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NOTIFICATION

No.H.12017/38/97-LJD, the 2nd November, 1998. The following Central ordinance is hereby published for general information.

Rolura Sailo,
Joint Secretary to the Govt. of Mizoram,
Law and Judicial Department.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 25th August, 1998/Bhadra 3, 1920 (Saka)

THE CENTRAL VIGILANCE COMMISSION ORDINANCE, 1998

No. 15 OF 1998

Promulgated by the President in the Forty-ninth Year
of the Republic of India.

An Ordinance to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1.(1) This Ordinance may be called the Central Vigilance Commission Ordinance, 1998.

Short title
and com-
mencement.

(2) It shall come into force at once.

Definitions. 2. In this Ordinance, unless the context otherwise requires,—

(a) “appointed day” means the date on which the Commission is constituted under sub-section (1) of section 3;

(b) “Central Vigilance Commissioner” means the Central Vigilance Commissioner appointed under sub-section (1) of section 4;

(c) “Commission” means the Central Vigilance Commission constituted under sub-section (1) of section 3;

(d) “Delhi Special Police Establishment” means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946;

25 of 1946.

(e) “prescribed” means prescribed by rules made under this Ordinance;

(f) “Vigilance Commissioner” means a Vigilance Commissioner appointed under sub-section (1) of section 4.

CHAPTER II

THE CENTRAL VIGILANCE COMMISSION

Constitution of Central Vigilance Commission. 3(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Ordinance.

- (2) The Commission shall consist of—
- (a) a Central Vigilance Commissioner — Chairperson;
 - (b) not more than three Vigilance Commissioners — Members;
 - (c) Secretary to the Government of India in-charge of the Ministry of Personnel — Member, *ex officio*.

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons who are or have been in an All India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration.

(4) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(5) The headquarters of the Commission shall be at New Delhi.

Appointment of Central Vigilance Commissioner and Vigilance Commissioners.

4. (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

- (a) the Prime Minister — Chairperson
- (b) the Minister of Home Affairs — Member;
- (c) the Leader of the Opposition in the House of the People — Member.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

5. (1) Subject to the provisions of sub-sections (3) and (4), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

Terms and other conditions of service of Central Vigilance Commissioner.

(2) Subject to the provisions of sub-sections (3) and (4), every Vigilance Commissioner shall hold office for a term of three years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

(3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule.

(4) The Central Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the President, resign his office.

(5) The Central Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(6) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

(a) reappointment in the Commission;

(b) further employment to any office of profit under the Government of India or the Government of a State.

(7) The salary and allowances payable to and the other conditions of service of—

(a) the Central Vigilance Commissioner shall be the same as those of the Chairman of the Union Public Service Commission;

(b) the Vigilance Commissioner shall be the same as those of a Member of the Union Public Service Commission:

Provided that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Central Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity;

Provided further that the salary, allowances and pension payable to, and the other conditions of service of the Central Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

**Removal of
Central Vi-
gilance
Commis-
sioner and
Vigilance
Commis-
sioner.**

6. (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

(4) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

Power to
make rules
by Central
Government
for staff.

7. The Central Government may by rules make provision with respect to the number of members of the staff of the Commission and their conditions of service.

CHAPTER III

FUNCTION AND POWERS OF THE CENTRAL VIGILANCE COMMISSION

Function
and powers
of Central
Vigilance
Commis-
sion.

8. (1) The functions and powers of the Commission shall be to—

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988;

49 of 1988.

49 of 1988.

(b) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988;

49 of 1988.

(c) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988;

49 of 1988.
25 of 1946.

(d) grant approval or otherwise for the conduct of investigation into allegations of corruption under the Prevention of Corruption Act, 1988 against the persons mentioned in section 6A of the Delhi Special Establishment Act, 1946 in accordance with the regulations made in this behalf;

49 of 1988.

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988;

49 of 1988.

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;

(g) tender advice to the Central Government corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) The persons referred to in clause (c) of sub-section (1) are as follows:-

(a) Group 'A' officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf;

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (c) of sub-section(1).

9. (1) The proceedings of the Commission shall be conducted at its headquarters. Proceedings of Commission.

(2) The Commission shall observe such rules of procedure in regard to the transaction of the business as may be provided by regulations.

(3) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the senior most Vigilance Commissioner present at the meeting, shall preside at the meeting.

(4) No act or proceeding of the Commission shall be invalid

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Vigilance Commissioner to act as Central Vigilance Commissioner in certain circumstances.

10. (1) In the event of the occurrence of any vacancy in the office of the Central Vigilance Commissioner by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Vigilance Commissioners to act as the Central Vigilance Commissioner until the appointment of a new Central Vigilance Commissioner to fill such vacancy.

(2) When the Central Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the President may, by notification, authorise in this behalf, shall discharge the functions of the Central Vigilance Commissioner until the date on which the Central Vigilance Commissioner resumes his duties.

Power relating to inquiries.

11. The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely :—

5 of 1908.

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

Proceedings before Commission to be judicial proceedings.

12. The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. 2 of 1974. 45 of 1860.

CHAPTER IV

EXPENSES AND ANNUAL REPORT

Expenses of 13. The expenses of the Commission, including any
commission salaries, allowances and pensions payable to or in respect
to be char- of the Central Vigilance Commissioner, the Vigilance
ged on the Commissioners, Secretary and the staff of the Commission,
Consolida- shall be charged on the Consolidated Fund of India.
ted Fund of
India.

14.(1) It shall be the duty of the Commission to present **Annual**
 annually to the President a report as to the work done by the **report.**
 Commission.

(2) The report referred to in sub-section (1) shall con-
 tain a separate part on the functioning of the Delhi
 Special Police Establishment in so far as it relates to sub-
 section (1) of section 4 of the Delhi Special Police Estab-
 25 of 1946. lishment Act, 1946.

(3) On receipt of such report, the President shall
 cause the same to be laid before each House of Parlia-
 ment.

CHAPTER V

MISCELLANEOUS

15. No suit, prosecution or other legal proceeding **Protection**
 shall lie against the Commission, the Central Vigilance **of action taken**
 Commissioner, any Vigilance Commissioner, the *ex-officio* **in good faith.**
 Member, the Secretary or against any staff of the Com-
 mission in respect of anything which is in good faith done
 or intended to be done under this Ordinance.

16. The Central Vigilance Commissioner, every Vigi- **Central Vigi-**
 lance Commissioner, the Secretary and every staff of the **lance Com-**
 Commission shall be deemed to be a public servant **missioner,**
 45 of 1860. **within the meaning of section 21 of the Indian Penal Code.** **Vigilance**
Commissioner
and staff to
be public
servants.

17.(1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

Report of any inquiry made on reference by Commission to be forwarded to that Commission.

(2) The Commission shall on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be as to the further course of action.

(3) The Central Government and the corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it may for reasons to be recorded in writing communicate the same to the Commission.

18. The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the Vigilance and anticorruption work in that Government and in the said corporations, Government companies, societies and local authorities.

Power to call for information.

Power to give directions.

19. The Commission shall from time to time give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946:

25 of 1946.

Provided that the Commission shall not exercise its powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of a particular case only in a particular manner.

Power to make rules.

20.(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing provisions such rules may provide for—

(a) the number of members of the staff and their conditions of service under section 7; and

(b) any other power of the civil court to be prescribed under clause (f) of section 11;

(c) any other matter which may be prescribed.

**Power to
make
regulations.**

21.(1) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Ordinance and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the duties and the powers of the secretary under sub-section (4) of section 3;

(b) the grant of approval for the conduct of investigation under clause (a) of sub-section (1) of section 8;

(c) the procedure to be followed by the Commission under sub-section (2) of section 9.

**Notification
rule, etc.,
to be laid
before
Parliament.**

22. Every notification issued and every rule made by the Central Government and every regulation made by the Commission under this Ordinance shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or regulation, or both Houses agree that the notification or the rule or regulation should not be made, the notification or the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

23. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty: Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

24. With effect from the appointed day of the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No. 24/7/64-AVD dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, in so far as its functions are not inconsistent with the provisions of this Ordinance, continue to discharge the said functions and,— Provisions relating to existing Vigilance Commission.

(a) all actions and decisions taken by the existing Vigilance Commission in so far as such actions and decisions are relatable to the functions of the Commission constituted under this Ordinance (hereafter referred to in this section as the new Commission) shall be deemed to have been taken by the new Commission;

(b) all proceedings pending before the existing Vigilance Commission in so far as such proceedings relate to the functions of the new Commission, shall be deemed to be transferred to the new Commission and shall be dealt with in accordance with the provisions of this Ordinance;

(c) the employees of the existing Vigilance Commission shall be deemed to have become the employees of the new Commission on the same terms and conditions;

(d) all the assets and liabilities of the existing Vigilance Commission shall be transferred to the new Commission.

46 of 1973.

25. Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1973 or any other law for the time being in force,—

Appointment, etc., of officers of Directorate of Enforcement

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

- (i) the Central Vigilance Commissioner — Chairperson;
- (ii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;
- (iii) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;
- (iv) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;

(b) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(c) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(d) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(e) the Committee referred to in clause (a) shall recommend officers for appointment to the posts of the level above the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(f) on receipt of the recommendation under clause (e), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation.

Amendment 26. In the Delhi Special Police Establishment Act, 1946, of Act 25 with effect of 1946.

(a) after section 1, the following section shall be inserted, namely:—

Definition.

“1A. Words and expressions used herein and not defined but defined in the Central Vigilance Commission Ordinance, 1998, shall have the meanings, respectively, assigned to them in that Ordinance.”;

(b) for section 4, the following sections shall be substituted, namely :—

Superintendence and administration of Special Police Establishment.

“4.(1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission. 49 of 1988.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

Committee for appointment of Director.

4A.(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

- (a) the Central Vigilance Commissioner — Chairperson;
- (b) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;
- (c) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member.

(2) While making any recommendation under sub-section (1), the Committee shall consider the views of the Director.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in investigation of anti-corruption cases; and

61 of 1951.

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951,

for being considered for appointment as the Director.

4B. (1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office. Terms and conditions of service of Director.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.

4C. (1) The committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Joint Director and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

Appointment for posts of Joint Director and above, extension and curtailment of their tenure, etc.

(2) on receipt of the recommendation under sub-section (1), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation.”;

(c) after section 6, the following sections shall be inserted, namely :—

“6A (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Commission where such allegation relates to,—

Approval of Commission to conduct inquiry or investigation.

49 of 1988.

(a) the employees of the Central Government of the level of Joint Secretary and above;

(b) such officers as are appointed by the Central Government in the corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving the arrest of a person on the spot on the charge of accepting or attempting to accept, any gratification other than legal remuneration referred to in clause (c) of the *Explanation* to section 7 of the Prevention of Corruption Act 1988.”.

49 of 1988.

THE SCHEDULE

[See section 5(3)]

Form of oath or affirmation to be made by the Central
Vigilance Commissioner or Vigilance Commissioner :—

“I, A.B., having been appointed Central Vigilance
Commissioner (or Vigilance Commissioner) of the Central
Vigilance Commission do swear in the name of God

solemnly affirm

that I will bear true faith and allegiance to the Constitution
of India as by law established, that I will uphold the sove-
reignty and integrity of India, that I will duly and faithfully
and to the best of my ability, knowledge and judgement
perform the duties of my office without fear or favour, affec-
tion or ill-will and that I will uphold the Constitution
and the laws.”

K.R.NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.