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CENTRAL VIGILANCE COMMISSION

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सं./No. 98/DSP/9(Part-2)

दिनांक / Dated 7th March, 2016

Circular No. 03/03/16

Sub:- Action on Anonymous / Pseudonymous Complaints - reg.

The Commission has been receiving references from Departments / Organisations seeking clarification on the action to be taken on anonymous/pseudonymous complaints which were acted upon and at different stages of process including under disciplinary proceedings before issuance of CVC Circular No. 07/11/2014 dated 25th November, 2014 on the captioned subject. A few Court decisions arising out of the Commission's guidelines issued earlier on the subject were also brought to the notice of the Commission.

2. The Commission considered the details of the Court orders/judgments and in one instance, the Central Administrative Tribunal (CAT), Principal Bench, Delhi had quashed the charge sheet dated 14.10.2004 issued to the delinquent official based on the pseudonymous complaints dated 18.02.1997 and 02.04.1997, vide order dated 20.07.2005. CAT had quashed the charge-sheet served mainly considering the circulars of the Commission dated 29.6.1999 and 31.01.2002 on the subject. In the order dated 20.07.2005, it was observed that the charge-sheet dated 14.10.2004 was issued pursuant to pseudonymous complaints received earlier and therefore is in violation of Commission's circular dated 29.6.1999 and 31.01.2002. The High Court agreed with the findings and observations of the CAT and dismissed the department's Writ Petition filed against the order of the CAT *in limine*. Thereafter, the Supreme Court had also dismissed the department's Civil Appeal in the matter. CAT's decision is based on one of the judgement dated 26.09.2003 of Madras High Court (in another case) wherein it was observed that the preliminary enquiry report dated 25.05.2000 based on anonymous complaint was subsequent to the CVC's circular dated 29.06.1999 and, therefore, is liable to be quashed and further that the prohibition (in CVC circular) that "no action will cover all pending proceedings on that date."

3. The instructions / guidelines issued from time to time on the subject-matter by DoPT / CVC are as follows:

i. DoPT's O.M. No. 321/4/910-AVD.III dated 29.09.1992 that no action is required to be taken on anonymous/pseudonymous complaints in general, provided the option to inquire into such complaints which contained verifiable details.

ii. Commission's initial Circular No. 3(v)/99/2 dated 29.6.1999 prescribing that no action should be taken on anonymous/pseudonymous complaints and should just be filed.

iii. Commission's circular No.98/DSP/9 dated 31.1.2002 reiterating that under no circumstances, should any investigation be commenced on anonymous/pseudonymous complaints.

iv. Commission's circular No. 98/DSP/9 dated 11.10.2002 reviewing its earlier instructions of 1999, providing that if any Departments/ organisations proposes to look into the verifiable facts alleged in anonymous/pseudonymous complaints it may refer the matter to the Commission seeking its concurrence through the CVO or the Head of the organisation.

v. DoPT O.M. No. 104/76/2011-AVD.I dated 18.10.2013 that no action is required to be taken on anonymous complaints, irrespective of the nature of allegations and such complaints need to be simply filed.

vi. Commission's circular No.07/11/2014 dated 25.11.2014 withdrawing Circular dated 11.10.2002 and reiterating previous circulars dated 29.6.1999 and 31.1.2002 to the effect that no action should be taken on anonymous/pseudonymous complaints and such complaints should be filed.

4. Since, the aforesaid issues arising out of the observations of CAT and High Court of Madras involve interpretation of substantial questions of law, the opinion of Ld. Attorney General for India was sought by the Commission. Ld. Attorney General for India has furnished his opinion and clarified that unless expressly stated all Executive Circulars are prospective in nature and they do not have retrospective effect. Only a law can be retrospective if a law expressly states that it will be retrospective or the intention to that effect is very clear. It is further clarified that an anonymous / pseudonymous complaint, say made in 1997 i.e. prior to the prohibitory circular dated 29.06.1999 ought to have been generally not entertained but if there was verifiable material in accordance with the DoPT's O.M. of 1992 and investigation has commenced, the same would have to be taken to its logical conclusion notwithstanding the issue of a later circular dated 29.06.1999.

5. Based on the opinion furnished by Ld. AG, the following clarifications are being issued:-

i. No action should be taken on anonymous / pseudonymous complaints in line with Commission's present instructions dated 25th November, 2014 and such complaints should be filed.

ii. However, where the action was initiated on anonymous/ pseudonymous complaints prior to the issue of CVC's circular dated 29.6.1999 and was pending as on 29.6.1999, it can be pursued further to its logical end.

iii. Where action was initiated on anonymous/ pseudonymous complaints between the period 11.10.2002 and 25.11.2004 with prior concurrence of CVC but is pending, further action is permissible on such complaints.

iv. Material/evidence gathered during the investigation/verification of anonymous complaints when the action was prohibited on such complaints (i.e. between 29.06.1999 & 11.10.2002), or where such enquiry was initiated without the approval of CVC, can be utilised for further initiation of disciplinary proceedings on misconducts noticed in such verification / enquiry.

6. All Administrative Authorities / CVOs may note the above clarifications for guidance / compliance while handling and processing matters arising out of anonymous / pseudonymous complaints.

(J. Vinod Kumar)
Director

To

All Chief Vigilance Officers in the Ministries / Departments / CPSUs / PSBs / PSICs/ FIs/ Societies and other Local Authorities.