministry with the Secretary, CVO, in the Department/Ministries.

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

Assistance to the CBI/Special Police Establishment by Technical Officers

17.39 In cases of a technical nature the CBI/Special Police Establishment may need the assistance of Technical Officers, e.g., Engineers, Doctors, Accountants, etc. for elucidation of technical details of cases under investigation. Ministries/Departments/ Undertakings, etc., should render full cooperation and assistance on receipt of such requests from the Special Police Establishment.

17.40 The CBI/SPE takes the assistance of Chief Technical Examiner's Organization which now functions under the Central Vigilance Commission, in cases relating to civil works pertaining to any Ministry/Department of the Government of India and the Central Corporate Undertakings. Separate cells also exist under the Ministry of Railway (Railway Board) and the Ministry of Defence for performing similar functions in respect of works pertaining to these two respective Ministries. Whenever the technical opinion of wood expert is required on wood and timber, assistance of the Forest Research Institute, Dehradun, is sought by the Special Police Establishment. The question of setting up a single organization to replace these separate cells was considered in consultation with the Central Vigilance Commission, the Ministry of Railways, the Ministry of Defence and the Department of Agriculture and it has been decided that as these cells have been rendering useful service in their own spheres, it would not be advisable to supplant them. However, in special cases pertaining to civil works of the Ministries of Railways and Defence, the SPE may, with the approval of the Central Vigilance Commission, seek the assistance of the Chief Technical Examiner's Organization.

Arrest, handing over of the Defence personnel etc to civil Police

17.41 The Defence personnel will not be kept under arrest on charges under investigation by the CBI/SPE unless advised by the Investigating Officer. Similarly, a civilian employee in the Defence Services or a contractor or his employee will not be handed over to the local Police unless so advised by the SPE.

Suspension

17.42 The CBI/Special Police Establishment may, either during the course of investigation or while recommending prosecution/ Departmental action, suggest to the disciplinary authority that the Officer concerned should be suspended giving reasons for recommending such a course of action. On receipt of such a suggestion, the matter should be carefully examined. The disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established. In deciding whether a Government servant should be placed under suspension, public interest should be the sole guiding factor and the disciplinary authority has discretion to take its own decision taking all factors into account. The following circumstances under which it may be appropriate to place a Government servant under suspension, are, however, indicated for the guidance of the disciplinary authorities.

- (a) where continuance in the office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);
- (b) where the continuance in the office the Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;
- (c) where the continuance in the office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as where there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with Officer involved in such scandals, particularly those involving corruption; or
- (d) where allegations have been made against the Government servant and the Preliminary Enquiry has revealed that a *prima facie* case is made out which would justify his prosecution or his being proceeded against in Departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

17.43 Certain types of misdemeanour where suspension may be desirable are indicated below:

- (a) Any offence or conduct involving moral turpitude;

- (b) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;
- (c) serious negligence and dereliction of duty resulting in considerable loss to Government;
- (d) desertion of duty; or
- (e) refusal or deliberate failure to carry out written orders of superior Officers.

17.44 Without prejudice to the above guidelines, there are certain kinds of cases where the CBI/SPE will, invariably advise that the Officer should be placed under suspension. These cases and the stage of the proceedings, where SPE will advise suspension are given below:

- (a) In a case where a trap has been laid to apprehend a Government servant while committing an act of corruption (usually receiving illegal gratification) and the Government servant has been so apprehended; immediately after the Government servant has been so apprehended.
- (b) In a case where, on conducting a search it is found that a Government servant is in possession of assets disproportionate to his known sources of income and it appears, *prima facie* that a charge under Section 13(1)(e) of the Prevention of Corruption Act could be laid against him; immediately after the *prima facie* conclusion has been reached.
- (c) In a case where a charge sheet accusing a Government servant of specific acts of corruption or any other offence involving moral turpitude has been filed in a Criminal Court; immediately after the filing of the charge-sheet.
- (d) In a case, where, after investigation by SPE, a *prima facie* case is made out and pursuant thereto Regular Departmental Action for imposition of major penalty has been instituted against a Government servant and a charge-sheet has been served upon him alleging specific acts of corruption or gross misconduct involving moral turpitude; immediately after the charge-sheet has been served upon the Government servant.

In each of these four cases, the suspension of the Government servant would be fully justified.

PROSECUTION

17.45 Prosecution should be the general rule in cases of bribery, corruption or other criminal misconduct and in case involving substantial loss to the public funds which are found fit to be sent to the Court after investigation. Under Section 19 of the Prevention of Corruption Act, 1988 and in cases covered by section 197 of the Criminal Procedure Code, prior sanction of the Competent Authority is required for launching prosecution in a Court of Law against a Government servant by public authorities. The sanctioning authority is expected to satisfy itself whether a *prima facie* case exists or not and, if it does, whether launching of the prosecution will be in the public interest. No further Departmental fact finding enquiry should be necessary in such cases. However if there are any points on which some additional information or clarification is required, it should be sought from the SPE. The need and desirability of coming to an expeditious decision in the matter is obvious. Any undue delay in giving the requisite sanction would hold up launching of the prosecution in the Court of Law. The sooner the Government servant involved is brought to book or cleared of the charges, the better it would be for the morale of the public services.

17.46 In cases investigated by the Special Police Establishment which are found fit for prosecution, the Special Police Establishment will take further action as follow:

- (a) *Cases in which sanction for prosecution is required to be issued in the name of the President:*

In cases in which the sanction for prosecution is required under any law to be issued in the name of the President, the Special Police Establishment will forward their report after completion of the investigation to the Central Vigilance Commission and endorse a copy to the Administrative Ministry/Department concerned for such comments as they may wish to make. Their comments should be forwarded by the Ministry/ Department concerned to the Central Vigilance Commission within one month or such time as may be fixed by the Central Vigilance Commission from the receipt of the report of Special Police Establishment. After considering the report of the SPE and other relevant records as also the comments, if any, received from the Administrative Ministry/Department, the Central Vigilance Commission will advise the concerned Administrative Ministry/Department whether prosecution should be sanctioned or not. Appropriate orders will thereafter be issued by that Ministry/Department.

- (b) *Cases where sanction for prosecution is to be issued by an authority other than the President:*

If an authority other than the President is competent to sanction the prosecution, the CBI/SPE will forward the investigation report to such authority and request for the sanction to the prosecution. The sanction should be issued by the Competent Authority as soon as possible and, in any event, within three months from the date of receipt of the report of the SPE. In exceptional cases in which the Competent Authority finds that it will take more than three months to come to a conclusion, the local head of the SPE Branch concerned should be informed about the time by which it would be feasible to communicate the decision. If such authority does not propose to accord the sanction sought by the Special Police Establishment, it will forward the case together with its views and reasons and other relevant records to the Central Vigilance Commission for advice through the Administrative Ministry/Department concerned within a month of the date of receipt of the report of the SPE. Further action will be taken by the authority concerned on the advice of the Central Vigilance Commission.

- (c) In a case falling under (a) above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to the Department of Personnel & Training for a final decision
- (d) In a case falling under (b) above, if the Central Bureau of Investigation has sought sanction for prosecution and the Central Vigilance Commission has recommended grant of sanction and yet the Competent Authority proposes not to grant sanction, the case should be referred to the Department of Personnel & Training for a final decision.
- (e) Where two or more Government servants belonging to different Ministries/Departments or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments or the respective competent authorities in accordance with the procedure laid down in the above paragraphs. Where sanction is granted in the case of one of the Government servants but sanction is refused in the case of the other or others, the CBI will refer the case to the Department of Personnel & Training for resolution of the conflict, if any.

17.47 In cases of both types mentioned in items (a) and (b) above, the SPE will send to the administrative authorities along with the report, such original documents as can be sent by them after retaining copies, if necessary. In respect of the documents, which the SPE would not like to part with for any reason, attested copies thereof or extract therefrom or gist of their contents may be sent instead. In case the administrative authority may still like to see the documents in original, the SPE may be requested to make them available for inspection. If there are any documents which are not capable of being copied or even a gist of which cannot be prepared, the administrative authority may inspect such documents by arrangement with the SPE.

Withdrawal of Prosecution

17.48 Once case has been put in a Court, it should be allowed to take its normal course. A proposal for withdrawal of prosecution may, however, be initiated by the investigating agency or by the Public Prosecutor, etc. on appropriate legal grounds. The CBI/SPE will forward its proposal to the Administrative Ministry in cases in which sanction for prosecution was accorded by the Ministry. In such cases, the Ministry of Law should be consulted and its advice accepted. In all cases in which prosecution was sanctioned on the advice of the CVC, the Commission should also be consulted before a reference is made to the Ministry of Law. Requests for withdrawal of prosecution may also come up from the accused. Such requests should not generally be entertained except in very exceptional cases where, for instance, attention is drawn to certain fresh, established or accepted facts which might alter the nature or basis of the case. In such cases also, the Ministry of Law should be consulted in first instance.

17.49 In all cases in which prosecution was sanctioned on the advice of the Central Vigilance Commission, the Commission should also be consulted before the matter is referred to the Ministry of Law.

17.50 Rule 7 of the Government of India (Transaction of Business) Rules and item (g) of the Second Schedule to those rules provide that any proposal to withdraw, otherwise than in accordance with the competent legal advice, any prosecution instituted by or at the instance of the Government of India, should be brought before the Cabinet. In most of the cases, the competent legal advice should be the advice received from the Ministry of Law.

INVESTIGATION REPORTS RECOMMENDING DEPARTMENTAL ACTION

17.51 When the available evidence is considered insufficient for a criminal prosecution and in cases involving less serious offences or those revealing malpractices in which the CBI/SPE consider that a Departmental action should be taken against the Officer involved, further action will be taken as indicated in the succeeding paragraphs in this Section of the Directive in the light of Policy Division, Circular No. DP0992003/00061/ 21/52/98-PD, dated 7-1-2003 and Circular No. DP0992003/01687/21/52/98-PD, dated 9-7-2003 on the subject.

Investigation Reports in respect of Gazetted Officers or Officers of equivalent status

17.52 When a PE after enquiry or a Regular Case after investigation is decided to be referred for RDA, the SP's Report along with relevant documents (original or authenticated copies as decided by the SP) should be sent immediately to the Competent Authority/Head of the Department with copies to CVC of the Organization. Once the Competent Authority has acknowledged the receipt of SP's Report and documents, the case should be treated as disposed of except in cases in which it has been decided to appoint a Presenting Officer by CBI.

17.53 Only such RDA cases in which a Presenting Officer from CBI is appointed may be shown pending and their progress monitored.

17.54 Presenting Officers by CBI should be appointed only in exceptional circumstances where a particular case is sent for trial and also recommended for RDA. In such cases also, the Branch SP has to satisfy himself whether Presenting Officer should be appointed in the interest of the case. This decision of the Branch SP should be approved by DIG keeping the JD concerned informed. The Presenting Officer should invariably be appointed in a case of RDA against CBI personnel.

17.55 In cases where the case is sent for trial and also Departmental action, the originals should be preserved for trial purpose and authenticated copies of the documents along with SP's Report should be sent to the Head of the Department as stated at Para 17.50/17.52 above.

17.56 In cases where the Presenting Officer of the CBI has been appointed prior to 7.1.2003, he need not be withdrawn till completion of the proceedings.

17.57 In cases where the Competent Authority requires any advice, help or assistance in matters referred to it by the CBI, timely assistance should be provided by the concerned branches.

17.58 In cases where closure report has been filed but is yet to be accepted by the Court, authenticated copies of the documents should be sent along with SP's Report to the concerned Department and on receipt of acknowledgement RDA should be treated as disposed of. After acceptance of the closure report by the concerned Court, the original documents may also be sent to the Competent Authority.

17.59 All pending RDAs prior to the issue of the Policy Division Circular dated 7-1-2003 will be deemed to have been disposed of as soon as SP's Report and the concerned documents were received by the competent Departmental authority except those in which the CBI has appointed its own Presenting Officer. It should be clear that after the Policy Division Circular of 7.1.2003, the CBI shall not depute POs and follow the guidelines stated above and show only those cases pending RDA where CBI appoints POs under circumstances stated above to conduct the proceedings.

17.60 In the Crime Index Register of the Branch, there should be proper recording of the progress of the PE and RC till its logical conclusion so that it can give an idea about the number of cases in which RDA has been recommended, names of the Departments to which it is referred etc. for statistical purpose. Command Centre should also make necessary modifications in the CRIMES Module wherever required.

17.61 In no circumstances, there should be any delay in sending of SP's Report or the relevant documents to concerned Departments for initiation of RDA. It will be the responsibility of the Branch SP and concerned DIG to take adequate steps/safeguards to ensure that actual process (commencement of RDA) is initiated by the Department. JD/DIG/SP should also regularly review the implementation of the above instructions during their Annual Inspection of Branches.

17.62 The above instructions were issued keeping into consideration that CBI should remain confined to furnishing SP's report, draft charges and relevant documents to the Competent Authority/CVO for taking further action in the matter. This is not just because of the paucity of resources, but also recognition of the principles laid down in the Santhanam Committee report that, it is the prime responsibility of the Head of the Department to ensure probity in his Department and also initiate action against the public servant violating service conduct rules or committing acts of Departmental misconduct.

GRANT OF IMMUNITY/PARDON

Gazetted Officers

17.63 If during an investigation, the SPE finds that a Gazetted Officer has made a full and true disclosure implicating himself and other public servants or members of the public and further that such statement is free from malice, the SPE will send to the Central Vigilance Commissioner its recommendation regarding grant of immunity to such Officers from the Departmental Action or punishment. The Central Vigilance Commission will consider the recommendation of the SPE in consultation with the administrative authority concerned and will advise that authority regarding the course of further action to be taken.

17.64 Instructions regarding withdrawal of any prosecution instituted by or at the instance of the Government of India are contained in the Office Memorandum No. 43/130/64-AVD, dated the 21st October, 1964 issued by the Ministry of Home Affairs.

Non-Gazetted officials

17.65 In cases pertaining to Non-Gazetted officials, the CBI/SPE will send its recommendation for grant of immunity from the Departmental Action to the administrative Ministry concerned. If there

is a difference of opinion between the SPE and the Administrative Ministry, the SPE will refer the matter to the Central Vigilance Commission for advice.

CLOSE LIAISON BETWEEN THE SPE AND THE ADMINISTRATIVE AUTHORITIES

17.66 The need for a close liaison and cooperation between the Chief Vigilance Officer/Vigilance Officer of the Ministry/Department/Office and the SPE during the course of an inquiry and investigation and processing of individual cases, hardly needs to be emphasized. Both the SPE and the Chief Vigilance Officers receive information about the activities of the Officers of various Ministries/Departments/ Offices, from diverse sources. As far as possible, the information should be cross-checked at appropriate intervals to keep the Officers of both the wings fully apprised of the latest development.

17.67 At New Delhi, the Chief Vigilance Officers, or Vigilance Officers of the Ministry/Departments/Offices should keep themselves in touch with the Joint Director/DIG of the SPE and in other places, the Regional DIG/SP of the SPE Branch will frequently call on the Head of the Department, Office, etc. and discuss personally matters of mutual interest particularly those arising from the enquiries and investigation.

CHAPTER 17

DIRECTIVE ON INVESTIGATION OF CASES BY S.P.E. AND FACILITIES/COOPERATION TO BE EXTENDED BY ADMINISTRATIVE AUTHORITIES

INTRODUCTORY

17.1 A set of instructions on the subject had been issued by the Ministry of Home Ministry in the form of a directive in January, 1954. Separate directives had also been issued by the Army, Navy and Air Headquarters and the Defence Production Organization of the Ministry of Defence during 1959 to 1962. The Railway Board have also issued instructions on the subject from time to time to administrative authorities under their control. The Committee on Prevention of Corruption recommended that these separate directives should be reviewed by the Central Vigilance Commission and a single directive should be issued by the Ministry of Home Affairs in their place. This recommendation was accepted by Government. The present directive is issued in pursuance of the above recommendation and seeks to consolidate the instructions issued from time to time by various authorities and describes the procedure followed by the Special Police Establishment/Central Bureau of Investigation in the investigation of various cases handled by the agency pertaining to Anti-Corruption, Special Crimes, Economic Offences and other Acts or laws and facilities cooperation to be extended to them by the administrative authorities.

FUNCTIONS AND POWERS OF THE SPECIAL POLICE ESTABLISHMENT

17.2 The Special Police Establishment is an agency which has been constituted by the Government of India under the Delhi Special Police Establishment Act, 1946, to enquire and to investigate into certain offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants with a view to bringing them to book. Section 3 of the Act provides that the Central Government may, by notification in the Official Gazette, specify the offences or class of offences which are to be investigated by the Special Police Establishment.

17.3 The Delhi Special Police Establishment Act, 1946 was amended in 1952 to enlarge its scope and to make it possible for the S.P.E. to investigate offences involving employees of statutory corporations and other similar bodies in the proper administration of which the Central Government was concerned, particularly from the financial point of view. Section 5 of the Act was further amended by the Anti Corruption (Laws) Amendment Act, 1964, to enable Officers of the SPE, not below the rank of a Sub-Inspector of Police to exercise the power of an Officer-in-charge of Police Station.

17.4 The Special Police Establishment enjoys with the respective State Police Force concurrent powers of investigation and prosecution under the Criminal Procedure Code. However, to avoid duplication of the effort, an administrative arrangement has been arrived at with the State Governments according to which:

- (a) the cases which substantially and essentially concern the Central Government employees or the affairs of the Central Government, even though involving certain State Government employees are to be investigated by the S.P.E. The State Police is, however, kept informed of such cases and will render the necessary assistance to the Special Police Establishment during investigation; and
- (b) the cases which substantially and essentially involve the State Government employees or relating to the affairs of a State Government, even though involving certain Central Government employees are investigated by the State Police. The S.P.E. is informed of such cases and it extends assistance to the State Police during investigation, if necessary.

17.5 The Central Units under the Anti-Corruption Division and the Special Crimes Division and Economic Offences Division located at Delhi have All India jurisdiction, and generally take up only important cases against senior Public Servants or cases having interstate or international ramifications or offences of national importance.

INVESTIGATION BY SPECIAL POLICE ESTABLISHMENT

17.6 The Special Police Establishment takes up cases for investigation on the basis of the information collected by them from their own sources or received from members of the public, as also cases referred to them by the Central Vigilance Commission and the administrative authorities.

17.7 When the information discloses, *prima facie*, Commission of a cognizable offence, a Regular Case (RC) is registered straightway u/s 154 Cr.P.C.

17.8 If the information *prima facie*, discloses, commission of irregularities, which call for an open enquiry, a Preliminary Enquiry (PE) is first registered. If the PE reveals commission of a cognizable offence, a Regular Case is registered for further investigation.

17.9 As soon as a case is taken up for a Preliminary Enquiry (PE) or a Regular investigation (RC) under Section 154 of the Code of Criminal Procedure, a copy of the PE registration report or of the First Information Report (FIR), as the case may be, will be sent by the SPE to the Head of the Department and/ or the Administrative Ministry concerned. In the case of Gazetted Officers, a copy of the FIR will also be sent to the Central Vigilance Commission.

17.10 If investigation into a case registered as a PE or RC shows that sufficient evidence is not available to launch a prosecution but that the facts of the case warrant a Departmental action, further action will be taken as indicated under the Head "Departmental Action" of this Manual.

17.11 In cases in which Preliminary Enquiry (PE) discloses that there is no substance in the allegations or that sufficient material is not available for registering a case (RC) or for initiating Departmental action, the S.P.E. may decide to close the case. Such cases pertaining to Gazetted Officers will be reported to the Central Vigilance Commission. In other cases, the decision to close a case will be communicated to the administrative authority concerned.

17.12 The SPE should not take up inquiries or register a case where minor procedural flaws are involved. They should also take note of an individual Officer's positive achievement so that a single procedural error does not cancel out a lifetime of good work.

17.13 The SPE will normally take into confidence the Head of the Department or office concerned before taking up any inquiry (PE or RC) or soon after starting the inquiry as may be possible according to the circumstances of each case. This will also apply in case a search is required to be made of the premises of an Officer.

17.14 The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to—

- (3) The employees of the Central Government of the level of Joint Secretary and above; and
- (4) Such Officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

17.15 No such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to Section 7 of the Prevention of Corruption Act, 1988.

17.16 When any complaint or communication containing some allegations or misconduct etc. against a public servant, which merits an enquiry, is received by an administrative authority or comes to its notice, it should be considered and decided whether the allegations should be looked into departmentally or whether a Police investigation is necessary. As a general rule, allegations involving offences of bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records or other serious criminal offences or those requiring an expert Police investigation such as cases of possession of disproportionate assets or cases in which a number of non-official witnesses are to be examined, should be referred to the SPE for investigation. In such cases, a prompt reference to the SPE is necessary to safeguard against the possibility of suspect Officer tampering with or destroying the incriminating evidence against him.

17.17 Once a case is referred to and taken up by the CBI/SPE for investigation, further investigation must be left to them. A parallel investigation by the Administrative Ministry/Department, Organization should be avoided. Further action by the Department should be taken on the completion of the investigation by the CBI/SPE on the basis of their report.

FACILITIES AND COOPERATION TO BE EXTENDED TO THE CBI/SPE BY THE ADMINISTRATIVE AUTHORITIES

17.18 Full cooperation and facilities should be extended by the administrative authorities and the individual public sector servant to the CBI/SPE during the course of investigation. Certain matters in which the CBI/SPE will need the assistance of the administrative authorities, are given in the succeeding paragraphs.

Records other than classified ones

17.19 The Head of Departments/Offices, etc. will ensure that during investigation, whether preliminary or regular the Superintendent of Police of the CBI/SPE and his authorized representatives are given full cooperation and facilities to scrutinize all relevant records. Investigation are often held up or delayed on account of reluctance or delay on the part of the Departmental authorities to make the requisite records available for various reasons. Sometimes the Departmental authorities express their inability to release the records without the prior permission of the superior authority or ask the CBI/SPE. to take photostat or attested copies of the documents without realizing that the CBI/SPE necessarily require the original records for the purpose of investigation. In this connection it has to be borne in mind that the authenticity of the attested or photostat copies can be contested by the delinquent official thereby hampering the progress of investigation.

17.20 In asking for original documents, particularly those forming part of the current files, the CBI/SPE will exercise due discretion so as to ensure that the day-to-day work in the Department concerned is not impeded. On the other hand, the Departmental authorities should ensure that the documents asked for by the CBI/SPE should be made available to them with the least possible delay. Where necessary, the Departmental authorities may keep attested or photostat copies of the records for meeting the urgent Departmental needs or for disposing of any action that may be pending on the part of the Department, without prejudice to the investigation being carried out by the CBI/SPE.

17.21 The records required by the CBI/SPE should be made available to them ordinarily within a fortnight and positively within a month from the date of receipt of the request. If, for any special reasons, it is not possible to hand over the records within a month, the matter should be brought by the authority in possession of the records to the notice of the Superintendent of Police of the CBI/SPE Branch concerned pointing out the reasons for not making the records available within the specified period and also to the notice of the Chief Vigilance Officer of the Administrative Ministry concerned for such further direction as the Chief Vigilance Officer might give.

17.22 Even before registration of PE or RC, if the CBI/SPE wishes to check the veracity of information in their possession from the official records, on receipt of a request from the SP SPE, the same should be made available.

Classified/ Graded Documents/Records

17.23 When the CBI/SPE desires to see any classified documents/records, sanction of the Competent Authority to release such documents/records should be obtained promptly by the administrative authority incharge of the records and the records should be made available to the CBI/SPE in the following manner:—

- (1) “Top secret” documents should be handed over only to Gazetted Officers of the CBI/SPE (Inspectors of CBI are not Gazetted Officers) or to an Inspector of Police of CBI if he is specifically authorized by the SP to obtain such documents.
- (2) “Secret and Confidential” documents should be given to Gazetted Officers of the CBI or to an Inspector of CBI if he is specially authorized by the Superintendent of Police of the CBI/SPE to obtain such documents.
- (3) A temporary receipt should be obtained whenever any graded document is handed over to an Officer of the SPE/CBI who will be asked to comply with the provisions of Para 27(a), (b), (c) and (e) of the pamphlet entitled “Classification and Handling of Classified Documents.
- (4) Where original document cannot be made available to the Investigating Officer for any reasons, he should be supplied with photostat copies or attested copies thereof and a certificate should be given by an Officer of appropriate rank that the originals are in safe custody and out of the reach of the suspect official and will be produced, whenever required.

Documents in Possession of Audit officials

17.24 The Comptroller and Auditor- General has issued instructions to his lower formations that original documents should be made available to the CBI/SPE at the Audit Offices for purpose of perusal, scrutiny and copying (including taking of photostat copies). Normally, the facility of inspection of documents within the Audit Offices and taking copies (including photostat copies) should be found to be adequate for the purpose of investigation.

17.25 There may be some very exceptional cases in which mere inspection of the documents at the Audit Office or examination by the G.E.Q.D. will not be adequate and it may be necessary to obtain temporary custody of the original documents to proceed with the investigation. The CBI/SPE would not take recourse to Section 91 Cr.P.C. for the purpose. In each such case, the matter should be reported to the Head Office. The Head Office after carefully examining the request and satisfying itself that there is sufficient justification for obtaining the original documents will refer the matter to the Accountant-General concerned with the request that the required documents may be handed over or sent to the Investigating Officer in original. The concerned Joint Director, and Special Inspector-General, CBI will personally request the Accountant-General concerned to make available the original records to CBI for investigation. It should be expressly mentioned in requisition that copies, including photostat copies would not serve the purpose of investigation. The Accountant-General concerned will then arrange for the required documents being handed over or sent to the Investigating Officer as early as possible after retaining photostat copies.

17.26 The responsibility for preparing photostat copies of such records will be that of Audit Office. Photocopying machines have been installed in all major Audit Offices. In the case of Audit Offices where such machines have not been installed, the Audit Office concerned will have photostat copies prepared in one of the offices where a photocopying machine has been installed.

Documents required to be referred to the Government Examiner of Questioned Documents, etc.

17.27 The original documents, when required by the CBI/SPE, for getting opinion of the Government Examiner of Questioned Documents, should be made available to the CBI by the administrative authorities concerned without delay.

17.28 The documents on which the opinion of the Government Examiner of Questioned Documents or a Handwriting or Fingerprint Expert under the direct control of the State Government is considered necessary by the Investigating Officer should be sent in original by the Accountant General concerned direct to the Government Examiner of Questioned Documents or the Handwriting or Fingerprint Expert on receipt of such a request from the Investigating Officer along with a list of the documents and the particular point or points on which the opinion is necessary. The Investigating Officer will also endorse a copy of his communication to the Government Examiner of Questioned Documents/Handwriting or Fingerprint Expert. While forwarding the original documents to the Examiner/Expert, a cross-reference to the Investigating Officer's communication should be given by the Accountant General so as to enable former to link up the documents with the particular Police case. The Government Examiner of Questioned Documents/Handwriting or Fingerprint Expert will communicate his opinion direct to the Investigating Officer and will return the original documents to the Accountant General together with a copy of his opinion, if that is specifically desired by the Accountant-General. It is necessary that the transmission of documents to and from the Government Examiner of Questioned Document/Handwriting or Fingerprint Expert should be executed with extreme care.

NOTE: The requisition of the documents on which the Investigating Officer of Police requires the opinion of the Handwriting or Fingerprint Expert under their own control or under the control of the State Criminal Investigation Department shall be sent by the Inspector General of Police or any other Competent Authority in accordance with the procedure.

17.29 Whenever the CBI desires the presence of an official for examining him in connection with any investigation, the administrative authority will direct the official concerned to appear before the CBI on the appointed date and time. If, for any reason, it is not possible for him to appear on the specified date and time a request if made by him for postponement, such request may be given due consideration by the administrative authority concerned and he may be directed to appear at the earliest possible opportunity.

17.30 The CBI may, when the interest of Government work so requires, examine a Gazetted Officer occupying or holding a responsible position at the place where he is located unless he has to be shown any documents during the recording of his statement and the movement of such documents is considered to be hazardous.

Accommodation, communication facilities and transport

17.31 The Investigating Officers of the CBI, if they so require, may be provided with such suitable accommodation in rest houses, service messes, etc. as may be available, on payment at such rates as may be applicable in the case of Officers on duty. Where civil communication facilities are not available, they should be allowed to use military signals and other communication facility available. They may also be provided with Government transport on payment at the prescribed rate.

Action to be taken when a bribe is offered

17.32 Dishonest and unscrupulous traders, contractors etc. frequently attempt to bribe public servants to get official favours or to avoid official disfavours. The public servants must, therefore, always be on their guard and should avail themselves of the assistance of the CBI/SPE or the local Police for apprehending such cases. A failure on the part of a public servant to take correct and timely action may result in the escape of the guilty person. It is, therefore, not enough for the public servant to refuse the bribe and to report the matter to the higher authorities later on. As soon as he suspects of an attempt to bribe him, action should be taken on the following lines:—

- (1) The proposed interview should, where possible, be tactfully postponed by the public servant to some future time. Meanwhile, the matter should be reported by him to the Superintendent of Police of the SPE Branch. If there is no Branch Office of the SPE in that location, then to the Superintendent of Police or to the senior most Officer of the local Police available in the station. The SPE or the local Police, as the case may be, will arrange to lay a trap. If for some reasons, it is not possible to contact the SPE or the local Police authorities, the matter should be brought to the notice of the senior-most district Officer in the station who may arrange to lay a trap. The Head of the Department/Office/Establishment should also be informed as early as possible.
- (2) Should it not be possible to follow the above course of action, the bribe-giver may be detained for a short time and some person or persons, who may be readily available, may be requested to witness the transaction and to overhear the conversation between the bribe-giver and the public servant.

17.33 The Head of the Department/Office/Establishment will take care to maintain an impartial position and will be in no case act as an agent of the CBI/SPE or the local Police either by arranging for money or other instrument of offence subsequently to be passed on to the suspect or by being a witness to the transaction.

Trap Cases

17.34 Whenever the CBI/SPE desires to lay a trap in the office for any public servant, who is suspected to be about to accept a bribe, the Special Police Establishment will give prior information to the Head of the Department/Office concerned. If the circumstances of the same cannot permit this being done, the Special Police Establishment will furnish details of the case to the Head of the Department/Office immediately after the trap.

17.35 In trap cases, it is necessary that some responsible and impartial person or persons should have witnessed 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 Special Police Establishment. The Head of Department/Office will, when requested by CBI/SPE, detail a suitable person/persons to be present at the scene of the trap. Refusal to assist or witness a trap on the part of a public servant will be regarded as a breach of duty and disciplinary action may be taken against him.

Transfer of an Officer at the request of the Special Police Establishment

17.36 In cases where the Special Police Establishment are investigating serious charges and request for the transfer of a public servant, such requests should be complied with. The CBI/SPE will recommend transfer only when it is absolutely necessary for the purpose of investigation and will give reasons while making such requests which will be made by an Officer not lower in rank than an SP.

17.37 Where the Department concerned has some administrative difficulty in complying with the request, the matter should be settled by discussion at the local level. If the difference persists, it should be discussed at a higher level. In exceptional cases, the matter should be discussed by the Administrative Ministry with the Secretary, CVO, in the Department/Ministries.

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

Assistance to the CBI/Special Police Establishment by Technical Officers

17.39 In cases of a technical nature the CBI/Special Police Establishment may need the assistance of Technical Officers, e.g., Engineers, Doctors, Accountants, etc. for elucidation of technical details of cases under investigation. Ministries/Departments/ Undertakings, etc., should

render full cooperation and assistance on receipt of such requests from the Special Police Establishment.

17.40 The CBI/SPE takes the assistance of Chief Technical Examiner's Organization which now functions under the Central Vigilance Commission, in cases relating to civil works pertaining to any Ministry/Department of the Government of India and the Central Corporate Undertakings. Separate cells also exist under the Ministry of Railway (Railway Board) and the Ministry of Defence for performing similar functions in respect of works pertaining to these two respective Ministries. Whenever the technical opinion of wood expert is required on wood and timber, assistance of the Forest Research Institute, Dehradun, is sought by the Special Police Establishment. The question of setting up a single organization to replace these separate cells was considered in consultation with the Central Vigilance Commission, the Ministry of Railways, the Ministry of Defence and the Department of Agriculture and it has been decided that as these cells have been rendering useful service in their own spheres, it would not be advisable to supplant them. However, in special cases pertaining to civil works of the Ministries of Railways and Defence, the SPE may, with the approval of the Central Vigilance Commission, seek the assistance of the Chief Technical Examiner's Organization.

Arrest, handing over of the Defence personnel etc to civil Police

17.41 The Defence personnel will not be kept under arrest on charges under investigation by the CBI/SPE unless advised by the Investigating Officer. Similarly, a civilian employee in the Defence Services or a contractor or his employee will not be handed over to the local Police unless so advised by the SPE.

Suspension

17.42 The CBI/Special Police Establishment may, either during the course of investigation or while recommending prosecution/ Departmental action, suggest to the disciplinary authority that the Officer concerned should be suspended giving reasons for recommending such a course of action. On receipt of such a suggestion, the matter should be carefully examined. The disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established. In deciding whether a Government servant should be placed under suspension, public interest should be the sole guiding factor and the disciplinary authority has discretion to take its own decision taking all factors into account. The following circumstances under which it may be appropriate to place a Government servant under suspension, are, however, indicated for the guidance of the disciplinary authorities.

- (a) where continuance in the office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);
- (b) where the continuance in the office the Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;
- (c) where the continuance in the office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as where there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with Officer involved in such scandals, particularly those involving corruption; or
- (d) where allegations have been made against the Government servant and the Preliminary Enquiry has revealed that a *prima facie* case is made out which would justify his prosecution or his being proceeded against in Departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

17.43 Certain types of misdemeanour where suspension may be desirable are indicated below:

- (a) Any offence or conduct involving moral turpitude;
- (b) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;
- (c) serious negligence and dereliction of duty resulting in considerable loss to Government;
- (d) desertion of duty; or
- (e) refusal or deliberate failure to carry out written orders of superior Officers.

17.44 Without prejudice to the above guidelines, there are certain kinds of cases where the CBI/SPE will, invariably advise that the Officer should be placed under suspension. These cases and the stage of the proceedings, where SPE will advise suspension are given below:

- (a) In a case where a trap has been laid to apprehend a Government servant while committing an act of corruption (usually receiving illegal gratification) and the Government servant has been so apprehended; immediately after the Government servant has been so apprehended.
- (b) In a case where, on conducting a search it is found that a Government servant is in possession of assets disproportionate to his known sources of income and it appears, *prima facie* that a charge under Section 13(1)(e) of the Prevention of Corruption Act could be laid against him; immediately after the *prima facie* conclusion has been reached.
- (c) In a case where a charge sheet accusing a Government servant of specific acts of corruption or any other offence involving moral turpitude has been filed in a Criminal Court; immediately after the filing of the charge-sheet.
- (d) In a case, where, after investigation by SPE, a *prima facie* case is made out and pursuant thereto Regular Departmental Action for imposition of major penalty has been instituted against a Government servant and a charge-sheet has been served upon him alleging specific acts of corruption or gross misconduct involving moral turpitude; immediately after the charge-sheet has been served upon the Government servant.

In each of these four cases, the suspension of the Government servant would be fully justified.

PROSECUTION

17.45 Prosecution should be the general rule in cases of bribery, corruption or other criminal misconduct and in case involving substantial loss to the public funds which are found fit to be sent to the Court after investigation. Under Section 19 of the Prevention of Corruption Act, 1988 and in cases covered by section 197 of the Criminal Procedure Code, prior sanction of the Competent Authority is required for launching prosecution in a Court of Law against a Government servant by public authorities. The sanctioning authority is expected to satisfy itself whether a *prima facie* case exists or not and, if it does, whether launching of the prosecution will be in the public interest. No further Departmental fact finding enquiry should be necessary in such cases. However if there are any points on which some additional information or clarification is required, it should be sought from the SPE. The need and desirability of coming to an expeditious decision in the matter is obvious. Any undue delay in giving the requisite sanction would hold up launching of the prosecution in the Court of Law. The sooner the Government servant involved is brought to book or cleared of the charges, the better it would be for the morale of the public services.

17.46 In cases investigated by the Special Police Establishment which are found fit for prosecution, the Special Police Establishment will take further action as follow:

- (a) *Cases in which sanction for prosecution is required to be issued in the name of the President:*

In cases in which the sanction for prosecution is required under any law to be issued in the name of the President, the Special Police Establishment will forward their report after completion of the investigation to the Central Vigilance Commission and endorse a copy to the Administrative Ministry/Department concerned for such comments as they may wish to make. Their comments should be forwarded by the Ministry/ Department concerned to the Central Vigilance Commission within one month or such time as may be fixed by the Central Vigilance Commission from the receipt of the report of Special Police Establishment. After considering the report of the SPE and other relevant records as also the comments, if any, received from the Administrative Ministry/Department, the Central Vigilance Commission will advise the concerned Administrative Ministry/Department whether prosecution should be sanctioned or not. Appropriate orders will thereafter be issued by that Ministry/Department.

- (b) *Cases where sanction for prosecution is to be issued by an authority other than the President:*

If an authority other than the President is competent to sanction the prosecution, the CBI/SPE will forward the investigation report to such authority and request for the sanction to the prosecution. The sanction should be issued by the Competent Authority as soon as possible and, in any event, within three months from the date of receipt of the report of the SPE. In exceptional cases in which the Competent Authority finds that it will take more than three months to come to a conclusion, the local head of the SPE Branch concerned should be informed about the time by which it would be feasible to communicate the decision. If such authority does not propose to accord the sanction sought by the Special Police Establishment, it will forward the case together with its views and reasons and other relevant records to the Central Vigilance Commission for advice through the Administrative Ministry/Department concerned within a month of the date of receipt of the report of the SPE. Further action will be taken by the authority concerned on the advice of the Central Vigilance Commission.

- (c) In a case falling under (a) above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to the Department of Personnel & Training for a final decision
- (d) In a case falling under (b) above, if the Central Bureau of Investigation has sought sanction for prosecution and the Central Vigilance Commission has recommended grant of sanction and yet the Competent Authority proposes not to grant sanction, the case should be referred to the Department of Personnel & Training for a final decision.
- (f) Where two or more Government servants belonging to different Ministries/Departments or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments or the respective competent authorities in accordance with the procedure laid down in the above paragraphs. Where sanction is granted in the case of one of the Government servants but sanction is refused in the case of the other or others, the CBI will refer the case to the Department of Personnel & Training for resolution of the conflict, if any.

17.47 In cases of both types mentioned in items (a) and (b) above, the SPE will send to the administrative authorities along with the report, such original documents as can be sent by them after retaining copies, if necessary. In respect of the documents, which the SPE would not like to part with for any reason, attested copies thereof or extract therefrom or gist of their contents may be sent instead. In case the administrative authority may still like to see the documents in original, the SPE may be requested to make them available for inspection. If there are any documents which are not capable of being copied or even a gist of which cannot be prepared, the administrative authority may inspect such documents by arrangement with the SPE.

Withdrawal of Prosecution

17.48 Once case has been put in a Court, it should be allowed to take its normal course. A proposal for withdrawal of prosecution may, however, be initiated by the investigating agency or by the Public Prosecutor, etc. on appropriate legal grounds. The CBI/SPE will forward its proposal to the Administrative Ministry in cases in which sanction for prosecution was accorded by the Ministry. In such cases, the Ministry of Law should be consulted and its advice accepted. In all cases in which prosecution was sanctioned on the advice of the CVC, the Commission should also be consulted before a reference is made to the Ministry of Law. Requests for withdrawal of prosecution may also come up from the accused. Such requests should not generally be entertained except in very exceptional cases where, for instance, attention is drawn to certain fresh, established or accepted facts which might alter the nature or basis of the case. In such cases also, the Ministry of Law should be consulted in first instance.

17.49 In all cases in which prosecution was sanctioned on the advice of the Central Vigilance Commission, the Commission should also be consulted before the matter is referred to the Ministry of Law.

17.50 Rule 7 of the Government of India (Transaction of Business) Rules and item (g) of the Second Schedule to those rules provide that any proposal to withdraw, otherwise than in accordance with the competent legal advice, any prosecution instituted by or at the instance of the Government of India, should be brought before the Cabinet. In most of the cases, the competent legal advice should be the advice received from the Ministry of Law.

INVESTIGATION REPORTS RECOMMENDING DEPARTMENTAL ACTION

17.51 When the available evidence is considered insufficient for a criminal prosecution and in cases involving less serious offences or those revealing malpractices in which the CBI/SPE consider that a Departmental action should be taken against the Officer involved, further action will be taken as indicated in the succeeding paragraphs in this Section of the Directive in the light of Policy Division, Circular No. DP0992003/00061/ 21/52/98-PD, dated 7-1-2003 and Circular No. DP0992003/01687/21/52/98-PD, dated 9-7-2003 on the subject.

Investigation Reports in respect of Gazetted Officers or Officers of equivalent status

17.52 When a PE after enquiry or a Regular Case after investigation is decided to be referred for RDA, the SP's Report along with relevant documents (original or authenticated copies as decided by the SP) should be sent immediately to the Competent Authority/Head of the Department with copies to CVC of the Organization. Once the Competent Authority has acknowledged the receipt of SP's Report and documents, the case should be treated as disposed of except in cases in which it has been decided to appoint a Presenting Officer by CBI.

17.53 Only such RDA cases in which a Presenting Officer from CBI is appointed may be shown pending and their progress monitored.

17.54 Presenting Officers by CBI should be appointed only in exceptional circumstances where a particular case is sent for trial and also recommended for RDA. In such cases also, the Branch SP has to satisfy himself whether Presenting Officer should be appointed in the interest of the case. This decision of the Branch SP should be approved by DIG keeping the JD concerned informed. The Presenting Officer should invariably be appointed in a case of RDA against CBI personnel.

17.56 In cases where the case is sent for trial and also Departmental action, the originals should be preserved for trial purpose and authenticated copies of the documents along with SP's Report should be sent to the Head of the Department as stated at Para 17.50/17.52 above.

17.56 In cases where the Presenting Officer of the CBI has been appointed prior to 7.1.2003, he need not be withdrawn till completion of the proceedings.

17.57 In cases where the Competent Authority requires any advice, help or assistance in matters referred to it by the CBI, timely assistance should be provided by the concerned branches.

17.58 In cases where closure report has been filed but is yet to be accepted by the Court, authenticated copies of the documents should be sent along with SP's Report to the concerned Department and on receipt of acknowledgement RDA should be treated as disposed of. After acceptance of the closure report by the concerned Court, the original documents may also be sent to the Competent Authority.

17.59 All pending RDAs prior to the issue of the Policy Division Circular dated 7-1-2003 will be deemed to have been disposed of as soon as SP's Report and the concerned documents were received by the competent Departmental authority except those in which the CBI has appointed its own Presenting Officer. It should be clear that after the Policy Division Circular of 7.1.2003, the CBI shall not depute POs and follow the guidelines stated above and show only those cases pending RDA where CBI appoints POs under circumstances stated above to conduct the proceedings.

17.60 In the Crime Index Register of the Branch, there should be proper recording of the progress of the PE and RC till its logical conclusion so that it can give an idea about the number of cases in which RDA has been recommended, names of the Departments to which it is referred etc. for statistical purpose. Command Centre should also make necessary modifications in the CRIMES Module wherever required.

17.61 In no circumstances, there should be any delay in sending of SP's Report or the relevant documents to concerned Departments for initiation of RDA. It will be the responsibility of the Branch SP and concerned DIG to take adequate steps/safeguards to ensure that actual process (commencement of RDA) is initiated by the Department. JD/DIG/SP should also regularly review the implementation of the above instructions during their Annual Inspection of Branches.

17.62 The above instructions were issued keeping into consideration that CBI should remain confined to furnishing SP's report, draft charges and relevant documents to the Competent Authority/CVO for taking further action in the matter. This is not just because of the paucity of resources, but also recognition of the principles laid down in the Santhanam Committee report that, it is the prime responsibility of the Head of the Department to ensure probity in his Department and also initiate action against the public servant violating service conduct rules or committing acts of Departmental misconduct.

GRANT OF IMMUNITY/PARDON

Gazetted Officers

17.63 If during an investigation, the SPE finds that a Gazetted Officer has made a full and true disclosure implicating himself and other public servants or members of the public and further that such statement is free from malice, the SPE will send to the Central Vigilance Commissioner its recommendation regarding grant of immunity to such Officers from the Departmental Action or punishment. The Central Vigilance Commission will consider the recommendation of the SPE in consultation with the administrative authority concerned and will advise that authority regarding the course of further action to be taken.

17.64 Instructions regarding withdrawal of any prosecution instituted by or at the instance of the Government of India are contained in the Office Memorandum No. 43/130/64-AVD, dated the 21st October, 1964 issued by the Ministry of Home Affairs.

Non-Gazetted officials

17.65 In cases pertaining to Non-Gazetted officials, the CBI/SPE will send its recommendation for grant of immunity from the Departmental Action to the administrative Ministry concerned. If there is a difference of opinion between the SPE and the Administrative Ministry, the SPE will refer the matter to the Central Vigilance Commission for advice.

CLOSE LIAISON BETWEEN THE SPE AND THE ADMINISTRATIVE AUTHORITIES

17.66 The need for a close liaison and cooperation between the Chief Vigilance Officer/Vigilance Officer of the Ministry/Department/Office and the SPE during the course of an inquiry and investigation and processing of individual cases, hardly needs to be emphasized. Both the SPE and the Chief Vigilance Officers receive information about the activities of the Officers of various Ministries/Departments/ Offices, from diverse sources. As far as possible, the information should be cross-checked at appropriate intervals to keep the Officers of both the wings fully apprised of the latest development.

17.67 At New Delhi, the Chief Vigilance Officers, or Vigilance Officers of the Ministry/Departments/Offices should keep themselves in touch with the Joint Director/DIG of the SPE and in other places, the Regional DIG/SP of the SPE Branch will frequently call on the Head of the Department, Office, etc. and discuss personally matters of mutual interest particularly those arising from the enquiries and investigation.
