

NAI DISHA

(e-Newsletter of Vigilance)

Volume : 2
January-March 2017

Message from Chairman & Managing Director



I am happy to note that Vigilance is bringing out second issue of quarterly e-Newsletter – 'Nai Disha'. I am further happy to note that the newsletter covers important subjects of Preventive Vigilance, Case Studies and information regarding events concerning vigilance.

The beginning of a New Year has always indicated a task to ponder upon the events of the previous year and expectations from the next. I sincerely believe that we have inherent capacity to grow beyond the current best. It is possible only if we can analyze the past and prepare ourselves for the future.

I hope this newsletter will serve as an instrument to promote integrity and good governance in the organization.

I congratulate the Corporate Vigilance team for the novel idea of reaching to the employees of STC. I wish the publication of "NAI DISHA" a grand success.

I wish 'HAPPY NEW YEAR' to all employees.

Date: 30.12.2016


(RAJIV CHOPRA)

Every Citizen Must Read Preamble of the Constitution : Justice G S Singhvi

As a part of monthly lecture series organized by Central Vigilance Commission, Justice (Retired) G S Singhvi, Chairman, Competition Appellate Tribunal, delivered a lecture on "Ethics of the Constitution" at Central Vigilance Commission on Dec 20, 2016. The lecture was attended by senior officials from Ministries, CVC and PSEs, Chief Vigilance officers.

Justice Singhvi said that all problems we are facing today are because we have not read the constitution. The preamble of the constitution contains answer to all problems including corruption. The preamble contains that state must secure social, economic and political justice for all citizens. This idea of framers of the constitution is the ethics of the constitution and key to governance of the country.

He said that we have forgotten the ideal of giving back to the society. He emphasized that every able body earning person shall spend 1/4th of his income on society as mentioned in all religious teaching. If it is done there will be no poverty, no children without education and people will not struggle for equality of opportunity and status. Consequently, there will be no problem of corruption.

Justice Singhvi said that every individual shall strive to achieve the goal of constitution and to remove disparity on the ground of caste, color and religion, and then only we will have corruption free society.

Preventive Vigilance Would Contribute Positively Towards The Overall Functioning of The Organization : KV Chowdary, CVC

On the occasion of Valedictory Function of Vigilance Awareness Week-2016 , special issue of VIGEYE VANI and Booklet on Preventive Vigilance was released by the Central Vigilance Commission on 7th November at Vigyan Bhawan, New Delhi. These are available on Commission's website <http://www.cvc.nic.in>



Panel Discussion
Public Participation in Promoting Integrity
Release of Special Issue of 'Vigeye Vani' by the Commission

Speaking on the occasion, Chief Vigilance Commissioner, Shri KV Chowdary said the time has come to address the supply side of corruption. He advised the private sector to adopt an ethics code to address the problem. He mentioned that the commission has undertaken a study to formulate a Corruption Index for twenty five Public Sector Undertakings.

The CVC said that it is not the purpose of vigilance to wait for lapses to be committed and then try to conduct post mortem. What is more important than punitive vigilance is preventive vigilance. Preventive vigilance could broadly be described as a package of measures to improve systems and procedures in a way so as to reduce scope for discretion and eliminate corruption. To list out few measures for preventive vigilance such as;

- follow rules and regulations without violation,
- follow systems and procedures meticulously,
- remember oneself as a public servant,
- discharge one's duty sincerely, honestly and faithfully at all times.

Always keep in mind that corruption starts in a small way. Good Governance is about the processes for making good decisions and their effective implementation. The main characteristics of good governance are transparency, accountability, following rule of law, being inclusive, effective and efficient. Good governance and preventive vigilance share several characteristics and therefore, preventive vigilance needs to be implemented as a tool of good governance. Application of preventive vigilance as tool of good governance would not only result in removing the negative connotations attached with vigilance work but would also contribute positively towards the overall functioning of the organization.

Experience Sharing by Chief Vigilance Officers



Meeting of VSC, Delhi & NCR in Progress

A meeting of Chief Vigilance Officers of Public Sector Undertaking, Banks and Government Department located in Delhi and NCR region was organised by Vigilance Study Circle, Delhi and NCR at NTPC HQ on 7th Dec 2016. The CVOs shared their experiences during the meeting. Surjeet Singh, Retd. Director (CVC) also shared his experience of working as Inquiry Authority in Departmental Proceeding cases. He mentioned about the common deficiencies noticed in charge sheets and precautions which are required to be taken while preparing the charge sheet.

Training Programme at International Anti-Corruption Academy



Participants of Training Program at IACA

Twenty Vigilance officers from public-sector organizations, Central Vigilance Commission and Indian Railways attended a training program at IACA, Austria from 14th Nov to 25th Nov 2016.

The two-week training program at IACA in Laxenburg, Austria covered among other topics, corruption and money-laundering, role of leadership in combating corruption, organizational integrity, ethical decision-making, fraud prevention, national and international legal instruments against corruption, and whistle-blower protection. Study visits to the United Nations Office on Drugs and Crime (UNODC) and Vienna City Hall were also part of the training.

Sessions were delivered by internationally renowned experts, many of whom are frequent IACA visiting faculty. They included Drago Kos (Chair of the OECD Working Group on Bribery), Georg Krakow (Baker & McKenzie), Mushtaq Khan (SOAS, University of London), Jeroen Maesschalck (Leuven Institute of Criminology), Samira Musayeva (UNCITRAL), Georg Florian Grabenweger (Austrian Federal Ministry of Interior), Jane Ley (US State Department) and Johannes Schnitzer (Schnitzer Law).

Coming together is a beginning. Keeping together is progress. Working together is success. : Henry Ford

The Difference Between Negligence and Gross Negligence

Can the same act of disregard be either negligence or gross negligence? The answer is “Yes”, because as we shall see, it is the degree and purpose of the negligence that is the question. It is a degree of willful disregard that makes all the difference. Let’s start with some legal definition and then may be some case law examples.

Negligence is the disregard for the safety or life of other people. Gross Negligence is also the same thing; it is the degree of negligence that will make the difference. To be as accurate as possible, we will quote verbatim from the [i]

“Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with ordinary Negligence, which is a mere failure to exercise reasonable care. Ordinary negligence and gross negligence differ in degree of in attention, while both differ from willful and want on conduct, which is conduct that is reasonably considered to cause injury. This distinction is important in contributory negligence—a lack of care by the plaintiff that combines with the defendant’s conduct to cause the plaintiff’s injury and completely bar his or her action—is not a defense to willful and want on conduct but is a defense to gross negligence. In addition, a finding of willful and want on misconduct usually supports a recovery of Punitive Damages, whereas gross negligence does not.”

As you can see from the above definition, it is not completely a black and white issue. It is mired in case law and interpretation. The fact that contributory negligence is also part of the definition means that the plaintiff in a negligence case was also somewhat culpable in the contribution that caused the injury by the defendant’s negligence.

The best way to see negligence would be some possible situations in which this could occur. If a parent inadvertently leaves their toddler in a locked car for an extended period of time causing heat stroke or death could be considered criminally negligent. It was not the intentional, it could have been that the parent had so much on their mind, or was detained at their destination longer than expected. There was not the intent to be negligent. It just happened due to falling short of an obligation to protect a child.

NEGLIGENCE

If you are texting while driving your vehicle and the distraction resulted in an accident causing physical damage to life and property, this would be considered negligent. One could make the same claim if the driver was unwrapping his newly acquired “fast food” sandwich while driving. If the act of unwrapping one’s sandwich while driving caused a distraction this may be considered negligent.

Negligence can occur in just about any setting or industry. It could be a nurse who neglects her patients that she has an obligation to care for. It could be a medical doctor who prescribes the wrong type of medicine. It could even be negligence in an industrial setting if proper safety procedures are not put in place and enforced to be followed. These are examples of negligence.

In the financial services industry, claims against financial advisors can be brought against them in the form of selling inappropriate or ill-liquid products to those clients who cannot afford the illiquidity or it was not appropriate. An example

might be placing an 80-year-old client in an annuity with a 12-year surrender charge. This does not mean that the annuity product was bad; it simply means that it was not the best product for that client at that age. It would be considered negligent and a lack of knowing their customer case against the advisor. It may even

be considered gross negligence on the part of the advisor if the main motivation was to generate a commission with the willful disregard of the client and their money.

GROSS NEGLIGENCE

Gross negligence would be extreme cases of negligence where it is a much more willful disregard for human life or property. Suppose it was a youth camping outing where they were doing rope climbing! If one of the students managed to slip and break a leg, it would be gross negligence on the part of the instructor to not get medical help immediately. If the instructor wanted to wait until after the rope climbing class was finished to get the help that would be gross negligence.

In many states, if a person signed a waiver not to sue a company for negligence, that means they have waived their right to sue. However, it is in these cases that many states may not honor the “negligent waiver” and simply escalate it up to a “gross negligent” case. This would be something that the plaintiff did not waiver or sign away his or her rights.

So to sum up, negligence is the lesser crime as it was not willful, intentional or malicious. It just was an act of negligence. Gross negligence carries with it a more willful, intentional or even malicious intent, placing even more and higher damage to property and life.

*A votary of ahimsa must cultivate the habit of unremitting toil, sleepless vigilance, and ceaseless self-control. :
Mahatma Gandhi*

CASE STUDY

Import of Pulses on Govt. A/c

Background

- Govt. of India during 2006 authorized STC to import pulses and sell the same in the domestic market in order to increase availability of pulses in domestic market to bring down the prices.
- STC floated a Global Tender dated 26.12.2006 **for import** of 25000 MTs Pulses including Black Matpe.
- The tender was closed on 29.12.2006 giving an effective time of merely three days.
- Tender notice was published in the Economic Times on 27.12.06.
- Only two companies M/s X and M/s Y submitted their tender documents and both tender documents were deficient i.e. not meeting tender conditions.
- M/s X did not submit original bid bond along with tender documents. The tender documents of M/s Y were not originally signed. Further, the documents submitted by M/s Y including the authorization letter dated 28.12.2006 were photocopies bearing scanned signatures of the authorized signatory. None of the documents bear the original signature as required under conditions of the tender documents.
- The tender of M/s X was rejected. The tender of M/s Y was accepted and declared as L-1 despite the fact that the rates were on higher side.
- The import quantity of Black Matpe was increased from 25000 MT to 30000 MT on same terms & conditions and even without approval of the Management.
- Similarly **Sale Tender** dated 26.02.2007 for sale of 30000 MT of Black Matpe was floated and uploaded on STC's website and Government website on 26.2.2007.

- The tender was closed on 28.2.2007 at 15.00 Hrs. The tenderers were given a short period of two days for submission of bids.
- Mr. A authorized by M/s Y for submission of the tender documents and further negotiations with STC for subject import on their behalf, was an employee of M/s Z whom the sale tender of above imported pulses was awarded.

Irregularities

- Wider publicity was not given to the Tender(s) for both import and sale of Pulses.
- Sufficient time for submission of tender documents was not given, thereby restricting participation.
- Scrutiny of tender documents was not done uniformly as per tender conditions and undue favour was shown to one party.
- Increased the import quantity of Pulses by 5000MTs (i.e. from 25000 MT to 30000 MT) after placement of order on L-1
- The two parties who were awarded import and sale tender were related parties, thus, the transaction effectively became financing of imports instead of market intervention, in contravention of Government directives.

Lessons learnt

- ❖ To generate wide publicity for better competition and to avoid cartel formation and favouritism to select firms, it is imperative that the advertised/global tender notice should be published in select 'national' and 'local' dailies with a large circulation. Tender notices may also be displayed on the notice boards of other organisations. In case of global tenders, copies of the tender notices should be sent to the Indian Missions/Embassies in major trading countries.
- ❖ In addition to the paper advertisements, the tender notices should also be put on the website indicating all the details of the tender.
- ❖ In case of limited tenders to 'approved contractors', due care should be taken to generate adequate competition and

reasonableness of rates should be established. The 'approved' list should be periodically updated weeding out the non-performers and including fresh entrants in the field.

❖ To generate fair and adequate competition, it is important that sufficient time, depending upon the magnitude and complexity of the project should be given to the bidders to submit their bids. Ordinarily, the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the department also contemplates obtaining bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidders. (Refer GFR 2005)

❖ To give an equal opportunity to all the bidders and to maintain the sanctity of tendering system, it is to be ensured that any change in the tender terms and conditions, specifications and tender opening date, etc. be notified to all the bidders sufficiently in advance of the revised tender opening date. In case of the advertised tenders, such notifications should invariably be through the publication of corrigenda in the media and also through individual information of those firms who had purchased the tender documents within the original tender sale date.

❖ The post tender changes i.e. increase in quantity etc. shall be avoided.

❖ The scrutiny of tender documents shall be done strictly as per terms and conditions mentioned in Tender document.

❖ In case of insufficient response (< 3) to tender feasibility of retender shall be explored.

❖ In case of any doubt regarding procurement issues, the instructions / clarifications issued by CTE, CVC or Govt. of India may be referred, which are available on-line.

Important Circulars

I – Expedious follow-up and scrutiny of Audit Report by Chief Vigilance officers.

(CVC Circular no. 14/11/16 dated 23.11.2016)

“One of the prominent functions expected from the Chief Vigilance Officers of the Ministries/Departments and all Organisations as laid down in the Vigilance Manual, Vol.-I, is scrutiny of reports of various Parliamentary Committees, Audit Reports (Internal, Statutory and CAG reports), etc., and to determine whether there is any vigilance angle involved in respect of the irregularities brought out in such reports.....

3.Recently, instances have come to the notice of the Commission wherein grave irregularities have been noticed in such audit reports, which should in the normal course have been examined and brought to the notice of the Commission by the CVOs of the Organisations concerned.

4. The audit reports of the Comptroller and Audit General (CAG) many a time reveal not only administrative and financial irregularities, but also instances of corruption/lapses involving vigilance overtones. Apart from reply to all such audit reports, no serious exercise is undertaken to identify officials responsible for deterrent action, wherever, necessary by the Administrative Authorities. The Commission would, therefore, in the discharge of its functions under Section 8(1)(h) of the CVC Act, 2003, exercising superintendence over the vigilance administration, hereby directs, all Chief Vigilance Officers of the Ministries/Departments/CPSUs/Public Sector Banks/Public Sector Insurance Companies/ Autonomous Organisations/Societies, etc., as below:

All the CVOs (including part-time CVOs) would examine the audit reports (internal, Statutory and CAG reports) relating to their organisations for the last three financial years

namely 2013-14, 2014-15 and 2015-16 and would submit their reports to the Commission.

.....

.....The entire exercise may be completed by the CVO of the Organisation concerned within three months. The CVOs should submit their Report on the examination of all the audit reports for the FY 2013-14 within one month, for FY 2014-15 within two months and for FY 2015-16 within three months. The fact of review/examination of these audit reports may be reported in their Annual Reports by the CVOs.

5. In cases of observations in audit reports wherein matters of prima facie vigilance angle/corruption are noticed, the CVOs would complete their inquiries in individual instances/cases fixing responsibilities of the official(s) concerned and thereafter make a self-contained reference seeking the first stage advice of the Commission as per prescribed procedure.”

2. Acceptance of Bank Guarantee (BG) – Reg. (OM No. 02-07-1-CTE-30/309204 Dated 4th March, 2016 of Central Vigilance Commission)

“2.practice of paper based verification of BGs followed by the organizations is not only time consuming causing delay in acceptance / award of works or advance related payments but also its trustworthiness cannot always be ensured due to human intervention in it.

3. In this background, organizations are advised to follow IT enabled confirmation system which is swift and secured in addition to their existing paper based confirmation system. The following methods for verification may be considered by organizations:

- a) Getting confirmation through digitally signed secured e-mails from issuing Banks;
- b) Online verification of Company portal with user ID and password followed by 2nd stage

authentication system generated One Time Password (OTP) on portal for reconfirmation;

c) E-mail confirmation followed by 2nd stage authentication by system generated SMS through registered mobile and reconfirmation through SMS to the verifying Officer.

4. Keeping above in view, organizations may evolve their own procedure adopting any one or more of the above methods for ensuring genuineness of BGs, which is compatible with the guidelines of Banks / Reserve Bank of India.”

3. Submission of Signed & Stamped Documents by Associate/ Suppliers/ Bidders (Vigilance Circular No. 02/2016 dated 30.12.2016)

During investigation of a case regarding export of agricultural commodities, it has been revealed that pre-shipment finance was extended to Associate Supplier against certain requisite documents which were later found fake/forged. The financial assistance was released to associate on the basis of photocopies of the documents on which there were no signatures of authorized person and stamp/seal of the company. During verification, the issuing authority disowned the documents purported to have been issued by them.

There are also instances where the documents submitted by the Supplier/Bidder against Expression of Interest/ NIT / tender etc., were found to be without stamp/seal and signature of the authorized signatory on each page.

2. It is a matter of concern that due to negligence on the part of official(s), the Associates were extended financial assistance on the basis of forged/fake documents. Similarly due to carelessness of the officials the Bidders/Suppliers qualified in the NIT/tender process.

3. In order to check/eliminate the possibility of submission of forged/fake documents by Associates/Suppliers/Bidders while proposing to

enter into business transactions or purchases in response to NIT/Tender etc., the officials concerned particularly from Trade/Finance Divisions shall ensure that:

‘ALL Documents submitted by the Associate/Supplier/ Bidder are signed and stamped on each page by their authorized representative and efforts shall be made by STC officials to ascertain the veracity/genuineness of such document(s) from its Issuing Authority directly at the earliest.’

4. Any additional document(s) submitted by Associate/Supplier/Bidder in the process of registration/tender/financing/after placement of order, shall not be accepted unless it is submitted with forwarding letter and duly signed and stamped on each page as mentioned above.

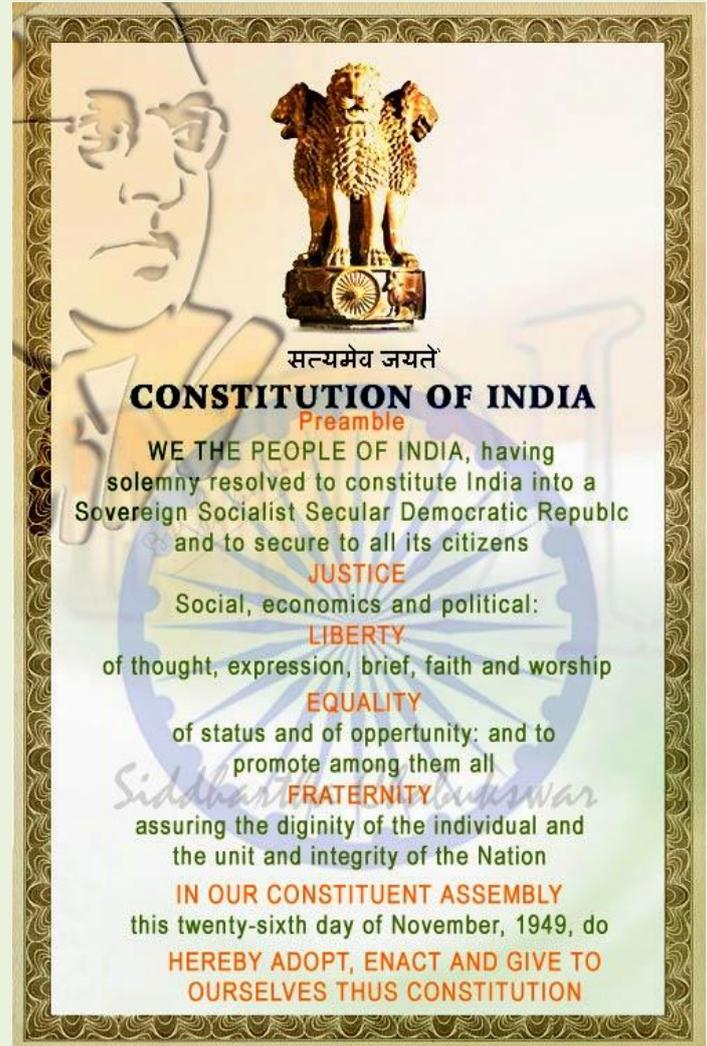
5. While accepting the documents from Associate/Supplier/Bidder, it shall be ensured that the contact details (Telephone no./ Mobile no./ e-mail.ID) of authority issuing the documents are mentioned on the forwarding letter.

6. The above requirement is equally applicable even if the documents are received in soft form. In such cases, it is to be ensured that the documents are received from authorized e-mail of the Associate/ Supplier/ Bidder.

7. In all NITs/ Tenders, the condition mentioned in Para 3.0 shall be invariably inserted as general condition of NIT/Tender/EOI.

*To accomplish great things,
We must not only act but also dream.
Not only plan but also believe. :
Anatole France*

Constitution of India : PREAMBLE



Reader's Feedback

‘.....The content of the e-newsletter rightly deserves sincere appreciation. The information contained was highly informative. Personally it would guide me for effective and efficient performance of my duties and responsibilities. Pretty sure the younger generation would derive maximum benefits from the same.

The vigilance team especially the leader CVO saheb should be complemented for the foresight. Trust this kind of e-newsletter would bring discipline and transparency in the functioning of STC.

Please include another case study in the next edition.

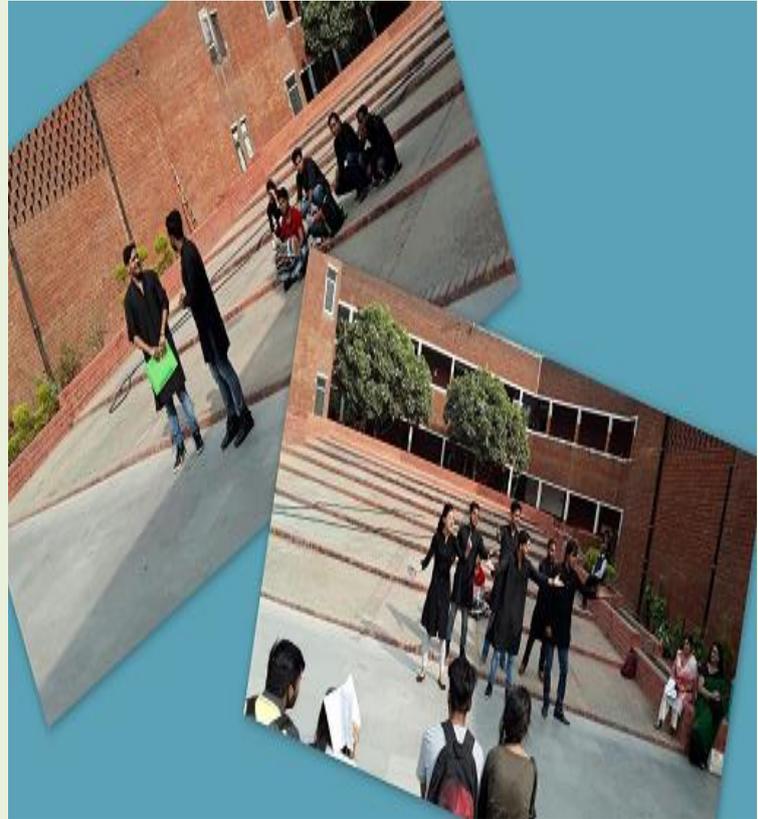
Like to request if an article on "tender guidelines", "norms for negotiation with L1 bidder" please be included in the next edition.’

D.P. Mishra, GM (Marketing)

Glimpses of Vigilance Week Observance -2016



**Street Play at
Shaheed Bhagat Singh College and
Delhi College of Vocational Studies, New Delhi**



Drawing Competition : Sister Nivedita Sarvodaya Kanya Vidyalaya, Delhi.





Quiz competition held at Sarvodaya Bal Vidyalaya-1, Madipur, New Delhi



Team Vigilance

Wish All The Readers

HAPPY & PROSPEROUS NEW YEAR-2017



Q & A

Q. If any vendor/ bidder submit any forged document to meet PQR or to meet any tender/PO requirement, whether action under Guidelines for Suspension of Business Dealing with Supplier as well as filing of FIR can be taken?

A. Yes, in case of submission of forged/ fake documents/ cheating by Vendor/ Contractor, action for filing of FIR under IPC shall be taken as per CVC directive in addition to action stipulated under Guidelines for Suspension of Business Dealing with Supplier.

The issue of forgery/ cheating shall be reported to Police authorities for filing of FIR without any delay. The unit authorities shall avoid delay in reporting the matter to Police authorities and not to form committee(s) to examine this aspect. It is for the Police authorities to decide whether FIR can be registered or not.

Q. Whether any employee of the corporation, who has not submitted Annual Immovable Property Return could be denied vigilance clearance?

A. YES. As per Department of Personnel, Public Grievances & Pensions OM No. 11012/11/2006-Estt.A dated 27th September 2011 'Vigilance clearance shall be denied to an officer if he fails to submit his annual immovable property return of the previous year by 31st January of the following year, as required under Government of India decisions under Rule 18 of the Central Civil Services (Conduct) Rule, 1964.'

Real knowledge is to know the extent of one's ignorance: Confucius

Any suggestion(s) /query/ article(s) may be mailed to :- cvo@stclimited.co.in