F.No.007/MISC/Legal/04(Pt.)
Government of India
Central Vigilance Commission
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Satarkata Bhawan, Block 'A',
GPO Complex, INA,
New Delhi-110 023
Dated: 1st November, 2007

Circular No.39 /11/07

Subject: Criteria to be followed while examining the lapses of authorities exercising quasi-judicial powers in accordance with the criteria laid down by the Hon'ble Supreme Court.

The Commission has observed that certain departments, while approaching the Commission for advice in respect of alleged/perceived lapses of the officials exercising quasi-judicial powers, do not follow an uniform approach in examining such lapses. In certain cases, it is routinely defended that the official had exercised his quasi-judicial powers and no disciplinary proceedings were warranted. In certain other cases, for similar lapses, disciplinary proceedings were proposed alleging that the official had shown recklessness or acted negligently and lacked devotion to duty. The Commission is of the view that there should be an uniform approach in examining such cases and it is important not to create an impression that the department was following a policy in targeting only few officials exercising such powers.

It is observed that the Hon'ble Supreme Court had laid down the criteria in K.K.Dhawan's case which, however, were being ignored and the officials were being defended on the basis of a subsequent Supreme Court judgement in the case of Z.B. Nagarkar Vs. Union of India. The Hon'ble Supreme Court in its judgment in the case of Union of India Vs. Duli Chand has held that the decision in the Z.B. Nagarkar's case did not represent the law correctly and decided that the decision in the K.K. Dhawan's case (decided earlier by a larger bench of the Supreme Court) would prevail. The judgment in K.K. Dhawan's case, had laid down the following criteria:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty.
(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) If he has acted in a manner which is unbecoming of a Government Servant;

(iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) If he had acted in order to unduly favour a party;

(vi) If he had actuated by corrupt motive, however, small the bribe may be because Lork Coke said long ago "though the bribe may be small, yet the fault is great".

The Commission has therefore, decided that the CVOs, while sending the case to the Commission for advice against the lapses of officials exercising quasi-judicial powers, should examine critically whether any of the above criteria listed, was attracted or not. In either case, detailed justification should be given in arriving at the conclusion as to how none of the criteria was attracted, or how any of them was attracted.

(Vineet Mathur)
Deputy Secretary

To

All Chief Vigilance Officers