

CHAPTER V

PROCESSING OF VIGILANCE CASES IN RAILWAY BOARD

- 501.** This chapter deals with the processing and disposal of reports and gives an over view of the stages through which a report is processed.
- 502.** In cases where allegations were investigated against non gazetted officials, at the behest of Board, the final disposal of the report vis-à-vis action to be initiated or closure will be at the level of the concerned Executive Director. Where, however, the case is dealt by a Joint Director or Director who reports directly to Additional Member Vigilance, the final decision on such cases will be taken by Additional Member (Vigilance).
- 503.** The level of initial examination, channel of submission and level of final disposal of reports in respect of gazetted officers dealt with in Board's office is as under:-

	<u>Nature of case</u>	<u>Channel of submission</u>	<u>Level of final disposal</u>
1.	Cases against Gr.B Officers where GM's views are acceptable or a more lenient view is taken.	DDV/JDV/DV & EDV	Addl.Member (Vig.)
2.	Cases against Gr.B Officers where GM's views are not acceptable and a more serious view is taken.	DDV/JDV/DV, EDV & Addl. Member (Vig.)	Concerned Board Member
3.	Cases against gazetted Officers found fit for closure.	DDV/JDV/DV & EDV	Addl. Member (Vig.)
4.	Cases involving Gr.A officers where action has been proposed.	DDV/JDV/EDV and Addl. Member (Vig.)	Concerned Board Member

The above channels of submission are equally applicable in the case of investigations/checks conducted by the Board's Vigilance.

- 504.** After the report is considered as per the above channel of submission and a course of action has been decided upon, the case is required to be referred to the Central

Vigilance Commission for its first stage advice. The following are the exceptions to this provision, and in these cases the case need not be referred to the CVC for advice -

- (a) Preventive check cases where no irregularity has been observed and no action is recommended against any Group 'A' officer.
- (b) Cases where the highest level of officer against whom action is recommended is Asstt. Scale Group 'B' and there is no difference of opinion between DA & CVO

505. Hitherto, all cases of Gazetted Officers were required to be referred to the CVC for advice. However, considering their own workload, the CVC, in their letter No.98/VGL/15 dated 16.4.2004 (office order No.26/4/04) delegated the powers for decision in regard to Group B officers to the CVOs of various Ministries/Departments. The salient features of the Commission's Office order, circulated under Board's letter No. 2004/V-I/CVC/1/11 dated 13-5-2004 are as follows:-

- (a) Only cases of officers of the level of Group A and above of the Central Government and Members of the All India Services in connection with the affairs of the Union may be referred to the CVC for advice.
- (b) CVC's advice would, however, be necessary in respect of all officers, irrespective of their level, if they are involved in the same matter in which an officer of the level of Group A or above is involved.
- (c) CVC's advice would also be necessary in cases of difference of opinion between the disciplinary authority and the CVO with regard to the action to be taken against officers who are not within the jurisdiction of the Commission, if these differences cannot be resolved with the intervention of the Secretary of the Ministry or Heads of Department.
- (d) In cases of officers below Group A, in which the Commission has tendered its first stage advice before the issue of these instructions, the matter need not be referred to it for second stage advice if, on conclusion of disciplinary proceedings, the disciplinary authority proposes to impose a penalty which coincides with CVC's first stage advice, provided none of the officers involved is an officer of the All India Services or a Group A officer. The case may, however, be referred to the CVC if the disciplinary authority proposes to take action which does not coincide with the Commission's first stage advice or differs with the recommendation of the CVO with regard to the quantum of punishment.
- (e) the Commission expects that appropriate expertise would be available to the CVOs; the CVO would be in a position to exercise proper check and supervision of such cases and would ensure timely disposal within the time limits stipulated

by the Commission and that the punishment awarded is commensurate with the gravity of the offence.

- (f) in order to ensure that the Commission's expectations are fully met, the Commission may depute its officers to conduct a vigilance audit through on site visits and through the monthly reports etc. If the Commission comes across any matter which, in its opinion, has not been handled properly, it may recommend a review by the appropriate authority or may give such directions as it may consider appropriate.

506. Consequent to the above guidelines, Board issued further clarifications that cases of Group B officers in the grades Rs. 7500-12000 and Rs. 8000-13500 need not be referred to the CVC for advice (save in the circumstances envisaged in items (b), (c) and (d) of para 505). However, the cases of those Group B Officers who are officiating on adhoc basis in the Senior Scale grade of Rs.10,000-15,200 have to be referred to CVC in the same manner as cases of Group A Officers.

507. The advice of the CVC, obtained after consideration of the investigation report is commonly known as the first stage advice. The first stage advice can be for any of the following courses of action ÷ (a) closure (b) administrative action like counselling, warning, etc. (c) treating the case as not having a vigilance angle and leaving it to the department for action as deemed fit (d) initiation of formal disciplinary proceedings either under minor penalty proceedings or major penalty proceedings, depending on the gravity of the charges.

Item (c) of para 507 implies that CVC leaves it to the Board/Railway to take further action. Such action may include formal disciplinary proceedings. Such cases need not be referred at any subsequent stage to the CVC but action will be finalised by the Zonal Railways/PUs in consultation with the Board.

508. By and large, the recommendations made by the Zonal Railways and Board are agreed to by the CVC. In such cases, the CVC's advice is conveyed to the Railway/PU concerned for further necessary action. However, there may be cases where there is a difference of opinion between the Board and the CVC. In such cases, where the CVC's advice is at variance with Board's recommendations, the following two courses of action are available:-

- (a) to accept the Commission's advice with the approval of the concerned Board Member; or
- (b) refer the case back to the Commission seeking reconsideration of the advice. Such a course of action also requires the approval of the concerned Board Member and must be accompanied by detailed reasons why Commission's advice cannot be accepted and needs reconsideration.

509. Similarly, there may be cases where there is a difference of opinion between the disciplinary authority and the CVC. In such cases also, the General Manager, who is the disciplinary authority has to give detailed reasons for differing with the views of the CVC and send the case to Board for onward transmission to the Commission.
510. The Commission will tender its advice on such requests for reconsideration and may either agree and modify its advice or reiterate its earlier advice. Where the difference of opinion persists despite reconsideration, the disciplinary authority, namely, the General Manager will finally take a decision, duly recording reasons for disagreement with the CVC's advice. In such situations, the case will neither be referred to the superior authority, nor to the Department of Personnel and Training. Such cases of disagreement may be reflected in the Annual Report of the CVC, laid in the Parliament.
- 511. Procedure for obtaining CVC's first stage advice in cases relating to CBI's request for prosecution:**
- 511.1 In established cases of demand and acceptance of bribes and possession of assets disproportionate to known sources of income, the CBI, by and large, recommend that the charged official should be prosecuted. As per extant procedure, the comments on the CBI's report are to be furnished to CVC in the case of Presidential appointees, i.e. Group A officers, within one month of receipt, failing which the CVC is at liberty to furnish its advice without waiting for the comments. As soon as CBI's report is received, the comments of the Zonal Railway Vigilance, along with the General Manager's views must be obtained within a period of 15 days so that the case may be processed for reference to CVC within the specified time limit. If, due to non receipt of relevant documents from CBI, or for any other reason, it is not possible to adhere to the schedule, the CVC must be kept informed so that the Commission does not furnish its advice unilaterally.
- 511.2 On receipt of the CVC's advice, the same will be considered and a decision taken whether or not to sanction prosecution. In the event there is a disagreement between Board, the CBI and CVC, the case may be referred back to CVC for reconsideration after obtaining the approval of the concerned Board Member. Before CVC gives its reconsidered advice, it may call for a tripartite meeting to help resolve areas of disagreement. On receipt of the CVC's reconsidered advice, if disagreement still persists, the matter is referred to the Department of Personnel and Training which will submit the case to the Minister in charge of Personnel for a final decision. The sanction of prosecution is within the competence of MR.
- 511.3 In cases where CBI recommends prosecution of non Presidential appointees (Group B officers and non gazetted officials) the cases are to be processed by the competent administrative authorities and will not be referred to CVC, except in cases of disagreement, in which case the procedure as brought out in 511.2 above will be

followed. The sanction of prosecution of Group B Officers is within the competence of concerned Board Member (Secretary to the Govt. of India).

512. There may be cases where the CBI, after investigations, recommends disciplinary action only. In such cases, while the time limits for reference to CVC as laid down in para 511.1 have to be adhered to, the case will be processed as per the procedure laid down in Paras 505 to 510.

513. Reference to CVC for 2nd stage advice:

513.1 After the CVC's first stage advice is conveyed to the disciplinary authority and the appropriate disciplinary proceedings are initiated, the charged official gives his statement of defence to the disciplinary authority. On consideration of the statement of defence, the disciplinary authority may, if it is a major penalty proceeding, conclude that the official should be exonerated or may decide that the ends of justice would be met by imposing a lesser penalty and that continuance of proceedings for major penalty proceedings is not warranted. Similarly in the case of minor penalty proceedings, the disciplinary authority may decide on exoneration or a lesser penalty than envisaged by CVC. In these circumstances, the case along with the disciplinary authority's detailed note giving reasons for his decision (which is treated as a provisional decision) and detailed vigilance comments as to whether vigilance agrees or disagrees with the disciplinary authority, must be sent to Board for obtaining the advice of the CVC. Further proceedings thereafter will be as laid down in para 510.

513.2 In the normal course, the question of obtaining CVC's second stage advice arises, in case of major penalty proceedings, after the disciplinary proceedings are completed and the Inquiry Officer concerned has submitted his report. The Inquiry report and proceedings are referred to Board along with vigilance comments on the findings of the IO and the provisional views of the General Manager/disciplinary authority as to the quantum of penalty proposed. The case will be referred to the Commission for advice and on receipt thereof, will be dealt with as laid down in Para 510.

513.3 It is reiterated that instructions relating to second stage apply in all cases where the CVC has given its first stage advice. In composite cases, involving non gazetted officials also, the cases have to be referred to the Commission for second stage advice and it will not be proper for the concerned disciplinary authority to impose penalty without consulting Zonal Vigilance, who will send the case to Board for obtaining CVC's second stage advice.

514. Imposition of penalties:

514.1 The General Manager's powers for imposition of a penalty are enumerated in Schedule III to the Railway Servants (Discipline and Appeal) Rules, 1968. In disciplinary cases where the General Manager on consideration of the case, comes to the conclusion that

the facts of the case merit imposition of a penalty that is not within his competence, he will give detailed reasons for his conclusions in the form of a Speaking Order and will refer the papers to Board for further action. The Board will thereafter consider the case and impose the penalty if the same is within its competence. In case of Group 'A' officer, the power to impose major penalties (other than dismissal, removal and compulsory retirement) and all minor penalties rests with concerned Board Members.

514.2 In the case of Group A officers, the power to impose a stiff major penalty rests only with the President. In all such cases, the disciplinary case file is submitted to the Minister for Railways, to pass provisional orders, on behalf of the President. The case is, thereafter, referred to the UPSC for advice, along with all relevant records.

514.3 The UPSC furnish their advice considering not only the merits of the case but also adherence to rules/procedures. The UPSC's advice when received, is submitted to the Minister for Railways for acceptance. If the advice is accepted, final orders are issued on behalf of the President and a copy of UPSC's advice is furnished to the charged officer along with the penalty orders.

514.4 In case there is disagreement in the context of UPSC's advice, the case can be sent once for reconsideration. In the event disagreement persists after reconsideration, the case has to be referred to the Department of Personnel and Training, where the case is considered by the Minister in charge of Personnel for a final decision.

515. Consultation with the CVC-making available a copy of CVC's advice to the concerned official:

515.1 The issue of making available a copy of the CVC's first stage advice to the concerned employee along with a copy of the charge-sheet served upon him for his information and similarly giving a copy of the CVC's second stage advice along with the inquiry report, to give him an opportunity to represent against the IO's findings and CVC's advice, if he desires to do so, had been under consideration in consultation with the CVC. The CVC has given its considered views as under:-

515.2 The advice tendered by the CVC is just that. It is for the disciplinary authority to apply his mind independently on the facts of the case and come to a conclusion on the nature of proceedings under the relevant rules of the Organisation and later the decision on the inquiry report and the quantum of punishment. The role of the CVC is to ensure that disciplinary cases having vigilance overtones are dealt with properly in the overall interest of integrity and probity in public service. To this extent, the disciplinary action against the charged officers is not expected to be influenced by the advice from the CVC. Where, however, the disciplinary authority relies on the advice and communication from the CVC—these cases should really be exceptional—it is only fair and just that the charged official should have access to this advice in order to defend

himself properly. The over-riding concern of the CVC is with regard to satisfying the principles of natural justice. The Railways will have to take necessary action keeping in view the spirit behind this principle. It will be open to them to take a view on supplying copies of the CVC's advice on a case to case basis, ensuring always that principles of natural justice are not violated. Should this be contested by the CO, it will be for the Railways to satisfy any court that the charged officer has not been adversely affected by their decision to withhold copies of documents, including CVC's advice.

515.3 The issue of making a copy of the CVC's advice available to the charged officials may be dealt with accordingly.

List of References

1. Board's letter No. 2004/V-I/CVC/1/11 dated 13-5-2004
2. Board's letter No. 2004/V-I/CVC/1/11 dated 25-5-2004
3. Board's letter No. 2004/V-I/CVC/1/9 dated 23-4-2004
4. Board's letter No. E(O)I-2004/Misc/9(A) dated 25-10-2004
5. Board's letter No. 2001/V-I/CVC/1/2 dated 12-7-2004