

The Committee constituted by the Commission under the Chairmanship of Shri Arvind Pande, Ex-Chairman, SAIL, has submitted its report on 22nd June, 2004. Extracts from the report are reproduced below

INTRODUCTION

1.1 Background:

- 1.1.1 There are nearly 240 Central Public Sector Enterprises (PSEs) which are making significant contribution to the growth and competitiveness of Indian economy in the contemporary context. PSEs have been nurseries of technology and expertise, both managerial and technical. In the areas of agriculture, defence, space research, nuclear programme, heavy engineering, infrastructure building, the government and government sector have built the strength of the nation. Besides driving the key segments of the economy, PSEs have begun to excite stock markets. Surveys have revealed that unlisted companies have outdone the performance of listed companies during the last year and the PSEs are in the lead among the unlisted companies in terms of profit and sales. While fulfilling their role effectively as builders of infrastructure, agents of socio-economic growth and change, creators of employment opportunities and social benefits, these PSEs have re-invented themselves in the market-oriented scenario with tremendous success.
- 1.1.2 The current business environment calls for speedy decision making amid a welter of factors and changes induced by globalization, liberalization, technology and continuously increasing competition. Public Sector Enterprises are also being evaluated as commercial entities expected to maximize returns on investment. Management of these PSEs are expected to take business decisions in a dynamic scenario with all the attendant risks.
- 1.1.3 It was felt that there is need to empower these PSEs by providing mechanisms which would enable speedier decision making in a changing business environment with all the inherent risks. In this context it was felt that certain impediments in areas like vigilance need to be removed for effective performance by PSEs. Fear of vigilance reportedly deters the PSE management from taking bonafide decisions. In an environment of competition, uncertainty and change, business decisions carry elements of in-built risks. In case the decision is proved wrong due to changes in assumptions and conditions PSE management remains in the fear of being taken to task. At the same time, it is probable that such fear is sometimes over stated and used as a ruse for inaction, delayed action, and omissions for which there may be little deterrence. It is evident that the number of cases are not so very many that should evoke such a widespread fear. Yet, the reality is that all employees perceive the current vigilance structure and process as instilling a fear that results in potential inefficiencies, higher transaction costs, and sacrifice of competitiveness among PSEs.
- 1.1.4 Taking into cognizance the widespread belief as also the note from the SCOPE, the Central Vigilance Commission (CVC) constituted a committee to

study the working of the vigilance administration and give recommendations as appropriate. The scope of the committee has been stated broadly as “to study the working of the vigilance administration in PSEs specially the large PSEs including navratna companies and thereafter evolve systems and procedures which would empower these PSEs to strengthen their own internal vigilance structure and deal with vigilance issues on their own under the guidance and review of the CVC.”

- 1.1.5 The scope or the terms of reference as stated above implies that the committee examines not only the critical systems within the PSEs but also the current system in the CVC for exercising its superintendence over the PSEs. Though the scope has been provided for evolving systems and procedures, the committee agreed to evolve recommendations for the consideration of the CVC and the PSEs. Detailed procedures may be devised by the CVC and the respective PSEs, after the recommendations have been agreed upon.

1.2 Methodology:

- 1.2.1 The committee evolved a methodology that would broadly suit the time frame, as well as the objectives of the study. The committee realizes that the issues under reference do not form part of any known theoretical frame or best practice standards. Consequently, the committee adopted an elaborate and inclusive process by which data and unstructured responses can be collected from the CMDs and CVOs of a variety of Public Sector Enterprises, and from Secretaries of administrative ministries. At the same time, this process is expected to give a sense of participation, involvement, and lay the foundation for eventual ownership of the recommendations, to facilitate easy implementation. The committee also elicited responses from the public at large by inviting suggestions through the web as also by post.
- 1.2.2 The Committee held two Workshops, one in Delhi and one in Bangalore, which were attended by nearly 45 CEOs/representatives of CEOs. Presentations were made by seven CEOs. The Committee also met CVOs of some leading PSEs and obtained valuable inputs from them. The Public Sector Enterprises being under the control of various Ministries/Departments, the Committee felt that it would be useful to have interactions with the Secretaries of such Ministries/Departments. A meeting with Secretaries/representatives of Coal, Steel, Mines, Power, Telecom, Petroleum and Department of Personnel was held wherein important issues like the definition of what constitutes vigilance, role of the CVOs vis-à-vis CVO of the Ministry, appointment of CVOs and how to strengthen the internal vigilance administration in PSEs etc were discussed. Subsequently, some of the CVOs of organizations, which had taken some notable initiatives/steps to strengthen their vigilance administration and had experienced critical challenges made presentations before the Committee. Lastly, the Commission had a final meeting with a few Heads of PSEs and the Chairman, PESB.
- 1.2.3 The committee has analyzed these responses, presentations, and suggestions and brainstormed them, drawing upon the members' knowledge,

experience, and process mapping. The committee believes that quantitative analysis of responses will be of little meaning in a study of this nature as it is not a survey. Indirect validation is necessary using the criteria of alignment with public policy goals and internal consistency in structures and processes that can contribute to an improved system of vigilance administration. Thus, judgment and logic have been the key applications in processing the information and data and arriving at the recommendations.

- 1.2.4 Though the terms of reference focus on the vigilance administration in the PSEs, it is obvious that the role of CVC also will need to be reviewed in the limited context of the framework and system it provides for guidance, and superintendence over the PSEs. The discussion and analysis in respect of the CVC must be viewed in this context. This approach was indeed encouraged by the Central Vigilance Commissioner and the Vigilance Commissioners.

3.3 Discussion & Critique

- 3.3.1 It is apparent that the CVC has been established to pursue a critical role in the governance of the country. Its role assumes great importance for two interconnected reasons. Firstly, the incidence of corruption and the overall perception of the international community on the levels of corruption in India which can influence the financial strength and valuations of PSEs also. It is increasingly evident that the low ranking in Transparency International and such other surveys become a direct input for the investors. In a world where finance flows are attracted by good institutional mechanisms, high integrity, property rights, legal enforcement, etc. CVC has an important role to ensure that the overall culture, structures, systems, are enhanced so that they improve the perceptions in the international investing community and actually reduce the scope for corruption.
- 3.3.2 Secondly, CVC's role assumes importance in our country due to the scarcity of resources and the need for getting better value for every rupee spent by the government. Scarcity of resources implies that any type of inefficiency will only marginalize further the poor and the deprived whose progress will depend on high efficiency of public assets, robustness and integrity in public expenditure. CVC's effective overview in the case of PSEs should be structured to ensure probity and integrity without sacrificing efficiency – this indeed is the essence of this study.
- 3.3.3 There is no standard for exercising superintendence or vigil over public assets and their governance. There is insufficient knowledge in the public domain to evolve standards, techniques, and tools that can be employed for exercising an optimal superintendence that does not trade-off one objective with the other. Unlike professional bodies for capital markets, chartered accountancy, or quality, CVC has little to go by as universally accepted framework, policy, or best practices. Nevertheless, the powers and functions conceptualized by the government are not only comprehensive but indicative of a mixed role comprising of advisory and standard setting on the one hand, and assisting in routine administrative transactions on the other.

- 3.3.4 Considering the vastness of our country, newer technologies being employed and the velocity of transactions, the CVC would probably face challenges in systematizing its superintendence. It is possible that the limited staff and limited exposure would force the domination of a reactive approach of processing the complaints received, selection of CVOs, liaison with the CBI and the ministry, inspections by the CTE wing and the like. While these contribute to checking delinquency amongst the employees out of fear, they may not necessarily contribute to improvement in the system. In such an atmosphere, the gaps in structures and systems are liable to be exploited and punitive actions may be exceptional in comparison with the perceptions of the massive incidence of delinquency. The “strike rate” of cases to separation (209 out of 8042 and to penalties of all types 3499 to 8042 with roughly 4500 getting exonerated after the due process) appears to validate, albeit indirectly, the feeling among employees of an atmosphere of persecution.
- 3.3.5 A more sustainable system and an effective method of supervision is necessary under these circumstances. An approach for the CVC’s PSU wing is to become a high powered body that can set standards, evaluate and assess adherence to these standards, introduce rating systems and announce the same, establish benchmarking within the country and in collaboration with other countries and build capacity in the entire public sector system to upgrade the quality of the structures, systems, and processes in vigilance administration.
- 3.3.6 Thus, the CVC’s PSE wing may consider repositioning itself and change its relative emphasis from those related to transactions and punitive work to those which are related to capacity building, systems improvement, and the like. This repositioning calls for a new vision and new competencies amongst the existing team including international exposure to the manner in which probity, integrity, and efficiency is being ensured in the public systems. This also calls for new competencies in understanding process flows, standard setting, preparation of best practice manuals, assessment, evaluation, rating, etc.
- 3.3.7 In some ways, it would be appropriate for the CVC’s PSE wing to examine the structures and processes involved in quality certification, system audit, risk assessment matrices, and the like. This approach entails substantial research, and validation to bring forth the structures, systems and processes, which will ensure proper vigilance administration in the PSEs. Following this, it may need to build capacity and work with the PSEs to implement the model in the organization and subsequently audit its functioning. Such an approach will synergize better with the modern day requirements of risk management, security management, and financial controls and compliance. Such a move will add value to the competitiveness of the enterprise apart from promoting probity and integrity amongst public officials. It would indeed support and promote corporate governance.
- 3.3.8 It appears from the interactions, that the CVC has indeed recognized this to some extent and has been attempting at promoting the preventive aspects of vigilance than punitive action alone. It is in this context that the CVC, amidst

several constraints, has tried to promote a culture of honesty, transparency, and speedy disposal of complaints and enquiries. For example, it had recommended a change in the tendering process banning post tender negotiations except in the case of L-1. Similarly, the CTE had brought out instances of poor project proposals, irregularities in appointment of consultants, incorrect estimations, unrealistic assumptions, change in specifications, etc. They brought out material for the information of various PSEs. The CTE estimates that based on its inputs, the government and the PSEs were able to recover an amount of Rs. 20.64 crores in 2003, and estimates that there is potential to save thousands of crores if the organizations improved the total quality of works and contracts. While this direction is laudable, far greater depth and change may be required which can only arise from a repositioning exercise.

3.3.9 The above may not absolve the CVC of its role to receive complaints, and process them. They may continue to be processed with some changes. One possible change is in the coverage of employees within the PSE. Currently, the CVC covers directors and two levels below. There have been suggestions that the jurisdiction be restricted to director and one level below director. There is, however, no difference between the types of companies. Consequently, a director in a Schedule-D company will probably be equivalent to the second level, below the Board in a Schedule-A company. Thus, some rationalization may be warranted to ensure that there is parity in superintendence over a similar class of public servants than go by designations or categorizations that are specific to the company. It has been suggested that all employees in E-8, E-9, and Board level directors are covered by the CVC's direct jurisdiction.

Pay Scales of Board Level Employees

Schedule	Pay Scale
A (Director)	27750-750-31500
B (Director)	25750-650-30950
C (Director)	22500-600-27300
D (Director)	20500-500-25000
E-9 (Executive)	23750-600-28550
E-8 (Executive)	20500-500-26500

However, some exceptions must be progressively made in the case of select *navratnas*. Such exceptions would be to restrict the jurisdiction to the director level only if the internal systems, controls, and procedures meet the preset standards evolved by the CVC and their audit of the same. This implies that empowerment should be earned as otherwise it might result in abdication than empowerment.

3.3.10 Some Chief Executives have wondered whether the CVO system and the CVC's superintendence should be removed, as the private sector does not have such a structure. While this may have an intuitive appeal, the answer lies in the realm of public policy and more importantly, corporate governance. In the case of private sector, the shareholders are expected to be active and

put pressure on the company's management and make them accountable. The theory of "contestability" applies here without fetters of Article 12 of the Constitution. Thus, the dominant owners and the other shareholders actively control the firm. If the management is corrupt or one major shareholder colludes with the management to siphon out money, the rest of the shareholders are expected to exert vigil or lose their private money if they refrain from activism. In the case of the public enterprises, the majority owner is the government, which has invested public money and hence is accountable to the parliament for the prudent management of the public assets. Having said that, the CVO system and CVC's superintendence can be scrapped if the provision on government companies in the Companies Act is removed, other laws amended and the Supreme Court is prepared to retract from its stand that public enterprises are instruments of State policy that are covered by Article 12 of the Constitution as well. Even so, some agent has to represent the dominant principal, the Government in this case. Whether such agent should be the Minister, Parliamentary Committee or a Special Purpose Vehicle? The desirability of such a new system vis-à-vis the current move in the context of public policy is another subject.

3.3.11 It is gathered that most (about 59%) complaints received by the commission are either anonymous or pseudonymous. Despite the specific instructions issued in 1999 that no action should at all be taken on any such complaints the commission continues to receive several of these. The CVC had observed that most of these complaints appear to be aimed at preventing a public servant's promotion. Where an executive is being called for an interview by the Public Enterprises Selection Board (PESB), the objective appears to be that of delaying the promotion if not necessarily denying it.

3.3.12 As anonymous and pseudonymous complaints are not being entertained, some litigants have found a way of approaching the honourable Members of Parliaments (MPs) or Members of Legislative Assemblies (MLAs) to forward what is intended to be an anonymous complaint. It is gathered that often letterheads have been misused, forged, or at times, the facts misrepresented to the honourable MP or MLA. Consequently, the public representatives themselves appear to be victimized by some of the litigants whose main motive may be to block some one's promotion or interview than to protect public interest. These are far from whistle blowing. The honourable MPs or MLAs often find themselves embarrassed when authentication is sought. It is obvious that in the absence of the original complainant, the honourable MP and MLA himself/herself becomes the complainant. Statistics reveal that nearly 7.6 percent of the complaints contain sufficient information while 56.3 percent of the complaints contain vague and unverifiable allegations.

3.3.13 It appears that false accusations and complaints by an individual have not been adequately pursued to create sufficient deterrence. It is appropriate to note that Section 182 IPC provides for prosecution of a person making a false complaint. The Special Chapter on Vigilance Management in PSEs issued by the CVC elaborates on this point but does not recommend a firm procedure in the case of such complaints. Consequently, much harm may be done by false complaints and by misusing the good offices of the honourable MPs and

MLAs. It is advisable to create a procedure where it becomes obligatory on the part of the CVC and the company concerned to initiate proceedings Under Sec. 182 IPC and under Sec 195 (i) (e) Cr.P.C. Concurrently, it may be appropriate for the CVO to seek authentication from the honourable MPs and MLAs regarding the complaints being forwarded by them so that misused/ forged complaints are weeded out. The MPs and MLAs concerned may also find it appropriate to make the complainant put his/her name and address clearly before forwarding the same. This is to protect themselves against being treated as the original complainant in the absence of any other and attracting the penal provisions in case the complaint were found to be false, malicious, vexatious, and unfounded.

3.3.14 Presentations and discussions with various stakeholders have revealed that complaints are being made just before appointments, or promotions to the Board. It has been suggested that the Janakiraman judgment be applied in the case of Public Sector Enterprises also covering both promotions and selections. This means that promotions and appointments should not be stopped on the basis of some recent complaints after the vigilance clearance has been granted by the CVC. Only those cases where the charge sheet has been issued or a decision has been taken to issue a charge sheet against an individual or if the CBI has registered a case should the promotions and appointments be deferred.

3.3.15 On the other hand, there is a judgment of the Delhi High Court (Shri YNP Sinha Vs Union of India & Others), which disagreed with the petitioner that there should be a cut off date for the consideration of the material to hold "scrutiny of antecedents". The judgment was apparently in interpretation of a Memo of the CVC itself and not on the merits of having a cut off date. The judgment, in fact, places responsibility upon the CVC to find out if the material is genuine or planted. It may be advisable, under the circumstances, to issue a guideline/order that clearly gives a cut off date with exceptions to be exercised by the CVC should it come across compelling evidence negating the clearance given earlier. Further, as the judgment says, "scrutiny of antecedents' is a wide sweeping term, the wording must refer to specific contra-criterion, in the fresh order, the CVC may consider issuing.

3.3.16 Currently, vigilance clearance for Board appointments involves a long drawn and complex process. There have been suggestions that this be simplified, especially in the case of employees in PSEs. The concerned CVO may be called upon to verify the records, make enquiries and furnish the assessment without countrywide scrutiny through various CBI offices. Some have even suggested a time limit of the past 10 years if there are no known cases/ charges against him/her in the company records.

3.3.17 There has been substantial debate on what constitutes a vigilance angle. The definition appears to be critical for initiating a case or entertaining a complaint. While the public does not have much argument about criminality, irregularity, etc., there has been discomfort on some of the categories of lapses. Consequent to the representations made, the CVC has very recently amended the definition to read as follows:

- “i. Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.*
- ii. Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he was or likely to have official dealings or his subordinates have official dealings or where he can exert influence.*
- iii. Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.*
- iv. Possession of assets disproportionate to his known sources of income.*
- v. Cases of misappropriation, forgery or cheating or other similar criminal offences.”*

3.3.18 While this change in definition may bring comfort to the officers concerned that professional *bona fide* decisions under the conditions prevailing at that time will not be pursued, there is also a danger of a moral hazard. The very absence of checks on application of due care and diligence may attract laxity, negligence, and recklessness apart from potential corruption that will be hard to discover. Thus, to bring about comfort to some honest officers who may be prevented from taking appropriate risks necessary for the company, there is indeed a danger of providing a safety net for a large number of potential delinquents. The answer obviously is not simple, particularly as there is a great amount of emotion than fact buttressing the case for softening the definition. International experience indicates that most countries have deterrents for recklessness, negligence, and poor value-for-money for all public servants. The difference, however, is that most of such state-owned enterprises may not necessarily be competing along with the private enterprises.

3.3.19 It may be argued that the new definition by implication permits recklessness, gross or willful negligence, violation of systems and procedures, and misapplication of laid down professional codes and standards so long as the integrity of the officer is not in doubt. (To gauge the gravity of this issue, one may imagine a surgeon deviating from standard practice in an eye surgery; or recklessness that leads to accidental death of colleagues or leakage of information that sets the stock prices afire). This definition may indeed provoke irregularities as long as the evidence of personal gain can be covered up.

3.3.20 If the intention is to let officers become proactive so as to take reasonable risk in the course of their functioning, the test should be whether the conditions at the time of decision-making called for such a deviation. It is possible to argue that deviations from the normal procedures and loss arising from negligence,

recklessness, misapplication of codes and standards must not be overlooked but must be explained, reasoned out by the concerned and where necessary, supported by specialists.

3.3.21 To ensure that bonafide decisions and frivolous complaints are not inquired into and thereby affect morale of the officials of the organization, it would be necessary to screen the complaints against the officials before these are inquired into. There could be two committees, namely,

- (a) An Advisory Board to CVC comprising of some professionals which would examine and advise on serious and complicated complaints received against the Board level officials and Chairman of PSEs.
- (b) A Sub-Committee of the Board to screen complaints against all other officials of PSEs.

3.3.22 Currently, the CVC gives its views, advice, and recommendations in individual cases at different stages. There have been suggestions that considering the experience of the CVO and the company and that most such cases may indeed be supported by precedents and examples, the CVC's advice may be simplified to be rendered in one go either in the beginning or towards the end. Further, many have suggested that considering the stature and standing of the CVC it might be appropriate if it refrained from giving advice of a minor nature such as withholding of gratuity which is best left to the disciplinary authority.

3.3.23 In this context, the annual reports indicate several instances where the advice rendered has not been accepted by the company concerned. Some of them appear fairly routine and are not of a systemic nature. However, some are of serious nature and may deserve distinction as directives than advice. As per the existing Act, CVC is only an advisory body and the Central Government and the Corporations established by or under any Central Act, Government Companies etc as the case may be shall consider the advice of the Commission and take appropriate action. However, where the Central Government, any Corporation established by or under any Central Act, Government Companies etc does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission. It was felt that the CVC should be empowered to take to task those who do not implement the advice or recommendation to rectify blatant or apparent misdeed. An amendment to the existing CVC Act is needed in this regard.

3.3.24 Though just a few in number, there has been some mention of vigilance cases being initiated against an individual just prior to his or her retirement and continuing such proceedings long after they had retired. The suggestion has been that no vigilance case should be opened against the person immediately prior to the retirement. Similarly, disciplinary cases should not be pursued for unduly long periods. Though, criminal acts will not be bound by such limitations, it is appropriate to have a norm by which all other types of

investigations and verifications are completed well before an officer is due to retire. Should a disciplinary action be continued, the same should be closed within a period of say one year. Though, the Prevention of Corruption Act is not limited by time, the CVC should adopt and advise a norm that no action be normally initiated against such officers after three years of his/her retirement. The exception of course could be composite or criminal cases.

- 3.3.25 It is understood that no sanction is required from the government for prosecution of a retired public servant in terms of Section 19 of the PC Act, 1988. However, such a sanction is required in the case of charges under the Code of Criminal Procedure, 1973 or a composite case. Several have suggested that employees of the PSEs who are equivalent in rank to that of the designated public servants or all Board level employees may also be covered for purposes of seeking prior sanction from the ministry. This stands to reason as PSEs are being treated as government and its employees as public servants for all legal purposes.
- 3.3.26 The CVC exercises its superintendence over the PSEs both from its offices as well as through the system of the CVOs at the respective organizations. The CVO is functionally responsible to the CVC. He is expected to be administratively responsible to the CMD. Our interactions have indicated some degree of tension in some organizations between the CVO and the management. There was a feeling that personality issues dominate in the relationships. There have been, at the same time, several examples of close liaison with the CMD and a high degree of integration, which probably could be the other extreme and tending to be less desirable. CVOs are currently appointed by the DOPT from its cadre of central service officers. The current procedure entails selection of officers who are merely approved by the Commission. There are no specific criteria or guidelines in selecting the CVOs. The most important criterion appears to be the willingness and need of the individual concerned than that of the organization per se. There are no competency criteria except for the knowledge of the broad procedures involved in the government.
- 3.3.27 If the CVC has to fulfill its goals of promoting probity, integrity, and transparency and reducing corruption in PSEs, it may have to take good charge of its human resources and the connected processes. For instance, CVOs have mentioned of the inadequacy of the one-week training that they receive. It should be able to develop the competencies of the CVOs and other staff required to discharge the functions in the modern environment. Such competence may indeed include adequate knowledge of management audit, decision making processes, domain issues of particular industries, good knowledge of financial analysis and transactions, risk management, control systems, etc. It will also include the ability to coordinate and align with security systems, CAG, external auditors, and internal auditors. Where necessary, the CVC must be able to design an appropriate training programme and internship to develop such competencies amongst the willing cadre. It is possible to pool, train, develop, and certify a cadre of CVOs. It may be appropriate to have a selection process with the involvement of the CVC and arising from a large list of people suggested by the DOPT. The CVC may also

be in a position to advertise and induct candidates from other services including the PSEs. There have been suggestions that employees being rendered surplus due to rationalization and downsizing may also be a potential source for competent staff.

3.3.28 It is being suggested that the CVO in the ministry should also be restricting his/her scope to that of the Board of directors. He may correspond with the CVOs in the PSEs but all such correspondence must keep the CVC in the loop. It has been suggested that the CVO in the ministry should assume a supportive and advisory role and not that of a directive one. The CVO should be an effective intermediary and facilitator among the ministry, the CVC, and the PSEs concerned. Currently, there appears to be some need for role clarity of the CVO in the ministry.

3.3.29 The technology and new markets as well as newer products, instruments, and services have brought about a sea change in the range of transactions, and their quality. The Public Sector Enterprises are having to use electronic supply management chain, customer relations management, ERP, intra and extra net that change the quality, response times, and the conditions of transactions and decisions. Further, consequent to the liberalization and globalization, the sourcing of the raw material, providers of services and target market segments have also undergone massive changes. Newer markets are being discovered constantly and competitive actions demand speedy responses, and often electronically. There are newer instruments in the financial markets including those of risk management, hedging, and insurance. New circumstances and newer legal implications and complications arise in this context. These require special knowledge and domain expertise to be able to judge whether a particular complaint or event could be investigated further. Such expertise will also be required throughout the cycle of dealing with the complaint at different stages. It is obvious that one department or an organization such as the CVC will not have this information, knowledge, or expertise in all conditions and for all times to come. CVC may need support from external expertise, which can assist it at different stages. It is gathered that in the case of banking the CVC has set up an advisory board. Such an advisory group/panel should be in a position to apply its best knowledge and judgment that would be required to understand the circumstances, assumptions, and implications of various actions, complaints and their processing.

3.3.30 Several employees of the PSEs have suffered unduly for long lengths of time only to be exonerated. Further, several cases have been unnecessarily dragged without reason. There have been reports of undue pressure from some public leaders on the PSEs. It may be appropriate to have a wing of Ombudsman within the CVC system to take cognizance of such issues and also provide a comprehensive help desk. The CVC may examine whether some part of the whistle blower protection system can be combined with the Ombudsman's responsibility specifically for the PSE segment.

3.3.31 Concerns were expressed by many Heads of PSEs on the existing suspension procedures. Though suspension is purely an administrative

decision, the stigma attached with suspension is very serious and has been used by the disciplinary authorities to harass individuals. The Committee suggests that in case of Board level officials, the concerned Ministry should obtain concurrence of the Advisory Committee as suggested herein before suspending. Similarly, for all other employees, the concurrence of the Board's Sub-Committee should be obtained before suspending.

Recommendations

- 5.1** It is recommended that the CVC considers a repositioning exercise as far as the PSEs are concerned to create a high-powered wing that can set standards, evaluate, and assist adherence to these standards, introduce rating systems and announce the same, establish benchmarking within the country and in collaboration with other countries, and build capacity in the entire PSE system to upgrade the quality of their structures, systems, and processes in vigilance administration.
- 5.2** It is recommended that the CVC and the PSEs adopt an approach of capacity building that can integrate better with the modern day requirements of risk management, security management, and financial controls and compliance. This effort will add discernable value to the competitiveness of the enterprise apart from promoting probity, and integrity amongst public officials and supporting, synergizing and fostering corporate governance.
- 5.3** It is recommended that the CVC expands and intensifies its proactive role and achieves even greater depth and coverage.
- 5.4** It is recommended that the coverage of CVC's jurisdiction be restricted to E-8, E-9, and directors of all companies. This will ensure parity going by the pay scales of Schedule-D companies' directors and the E-8. However, the CVC may make specific exemptions in the case of select *navaratnas*, which have in place internal systems, controls, and procedures that would demonstrably meet the preset standards evolved by the CVC. In case of such exceptions, the CVC's jurisdiction may be restricted to the director level only. However, it is recommended that this empowerment should be earned by the respective organizations by meeting quality standards and subject to withdrawal should the systems fall short of the standards in future.
- 5.5** It is recommended that anonymous and pseudonymous complaints forwarded by honourable MPs or MLAs should be authenticated by the concerned CVO or official. Where the complainant is identifiable suggest to the MP or MLA concerned to obtain his/her signature and name in their own interest, failing which the case may be proceeded as if the honourable MP or MLA is the complainant.
- 5.6** It is recommended that the CVC gives firm guidelines to the companies to initiate proceedings under the relevant sections of the IPC and the

CrPC in all cases of false, malicious, vexatious, and unfounded complaints that may have delayed strategic decisions.

- 5.7 It is recommended that the CVC amends and issues a fresh order to ensure that specific elements are stated under “scrutiny of antecedents” and state clearly that no fresh complaints will be entertained after the vigilance clearance has been given for Board interviews/appointments unless a specific charge sheet has been issued.
- 5.8 It is recommended that the vigilance clearance is simplified in the case of PSE employees aspiring for Board appointments. The CVO concerned should be empowered to verify the records, make enquiries, and furnish the assessment without countrywide scrutiny through various CBI offices. Unless otherwise required for any apprehended reason, it is recommended that a period of 5 years should be the time span for verification.
- 5.9 It is recommended that the order dated 23-04-04 on the definition of vigilance angle is further amended in the case of PSEs considering the following suggestion:

“Vigilance angle is obvious in the following acts:

- (i) Demanding and/or accepting gratification or offering and/or giving gratification other than legal remuneration in respect of an official act or for using his influence with any other official.*
- (i) Obtaining a property, movable or immovable, whose value is beyond the company’s norm, without consideration or with inadequate consideration from a person or an organization with whom he/she has or likely to have official dealings or his/her subordinates have official dealings or for whose benefit he/she can exert influence over decisions.*
- (ii) Obtaining for himself/herself or for any other person any valuable object or property or pecuniary advantage by corrupt or illegal means or by abusing his/her position as a public servant.*
- (iii) Possession of assets disproportionate to his/her declared and known sources of inheritance and income.*
- (iv) Misappropriation, forgery, or cheating or other offences that attract the provisions of CrPC/IPC.*

Gross or willful negligence, reckless decision making; blatant violation of systems and procedures; misapplication or non-application of laid down professional codes/standards; exercise of discretion without appropriate reasoning of the exigencies or the public interest; attempts to conceal information on major exceptions, deviations, omissions and commissions, are some of the acts where the disciplinary authority with

the help of the CVO and wherever necessary, the Board's, Sub-Committee/advisory panel, which should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

If the integrity is not in doubt but the act amounts to a misconduct or indiscipline, the same must be dealt with appropriately as per the disciplinary procedures of the company.”

- 5.10 It is recommended that the CVC gives its views, advice, and recommendations in one go and more selectively rather than at different stages of several cases. It is recommended that the CVC refrains from giving advice of a minor nature leaving it to the disciplinary authority concerned.
- 5.11 It is recommended that the CVC makes a difference between the advice that is left to the Ministry/company to follow or otherwise and directives that must be followed – some cases indicate that Ministries/Companies have ignored major suggestions from the CVC with impunity and hence such a distinction would be appropriate for further action. CVC has judicial as well as administrative domains. Some of the recommendations made by the Commission come within the judicial domain and hence have to be considered as a view of the judiciary. Accordingly it is suggested that necessary amendments to the CVC Act are called for to ensure that the recommendations of the CVC in such cases are followed without fail, with an appropriate appellate authority.
- 5.12 It is recommended that no vigilance case be initiated against any individual just prior to the retirement and those in progress must be closed within a year's time. The CVC may also give a general guidance that no action under PC Act be initiated against officers after two years of his/her retirement.
- 5.13 It is recommended that the employees of the PSEs who are equivalent in rank to that of the designated public servants for seeking prior sanction from the ministry before initiating prosecution, be treated on par with the latter as PSEs are treated as government and its employees as public servants.
- 5.14 It is recommended that the CVC develops scientific criteria for the selection of CVOs that match the competency requirements.
- 5.15 It is recommended that the CVOs are trained longer and more frequently and given adequate knowledge of management audit, decision making processes, domain issues of particular industries, good knowledge of financial analysis and transaction, risk management, control systems, ability to coordinate with other functions, etc.

- 5.16** It is recommended that CVC takes charge of the human resource pool of CVOs by selecting people from other sources also than merely the list suggested by the DOPT.
- 5.17** It is recommended that the role of the CVO in the ministry is further elaborated and clarified to make the position an effective intermediary and facilitator among the ministry, the CVC, and the PSEs concerned.
- 5.18** It is recommended that an advisory group/panel is instituted to assist CVC in applying specialist and technical knowledge in understanding the circumstances, assumptions, and implications of various actions, complaints and their processing.
- 5.19** It is recommended that CVC has an Ombudsman and a help desk system to take up grievances of employees who may be unduly harassed by prolonged cases or by public leaders; it may examine whether the whistle blower protection system can be combined with this role designated for the PSE segment.
- 5.20** It is recommended that PSEs have a mix of internal and external staff in their vigilance departments. The CVOs themselves can be external. The CVC may consider promoting a database of human resources on sectoral as well as functional basis that can be used for filling vacancies in various organizations.
- 5.21** It is recommended that the CVC designs a training and certification system that can be a criteria for placement into the vigilance system.
- 5.22** It is recommended that the CVC keeps close watch over organizations, which have poor organizational designs for vigilance, inadequate staffing or prolonged ad hoc mechanisms, and intervenes proactively.
- 5.23** It is recommended that where there are subsidiary companies, the vigilance of these must be under the vigilance administration of the holding company and need not have direct interface with the CVC.
- 5.24** The CVC may consider developing an expert group within its system, full-time or as a panel to assist PSEs in designing and implementing appropriate vigilance structures, systems, and standards.
- 5.25** It is recommended that the CVC develops ideal/best practice manuals for vigilance recognizing the factors behind the success of vigilance departments in some of the companies. The CVC must consider occupying the current vacuum in devising standards, best practice manuals, developing human resources, and building capacity amongst the public enterprises to enable them meet CVC's objectives of promoting probity, integrity, transparency, and efficiency in the management of public assets.

- 5.26** It is recommended that the CVC exercises restraint in issuing circulars so that the PSEs apply themselves more comprehensively and innovatively than adhering to a few of these circulars as they do not cover all aspects of vigilance.
- 5.27** It is recommended that the CVC adopts a plan to develop principles of vigilance and a structure/framework of best practices; ensures that each PSE has a comprehensive manual; undertakes vigilance audit, rating, ranking, and benchmarking, and evolves a system of evaluation and assessment based on strategic criteria than mere statistics.
- 5.28** It is recommended that a Board Sub-Committee supports the vigilance function at the enterprise level with special invitees as necessary to examine and render advice in cases which need judgment and technical knowledge of a high order.
- 5.29** It is recommended that in case of Board level officials, before they are suspended, the Ministry should obtain concurrence of the Advisory Committee as suggested in para 3.3.30 and in case of other officials, the Board Sub-Committee's concurrence should be obtained before suspending any officials.