

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2021
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

CENTRE FOR PUBLIC INTEREST LITIGATION

THROUGH ITS GENERAL SECRETARY

43, LAWYERS CHAMBER

SUPREME COURT OF INDIA

NEW DELHI – 110 001

E-MAIL ID: [REDACTED]

...PETITIONER

VERSUS

1. UNION OF INDIA

THROUGH ITS SECRETARY

MINISTRY OF HOME AFFAIRS

NORTH BLOCK, CENTRAL SECRETARIAT

NEW DELHI - 110001

...RESPONDENT NO.1

2. RAKESH ASTHANA

COMMISSIONER OF POLICE, DELHI

OFFICE OF THE COMMISSIONER OF DELHI POLICE,

POLICE HEADQUARTERS, JAI SINGH ROAD,

NEW DELHI – 110 001

...RESPONDENT NO.2

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS UNDER ARTICLES 14, 19 & 21 SEEKING AN APPROPRIATE WRIT, ORDER OR DIRECTION FOR QUASHING THE ORDER DATED 27.07.2021 PASSED BY THE CENTRAL GOVERNMENT APPOINTING RESPONDENT NO. 2 AS THE COMMISSIONER OF POLICE IN VIOLATION OF GOVERNMENT RULES AND IN VIOLATION OF JUDGMENT OF THIS HON'BLE COURT IN *PRAKASH SINGH V UNION OF INDIA* VIZ., (2006) 8 SCC 1, (2019) 4 SCC 13, AND (2019) 4 SCC 1; AND A FURTHER DIRECTION TO THE RESPONDENT NO.1 TO INITIATE FRESH STEPS FOR APPOINTMENT OF THE COMMISSIONER OF POLICE, DELHI, STRICTLY IN ACCORDANCE WITH THE DIRECTIONS ISSUED BY THIS HON'BLE COURT IN *PRAKASH SINGH* CASE

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. The instant writ petition in public interest is being filed under Article 32 of the Constitution of India for the enforcement of fundamental rights of the citizens as enshrined under Articles 14, 19 and 21 of the Constitution of India seeking 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 Commissioner of Police, Delhi; and for quashing the order/communication dated 27.07.2021 of the ACC granting inter-cadre deputation and extension of service to Respondent No. 2 and for a further direction to the Respondent No.1 to initiate fresh steps for appointing the Commissioner of Police, Delhi, strictly in accordance with the directions issued by this Hon'ble Court in the *Prakash Singh case viz., (2006) 8 SCC 1, (2019) 4 SCC 13 and (2019) 4 SCC 1* of some officer of AGMUT cadre.

INTRODUCTION OF THE PETITIONER:

- 1A. That the Petitioner herein is Centre for Public Interest Litigation (CPIL). CPIL is a registered society formed for the purpose of taking up causes of grave public interest and conducting public interest litigation in an organized manner. Its founder President was the late

Shri V.M. Tarkunde and founder members consisted of several senior advocates including Shri Fali S. Nariman, Shri Shanti Bhushan, Late Shri Anil Divan and Late Shri Rajinder Sachar among others. Ms. Kamini Jaiswal is the General Secretary of the petitioner and is authorized to institute petitions on behalf of the petitioner. A copy of the list of members of the Petitioner organisation is annexed herewith and marked as **ANNEXURE P-1 (Pages _____)**. A copy of the list of important cases filed and argued by the Petitioner organisation before this Hon'ble Court and Hon'ble Delhi High Court is annexed herewith and marked as **ANNEXURE P-2 (Pages _____)**.

The Petitioner organisation does not have any Aadhar number and does not have any income. PAN Card No. of the Petitioner organisation is AAATT9641G. The Petitioner herein has no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in the PIL. The Petitioner herein has not sent any representation to the Respondents herein. That the instant writ petition is based on the information and/or documents which are in public domain, and/or part of court records.

THE CASE IN BRIEF:

1. That vide order dated 17.08.2020, issued by the Central government, Mr. Rakesh Asthana (Respondent No.2 herein), was appointed as the DG, Border Security Force (BSF), while continuing to hold the additional charge of DG, Narcotic Control Bureau (NCB). Thus,

Respondent No2 was till recently holding two posts. Relevant part of the order, dated 17.08.2020, is quoted below:

“The Appointments Committee of the Cabinet has approved the proposal of the Ministry of Home Affairs for:

i. Appointment of Shri Rakesh Asthana, IPS (GJ:84), presently working as DG, BCAS with additional charge of DG, NCB, to the post of DG, Border Security Force (BSF) in Level-17 of the pay matrix from the date of joining the post and up to 31.07.2021 i.e. date of his superannuation or till further order whichever is earlier, along with additional charge of DG, Narcotic Control Bureau (NCB).”

A copy of the order, dated 17.08.2020, issued by the Central government is annexed herewith and marked as **ANNEXURE P-3 (Pages _____)**.

2. That 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 following impugned order, dated 27.07.2021:

“The approval of the Appointments Committee of the Cabinet has been conveyed vide No. 6/30/2021-EO(SM-I) Dated 27.07.2021 for the Inter Cadre deputation of Shri Rakesh Asthana, IPS (GJ:1984) from Gujarat cadre to AGMUT Cadre and extending his service initially for a period of one year beyond the date of his superannuation on 31.07.2021 or until further orders, whichever is earlier, in relaxation of Rule 16(1) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 as a special case in public interest.

2. In pursuance of the said approval, Shri Rakesh Asthana, IPS (GJ:1984) is hereby appointed as Commissioner of Police, Delhi with effect from the date of taking over charge up to 31.07.2022 or until further orders, whichever is earlier.

3. *This issues with the approval of the Competent Authority.*”

A copy of the impugned order, dated 27.07.2021, issued by the Respondent No.1 herein is annexed herewith and marked as **ANNEXURE P-4 (Pages _____)**.

3. That through the ACC order (No. 6/30/2021-EO-SM-I) dated 27.07.2021 and order dated 27.07.2021 (hereinafter referred to as “impugned orders”)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.
4. These orders violate a number of statutory rules and also violate the judgment of this Hon’ble Court in *Prakash Singh* case regarding the eligibility, procedure for appointment and tenure of police chiefs. The succeeding paragraphs show how government rules have been given a complete go-by in order to hand over the sensitive post of

the Delhi Police Commissioner to their favoured IPS officer, i.e. Respondent No. 2 on the verge of his retirement.

5. Violation of Fundamental Rule 56(d)

Fundamental Rule- 2 provides that the Fundamental Rules apply to all the Government Servants whose pay is debitable to the Civil Estimates and to any other class of Government Servants to which the President may, by general or special order, declare them to be applicable. By virtue of Article 372 read with Article 309 of the Constitution of India, the Fundamental Rules, which came into force in 1922, continue to apply to Government servants and are often enforced by this Hon'ble Court. A copy of the relevant page of Fundamental Rules & Supplementary Rules containing Fundamental Rule- 2, as downloaded from the official website of the Department of Personnel & Training (<https://dopt.gov.in/download/acts>), is annexed herewith and marked as **ANNEXURE P-5 (Pages _____)**.

6. As per Fundamental Rule- 56(d):

“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 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.

A copy of the Extracts of provisions in Fundamental Rule 56, as downloaded from the official website of the Department of Personnel

& Training (<https://dopt.gov.in/download/acts>), is annexed herewith and marked as **ANNEXURE P-6(Pages _____)**).

That clearly, 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.

7. Furthermore, vide Office Memorandum, dated 09.12.2002, issued by the Department of Personnel & Training, on the Subject: "*Grant of extension/re-employment to Central Government servants beyond the age of superannuation - issue of instructions regarding*", it has been specifically stated in Para 3 that:

"3. Extension: F.R. 56(d) states that no Government servant shall be granted extension of service beyond the age of 60 years. However, provisions exist in the rules to grant extension of service to certain category of Government servant only. Therefore, it must be ensured that no Ministry/Department should propose to grant extension in service unless the case is covered by the Rules." [emphasis supplied]

A copy of the Office Memorandum, dated 09.12.2002, issued by the Department of Personnel & Training, as downloaded from the official website of the Department of Personnel & Training (<https://doptcirculars.nic.in/Default.aspx?URL=BfFCyr51M7RE%20>) is annexed herewith and marked as **ANNEXURE P-7 (Pages _____)**).

8. Respondent No. 2 is not eligible for Relaxation of Rule 16(1) of AIS (Death-cum-Retirement Benefits) Rules, 1958

As per the impugned order dated 27.07.2021, the extension in service has been granted to Respondent No.2 “in relaxation of Rule 16(1) of the All India Services (Death-Cum-Retirement Benefits) Rules as a special case in public interest”.

Rule 16(1) of the Rules, 1958 is quoted herein below:

“16. Superannuation 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:

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 months on the recommendations 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.” [emphasis supplied]

A copy of the relevant pages of All India Services (Death-Cum-Retirement Benefits) Rules, 1958, containing Rule 16, as downloaded from the official website of the Department of Personnel & Training (<https://dopt.gov.in/vol1>) is annexed herewith and marked as **ANNEXURE P-8 (Pages_____)**.

It is clear that the Respondent No.2 does not come under any of the afore-mentioned 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 presumably relaxed by the Central government. Apart from the above, Rule 16(1) provides for a maximum period of extension of service to be of six months. As the impugned order dated 27.07.2021 has provided Respondent No. 2 an extension of one year, therefore, the said requirement has also been presumably relaxed by the Central government.

9. It may be noted that Rules, 1958 have been made by the Central government in exercise of the powers conferred by Section 3(1) of the All India Services Act 1951. Further, the power of the Central government to relax the Rules comes from Rule 3 of the All India Services (Conditions of Service- Residuary Matters) Rules, 1960 [*“Residuary Rules”*]. The requirements of Rule 16(1) of the Rules, 1958 seem to have been relaxed in the instant case in exercise of the power under Rule 3 of the Residuary Rules. The said Rule 3 of the Residuary Rules is quoted below:

“3. Power to relax rules and regulations in certain cases.—
Where the Central Government is satisfied that the operation of—

1. (i) *any rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or*
2. (ii) *any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service **causes undue hardship** in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulations, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.”* [emphasis supplied]

A copy of the All India Services (Conditions of Service- Residuary Matters) Rules, 1960, as downloaded from the official website of the Department of Personnel & Training (<https://dopt.gov.in/vol1>) is annexed herewith and marked as **ANNEXURE P-9 (Pages _____)**.

10. Thus, the 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*”. It may be noted that the position of law regarding Rule 3 of the All India Services (Conditions of Service- Residuary Matters) Rules, 1960, has been settled by numerous decisions of this Hon’ble Court, namely, **Syed Khalid Rizvi v. Union of India, 1993 Supp (3) SCC 575; R.R. Verma v. Union of India, (1980) 3 SCC 402; Union of India v. D.R. Dhingra, 2011 SCC On Line Del 988 : ILR (2011) 3 Del 170**, etc.
11. That in the instant case, the requirement for exercise of power under Rule 3 of the Residuary Rules [for relaxing the Requirement of Rule 16(1) of the Rules, 1958] is not satisfied. The impugned orders

dated 27.07.2021 are therefore, completely illegal and clearly smack of *mala fide*, and have presumably been issued only to promote the interests of the Respondent No.2 as well as of those in the Central government.

12. That furthermore, Fundamental Rule 56(d) as well as Rule 16(1) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, make it amply clear that extension in service can be provided for only the specific categories of posts enlisted therein and more importantly, such extension would be granted only on the ground of '*public interest*' to those officers who are already holding such posts. The above has been done so as to provide them with continuity in service for a certain period in order to enable them to complete their exigent tasks and to ensure that public interest doesn't suffer because of their retirement.

13. The said Rules, however, in no manner whatsoever envisage a situation or provide any legal basis for extending service of an officer who is serving on some other post and who is on the verge of his retirement in order to appoint him to a new post, and that too to a different cadre and department. No public interest whatsoever is served by granting such extensions and making such appointments.

14. Violation of Rule of Inter-Cadre deputation as prescribed under DoPT's Office Memorandum dated 08.11.2004

That vide its Office Memorandum, dated 08.11.2004, DoPT prescribed the policy regarding Inter-Cadre deputation of All India Service Officers, and specifically requested the Ministry of Home Affairs (Respondent No.1 herein) and MoEF to take all decisions of inter-

cadre deputations only in accordance with the said policy. The relevant part of DoPT's Office Memorandum, dated 08.11.2004, is quoted herein-below:

"2. Over the years various instructions have been issued from the Department of Personnel & Training on the general guidelines to be followed by Cade Controlling Authorities while processing requests for inter-cadre deputation under Rule 6(1). The matter has been reviewed in detail and it has been decided that inter-cadre deputation may be availed of with the following conditions:

(i) Inter-cadre deputation will be available to the officers only after completion of nine years of service in his or her cadre and before reaching Super Time Scale in his or her home cadre.[emphasis supplied]

A copy of the DoPT's Office Memorandum, dated 08.11.2004, is annexed herewith and marked as **ANNEXURE P-10 (Pages _____)**.

15. It is submitted that Respondent No. 2 is a 1984-batch IPS Officer of Gujarat cadre and has already reached the Super Time Scale in his home Cadre, which makes him ineligible to avail Inter-Cadre deputation as such a deputation is available only upon fulfilment of the condition that the officer must not have reached the Super Time Scale in his home cadre. Hence, as the Respondent No.2's Inter-Cadre deputation from Gujarat Cadre to Arunachal Pradesh-Goa-Mizoram and Union Territory (AGMUT) Cadre is in contravention of the policy regarding Inter-Cadre deputation of All India Service Officers, thus, the impugned order, dated 27.07.2021, providing for such Inter Cadre deputation is liable to be quashed.

16. Violation of the directions issued by this Hon'ble Court in landmark case of Prakash Singh vs. Union of India (2006) 8 SCC 1, (2019) 4 SCC 13 and (2019) 4 SCC 1:

This Hon'ble Court, *vide* judgment dated 22.09.2006 passed in *W.P.(C) No. 310 of 1996*, reported as ***Prakash Singh v. Union of India, (2006) 8 SCC 1***, was pleased to pass *inter alia* the following directions:

“31. With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforesaid position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations:

2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empaneled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation...

...

The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31-12-2006 so that the bodies aforesaid become operational on the onset of the new year. [emphasis supplied]

17. That the aforesaid directions applies to Police Chiefs of every state is clear from Para 26 of the said judgment which is quotes below:

26. Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of the rule of law; (iii) pendency of even this petition for the last over ten years; (iv) the fact that various commissions and committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (v) total uncertainty as to when police reforms would be introduced, we

think that there cannot be any further wait, and the stage has come for issuing of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. It may further be noted that the quality of the criminal justice system in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions. Nearly ten years back, in Vineet Narain v. Union of India [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] this Court noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendents of Police and above. The Court expressed its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons which has not only demoralising effect on the police force but is also alien to the envisaged constitutional machinery. It was observed that apart from demoralising the police force, it has also the adverse effect of politicising the personnel and, therefore, it is essential that prompt measures are taken by the Central Government.

18. That *vide* order, dated 03.07.2018, reported in (2019) 4 SCC 13, this Hon'ble Court was pleased to pass the following directions in *W.P. (C) No. 310 of 1996*:

"6. Having heard the learned counsel for the parties, we pass the following directions:

6.1. All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police;

6.2. The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in

Prakash Singh case [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] and intimate to the States;

6.3. The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

6.4. None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh case [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] ;

6.5. An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation. Such a practice will not be in conformity with the spirit of the direction.

6.6. Our Direction 6.3 should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.

6.7. Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent.

7. The present directions shall be followed scrupulously by the Union of India and all the States/Union Territories.

[emphasis supplied]

19. That vide order, dated 13.03.2019, passed in W.P. (C) No. 310 of 1996, reported in **Prakash Singh v. Union of India (2019) 4 SCC 1**, this Hon'ble Court was pleased to direct as follows:

“6. Having read and considered the decision of this Court in Prakash Singh [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] we are of the view that what was emphasised in Prakash Singh [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] is a minimum tenure of two years for an incumbent once he is appointed as the Director General of Police. The direction issued by this Court neither contemplated the appointment of a Director General of Police on the eve of his retirement nor the practice now adopted by the Union Public Service Commission in making the empanelment i.e. empanelling officers who have at least two years of tenure.

7. Neither of the aforesaid practices, in our considered view, can further the directions of this Court in Prakash Singh [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] or give impetus to what this Court had in mind in issuing the directions in Prakash Singh [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] , namely, that the appointment of a Director General of Police in a State should be purely on the basis of merit and to insulate the said office from all kinds of influences and pressures, once appointed the incumbent should get a minimum tenure of two years of service irrespective of his date of superannuation.

8. Neither this Court had contemplated recommendation for appointment of officers who are on the verge of retirement or appointment of officers who have a minimum residual tenure of two years. The emphasis was to select the best and to ensure a minimum tenure of two years' service of such officer who is to be selected and appointed. The Police Acts enacted also do not contemplate any fixed residual tenure for an officer to be recommended for appointment as the Director General of Police of a State. In the above conspectus the object in issuing the directions in Prakash Singh [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] , in our considered view, can best be achieved if the residual tenure of an officer i.e. remaining period of service till normal retirement,

is fixed on a reasonable basis, which, in our considered view, should be a period of six months.

9. This will take care of any possible action on the part of the State Government which can be viewed by any quarter as an act of favouritism. Recommendations for appointment of the Director General of Police on the eve of retirement of the incumbent or of the Union Public Service Commission in embarking upon a course of action which may have the effect of overlooking efficient and eligible officers will stand obviated by the above direction which we had deemed to be fit and proper to issue.

10. We, therefore, clarify the order of this Court dated 3-7-2018 passed in Prakash Singh v. Union of India [Prakash Singh v. Union of India, (2019) 4 SCC 13] to mean that recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers who have a minimum residual tenure of six months i.e. officers who have at least six months of service prior to the retirement.

[emphasis supplied]

20. That the post of Commissioner of Police in Delhi is akin to the post of DGP of a State and he is the Head of Police Force for the NCT of Delhi and therefore, the directions concerning the appointment to the post of DGP passed by this Hon'ble Court in the **Prakash Singh** case (supra) had to be followed by the Central Government while making the impugned appointment. However, the same have been given a complete go-by the Central Government as is clear from the following:

- a. Respondent No. 2 has not been empaneled by the Union Public Service Commission, as directed in *Prakash Singh*. This is so because Respondent No. 2 did not belong in the

cadre of AGMUT at all. He was deputed to AGMUT from Gujarat Cadre and appointed to the post of Police Commissioner, Delhi *vide* orders issued on the **same date** i.e. July 27, 2021 as can be ascertained from the order regarding his appointment dated 27.07.2021 annexed at P-4 which make no reference to any process of empanelment followed by the UPSC.

- b. Respondent No.2 did not have a residual tenure of 6 months of service at the time of his appointment as Commissioner of Police since he was to retire within 4 days. The judgment of this Hon'ble Court in **Prakash Singh**,(2019)4 SCC 1 states as follows:

*10. We, therefore, clarify the order of this Court dated 3-7-2018 passed in Prakash Singh v. Union of India [Prakash Singh v. Union of India, (2019) 4 SCC 13] to mean that recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers **who have a minimum residual tenure of six months** i.e. officers who have at least six months of service prior to the retirement[emphasis supplied]*

- c. Respondent No. 2 has been appointed for a period of only one year *vide* an extension beyond his date of superannuation even though **Prakash Singh** provides for a minimum 2 years tenure irrespective of the date of superannuation.
- d. In fact, the tenure of the previous regular incumbent Mr. S.N. Shrivastava, IPS (AGMUT:1985)was also curtailed upon his superannuation without completion of the minimum

tenure of 2 years in violation of the judgment in **Prakash Singh** which provides for a minimum 2 years tenure to the Police Chief, irrespective of the date of superannuation. Thus, the curtailment of the tenure of the previous incumbent is also a violation of **Prakash Singh**. Thereafter, upon the superannuation of Mr. S.N. Shrivastava on 29.06.2021, additional charge of Commissioner of Police, Delhi was given to Mr. Balaji Srivastav, IPS (AGMUT:1988) who served on the post for less than one month (29.06.2021 to 27.07.2021). This appears to have been done in a *malafide* manner in order to appoint Respondent No. 2 to the said post. A copy of order dated 21.02.2020 giving the additional charge of Commissioner of Police, Delhi to previous incumbent Mr. S.N Shrivastava is annexed herewith as **ANNEXURE P-11(Pages_____)**. A copy of order dated 21.05.2021 appointing Mr. S. N. Shrivastava to the post of Commissioner of Police Delhi is annexed herewith as **ANNEXURE P-12(Pages_____)**. A copy of order dated 29.06.2021 giving additional charge of Commissioner of Police in addition to his regular charge until appointment of a regular incumbent to Mr. Balaji Srivastav is annexed herewith as **ANNEXURE P-13(Pages_____)**.

21. Moreover, in the High-Powered Committee meeting held on 24.05.2021, the Central government's attempt to appoint the same IPS officer (Respondent No.2) as the CBI Director was reportedly rejected by the Hon'ble Chief Justice of India by citing the "*six-month rule*" of the *Prakash Singh* case, referred to herein-

above. As per the news report, dated 25.05.2021, titled “*After CJI Ramana cites ‘rule of law’, Rakesh Asthana and YC Modi out of CBI chief race*”, published by The India Express: “*The two candidates, among the frontrunners to the post, were dropped after Chief Justice of India N V Ramana cited a Supreme Court guideline on appointment of police chiefs. CJI Ramana is learnt to have pointed out that the apex court’s guidelines in the Prakash Singh case of March 2019 made it clear that no officer with less than six months to retirement should be appointed as police chief. It is learnt that CJI Ramana was rather insistent on this point.*” As per the news report, dated 25.05.2021, titled “*How the CJI ruled out Rakesh Asthana & YC Modi from the running for CBI chief*”, published by India Today: “*CJI Ramana cited before the committee the “six-month rule” mentioned in the 2006 landmark Prakash Singh judgment on police reforms. This is reportedly the first time the rule has been put forward during the selection of a new CBI director, and the Chief Justice insisted that it be complied with.*” A true typed copy of the news report, dated 25.05.2021, titled “*After CJI Ramana cites ‘rule of law’, Rakesh Asthana and YC Modi out of CBI chief race*”, published by The India Express is annexed herewith and marked as **ANNEXURE P-14 (Pages _____)**. A true typed copy of the news report, dated 25.05.2021, titled “*How the CJI ruled out Rakesh Asthana & YC Modi from the running for CBI chief*”, published by India Today is annexed herewith and marked as **ANNEXURE P-15 (Pages _____)**.

22. That after the aforesaid reported objection by the Hon’ble Chief Justice of India, the High-Powered Committee (HPC) comprising

the Prime Minister of India, the Leader of Opposition and the Hon'ble Chief Justice of India rejected the proposal to appoint Respondent No. 2 as CBI Director. Thus, despite being well aware of the ineligibility of Respondent No. 2, the Central government has illegally appointed him as the Delhi Police Commissioner *vide* the impugned orders dated 27.07.2021 and the same are liable to be set aside.

23. The post of Delhi Police Commissioner is much more similar in nature to the post of DGP in the States, than the post of CBI Director. While the CBI is only an investigating agency, the Delhi Police performs the tasks of doing investigation as well as maintaining law and order, and thus is similar to police forces under various State Governments. Further, just like a State's Director General of Police is the Head of Police Force in a state, the Delhi Police Commissioner is the Head of Police Force in the NCT of Delhi. Thus, the mandate of ***Prakash Singh*** ought to have been followed in case of the impugned appointment. As shown above, the directions of *Prakash Singh* case are applicable to Union territories too and therefore, the same are applicable to NCT of Delhi.
24. It is therefore, submitted that the impugned orders are liable to be set aside and directions may be issued to the Central government to initiate fresh steps for appointing some other officer of the AGMUT cadre as the Commissioner of Police, Delhi, strictly in accordance with the directions issued by this Hon'ble Court in the *Prakash Singh* case *viz.*, (2006) 8 SCC 1, (2019) 4 SCC 13 and (2019) 4 SCC 1.

25. That the Delhi Assembly has also passed a resolution against the appointment of Respondent No. 2 as the Delhi Police Commissioner. The said resolution dated 29.07.2021 *inter alia* states:

“This MHA order is in complete violation of the Hon’ble Supreme Court of India judgement dated 13th March 2019 in the case titled : Prakash Singh Vs Union of India. The judgement clearly lays down that no individual who has less than six months of service left, can be considered for appointment as head of a police force anywhere in the country.

...

It is a widely known fact that Sh. Asthana was to retire from service on 31st July – meaning barely two days later. Further, the post of Commissioner of Police, Delhi, belongs to the AGMUT IPS cadre.

...

This House directs the Government of NCT of Delhi to convey to the MHA that the appointment order of Sh. Rakesh Asthana be immediately withdrawn and fresh process for the appointment of Commissioner of Police for Delhi be initiated in accordance with proper rules and regulations.”

A copy of Delhi Assembly resolution dated 29.07.2021 against the appointment of Respondent No. 2 as Police Commissioner, Delhi is annexed herewith as **ANNEXURE P16 (Pages _____)**.

26. That the appointment of the Respondent No. 2 has been strongly criticized by former IPS officers of high standing such as Mr. Julio Ribeiro, who has served in the past as Commissioner of Police, Mumbai; Director General of CRPF, DGP Gujarat and DGP Punjab, among others. In his opinion piece dated 31.07.2021 titled “*Rakesh Asthana’s new job shows how Modi and Shah are out to destroy our institutions*”, he notes: “*Rakesh Asthana, an*

IPS officer of the Gujarat cadre, was appointed Police Commissioner of Delhi on July 27, a few days before he was slated to retire from service. The Supreme Court had stipulated in its Prakash Singh judgment that only officers with at least six months remaining before superannuation would be eligible to lead state police forces. The principle was clear. Yet it was discarded like a used napkin and it was effected in one sweep of regal hands.” A copy of the said opinion piece dated 31.07.2021 published on *scroll.in* is annexed herewith as **ANNEXURE P-17 (Pages_____)**.

27. Ms. Meera Borwankar, former Commissioner of Police, Pune and former DG, Bureau of Police Research & Development, in her opinion piece dated 31.07.2021 published in the Indian Express stated, *“The central government has shown scant respect to either the Supreme Court or to the police as an institution. In one stroke, through the recent posting of the Delhi police chief, the politicians have displayed the ruthless power with which they control civil services. The message of them being the “masters” is loud and clear.”* A copy of the said opinion piece dated 31.07.2021 published on *scroll.in* is annexed herewith as **ANNEXURE P-18 (Pages_____)**.
28. That the Petitioner herein has not filed any other petition seeking the same relief before this Hon’ble Court or before any other court.
29. That the Petitioner herein is filing the instant Writ Petition on the following, inter alia, other grounds.

GROUND

- A. Because impugned orders violate a number of statutory rules and violate the judgment of this Hon’ble Court in **Prakash**

Singh vs Union of India [(2006) 8 SCC 1, (2019) 4 SCC 1, and (2019) 4 SCC 13] regarding the eligibility, procedure for appointment and tenure of police chiefs. Through impugned order/communication dated 27.07.2021 of the ACC and order dated 27.07.2021 passed by Respondent no. 1, the government has:

- i. 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) in violation of its own policy regarding inter-cadre deputation.
 - ii. Granted Respondent No. 2 an extension of service for 1 year beyond the date of his superannuation on 31.07.2021 by illegally relaxing Rule 16(1) of All India Services (Death cum Retirement Benefit Rules), 1958;
 - iii. Appointed him as the Commissioner of Police, Delhi in violation of principle as laid down in ***Prakash Singh***.
- B. Because the said impugned order dated 27.07.2021 is in clear and blatant breach of the directions passed by this Hon'ble Court in the *Prakash Singh* case as (i) Respondent No.2 did not have a minimum residual tenure of six months; (ii) no UPSC panel was formed for appointment of Delhi Police Commissioner; and (iii) the criteria of having a minimum tenure of two years has been ignored.
- C. Because the post of Commissioner of Police in Delhi is akin to the post of DGP of a State and he is the Head of Police Force

for the NCT of Delhi and therefore, the directions concerning the appointment to the post of DGP passed by this Hon'ble Court in the **Prakash Singh** case (supra) had to be followed by the Central Government while making the impugned appointment. However, the same have been given a complete go-by the Central Government as is clear from the following:

- i. Respondent No. 2 has not been empaneled by the Union Public Service Commission, as directed in **Prakash Singh**. This is so because, Respondent No. 2 did not belong in the cadre of AGMUT at all. He has been deputed to AGMUT from Gujarat Cadre *vide* the same order as his appointment to the post of Police Commissioner, Delhi.
- ii. Respondent No.2 did not have a residual tenure of 6 months of service at the time of his appointment as Commissioner of Police since he was to retire within 4 days. The judgment of this Hon'ble Court in **Prakash Singh, (2019) 4 SCC 1** states as follows: t
*10. We, therefore, clarify the order of this Court dated 3-7-2018 passed in Prakash Singh v. Union of India [Prakash Singh v. Union of India, (2019) 4 SCC 13] to mean that recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers **who have a minimum residual tenure of six months** i.e. officers who have at least six months of service prior to the retirement[emphasis supplied]*
- iii. Respondent No. 2 has been appointed for a period of one year till his date of superannuation even though **Prakash**

Singh provides for a minimum 2 years tenure irrespective of the date of superannuation.

- D. Because in the High-Powered Committee meeting held on 24.05.2021, the Central government's attempt to appoint the same IPS officer(Respondent No.2) as the CBI Director was reportedly rejected by the Hon'ble Chief Justice of India by citing the "six-month rule" as laid down in **Prakash Singh**.The appointment of Respondent No. 2 to the post of Commissioner of Police, Delhi must be set aside on the same principle.
- E. Because the post of Delhi Police Commissioner is much more akin to the post of DGP in the States, than the post of CBI Director and thus the directions given by this Hon'ble Court in **Prakash Singh** would squarely apply in the instant case. Further, just like a State's Director General of Police is the Head of Police Force in a state, the Delhi Police Commissioner is the Head of Police Force in the NCT of Delhi. Thus, the mandate of **Prakash Singh** ought to have been followed. The directions of **Prakash Singh** case are applicable to Union territories too and therefore, the same would be applicable to NCT of Delhi.
- F. Because no extension of service could have been legally granted to Respondent No.2 beyond the age of retirement of sixty years, and the said extension, having been granted *vide* the impugned orders dated 27.07.2021, is completely illegal, being in violation of Fundamental Rule 56. Thus, the impugned orders dated 27.07.202are liable to be set aside. As per Fundamental Rule 56(d), "*No Government servant shall be*

granted extension in service beyond the age of retirement of sixty years". None of the provisos under this Rule provide for grant of extension to a police officer like Respondent No. 2 beyond his age of retirement of 60 years.

G. As per the impugned order dated 27.07.2021, the extension of service has been granted to Respondent No.2 "in relaxation of Rule 16(1) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 as a special case in public interest". Rule 16 (1) provides that, "*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.*" The said rules also contains certain exceptions to the said rule for certain specific posts, which also do not apply in the case of Respondent No. 2.

H. Because in the instant case, the requirement for exercise of power under Rule 3 of the All India Services (Conditions of Service- Residuary Matters) Rules, 1960 has not been satisfied for relaxing the requirement of Rule 16(1) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958, in order to appoint Respondent No.2 as the Delhi Police Commissioner. Rule 3 provides the central government with the "Power to relax rules and regulations in certain cases" and states that the regulations or rules regulating conditions of service of AIS officers can be relaxed or dispensed with in cases of "undue hardship" to a particular officer. Reliance is placed on ***Syed Khalid Rizvi v. Union of India, 1993 Supp (3) SCC 575, R.R. Verma v. Union of India, (1980) 3 SCC 402 and Union of India v. D.R. Dhingra, 2011 SCC OnLine Del 988 : ILR (2011) 3 Del 170.***

I. Because Respondent No.2 was under no “*undue hardship*” so as to require the Central government to give him an extension of service *vide* the impugned order merely 4 days before his retirement. The impugned order issued by the Central government (Respondent No.1) is, therefore, completely illegal and clearly smacks of *mala fide*, having been issued apparently only to promote the interests of the Respondent No.2 as well as of those in the Central government. Further, there doesn't seem to be an express order in writing under Rule 3 the Residuary Rules recording the exigent reasons for relaxing Rule 16(1) of the Rules, 1958 in favour of Respondent No.2.

J. Because Respondent No.2 is a 1984-batch IPS Officer of Gujarat cadre and has already reached the Super Time Scale in his home Cadre, which makes him ineligible as per OM dated 08.11.2004 to avail Inter-Cadre deputation, as such a deputation is available only upon fulfilment of the condition that the officer must not have reached the Super Time Scale in his home cadre. Hence, as the Respondent No.2's Inter Cadre deputation from Gujarat Cadre to Arunachal Pradesh-Goa-Mizoram and Union Territory (AGMUT) Cadre is in contravention of the policy regarding Inter-Cadre deputation of All India Service Officers, thus, the impugned order, dated 27.07.2021, providing for such Inter Cadre deputation is liable to be quashed.

K. Because Fundamental Rule 56(d) as well as Rule 16(1) of the All India Services (Death-cum-Retirement Benefits) Rules,

1958, make it amply clear that extension in service can be provided for only the specific categories of posts enlisted therein and more importantly, such extension would be granted only on the ground of '*public interest*' to those officers who are already holding such posts. The above has been done so as to provide them with continuity in service for a certain period in order to enable them to complete their exigent tasks and to ensure that public interest doesn't suffer because of their retirement. The said Rules, however, in no manner whatsoever envisage a situation or provide any legal basis for extending service of an officer who is serving on some other post and who is on the verge of his retirement in order to appoint him to a new post, and that too to a different cadre and department. No public interest whatsoever is served by granting such extensions and making such appointments.

L. In ***Centre for PIL v. Union of India, (2011) 4 SCC 1***, while declaring that the recommendation dated 03.09.2010 of the High-Powered Committee recommending the name of Mr. P.J. Thomas as the Central Vigilance Commissioner under the proviso to Section 4(1) of the 2003 Act is non est in law and consequently, quashing the impugned appointment, a three-judge bench of this Hon'ble Court was pleased to observe and hold, inter alia, as follows:

"51. *The procedure of quo warrant to confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the court inter alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law*

or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority.”

64. Even in *R.K. Jain case* [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464], this Court observed vide para 73 that **judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable.** We reiterate that the Government is not accountable to the courts for the choice made but **the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction.** We do not wish to multiply the authorities on this point.” [emphasis supplied]

PRAYERS

In view of the above facts and circumstances, it is most respectfully prayed that this Hon’ble Court may be pleased to:

- 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 this Hon'ble Court in the *Prakash Singh* case viz., (2006) 8 SCC 1, (2019) 4 SCC 13 and (2019) 4 SCC an officer of high integrity belonging to the AGMUT cadre.
- d. Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

PETITIONER THROUGH:

PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER

FILED ON: 05.08.2021
NEW DELHI