



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

Writ Petition (C) No. 250(AP)/2023

Shri Netan Tsering

..... PETITIONER.

-Versus-

The State of AP & 8 Ors.

..... RESPONDENTS.

Advocates for the petitioner:

Mr. B. Picha, Advocate

Advocate for the respondents:

Mr. N. Ratan, Addl. Advocate General

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE

Date of hearing : 02.04.2024.

Date of judgment : 12.04.2024.

JUDGEMENT AND ORDER (CAV)

Heard Mr. B. Picha, learned counsel for the petitioner. And also heard Mr. N. Ratan, learned Additional Advocate General appearing for the State respondents.

2. By filing this writ petition, the petitioner has put to challenge the impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020 issued by the Vigilance Department, Govt. of Arunachal Pradesh, whereby requirement of obtaining No objection Certificate and Vigilance clearance and its procedure are provided, on the ground of having no force of law and contrary to the Deputy Forest Ranger/Forester/Forest Guard Recruitment Rules, 2019.

3. The case of the petitioner, in brief, is that the petitioner has joined as the Forester (Grade-II) on 15.06.1987 in the Department of Environment & Forest, Govt. of Arunachal Pradesh. Since, his joining in the service till date, the petitioner is serving as Forester without any promotion. It is contended that though the petitioner is eligible and was kept under consideration for promotion, due to want of No Objection Certificate (hereinafter referred to as NOC in short) and Vigilance Clearance, the petitioner has been denied of his due promotion.

4. It is contended that during the relevant point of time of the appointment of the petitioner, the Recruitment Rule of 1974 was in force for promotion from the post of Forester to the post of the Deputy Forest Ranger. The method of recruitment was by 100% promotion on the basis of seniority cum merit from amongst the Foresters having rendered good number of services. The Recruitment Rules has been framed and amended from time to time for promotion to the post of Deputy Forest Ranger. The Deputy Forest Ranger/Forester/Forest Guard Recruitment Rules, 2019 (in short RR, 2019) has been framed finally and is in force. As per the RR, 2019, the method of the recruitment for the post of Deputy Forest Ranger is 100% by promotion amongst the Foresters of the department with minimum five years of regular service. It is contended that even before the present RR, 2019 come into force, as per earlier Recruitment Rules, all along the petitioner was eligible for promotion to the post of Deputy Forest Ranger.

5. The Principal Secretary (Vigilance), Govt. of Arunachal Pradesh vide No. PSH-06/2012-13 dated 02.04.2013, issued an impugned order wherein it provides that for promotion, it is mandatory for every government employee to obtain No Objection Certificate/Vigilance Clearance Certificate from the office of the concern Deputy Commissioner that the government official has not encroached upon any government property nor has caused any damage or abetted encroachment on the public property by a private person.

6. Thereafter, vide order dated 06.06.2017, 11.05.2018, 25.02.2020, it has been made mandatory to obtain Vigilance Clearance from the Under Secretary (Vigilance), Government of Arunachal Pradesh for consideration of promotion. It is also prescribed that Vigilance report in prescribed form shall be sent by the officer of the concerned department and also provides that Vigilance Clearance shall be denied, if NOC from the concerned Deputy Commissioner is not enclosed pertaining to non-encroachment of government land.
7. The Conservator of Forest (HQ)L-I, vide Memo No. FOR/CC-4/25/2016/90-150 dated 02.02.2017 had communicated to process and direct the concerned Divisional Forest Officer/Concerned Officials to obtain NOC from concerned Deputy Commissioner to the effect that Government officials have not encroached upon any government property nor caused any damage or abetted encroachment on public property and submit the same in original with particulars. It has further provided that in case ACRs/APARs, NOC, status with above referred particulars is not submitted latest by 20.03.2017, the office shall not be responsible for non-inclusion of such incumbent's name in the Departmental Promotion Committee (DPC). In the letter dated 02.02.2017, the name of the petitioner has been reflected at serial No. 57. Therefore, the concerned authority had also sought NOC of the petitioner, as the petitioner was also under the zone of consideration for promotion to the post of Deputy Forest Ranger.
8. Pursuant to the communication dated 02.02.2017, Divisional Forest Officer, NRS Division, Kamengabari, West Kameng District had vide letter dated 24.02.2017 had requested the Deputy Commissioner, Bomdila, West Kameng District to issue NOC cum Vigilance Clearance Certificate for consideration of promotion of three officers including the petitioner.
9. The petitioner, having knowledge of the requirement of NOC cum Vigilance Clearance for promotion, on 06.03.2017 has submitted a representation before the Deputy Commissioner, West Kameng District, by stating that the petitioner had occupied a plot of land located at Bomdila, near P.W.D. Garage, West Kameng District, Arunachal Pradesh. He clarified that the land of the petitioner is not a part of government quarter area or any government establishment/office. The land has been free from encumbrances and being in peaceful occupation since 1998 and has formally started construction of dwelling house over the land. He had also applied for allotment of the land. Vide letter dated 24.07.1998, the Deputy Commissioner, Bomdila, West Kameng District had issued notice to the petitioner directing to stop construction work. The petitioner had filed representation dated 06.10.1998 stating inter-alia that the petitioner had already applied for allotment of the said land and the same had been forwarded by the office of the Deputy Commissioner, West Kameng District, before the higher authority for approval. Under such circumstances, the petitioner had started construction of one RCC

residential building over the land, as the petitioner had already purchased huge quantity of materials for construction of the said building and requested for allowing him to continue his construction.

10. On such representation, the Deputy Commissioner, West Kameng District has issued an order dated 09.12.1998 directing the petitioner to submit an undertaking within 15(fifteen) days to the effect that in the event of regularization of land allotment, the petitioner shall pay penalty of Rs. 100/- per square meter for residential and Rs. 200/- per square meter for commercial purposes. Accordingly, he has submitted an undertaking on 09.12.1998 and paid Rs. 2,000/- as a first installment and further, undertakes to pay rest of the amount after formal approval of land allotment. Thereafter, the petitioner was allowed to continue his construction. Therefore, the petitioner had contended that he has not encroached over any government land and the construction work was carried out as per the permission given by the then Deputy Commissioner, West Kameng District. Accordingly, a request was made to issue NOC and Vigilance Clearance to the petitioner. However, the Deputy Commissioner has not issued NOC and the Vigilance Clearance for consideration for promotion of the petitioner to the post of Deputy Forest Ranger. Situated thus, the petitioner has filed representation on 15.03.2017 before the Principal Chief Conservator of Forest, Govt. of Arunachal Pradesh, for promotion to the post of Deputy Forest Ranger, as there is no requirement of NOC and Vigilance Clearance for consideration of promotion as per the Recruitment Rules. Finally, the Deputy Commissioner of West Kameng district had issued a certificate dated 23.05.2017 certifying that although the petitioner did not possess any formal land allotment order, the official records reveals that he has obtained permission from the office of the Deputy Commissioner, West Kameng District, for carrying out the construction works of the said building. But since it was not an NOC, the case of the petitioner could not be considered for promotion.

11. It is contended that again on account of subsequent vacancy of post of the Deputy Forest Ranger in the Department, the Conservator of Forest (HQ), vide Memo dated 22.09.2020 had communicated to its counterpart by requesting to direct the Concerned Officials to obtain NOC from concerned Deputy Commissioner to the effect that Government officials have not encroached upon any government property nor caused any damage or abetted encroachment on public property and others particulars as required by the Vigilance Department for onwards submission to State Government. It also further stated that ACRs/APARs, NOCs, of the officials concerned be submitted before the office by latest 20.10.2020. In the said letter, the name of the petitioner is reflected at serial No. 1 and the concerned authority has sought for NOC of the petitioner, as the petitioner was under the zone of consideration for promotion to the post of Deputy Forest Ranger.

12. The petitioner having known the fact that the Deputy Commissioner, West Kameng District, would not issue NOC and Vigilance Clearance Certificate, the petitioner had again submitted a

representation dated 20.10.2020 before the Principal Chief Conservator of Forest, Government of Arunachal Pradesh, by requesting to consider the due promotion of the petitioner without insisting on NOC and Vigilance Clearance Certificate. Despite repeated submissions of representation, the respondent authorities on being influenced by impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020 had ignored the grievance of the petitioner and never considered his case for promotion in complete violation of Recruitment Rules.

13. Again on 07.12.2020, a similar communication was made requesting to direct the concerned officials to obtain NOC from concerned Deputy Commissioner on the same norm. However due to non submission of NOC and Vigilance Clearance Certificate, the case of the petitioner has not been considered for promotion whereas many juniors of the petitioner have been promoted to the higher rank of superior officer to the petitioner. The RR, 2019 for the post of Deputy Forest Ranger, provides that the method of the recruitment for the post of Deputy Forest Ranger is 100% by promotion amongst the Foresters of the Department with minimum 5(five) years of regular service in the grade. According to the petitioner, the RR, 2019 also does not require any NOC or Vigilance Clearance Certificate for promotion.

14. Mr. B. Picha, learned counsel for the petitioner, submits that the petitioner has not encroached upon any government quarter or government establishment and he was granted permission to construct building on the plot of land in the year 1998 and he had applied for allotment of the land, which is still pending for consideration. Though the notice was issued to the petitioner, subsequently, he was asked to submit undertaking to the effect that in the event his plot of land is regularized he would pay penalty at the rate of Rs. 100/- per square meter for residential and Rs. 200/- per square meter for commercial purposes respectively to which he has already submitted the undertaking and deposited Rs. 2,000/- as a first installment.

15. He submits that it is revealed from the record that the concerned authorities had verified the plot of the petitioner and recommended to the higher authority for approval and for onward forwarding to the Government for final approval. He submits that the Deputy Commissioner has arbitrarily withheld the land allotment application of the petitioner, though the required procedure has been completed for final approval by the Government.

16. Mr. B. Picha, learned counsel for the petitioner submits that there is no criminal case or any departmental proceedings pending against the petitioner, it is only due to pendency of land allotment process, though the plot of land of the petitioner measuring 495 square meters only located near PWD garage, Bomdila, which the petitioner had already applied before the Deputy Commissioner, West Kameng District and due to such pendency, no NOC and the Vigilance Clearance Certificate have been

issued, which led to non consideration of the promotion to the petitioner despite, the petitioner has been eligible in all respect. Though the petitioner has lawfully applied for the allotment of the plot of land in his possession, the respondent authority are neither issuing the NOC and Vigilance Clearance Certificate nor considering the promotion of the petitioner. He submits that such an action is being influenced by the impugned orders 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020. He submits that the impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020 having no force of law, it cannot override the Recruitment Rules framed under Article 309 of the Constitution of India and it cannot be a basis for non-consideration of promotion of the petitioner.

17. He further submits that there is no requirement for obtaining NOC and Vigilance Clearance certificate for promotion in the RR, 2019 as well as earlier recruitment rules, as the method of the recruitment in the post of Deputy Forest Ranger is by way of 100% promotion having five years of regular service in the Grade. Nowhere, it is mentioned that for promotion to the post of Deputy Forest Ranger NOC and Vigilance clearance certificate are to be submitted. Therefore, requirement of NOC and vigilance clearance is totally illegal and contrary to service jurisprudence. He submits that non-consideration of promotion of the petitioner for want of NOC and Vigilance Clearance Certificate on the basis of impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020 is totally arbitrary and illegal.

18. He further submits that the origin of impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020 has no legal basis. It has not been created by taking recourse to any service law as such reliance of such an impugned orders is itself illegal. The impugned orders cannot override the provision of Recruitment Rules framed under Article 309 of the Constitution of India. Therefore, the same is liable to be set aside and quashed and a direction may be given to the concerned authorities to consider the case of the petitioner for promotion to the post of Deputy Forest Ranger in terms of Recruitment Rules without insisting on NOC and Vigilance clearance from the Deputy Commissioner, West Kameng District.

19. In support of his submissions, Mr. B. Picha, learned counsel for the petitioner, has placed reliance of the following judgments:-

1. **Dr. Rajinder Singh Vs. State of Punjab and Ors.** reported in (2001) 5 SCC 482.
2. **Dr. Hira Lal Vs. State of Bihar and Ors.** reported in (2020) 4 SCC 346.
3. **Union of India and Ors. Vs. Sangram Keshari Nayak** reported in (2007) 6 SCC 704.
4. **Union of India and Ors. Vs. K.V. Jankiraman and Ors.** reported in (1991) 4 SCC 109.

20. On the other hand, Mr. N. Ratan, learned Addl. Advocate General submits that the Department of

Vigilance, Govt. of Arunachal Pradesh has issued an order dated 25.02.2020, wherein, NOC and Vigilance Clearance Certificate are mandatory documents for promotion to the grant of MACP, release of pension etc. NOC must be obtained from the concerned Deputy Commissioner for obtaining Vigilance Clearance without which promotion to higher post cannot be considered as per the above order.

21. Mr. N. Ratan, learned Add. A.G. while referring to the Arunachal Pradesh Vigilance Manual-2022, wherein, all the impugned order compiled and incorporated in the manual submits that the same has been notified by the Government of Arunachal Pradesh in the name of Hon'ble Governor. Therefore, he submits that the impugned orders have been issued under Article 162 of the Constitution of India. He further submits that the executive orders or office memorandums impugned in the present case, have been issued in the exercise of power conferred under Article 162 of the Constitution of India.

22. Mr. N. Ratan, learned Addl. Advocate General submits that where the rules in the Recruitment Rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement the same and it is only in case of supplant, which is not permissible under law. In the present case, since these executive orders are issued under Article 162 of the Constitution of India, if at all, it is by way of supplementing and not by way of supplanting. Therefore, there is no question of not having force of law or contrary to the Recruitment Rule, 2019. Therefore, the contention of the petitioner is not tenable and is liable to be rejected.

23. Having submitted above, the learned Addl. Advocate General Mr. N. Ratan, has placed a copy of communication dated 14.03.2024 issued by the Conservator of Forest (HQ), Department of Environment, Forest and Climate Change, Govt. of Arunachal Pradesh stating that a No Objection Certificate from the concerned Deputy Commissioner that the individual in question has not encroached upon any government land is mandatory for obtaining vigilance clearance from the Home Department as per the standing order of the Government. Another letter has also been placed to show that the petitioner has not encroached upon any Govt. property nor has any damage or abetted encroachment on the public property under NRS Division at Kamengbari under Forest Department, to project that the petitioner if not encroached or damage or abetted of the Government properties and land, the petitioner is entitled to NOC from the Deputy Commissioner, West Kameng District.

24. Mr. N. Ratan, learned Addl. AG, has placed reliance of the judgement of the Hon'ble Supreme Court in the case of **Sk. Nausad Rahaman and Others. Vs. Union of India and Others** reported in **(2022) 12 SCC 1**, wherein it is held that norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in:

- (i) A law enacted by the competent legislature;

(ii) Rules made under the proviso to Article 309 of the Constitution; and

(iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States. Where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law made by the legislature shall prevail. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules. A policy decision taken in terms of the power conferred under Article 73 of the Constitution on the Union and Article 162 on the States is subservient to the recruitment rules that have been framed under a legislative enactment or the rules under the proviso to Article 309 of the Constitution.

25. Due consideration has been extended to the rival submissions of the learned counsel for the parties and also perused the materials available on record.

26. The challenge made in the present proceedings are the impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020. According to the petitioner, the impugned orders does not have force of law and are contrary to the Recruitment Rules, 2019. The grievance of the petitioner is basically on the point that the impugned orders being the executive orders/instruction cannot override the provision of the Recruitment Rules framed under proviso to Article 309 of the Constitution of India. It is strenuously urged that there is no provisions for requirement of obtaining NOC/Vigilance clearance prescribed in the Recruitment Rules. The provisions in the Recruitment Rules applicable for promotion to the post of Deputy Forest Ranger having no provision of obtaining NOC/Vigilance clearance, the respondent authorities cannot insist on NOC or Vigilance Clearance from the concerned Deputy Commissioner for consideration for promotion to the post of Deputy Forest Ranger.

27. In order to appreciate and analyse the matter in the present proceeding, it would be necessary to refer to the impugned orders, which is extracted herein below:-

GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF VIGILANCE ITANAGAR

ORDER

No. PSH-06/2012-13/

Dtd. Itanagar, the 02nd April, 2013.

Sub:-**Procedure for grant of Vigilance Clearance.**

It has been reported by Chief Estate Officer, Itanagar Capital Complex that there are approximately 3,000 cases, wherein the occupants of Govt. accommodation have either occupied those structures permanently or demolished to construct new buildings.

Further, this action on the part of the allottee Govt. servants is in violation of Conduct Rules and amounts to Criminal Offence under Damage to Public Property Act., for which, the District Administration can initiate criminal proceedings. On the other hand, there is acute shortage of residential quarters for the Govt. officials on transfer.

To curb this practice of encroachment and demolition, illegal use of public property, it has been decided that Vigilance Clearance to Govt. officials for promotion and for settling retirement due, NOC shall be obtained from the concerned Deputy Commissioner, clearly stating that the Govt. officials has not encroached upon any Govt. property nor has caused any damage or abetted encroachment on the public property by a private person.

These instructions shall be complied by all concerned.

(Ramesh Negi)
Principal Secretary (Vigilance)
Govt. of Arunachal Pradesh, Itanagar

GOVERNMENT OF ARUNACHAL PRADESH

VIGILANCE DEPARTMENT:: A. P. SECRETARIAT

ITANAGAR

ORDER

No. VIG-71/2014

Dated, Itanagar, the 06th June 2017

Sub-Procedure for grant of Vigilance Clearance.

It has been reported by Deputy Commissioner, Itanagar Capital Complex that there are approximately 3,175 cases, wherein the occupants of Govt. accommodation have either occupied those structures permanently or demolished to construct new buildings.

Further, this action on the part of the allottee Govt. servants is in violation of Conduct Rules and amounts to Criminal Offence under Damage to Public Property Act., for which, the District Administration can initiate criminal proceedings. On the other hand, there is acute shortage of residential quarters for the Govt. officials on transfer.

To curb this practice of encroachment and demolition, illegal use of public property, it has been decided that Vigilance Clearance to Govt. officials for promotion and for settling retirement due, NOC shall be obtained from the concerned Deputy Commissioner, clearly stating that the Govt. officials has not encroached upon any Govt. property nor has caused any damage or abetted encroachment on the public property by a private person.

However, in the cases of retirement of officers on superannuation and in the event of the NOC not being issued by the authority designated by the State Government in this regard within the specified period of 6 (six) weeks from the date of receipt of the said letter/application in proper format by the designated authority, then it would be deemed that the NOC has been issued by the designated authority. If any encroachment/illegal construction is detected later on subsequently on the said Government land in respect of which deemed NOC was supposed to have been issued due to the lapse/delay on the part of the designated authority, then the responsibility for this lapse shall be fixed on the designated authority responsible for the same and appropriate disciplinary action shall be taken against him as per rules in a time bound manner.

These instructions shall be complied by all concerned.

This order supersede earlier Govt. order No.PSH - 06/2012-13/97 dated, 2nd

April 2013.

Sd/= (Satya Gopal)
Principal Secretary
(Vigilance) Govt. of Arunachal
Pradesh, Itanagar.

GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF VIGILANCE: A.P. CIVIL SECRETARIAT
BLOCK-JV: ITANAGAR-791111

NO.VIG-07/2018/4/

Dated Itanagar, the 11th May 2018

ORDER

In partial supersession of all previous circulars in the matter of issuance of NOC for issue of Vigilance

Clearance for;

(a) Promotion

(b) Grant of MACP

(c) Issuance of NOC for applying for deputation etc

(d) Retirement for release of pension

(e) Application for Passport

(1) Application for Visa,

the following procedure shall be adopted with immediate effect:

1. Vigilance Report request clearly stating the purpose for which it is required, shall be sent by an officer not below the rank of Joint Director/Under Secretary of the Department where the official/officer is currently posted to the Under Secretary(Vigilance).

II. The Under Secretary (Vigilance) shall issue a letter to SP, SIC(Vigilance) for getting status from the SIC Branch while simultaneously collect the Vigilance Status from the Vigilance Branch.

III. The Vigilance status from Vigilance Branch shall state any or all of the following as applicable in the case:-

(a) Any serious complaint(s) is/are under investigation.

(b) Charge Sheet of disciplinary action has been issued/or has been submitted for approval of the competent authority/recommended to the competent authority for further action. Rule under which issued has to be stated.

(c) Outcome of point (b) above or the status of it.

(d) Draft Sanction for prosecution has been received in the Vigilance Department/has been submitted for approval of the competent authority/recommended to the competent authority for further action/has been denied.

IV. SIC Report shall clearly indicate whether:-

(a) Any serious Complaint(s) is/are under consideration.

(b) FIR lodged/not lodged/ is being lodged.

(c) Charge sheet filed in the Court or not and Status thereof.

(d) Request for Sanction of Prosecution is being submitted and under which sections.

V. Status of Land Encroachment shall be submitted by concerned Deputy Commissioner as per decision taken in the Cabinet issued vide UO No.Cab/M- 16/2017/40-56 dated 5th February 2018. Encroachment etc. done by the family

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shall be inferred to have been done by the Government employee. Family shall imply the family members as recorded in the last declaration and in case declaration has not been filed, family shall be as per usual Govt. decision that is the dependent parents, spouse, unmarried/dependent daughters and dependent sons. In case of encroachment of any type on the plot or premises made by the Govt, employee, Vigilance clearance shall not be given by Vigilance Department unless the concerned DC gives a clear report of it being removed completely. In case the employee is the allottee of a Govt. Quarter, his pension shall be provisional till he/she vacates the quarter including the entire plot free from all encumbrances and a Taking-over Report is received from the UD Department.

The Vigilance Clearance shall be issued by Under Secretary (Vigilance) after following the above procedure and satisfying himself of the fulfilment of the conditions thereunder. In case there is any ambiguity in the clearance being granted straight away, orders of the Competent Authority whether to grant/ withhold Vigilance Clearance shall be sought by the Under Secretary (Vigilance) at the earliest.

This guideline comes into effect immediately and is issued with the approval of the competent authority.

Sd/- (Madhu K Garg) IAS

Secretary (Vigilance) Govt. of A.P. Itanagar

GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF VIGILANCE: A.P. CIVIL SECRETARIAT
PAPUMPARE, ITANAGAR-791111

NO. VIG-71/2014/365

Dated Itanagar, the 25th Feb 2020

ORDER

In partial modification to office order No. VIG-07/2018 Dtd. 11th May 2018 pertaining to the issuance of Vigilance Clearance from Vigilance Department for the purpose of:

- (a) Promotion
- (b) Retirement for release of pension.
- (c) Deputation
- (d) Grant of MACP
- (e) Application for Passport
- (10) Application for Ex-India Tour

The following procedure shall be adopted with immediate effect:

- (i) Vigilance Report in prescribed format clearly stating the purpose for which it is required, shall be sent by an Officer not below the rank of Joint Director/ Under Secretary of the Department where the Official/ Officer is currently posted to the Under Secretary (Vigilance).
- (ii) The under Secretary (Vigilance) shall issue a letter to SP, SIC (Vigilance) for getting status for the SIC Branch, simultaneously collecting the Vigilance Status from the Vigilance Branch.
- (iii) The Vigilance status from Vigilance Branch shall state any or all of the following as applicable in the case:
 - (a) Any serious complaint(s) is/are investigation.
 - (b) Charge Sheet of disciplinary action has been issued/ or has been submitted for approval of the competent authority/ recommended to the competent authority for further action. Rule under which issued has to be stated.
 - (c) Outcome of point (b) above or status of it.
 - (d) Draft sanction for prosecution has been received in the Vigilance Department has been submitted for approval of the competent authority for further action has been denied.
 - v) SIC Report shall clearly indicate whether:
 - (a) Any serious complaint (s) is/ are under consideration.

(b) FIR lodged/not lodged/is being lodged.

(c) Charge sheet filed in the court or not and Status thereof.

(d) Request for sanction of prosecution is being submitted and under which section.

(iv) Status of Land Encroachment shall be submitted by concerned Deputy Commissioner as per the decision taken in the Cabinet Issued vide UO No. CAB/M-16/2017/40-56 Dtd. 05th Feb 2018. The encroachment etc. done by the family shall be inferred to have been done by the Government employee. Family shall imply the family members as recorded in the last declaration and in case declaration has not been filed, family shall be as per usual Govt. decision that is the dependent parents, spouse, unmarried/ dependent daughters and dependent sons. In case of encroachment of any type on the plot or premises made by the Govt. employee, Vigilance clearance shall not be given by Vigilance Department unless the concerned DC gives clear report it being removed completely. However, NOC from the Deputy Commissioner concerned shall not be required for obtaining Vigilance Clearance for Passport and Ex-India Tour.

(vi) In Case the employee is the allottee of a Govt. Quarter, his pension shall be provisional till he/she vacates the quarter including the entire plot free from all encumbrances and a Taking over Report is received from the UD/Housing Department.

(vii) The Officer forwarding any requisition for any particular Officer/ Officials should clearly state if there is any department/ CBI/ Court case pending against the officer or contemplated to register.

(viii) The Vigilance Clearance shall not be withheld due to filling of a complaints, unless it is establishment on the basis of a least a preliminary enquiry or on the basis of any information's/ records that the concerned department may already have in its possession that there is prima facie substances of verifiable allegations regarding (i) Corruption (i) Possession of assets disproportionate to known sources of income (iii) Moral turpitude.

(b) Vigilance Clearance shall not be withheld if preliminary Enquiry mentioned in above para (i) (ii) (iii) takes more than three months.

(c) Vigilance Clearance shall not be withheld unless (i) Officer/ Official is under suspension (ii) A charge sheet have been issued against the officer/ Officials in a disciplinary proceedings and the proceedings is pending (iii) Order of instituting disciplinary proceedings against the Officer/ Officials have been issued by disciplinary Authority (iv) A charge sheet have been filed in a court by the investigating Agency in a criminal case and the case is pending (v) Sanction for prosecution have been granted by the competent authority in a case under PC Act or any other criminal matter unless the charges is framed by the competent Court (vi) FIR has been filed or a case registered by the concerned

department against the Officer/ Officials provided charge sheet is served within 3 months from the date of registration of FIR. However, Vigilance clearance shall be denied for the period of 3 (three) months after the registration of FIR.

d) Vigilance clearance shall not be withheld due to an FIR filed on the basis of private complaints 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.

(f) Vigilance Clearance shall be denied on the following:-

(i) If NOC from the concerned Deputy Commissioner are not enclosed pertaining to non encroachment of Govt. land.

(ii) Govt. servants is under suspension.

(iii) Govt. servants in respect of whom charge sheet has been issued in any disciplinary cases and disciplinary proceedings are pending.

(iv) Govt. servants in respect of whom prosecutions under PC Act and other criminal Charges is granted.

The Vigilance clearance shall be issued by the Under Secretary (Vigilance) after following the above procedure and satisfying himself of the fulfilment of the conditions there under. In case there is any ambiguity in the clearance being granted straight away. Orders of the Competent Authority whether to grant/ withhold Vigilance Clearance shall be sought by the Under Secretary (Vigilance) at the earliest.

The Vigilance Clearance shall be valid for the period of 10 (Ten) months unless and until any specific adverse report comes to the notice of the Vigilance Department in writing.

This guideline comes into effect immediately and is issued with the approval of the competent authority.

Sd/- (GS Meena)
IAS Commissioner (Vigilance)
Govt. of A.P. Itanagar

28. On the reading of the impugned orders above, it is noticed that impugned order dated 02.03.2013 has been issued by the Principal Secretary (Vigilance) Govt. of Arunachal Pradesh, Itanagar, to curb the

practice of encroachment and demolition, illegal use of public property which is rampant in the State and provides that Vigilance Clearance to Govt. officials for promotion and for settling retirement due, NOC shall be obtained from the concerned Deputy Commissioner, to which in the considered view of this Court is in the interest of public.

29. The order dated 06.06.2017 issued by the Principal Secretary (Vigilance) is also on the same aspect of the matter with certain clarification that if the NOC is not being issued within 6 (six) weeks from the date of receipt of the said letter/application in proper format for the cases of retirement of officers on superannuation shall be deemed have been issued. However, any encroachment/illegal construction is detected subsequently on the said Government land in respect of which deemed NOC was supposed to have been issued due to the lapse/delay on the part of the designated authority, then the responsibility for this lapse shall be fixed on the designated authority responsible for the same and appropriate disciplinary action shall be taken against him as per rules in a time bound manner.

30. Order dated 11.05.2018 is with regard to the detail procedure for the issuance of NOC and Vigilance Clearance, inter-alia, for promotion, grant of MACP, issuance of applying for deputation etc. The order dated 25.02.2020 is the partial modification of the earlier order pertaining to the issuance of Vigilance Clearance from Vigilance Department for the purpose of promotion, retirement, release of pension, deputation etc, which includes the requirement of NOC from the concerned Deputy Commissioner. On perusal, the impugned orders have been issued apart from to protect the Government properties from being encroach, damage or abetted encroachment of the Government land, provides for procedure for issuance of a vigilance certificate.

31. On careful consideration of above impugned orders, I am of the considered view that the same cannot be said to have no force of law inasmuch as the respondent authorities have issued the impugned orders by way of executive instructions as per the laid down procedures and in accordance with Article 162 of the Constitution of India.

32. The contention of the learned counsel for the petitioner that the impugned orders are contrary to the Recruitment Rules, 2019, inasmuch as the impugned orders being an mere executive instructions can not override the provisions of Recruitment Rules framed under proviso Article 309 of the Constitution of India, I am of the view that such contention is considered for rejection inasmuch as the contention is totally fallacious as the requirement of NOC/Vigilance Clearance cannot be a requirement that would be provided in the Recruitment Rules. The authorities have the authority to framed policy and adopt any procedure, which would be in tune with the Constitution requirement as well as the law. There cannot be any bar to issue an order in consonance with the Constitution as well as law for administrative convenience and in the interest of public. The requirement of the NOC and the vigilance

clearance in terms of the impugned orders cannot be faulted, and are an executive orders under Article 162 of the Constitution of India.

33. Another aspect of the matter to be considered is as to whether by way of any executive instruction, a provision of Rule can be supplemented where it is silent on the issue. To that effect, it is settled law that if the rules is silent on a issue, the same may be supplemented by executive instruction/orders. It is in a case, wherein same is sought to be supplanted, then only it is not permissible under the law.

34. This court, now would refer and consider the case laws relied by the learned counsel for the petitioner.

35. In the case of **Dr. Rajinder Singh** (supra), the Hon'ble Supreme Court has held that the settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence.

In the above case where without the amendment of the rules, the High court held that the Class II service can be treated as Class I only by way of notification. In that context, it is held that following such a course in effect amounts to amending the rules by a Government Order and ignoring the mandate of [Article 309](#) of the Constitution.

35.1 In **Dr. Hira Lal** (supra) the Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980, were held to be merely administrative instructions/executive orders and were not issued in exercise of the power under [Article 309](#) of the Constitution and cannot be said to have the force of law.

The above case relates to withholding of 10% of pension under executive instructions and contrary to provisions of Rules.

36. In the case of **Sangram Keshari Nayak** (supra) it is held that promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor.

37. In the case of **K.V. Jankiraman**(supra), the Hon'ble Supreme Court has observed that the

promotion cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge- memo/charge-sheet has already been issued to the employee.

38. On perusal of the case laws referred to above, I am of the view that there would not be any quarrel to the proposition of the law laid down by the Hon'ble Supreme Court. However, these propositions does not come to the aid of the petitioner in the facts and circumstances of the present case as it is settled position of law that where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules.

39. Reference may be made to the case of **Sant Ram Sharma Vs. State of Rajasthan and Anr.** reported in **AIR 1967 SC 1910**, wherein Constitution Bench has held that the statutory rules cannot be supplanted but can be supplemented by way of an administrative instruction. In the case of **Mannalal Jain Vs. State of Assam** reported in **AIR 1962 SC 386**, it is held by the Hon'ble Supreme Court that an executive instruction cannot override the provisions of law, such a method will destroy the very basis of Rule of law.

40. Reverting back to the present case, it is clear from the impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020 that the authorities have issued the same from time to time prescribing requirement of NOC and the Vigilance Clearance and its procedure for obtaining to curb the rampant encroachment, damage and abetment of encroachment over the Government property and the Government land by the Government servant in the State in public interest. The impugned orders have been issued by providing the procedure for issuance of Vigilance Clearance Certificate which is within the permissible anvil of the law for issuance of such orders and the decisions of the respondent authorities.

41. In view of the discussions made herein above, in my considered view, the impugned orders dated 02.04.2013, 06.06.2017, 11.05.2018 and 25.02.2020 are issued in the interest of public and administrative exigencies by way of an executive instructions/orders which are in consonance with the provisions of the law and the same are not contrary to the provisions of the Recruitment Rules and as such, there is no scope of interference to such an executive instruction. Accordingly, I find no merit in the writ petition and the same stands rejected.

42. However, it is provided that the respondent authorities particularly, the Deputy Commissioner,

West Kameng District, is at liberty to reconsider the case of the petitioner for issuance of NOC and upon consideration if the petitioner is found to be not involved in encroachment, damage and abetment of encroachment of Government property and the Government land, the NOC may be issued to the petitioner.

43. The writ petition stands dismissed, accordingly. No order as to costs.

JUDGE

Comparing Assistant