

## A critical analysis of the Guidelines on vigilance clearance mechanism in the light of Revised Vigilance Clearance Guidelines of the Department of Personnel and Training dated 09<sup>th</sup> October 2024

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### Abstract

*The importance of having an unblemished record at workplace cannot be overemphasized. The difficulties and legal wrangles that the employees may find themselves in case they face disciplinary and/or criminal proceedings may lead to unpleasantness besides bringing in financial hardship, reputational damage etc. The careers of many government employees and employees working in public sector gets a severe jolt once they find themselves in a state of facing legal proceedings either from the employer or from the State (i.e the Criminal Law of the Land). The requirement of obtaining vigilance clearance at various stages of the career of an employee places him in a situation of being adherent to always discipline and good conduct. The granting of vigilance clearance can become a severe constraint for career progression as well at the time of exit if the employee comes under the ambit of vigilance angle.*

*This Article delves into the guidelines issued by the Department of Personnel and Training vide Office Memorandum dated 9<sup>th</sup> October 2024. The guidelines indeed have plugged a deep hole by which an employee is left in the lurch i.e after permission under Section 17A of the Prevention of Corruption is granted to the investigating agency. The revised guidelines make it necessary that a chargesheet should be filed within 3 months after the permission is granted. While this is a welcome change giving huge relief to the vast millions of employees, the guidelines however are silent with regard to the existing cases where permission has been granted but chargesheet has not been served after the period of 3 months. This Article examines the revised guidelines and highlights a few gaps which still remain. The Author makes out an attempt to seek further modification of the guidelines and also extend the applicability to all the employees covered by the Prevention of Corruption Act 1988.*

**Key Words:** Career Growth, Vigilance Angle, Vigilance Clearance, Disciplinary Proceedings, Criminal Proceedings

### Introduction:

Integrity and transparency in public administration are vital markers of a progressive society. In a diverse and populous nation like India, the efficient delivery of public goods and services depends on well-designed policies, robust programmes, and streamlined procedures. However, the scale and complexity of governance present significant challenges in ensuring effective and corruption-free administration.

A clean, accountable, and efficient public administration is crucial for the success of government initiatives. To this end, India has implemented various legislative, judicial, and regulatory measures aimed at fostering transparency and good governance. Yet, corruption is still a persistent

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obstacle, undermining trust, and development. This global issue disproportionately affects developing nations, drawing international attention to their efforts in combating it.

In the realm of public employment, integrity is paramount. As a democracy governed by the rule of law, India emphasises the need for employees who demonstrate not only competence and expertise but also unwavering ethical standards. Public servants are entrusted with upholding legal principles and aligning their actions with societal expectations.

The conduct of employees is guided by an intricate framework of laws and organisational regulations. Any violation of these rules can have serious repercussions, including career setbacks and legal complications. For government and public sector employees, maintaining high standards of professionalism and integrity is essential to fulfilling their responsibilities and avoiding entanglements in legal or ethical challenges.

The essence of these rules is that an employee is expected to conform and adhere to the said rules and regulations

Any infraction of the rules and regulations lead to unpleasant situations for the employee. These infractions of either statutory framework or the regulations at workplace can badly hinder the progress of the employee in the matter of his career besides other consequences.

Hence it is of utmost importance to persons employed in Government and public sector to perform and discharge their work responsibilities in a manner which befits the position held by him/her and more importantly without entangling themselves into legal complexities arising out of misconduct or violation of statutory provision

### **System of Vigilance Clearance**

The system of vigilance clearance is a well-established mechanism in Indian government employment. It serves as a safeguard to ensure that individuals entering or continuing in public service maintain a clean record of integrity. Vigilance clearance is required at various stages of an employee's career, such as promotions, forwarding applications for external employment, deputations, or retirement. Any violation of service regulations or involvement in misconduct can result in denial of vigilance clearance, significantly affecting an employee's career trajectory.

### **What is Vigilance Clearance?**

Vigilance clearance is a process in which the vigilance department certifies that an employee's record is free from misconduct or legal proceedings. It is a critical validation to ensure that public servants uphold integrity and comply with workplace regulations.

### **When is Vigilance Clearance Necessary?**

Vigilance clearance is required at various stages in an employee's career, from entry into government service to retirement. Key instances where vigilance clearance is necessary include:

1. Inclusion in the offer list.
2. Empanelment for senior positions.
3. Granting ex-India study leave.
4. Deputations and their extensions.
5. Appointments to sensitive posts.

6. Non-mandatory training assignments.
7. Confirmation in service.
8. Voluntary retirement (VRS).
9. Post-retirement commercial employment.
10. Premature repatriation from deputation.

### **What is the Vigilance Angle?**

The term “vigilance angle” lacks a formal statutory definition but is broadly understood through guidelines issued by the Central Vigilance Commission (CVC) and public sector organisations. It refers to instances where misconduct, corruption, or criminal behaviour is suspected or established.

### **The vigilance angle includes the following instances:**

1. Corruption, such as accepting illegal gratification or misusing one’s position for personal gain.
2. Possession of assets disproportionate to known income.
3. Involvement in criminal offences like misappropriation, forgery, or cheating.
4. Acts of moral turpitude.
5. Violations of conduct rules.

### **Conditions Affecting Vigilance Clearance**

Vigilance clearance is withheld if any of the following conditions are met:

1. Preliminary inquiries into allegations are initiated but not completed within three months.
2. The officer is under suspension.
3. The officer is on the Agreed List, reviewed annually.
4. Disciplinary proceedings are pending following the issuance of a chargesheet.
5. A criminal case or investigation has been approved, and a chargesheet is issued within three months.
6. Chargesheet filed in court for a criminal offence, and the case is pending.
7. Sanction for prosecution has been granted, and the trial is ongoing.
8. Involvement in a corruption case with pending investigation.
9. FIR registered against the officer, with a chargesheet issued within three months.
10. Failure to submit the Annual Immovable Property Return (AIPR) by January 31 as mandated.
11. Imposition of penalties:

**Minor penalty:** Vigilance clearance denied for three years after the penalty period.

**Major penalty:** Vigilance clearance denied for five years after the penalty period.

### **Consequences of Facing a Vigilance Angle**

Being subject to a vigilance angle has significant professional and legal consequences:

1. **Denial of Vigilance Clearance:** This can lead to career stagnation, barring the employee from promotions, deputations, or other opportunities.
2. **Legal Proceedings:** Employees may face disciplinary or criminal proceedings, further complicating their professional lives.
3. **Damage to Reputation:** Inclusion in the agreed or ODI (Officers of Doubtful Integrity) list can harm an employee's standing within the organisation and beyond.

**Interplay between Disciplinary action initiated by the employer and the criminal prosecution:** The commission of an act of misconduct within the ambit of the service regulations makes an employee liable for disciplinary proceedings. Disciplinary proceedings are internal proceedings conducted by the Employer. The proceedings are conducted as per the procedure prescribed and envisaged in the service regulations.

On the other hand, if the commission or omission of an act of an employee either at workplace or outside the workplace may render him/her liable for criminal prosecution if such commission or omission is an offence under Indian laws. However, there is a direct relationship between the Disciplinary proceedings and the Criminal proceedings. If an employee for instance commits a crime and is arrested and detained for more than 24 hours, it will result in his suspension at workplace. Further if the employee is convicted of an offence, the conviction will have a bearing on the employment.

#### **Courts survey on Vigilance:**

There are several court judgments that address the concept of “vigilance angle” in the context of administrative and disciplinary proceedings. The term vigilance angle typically refers to situations where an employee, particularly in the public sector, is under investigation for misconduct, corruption, or any other activity that may affect their integrity in office. Such investigations often have a direct impact on the employee's career progression, including the denial of vigilance clearance.

Some of the notable cases on Vigilance angle are

- a. *State of Rajasthan v. B.K. Meena and Ors*<sup>2</sup>.

This case is significant because it involved the denial of promotion to a government employee on the grounds of being under a vigilance angle. The Supreme Court held that an employee under investigation for corruption or other misconduct could have their promotion or career advancement withheld until the investigation is concluded. However, it emphasised that the employee must be provided a fair opportunity to clear the charges against them.

- b. *Union of India v. K. V. Jankiraman*<sup>3</sup>

In this case, the Supreme Court dealt with the issue of disciplinary proceedings being initiated against an officer after an investigation of his actions, often termed as the vigilance angle. The Court ruled that the denial of promotion due to an ongoing vigilance inquiry is permissible, but the disciplinary proceedings must be completed without unnecessary delay. It also stressed that undue delay in concluding the inquiry should not result in prolonged harm to the employee's career.

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<sup>2</sup> (1997) 11 SCC 30

<sup>3</sup> (1991) 4 SCC 109

*Central Bureau of Investigation (CBI) v. S. K. Sharma*<sup>4</sup>

The issue here was the impact of criminal investigations (and vigilance angle) on the career of a public servant. The Court clarified that the mere pendency of a vigilance inquiry or criminal case does not automatically debar an employee from getting promotion or benefits unless it is linked to the outcome of the inquiry.

c. *D. C. Saxena v. Union of India*<sup>5</sup>

This case dealt with the rights of a public servant who had been placed under the *vigilance angle* due to allegations of corruption. The Supreme Court held that an employee under a vigilance inquiry must be treated fairly, and any disciplinary action should not be taken based solely on the investigation unless the evidence warrants such action.

d. *S. Sreedharan v. Union of India*<sup>6</sup>

This case discusses the fairness of denying an employee vigilance clearance based on an ongoing investigation or charge. The Court emphasised that a decision to withhold vigilance clearance must be based on substantial evidence of misconduct and should be reviewed carefully to ensure that the denial is not arbitrary.

e. *Union of India v. R.K. Jain*<sup>7</sup>

The court held that the mere initiation of a vigilance inquiry or the fact that an employee's name appears in the vigilance angle does not automatically result in a denial of promotion or other benefits. The Court ruled that such decisions should be made based on clear legal grounds and not solely on the fact of an investigation or the suspension of the employee.

#### **General Principles from Court Judgments on Vigilance Angle:**

***Right to Fair Treatment:*** Employees under investigation or facing vigilance inquiries must be treated fairly, and decisions regarding promotions or other career advancements should not be made arbitrarily.

***Time Limit on Investigations:*** Delays in concluding investigations can cause unnecessary hardship to the employee, and the Courts have often emphasised that inquiries should be concluded within a reasonable time frame to avoid damaging the employee's career.

***Proportionality:*** The decision to deny benefits or promotions must be proportional to the seriousness of the charges and the stage of the investigation.

***Fair Opportunity to Clear Charges:*** Public servants under investigation must be provided with a fair chance to defend themselves and prove their innocence before actions like denial of vigilance clearance or promotion are taken.

These rulings are important as they lay down guidelines for balancing the need to maintain integrity in public office with the protection of an employee's rights, ensuring that decisions related

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<sup>4</sup> 1999 4SCC 126

<sup>5</sup> 1996 6 SCC 529

<sup>6</sup> 2008 13 SCC 155

<sup>7</sup> 2012 8 SCC 281

to vigilance clearance and promotions are not taken arbitrarily or in a manner that violates principles of natural justice.

The vigilance clearance system plays a critical role in maintaining integrity and accountability within the government sector. However, it is also a mechanism with profound implications for employees, requiring careful adherence to service rules and timely resolution of pending cases to prevent undue hardships.

### **Revised Guidelines on Vigilance Clearance**

#### ***Background***

The Department of Personnel and Training (DoPT), through Office Memorandum No. 104/33/2024-AVD dated 9th October 2024, revised the guidelines on vigilance clearance. These changes address challenges and hardships faced by employees due to earlier provisions.

#### ***Applicability***

The revised guidelines apply to All India Services (AIS) officers and officers in the Central Civil Services.

#### ***Need for Revision***

The guidelines were revised to address the unintended hardships arising from the 2018 amendment to the Prevention of Corruption Act, specifically Section 17A. While the amendment aimed to protect employees from frivolous investigations, it inadvertently caused significant delays and distress.

Section 17A requires prior approval from the competent authority before initiating investigations into a public servant for decisions taken in their official capacity. However, the grant of permission under Section 17A led to vigilance clearance being withheld, even if the investigation ultimately exonerated the employee.

The lack of a time-bound framework for investigations further compounded this issue, as employees were left in prolonged uncertainty, facing career stagnation and mental agony while waiting for the outcome of the investigation.

### **Key Changes in the Revised Guidelines**

The revised guidelines introduce significant improvements to make the process more objective and time-bound:

- a. *Chargesheet Requirement:* Vigilance clearance can now only be denied after a chargesheet has been served, following the grant of investigation permission under Section 17A.
- b. *Time-Bound Investigations:* Investigations must be completed within three months from the date permission is granted.

The effect of these revision is that the Vigilance clearance cannot be withheld even if the permission to investigate has been issued by the competent authority under S.17A of the Prevention of Corruption. The vigilance clearance can be withheld only if a chargesheet is served on the employee within 3 months.

### **Analysis of the Revised Guidelines**



The updated guidelines are a major relief for government employees, as they replace subjective and arbitrary provisions with clearer, more objective criteria. Key benefits include:

- a. *Reduced Uncertainty*: The requirement to serve a chargesheet before withholding vigilance clearance ensures that employees are not penalised prematurely.
- b. *Time-Bound Resolution*: By mandating a three-month timeline for investigations, the guidelines minimise prolonged delays, alleviating mental and professional stress for employees.
- c. *Balance of Accountability and Fairness*: The changes strike a balance between enabling thorough investigations and protecting employees from unnecessary career setbacks due to procedural delays.

### **Analysis and Recommendations on the Revised Vigilance Clearance Guidelines**

#### **a. Key Change in Vigilance Clearance Criteria**

The Office Memorandum dated 9th October 2024 has introduced a pivotal reform in the application of Section 17A of the Prevention of Corruption Act, 1988. Under the earlier framework, mere sanction for investigation was sufficient for denying vigilance clearance. This has now been amended to require that a chargesheet must be served within three months of granting such permission. This change adds an objective and time-bound criterion, reducing the scope for arbitrary denial of vigilance clearance.

#### **b. Clarification Needed on “Service of Chargesheet”**

The guidelines would benefit from a precise definition of “service of chargesheet”. As per general understanding, service of chargesheet refers to its submission in court as per judicial directions. A formal clarification in this regard would eliminate any potential ambiguity in interpretation or implementation.

#### **c. Ambiguity in Handling Existing Cases.**

The guidelines are silent on the treatment of existing cases where permissions for investigation under Section 17A have already been granted, but chargesheets remain unserved even after the three-month window. This omission leaves many employees in a state of uncertainty and fails to address the hardships caused by prolonged procedural delays.

#### **d. Implications under Article 14 of the constitution.**

The principle of equality under Article 14 of the Constitution mandates equal treatment for all individuals under similar circumstances. Continuing to withhold vigilance clearance in older cases, where chargesheets have not been served within three months, contradicts this principle. A provision extending the revised criteria to past cases would ensure justice and parity among employees subjected to such investigations.

#### **e. Uniformity in application across public servants**

The current guidelines are restricted to All India Service (AIS) officers and those in Central Civil Services/Central Civil posts. However, a considerable number of public servants—such as employees of central public sector undertakings, statutory bodies, and autonomous organisations—also fall under the purview of the Prevention of Corruption Act, 1988. To avoid differential treatment and ensure uniformity, the guidelines should be extended to cover all public servants across various cadres and organisations.

## **Recommendations**

In light of the above, the following measures suggested:

### **a. Clarification on Existing Cases**

Introduce a provision to address existing cases where permissions under Section 17A were granted but chargesheets have not been served within the stipulated three months. It should be explicitly stated that vigilance clearance cannot be withheld in such cases.

### **b. Definition of “Service of Chargesheet”**

Formally define “service of chargesheet” as its submission in court following judicial directives, ensuring uniform interpretation across all cases.

### **c. Expansion of Applicability**

Issue directives to apply these revised guidelines mutatis mutandis to all public servants, including those in public sector undertakings, statutory bodies, and autonomous organisations, to promote fairness and transparency.

## **Conclusion**

The revised guidelines mark a progressive step toward ensuring transparency and accountability in vigilance processes. However, certain ambiguities and gaps remain, particularly concerning existing cases and the limited scope of application. Addressing these issues through clarifications and extending the applicability of the guidelines would enhance trust in the system, reduce undue hardships, and uphold the principles of justice, equality, and good governance.