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IN THE SUPREME COURT OF INDIA
(EXTRAORDINARY APPELLATE JURISDICTION)

SLP (CIVIL) NO. 19466/2021

CENTRE FOR PUBLIC INTREST LITIGATIONPETITIONER

UNION OF INDIA & ORSRESPONDENTS

VERSUS

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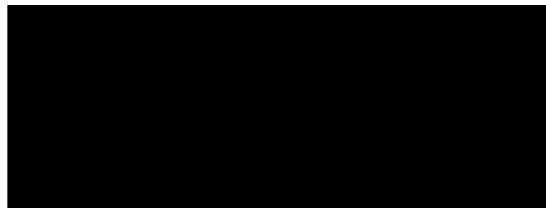
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RESPONDENT NO.3

Filed By:



ANKUR BANSAL
Advocate-On-Record



Delhi
Dated: 10.12.2021

IN THE SUPREME COURT OF INDIA
(EXTRAORDINARY APPELLATE JURISDICTION)

SLP (CIVIL) NO. 19466/2021

CENTRE FOR PUBLIC INTREST LITIGATIONPETITIONER

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MR. ANKUR BANSAL ADVOCATE FOR THE RESPONDENT

IN THE SUPREME COURT OF INDIA
(EXTRAORDINARY APPELLATE JURISDICTION)

SLP (CIVIL) NO. 19466/2021

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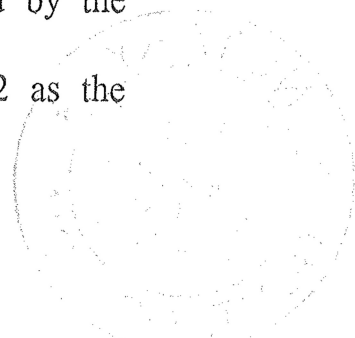
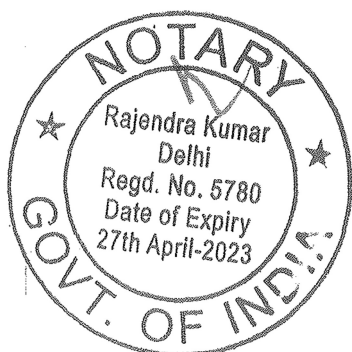
UNION OF INDIA & ORS. RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDNET NO.3
SADRE ALAM AGED ABOUT 28 YEARS S/o LATE SH.
ANWARUL R/o B-425, GALI No.4, SUBAHSH MOHALLA,
NORTH GHONDA , DELHI -110053

I, the above name deponent do solemnly affirms and declare as under:-

1. I say that I have been arrayed as respondent no.3 in the present petition.
2. I say that I had invoked the writ jurisdiction of the Hon'ble High of Delhi under Article 226 of the Constitution of India seeking the following reliefs:

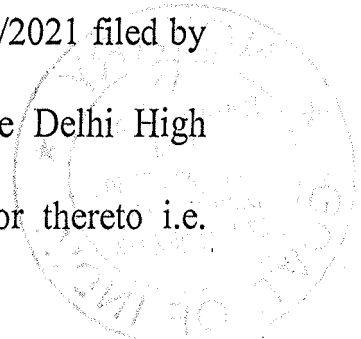
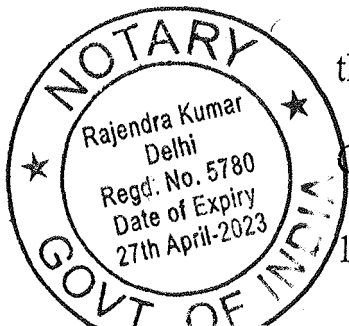
- a. Issue an appropriate writ, order or direction for quashing the impugned order, dated 27.07.2021, issued by the Respondent No.1 appointing Respondent No.2 as the Commissioner of Police, Delhi;



b. Issue an appropriate writ, order or direction to Respondent No. 1 to produce the order/communication of Appointments Committee of Cabinet vide No. 6/30/2021-EO(SM-I) dated 27.07.2021 issued by it approving the inter-cadre deputation of Respondent No.2 from Gujarat cadre to AGMUT cadre and further to extend his service period to 31.07.2021, i.e. one year beyond his date of superannuation, and to set-aside the said order.

c. Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondent No.1 to initiate fresh steps for appointing Commissioner of Police, Delhi, strictly in accordance with the directions issued by the Hon'ble Supreme Court of India in *Prakash Singh* case viz., (2006) 8 SCC 1, (2019)4SCC13 and (2019)4SCC an officer of high integrity belonging the AGMUT cadre.

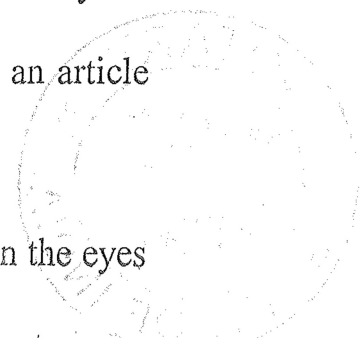
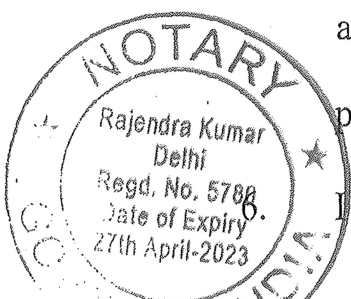
3. I say that the Writ Petition no. 881/2021 was filed by the present petitioner in this Hon'ble Court and the same came up for hearing on 25.08.2021. However, the Writ Petition No. 8654/2021 filed by the answering respondent no.3 before the Hon'ble Delhi High Court came up for hearing for the first time prior thereto i.e. 18.08.2021.



4. I say that the present petitioner has leveled irresponsible, unfounded and reckless allegations against the answering respondent no.3 in as much as that it has been alleged by the petitioner that the answering respondent no.3 has copied the petition bearing WP(C) 881 /2021 filed by the present petitioner in this Hon'ble Court. This allegation is patently false since the writ petition filed by the answering respondent in the Hon'ble Delhi High Court came up for hearing prior to the listing of the writ petition filed by the present petitioner in this Hon'ble Court. By no such of imagination could the answering respondent have gained access to the petition preferred by the present petitioner in this Hon'ble Court. It is indeed an un-becoming and disgraceful act on the part of the petitioner to level scandalous allegations against the answering respondent no.3 simply to gain mileage. The answering respondent no.3 had espoused a cause in public interest.

5. I say that I am a practicing advocate having enrolment no. D/1602/2021. I filed the writ petition in public interest and had no personal interest in this litigation. The writ petition was filed by me as I gained knowledge about the facts of this case from an article published in the newspaper dated 25.05.2021.

I say that the appointment of the respondent no.2 is bad in the eyes



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of laws since just four days before the Respondent No.2 herein was due to retire on his superannuation i.e. on 31.07.2021, the Ministry of Home Affairs (Respondent No.1) issued the order, dated 27.07.2021- Annexure P-18. Vide the said order, the central government has:

- a. Granted an inter-cadre transfer/deputation to Respondent No. 2 from his parent cadre of Gujarat to the AGMUT cadre (cadre for Arunachal Pradesh, Goa Mizoram other Union Territories including Delhi);
- b. Granted Respondent No. 2 an extension of service for 1 year beyond the date of his superannuation on 31.07.2021 by relaxing Rule 16(1) of All India Services (Death cum Retirement Benefit Rules), 1958;
- c. Appointed him as the Commissioner of Police, Delhi.

7. I say that the order dated 27.07.2021 is violative of law since the same is contrary to FR- 56 (d) which is reproduced hereunder:

"56(d) No Government servant shall be granted extension in service beyond the age of retirement of sixty years. Provided that a Government servant dealing with dealing with budget work or working as a full-time member of a Committee

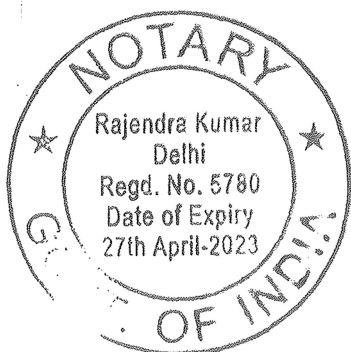


which is to be wound up within a short period of time may be granted extension of service for a period not exceeding three months in public interest;

Provided further that a specialist in medical or scientific fields may be granted extension of service up to the age of sixty-two years, if such extension is in public interest and the grounds for such extension are recorded in writing;

Provided also that an eminent scientist of international stature may be granted extension of service up to the age of 64 years, if such extension is in public interest and the grounds for such extension are recorded in writing;

Provided also that notwithstanding anything contained in any rule, the Central Government may, if considered necessary in public interest so to do, give extension in service to a Cabinet Secretary in the Central Government for such period or periods as it may deem proper subject to the condition that his total term as such Cabinet Secretary does not exceed four years;

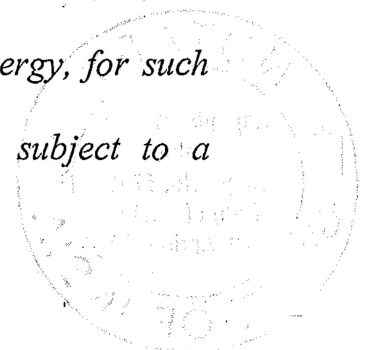
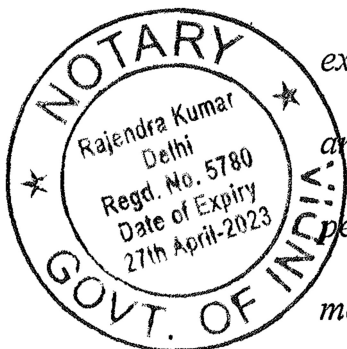


Provided also that the Central Government may, if considered necessary in public interest so to do, give

extension in service to the Defence Secretary, Foreign Secretary, Home Secretary, Director, Intelligence Bureau, Secretary, Research and Analysis Wing and Director, CBI in the Central Government for such period or periods as it may deem proper on a case-to-case basis, subject to the condition that the total term of such Secretaries or Directors, as the case may be, who are given such extension in service under this rule, does not exceed two years;

Provided also that notwithstanding anything contained in the Fifth Proviso, the Central Government may, if it considers necessary, in public interest, so to do, give an extension in service for a further period not exceeding three months beyond the said period of two years to the Home Secretary and the Defence Secretary.

Provided also that the Central Government may, if considered necessary in public interest so to do, give extension of service to the Secretary, Department of Space and the Secretary, Department of Atomic Energy, for such period or periods as it may deem proper subject to a maximum age of 66 years."



8. I say that the Hon'ble high has failed to consider that, under this Rule, there is no provision for grant of extension to a police officer like Respondent No. 2 beyond his age of retirement of 60 years. Thus, the impugned order, dated 27.07.2021, is liable to be set aside. The Hon'ble High Court's observation that rule 3 of rules, 1960 certainly empowers the central government to relax this provisions is unsustainable in law as rule 3 sub clause 2 would speak of undue hardship which in this case is not there.

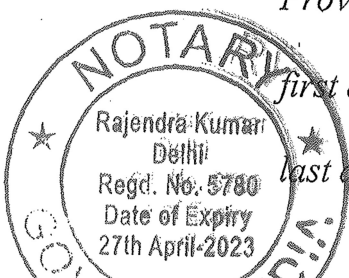
9. I say that the analogy culled out by the Hon'ble High Court in rejecting the plea of the answering respondent no.3 that the Respondent No.2 is not eligible for Relaxation of Rule16 (1) of AIS (Death-cum-Retirement Benefits) Rules,1958 is again wholly illegal.

Rule 16(1) of the Rules, 1958 is reproduced hereunder:

"16. Super annuation gratuity or pension.-

16(1) A member of the Service shall retire from the service with effect from the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a member of the Service whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years:



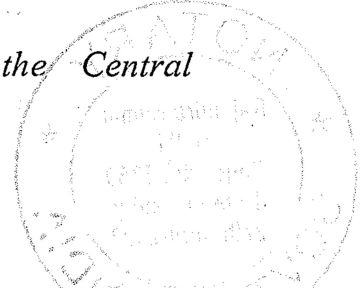
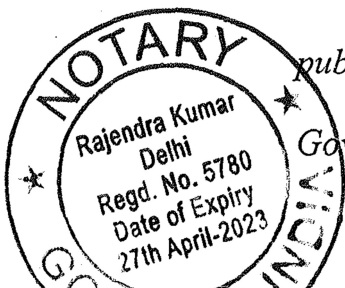
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Provided further that a member of the Service dealing with budget work or working as a full-time member of a Committee which is to be wound up within a short period may be given extension of service for a period not exceeding three months in public interest, with the prior approval of the Central Government.

Provided also that a Member of the Service holding the post of Chief Secretary to a State Government may be given extension of service for a period not exceeding six month son there commendations made by the concerned State Government with full justification and in public interest, with the prior approval of the Central Government.

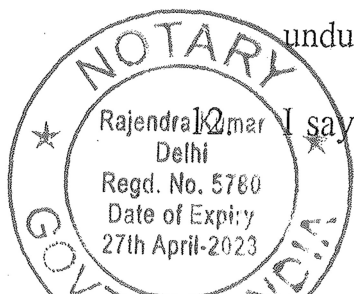
Provided also that a Member of the Service holding the post of Chief Secretary to the Government of Jammu & Kashmir may be given extension of service, under exceptional circumstances, for a period beyond six months but the total term as Chief Secretary not exceeding three years and up to the age of sixty-two years, whichever is earlier, on the recommendations made by the State Government of Jammu & Kashmir, with full justification and in

public interest, with the prior approval of the Central Government''.



Provided also that a member of the Service who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on the expiry of his extended period of service or on the expiry of any further extension, granted by the Central Government in public interest, and that no such extension in service shall be granted beyond the age of sixty years."

10. I say that from a perusal of the aforementioned rule, it is clear that the Respondent No.2 does not come under any of the aforementioned provisos and therefore, he is not eligible for any kind of extension in service under Rule 16(1) of the Rules, 1958. Thus, the said requirement was illegally relaxed by the Central government.
11. I say that the Hon'ble High Court has failed to notice that power of relaxing the requirement of a Rule can be exercised by the Central government under Rule 3 of the Residuary Rules only when it is satisfied that the operation of a rule regulating the conditions of service of a person appointed to an All India Service "*causes undue hardship in any particular case*". In the present case, no undue hardship has been mentioned.



I say that the High Court has failed to consider that the judgment

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passed by the Hon'ble Supreme Court of India in of Prakash Singh vs. Union of India (2006) 8SCC1, (2019)4SCC13 and (2019)4SCC1 is applicable both to the state governments and the Union Territories. No possible justification can be given by the respondent no.1 for digressing from the dictum of this Hon'ble Court.

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13. I say that the Hon'ble High Court has not appreciated the fact that the respondent no.2 did not have six months of service at the time of his appointment as commissioner of police, Delhi which was necessary as per the mandate of Prakash Singh's case 2019 4 SCC 1 para 10 therein.

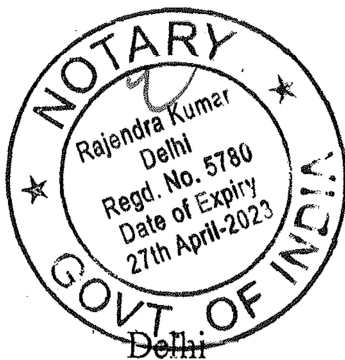
14. I say that no new facts pleaded in this affidavit which were not before the Courts below or not necessary to answer the contentions raised in the list of dates in the SLP.

[REDACTED]
RESPONDENT NO.3

Filed By:

[REDACTED]
ANKUR BANSAL
Advocate-On-Record
Supreme Court of India
[REDACTED]

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Dated: 10.12.2021

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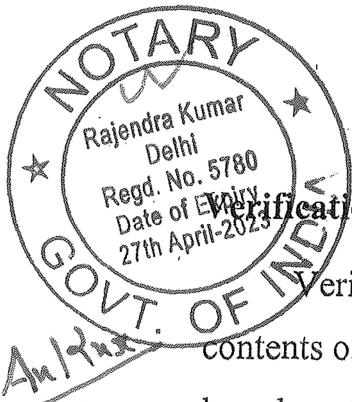
8 UNION OF INDIA & ORSRESPONDENTS

AFFIDAVIT

I, Sadre Alam a [REDACTED]

[REDACTED] do hereby solemnly
affirm and declare as under:

1. That I being the respondent no.3 in the above mentioned case and hence, well aware of the facts and circumstances of the case and hence, am competent to swear the present affidavit.
2. That contents of the accompanying counter affidavit has been drafted by my counsel under my instructions and are true and correct to my knowledge. The contents of the said Application have been read over to me in the language understood by me.



[REDACTED]
DEPONENT

Verification:
Verified at New Delhi on 10th Day of December, 2021 that the contents of this affidavit are true to the best of my knowledge and same is based on the record of the case maintained by and nothing material has been concealed therefrom. [REDACTED]

IN THE SUPREME COURT OF INDIA
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CENTRE FOR PUBLIC INTREST LITIGATIONPETITIONER

VERSUS

UNION OF INDIA & ORSRESPONDENTS

VAKALATNAMA

I / We The undersigned Petitioner(s) / Respondent(s) / Appellant(s) in the above Petition / Appeal do hereby appoint and retain **Mr. Ankur Bansal , ADVOCATE** of the Supreme Court of India, to act and appear for me / us in the above Petition / Appeal and on my / our behalf to conduct (or defend) the same and al proceeding that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and applications for Review, to file and obtain, return of documents, and to deposit and receive money on my / our behalf in the said Petition / Appeal and in application for Review, and to represent me/ us and to take all necessary steps on my / our behalf in the above matter. I / We agree to ratify all acts done by the aforesaid Advocates in pursuance of this authority.

Dated: this the 10th day of December 2021

Accepted, Identified and Certified

Put signature(s) / Thumb impression below:

The address for service of the Advocate is:

ANKUR BANSAL

Advocate-on-Record
Supreme Court of India

Petitioner(s) / Appellant (s)
Opposite Party / Respondent (s)

MEMO OF APPEARANCE

To,
The Registrar,
Supreme Court
New Delhi,
Sir,

Please enter an appearance for the above named Petitioner(s) / Appellant(s) / Opposite Party / Respondent(s) in the above mentioned petition / case / appeal / matter.

Yours faithfully,

Date:- 10 /12 /2021



quired



ANKUR BANSAL

Advocate-on-Record
Supreme Court of India

H-16, (Basement), Lajpat Nagar-II
New Delhi-110024

Mobile: 9810149141

Email: ankurbansal1985@gmail.com

AOR Code - 2472

