

ESTIMATES COMMITTEE (1969-70)

(FOURTH LOK SABHA)

HUNDRED AND TENTH REPORT

MINISTRY OF HOME AFFAIRS

**Action taken by Government on the recommendations
contained in the Eighty-Fourth Report of the
Estimates Committee (Fourth Lok Sabha)
on the Ministry of Home Affairs—
Central Vigilance Commission**



LOK SABHA SECRETARIAT
NEW DELHI

February, 1970/Phalgun, 1891 (Saka)

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(1969-70)

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STUDY GROUP 'D'
ESTIMATES COMMITTEE
(1969-70)

CONVENER

1. Shri Nugehalli Shivappa

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3. Shri B. Anjanappa
4. Shri Dalbir Singh Choudhari
5. Shri Hem Raj
6. Shri Hukam Chand Kachwai
7. Shri M. Kamalanathan
8. Shri H. Ajmal Khan
9. Shri Masuriya Din
10. Shri Kartik Oraon
11. Shri Shashi Bhushan
12. Shri Shiv Kumar Shastri
13. Shri S. Supakar
14. Shri K. N. Tewari.

INTRODUCTION

1. The Chairman of the Estimates Committee having been authorised by the Committee to submit the Report on their behalf, present this Hundred and Tenth Report on action taken by Government on the recommendations contained in the 84th Report of the Estimates Committee (Fourth Lok Sabha) on the Ministry of Home Affairs—Central Vigilance Commission.

2. The 84th Report of the Estimates Committee was presented to the Lok Sabha on the 25th April, 1969. Replies indicating action taken on the recommendations contained in the Report were received from the Ministry on the 5th January, 1970. The replies were considered by the Study Group 'D' of the Estimates Committee 1969-70 on the 30th January, 1970.

3. The draft report was adopted by the Committee on the 23rd February, 1970.

4. The Report has been divided into the following Chapters :—

I. Report.

II. Recommendations that have been accepted by Government.

III. Recommendations which the Committee do not desire to pursue in view of Government's reply.

5. An analysis of the action taken by Government on the recommendations contained in the Eighty-fourth Report (Fourth Lok Sabha) of the Estimates Committee is given in Appendix. It would be observed therefrom that out of Thirty-three recommendations made in the 84th Report, 21 recommendations *i.e.*, 64% have been accepted by the Government. The Committee do not desire to pursue twelve recommendations *i.e.*, 36% in view of Government's reply.

M. THIRUMALA RAO,
Chairman,
Estimates Committee

NEW DELHI;
February 23, 1970
Phalguna 4, 1891(S)

CHAPTER I

REPORT

The Committee are glad to observe that the recommendations contained in the Eighty-fourth Report (Fourth Lok Sabha) on the Ministry of Home Affairs—Central Vigilance Commission, have been replied to by Government generally to the Committee's satisfaction.

CHAPTER II

RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation (Serial No. 1, Para 1.11)

The Committee feel that the Government should not have set up an important institution like the CVC enjoying the same measure of independence and autonomy as the Union Public Service Commission, by a simple executive resolution. They are unable to appreciate the argument that since a copy of the Scheme of the CVC had been laid on the Table of the Houses of Parliament in December, 1963, and it had also been referred to in the President's Address delivered to both the Houses assembled together on the 10th February, 1964, it was not necessary to approach Parliament again before the Commission was actually set up. The Committee feel that it would have been desirable to place the resolution before the Parliament.

Reply of Government

The observations of the Committee with reference to the setting up of the Central Vigilance Commission have been noted. The Lokpal and Lokayuktas Bill is already before the Parliament. With its enactment the Central Vigilance Commission is expected to merge in the statutory institutional set-up envisaged in the Bill.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-11-1969]

Recommendation (Serial No. 2, Para 1.12)

The Committee note that Government are contemplating to redesignate the Central Vigilance Commissioner as Lokayukta after the Lokpal and Lokayukta Bill, which is currently before the Parliament, becomes law and to merge the CVC into the new institution to be established under the Act. They hope that the difficulties and lacunae found in the working of the Commission will be duly taken care of in the Act.

Reply of Government

The recommendations of the Estimates Committee has been noted.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-11-1969]

Recommendation (Serial No. 4, Para 2.11)

The Committee recommend that, in order that appointment to the office of the Central Vigilance Commissioner is made after due consideration of the relative merits, Government should devise some formal procedure of consultation with persons in high authority and of eminence such as Chief Justice of India, etc. for the purpose of drawing up a panel, before names are submitted for the consideration of the Prime Minister.

Reply of Government

After the enactment of the Lokpal and Lokayuktas Bill the Central Vigilance Commission will be replaced by the new institution of Lokpal and Lokayuktas. A provision has been included in clause 3(1) of the Bill as follows :—

- “(a) the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct;
- (b) the Lokayukta or Lokayuktas shall be appointed after consultation with the Lokpal.”

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-12-1969]

Recommendation (Serial No. 5, Para 2.14)

The Committee are not convinced by the reasons given for the delay in selecting/successor to the last Central Vigilance Commissioner. The Lokpal and Lokayuktas Bill was introduced in Lok Sabha on the 9th May, 1968 and had been referred to a Joint Committee of the two Houses while the last Central Vigilance Commissioner retired on the 23rd August, 1969. It was extremely unlikely that the Bill would have become an Act by that time. They regret that the importance of initiating action in this regard well in time was not foreseen by Government due to which the work of the Commission suffered and remained at a standstill for a period of over two months during which the Commission had to function without the Commissioner.

Reply of Government

The above observations made by the Estimates Committee have been noted by the Government.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 16-12-1969]

Recommendation (Serial No. 8, Para 2.24)

With a view to avoid delays in appointment to the senior posts, the Committee would like to make the following suggestions :—

- (i) action to fill up a vacancy should be initiated by the Commission at least 6 months before it is likely to occur; and
- (ii) the process of selection should be completed at least two months in advance of the occurrence of the vacancy.

Reply of Government

The recommendation of the Estimates Committee is accepted in principle as a guideline subject to exigencies of public service as vacancies cannot always be anticipated.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 5-1-1970]

Recommendation (Serial No. 9, Para 2.39)

The Committee are not happy about the Government assigning to the CVC additional functions not specifically covered by the original Resolution setting up the Commission by mere executive decisions. They feel that if it was intended to expand the scope of functions of the CVC, the proper course would have been for the Government to issue another Resolution or amend the existing one instead of the Commission itself issuing a circular to the Ministries about its expanded functions as has been done in the present case.

Reply of Government

Observations of the Estimates Committee have been noted for future guidance.

With the enactment of the Lokpal and Lokayuktas Bill, 1968, (which has already been passed by the Lok Sabha) the Central Vigilance Commission is expected to merge in the statutory institutional set-up envisaged in the Bill. In view of this development it is not proposed to issue another Resolution amending the existing Resolution.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 5-1-1970]

Recommendation (Serial No. 11, Para 3.16)

The Committee note that Ministries/Central Bureau of Investigation have been taking a long time in sending reports of enquiry/investigation in cases referred to them by the Commission. In their Seventy-eighth Report (Fourth Lok Sabha) on the Central Bureau of Investigation the Committee have already made certain suggestions with a view to avoid delays in the investigation of cases by the Central Bureau of Investigation and the disposal of the disciplinary cases by the Ministries. They suggest that the Central Vigilance Commission should, in consultation with the Ministry of Home Affairs, devise a proper system of watching the progress of enquiry/investigation with a view to see that these are not unduly prolonged.

Reply of Government

A circular has been issued by the Central Vigilance Commission laying down that reports of inquiry into complaints or allegations forwarded to the Ministries/Departments by the Central Vigilance Commission should normally be sent by them within three months from the date of receipts of reference from the Commission. This limit may be extended to six months in the case of complaints entrusted to C.B.I., since cases entrusted to them may involve detailed investigation. It has also been laid down that if due to unavoidable reasons, it is not possible to complete the enquiry within the specified period, the Chief Vigilance Officer of the Ministry/Department or the D.I.G., C.B.I., as the case may be, should personally look into the matter and send an interim reply to the Commission giving the progress of the investigation, reasons for delay and the date by which the final report should be expected. A copy of the circular letter No. 60/15/69-C, dated the 23rd July, 1969 is enclosed. (Annexure)

Instructions have also been issued to all the Sections in the Commission that if the replies from the Ministries/C.B.I. are not received within the specified period, a reminder may be sent to the Chief Vigilance Officer or

D.I.G., C.B.I., as the case may be, and if no reply comes within one month from the date of reminder, a demi-official letter may be addressed to the Secretary of the Ministry or the Director, C.B.I. Such cases are brought to the notice of C.V.C. and typical cases of delay are also mentioned in the annual reports of the Commission.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-11-1969]

ANNEXURE

Copy of the letter No. 60/15/69-C, dated the 23rd July, 1969 from Shri C. M. Narayanan, Deputy Secretary, Central Vigilance Commission, 3, Dr. Rajendra Prasad Road, New Delhi addressed to Chief Vigilance Officers of all Ministries, Departments/Union Territories and copies endorsed to the Ministry of Home Affairs, Director, C.B.I. etc. etc.

SUBJECT :—84th Report of the Estimates Committee—Expeditious completion of investigations/enquiries referred by the C.V.C.

The Estimates Committee in Para 3.16 of their 84th Report have expressed concern at the delay that occurs in the C.B.I./Ministries in sending reports of enquiry or investigation in cases referred to them by the C.V.C. and have suggested that the Commission should devise a proper system of watching the progress of enquiries/investigation with a view to see that these are not unduly prolonged.

2. It is requested that reports of investigation into complaints or allegations should normally be sent to the Commission within three months from the date of the receipt of the reference from the Commission. This limit may be extended to six months in the case of complaints entrusted to the C.B.I. since cases entrusted to them involve detailed investigation. If due to unavoidable reasons it is not possible to complete the investigation within the specified period, the C.V.O. of the Ministry/Department or the D.I.G., C.B.I. as the case may be, should personally look into the matter and send an interim report to the Commission giving the progress of the investigation, reasons for delay and the date by which the final report could be expected.

3. In respect of references made by the Commission to C.B.I./Ministries etc. for clarification and/or comments, it may please be ensured that the clarifications/comments requested by the Commission are sent within a period not exceeding six weeks. If such clarifications/comments are not received within this period, the Commission will tender advice on such material as is available.

4. Cases in which sanction for prosecution is required to be issued in the name of the President, the C.B.I. sends its reports to the Commission and simultaneously endorses a copy to the administrative Ministry/Department concerned. Under the instructions already in force, the administrative Ministry/Department are required to send their comments to the Commission within 14 days. It is requested that this time limit may be adhered to strictly.

Recommendation (Serial No. 12, Para 3.23)

"The Committee regard the procedure of recording the reasons for taking a particular decision as highly salutary and based on sound principles of public policy inasmuch as it guards against the decision of any person being arbitrary or whimsical. In this context, they are glad to note the assurance given by the Central Vigilance Commissioner that his advice will be accompanied by reasons so as to enable the disciplinary authority concerned to reach a decision."

Reply of Government

The observations made by the Estimates Committee have been noted.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-11-1969]

Recommendation (Serial No. 13, Para 4.11)

The Committee have observed in an earlier chapter that advising the Government regarding blacklisting of firms is a function which is not in the charter of duties of the CVC laid down in the Ministry of Home Affairs Resolution of February 11, 1964 creating the Commission but was added later. Apart from the delay that is bound to occur as a result of reference of cases of blacklisting to the CVC, the Committee are unable to appreciate how the Commission is in a better position to guide the Government in such an administrative matter as this. They feel that the overruling powers given to CVC in the matter of blacklisting of firms are not justified.

Reply of Government

The observation of the Committee has been noted. With the enactment of the Lokpal and Lokayuktas Bill the Central Vigilance Commission would be replaced by the new institutions of Lakpal and Lokayukta. The views of the Committee would be taken into consideration while deciding on the question of additional functions to be entrusted to the Lokpal.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 16-12-1969]

Recommendation (Serial No. 14, Para 4.14)

The Committee find it difficult to appreciate the idea of the Commission entertaining representations direct from affected firms against orders of blacklisting or for revocation of blacklisting orders. They are glad that the present Central Vigilance Commissioner also shares this view. The Committee hope that the practice of the Commission entertaining direct representations from firms will be stopped in future.

Reply of Government

The recommendation of the Estimates Committee has been accepted by the Central Vigilance Commission.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 5-1-1970]

Recommendation (Serial No. 15, Para 4.18)

The Committee note that in quite a good number of cases proposals of the Central Bureau of Investigation or the Administrative Ministry for

blacklisting of firms/contractors were not agreed to by the Commission, who advised either no punishment or a far lesser punishment. They also note that softening of the proposals for punishment against firms has been the result of subjecting them to rigorous judicial scrutiny by the Commission. Since blacklisting of a firm is an administrative action, and orders regarding blacklisting are passed at the highest level of Ministers, the Committee are inclined to think that consultation with the Commission is redundant. The Committee therefore, suggest that Government should bear this in mind while reviewing the procedure regarding blacklisting.

Reply of Government

The suggestion of the Committee has been noted. With the enactment of the Lokpal and Lokayuktas Bill the Central Vigilance Commission would be replaced by the new institutions of Lokpal and Lokayukta. The views of the Committee would be taken into consideration while deciding on the question of additional functions to be entrusted to the Lokpal.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 16-12-1969]

Recommendation (Serial No. 16, Para 4.19)

The Committee notice that the Commission is receiving references from the Ministries/Central Bureau of Investigation also where the suggestion is to award punishment other than blacklisting, such as, Banning, Suspension of Business or even cancellation of licences, although such references are not covered by para 7 of the Committee's circular dated the 13th April, 1964 or the Standardised Codes maintained by the Ministries/Departments concerned. The Commission has been entertaining such references and has in certain cases differed with the proposal of the Ministries/Central Bureau of Investigation and advised punishment of lesser degree. The Committee consider that references to the Commission in such cases need not be made.

Reply of Government

The suggestion of the Committee has been noted. With the enactment of the Lokpal and Lokayuktas Bill the Central Vigilance Commission would be replaced by the new institutions of Lokpal and Lokayukta. The views of the Committee would be taken into consideration while deciding on the question of additional functions to be entrusted to the Lokpal.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 16-12-1969]

Recommendation (Serial No. 18, Para 5.11)

The Committee are concerned to note the large number of enquiry cases pending with the Commissioners for Departmental Enquiries which are mounting every year. At the present rate of disposal, which is stated to be three per month per Commissioner, the 5 Commissioners at present attached to the Commission will take as long as 1½ years to complete the enquiries in 270 cases pending with them as on 31st March, 1968. The Committee recommend that the Commission as well as the Ministry of Home Affairs should make a thorough investigation of the causes which have led to the accumulation of enquiry cases with the Commissioners, streamline and simplify the enquiry procedures wherever possible and, if the work-load justifies, take prompt action to increase the number of Commissioners.

Reply of Government

The factors which have led to the accumulation of enquiry cases are as follows :—

- (i) Inadequate strength of the Commissioners for Departmental Enquiries;
- (ii) Absence of Presenting Officers of CBI and requests from them for adjournment;
- (iii) Absence of witnesses on the dates of hearing; (Commissioners for Departmental Enquiries have no powers to compel the attendance of witnesses); and
- (iv) Fixation of hearings to suit the convenience of assisting Government servants who are sometimes busy with a number of cases at one time.

The number of posts of Commissioners for Departmental Enquiries has since been increased from 5 to 6.

In order to deal with the difficulties referred to in items (ii) and (iii) above, the Central Vigilance Commission in consultation with the CBI has decided that notice for hearings and requests to the prosecution witnesses to appear should be sent by the Commissioners for Departmental Enquiries sufficiently in advance to the concerned SP, SPE, who will secure the presence of the Presenting Officers and the witnesses on the dates fixed. Besides, legislation to empower the Commissioners for Departmental Enquiries to compel attendance of witnesses and production of documents is under consideration of the Government.

A suggestion has been made by the Central Vigilance Commission that the CCS(CC&A) Rules may be amended so as to provide that no assisting Government servant shall take up more than two disciplinary enquiries at a time. This is being examined in consultation with the Ministry of Law.

Attempts have been made to streamline the procedure relating to disciplinary action. Since however disciplinary proceedings are quasi-judicial in character the requirements of the principles of natural justice have to be kept in view while making procedural changes, having regard to the judicial pronouncements available on the subject.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 16-12-1969]

Recommendation (Serial No. 19, Para 5.12)

The Committee are aware that at present the Commissioners for Departmental Enquiries are not empowered to compel the production of documents and attendance of witnesses leading to considerable delay in the completion of enquiries. The Committee have dealt with this matter in paras 5.36 and 5.39 of their Seventy-eight Report of the Ministry of Home Affairs—Central Bureau of Investigation and have urged Government to introduce legislation in this regard.

Reply of Government

A Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Bill, 1969 has been drafted. Some provisions included in the Bill and their legal implications are under examination in consultation with the C.B.I. and the Ministry of Law, as it is intended to include employees of public undertakings (including Corporations owned or controlled by the Government) within the purview of the proposed legislation.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 5-1-1970]

Recommendation (Serial No. 21, Para 6.13)

The Committee note that the post of Chief Technical Examiner has all along been held by an officer of the Central Public Works Department. They also note that, although the Recruitment Rules for the post of Technical Examiner and Assistant Technical Examiner provide for locating suitable officers of comparable status in the first instance, from sources other than C.P.W.D., in actual practice on account of the response from sources other than C.P.W.D. being extremely poor, most of these posts also have to be filled up by officers of C.P.W.D. In view of the fact that major part of the activities of the Chief Technical Examiner's Organisation comprises of technical control over the works of C.P.W.D., the efficacy of such control being exercised by C.P.W.D.'s own officers temporarily on deputation with the Organisation may be open to doubt. The Committee, therefore, recommend that the Central Vigilance Commission should intensify their efforts to secure officers for this organisation from sources other than C.P.W.D.

Reply of Government

The recommendation has been accepted by the Central Vigilance Commission.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 5-1-1970]

Recommendation (Serial No. 22, Para 6.14)

The Committee also recommend that, in order to avoid undue delays in filling up these posts, which are bound to occur if deputation is the only source of recruitment for these posts, Government should examine the desirability of either amending the Recruitment Rules in order to allow direct recruitment to these posts, or reviewing the grant of deputation allowance to the incumbent of these technical posts as a special case.

Reply of Government

Direct recruitment to the posts of Technical Examiner, Assistant Technical Examiner, etc. is not considered advisable for the following reasons :

- (i) The officers appointed to man these posts should not only be officers of absolute integrity and known ability but should also possess sufficient technical experience.
- (ii) Officers coming on deputation can be reverted, if subsequently not found suitable; but it would be difficult to dispense with

the services of a directly recruited officer, if he is not found quite upto the mark later on.

- (iii) As the number of higher posts is small, prospects for directly recruited officers would be limited. As such, persons of the required calibre are not likely to be attracted to these posts.

Considering the difficulties to get officers on deputation, the Government have now sanctioned special pay at the following rates for these posts.

Technical Examiner—Rs. 200 p.m.

Assistant Technical Examiner—Rs. 75 p.m.

Technical Assistant—Rs. 50 p.m.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 16-12-69]

Recommendation (Serial No. 26, Para 6.30)

The Committee also suggest that in a case of serious defect/irregularity or lapse where a contractor is suspected of collusion, appropriate action under the Standardised Code should be taken immediately after the report of the Chief Technical Examiner's Organisation is received and has been substantiated.

Reply of Government

The recommendation of the Estimates Committee has been accepted.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. Dated 16-12-69]

Recommendation (Serial No. 27, Para 6.31) .

The Committee note that out of overpayments detected by the Chief Technical Examiner's Organisation and finalised with the C.P.W.D. upto 31st March, 1968 amounting to Rs. 48.41 lakhs, a sum of Rs. 13.49 lakhs remained to be recovered by that date. The Committee would like Government to make special efforts to realise the outstanding and initiate measures to ensure that the recoveries finalised by the Chief Technical Examiner's Organisation with the C.P.W.D. are effected promptly.

Action by Government

This recommendation was brought to the notice of the Department of Works, Housing and Urban Development, for necessary action. The Engineer-in-Chief, Central Public Works Department, New Delhi, has reported that out of the outstanding total of Rs. 13.49 lakhs, a sum of Rs. 4.88 lakhs has since been recovered. For the balance (Rs. 8.61 lakhs) all possible efforts are being made by the Chief Engineers concerned to effect recovery from the Contractors concerned, expeditiously.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 27-12-1969]

Recommendation (Serial No. 29, Para 7.9)

The Committee are surprised that even though 5 years have elapsed since the Santhanam Committee had made their recommendation which was accepted by Government, the scheme for a training course for Vigilance Officers has not been finalised. The Committee would like to stress the

importance of suitable training programmes for Vigilance Officers/Chief Vigilance Officers in the Ministries/Departments/Public Undertakings and officers in the Central Vigilance Commission including Commissioners for Departmental Enquiries and urge that the training scheme should be finalised and started without any further delay.

Action by Government

Government have accepted the recommendation of the Santhanam Committee regarding working out a scheme for a training course for Vigilance Officers and others. A beginning was made by running a five weeks' course at the Secretariat Training School during 1968. The first course was organised for Section Officers and dealing assistants in various Ministries and Departments of the Government of India and some officers in Public Sector Undertakings. Since then another six weeks' course was held at the Secretariat Training School in September, 1969 and the third course is being organised.

A training course for Chief Vigilance Officers of various Ministries and Departments and senior Officers in Public Sector Undertakings and others was organised at the National Academy of Administration, Mussoorie. This course was sponsored by the Central Vigilance Commission and Training Division of the Ministry of Home Affairs. This course is also likely to be repeated during 1970. The first course was held during the last week of October, 1969 at Mussoorie, and was inaugurated by the Central Vigilance Commissioner.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. Dated 16-12-69]

Recommendation (Serial No. 31, Para 7.20)

The Committee welcome the idea of periodical Conferences of State Vigilance Commissioners and meetings of Chief Vigilance Officers being convened by the C.V.C. for discussing matters of common interest and evolving common standards and procedures for dealing with vigilance cases. They, however, suggest that the conclusions of the Conferences of Vigilance Commissioners should be properly drawn up in the form of minutes and energetic action taken in pursuance thereof.

Reply of Government

The observation of the Estimates Committee has been accepted for guidance.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 5.1.1970]

Recommendation (Serial No. 33, Para 7.26)

The idea of the Santhanam Committee in recommending the setting up of the CVC was to put anti-corruption measures on a firmer and more systematic basis as well as to combat corruption and bring offending public servants to book promptly.

The basic objective of the Government in setting up the CVC is stated to be to fulfil the need for an independent body with extensive functions designed to ensure that complaints of corruption or lack of integrity on

the part of the Government servants are given prompt and effective attention and that offenders are brought to book without fear or favour. Para-2 of the Resolution dated the 11th December, 1964 under which the Commission was set up, which lays down the powers and functions of the Commission, would also appear to indicate that the CVC was expected to play an effective role in combating corruption among public servants.

From the Annual Report of the CVC, the material furnished by the Ministry of Home Affairs and the evidence tendered by the representative of the Ministry of Home Affairs and the Central Vigilance Commissioner himself, it is noticed that in quite a number of cases referred to the Commission by the C.B.I. and the Administrative Ministries, the Central Vigilance Commissioner advised either no punishment or lesser punishment than had been recommended/ proposed by the former. In the three cases of difference of opinion cited in the foregoing paras also, the disciplinary authorities awarded major punishments to their officers concerned against the advice of Central Vigilance Commissioner who had recommended minor or lesser punishment to them.

In the circumstances, the Committee find it difficult to express an opinion whether Commission has adequately fulfilled the purpose for which it was set up.

The Committee have no doubt that Government would keep in view these objectives and the experience gained so far of the working of the Central Vigilance Commission in finally deciding the functions and role of Lokayukta to be appointed in terms of the Lokpal and Lokayuktas Bill, 1968.

Reply of Government

Recommendation of the Committee has been noted.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 24-11-69]

CHAPTER III

RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF GOVERNMENT'S REPLY

Recommendation (Serial No. 3, Para 1.18)

The Committee hope that in the re-organised set up of the Commission under the new enactment, the question of its jurisdiction over the All India Service Officers serving in connection with the affairs of a State Government will have been finally settled. They also hope that the non-gazetted officers serving in the Central Government Departments, Administrations of Union Territories, Public Undertakings, and Local Self-Governing institutions in the Union Territories would also be brought under the purview of the Commission.

Reply of Government

Government have been advised that any amendment of the All India Services Rules authorising the Lokpal/Lokayukta to look into allegations against All India Services Officers serving in connection with the affairs of the State Governments would be unconstitutional and *ultra vires* of the powers of the Central Government under Article 312 read with entry 70 of the Union List which relates to conditions of service of All India Services. A proposal for enabling the Central Government to institute disciplinary proceedings in respect of a member of an All India Service serving in connection with the affairs of a State was considered in the past but did not find favour with most of the State Governments.

The definition of 'Public Servants' in the Lokpal and Lokayuktas Bill, includes, inter-alia the non-gazetted employees of the Central Government, Union Territories, corporations and companies owned or controlled by the Central Government as well as the employees of the local authorities in the Union Territories which may be notified in the official gazette. However, the Joint Committee on the Lokpal and Lokayuktas Bill felt that with a view to enabling the Lokpal or the Lokayukta to concentrate on really important cases the Central Government should be empowered to exclude by notification, on the recommendation of the Lokpal, complaints against public servants belonging to specified classes.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated
24-12-1969]

Recommendation (Serial No. 6, Para 2.15)

In this connection the Committee would like to make the following suggestions :

- (i) action to fill up the post of the Central Vigilance Commissioner should be initiated by the Ministry of Home Affairs at least 6 months before the occurrence of the vacancy;

- (ii) the process of consultation, obtaining consent of the persons selected for consideration, obtaining approval of the Home Minister, the Prime Minister and of the President should be completed by the Ministry of Home Affairs at least two months in advance of the occurrence of the vacancy;
- (iii) the offer of appointment should be sent out to the persons selected two months before the occurrence of the vacancy so that adequate margin is left for consideration of alternative names in the event of the person selected expressing his inability to join or in case where the Ministry visualises delay in his release for the post.

Reply of Government

With the enactment of the Lokpal and Lokayuktas Bill the Central Vigilance Commission will be replaced by the new institution of Lokpal and Lokayuktas. Clause 3(1) of the Bill lays down the procedure for appointing the Lokpal and Lokayukta. The first appointment of Lokpal and Lokayukta will have to be made soon after the enactment of the Bill.

As regards the suggestion for drawing up a time schedule for filling up future vacancies it is felt that a rigid time schedule may not be workable since a vacancy could arise suddenly also. Provision already made in sub-clause (2) of Clause 5 of the Lokpal and Lokayuktas Bill (which is reproduced below) is considered adequate for serving the object which the Committee appear to have in view.

“5(2) If the office of the Lokpal or a Lokayukta becomes vacant or if the Lokpal or a Lokayukta is, by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, those duties shall, until some other person appointed under section 3 enters upon such office, or as the case may be until the Lokpal or such Lokayukta resumes his duties, be performed,—

- (a) where the office of the Lokpal becomes vacant or where he is unable to perform the duties of his office, by the Lokayukta or if there are two or more Lokayuktas by such one of the Lokayuktas as the President may by order direct;
- (b) where the office of a Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Lokpal himself, or if the Lokpal so directs by the other Lokayukta or, as the case may be, such one of the other Lokayuktas as may be specified in the direction.”

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-12-1969]

Recommendation (Serial No. 7, Para 2.23)

The Committee find that the root cause of delay in appointment in most cases was that the Recruitment Rules for senior posts, both administrative as well as technical, provide for deputation from specified categories of officers as the only source of recruitment. This provision in the Recruitment Rules also limits the field of selection. They would like the source of recruitment

to be made a little more broad based and therefore recommend that the Recruitment Rules should also provide for filling up the posts by deputation of Central Government Officers, who do not belong to any of the All-India or established Central Services.

Reply of Government

The existing Recruitment Rules for the senior administrative posts, namely, Secretary, Commissioners for Departmental Enquiries, Deputy Secretary and Officer on Special Duty provide for transfer on deputation of suitable officers of I.A.S. and other Central Services Class I, including General Central Service, Class I, and State Services. The General Central Service covers the Central Government officers who do not belong to any of the All India or established Central Services.

The Recruitment Rules for the senior technical posts, namely, Chief Technical Examiner and Technical Examiners provide for deputation of suitable officers from the Engineering Departments of the Government of India and of officers holding analogous posts in the State Government Offices.

Thus, the source of recruitment to the senior administrative as well as technical posts is sufficiently broad based.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 16-12-1969]

Comments of the Committee

The Committee note that the officers belonging to the Secretariats of Houses of Parliament, Supreme Court of India, etc. are not included in the General Central Service. The Committee feel that the officers working in the aforesaid offices should not be precluded for being considered for appointments in the C.V.C./Secretariat of Lokpal/Lokayuktas.

Recommendation (Serial No. 10, Para 3.12)

Considering the fact that the Central Vigilance Commissioner has to study each and every case personally and take decision himself, the Committee feel convinced that it is humanly impossible for one person to handle the large volume and variety of work transacted by the Commission. The Committee also note from the Annual Reports of the C.V.C. that in the discharge of his duties the Commissioner has also to attend conferences and meetings and visit places outside Delhi. This takes away a portion of the Commissioner's time. The Committee therefore recommend that if the Commission is to discharge the onerous duties entrusted to it, it should be enlarged and at least one more member added to it. They trust that this fact will be borne in mind by Government while piloting the Lokpal and Lokayuktas Bill in Parliament.

Reply of Government

Clause 3(1) of the Lokpal and Lokayuktas Bill, 1968, (as reported by the Joint Committee and passed by the Lok Sabha) provides that the President shall appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas. A decision

as regards the number of Lokayuktas can be taken after the enactment of the Bill.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 5-1-1970]

Recommendation (Serial No. 17, Para 5.6)

The Committee note that, although the Commissioners for Departmental Enquiries are not required to function as a court of law, while conducting enquiries they have to examine witnesses, admit evidence according to judicial procedures and sift it before giving their opinion. The whole case against a public servant may fall through in a court of law if there is any lacunae in the procedure followed by the Inquiring Officer. The Committee, therefore, feel that Commissioners for Departmental Enquiries should preferably be persons with legal knowledge and background.

Reply of Government

The Committee on Prevention of Corruption (Santhanam Committee) had recommended that officers from different departments like Railways, Central Public Works Department, Income Tax, Central Excise and Customs, Posts and Telegraphs should also be appointed as Commissioners for Departmental Enquiries, and the Government decided that any suitable officer possessing necessary qualifications and experience, belonging to All India Services, Central Services or State Government cadres would be eligible for appointment as Commissioner for Departmental Enquiries.

Accordingly appointment to the posts of Commissioners for Departmental Enquiries have been made till now from officers of the I.A.S., States' Judicial Service, Indian Revenue Service, Indian Postal Service and Central/Railway Secretariat Services. No case has come to notice so far which may have fallen through in a court of law due to any procedural lapse on the part of any Commissioner for Departmental Enquiries.

The observations of the Estimates Committee however have been noted.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-11-1969]

Recommendation (Serial No. 20, Para 5.13)

The Committee note the assurance given by the Central Vigilance Commissioner that he would again examine the possibility of dispersing the Commissioners for Departmental Enquiries at suitable stations in the interest of expeditious disposal of work.

Reply of Government

The Central Vigilance Commission is agreeable in principle but as the Central Vigilance Commission will shortly be replaced by the new institutions of Lokpal and Lokayuktas, it would be advisable to take a final view in the matter after a comprehensive review of the set up in consultation with the Lokpal.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-12-1969]

Recommendation (Serial No. 23, Para 6.18)

The Committee recommend that periodic evaluation of the work of the Chief Technical Examiner's Organisation may be conducted by an Achievement Audit Committee consisting of specialists and experts.

Reply of Government

The recommendation has been noted. While it is felt that a periodic evaluation may not be necessary it will be useful for a Committee to evaluate the work of the Chief Technical Examiner's Organisation and in the light of the results achieved to suggest desirable changes in the functions and the method of work of the Organisation. The Committee will no doubt take into consideration the fact that the C.T.E.'s Organisation has both a positive and a negative value to recover excess payments made and to serve as a warning to those who would otherwise be inclined to deviate from paths of rectitude.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-12-1969]

Recommendation (Serial No. 24, Para 6.19)

The Committee suggest that a copy of the Annual Report of the Chief Technical Examiner's Organisation may also be laid by the Ministry of Home Affairs before the Houses of Parliament along with the Annual Report of the CVC.

Reply of Government

The Chief Technical Examiner's Report is a record of the activities of that Organisation during a particular year. Section 2 of the report deals in particular with the observations of the Chief Technical Examiner on the works executed by the Central Public Works Department. These observations are not intended to be conclusive inasmuch as when the Chief Technical Examiner's observations are communicated to the departmental officers, the latter examine the observations and clarify the position and explain the circumstances in which a particular action was taken by them or work was accepted. In a number of cases, after receipt of the clarifications, the Chief Technical Examiner drops his objections. Mere mention of a case in the report can not be taken to indicate culpability on the part of the departmental officers in the circumstances. Placing of the report on the Table of the House in its present form may not, therefore, give a correct picture of the state of affairs obtaining in the Central Public Works Department. However, the salient features of the Chief Technical Examiner's working are given in the annual report of the Central Vigilance Commission.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 24-12-1969]

Recommendation (Serial No. 25, Para 6.29)

The Committee find that the technical audit of the works of C.P.W.D. exercised by the Chief Technical Examiner's Organisation is rather a tame affairs. In most cases, the Organisation is merely bringing to the notice of a comparatively junior officer, i.e., the Executive Engineer concerned, the technical lapses, often involving overpayments or loss to Government. Only in a few cases of defects/irregularities by gross negligence noticed in the

works of C.P.W.D., the Organisation has brought the matter to the notice of the Ministry of Works, Housing and Supply or the Chief Engineer/Engineer-in-Chief, C.P.W.D. There is no system of keeping a watch whether the lapses brought to the notice of the authorities have been duly investigated, set right if remediable, responsibility therefore fixed and the officers responsible suitably dealt with.

With a view to make the Chief Technical Examiner's Organisation more effective, the Committee have the following suggestions to make :

- (i) the Organisation should forward, through the CVC, the result of its inspection/examination in the form of a report either to the Chief Engineer/Engineer-in-Chief, C.P.W.D. or the administrative Ministry, depending upon the gravity of the lapses pointed out;
- (ii) the lapses contained in the Report should be investigated by an officer other than the one under whom the work was executed;
- (iii) the CVC should be informed of the result of the investigation and the action proposed to be taken in pursuance thereof within one month. In case, there is likely to be delay in this regard, the CVC should be informed stating the reasons and intimating the date by which reply would be sent to the Commission;
- (iv) the Organisation/CVC should keep a close watch on the progress made in investigation of lapses pointed out in their reports. Delays in taking action beyond the specified time should be pointed out to the Ministry concerned.

Reply of Government

The technical lapses are pointed out by the Chief Technical Examiner's Organisation in the form of an Observation Memo. addressed to the Executive Engineer under intimation to the Superintending Engineer concerned.

2. As regards the Estimates Committee's observation that there is no system in the CTE Organisation of keeping a watch whether the lapses brought to the notice of the authorities have been duly investigated, set right if remediable, responsibility therefor fixed and the officers responsible suitably dealt with, it may be pointed out that after issue of Observation Memos. to the Executive Engineers/Superintending Engineers, the CTE Organisation does not close any case *suo motu*. The observations of the C.T.E. are not intended to be conclusive inasmuch as when his observations are communicated to the departmental officers, the latter examine the observations and clarify the position and explain the circumstances in which a particular action was taken by them or work was accepted. In a number of cases, after receipt of the clarifications, the Chief Technical Examiner drops his objections. If the clarification etc. is not found satisfactory the Chief Technical Examiner does not close any case till the Department has confirmed that the defects have been set right or suitable compensation obtained from the contractors.

3. As regards the suggestions of the Estimates Committee in sub-para (i) to (iv) above, the position is as follows *ad seriatim* :—

- (i) Even at present, depending on the gravity of the lapses, the CTE Organisation forwards its reports to the administrative Ministry or the Engineer-in-Chief, C.P.W.D., after taking the approval of the Central Vigilance Commission.
- (ii) The cases reported to the Ministry or Engineer-in-Chief are investigated through their Vigilance Cells and as such the lapses are investigated by an officer other than the one under whom the work was executed.
- (iii) Instructions have been issued by the Central Vigilance Commission to the CTE that a close watch should be kept on the progress & made in investigation of lapses pointed out by the C.T.E. and the Commission kept informed of the progress. Where necessary, delay should be brought to the notice of the administrative Ministry concerned. Period of one month, it may be added, will not be sufficient for reporting on the result of investigation.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 27-12-1969]

Comments of the Committee

While accepting the reply of Government, the Committee would, however, like to stress that a reasonable time limit should be laid down for reporting the results of investigation.

Recommendation (Serial No. 28, Para 7.4)

The Committee note that according to the legal position stated in the Commission's Circular dated the 23rd September, 1966, all that the Commission can do is to tender advice as to the course of further action to be taken, since it itself cannot initiate action for prosecuting false complainant. They regret that Government had not properly examined the legal implications before entrusting to the Commission the function of taking "initiative" in prosecuting such persons with the result that an erroneous impression was created amongst Ministries/Departments/Public Undertakings that the Commission had some special machinery to initiate prosecution in such cases.

Reply of Government

There was a suggestion that existing provisions of the Cr. P.C. should be amended to enable the Public Prosecutor to move for prosecution against false complainants in the same manner as provided in Section 198-B Cr. P.C.

2. The legal implications have since been examined. The Ministry of Law are of the opinion that in such cases it would be more appropriate that the person who had made a false complaint to the C.V.C. should

be prosecuted under Section 182. In view of Section 195(1)(a) of the Cr. P.C. the court will take cognizance of an offence under Section 182 I.P.C. only on a complaint in writing of the public servant concerned. There is already a discretion with the magistrate under the Proviso to Section 200 Cr. P.C. not to examine a public servant making a complaint in writing in the discharge of his official duties. But even if it is provided that in such cases the magistrate is to take cognizance without examining the C.V.C., the accused may well at a later stage request the court to examine him either as a court witness or as a defence witness, in which case it may be difficult for the magistrate to disallow the request. From both practical and the legal point of view it is not free from doubt whether such a provision is desirable or necessary. The Ministry of Law advised that as the Law Commission were making a study of the Criminal Procedure Code the matter may be referred to them. A reference in the matter was accordingly made to the Law Commission whose recommendation is awaited.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D., dated 5-1-1970]

Recommendation (Serial No. 30, Para 7.16)

The Committee note that in the case of non-gazetted officers the responsibility for maintaining uniformity and evolving common standards in dealing with vigilance cases has been left entirely to the Chief Vigilance Officers of the respective Ministers. The Committee feel that in regard to non-gazetted officers the Commission should, in the interest of uniformity, lay down broad guide lines for the Vigilance Officers/Chief Vigilance Officers based on sample studies of vigilance cases dealt with by the Ministries.

Reply of Government

On the question of laying down guide-lines regarding scales of penalties for various kinds of offences the Ministry of Law had in a case advised as follows :—

The rules empower the disciplinary authorities to impose penalties for good and sufficient reasons. The rules themselves do not define what is a major misconduct and what is a minor misconduct. The quantum of punishment is left to the discretion of the disciplinary authority and it is expected that this discretion would be exercised judiciously. In the circumstances, any direction to a disciplinary authority that a specific penalty shall be imposed in a particular case will be interference in the exercise of quasi-judicial functions entrusted to a disciplinary authority by the statutory rules. Supreme Court in more than one case has objected to issue of executive instructions which fetter the discretion of an authority to prosecute an inquiry strictly in accordance with the law governing the same. In this view of the matter, instructions which fix a rigid scale of penalties would invite strong criticism from courts and may be struck down.

Regarding general instructions which are intended to guide the authorities, it is indeed desirable that such instructions are also not given. It is of the essence of fair and objective administration

of law that the decision of the domestic tribunal must be absolutely unfettered by any extraneous guidance by way of any executive or administrative instructions.

In view of this it would not be desirable to formally lay down as guide-lines broad standards of penalties for specified misconduct, as any such instructions are likely to lead to avoidable litigation and may not be sustained in Court.

However, in the matter of procedure, the guide-line already exist in the form of the Vigilance Manual and other instructions issued by this Ministry and the Central Vigilance Commission from time to time. Meetings of Chief Vigilance Officers are held now and then under the Chairmanship of the Central Vigilance Commissioner to discuss matters pertaining to vigilance. The Chief Vigilance Officers are also familiar with important court decisions on disciplinary cases and the CVC have taken in hand the compilation of a digest of important court judgments in this regard. All these measures ensure that a uniform practice is followed in dealing with vigilance cases whether in respect of gazetted officers or non-gazetted Government servants.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 16-12-1969]

Recommendation (Serial No. 32, Para 7.24)

The Committee feel that there is need for concerted efforts by the Ministry of Home Affairs and the CVC to publicise the functions of the Commission and the nature, type, manner and contents of complaints that would normally be taken notice of by the Commission. This can be done by means of brochures produced in Hindi and English as well as in regional languages for wide distribution. Advantage can also be had of the media of Newspapers, Radio and Films.

Reply of Government

The functions of the Central Vigilance Commission are now better known than before. In the past, the Central Vigilance Commissioner met newspaper-men and members of the public and explained the functions and organisation of the Commission.

With the enactment of the Lokpal and Lokayuktas Bill, 1968, which is before Parliament, the Central Vigilance Commission is expected to merge in the statutory institutional set up envisaged in the Bill. It will be for the Lokpal to decide on the form and manner of publicity about the functions of the new institutions.

[Ministry of Home Affairs O.M. No. 118/15/69-A.V.D. dated 5-1-1970]

NEW DELHI;

February 23, 1970

M. THIRUMALA RAO,

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Chairman,
Estimates Committee.

APPENDIX

*Analysis of the action taken by Government on the recommendations
contained in the Eighty-fourth Report of the Estimates Committee
(Fourth Lok Sabha)*

1. Total number of recommendations	33
2. Recommendations which have been accepted by Government (<i>vide</i> recommendations No. 1, 2, 4, 5, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 26, 27, 29, 31, 33, included in the Chapter II)	
Number	21
Percentage to total	64%
3. Recommendations which the Committee do not desire to pursue in view of Government's reply (<i>vide</i> recommendations No. 3, 6, 7, 10, 17, 20, 23, 24, 25, 28, 30, 32 included in Chapter III)	
Number	12
Percentage to total	36%

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PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT
OF BUSINESS IN LOK SABHA (FIFTH EDITION) AND PRINTED BY THE
MANAGER GOVERNMENT OF INDIA PRESS, FARIDABAD
