GOVERNMENT OF KERALA

Abstract

AIS - STREAMLINING THE PROCESS AND PROCEDURES FOR CONSIDERATION AND GRANT OF VIGILANCE CLEARANCE TO ALL INDIA SERVICE OFFICERS BELONGING TO KERALA CADRE - ORDERS ISSUED.

GENERAL ADMINISTRATION (SPECIAL C) DEPARTMENT

(OM) (Ms) No.159/2018/GAD

Dated, Thiruvananthapuram, 23.07.2018.

Read:- 1. Office Memorandum No. 104/33/2005/AVD.1 dated 29.10.2007 of the Department of Personnel & Training, Government of India.

ORDER

The guidelines for grant of vigilance clearance to AIS Officers have been laid down in the Office Memorandums of Department of Personnel & Training (DoPT), Government of India read above, in consultation with the Central Vigilance Commission.

I. The orders contained in these guidelines are applicable to the following purposes:

   i. inclusion in the offer list for Central Deputation
   ii. empanelment to the various posts in Government of India
   iii. any deputation for which Central Government clearance is necessary including deputation under Rule 6 (1) and 6 (2)(ii) of the AIS (Cadre) Rules
   iv. appointments to sensitive posts
   v. assignments to training programmes (except mandatory training)
   vi. premature repatriation to the cadre.

II. These guidelines explicitly state and provide for the following circumstances under which vigilance clearance has to be accorded by the competent authority:

   i. Vigilance clearance is to be accorded in a case where a complaint has been made against the officer, unless it is established on the basis of at least preliminary inquiry or on the basis of any information that the concerned Government may already have in its possession, that there is, prima facie, substance to verifiable
allegations regarding:

a. Corruption  
b. Possession of assets disproportionate to known sources of income  
c. Moral turpitude  
d. Violation of AIS Conduct Rules.

ii. Vigilance clearance is to be accorded if a preliminary inquiry mentioned in II (i) above takes more than three months to be completed.

iii. Vigilance clearance is to be accorded unless

a. the officer is under suspension  
b. the officer is on the Agreed List, provided that in all such cases the position shall be mandatorily revisited after a period of one year  
c. charge sheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending  
d. orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority provided that the charge sheet is served within three months from the date of passing such order  
e. charge sheet has been filed in a Court by the Investigating Agency in a criminal case and the case is pending  
f. orders for instituting criminal case against the officer have been issued by the Disciplinary Authority provided that the charge sheet is served within three months from the date of initiating proceedings  
g. sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter

Proviso: - Vigilance clearance is to be accorded even after sanction for prosecution if the investigating agency has not been able to complete its investigations and file charges even after period of two years. However, such vigilance clearance entitles the officer to be considered only to be appointed to non-sensitive posts in Central Government. However in a situation as in para II (iii) (g) above along with this proviso, the Central Government is competent to prematurely repatriate the officer to the cadre, and the officer is not entitled for empanelment, Central deputation, appointment to sensitive posts, assignment to training programmes, etc. as listed in Para 2 of this order.

h. an FIR has been filed or a case has been registered by the concerned Government against the officer provided that the charge sheet is served within three months from the date of filing/registering the FIR/case.

i. the officer is involved in trap/raid case on charges of corruption and investigation is pending

iv. Vigilance clearance is to be accorded in a case where an FIR has been filed on the basis of a private complaint unless a charge sheet has been filed by the
investigating agency provided that there are no directions to the contrary by a
competent court of law.

v. Vigilance clearance is to be accorded to an officer if he has submitted his annual
immovable property return of the previous year latest by 31st January of the
following year, as required under Government of India decisions under Rule 16 of
the All India Services (Conduct) Rule, 1968.

III. Vigilance clearance is to be accorded/decided on a case-by-case basis by the
Competent Authority keeping in view the sensitivity of the purpose, the gravity of the
charges and the facts and circumstances, in the following situations:

i. Where the investigating agency has found no substance in the allegation
but the Court refuses to permit closure of the FIR.

ii. Where the Investigating Agency/Investigating Officer holds the charges as
proved but the State Government differs on the converse.

IV. Vigilance clearance is to be issued in all cases with the approval of the Head of
Vigilance Division for officers up to one level below their seniority in service.

V. Vigilance clearance is not to be normally be granted for a period of three years after
the currency of the punishment, if minor penalty has been imposed on an officer. In case
of imposition of a major penalty, vigilance clearance is not to be normally granted for a
period of five years, after the currency of punishment. During the period, the performance
of the officer is required to be closely watched.

2. The extant practice in the State Government is to communicate the report
about Vigilance Enquiry (VE), Vigilance Cases (VC), and Quick Verification Report
(QVR) to Government of India for the following purposes:

i. inclusion in the offer list for Central Deputation

ii. empanelment to the various posts in Government of India

iii. any deputation for which Central Government clearance is necessary
including deputation under Rule 6(1) and 6(2)(ii) of the AIS (Cadre) Rules

iv. appointments to sensitive posts

v. assignments to training programmes (except mandatory training)

vi. premature repatriation to the cadre.
3. However it is observed that due diligence is not carried out while reporting the Vigilance Status in accordance with the guidelines of Government of India. The information as contained in communication to Government of India about the vigilance status convey wide array of information on existing VE, VC & QVR without any judicious analysis with reference to guidelines for according Vigilance Clearance as mandated by Government of India, which leads to non-consideration of officers from Kerala Cadre for empanelment/assignment in Government of India.

4. The provisions of these instructions of Government of India explicitly cover the situations of vigilance cases, institution and pendency of criminal cases, disciplinary proceedings, suspension, sanctions for investigation and prosecution, trap and raid cases on charge of corruption, failure to file IPR and difference of opinion between Investigating Agency and Court, and between Investigating Agency and Government. In addition, specific provisions exist in the guideline as enumerated in para II (i) of this order to consider the outcome of complaints received against the officers on the following allegations:

i. Corruption
ii. Possession of assets disproportionate to known sources of income
iii. Moral turpitude
iv. Violation of AIS Conduct Rules.

5. However, in the OM No.104/33/2005-AVD.I dated 29.10.2007 of DoPT read as 1st paper above, Para 2 (a) and (b) explicitly state that vigilance clearance shall not be withheld due to filing of a complaint unless it is established on the basis of at least a preliminary enquiry or on the basis of any substantive information that State Government is in possession to state that there is prima facie substance to verifiable allegations in these four above mentioned allegations. Presently the report about Vigilance Enquiry (VE) as being conveyed by VACB and considered by the competent authority are being dealt under this provision. Nevertheless, para 2 (b) of this specific OM of Government of India clearly states that vigilance clearance shall not be withheld to an officer if the preliminary enquiry on the complaints received against the officers with the allegations about corruption, possession of assets disproportionate to known sources
of income, moral turpitude and violation of AIS Conduct Rules takes more than three months to be completed.

6. Accordingly, the following due diligence is to be undertaken and outcome thereafter is to be considered for according/denying vigilance clearance to AIS officers if a complaint/complaints is (are) pending against any officer:

i. A preliminary enquiry has to be conducted on receipt of complaint.

ii. The preliminary enquiry has to be completed within three months of the receipt of the complaint.

iii. The outcome of Preliminary enquiry should mandatorily have substantive information to state that there is prima facie substance to establish verifiable allegation.

iv. In case the preliminary enquiry is not conducted, the State Government should be in its possession substantive information to state that there is prima facie substance to establish verifiable allegation.

v. The outcome of Quick Verification Reporting system either suo motu by VACB or on the direction of court/tribunal should also be subjected to the test parameter as recorded in 6 (i) – (iv) above.

7. The present extant system of a simple conveyance of existence of a VE/QVR without satisfying above conditions is neither adequate nor appropriate to deny the vigilance clearance to the AIS officers for the purposes as provided in Para 1 (i) of this order. Accordingly, VACB should furnish the statement about existence of complaints pending against the officer in line with the tests criteria as provided in Para 6 (i) – (v) of this order. In the four point test criteria as above, however, there could be a situation when a complaint is received against an officer and three months period as stipulated to complete preliminary enquiry is not over but the vigilance status of the officer is required to be ascertained and conveyed to Government of India. In this circumstance, reliance is to be laid upon the specific phraseology in Para 2 (a) and (b) read together of the DoPT O.M. read as 2nd paper above, which states that ‘vigilance clearance shall not be withheld due to the filing of a complaint, unless it is established on the basis of at least a preliminary enquiry...’ and ‘vigilance clearance shall not be withheld if a preliminary enquiry takes more than three months to be completed’. The spirit of the provision is explicit to the effect that there is a mandatory requirement of at least a preliminary enquiry and which is to be completed within three months. In a scenario when the period of three months is not over and no substance on verifiable allegation is available to prove
the allegation the officer deserves to be accorded vigilance clearance at that stage. On receipt of the report from VACB in such matters the entire fact should be placed before the competent authority for consideration for according vigilance clearance.

8. One of the extant observed practices is the typology of reporting by VACB is statement pursuant to QVR or any enquiry into a complaint – undertaken suo motu or under the direction of court/tribunal – to the effect that the report has been filed with the court/tribunal with a recommendation to close the enquiry and/or not requiring any further enquiry. Such reports creating an open ended outcome is having a bearing on the consideration for according vigilance clearance to the officers. Government of India guidelines explicitly provide four point test criteria in respect of complaints against officers limited to specific types of allegations as provided in Para (II) (i) above. The State VACB should specifically report in such cases whether the outcome of his reporting to court / tribunal fulfil four point test criteria for according/denying vigilance clearance rather than leaving the matter open ended. The decision by court is independent and should be taken into account in matters of vigilance clearance only after there is a direction from the court which satisfies any of the determining grounds as provided under the Government of India O.M. to withhold or deny the vigilance clearance.

9. In the circumstances, it is hereby ordered that the provisions of Government of India guidelines on Vigilance Clearance shall strictly be followed while forwarding the Vigilance status of the Officers to Government of India. The same guidelines shall be adopted by Government of Kerala for according Vigilance Clearance to AIS Officers for similar purposes in the State Government as well.

10. The tabular format outlined in the Annexure to this order shall be followed henceforth by the concerned Authorities, i.e. Director, Vigilance & Anti-Corruption Bureau, Director General of Police & State Police Chief, Principal Chief Conservator of Forests and Head of Forest Force and the General Administration (Special A & C) Departments for conveying the Vigilance status of AIS officers to Government of India.
11. In all the cases listed at Para 1 above, the vigilance status in the prescribed tabular format shall be placed before and considered by the Competent Authority before decision is taken.

(By Order of the Governor),
Bishwanath Sinha
Principal Secretary to Government.

To
The Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram.
The Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi -110 001.
The Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi-110 001.
The Secretary, Government of India, Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhawan, 6th Floor, Prithvi Block, Jor Bagh Road, Ali Ganj, New Delhi ±110 003.
The Director General of Police & State Police Chief, Kerala,
Police Head Quarters, Thiruvananthapuram.
The Principal Chief Conservator of Forests and Head of Forest Force, Kerala,
Forest Headquarters, Thiruvananthapuram.
The General Administration (SC/Special-A/Special-C1/Special-C3) Departments.
The Vigilance Department.
✓The Web & New Media Division of I&PRD.
Stock File/Office Copy.

Copy to: The Chief Principal Secretary to Chief Minister.
The Private Secretary to Chief Minister.
The Special Secretary to Chief Secretary.
The P.A. to Additional Chief Secretary (Home & Vigilance).
The P.A. to Principal Secretary, General Administration Department.
The P.A. to Additional Secretary, General Administration (Special A&C) Department.

Forwarded/By Order

Section Officer
## PROFORMA FOR ACCORDING VIGILANCE CLEARANCE TO AN AIS OFFICER

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Name of Officer</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Service</td>
<td>IAS/IPS/IFS</td>
</tr>
<tr>
<td>3</td>
<td>Cadre &amp; Batch</td>
<td>KL:</td>
</tr>
<tr>
<td>4</td>
<td>Designation</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Present Posting</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Whether on deputation</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Date of Superannuation</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Level of the pay scale</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Appointing/ Disciplinary Authority</td>
<td></td>
</tr>
</tbody>
</table>

10 Vigilance Clearance is required for the purpose of (please tick the relevant column)

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Empanelment</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Central Deputation</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Any deputation for which Central Government clearance is necessary including deputation under Rule 6(1) and 6(2)(ii) of the AIS (Cadre) Rules</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Appointments to sensitive posts</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Training Programme</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Foreign Assignment</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Voluntary retirement/ Retirement on superannuation</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Any other purpose</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Whether the officer is under suspension</td>
<td>Y/N (GAD Special)</td>
</tr>
<tr>
<td>12</td>
<td>Whether the officer is on the Agreed List of the current year</td>
<td>Y/N (GAD Special)</td>
</tr>
<tr>
<td>13</td>
<td>Whether any charge sheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending</td>
<td>Y/N (GAD Special)</td>
</tr>
<tr>
<td>14</td>
<td>Whether the charge sheet has been served within three months pursuant to orders for instituting disciplinary proceeding against the officer from the date of issue of such orders</td>
<td>Y/N (GAD Special)</td>
</tr>
<tr>
<td>15</td>
<td>Whether a charge sheet has been filed in a court by the investigating agency in a criminal case involving the officer and the case is pending</td>
<td>Y/N (VACB)</td>
</tr>
<tr>
<td></td>
<td>Question</td>
<td>Response</td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>16</td>
<td>Whether the charge sheet has been served within three months pursuant to orders for instituting criminal case against the officer from the date of initiating proceedings</td>
<td>Y/N (GAD Special and VACB)</td>
</tr>
<tr>
<td>17</td>
<td>Whether sanction for investigation or prosecution has been granted by the competent authority in a case under the PC Act or any other criminal matter</td>
<td>Y/N (GAD Special)</td>
</tr>
<tr>
<td>18</td>
<td>Whether investigating agency has completed its investigation and filed the charge sheet within two years</td>
<td>Y/N (VACB)</td>
</tr>
<tr>
<td>19</td>
<td>Whether the charge sheet has been served within three months pursuant to registration of FIR or filing of a case from the date of such registration of FIR / filing of case.</td>
<td>Y/N (GAD Special and VACB)</td>
</tr>
<tr>
<td>20</td>
<td>Whether the officer is involved in trap/raid case on charges of corruption and investigation is pending</td>
<td>Y/N (VACB)</td>
</tr>
<tr>
<td>21 a</td>
<td>Whether the charge sheet has been served upon officer pursuant to filing of FIR on the basis of a private complaint</td>
<td>Y/N (VACB)</td>
</tr>
<tr>
<td>21 b</td>
<td>If charge sheet has not been filed, is there any direction contrary by a court in this regard</td>
<td>Y/N (VACB)</td>
</tr>
<tr>
<td>22</td>
<td>Whether officer has submitted his annual immovable property return of the previous year by 31st January of the following year under Rule 16 of the AJS (Conduct) Rule, 1968.</td>
<td>Y/N (CS office)</td>
</tr>
<tr>
<td>23</td>
<td>Is there any complaint received against the officer</td>
<td>Y/N (GAD Special and VACB)</td>
</tr>
<tr>
<td>23 a</td>
<td>If yes, whether preliminary enquiry has been conducted within three months from the date of receipt of the complaint</td>
<td>Y/N(GAD Special and VACB)</td>
</tr>
<tr>
<td>23 b</td>
<td>If yes, is there any prima facie substance to establish verifiable allegation</td>
<td>(to elaborate) (VACB)</td>
</tr>
<tr>
<td>23 c</td>
<td>Whether the Government is in its possession substantive information to state that there is prima facie substance to establish verifiable allegation</td>
<td>Y/N (to elaborate) (GAD Special)</td>
</tr>
</tbody>
</table>

**DATE:**

(NAME AND SIGNATURE)

* The outcome of QVR should be covered in item 23 above.

**Note:**

# A complaint is received against an officer and three months period as stipulated to complete preliminary enquiry is not over at the time of furnishing the report, vigilance clearance is to be accorded provided no substance on verifiable allegation is available.