

**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH  
WP (C) 319 (AP)2018**

Sri Dorjee Tsering,  
S/o Prem Khandu,  
R/o Village-Dirang,  
P.O./P.S.-Dirang,  
West Kameng District,  
Arunachal Pradesh.

.....*Petitioner.*

By Advocate:  
Mr. T. T. Tara.

**- Versus -**

1. The State of Arunachal Pradesh, represented by Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Commissioner (Vigilance), Govt. of Arunachal Pradesh, Itanagar.
3. The Deputy Commissioner, Bomdila, West Kameng District, Govt. of Arunachal Pradesh.
4. The Addl. Deputy Commissioner, Singchung, West Kameng District, Govt. of Arunachal Pradesh.
5. The Director, Audit and Pension, Govt. of Arunachal Pradesh, Naharlagun.

..... *Respondents.*

By Advocates:  
Mr. D. Soki, learned Addl. Sr. Govt. Advocate.

**Date of Judgment & Order (Oral):29.06.2018.**

**:::BEFORE:::**

**HON'BLE MR. JUSTICE AJIT BORTHAKUR  
JUDGMENT & ORDER (ORAL)**

Heard Mr. T. T. Tara, learned counsel for the petitioner and Mr. D. Soki, learned senior Govt. Advocate appearing for the State respondents.

2. By preferring this petition under Article 226 of the Constitution of India, the petitioner has sought for a direction to the respondent No. 2/the Commissioner (vigilance), Govt. of Arunachal Pradesh and the respondent No. 3/the Deputy Commissioner, West Kameng District, Bomdila, Arunachal Pradesh to issue No

Objection Certificate (for short 'NOC') and Vigilance clearance respectively, in his favour, within a period of one week and further, to direct the respondent No. 4/the Additional Deputy Commissioner, West Kameng District, Bomdila, Arunachal Pradesh and respondent No. 5/ the Director, Audit & Pension, Arunachal Pradesh, to process his pension file, without NOC and vigilance clearance from the offices of the respondents No. 2 and 3.

**3.** The petitioner's case, in a nut-shell, is that the petitioner retired from service, on 31.12.2017, as Head Assistant (HA) of the Office of the Additional Deputy Commissioner, Singchung, West Kameng District, Arunachal Pradesh. As per order vide Memo No. VIG-71/2014/45, dated 06.06.2017, issued by the Principal Secretary (Vigilance), Govt. of Arunachal Pradesh, it is mandatory to obtain NOC and Vigilance clearance by every retired government employee from the concerned Deputy Commissioner to draw pension. The aforesaid order further provides that in case of failure of issue of NOC within a period of 6 (six) weeks, the NOC and Vigilance clearance shall be deemed to be considered as issued. It is the case of the petitioner that he submitted two representations, on 03.05.2018, addressed to the respondent No. 3 praying for issuance of Vigilance clearance and NOC respectively, so as to enable him to draw pensionary benefits, however, his representations are yet to be considered by the authorities concerned. Hence, the instant petition is filed praying for directions as stated above.

**4.** Mr. T. T. Tara, learned counsel for the petitioner, contends that it is judicially settled that the pension is not the bounty and by no Standing Order of the government, the pensioner can be deprived of his right to pension. Mr. Tara, further submits that this court in W.P.(C) No. 120 (AP) 2018 directed the authorities, in a similarly situated fact situation of the present petitioner, to initiate the process for granting pension and pensionary benefits, without NOC.

**5.** Mr. D. Soki, learned Addl. Senior Government Advocate, Arunachal Pradesh, contends, with reference to the circular No. VIG-71/2014, dated 06.06.2017, that in case of the petitioner, the Deputy commissioner, who is to issue the NOC required by the petitioner to draw his pensionary benefits and thereafter only, on his

forwarding of the pension papers the State Pension Department can process for pension and as such, a similar order that was passed, on 20.06.2018, in W.P. (C) No. 295 (AP)/2018 can be passed.

6. It is noticed that the Vigilance Department, Govt. of Arunachal Pradesh by the above noted Circular/order, dated 06.06.2017, directed all Head of offices and Deputy Commissioner-cum-District Vigilance Officer, Govt. of Arunachal Pradesh, laying down the procedure for grant of vigilance clearance for the purpose of drawing pensionary benefits by the retired employees. It reads:-

**GOVERNMENT OF ARUNACHAL PRADESH**  
**VIGILANCE DEPARTMENT:: A.P. SECRETARIAT**  
**ITANAGAR**  
**ORDER**

No. VIG-71/2014

Dated, Itanagar, the 06<sup>th</sup> June, 2017

Sub:- Procedure for grant of Vigilance Certificate

*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 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 the 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 2<sup>nd</sup> April, 2013.*

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

**7.** The very object and reasons for issuing the above Circular/order by the Government of Arunachal Pradesh is clearly discernable from the body of its text, which pertains to various illegal acts committed by a section of the government pensioners during their service tenure, in respect of government properties. However, the direction contained in the said circular/order, dated 06.06.2017, is subject to the presumption that 'in the event of the NOC not being issued by the authority designated by the State Government is this regard within the specified period of 6 (six) weeks' from the date of receipt of the application, 'then it would be deemed that the NOC has been issued by the designated authority.' In the instant case, however, although the petitioner had submitted his application on 03.05.2018, by this time, the specified 6 (six) weeks period has elapsed, neither the respondent No. 3 has issued the NOC/Vigilance clearance nor the respondent No. 4, at the district level, has initiated file processing, without waiting for the NOC and Vigilance clearance to avoid delay in payment of pensionary benefits to the petitioner, who retired from service long back, on 31.12.2017.

**8.** Here, as Mr. T. T. Tara, learned counsel for the petitioner referred to, I feel it appropriate to quote two relevant paragraphs from the judgment of the Supreme court, rendered in Civil Appeal No. 3173 of 2018;

***"2.....More than 140 years ago, it was said by the Privy Council:***

***"These proceedings certainly what was said by Mr. Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a Decree". A somewhat fate seems to await government servants- on getting retired, they have to struggle for the due pension".***

The Supreme Court recommended in the following words:-

***"3...We recommend to the Department of Personnel and Training of the Government of India to try and make life after retirement easier for a government servant by having appropriate legislation enacted by Parliament or applicable Pension Rules rather than a Khichdi of Instructions, Officer Memoranda, Clarifications, Corrigenda and so on and so forth"***

**9.** Here, this Court is concerned with the lamentable condition of a retired employee of the Govt. of Arunachal Pradesh, who is struggling hard to get his pensionary benefits.

**10.** In view of the above, the respondent authorities, more particularly, the respondents No. 4 and 5 are directed to initiate process of the pension due to the petitioner, without waiting for any NOC and vigilance clearance from the office of the respondents No. 2 and 3, expeditiously.

**11.** In the event, the authorities are of the view that a NOC is also required to be provided by the Vigilance department, the Vigilance department shall forthwith consider the eligibility of the petitioner for a NOC and pass an appropriate reasoned order thereon. In no circumstance, the Vigilance Department will sit over the matter and not take a decision either way.

In terms of the above, the writ petition stands disposed of.

**JUDGE**

*Talam*