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केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



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सं./No.....

24th Oct.2016

दिनांक / Dated.....

Circular No. 12/10/16

Subject:- Criteria to be followed while examining the lapses of authorities exercising judicial or quasi-judicial functions- regarding.

The Commission vide its Circular No. 39/11/07 dated 1st November 2007 had desired that while examining cases of officials exercising quasi-judicial functions, the criteria laid down by the Supreme Court in the K.K. Dhawan's case should be kept in mind for a uniform approach in such matters.

2. In a recent judgment dated 12th July 2016 in R.P. Parekh Case (Civil Appeal Nos. 6116-6117 of 2016), the Supreme Court has prescribed the procedure / principles to be followed while examining the case against an officer exercising judicial/quasi-judicial function. The relevant para -15 of the judgment is reproduced below:

"The issue of whether a judicial officer has been actuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn. Cases involving misdemeanours of a judicial officer have to be dealt with sensitivity and care. A robust common sense must guide the disciplinary authority. At one end of the spectrum are those cases where direct evidence of a misdemeanour is available. Evidence in regard to the existence of an incriminating trail must be carefully scrutinized to determine whether an act of misconduct is established on the basis of legally acceptable evidence. Yet in other cases, direct evidence of a decision being actuated by a corrupt motive may not be available. The issue which arises in such cases is whether there are circumstances from which an inference that extraneous considerations have actuated a judicial officer can legitimately be drawn. Such an inference cannot obviously be drawn merely from a

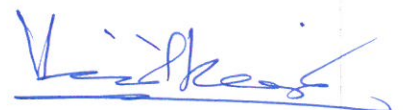
hypothesis that a decision is erroneous. A wrong decision can yet be a bona fide error of judgment. Inadvertence is consistent with an honest error of judgment. A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. ”.

3. The Supreme Court in R P Parekh case has laid down the following conditions / procedure to be followed to determine as to whether an act of a judicial officer has been actuated by an oblique motive or corrupt practice:

- (i) Since, direct evidence of corruption may not always be forthcoming in every case involving a misconduct, a wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle.
- (ii) In the absence of cogent explanation, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that an officer was actuated by extraneous considerations can be drawn.
- (iii) The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which form the basis of the charge of misconduct was not an honest exercise of judicial power.
- (iv) A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact.

4. The Commission desires that in addition to the principles enunciated in the Commission's Circular dated 1st November, 2007, the afore-mentioned criteria in the judgment may also be kept in mind while examining alleged lapses/misconducts in respect of officials exercising quasi-judicial functions/powers.

5. All CVOs are also advised to apprise the above said principles to all Disciplinary Authorities / Administrative Authorities in the Organisations for guidance.



(J. Vinod Kumar)

Director

To,

All CVOs of Ministries/Depts./CPSEs/ PSBs/FIs/PSICs/Autonomous Organisations.