

Module 3

Vigilance Mechanism

Chapter 5

Vigilance Clearances

Introduction and Definition

Vigilance Clearance is an important tool of vigilance appraisal of an officer. Airports Authority of India Employees (Conduct, Discipline & Appeal) Regulations, 2003 has defined vigilance Clearance as an instrument to ensure whether an employee is involved in any misconduct or criminal offence. (e.g., demand / acceptance of illegal gratification, possession of disproportionate assets, abuse of official position involving vigilance angle and violation of any of the prescribed provisions)

Vigilance Clearance is sought from the Commission only for two specific purposes:

- ❖ Empanelment to senior level posts in the Government of India, and
- ❖ Appointment to Board (and higher) level posts by PESH and appointment to sensitive posts by the Cabinet Secretariat

Related Guidelines

Seeking vigilance clearance from the Commission for the above two purposes is mentioned in DoPT guidelines dated 29.10.2007 with regard to empanelment of non-AIS officers and guidelines dated 14.12.2007 with regard to empanelment of AIS officers. The guidelines of DoPT state that while considering cases for grant of VC for the purpose of empanelment of AIS officers or members of CCS, and Board level positions in PSEs, the comments of the CVC are to be obtained.

For appointment to Board level positions, DOPT OM of 1988 states that it would be the primary responsibility of the administrative Ministry/Department concerned to ensure that the candidates, whose appointment as functional directors/CMDs in PSUs is being considered by ACC,

are cleared from vigilance angle. In respect of those persons who are already holding board level positions and who have been recommended for higher than board level positions, the vigilance clearance may be ascertained, amongst other sources, from the Central Vigilance Commission. It was further clarified vide Commission's OM dated 12.07.1999 that Vigilance clearance shall be obtained from the Commission **in respect of all candidates /officers** recommended by the PESB for appointment to any Board level position in PSEs, irrespective of their holding a Board level or below Board level posts at that point of time.

Consequently, CVC vide OM dated 11.08.2005 clarified that whenever some officer is given additional charge of some post for a short duration, i.e., upto 3 months, clearance from the CVC will not be required. In such cases, CVOs of the organization would give clearance. Further, clearance from the Commission is not to be sought for the purpose of additional charge arrangements in respect of Board level functionaries in PSUs, unless the department concerned has material in its possession on the basis of which it believes that vigilance status has changed since the incumbent was last cleared for Board level appointment. However, these instructions will further not apply in cases where a functional director of a PSU is proposed to be given additional charge of MD/CMD of the same PSU or another PSU¹.

Further, DPE OM dated 16.10.2008 stated that fresh CVC clearance would be required if arrangements continue beyond a year and that CVC clearance is required if additional charge is assigned to a functionary from another PSU or to an officer from the Ministry.

Source of Input for Vigilance Clearance

At the time of giving vigilance clearance of an officer, the Commission takes into consideration feedback from three different sources:

- ❖ **Concerned Department / Ministry:** In fact, vigilance clearance is granted by respective Cadre Controlling Authorities, and the CVC plays an advisory role. Hence, it is the responsibility of the organizations to maintain up-to-date biodata, posting profile and vigilance profile of ALL officers of its cadre. The Departmental input contains the most crucial and detailed information about the antecedents of an officer. The Commission has prescribed a 13-

¹ CVC OM dated 15.02.2008

point format for compilation and submission of this input along with proposals soliciting its advice on vigilance status of officers.

- ❖ **Central Bureau of Investigation:** After a proposal has been received in the Commission, the 1st part of profiles of officers, which contains bio-data and posting details, is shared with the CBI for its feedback on antecedents of the officer
- ❖ **Commission's records:** In the internal inputs taken from the Commission, we take inputs from the vigilance branch dealing with the concerned Ministry/ Department, the branch dealing with any another ministry/department the officer might have worked at, and from the Confidential/PIDPI section of the Commission.

The 'case-details' in the inputs received from **all 03 sources** for **each officer** are matched and reconciled.

Types Of Commission's Advice

Based on examination of inputs, Commission offers three types of advice on vigilance status:

- i. If no adverse input is found in the feedback of CBI /or the Department /or database of the Commission it is conveyed that there is nothing adverse in the records of the Commission against the officer;
- ii. If adverse information is reported by CBI/ or detected in the Departmental inputs/ or in the data-base of the Commission, denial of clearance is conveyed. This also includes if the officer is on any agreed list/ODI list.
- iii. When complaints are found pending at the end of the concerned Department, the Commission advises the competent authority to bring the pending complaints to logical conclusion, update the vigilance profile of the officer accordingly, and thereafter submit the proposal for consideration of the Commission².

Vigilance Clearance and Complaints

With regards to complaints and its impact on vigilance clearance, the Commission has decided the following:

² Para 11.2 (9) (c) of the Vigilance Manual

- i. All anonymous and pseudonymous complaints are required to be filed.
- ii. The balance complaints should be brought to logical conclusion within 03 months by taking decision for its **(1) FILING** or **(2) REGISTERING a vigilance case or non-vigilance case**
- iii. At the end of 03rd month, the concerned official against whom complaint has been filed, should be **informed about the complaint** if decision has been made to register a CASE against him. In case the name of the employee is not explicitly mentioned in the complaint, a copy of the complaint shall be made available to the concerned employee at the time of registration of vigilance/non vigilance case against the said employee. The purpose of this is to inform the employee that the complaint is being examined by the organization. The employee shall also be informed that full opportunity would be given to him during examination. In case, a decision is made to file the complaint, then no further action will be required.
- iv. Lastly, Inquiry Report should be submitted for First Stage Advice within 03 months of registration of VIGILANCE case³.

Thirteen Point Format

The Central Vigilance Commission has devised a format in which details of the officer about whom vigilance clearance is sought is submitted by the concerned Department. The Format captures information on 13 parameters, under 02 distinct Parts. The first part contains general information like Officer's Name, Father's Name, Date of Birth, Date of Retirement, Date of entry into Service, Name of Service, Batch of the Officer and 10 years' posting details.

The second part contains CONFIDENTIAL information such as Agreed list, ODI list/ 10 years' vigilance profile, punishment details, pending cases, action contemplated, pending vigilance complaints.

Recently the Commission vide OM dated 16.03.2022 have made timely filing of AIPR a mandatory pre-requisite for giving of vigilance clearance.

³ CVC's OM dated 19.04.2021

Preconditions for Vigilance Clearance

Preconditions of denial of Vigilance Clearance are clearly defined by existing government guidelines. Accordingly, Vigilance clearance shall not be withheld unless:

- i. the officer is under suspension
- ii. 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
- iii. a chargesheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending
- iv. orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority, provided that the chargesheet is served within three months from the date of passing such order
- v. chargesheet has been filed in a Court by the Investigating Agency in a criminal case and the case is pending
- vi. orders for instituting a criminal case against the officer have been issued by the Disciplinary Authority, provided that the chargesheet is served within three months from the date of initiating proceedings
- vii. sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter
- viii. an FIR has been filed or a case 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
- ix. the officer is involved in a trap/raid case on charges of corruption and investigation is pending.
- x. Vigilance clearance shall not be withheld due to an FIR filed on the basis of a private complaint unless a chargesheet has been filed by the investigating agency, provided that there are no directions to the contrary by a competent court of law.
- xi. Vigilance clearance shall not be withheld even after sanction for prosecution if the investigating agency has not been able to complete its investigations and file charges even after a period of two years. However, vigilance

clearance will entitle the officer to be considered only to be appointed to non-sensitive posts and premature repatriation to the cadre and not for any other dispensation listed in Para 2(1) above.

Currency of Penalties

- ❖ Vigilance clearance will not normally be granted for a period of three years after the currency of the punishment, if a minor penalty has been imposed.
- ❖ In case of imposition of major penalty, vigilance clearance will not normally be granted for a period of five years after the currency of punishment⁴.

⁴ DOPT OMs dated 29.10.2007 and 14.12.2007