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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8654/2021 & CM APPL. 26788/2021 *(stay)*

% *Reserved on: 27th September, 2021*
Pronounced on: 12th October, 2021

SADRE ALAM ..... Petitioner
Through: Mr. B.S. Bagga, Advocate

Versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr. Tushar Mehta, Solicitor General of India with Chetan Sharma, Additional Solicitor General, Mr. Amit Mahajan, Central Government Standing Counsel, Mr. Amit Gupta, Mr. Vinay Yadav, Mr. Akshay Gadeock and Mr. Sahaj Garg, Advocates for Respondent No.1.
Mr. Mukul Rohatgi, Senior Advocate, Mr. Maninder Singh, Senior Advocate with Ms. Diksha Rai, Ms. Devanshi Singh, Mr. Ankit Agarwal, Mr. Prabhas Bajaj and Ms. Palak Mahajan, Advocates for Respondent No.2.
Mr. Prashant Bhushan, Ms. Neha Rathi and Mr. Jatin Bhardwaj, Advocates for Intervener.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: *Per* D. N. PATEL, Chief Justice

1. Present public interest litigation has been preferred seeking the following reliefs:-

> *"a. Issue an appropriate writ, order or direction for quashing the impugned order, dated 27.07.202I, 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. 6/30/202I-EO (SM-I) dated 27.07.202Iissued 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 3 l.07.202I, 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. I 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) 4 SCC 13 and (2019) 4 SCC an officer of high integrity belonging 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."

2. We have heard learned counsel appearing on behalf of the Petitioner at length. Petitioner is aggrieved by the impugned order dated 27.07.2021, whereby Inter-Cadre deputation has been granted to Respondent No.2 – Mr.Rakesh Asthana, from Gujarat Cadre to AGMUT Cadre as also extension of 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 and his appointment as Commissioner of Police, Delhi. Challenge is also laid to the order dated 27.07.2021 whereby approval was granted by

Appointments Committee of Cabinet for Inter-Cadre deputation of Respondent No. 2 as well as extension of his service beyond the age of superannuation.

3. Respondent No. 2 is a 1984 Batch officer of the Indian Police Services ('IPS'), Gujarat Cadre and his date of superannuation was 31.07.2021. Vide the impugned order dated 27.07.2021, Respondent No. 1 has granted Inter-Cadre deputation to Respondent No. 2 and extended his services beyond the date of superannuation. Vide the same order, Respondent No. 2 has been appointed as Commissioner of Police, Delhi. Assailing the said order, it was contended by learned counsel appearing on behalf of the Petitioner that the impugned order (**Annexure P-2** to the memo of this petition) has been passed in total violation of provisions of **Rule 56(d) of the Fundamental Rules and Supplementary Rules** (hereinafter referred to as **'FR-56(d)'**); **All India Services (Death-cum-Retirement Benefits) Rules, 1958** (hereinafter referred to as **'Rules, 1958'**); **All India Services (Conditions of Service - Residuary Matters) Rules, 1960** (hereinafter referred to as **'Rules, 1960'**), as well as in violation of Office Memorandum dated 08.11.2004, issued by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, (hereinafter referred to as **'DoPT'**).

4. It was further contended by learned counsel for the Petitioner that the appointment of Respondent No.2, is also in violation of the directions issued by the Hon'ble Supreme Court in ***Prakash Singh's Case (I),*** **(2006) 8 SCC 1**, wherein it was directed that DGP of the State shall be selected by the State Government from amongst the three senior most officers of the Department who have been empanelled for promotion to that rank by Union

Public Service Commission (hereinafter referred to as **'UPSC'**), on the basis of their length of service, very good record and range of experience for heading the Police Force. Once selected for the job, the DGP should have a minimum tenure of at least two years, irrespective of his date of superannuation. For this, reliance was placed on paragraphs 26 and 31 of the said judgment. It was further submitted that the Hon'ble Supreme Court vide order dated 03.07.2018 in W.P.(C) 310/1996, reported in ***Prakash Singh's Case***, **(2019) 4 SCC 13**, had issued directions that all the States shall send their proposals in anticipation of the vacancies to the UPSC, well in time, at least three months prior to the date of retirement of the incumbent, on the post of DGP and also directed UPSC to prepare a panel as per the directions issued in ***Prakash Singh's Case (I)*** and intimate the same to the States.

5. Learned counsel further submitted that the Hon'ble Supreme Court, *vide* order dated 13.03.2019, reported in ***Prakash Singh's Case (II)***, **(2019) 4 SCC 1**, directed that the recommendation for appointment to the post of DGP by UPSC 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. Relying on the observations and directions of the Hon'ble Supreme Court, it was contended that the post of Commissioner of Police, Delhi is *akin* to the post of DGP of the State and therefore directions in ***Prakash Singh's Case (I) and (II)*** of the Hon'ble Supreme Court, are required to be followed by the Central Government while making an appointment to the said post. However, in contravention of the said directions, Respondent No.2 was appointed without being empanelled by UPSC, besides the fact that he did not have a residual tenure of six months of service, at the time of his

appointment as Commissioner of Police, since he was retiring within four days of the appointment. Additionally, Respondent No.2 has been appointed for a period of only one year, beyond his date of superannuation, though the Hon'ble Supreme Court clearly directed that a minimum two years' tenure must be available to the appointee.

6. It was submitted by counsel for the Petitioner that the decisions in ***Prakash Singh's Case (I) and (II)*** are applicable to both, the State Governments as well as Union Territories and therefore the directions issued with respect to appointment of DGP of a State would equally apply to appointment of a Commissioner of Police, Delhi, both with respect to the procedure of appointment as well as the residual tenure. As the appointment is in violation of the aforesaid directions in ***Prakash Singh's Case (I) and (II)***, the same deserves to be quashed and set aside.

7. Next contention on behalf of the Petitioner was that the appointment of Respondent No.2 is in violation of provisions of FR-56(d). The said Rule stipulates that no Government Servant shall be granted extension in service beyond the age of retirement of sixty years *albeit* under certain exceptional circumstances enumerated therein or in respect of certain exceptional categories specified in the Provisos, extension can be granted for the maximum periods, specified in each of the Provisos. The argument was that as a normal rule, there can be no extension of service beyond the age of sixty years and Respondent No.2 does not fall in any of the exceptions provided under the Provisos to FR-56(d).

8. Learned counsel for the Petitioner also contended that Respondent No.2 is not eligible for relaxation of Rule 16(1) of Rules 1958 and therefore the extension of service of Respondent No.2, for a period of one year

beyond the age of is superannuation or until further orders, whichever is earlier, in alleged relaxation of the said Rule is bad in law, being violative of the provisions of Rule 16(1) of Rules, 1958. It was argued that Rule 16(1) of Rules 1958 clearly 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. Exceptions to the Rule, where extension can be granted, have been specifically stipulated in the Provisos to the said Rule and the case of Respondent No. 2 does not fall in the exceptions provided under the Provisos. Thus no extension could be granted to Respondent No. 2 beyond his age of superannuation. In any event, Rule 16(1) provides for a maximum period of extension of service, which is six months, while the services of Respondent No. 2 have been extended beyond the permissible period of six months.

9. Elaborating the argument, it was contended that Rules 1958 were framed by the Central Government in exercise of powers conferred by Section 3(1) of the All India Services Act, 1951. The power of the Central Government to relax the said Rules emanates from Rule 3 of Rules, 1960. Respondent No.1 has apparently relaxed the requirements of Rule 16(1) in the present case, in exercise of power under Rule 3 of Rules, 1960, which is completely illegal and *malafide*. The power of relaxation under Rule 3 of Rules, 1960 can only be exercised by the Central Government 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 and the relaxation may be granted to such extent and subject to such exceptions and conditions, as may be, considered necessary for dealing with the case, in a just and equitable manner. In the present case,

Respondent No.2 does not fall within the specified categories mentioned either under the Provisos to FR-56(d) or those under Rule 16(1) and once Respondent No.2 is not the holder of any of the posts specified under the Provisos, he was not entitled to extension, as the Central Government had no power or jurisdiction to relax the Rules. In any case, no public interest, whatsoever, is sub-served by granting the said extension.

10. It was further contended by counsel for the Petitioner that in appointing Respondent No.2, Respondent No.1 has also violated the mandate and provisions of DoPT O.M. dated 08.11.2004. Para 2 (i) of the said O.M. provides that Inter-Cadre deputation will be available to officers only after completion of 9 years of service in his/her cadre and before reaching Super Time Scale in his / her home cadre. Respondent No.2, it was submitted, is a 1984-Batch IPS Officer of Gujarat Cadre, who had reached the Super Time Scale in his home Cadre in 2002 and therefore his Inter-Cadre deputation from Gujarat Cadre to AGMUT Cadre, is in contravention of the provisions of the O.M. dated 08.11.2004 and thus the impugned order dated 27.07.2021, issued by Respondent No.1, deserves to be quashed and set aside.

ARGUMENTS CANVASSED BY THE INTERVENER

11. We have heard Mr. Prashant Bhushan, learned counsel appearing on behalf of the Intervener – Centre for Public Interest Litigation, who had preferred an application being C.M. APPL. 29150/2021, which was allowed vide order dated 01.09.2021, permitting the applicant to assist the Court in adjudication of the present writ petition.

12. Mr. Prashant Bhushan, learned counsel assailed the impugned orders of the Central Government and ACC, both dated 27.07.2021, respectively on

multifarious grounds. It was argued that the directions of the Hon'ble Supreme Court in the case of ***Prakash Singh (I) and (II)*** as well as in the order dated 03.07.2018, have been flouted by Respondent No. 1, in as much as, Respondent No.2 was not empanelled by UPSC, prior to his appointment as Commissioner of Police, Delhi. Secondly, the appointment is also contrary to the specific directions in ***Prakash Singh's Case (II)***, whereby the appointee should have a minimum residual tenure of six months i.e. officer should have at least six months of service prior to the retirement, while in the case of Respondent No.2, the appointment was made four days prior to his superannuation.

13. Mr. Prashant Bhushan further contended that the extension of service granted to Respondent No.2 is against the provisions of FR- 56(d) and Rule 3 of Rules, 1960. Respondent No.2 does not fall under any of the exceptions to Rule 16(1) of Rules, 1958 or FR-56(d) and therefore was not entitled to relaxation of the Rules under Rule 3 of Rules, 1960. The exercise of power by the Central Government under Rule 3 of Rules, 1960 is therefore without jurisdiction and illegal. Further contention of learned counsel was that Respondent No.1 has clearly mis-interpreted and misread Rule 3, as is evident from reading of para 46 of the counter affidavit, filed by Respondent No.1. Rule 3 envisages a situation of "undue hardship" to an officer and not to the State Authorities and therefore the ground of "undue hardship" was not available to Respondent No. 1 to relax the provisions of Rule 16(1) of Rules, 1958 and grant extension of service to Respondent No. 2 beyond the date of his superannuation. Learned counsel placed reliance on the following judgments:-

a) ***R.R. Verma v. Union of India,*** **(1980) 3 SCC 402**,

b) ***Syed Khalid Rizvi v. Union of India,*** **(1993) Supp (3) SCC 575**

c) ***Union of India v. D. R. Dhingra,*** **(2000) 11 SCC OnLine Del 988**

14. Mr. Bhushan has also assailed the appointment of Respondent No.2 on the ground that the action of Respondent No. 1 is in violation of the Guidelines provided in DoPT O.M. dated 08.11.2004, in as much as, having reached the Super Time Scale in his home Cadre, way back in 2002, Respondent No.2 was not eligible for Inter-Cadre deputation from Gujarat Cadre to AGMUT Cadre.

ARGUMENTS CANVASSED BY LEARNED SOLICITOR GENERAL OF INDIA ON BEHALF OF RESPONDENT NO.1/UNION OF INDIA

15. Mr. Tushar Mehta, learned Solicitor General of India, appearing on behalf of Respondent No.1/Union of India submitted that Respondent No.1 has neither violated provisions of FR-56(d) nor Rule 16(1) of Rules, 1958, as alleged by the Petitioner/Intervener and the power to relax the said Rules has been correctly exercised by invoking Rule 3 of Rules, 1960. The allegation that Guidelines stipulated in DoPT O.M. dated 08.11.2004 have been flouted is vehemently disputed and denied.

16. Learned Solicitor General strenuously contended that the plea of the Petitioner/Intervener that the appointment of Respondent No.2 is in violation of the judgment and directions of the Hon'ble Supreme Court rendered in ***Prakash Singh's Case (I)***, is completely misconceived and devoid of merits. Respondent No.1 has not violated any direction(s) of the Apex Court and in fact, the Petitioner and the Intervener are misreading and misinterpreting the observations and directions. It was submitted that the directions issued by

the Apex Court in ***Prakash Singh's Case (I) and (II)*** are applicable in respect of appointment of 'DGP of a State'/Chief of the Police Administration of the entire State and have no application for appointment to the post of Commissioner/Police Head of a Union Territory, falling under the AGMUT Cadre. Drawing the attention of the Court to para 31 of the judgment in ***Prakash Singh's Case (I)***, it was argued that direction no.2 under the heading 'Selection of Minimum Tenure of DGP' would not apply to Police Commissioner of a Commissionerate in general and Union Territories under AGMUT Cadre, in particular. The direction that the Director General of Police shall be selected by the State Government from amongst the three senior most officers of the Department empanelled for promotion to the said rank, by UPSC, was only in respect of a 'State' and not any Union Territory.

17. It was further contended that pursuant to the directions of the Hon'ble Supreme Court in ***Prakash Singh's Case (I)***, UPSC framed Guidelines for appointment of DGPs of States, but no such Guidelines were framed for appointment of Police Commissioner/Head of Police Force in Union Territories, appointed from the AGMUT Cadre. From 2006 onwards, the Central Government, the State Governments and UPSC have understood and applied the directions issued in ***Prakash Singh's Case*** only for appointment of DGP of State, which has a dedicated State Cadre and sufficient number of officers available in Pay-Level 16 Pool, for constitution of a panel, for appointment of DGP, which is a Pay-Level 17 Rank and pertinently, these Guidelines framed by the UPSC were also placed before the Hon'ble Supreme Court.

18. It was argued that since the year 2006 and prior to the appointment of Respondent No.2, eight Police Commissioners have been appointed by the Central Government in Delhi, following the same procedure as has been followed in the instant case. There has never been any objection to the erstwhile appointments either by UPSC or the intervener organization and the selective objection to the appointment of Respondent No.2 herein raises serious concerns on the bonafides of the Petitioner/Intervener.

19. It was contended that in terms of the judgment in ***Prakash Singh's Case (I)***, Head of Police Force in the State i.e. DGP Rank Officer attains Pay-Level 17 after selection, from the eligible DGP level Officers in Pay-Level 16 and ADG level officers, available in the cadre with 30 years of service and six months left for retirement. In the State Cadres, generally, sufficient number of officers are available for preparing the panel for appointment to the DGP level. However, the status of AGMUT Cadre is different from other State Cadres. In case of AGMUT Cadre, there are several segments and in all the segments respectively, Heads of Police Force are in different Pay-Levels. This is on account of the fact that in AGMUT Cadre, there never exists a situation where sufficient number of Pay-Level 16 DG Rank Officers are available in one segment, with thirty years of service and six months of residual service, for empanelment by UPSC, in accordance with the directions in ***Prakash Singh's Case (I) and (II)***.

20. It was further contended that if the directions in ***Prakash Singh's Case (I)*** were to apply in case of UTs / AGMUT Cadre then from one single segment, a total of 3 Pay-Level 16 IPS Officers would be required for empanelment by UPSC and the same shall be the requirement with respect to all the segments. Such a vast pool of Pay-Level 16 IPS Officers, for each

segment is never available in the AGMUT Cadre and this is the reason why in all the segments, the Head of Police Force is made from different levels, as detailed in the tabular representation given in the counter affidavit. Drawing the attention of the Court to the table in para 20 of the Counter Affidavit, it was argued by Mr. Mehta that the highest level posts sanctioned in different segments of AGMUT Cadre are at different Pay-Levels. It is only in Delhi, which is the Capital of the Nation, that the highest sanctioned post of Commissioner of Police, Delhi is in Pay-Level 17, while for all other segments, the level of Police Head is below Pay-Level 17.

21. Learned Solicitor General articulated that for Delhi, which is the Capital of the country, there is a requirement of a robust Police Force of International repute and thus maximum number of sanctioned posts in ADG Rank and above are created in AGMUT Cadre to cater to the peculiar policing needs of the National Capital. Though Delhi has sufficient number of ADG (Pay-Level 15 IPS officers), which can be included in the zone of consideration, as per ***Prakash Singh's Case (I)***, however, a panel of 3 IPS officers, from DGP rank in Pay-Level 16, cannot be prepared from the pool of officers available in Government of NCT of Delhi, as evinced by the Hon'ble Supreme Court in the context of appointment of DGP of a State. Learned Solicitor General further submitted that the highest sanctioned post is Commissioner of Police, Delhi, which is in Pay-Level 17. In the available pool, there is only one post of DGP (Pay-Level 16) in Delhi and remaining are 10 sanctioned posts of ADG (Pay-Level 15). *Albeit*, technically a Pay-Level 15 officer can be considered for empanelment, however, the same would be of no avail as in the presence of DGP Level officer in the segment, an officer of ADG level cannot head the Police Force in that segment. As a

matter of practice, not only in Delhi but in the entire country, a Pay-Level 15 IPS officer, though he may be technically competent to be part of the zone of consideration, is not granted Pay-Level 17 directly from Pay-Level 15, as this would have demoralising and deleterious effect not only on the officers superseded but the entire Police Force and thus such a practice is discouraged.

22. It was contended by learned Solicitor General that the case of AGMUT Cadre and Delhi Commissionerate is a *sui generis* case, so far as the appointment of Commissioner of Police/Head of Police Force is concerned. Delhi being the Capital, has its own characteristic features, which do not exist in any other Commissionerate. Being the Capital of the country, any untoward incident occurring here, has far-reaching impact and implication, not only throughout the country but across the International borders. In a nutshell, the argument was that any statutory provision deserves to be read in a manner that a leeway and discretion is left to the Central Government for appointment of Police Commissioner, Delhi and any straitjacket or paediatric approach would not be in National interest. Reiterating the argument, Mr. Mehta submitted that keeping in view the peculiar structure of AGMUT Cadre, the directions issued in ***Prakash Singh's Case (I) and (II)*** for appointment of DGP of a State, cannot be made applicable *ipso facto* for appointment of the Head of Police Force in relation to a Union Territory, particularly Government of NCT of Delhi and in fact a bare reading of the judgment reflects that the directions were not even intended to be implemented with respect to the Union Territories which have a common AGMUT Cadre. No action can be invalidated on the ground of non-performance of something, the performance of which is impossible.

23. Learned Solicitor General drew the attention of the Court to the position prevailing in the various segments of the AGMUT Cadre, to make a point that a pool of sufficient number of officers is not available at the appropriate level or rank and therefore it is not feasible to prepare a panel of three officers. As an illustration, it was shown that in Puducherry, highest sanctioned post is at IG level and as per UPSC Guidelines, IG level officers and DIG level officers with 18 years of service are eligible for inclusion in the zone of consideration for heading the Force. However, considering that only one IGP and one DIG post have been sanctioned, it is not feasible to prepare a panel of three officers. Moreover, in the presence of IGP level officer in the segment, an officer of DIG level cannot head the Police Force in that segment. It was highlighted that the aforesaid features distinguishing the case of Union Territories and AGMUT Cadre from a State, were before the Hon'ble Supreme Court and also within the knowledge of UPSC and it is for this reason that neither the Hon'ble Supreme Court nor the UPSC, which empanels the eligible IPS officers for appointment as DGPs of respective State(s), as per its Guidelines of 2009, have directed the Central Government or the Delhi Police Force to follow the process of empanelment by UPSC, in accordance with the directions in ***Prakash Singh's Case (I) and (II).***

24. Learned Solicitor General of India submitted that the appointment of Commissioner of Police, Delhi has all along been made as per the procedure prescribed under the Delhi Police Act, 1978 read with Transaction of Business of GNCTD Rules, 1993. Section 6 of the Delhi Police Act, 1978 provides for appointment of Commissioner of Police and perusal of the provisions of Section 6 clearly reveals that the appointment is made by the Administrator (Hon'ble Lieutenant Governor) in accordance with the

procedure laid down under the Transaction of Business of GNCTD Rules, 1993. Under Rule 55(2) of the said Rules, subject to Instructions issued from time to time, by the Central Government, the Hon'ble Lieutenant Governor is required to make a prior reference to the Central Government in the Ministry of Home Affairs or the appropriate Ministry, with respect to proposals for appointment of Chief Secretary and Commissioner of Police, Secretary (Home) and Secretary (Lands). The said procedure has been followed all along and eight Commissioners, prior to the appointment of Respondent No.2 herein, have been appointed by the Ministry of Home Affairs, in accordance with this procedure, following the mandate of Delhi Police Act read with Transaction of Business of GNCTD Rules, 1993.

25. In so far as Inter-Cadre deputation of Respondent No.2 is concerned, learned Solicitor General submitted that there is no illegality in the action of Respondent No.1, as alleged, in as much as the Inter-Cadre deputation is in accordance with the provisions of DoPT O.M No.13017/16/2003-AIS (I) dated 28.06.2018 (**Annexure R/2** to the counter affidavit filed by Respondent No.1). The said O.M clearly stipulates that all cases of Inter-Cadre deputation would be processed as per Guidelines stated therein and wherever relaxation of any of the provisions of the Guidelines are required, the case shall be put up to a Committee comprising of Secretary, DoPT, Establishment Officer & Additional Secretary and Additional Secretary (S&V), as Members. Home Secretary is to be co-opted as a Member in this Committee, while considering cases of IPS officers, for relaxation of any provision relating to Inter-Cadre deputation. In consonance with the said O.M, the matter is first placed before the Committee for recommendation

relating to relaxation of the conditions laid down in the O.M dated 08.11.2004.

26. Elaborating the argument, learned Solicitor General contended that the Office Memorandums are nothing but practice/executive directions, issued by the Central Government to regulate the service conditions of its employees and are to be interpreted keeping in view the past practice. Exercising powers under Clause (a) of the DoPT OM dated 28.06.2018, Central Government has been granting Inter-Cadre deputation to officers who have attained Pay-Level 14, by following the procedure laid down under Clause (b) of the O.M. dated 28.06.2018 and the relaxation power of the Central Government has never been questioned in the past. To substantiate the argument, names of four officers were pointed out to the Court, as referred to in para 36 of the counter affidavit, in whose cases the power of relaxation was exercised for granting Inter-Cadre deputation. In the instant case, powers of relaxation have been invoked to relax Clause 2(i) of the DoPT O.M. dated 08.11.2004 and the action does not suffer from any illegality in the absence of lack of power of relaxation and nor can it be contended that there is any procedural irregularity, while passing the impugned order.

27. Reiterating the argument that Delhi being the Capital of the country, having a specific and special requirement, in view of the fact that it has witnessed several untoward and extremely challenging incidents/law and order problems/riots/crimes, which have International implications, it was emphasized that there was a dire need and necessity of appointment of an experienced officer, having diverse and multifarious experience of heading a Police Force in any large State/Central Investigating Agency / Para-military

Security Forces etc. to head the Delhi Police Force. The Competent Authority, accordingly, in its considered decision, thought it appropriate and just, in public interest, to appoint Respondent No.2, who has vast experience and knowledge in the field, having headed a large Para-Military Force, so as to effectively negotiate and handle the peculiar policing needs and the law and order situation in the National Capital.

28. Learned Solicitor General next contended that both the Petitioner and the intervener are mis-reading and mis-interpreting FR-56(d) and Rule 16(1) of Rules, 1958, as though there is a complete bar in granting extension in service beyond the age of superannuation and are overlooking Rule 3 of Rules, 1960, under which the Central Government has the power to relax any Rule/Regulation, where the Central Government is satisfied that the operation of any Rule, made or deemed to have been made under the All India Services Act, 1951 or any Regulation made under any such Rule, causes "undue hardship" in any particular case. The 'undue hardship' contemplated would include the hardship faced by the Central Government. In case of a hardship faced by the Central Government/Cadre Controlling Authority (hereinafter referred to as **'CCA'**), in finding a suitable officer for a specific post, with special requirements, within a cadre, it can relax Rule 16(1) of the Rules, 1958 and grant extension of service to an officer, in exercise of powers conferred under Rule 3 of Rules, 1960 and Section 21 of the General Clauses Act, 1897.

29. In the present case, during the process of appointment of the Commissioner of Police, Delhi, the CCA was faced with precarious situation, where it was found that most of the appropriate level officers of AGMUT Cadre, were not having sufficient experience of policing in a vast

law and order sensitive State/Central Investigating Agency/National Security/ Para-Military Force, for appointment of Commissioner of Police, Delhi, which being the Capital of the country, was experiencing a unique situation in terms of the impact of local incidences of crime and the law and order situation was adversely affecting the image of the Country. Considering the complexities and the sensitivities involved and also considering that no officer of appropriate seniority with balanced experience was available in the AGMUT Cadre, it was felt that an officer belonging to a large State Cadre, who had the exposure of complexities of governance and knowledge of nuances of broad canvas policing, is given the charge of Commissioner of Police, Delhi. Keeping the public interest objective in mind, the service tenure of Respondent No.2 was extended in exercise of the powers vested in the CCA. In the absence of lack of power, exercise of said power cannot be faulted, when the same is in accordance with law.

30. Learned Solicitor General articulated that power of the Government to extend the tenure of service of an officer working under the Central Government has been recently affirmed by the Hon'ble Supreme Court in judgment dated 08.09.2021, passed in ***Common Cause (A Registered Society) vs. Union of India & Ors.*****,** **2021 SCC OnLine 687**. Additionally, Ministry of Home Affairs, being the CCA of IPS officers, in exercise of powers conferred under Rule 3 of Rules, 1960, relaxed Rule 16(1) of Rules, 1958 and extended the service tenure of the following officers:-

i. Shri Amulya Kumar Patnaik, IPS (AGMUT:1985)
ii. Shri Shivanand Jha, IPS (GJ:1983)
iii. Shri Sanjay Barve, IPS (MH:1987)
iv. Shri Kuladhar Shaikia, IPS (AM:1985)

v. Shri Munir Ahmad Khan, IPS (JK:1994)

vi. Shri Sulkhan Singh, IPS (UP:1980)

vii. Shri Suresh Arora, IPS (PB:1982)

viii. Dr. S.B. Singh, IPS (AM:1986)

ix. Shri K. Rajendra Kumar, IPS (JK:1984)

31. Learned Solicitor General also questioned the maintainability of the present petition and argued that a public interest litigation is not tenable in service matters. If any individual is personally aggrieved or affected by the appointment of Respondent No.2, as Commissioner of Police, Delhi, it is always open to that individual to challenge the appointment of Respondent No.2, however, present Petitioner cannot challenge the same by filing a writ petition in the nature of public interest litigation.

32. It was argued that the present petition is a *verbatim* reproduction of a petition filed earlier by the Intervener before the Hon'ble Supreme Court and is a gross abuse of process of law, which cannot be lightly brushed aside. The fact that the petition is a 'cut, copy, paste' of another petition not only reflects non-application of mind of the Petitioner but also creates serious doubts on the *bonafides* of the Petitioner. In so far as the Intervener is concerned, learned Solicitor General submits that the Intervener is not a public spirited organisation but is a mere busy body, which selectively files petitions for vested interests. There are serious concerns regarding the purpose and motive behind the present petition and the same should thus not be entertained, though camouflaged as a public interest litigation.

33. It was also urged by Mr. Mehta that Central Government has the power, jurisdiction and authority to grant Inter-Cadre deputation to officers by virtue of provisions of DoPT O.M. dated 08.11.2004, as well as to grant

relaxation of the provisions of the said O.M., wherever required, under Clause (a) of DoPT O.M. dated 28.06.2018. Once the Central Government has the powers of relaxation, this Court cannot substitute the decision of the Government granting relaxation, in exercise of powers of judicial review. The decision to relax the provisions of DoPT O.M. dated 08.11.2004 and grant Inter-Cadre deputation to Respondent No. 2, is a well-considered decision based on special facts and circumstances obtaining in the AGMUT Cadre and the subjective satisfaction has been arrived at on objective considerations. This Court cannot sit as a Court of appeal over the subjective satisfaction arrived at by the Central Government for grant of Inter-Cadre deputation to Respondent No.2 or for extension of his service beyond superannuation as well as appointment as Commissioner of Police, Delhi.

34. It was vehemently argued that the present petition is an abuse of the process of law and manifestly an outcome of some personal vendetta against the incumbent Commissioner of Police entertained by the Petitioner as well as the Intervener and the petition deserves to be dismissed with exemplary costs.

35. Learned Solicitor General placed reliance upon the following judgments:-

a) ***Tehseen Poonawalla vs. Union of India,*** **(2018) 6 SCC 72**,

b) ***Citizens For Justice and Peace vs. State of Gujarat & Ors.*** **(2009) 11 SCC 213**.

c) ***Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo & Ors.,*** **(2014) 1 SCC 161**.

d) ***Arun Kumar Agrawal vs. Union of India & Ors.,*** **(2014) 2 SCC 609**.

e) ***Hari Bansh Lal vs. Shaodar Prasad Mahto & Ors.,*** **(2010) 9 SCC 655**.

f) ***Girjesh Shrivastava & Ors. vs. State of Madhya Pradesh & Ors.,*** **(2010) 10 SCC 707**.

ARGUMENTS CANVASSED ON BEHALF OF RESPONDENT No.2- MR. RAKESH ASTHANA

36. We have heard Mr. Mukul Rohatgi, learned Senior Counsel appearing on behalf of Respondent No.2 – Mr. Rakesh Asthana, who has at the outset contended that the writ petition is not a bonafide public interest litigation, but a flagrant abuse of the august Forum of this Court on account of a personal vengeance or a hidden vendetta, either of the Petitioner or the Intervener or someone, on whose behest attempts are being made to jeopardise the career of Respondent No. 2. It was also argued that the present petition is a proxy litigation on behalf of some undisclosed rival interest. Learned Senior Counsel placed reliance upon the decision of the Hon'ble Supreme Court in ***R.R. Verma v. Union of India,*** **(2010) 3 SCC 402**, more particularly paragraph 181 thereof, to contend that Courts must ensure that there is no personal gain or private/oblique motive behind filing a petition in the nature of public interest litigation.

37. Mr. Mukul Rohatgi placed reliance upon Annexure CA-1 appended to the counter affidavit filed by Respondent No. 2, which are copies of the snapshots of the tweets posted by learned counsel for the Intervener, between 22.10.2017 to 28.07.2021, to buttress the point that not only is the present petition an abuse of process of law but also that there has been a sustained social media campaign against Respondent No. 2 in the past,

which corroborates the apprehension of Respondent No. 2 that the challenge to his appointment is a result of either some personal vendetta or undisclosed rival interests. It was argued that there are two organizations, namely, Common Cause and Centre for Public Interest Litigation, who are professional public interest litigants and exist only for filing litigations. One or two individuals run both the organisations and enjoy deep and pervasive control over these organisations. Individuals running them in the recent past, for some oblique and ostensible undisclosed reasons, have started a barrage of selective actions against Respondent No.2, either out of some personal vendetta or at the behest of some other individuals. As a part of this selective campaign against Respondent No.2, proceedings are being consistently filed against him in Courts, by these two organisations and additionally outside the Courts, people in control of the said organisations spearhead a malicious campaign against Respondent No.2. This, it was argued, has been a regular feature, since Respondent No.2 was appointed as Special Director in the Central Bureau of Investigation. Mr. Rohatgi has drawn the attention of the Court to the counter affidavit, filed on behalf of Respondent No.2, wherein details of the petitions filed against Respondent No. 2, by the said organisations, have been enumerated.

38. Objection was taken to the maintainability of the writ petition also on the ground that no public interest litigation can be entertained in service matters, as held by the Hon'ble Supreme Court in several judgements. It was also pointed out that no individual who may have been an aspirant to the post or personally aggrieved by the appointment, has approached the Court against the appointment of Respondent No. 2.

39. Without prejudice to the aforesaid arguments, Mr. Rohatgi learned Senior Counsel, on merits, adopted the arguments canvassed on behalf of Respondent No. 1. It was reiterated that the judgements of the Hon'ble Supreme Court in ***Prakash Singh's Case (I) and (II)*** are applicable for appointment to the post of 'DGP of a State'/Chief of Police Administration of the entire State and have no application with respect to appointment of Commissioners of a Commissionerate in General and Union Territories, falling under the AGMUT Cadre, in particular.

40. It was further submitted that Rule 3 of Rules, 1960 gives power to the Central Government to relax the requirements of Rules made under the All India Services Act, 1951 and the Regulations made under the said Rules, wherever it is satisfied that the operation of any Rule or Regulation, as the case may be, causes 'undue hardship' in any particular case. Exercising the said power, provisions of Rule 16(1) of Rules, 1958 were relaxed by the Central Government, as evident from the stand of learned Solicitor General that during the process of appointment of the Commissioner of Police, Delhi, the CCA was faced with a precarious situation where most of the appropriate level officers of AGMUT Cadre were not having sufficient experience of Policing in a vast law and order sensitive State/Central Investigating Agency/National Security/Para-military Force, to enable the CCA to appoint the Commissioner of Police, Delhi, keeping in mind the complexities and sensitivities involved in the National Capital. Likewise, it was contended that there is no illegality in the Inter-Cadre deputation of Respondent No. 2 or the extension of service beyond the date of superannuation, as the same has been granted in exercise of powers of relaxation by the Central Government, invoking Rule 3 of Rules, 1960 and

there is no dispute on the existence of such powers. Hence, it was submitted that the writ petition be dismissed and costs be imposed on the Petitioner.

ANALYSIS AND REASONS:

41. We have heard the learned counsel appearing for the Petitioner as well as counsel for the Intervener and learned Solicitor General appearing on behalf of Respondent No.1 as well as learned Senior Counsel appearing for Respondent No.2, at length.

42. From the aforesaid narrative of facts and the contentions raised by the respective parties, it emerges that Respondent No.2 is an IPS officer of 1984 Batch of Gujarat Cadre, with an experience of approximately 37 years in different posts. Respondent No. 2 has been found suitable by Respondent No.1, to be appointed as Commissioner of Police, Delhi, *vide* order dated 27.07.2021 (**Annexure P-2** to the memo of this writ petition). By the same order, Respondent No.2 was brought on Inter-Cadre deputation from Gujarat Cadre to AGMUT Cadre and also granted extension of service initially for a period of one year, beyond the date of his superannuation or until further orders, whichever is earlier, in relaxation of Rule 16(1) of Rules, 1958, in public interest. It is this order which is assailed in the present petition, *inter alia*, on the following grounds:-

i) Violation of Guidelines issued by the Hon'ble Supreme Court in ***Prakash Singh's Case (I) and (II)***

ii) Violation of mandate of provisions of FR-56(d).

iii) Central Government has no power under Rule 3 of Rules, 1960 to relax Rule 16(1) of Rules, 1958.

iv) Violation of provisions of DoPT O.M. dated 08.11.2004, pertaining to Inter-Cadre deputation of officers belonging to the All India Services.

43. Learned counsel appearing for the Petitioner as well as learned counsel appearing for the intervener had emphasized and re-emphasized that the appointment of Respondent No. 2 as Commissioner of Police, Delhi is in violation of the principles culled out and the directions issued by the Hon'ble Supreme Court in ***Prakash Singh's Case (I) and (II)***, inasmuch as Respondent No. 2 was not empanelled by the UPSC, prior to his appointment and that Respondent No. 2 did not have a residual tenure of six months prior to the date of retirement, on the date of his appointment as Commissioner of Police. It was pointed out that Respondent No. 2 was to superannuate on 31.07.2021 and he was appointed as Commissioner of Police, Delhi on 27.07.2021 i.e. only 4 days prior to his date of superannuation.

44. In our view, the aforesaid contentions do not merit acceptance. Reading of the directions issued by the Hon'ble Supreme Court, in the decisions rendered in ***Prakash Singh's Case (I)***; order dated 03.07.2018 in I.A. 25307/2018 in W.P.(C) 310/1996 in ***Prakash Singh's Case (I)*** and the directions in ***Prakash Singh's Case (II)***, makes it clear that the directions given by the Hon'ble Supreme Court and the principles culled out therein were in effect applicable for appointment to the post of 'DGP of a State', to be selected by the State Government, from amongst the three senior most officers of the Department, who have been empanelled by UPSC for promotion to the said rank. The judgement and the directions therein, have no application for appointment of Commissioners/Police Heads of Union

Territories falling under the AGMUT Cadre. Respondent No.2 has been appointed as Commissioner of Police, Delhi, which is a Union Territory, having a Legislative Assembly, in accordance with provisions of Article 239AA of the Constitution of India. The directions given by the Hon'ble Supreme Court in paragraph 31 of ***Prakash Singh's Case (I)***, make it explicitly clear that the Hon'ble Supreme Court was considering the appointment of DGP of the State and not the Head of a Police Force for a Union Territory and therefore there was no occasion to pass directions applicable to appointment of a Head of Police Force in a Union Territory. The peculiar set up of Union Territories and the lack of pool of sufficient officers in the appropriate Pay-Level, with requisite experience, in the AGMUT cadre, as highlighted by learned Solicitor General and not disputed by the Petitioner and the Intervener, lead to an inevitable conclusion that application of the UPSC Guidelines, flowing from the directions of the Hon'ble Supreme Court, to Union Territories will create an anomalous situation, which would be completely unworkable. For ready reference, paragraph 31 is extracted hereinunder:-

> *"**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 aforenoted position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations:*
>
> ***State Security Commission***
>
> *(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad*

policy guidelines so that the State Police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as under:

NHRC	*Ribeiro Committee*	*Sorabjee Committee*
1. Chief Minister/HM as Chairman.	*1. Minister i/c Police as Chairman.*	*1. Minister i/c Police (ex-officio Chairperson).*
2. Lok Ayukta or, in his absence, a retired judge of High Court to be nominated by the Chief Justice or a Member of the State Human Rights Commission.	*2. Leader of Opposition.*	*2. Leader of Opposition.*
3. A sitting or retired judge nominated by the Chief Justice of the High Court.	*3. Judge, sitting or retired, nominated by the Chief Justice of the High Court.*	*3. Chief Secretary.*
4. Chief Secretary.	*4. Chief Secretary.*	*4. DGP (ex-officio Secretary).*
5. Leader of Opposition in the Lower House.	*5. Three non-political citizens of proven merit and integrity.*	*5. Five independent Members.*
6. DGP as ex-officio Secretary.	*6. DG Police as Secretary.*	

The recommendations of this Commission shall be binding on the State Government.

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service-oriented functions of the police, evaluation of the performance of the State Police and preparing a report thereon for being placed before the State Legislature.

Selection and minimum tenure of DGP

(*2*) The Director General of Police of the State shall be selected by the State Government from amongst the three seniormost officers of the Department who have been empanelled 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 DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

Minimum tenure of IG of police and other officers

(3) Police officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge District and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging

his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of investigation

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with the decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorised to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotions/transfers/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State

level to look into complaints against officers of the rank of Superintendent of Police and above. The district-level Authority may be headed by a retired District Judge while the State-level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State-level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district-level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilise the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation. The State-level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district-level Complaints Authority would, apart from the above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State-levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the authority concerned.

National Security Commission

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate appointing authority, for

selection and placement of Chiefs of the Central Police Organisations (CPOs), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilised for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.

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 aforenoted become operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3-1-2007."

(emphasis supplied)

45. Perusal of the aforesaid observations and directions of the Hon'ble Supreme Court in ***Prakash Singh's Case (I)*** indicates that direction No.2 under the heading "**Selection and Minimum Tenure of DGP"** are clearly meant to apply for selection to the post of DGP of a State and accordingly the procedure for selection can only be relevant and applied in that context and can have no relevance or application to the appointment of Commissioner of Police, Delhi, as was sought to be urged by learned counsels for the Petitioner and the Intervener. This is further fortified by a holistic reading of the observations in sub-para (2) of para 31 of the judgement, wherein it was directed that the State Government shall select the DGP from amongst the three seniormost officers of the Department,

empanelled for promotion by UPSC, based on their length of service, very good record and range of experience for heading the Police Force. This Court is unable to discern any observation of the Hon'ble Supreme Court which even remotely indicates or suggests that the directions were issued in the context of Police Heads of Union Territories, falling under the AGMUT Cadre.

46. As per the directions given by the Hon'ble Supreme Court in ***Prakash Singh's Case (I)***, DGP rank officer, who after selection, attains Pay-Level 17, is to be selected from the eligible DG level officers in Pay-Level 16 and ADG level officers, available in the State Cadre, with 30 years of service and 6 months residual service, prior to the date of their superannuation. We have no reason or material on record to disbelieve or reject the stand of Respondent No. 1 that in the State Cadres, sufficient number of officers are available to constitute a zone of consideration, for the purpose of preparing a panel for appointment as DGP (Pay-Level 17), which is not the case in the AGMUT Cadre. Neither the Petitioner nor the Intervener have placed any material enabling this Court to come to a contrary conclusion. Moreover, as brought out on behalf of Respondent No. 1, status of AGMUT Cadre is completely different from the other State Cadres. AGMUT Cadre comprises of several segments and in each of these segments, Head of Police Forces are in different Pay-Levels. This is on account of the fact that in AGMUT Cadre, as explained by the learned Solicitor General, there can never be a position where sufficient number of Pay-Level 16 - DG Rank officers would be available in one segment, with 30 years of service and 6 months residuary service, prior to their superannuation, for empanelment by UPSC, in accordance with the directions in ***Prakash Singh's Case (I)***. The fact that

Heads of respective Police Forces are in different Pay-Levels is reflected from a tabular representation given by Respondent No. 1 in the counter affidavit, which is extracted hereunder, for ready reference:-

Sl. No.	**Name of State/UT**	**Total stationed strength**					
		Leve of Police Head	**DGP**	**ADGP**	**IG**	**DIG**	**SP**
1.	Government of NCT of Delhi	CP (level-17)	**02**	10			
2.	Arunachal Pradesh	DG(Level-16)	**01**	0			
3.	Mizoram	DG(Level-16)	**01**	01			
4.	Goa	DG(Level-15)	0	**01**	01		
5.	DNH&DD	DIG-13-A	0	0		**01**	03
6.	Chandigarh	DG(Level-14)	0	0	**01**	01	
7.	A&NI	DG(Level-15)	0	**01**	01		
8.	Lakshdweep	SP(Sr. Scale)	0	0	0	0	**01**
9.	Puducherry	DG(Level-14)	0	0	**01**	01	

** In addition 4 temporary posts at DGP (Level-16) level have been created.*

47. We also find merit in the contention of learned Solicitor General that if the arguments canvassed by learned counsels for the Petitioner and Intervener, that the directions issued in ***Prakash Singh's Case (I)*** are to apply in the case of Union Territories/AGMUT Cadre, are accepted, then from one single segment, three Pay-Level 16 IPS Officers, would be required for empanelment by UPSC and multiplying 3 with the number of total segments, a vast pool of eligible officers, would be needed to constitute the zone of consideration. This would be a completely unworkable situation,

inasmuch as a vast pool of Pay-Level 16 IPS Officers for each segment is never available in the AGMUT Cadre. Accepting the proposition placed by the Petitioner, would result in a situation where perhaps only one officer will fall in the zone of consideration and the empanelment would resultantly be only of one officer. There may also be a situation where not a single IPS Officer in the required Pay-Level, with requisite experience and residual service, would be available to constitute the zone of consideration. It is for this reason that the UPSC framed Guidelines, as aforementioned, only with respect to appointment of DGPs in the States, in accordance and consonance with the directions of the Hon'ble Supreme Court and it bears repetition to state that the Guidelines were placed before the Hon'ble Supreme Court.

48. In order to substantiate the point that it is not possible to follow the regime provided for selection of a State DGP, in case of the Commissioner of Police, Delhi, in particular and for the Union Territories having a common AGMUT Cadre, in general, Respondent No. 1 has, by way of illustration, categorically averred in paragraph 26 of the counter affidavit that in Arunachal Pradesh, only one post of DGP had been sanctioned and there is no sanctioned post of ADGP. Thus, it is impossible to prepare a panel of three officers for empanelment by the UPSC, for appointment of DGP. Likewise, in Puducherry, highest sanctioned post is at IG level. As per UPSC Guidelines, IG level officers and DIG level officers with 18 years of service are eligible for inclusion in the zone of consideration for heading the Force. However, considering that only one IGP and one DIG post had been sanctioned, a panel of three officers is unavailable. Additionally, in the presence of an IGP level officer in the segment, an officer of DIG level cannot head the Police Force in that segment. A similar situation exists in

Mizoram and in Goa, as brought out in the counter affidavit. None of these facts/data have been disputed by the Petitioner/Intervener. On account of the unavailability of sufficient number of officers in the pool in respect of various segments of AGMUT Cadre, we cannot but agree with Respondent No. 1 that the State Cadres have to be treated differently from the AGMUT Cadre, for the purpose of empanelment of the respective Heads of the Police Force and there is thus merit in the contention that the directions of the Hon'ble Supreme Court in ***Prakash Singh's Case (I)*** were intended to apply only to the appointment of a State DGP. We also find merit in the contention that in a given case, Pay-Level 15 IPS officers may be available and technically eligible to be a part of the zone of consideration, but it would not be a preferred or a desirable course of action to empanel the said officers, superseding a Pay-Level 16 officer for appointment as DGP, as this would have a demoralising and deleterious effect on the entire Police Force and the officers of the concerned segment, in particular.

49. We may also take note of the figures reflected in the aforementioned table indicating the strength of Police Officers in different ranks i.e. DGP, ADGP, IG, DIG and SP, in different segments of AGMUT Cadre, more particularly with respect to the Union Territory of Delhi. The table indicates that the highest sanctioned post is that of Commissioner of Police, Delhi, which is in Pay-Level 17. The available pool does not have 3 IPS Officers in the DGP rank i.e. Pay-Level 16. There are 10 sanctioned posts of ADGP (Pay-Level 15) and while, even according to Respondent No. 1, officers in Pay-Level 15 are eligible for empanelment, however, in the presence of a DGP level officer in the segment, an officer of ADGP level cannot head the Police Force in that segment. It is the stand of Respondent No. 1 and in our

view, rightly so, that it would not be a desirable or a preferred exercise to supersede a senior officer in a higher Pay-Level, with a higher rank, as this would certainly have a demoralising effect on the officers in the given segment and the Police Force in general. From the perspective of service jurisprudence and good administration, it is no doubt a healthy practice to ensure that senior officers are not superseded on account of mere technicalities.

50. This Court also finds merit in the contention of Respondent No. 1 that Delhi, being the Capital of India, has its own characteristics, peculiar factors, complexities and sensitivities, which are far lesser in any other Commissionerate. Any untoward incident in the National Capital or a law and order situation will have far reaching consequences, impact, repercussions and implications not only in India but across the International borders. Thus, it is imperative that **"free movement of joints"** is given to the Central Government for appointment of Commissioner of Police, Delhi, keeping in mind the complexities obtaining in the Capital. We are therefore in complete agreement with learned Solicitor General that the directions given in ***Prakash Singh's Case (I)***, are not applicable to the appointment of Commissioner of Police, Delhi and on this ground the challenge to the impugned order fails.

51. Learned counsel for the Petitioner as well as learned counsel for the Intervener had strenuously argued that judgment in ***Prakash Singh's Case (I)*** is applicable to the Union Territories as well as the States and to buttress the contention, heavy reliance was placed on the following portions of para 31 of the judgment:-

> *"**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 aforenoted position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations: ....*
>
> *xxx xxx xxx*
>
> *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 aforenoted become operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3-1-2007.**"*
>
> *(emphasis supplied)*

52. It is true that in the aforesaid paragraph of the judgment, there is reference to the Union Territories, however, the contention cannot be accepted as the Petitioner/Intervener are misreading and misconstruing the observations of the Hon'ble Supreme Court in the paragraphs relied upon by them. The contention overlooks the words 'as the case may be', used carefully by the Hon'ble Supreme Court, while directing compliance of its directions. The words are certainly not without a meaning or relevance. In fact, interpretation of these words has been the subject matter of several judgements and have been interpreted to mean and connote 'whichever the case may be' or 'as the situation may be'. Broadly understood, the expression means, one out of the various alternatives would apply to one out of the various situations and not otherwise. Although there is a long line of judgments interpreting the said words, however, to avoid prolixity, we may

only refer to a few as under:

53. It has been held by the Hon'ble Supreme Court in ***Subramaniam Shanmugham v. M.L. Rajendran,*** **(1987) 4 SCC 215**, as under:-

> *"**3.** Justice Morris in Bluston & Bramley Ltd. v. Leigh [(1950) 2 All ER 29, 35] explained that the phrase "as the case may be" meant in the events that have happened. Our attention was also drawn to the expression "as the case may be" as appearing in the Words and Phrases, Permanent Edn. 4 page 596. The meaning of the expression "as the case may be" is what the expression says, i.e., as the situation may be, in other words in case there are separate and distinct units then concept of need will apply accordingly. Where, however, there is no such separate and distinct unit, it has no significance. There is no magic in that expression. The expression "as the case may be" has been properly construed in the judgment mentioned hereinbefore."*
>
> *(emphasis supplied)*

54. It has been held by the Hon'ble Supreme Court in ***Shri Balaganesan Metals v. M.N. Shanmugham Chetty,*** **(1987) 2 SCC 707**, as under:

> *"**21.** The words "as the case may be" in sub-clause (c) have been construed by the Division Bench of the Madras High Court to mean that they restrict the landlord's right to secure additional accommodation for residential purposes only in respect of a residential building and in the case of additional accommodation for business purpose only to a non-residential building. We are of the view that in the context of sub-clause (c), the words "as the case may be" would only mean "whichever the case may be" i.e. either residential or non-residential."*
>
> *(emphasis supplied)*

55. It has been held by the Hon'ble Supreme Court in ***Union of India v. Ashok Kumar,*** **(2005) 8 SCC 760** in paragraphs 12, 16, 17 and 18 as under:-

*"**12.** The Division Bench by the impugned judgment concurred with the findings expressed by the learned Single Judge so far as the first three points are concerned. So far as the fourth point is concerned it was held that the Central Government was required to record satisfaction that it was inexpedient and impracticable to hold inquiry, and to form opinion relating to the delinquent officer for retention in service. According to the High Court the delinquent officer had been removed from the service without following the provisions of Section 10 of the Act and Rule 20 of the Rules. The High Court noticed that the two authorities are authorised to act under Rule 20 of the Rules. The procedure to be followed to terminate the services of an officer is available under Section 10 of the Act by the Central Government on account of misconduct. The expression "as the case may be" relates to the action to be taken by the Central Government and the action to be taken by the Director General. It was held that both the authorities did not have concurrent jurisdiction; otherwise the expression "as the case may be" would be rendered surplus and meaningless. Reference was made to Section 19 of the Army Act, 1959 (in short "the Army Act") and Rule 14 of the Army Rules, 1954 (in short "the Army Rules"). It was noted that the language was in pari materia, except the words "as the case may be" with the corresponding section and rule of the Act and the Rules respectively. Therefore, it was held that use of the expression "as the case may be" is significant and indicative of two different spheres of activity for two different authorities. The Director General was not the appointing authority of the delinquent officer and, therefore, it was held that only the Central Government could have taken action and not the Director General. It was incumbent upon the Central Government to record satisfaction that it was inexpedient and impracticable to hold trial, before the jurisdiction to take further action could be assumed.*

xxx xxx xxx

***16.** The High Court is plainly in error in holding that it is only the Central Government which is competent to act in terms of*

sub-rule (2). The expression "as the case may be" is otherwise rendered superfluous. Both the authorities can act in terms of sub-rule (2). The High Court overlooked the salient factor that any other interpretation would render reference to the Director General meaningless.

17. *A bare reading of Rule 20 makes the position clear that both the Director General and the Central Government can act in different situations and consideration by the Director General is not ruled out. Sub-rule (3) makes the position clear that the explanation is to be considered by the Director General and only when it is directed by the Central Government, the matter shall be submitted to the Central Government with the officer's defence and the recommendations of the Director General. When the Director General finds the explanation unsatisfactory he recommends for action. There may be cases where the Central Government directs the Director General to submit the case. There can be a case where the Central Government finds that the explanation is unsatisfactory. In that case the Central Government may direct the case to be submitted to it. At the first stage the consideration is by the Director General. When he finds the explanation unsatisfactory, he recommends action by the Central Government. But even if he finds the explanation to be satisfactory, yet the Central Government can direct the case to be submitted to it. Recommendations in terms of sub-rule (4) are made by the Director General and the final order under Rule 20(5) is passed by the Central Government. The expression "as the case may be" is used in sub-rule (2) and sub-rule (5). It obviously means either of the two. It is to be further noted that the order in terms of sub-rule (5) is passed by the Central Government. But the enquiry can be either by the Central Government or the Director General, as the case may be. There is another way of looking at sub-rule (2). Where report of the officer's misconduct is made by the Director General, the matter is to be placed before the Central Government and in all other cases the consideration is by the Director General.*

18. *The words "as the case may be" mean "whichever the case may be" or "as the situation may be". (See Shri Balaganesan Metals v. M.N. Shanmugham Chetty [(1987) 2 SCC 707] .) The expression means that one out of the various alternatives would apply to one out of the various situations and not otherwise."*

(emphasis supplied)

56. It has been held by The Hon'ble Supreme Court in ***Union of India v. Alok Kumar,*** **(2010) 5 SCC 349** in paragraph 30 as under:-

*"**30.** The Rules require the disciplinary authority to form an opinion that the grounds for inquiry into the truth of imputations of misconduct or misbehaviour against the railway servant exists. Further, that they have enquired into the matter. Then, such inquiry may be conducted by the disciplinary authority itself or it may appoint under the Rules a Board of Inquiry or other authority to enquire into the truth thereof. Formation of such an opinion is a condition precedent for the disciplinary authority, whether it intends to conduct the inquiry under the Rules or under the Act as the case may be. The expression "as the case may be" clearly suggests that law which will control such departmental enquiry would depend upon the class of officers/officials whose misconduct or misbehaviour subject them to such inquiry. If the employee is covered under the Act, the disciplinary authority shall have to appoint an enquiry officer and proceed with the inquiry under the provisions of the Act, whereas if he is covered under the Rules, the procedure prescribed under the Rules will have to be followed."*

(emphasis supplied)

57. It has been held by Andhra Pradesh High Court in ***Baddam Prabhavathi v. Govt. of A.P.,*** **2001 SCC OnLine AP 989** in paragraph 53 as under:-

*"**53.** The expression 'as the case may be' assumes importance for determination of the aforementioned questions in these writ petitions. The phrase 'as the case may be' in Section 326(2) of the Companies Act were interpreted by Justice Morris in Bluston 7 Bramley, Ld. v. Leigh, 1950 KB 548. The phrase 'as the case may be' in Section 326, sub-section (2) does not mean "respectively". It means "whichever is appropriate in 'the events which happen'". "And an order is made or a resolution is "passed", as the case may be" for the winding up the company was interpreted as where there has been a notice of a meeting, it should be followed by an order and in that way where there has been a notice of meeting, it should be followed by a resolution for voluntary winding-up. Their Lordships of the Supreme Court interpreted the phrase "as the case may be" occurring in Section 10(3)(c) of Tamil Nadu Buildings (Lease and Rent Control) Act in Shri Balaganesan Metals v. M.N. Shanmugham Chetty, (1987) 2 SCC 707 : AIR 1987 SC 1668, to the effect that in the context of sub-clause (c), the words "as the case may be" would only mean "whichever the case may be i.e., either residential or non-residential". The same phrase fell for consideration again in S. Shanmugham v. M.L. Rajendran, (1987) 4 SCC 215 : AIR 1987 SC 2166, wherein the apex Court explained the meaning of the expression "as the case may be" to the effect that i.e., as the situation may be, in other words in case there are separate and distinct units then concept of need will apply accordingly. From the above, it is seen that the words "as the case may be" should mean "as the situation may be" or "whichever the case may be"."*

(emphasis supplied)

58. It has been held by Kerala High Court in ***Sanim Shah v. State of Kerala,*** **2007 SCC OnLine Ker 460** in paragraph 10 as under:-

*"**10.** Expression "as the case may be" again came up for consideration before the Apex Court in Union of India v. Ashok Kumar, 2006 (1) KLT SN 30 (C. No. 41) SC. Apex Court while considering the scope of R. 20(2) of Border Security Force*

Rules, 1969 said that the words "as the case may be" means "whichever the case may be" or "as the situation may be". The expression means that one out of the various alternatives would apply to one out of the various situations and not otherwise. When we give meaning to the expression "as the case may be" in R. 17(d) if a full member of a department is transferred to another department he would be ranked as junior most not among probationers or approved probationers of the transferred department, but as last among full members. In other words an approved probationer who has sought for a transfer will lose his seniority under R. 14 and be treated as junior most among the approved probationers of the transferee department so also the case of a probationer. R. 17(d) only says that such persons has to forgo his seniority in the list of probationers, approved probationers or full members as the case may be."

(emphasis supplied)

59. A bare perusal of the directions of the Hon'ble Supreme Court in paragraph 31 would indicate that the directions given in various sub-paras are to different Government functionaries and in a different context i.e. the State Governments, the Central Government or the Union Territories and this explains the use of words **'as the case may be'** in the final paragraph directing compliance. It was rightly argued by the learned Solicitor General that all the directions in paragraph 31 of the judgement in ***Prakash Singh's Case (I)*** were not meant for the Central Government/Union Territories and the Petitioner/Intervener cannot paint the directions in the entire paragraph with the same brush. Seen in the light of the above judgements, interpreting the words **'as the case may be'**, we are of the view that the directions in paragraph 31 were not meant to automatically apply to the Union Territories. It has been pointed out to us in detail that there is a marked

distinction between the State Cadres and the AGMUT Cadre with different segments, where the latter has deficiency of pool level officers for empanelment of respective Heads of Police Force. Added to this are the complexities of the National Capital and thus, in our view, Respondent No.1 is right in arguing that procedure for appointment of State DGPs cannot be *ipso facto* applied for appointment of Commissioner of Police, Delhi. For the same reason, we uphold the contention of Respondent No. 1 that the directions in ***Prakash Singh's Case (II)*** with respect to residual tenure of six months shall not apply to the appointment of Commissioner of Police, Delhi.

60. Pursuant to the directions issued by the Hon'ble Supreme Court, in the aforesaid decisions, UPSC issued Guidelines in consonance thereof, for appointment of DGPs in the States. The said Guidelines have been appended as **Annexure R-1** to the counter affidavit, filed on behalf of Respondent No.1/Ministry of Home Affairs. The procedure detailed in the Guidelines envisages constitution of an Empanelment Committee, comprising of the Chairman and other members mentioned therein. The Guidelines prescribe the method of selection for empanelment, including the zone of consideration, size of the panel, procedure for sending the proposals to the UPSC as well as the procedure to be followed by the Empanelment Committee. We have carefully perused the Guidelines and are clearly of the view that the procedure detailed therein concerns the appointment of DGP of a State and do not concern themselves with appointment of Police Commissioner/Head of the Police Force in the Union Territories, having a common AGMUT Cadre. We also take note of the fact, as informed, that the Guidelines were placed before the Hon'ble Supreme Court and also that

even thereafter and till date, there has been no objection/challenge to them.

61. Learned Solicitor General had highlighted that ever since the year 2006, the Guidelines framed by the UPSC and the directions in ***Prakash Singh's Case (I) and (II)*** have been understood to apply only for appointment of a State DGP, by all stakeholders such as the Central Government, State Governments and UPSC, because every State has a dedicated State cadre and sufficient number of officers are available in Pay-Level 16, from which a panel for appointment of DGP, which is in Pay-Level 17, can be constituted. Moreover, it was a categorical stand of Respondent No. 1 that with the said understanding, as many as 8 erstwhile Police Commissioners in Delhi, have been appointed by the Central Government since 2006, prior to the appointment of Respondent No.2, following the same procedure as has been followed for appointment of Respondent No.2 herein. There has never been any objection to the said appointments following the statutory procedure prescribed under the Delhi Police Act, 1978 read with Transaction of Business of GNCTD Rules, 1993 either by UPSC or any other party. There is no denial to the said categorical averment, either by the Petitioner or the Intervener, except for making a bald argument that past practice cannot justify the alleged illegal appointment of Respondent No. 2, with which we do not agree for the reasons hereinafter.

62. Appointment of Respondent No. 2 as Commissioner of Police, Delhi has been made by following the statutory procedure prescribed under the **Delhi Police Act, 1978** read with **Transaction of Business of GNCTD Rules, 1993**. No appointment to the said post, has been challenged in the past by any stakeholder on the ground that the said Act or the Rules are inapplicable to the appointment or that the applicability of the procedure

prescribed therein is in violation of the directions of the Hon'ble Supreme Court in the case of ***Prakash Singh's Case (I) and (II)***.

63. It is a settled law that where a contemporaneous and practical interpretation or practice has stood unchallenged for a considerable length of time, it would be a useful guide for proper construction/interpretation of the provisions of a Statute or Executive Instructions. Therefore, applying the principle of ***contemporanea expositio***, if a procedure has been followed by the Central Government since 2006, with the clear understanding as aforesaid and appointments of as many as 8 Commissioners of Police, Delhi have been made following the statutory regime under the **Delhi Police Act, 1978** read with **Transaction of Business of GNCTD Rules, 1993**, which has withstood the test of time, without any demur/objection/challenge in any Court or Forum of law, the same gains weightage. We accordingly see no reason to direct Respondent No. 1 to deviate from the long practice and procedure followed for appointment of Commissioner of Police, Delhi given the reasons and complexities of the National Capital and the AGMUT Cadre and in particular, when we find that the directions in ***Prakash Singh's Case (I) and (II)*** are inapplicable to the appointment in question. In our view, the justification and reasons given by Respondent No. 1 for appointing Respondent No. 2 are plausible, calling for no interference in judicial review. This is more so, on account of the fact that the Petitioner/Intervener have been unable to demonstrate that a different procedure, from the one followed in appointing Respondent No. 2, was followed for appointment of the erstwhile 8 Commissioners of Police, Delhi.

64. The principle of ***Contemporanea Expositio*** has been explained by the Hon'ble Supreme Court in several judgements and we may refer to a few, as follows:-

(a) In ***Commissioner of Income-Tax, M.P.-II, Bhopal v. Anand Bahri Steel and Wire Products, Raipur,*** **1980 SCC OnLine MP 148**, it was held by the Hon'ble Supreme Court, as under:-

> ***"6.*** *The precursor of section 80J of the present Act was section 15C of the 1922 Act. Section 15C also provided for exemption from tax of newly established industrial undertakings on so much of the profits or gains as did not exceed six per cent per annum "on the capital employed in the undertaking, computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue." In pursuance of this rule making power, the Central Board of Revenue made the Indian Income-Tax (Computation of Capital of Industrial Undertakings), Rules, 1949, which correspond to Rule 19-A of the 1962 Rules. Rule 3(3) of the 1949 Rules provided for deduction of any borrowed money and debt due by the person carrying on the business in computation of capital for purposes of section 15-C. Rule 3(3) of the 1949 Rules was not challenged and was in operation till the coming into force of the 1961 Act and the making of the 1962 Rules. Rule 19-A (3) follows the same pattern as Rule 3(3) of the 1949 Rules, except that the amount of debentures and the amount of long term loans i.e. loans providing for repayment during a period of not less than seven years when taken from an approved source, are not deducted in computation of capital for purposes of section 80J. Rule 19-A was later on amended and the exception made in respect of debentures and long term loans was withdrawn. The validity of Rule 19-A(3) in so far as it requires deduction of borrowed moneys and debts due by the assessee in computation of capital for purposes of section 80-J, was for the first time challenged in 1977 in the Calcutta High Court in Century Enka Ltd.'s case. The fact that such a rule existed right from 1949 when section 15C was introduced and was followed by all*

concerned till 1977, itself shows that the rule was in accordance with the intention expressed by the legislature. When Parliament enacted section 80J, it must have known as to how section 15-C of the 1922 Act was interpreted by the Central Board of Revenue and applied by the Income-tax Authorities. The fact that section 80-J was enacted in similar terms without showing any disapproval of the interpretation put by the Central Board of Revenue that the amount of borrowings and debts is to be deducted in computing the capital employed, goes to show that Parliament approved of that interpretation. This, in our opinion, is a very important factor to hold that Rule 19-A(3) which follows the same pattern as Rule 3(3) of the 1949 Rules, is valid and is in line with the intention of Parliament in enacting section 80J. ***Where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time, it is regarded as of great importance in arriving at the proper construction of a statute. Further such an interpretation gains greater weight when the statute as interpreted is re-enacted and is regarded presumptively the correct interpretation of the law. This rule is based upon the theory that the legislature is acquainted with the contemporaneous interpretation of a statute, especially when made by an administrative body or executive officers charged with the duty of administering or enforcing the law, and, therefore, impliedly adopts the interpretation upon re-enactment (See Sutherland Statutory Construction, 3rd edition, pp. 520, 521, 523, 524). This important principle was not considered by the Calcutta, Madras and Allahabad High Courts in holding that Rule 19-A(3) in so far as it provides for the deduction of borrowings and debts incomputation of the capital employed, goes beyond the rule making power conferred by section 80-J.*** *Another equally important matter which has not been noticed by these High Courts is that the word "capital" in the business world means the net worth of an enterprise and thus necessarily excludes the borrowings. In Batliboi's Advanced Accounting, 19th edition, p. 78, it is stated that "capital is the excess of a trader's assets over his liabilities." Similarly, in Encyclopaedia Britannica*

(Macropaedia), Vol. 3, p. 799, it is observed that "in the business world the word capital usually refers to an item in the balance sheet representing that part of the net worth of an enterprise that has not been produced through the operation of the enterprise". It is, therefore, wrong to assume that the expression "capital employed" is not open to construction that if does not embrace moneys borrowed by the assessee and invested in the industrial undertaking. It may be that in some context the expression "capital employed" may include the borrowed moneys or borrowed capital; but we are clearly of opinion that in the context of section 80-J the expression does not include borrowed moneys and debts, as it is in this sense that this expression has been understood right from 1949. It also cannot be lost sight of that computation of capital employed has to be "in the prescribed manner" as is expressly provided in section 80-J and, therefore, the rules can prescribe as to what should or should not be included in the computation. The provision for deduction of borrowed moneys and debts in Rule 19-A(3) is not such which "

(emphasis supplied)

(b) The Hon'ble Supreme Court in ***Ajay Gandhi vs. B. Singh,*** **(2004) 2 SCC 120,** in paragraphs 14 to 20, held as follows:-

"14. *The primal question, therefore, which arises for consideration is as to whether the Central Government can be said to have any power of transfer and posting of the members of the Tribunal. It is true that ordinarily the power of transfer vests in the employer. Such power, however, would be subject to the statutory provisions operating in the field.*

15. *For the aforementioned purpose, the scheme of the Act plays an important role. In the instant case, having regard to the provisions contained in sub-sections (1) and (5) of Section 255 of the Act, we are of the opinion that the President has the requisite power of transfer and posting of its members.* ***For construction of a statute, it is trite, the actual practice may be taken into consideration.***

16. In Corpus Juris Secundum, Vol. 82, p. 761, it is stated that the controlling effect of this aid which is known as "executive construction" would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice resulting from its departure and the approval that it has received in judicial decisions or in legislation.

17. In Francis Bennion's Statutory Interpretation, 4th Edn., the law is stated in the following terms at p. 596:

"Section 231

231. The basic rule.—In the period immediately following its enactment, the history of how an enactment is understood forms part of the contemporanea expositio, and may be held to throw light on the legislative intention. The later history may, under the doctrine that an ongoing Act is always speaking, indicate how the enactment is regarded in the light of developments from ime to time.

COMMENT

On a superficial view, it may be though that nothing that happens after an Act is passed can affect the legislative intention at the time it was passed. This overlooks the two factors stated in this section.

Contemporanea expositio.—The concept of legislative intention is a difficult one. Contemporary exposition helps to show what people thought the Act meant in the period immediately after it was passed. Official statements on its meaning are particularly important here, since every Act is supervised, and most were originally promoted, by a government department which may be assumed to know what the legislative intention was."

18. In R. v. Wandsworth London Borough Council, ex p, Beckwith [(1996) 1 All ER 129 : (1996) 1 WLR 60 (HL)] the House of Lords has held that a departmental circular is entitled to respect. It can only be ignored when it is patently wrong. The said principle has also been followed in Indian Metals and Ferro Alloys Ltd. v. CCE [1991 Supp (1) SCC 125: AIR 1991 SC 1028] (AIR at p. 1034 : SCC p. 135), Keshavji Ravji and Co. v. CIT [(1990) 2 SCC 231 : 1990 SCC (Tax) 268 : AIR 1991 SC 1806] (AIR at p. 1817 : SCC p. 250), Raymond Synthetics Ltd. v. Union of India [(1992) 2 SCC 255 : AIR 1992 SC 847] (AIR at p. 859), P. Kasilingam v. P.S.G. College of Technology [1995 Supp (2) SCC 348 : (1995) 2 Scale 387] (Scale at p. 397 : SCC pp. 356-57) and CCE v. Dhiren Chemical Industries [(2002) 2 SCC 127] .

19. *The Central Government, admittedly, never exercised its purported power of transfer and posting in its capacity as an employer or otherwise. From the impugned order, furthermore, it would appear that even therein the source of power had not been traced from the provisions of the Income Tax Act but to the delegation of financial powers which have no nexus therewith. By reason of amendment to certain circular letters also, the Central Government cannot confer upon it such statutory power of transfer and posting of the members of the Appellate Tribunal.*

20. *Having regard to the fact that the Central Government had acted sub silentio and even allowed the President to delegate his power to constitute Benches to various Senior Vice-Presidents over a number of years is itself a pointer to the fact that the Central Government was also of the opinion that the power of transfer and posting is a part of the administrative function of the President as an ancillary power of constitution of Benches."*

(emphasis supplied)

(c) It has been held by the Hon'ble Supreme Court in ***Indian Metals and Ferro Alloys Ltd. v. CCE,*** **1991 Supp (1) SCC 125**, as under:-

> *"**14.** However, even assuming that there could have been some doubt as to the intention of the legislation in this regard, the matter is placed beyond all doubt by the revenue's own consistent interpretation of the item over the years. It has been pointed out that prior to March 1, 1975, residuary Item 68 was not in the schedule. If the revenue's contention that these poles are not pipes and tubes is correct then they could not have been brought to duty at all before March 1, 1975. But the fact is that transmission poles have been brought to duty between 1962 to 1975, and that could only have been under Item 26-AA (for there was no residuary item then). This is indeed proved by the fact that this very assessee was thus assessed initially and also by the issue of notifications of exemption from time to time which proceed on the footing that these poles were assessable to duty under Item 26-AA but were entitled to an exemption if certain conditions were fulfilled. Indeed, the assessee also applied for and obtained relief under one of those exemption notifications since 1964.*
>
> ***15.** It is contended on behalf of the department that this earlier view of the department may be wrong and that it is open to the department to contend now that the poles really do not fall under Item 26-AA. In any event, it was submitted since the poles were exempted from duty under one notification or other, it was not very material prior to March 1, 1975 to specifically clarify whether the poles would fall under Item 26-AA or not. This argument proceeds on a misapprehension. The revenue is not being precluded from putting forward the present contention on grounds of estoppel.* ***The practice of the department in assessing the poles to duty (except in cases where they were exempt as the condition in the exemption notifications were fulfilled) and the issue of notifications from time to time (the first of which was almost contemporaneous with the insertion of Item 26-AA) are being relied upon on the doctrine of contemporaneo expositio to remove any possible ambiguity in***

the understanding of the language of the relevant statutory instrument: see K.P.Varghese v. TTO [(1981) 4 SCC 173 : 1981 SCC (Tax) 293 : (1982) 1 SCR 629] , State of Tamil Nadu v. Mahi Traders [(1989) 1 SCC724 : 1989 SCC (Tax) 190 : (1989) 1 SCR 445] , CCE v. Andhra Sugar Ltd. [1989 Supp (1) SCC 144 : 1989 SCC (Tax) 162] and Collector of Central Excise v. Parle Exports P. Ltd. [(1989) 1 SCC 345 : 1989 SCC (Tax) 84] Applying the principle of these decisions, that a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of the expressions used in a statutory instrument*, we think the assessee's contention that its products fall within the purview of Item 26-AA should be upheld.''*

(emphasis supplied)

(d) It has been held by the Hon'ble Supreme Court in ***S.B. Bhattacharjee v. S.D. Majumdar,*** **(2007) 10 SCC 513,** in paragraphs 24 to 36, as under:-

*"**24.** The office memorandum, if read in the context of the Rules, takes into consideration the necessity of considering the case of the eligible candidates during the year when vacancy arose. The DPC is expected to meet each year. Only when it is not possible to hold a meeting of the DPC within that year, the illustration would be applicable.*

***25.** A vacancy must arise in a particular year. If it arose as in the present case in 2003-2004 following the illustration contained in Clause (g) of Para 3.4, ACRs up to the year 31-3-2002 i.e. vacancy year/panel year 2001-2002 are required to be taken into consideration irrespective of the date of convening of the DPC. Only then ACRs up to 31-3-2003 were required to be taken into consideration if it sits after September of that year even if the vacancy arose within the year 2001-2002.*

***26.** If the opinion of the learned Single Judge is given effect to, then 31-3-2003 becomes 31-3-2004. Indisputably, necessity was felt for a further clarification. It was in the aforementioned premise that a further clarification was issued by the State so as to direct that if the DPC sits after September of the year*

concerned (in this case 2004), the ACRs up to the year ending 31-3-2003 could be taken into consideration while considering the vacancies which arose in 2003-2004. The Division Bench of the High Court, in our opinion, cannot, thus, be held to have committed any error in this behalf.

27. It may be that in a given case, the court can with a view to give effect to the intention of the legislature, may read the statute in a manner compatible therewith, and which would not be reduced to a nullity by the draftsman's unskillfulness or ignorance of law. But, however, it is also necessary for us to bear in mind that the illustration given by the executive while construing an executive direction and office memorandum by way of executive construction cannot be lost sight of. It is in that sense the doctrine of contemporanea expositio may have to be taken recourse to in appropriate cases, although the same may not be relevant for construction of a model statute passed by a legislature.

28. *In G.P. Singh's Principles of Statutory Interpretation, 10th Edn. at p. 319, it is stated:*

> *"But a uniform and consistent departmental practice arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as 'executive construction' would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice resulting from its departure and the approval that it has received in judicial decisions or in legislation.*
>
> *Relying upon this principle, the Supreme Court in Ajay Gandhi v. B. Singh [(2004) 2 SCC 120] having regard to the fact that the President of the Income Tax Appellate Tribunal had been from its inception in 1941 exercising the power of transfer of the members of the*

Tribunal to the places where Benches of the Tribunal were functioning, held construing Sections 251(1) and 255(5) of the Income Tax Act that the President under these provisions has the requisite power of transfer and posting of its members. The Court observed: 'For construction of a statute, it is trite, the actual practice may be taken into consideration.'

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes both in England and India."

29. *Clarification was issued by the State of Mizoram not only in the light of the express provisions contained in Para 3.8 of the office memorandum but also in the light of a similar clarification issued by the Central Government. The Division Bench of the High Court has noticed that the clarificatory memorandum was issued considering the Central Government clarificatory office memorandum as a model.*

30. *Reliance placed by Mr Ranjit Kumar, learned Senior Counsel appearing on behalf of the appellant on a decision of this Court in Shambhu Nath Mehra v. State of Ajmer [AIR 1956 SC 404 : 1956 Cri LJ 794] , in our opinion, is not apposite. This Court therein was considering interpretation of the word "especially" contained in Section 106 of the Evidence Act, 1872, which was an exception to Section 101 thereof vis-à-vis Sections 112 and 113 of the Railways Act. It is in that context this Court observed: (AIR p. 406, para 13)*

"13. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be 'especially' within the knowledge of the accused."

31. *If the first part of the statement of law in Shambhu Nath [AIR 1956 SC 404 : 1956 Cri LJ 794] in our opinion, is applicable, the illustration in question does not curtail nor extend the ambit. It merely clarifies what otherwise might have been obvious. It introduces the rule by abundant caution although it might not have been necessary keeping in view the purport and object which Rule 20 and Para 3.8 seeks to achieve.*

32. *The clarification issued by the State is not in the teeth of the illustration given in Clause (g) of Para 3.4 of the office memorandum. The clarification having been issued, the same should be taken into consideration by this Court irrespective of the fact as to whether it was available to the Public Service Commission on 16-3-2004 when the DPC held its meeting which, in our opinion, was not of much significance.*

33. *The clarification being explanatory and/or clarificatory, in our opinion, will have a retrospective effect.*

34. *In S.S. Grewal v. State of Punjab [1993 Supp (3) SCC 234 : 1993 SCC (L&S) 1098 : (1993) 25 ATC 579] this Court stated the law thus: (SCC pp. 240-41, para 9)*

> *"9. ... In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See Craies on Statute Law, 7th Edn., p. 58.) It must, therefore, be held that all appointments against vacancies reserved for Scheduled Castes made after May 5, 1975 (after May 14, 1977 insofar as the service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980."*

35. *Yet again in CIT v. Podar Cement (P) Ltd. [(1997) 5 SCC 482] this Court referring to a large number of authorities including that of G.P. Singh's Principles of Statutory Interpretation, observed: (SCC p. 506, para 51)*

"51. ... '... An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.' "

36. *This Court in Allied Motors (P) Ltd. v. CIT [(1997) 3 SCC 472] observed: (SCC pp. 479-80, para 13)*

"13. Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In R.B. Jodha Mal Kuthiala v. CIT [(1971) 3 SCC 369] this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole."

(See also Zile Singh v. State of Haryana [(2004) 8 SCC 1] .)

(emphasis supplied)"

(e) In ***N. Suresh Nathan v. Union of India,*** **1992 Supp (1) SCC 584**, the Hon'ble Supreme Court held as under:-

*"**4.** In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents diploma holders that the practice followed in the department for a long time was that in the case of diploma-holder Junior Engineers who obtained the degree during service, the period of three years' service in the grade for eligibility for promotion as degree-holders commenced from the date of obtaining the*

degree and the earlier period of service as diploma-holders was not counted for this purpose. ***This earlier practice was clearly admitted by the respondents diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter affidavit of respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.***

5. *The Recruitment Rules for the post of Assistant Engineers in the PWD (Annexure C) are at pages 57 to 59 of the paper book. Rule 7 lays down the qualifications for direct recruitment from the two sources, namely, degree-holders and diploma-holders with three years' professional experience. In other words, a degree is equated to diploma with three years' professional experience. Rule 11 provides for recruitment by promotion from the grade of Section Officers now called Junior Engineers. There are two categories provided therein — one is of degree-holder Junior Engineers with three years' service in the grade and the other is of diploma-holder Junior Engineers with six years' service in the grade, the provision being for 50 per cent from each category. This matches with Rule 7 wherein a degree is equated with diploma with three years' professional experience. In the first category meant for degree holders, it is also provided that if degree-holders with three years' service in the grade are not available in sufficient number, then diploma-holders with six years' service in the grade may be considered in the category of degree-holders also for the 50 per cent vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years' service in the grade required for degree-holders according to Rule 11 as the*

qualification for promotion in that category must mean three years' service in the grade as a degree-holder and, therefore, that period of three years can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma-holder prior to obtaining the degree cannot be counted as service in the grade with a degree for the purpose of three years' service as a degree-holder. ***The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision. In our opinion, the contention of the appellants degree holders that the rules must be construed to mean that the three years' service in the grade of a degree-holder for the purpose of Rule 11 is three years from the date of obtaining the degree is quite tenable and commends to us being in conformity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently by the respondents. The tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the department****."*

(emphasis supplied)

65. Learned Solicitor General highlighted that Respondent No.2 was appointed as Commissioner of Police, Delhi as per the procedure prescribed under the **Delhi Police Act, 1978** read with **Transaction of Business of GNCTD Rules, 1993**. For ready reference, Section 6 of the Delhi Police Act, 1978 is reproduced hereunder:-

> "***6. Commissioner of Police.****—For the direction and supervision of the police force in Delhi, the Administrator shall appoint a Commissioner of Police who shall exercise and perform such powers and duties and perform such functions as are specified by or under this Act.*"
>
> *(emphasis supplied)*

66. The procedure required to be followed for the said appointment by the

Hon'ble Lieutenant Governor is laid down under the **Transaction of Business of GNCTD Rules, 1993,** relevant portion of which is reproduced hereunder:-

> "***55(2)*** *Subject to any instructions which may from time to time be issued by the Central Government, the Lieutenant Governor shall make a prior reference to the Central Government in the Ministry of Home Affairs or to the appropriate Ministry with a copy to the Ministry of Home Affairs in respect of the following matters:-*
>
> *(a) proposals affecting the relations of the Central Government with any State Government, the Supreme Court of India or any other High Court;*
>
> *(b) proposals for the appointment of Chief Secretary and* ***Commissioner of Police****, Secretary (Home) and Secretary (Lands);*
>
> *(c) important cases which affect or are likely to affect the peace and tranquility of the National Capital Territory; and*
>
> *(d) cases which affect or are likely to affect the interests of any minority community, Scheduled Castes or the backward classes."*
>
> *[Emphasis Supplied]*

67. There is no dispute that Delhi is a Union Territory having a Legislative Assembly, in accordance with provisions of Article 239AA, Part-VIII – Union Territories, of the Constitution of India. As per the decision rendered by the Hon'ble Supreme Court in ***Government of NCT of Delhi vs. Union of India & Anr.,*** **(2018) 8 SCC 501**, matters pertaining to Public Order, Police and Land lie outside the ambit of the legislative powers of the Assembly and hence are outside the Executive functions of the Government of NCT of Delhi. These are matters where the Hon'ble

Lieutenant Governor, Delhi would act in the exercise of his functions at his discretion and to the extent to which there has been a delegation or entrustment by the Hon'ble President of India to him under Article 239 of the Constitution of India. In the present case, a statutory provision being Section 6 of the Delhi Police Act, 1978, as aforementioned, empowers the Hon'ble Lieutenant Governor to make a proposal for appointment of Commissioner of Police, Delhi and thus we find no illegality in the appointment.

68. In view of the aforesaid conspectus of judgements, expounding the principle of ***contemporanea expositio***, we do not find any irregularity, illegality or infirmity in the action of Respondent No.1 in appointing Respondent No. 2, following the procedure followed for nearly over a decade.

69. The second contention raised by learned counsel for the Petitioner as well as learned counsel for the Intervener was that there is violation of provisions of the DoPT O.M. dated 08.11.2004 regarding the Inter-Cadre deputation of Respondent No.2 made vide impugned order dated 27.07.2021. In order to examine the said contention, it would be relevant to refer to the impugned order, which is reproduced hereunder:-

"F. No 14016/24/2007.uts-1
Government of India
Ministry of home affairs

North block, New Delhi
Dated the 27th July, 2021

ORDER

The approval of the Appointments committee of the Cabinet has been conveyed vide No. 6/30/2021- ED(SM-1)

Dated 27.07.2021 <u>for the Inter Cadre deputation</u> of Shri Rakesh Asthana, IPS (GJ:1984) <u>from Gujarat cadre to AGMUT Cadre</u> 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 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.

-Sd-
(B.G. Krishna)
Deputy Secretary (S)
Tele: 23094790"

(emphasis supplied)

70. The contention, succinctly put, was that Respondent No. 2 was not eligible for Inter-Cadre deputation, in terms of the provisions of DoPT O.M. dated 08.11.2004, as he had reached the Super Time Scale in 2002 and Inter-Cadre deputation is permissible only before reaching the Super Time Scale in the Home Cadre. *Per contra*, the stand of Respondent No. 1 was that by virtue of a recent DoPT O.M. dated 28.06.2018, the provisions of the DoPT O.M. dated 08.11.2004 can be relaxed, as and when required, by a Committee, constituted as per Clause (a) of the DoPT O.M. dated 28.06.2018.

71. We have carefully perused the DoPT O.Ms. dated 08.11.2004 and 28.06.2018 respectively and examined the rival contentions. For ready reference, DoPT O.M. dated 28.06.2018 is reproduced hereunder:

"No. 13017/16/2003-AIS.I
Government of India

Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi
Dated: 28th June, 2018

Office Memorandum

Sub: Inter-Cadre deputation of All India Service Officers — policy regarding.

The undersigned is directed to refer to this Department's OM of even number dated 8.11.2004 on the subject mentioned above and to convey that the Competent Authority has approved the following:-

(a) all cases of inter-cadre deputation would be processed as per existing guidelines and wherever relaxation of any of the provisions of these guidelines are required, the case will be put up to a Committee comprising of Secretary (DoPT), Establishment Officer & Additional Secretary and Additional Secretary (S&V) as Member.

(b) in order to have a uniform pattern for consideration of such cases for all the three All India Service Officers, the Committee, as mentioned at para (a) above, should consider all cases of inter-cadre deputation of all AIS officers (IPS and IFoS included). Home Secretary is to be co-opted as a Member in this Committee while considering cases of IPS officers and Environment Secretary is to be co-opted as a Member while considering the cases of Indian Forest Service officers. The Committee should consider all cases of inter cadre deputation and give its recommendations on the need and justification of inter-State deputation.

(c) 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 pay at Level 14 of the Pay Matrix in his or her home cadre.

2. The provisions of DOPT's O.M. No. 13017/16/2003-AIS-1 dated the 8th November 2004 regarding inter cadre

deputation of All India Service officers will stand modified to the above extent.

3. The Ministry of Home Affairs and the Ministry of Environment, Forests & Climate Change are requested to consider all such requests for inter cadre deputation keeping in view incorporation of the aforesaid provisions in the extant policy and proposals shall thereafter continue to be processed and submitted for consideration and orders of the Appointments Committee of the Cabinet after obtaining approval of the Minister-in-charge.

Sd/-
(Udai Bhan Singh)
Under Secretary to the Government of India
Tel: 011-23094142"

(emphasis supplied)

72. Reading of paragraph 2 of the aforesaid O.M. indicates that by way of the said O.M., the earlier OM dated 08.11.2014 has been partially modified. Provisions of Clause (a) of O.M. dated 28.06.2018 grant power of relaxation of any of the provisions of the Guidelines stipulated in O.M. dated 08.11.2004. It is stipulated that all cases of Inter-Cadre deputation would be processed as per existing Guidelines and wherever relaxation of the Guidelines are required, the case will be put up to a Committee comprising of the following:-

a) Secretary (DoPT),

b) Establishment Officer & Additional Secretary, and

c) Additional Secretary (S&V), as Member

Additionally, Home Secretary shall be co-opted as a Member while considering cases of IPS officers.

73. Clause (b) of the aforesaid O.M. dated 28.06.2018 provides for

consideration of cases of officers of the All India Services for Inter-Cadre deputation, by the Committee, in order to have a uniform pattern of consideration. Clause (c) provides that the Inter-Cadre deputation will be available to officers after completion of 9 years of service in the Cadre and before reaching Pay-Level 14 in the Home Cadre.

74. The argument of the Petitioner/Intervener overlooks the provisions of Clause (a) by virtue of which relaxation can be granted to any of the provisions of DoPT O.M. dated 08.11.2004, with regard to Inter-Cadre deputation. Thus, there is a power vested in the Central Government to grant relaxation, which would include relaxation of the provisions of Clause (b) of the DoPT O.M. dated 28.06.2018 and Clause 2(i) of DoPT O.M. dated 08.11.2004. The relaxation power has been exercised in the present case in granting Inter-Cadre deputation to Respondent No. 2 and in the absence of lack of power and jurisdiction, this Court cannot find any illegality in the impugned action. We may also note the categorical stand of Respondent No.1, set out in para 36 of the counter affidavit, wherein it is stated, by way of illustration, that four officers in the past, above Pay-Level 14, have been granted Inter-Cadre deputation, exercising the power of relaxation. The names of the officers as enumerated therein are as follows:

Sr. No.	Name of the Officer	Date of Central Government's Order
1.	Sh. Thianghlima Pachuau, IPS [MT:87]	26th March, 2014
2.	Sh. T. John Longkumar, IPS [CG:1991]	21st June, 2018
3.	Sh. Nitishwar Kumar, IAS [UP:1996]	5th September, 2020
4.	Sh. Vivek Bhardwaj, IAS [WB:1990]	13th August, 2021

75. It ought to be kept in mind that Delhi, being the Capital of India, has a unique, special and specific requirement. It has witnessed several untoward incidences and extremely challenging law and order situations/riots/crimes, which have an international implication, which in the wisdom of the Central Government necessitated appointment of an experienced officer possessing diverse and multifarious experience of heading a large Para-Military Security Force apart from other factors. As brought out in the counter affidavit by Respondent No. 1, the impugned order was passed keeping in background the aforesaid factors. The Executive, which is responsible for the law and order situation in the National Capital, must have a reasonable discretion to select an officer it finds more suitable, based upon the career graph of such an officer, unless there is anything adverse in the service career of such an officer. Learned counsels appearing for the Petitioner/Intervener have not been able to make out a case calling for interference in the decision of the Government or even remotely demonstrated that there is any blot in the service career of Respondent No.2, making him unsuitable for the post in question. Once this Court finds that the Central Government has the power, jurisdiction and authority to grant relaxation of any of the provisions of the Guidelines issued on 28.06.2018 for Inter-Cadre deputation of All India Services officers and that the power has been exercised for valid and just reasons, we see no reason to interfere in the decision of granting Inter-Cadre deputation to Respondent No. 2. Needless to state that Office Memorandums are Guidelines, to effectively regulate the services of the employees and bring uniformity therein. In changing conditions or peculiar circumstances, Government may require to deviate from a certain condition and it is for this reason that provisions for

relaxation of the Guidelines are incorporated in the Rules and Executive Instructions. The present case is no different or solitary, where the power of relaxation has been exercised by the Government, in public interest. The contention is therefore rejected and the prayer of the Petitioner to declare the Executive action, null and void cannot be acceded to.

76. Much was argued out by learned counsels for the Petitioner/Intervener that Respondent No. 1 has violated FR-56(d) and Rule 16(1) of Rules, 1958, while granting extension of service to Respondent No. 2, beyond the age of superannuation. Learned counsels relied on the provision of FR-56(d) which prescribes that *"no Government Servant shall be granted extension in service beyond the age of retirement of 60 years"* as well as Rule 16(1) of Rules, 1958 and submitted that the Rules mandate a complete bar in extension of service beyond superannuation and the Central Government does not have the power under Rule 3 of Rules, 1960 to relax either Rule 16(1) of Rules, 1958 or provisions of FR-56(d).

77. The aforesaid contention raised by the counsels for Petitioner/Intervener is not accepted by this Court. For ready reference, FR-56(d) is reproduced hereunder:-

> *"**Fundamental Rule***
>
> ***56(d)** No Government servant shall be granted extension in service beyond the age of retirement of sixty years:…"*

78. For ready reference, Rule 16(1) of Rules, 1958 is reproduced hereunder:-

> *"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)

79. Rule 3 of Rules, 1960 is also reproduced hereunder, for ready reference:-

> *"**3. Power to relax rules and regulations in certain cases.-** Where the Central Government is satisfied that the operation of-*
>
> *(i) any rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or*
>
> *(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)*

80. Plain reading of the aforesaid Rule 3 shows that the Central Government has the power to relax any Rule framed under the All India Services Act, 1951 and any Regulation made under any such Rule, if it is satisfied that the operation of any Rule/Regulation, causes undue hardship in any particular case. The relaxation can 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.

81. Rule 3 is an enabling provision, empowering the Central Government to relax the Rules framed under the All India Services Act, 1951, which would include Rule 16(1) of Rules, 1958. There is no dispute between the parties that the services of Respondent No. 2 are governed by Rule 16(1) of Rules, 1958 and therefore as a corollary, the Central Government has the power to relax the provisions of Rule 16(1) of Rules, 1958. It is the stated case of Respondent No. 1, on affidavit, that power of relaxation has been

exercised by the Central Government and provisions of Rule 16(1) of Rules, 1958 have been relaxed to grant extension of service to Respondent No. 2 by invoking Rule 3 of Rules, 1960 read with Section 21 of the General Clauses Act, 1897. It is further averred in the affidavit that during the process of appointment of Commissioner of Police, Delhi, the CCA was faced with precarious situation where it found that most of the appropriate level officers of AGMUT Cadre were not having the requisite experience for appointment of Commissioner of Police, Delhi. Keeping in mind the complexities and sensitivities in the Capital of the Country and the fact that no officer with appropriate seniority and requisite experience was available in the AGMUT Cadre, the relaxation provision was invoked and extension of service was granted to Respondent No. 2. We find that Rule 3 of Rules, 1960 certainly empowers the Central Government to relax the provisions of Rule 16(1) of Rules, 1958, to give extension of service to Respondent No.2. We also find merit in the reasons furnished by Respondent No. 1 for grant of relaxation and it is not open for this Court, sitting in a judicial review, to substitute its own decision and wisdom for that of the Central Government as it is really the domain and prerogative of the Government to take a decision for grant of relaxation or otherwise, on the basis of its subjective satisfaction premised on objective considerations. We also find that this is not the first of its case where powers of relaxation of Rule 16(1) of Rules, 1958 have been exercised by the Central Government. In para 49 of the counter affidavit, Respondent No. 1 has enumerated the names of 9 IPS officers, in whose cases, the service tenure was extended, by invoking the powers under Rule 3 of Rules, 1960. For the same reasons, we reject the contention of the Petitioner/Intervener that there is a violation of FR-56(d). Provisions of FR-

56(d) are *pari materia* to the provisions of Rule 16(1) of Rules, 1958. While FR 56(d) deals with the extension of service of a Government Servant, in general, Rule 16(1) of Rules, 1958, in particular, deals with a Member of the All India Services. Therefore, in the present case, as Respondent No. 2 is an IPS officer and Member of the All India Services, the service conditions are more aptly governed by Rules, 1958 and the provisions of Rule 3 of Rules, 1960, as extracted hereinabove, would apply for relaxation of the provisions of Rule 16(1) of Rules, 1958. In view thereof, it would be irrelevant to deal with the issue of alleged violation of FR-56(d) once the Central Government has relaxed Rule 16(1) by invoking Rule 3 of Rules, 1960. Be that as it may, once we are satisfied that the power of relaxation has been exercised under Rule 3 of Rules, 1960 for a just cause and for extenuating circumstances, calling for exercise of the said power, we do not subscribe to the argument that there is a violation of FR-56(d). Insofar as the argument of the Petitioner/Intervener that post of Commissioner of Police, Delhi does not find mention in the Provisos to FR-56(d) and Rule 16(1) of Rules, 1958 and therefore his case does not fall in the exceptions, is concerned, suffice would it be to state that if the said post was covered under the Provisos and therefore the exceptions, the Provisos would have a self-operating effect. It is only because the case of Respondent No. 2 does not fall in the Provisos, the power of relaxation of the provisions of the substantive Rule 16(1) of Rules, 1958 has been exercised. We do not find any violation of Rule 16(1) of Rules, 1958 and/or FR-56(d) and the contention is hereby rejected.

82. In view of the aforesaid finding by us that the directions of the Hon'ble Supreme Court rendered in ***Prakash Singh's Case (I) and (II)***, do not apply to the appointment of Commissioner of Police, Delhi, we also

reject the contention that the Central Government was required to send the case to UPSC for empanelment or that Respondent No. 2 was required to have a residuary service of six months, prior to his superannuation, at the time of his appointment as Commissioner of Police, Delhi. It bears repetition to state that the directions of the Hon'ble Supreme Court were only intended to apply with respect to the appointments of the DGPs in the respective States and thus there is no violation of the directions of the Hon'ble Supreme Court. Both the aforesaid decisions have all along been interpreted and understood as being applicable to the States, for appointment of Police Officers of the rank of DGP and above.

83. There can hardly be a dispute on the proposition of law sought to be urged by learned Solicitor General and learned Senior Counsel for Respondent No. 2 that public interest litigation cannot be entertained in a service matter. The law on this aspect is no longer *res integra* and we may only refer to the observations of the Hon'ble Supreme Court in ***Vishal Ashok Thorat and Others vs. Rajesh Shrirambapu Fate and Others,*** **2019 SCC OnLine SC 886**, as follows:-

> *"**18.** In support of the appeal filed by the State of Maharashtra, learned senior counsel submits that respondent No. 1 had no locus to file a writ petition, he having not participated. It is submitted that provisos to Rule 3(iii) and Rule 3(iv) of Rules, 2016 do not at all lower minimum qualification prescribed by Central Government vide notification dated 12.06.1989, but it merely gives breathing period of two years (before completion of probation period) to selected candidates to gain experience of one year and driving licence. It is submitted that direction in paragraph 51 of the judgment cannot be complied as on date, in view of fact that notification of the Central Government dated 12.06.1989, is no longer in operation. Rules, 2016 do not*

change the minimum qualification which is same as provided in substantive provision of Rule 3 and proviso carves out only an exception giving some time to acquire the qualification during the probation period by which provision the zone of consideration has been enlarged enabling the more meritorious candidates to apply for the post. The High Court committed error in treating the writ petition filed by the respondent as Public Interest Litigation whereas in the service matters no Public Interest Litigation can be entertained.

xxx *xxx* *xxx*

38. *Although, learned counsel for the parties have made elaborate submissions on the validity of Rule 3(iii) proviso, Rule 3(iv) proviso and Rule 4 but in the facts of the present case, where writ petitioner, i.e., respondent No. 1 was held by the High Court not competent to challenge the advertisement Nos. 2 of 2017 and 48 of 2017, the High Court committed error in proceeding to examine the validity of the Rules, 2016. The challenge to Rules, 2016 in the background of the present case ought not to have been allowed to be raised at the instance of the writ petitioner. The respondent No. 1, who did not participate in the selection and the High Court had specifically rejected the entitlement of the respondent No. 1 to challenge the advertisement Nos. 2 of 2017 and 48 of 2017, as held in paragraph 48 of the judgment, permitting him to challenge the validity of the Rules in reference to the same advertisements is nothing but indirectly challenging something which could not be challenged directly by the respondent No. 1. The High Court in the facts of the present case, where respondent No. 1 was not allowed to challenge the advertisements or the select list should not have been allowed to challenge the Rules, 2016 in so far as the selection in question was concerned. The writ petition filed by respondent No. 1 was not styled or framed as PIL. It is well settled that with regard to service jurisprudence, PIL are not entertained. In Ayaaubkhan Noorkhan Pathan v. State of Maharashtra, (2013) 4 SCC 465, this Court has reiterated that PIL should not be entertained in service matter. In paragraph 15 following has been laid down:*

> *"13. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu v. Jitendra Kumar Mishra, (1998) 7 SCC 273 : AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra, (2005) 1 SCC 590 : AIR 2005 SC 540; and Neetu v. State of Punjab, (2007) 10 SCC 614 : AIR 2007 SC 758)""*
>
> *(emphasis supplied)*

84. Similarly, in ***Central Electricity Supply Utility of Odisha v. Dhobei Sahoo,*** **(2014) 1 SCC 161**, the Hon'ble Supreme Court observed as under:-

> *"**14.1.** In relation to a service matter a public interest litigation is not maintainable except as far as it relates to a writ of quo warranto and in the case at hand, the High Court has failed to understand the implications of the writ of quo warranto and has not only entertained the PIL in the garb of a writ of quo warranto but further proceeded to direct recovery of the amount paid to the Chairman of the Commission while functioning as a CEO which is beyond the scope of a PIL."*
>
> *(emphasis supplied)*

85. However, we may only add a caveat that the only exception to the above proposition is a writ in the nature of *quo warranto*. It is a well-settled law that a writ of *quo warranto* lies for violation of statutory provisions. In this regard, we may refer to the observations of the Hon'ble Supreme Court in ***Hari Bansh Lal vs. Sahodar Prasad Mahto and Ors.,*** **(2010) 9 SCC 655 2010**, as follows:

> *"20. From the discussion and analysis, the following principles emerge: (a) Except for a writ of quo warranto, PIL is not maintainable in service matters. (b) For issuance of writ of quo warranto, the High Court has to satisfy that the appointment is*

contrary to the statutory rules. (c) Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules."

86. We may also refer to a passage of the judgment of Hon'ble Supreme Court in ***Rajesh Awasthi v. Nand Lal Jaiswal and Ors.*** **2013 (1) SCC 501,** which is as follows*:*

"19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana [(2002) 6 SCC 269] held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)], this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bansh Lal [(2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules."

87. This Court in ***S.N. Sahu v. Chairman, Rajya Sabha & Ors. being W.P.(C) No. 11146/2016, decided on 05.12.2016*** held as follows:

"5. It is a settled law that a writ of quo warranto can be sought only if there is found to be violation of a statutory provision. This is so held by the Supreme Court in its various judgments and two such judgments are in the cases of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Others, (2006) 11 SCC 731(2) and Rajesh Awasthi Vs. Nand Lal Jaiswal & Others (2013) 1 SCC

501. The relevant paragraphs of the judgment of the Supreme Court in the case of B. Srinivasa Reddy (supra) are paras 49, 57 and 60 which hold that a writ of quo warranto can only be filed if there is found to be violation of a statutory provision.

xxx *xxx* *xxx*

7. It is therefore clear that the present writ petition seeking reliefs in the nature of quo warranto is not maintainable because there is no pleading in the writ petition as to which statutory provision is violated in the appointments of Shri Ramacharyulu and Shri Mukul Pande. Prayer (a) therefore is misconceived and the writ petition is liable to be and is accordingly dismissed so far as prayer (a) is concerned".

88. We have examined the contentions of the Petitioner/Intervener with regard to violation of Rule 16(1) of Rules, 1958 and FR 56(d) and given a detailed finding that there is no violation of the said Rules, in view of the power of relaxation exercised by the Central Government. Therefore, even when examined on the anvil and touchstone of the parameters for issuing a writ of *quo warranto*, we do not find any violation of the statutory Rules and are thus not persuaded to issue a writ of *quo warranto* to quash the appointment of Respondent No. 2, as Commissioner of Police, Delhi, as prayed for by the Petitioner/Intervener.

89. Before we part with the judgment, we may add a note of caution to the Petitioner. Learned Solicitor General and Mr. Prashant Bhushan had strenuously argued that the pleadings in the present petition are a 'cut, copy, paste' of the petition filed by the Intervener before the Hon'ble Supreme Court and that such a practice must be discouraged and strictures be passed against the Petitioner. Learned counsel for the Petitioner had disputed and denied the allegation and asserted that the pleadings in the petition are his

own creation. We do not wish to precipitate the issue any further but are constrained to observe that such a practice is certainly unhealthy and deserves to be deprecated and the Petitioner shall be well advised to refrain from indulging in such an exercise, in future.

90. For all the aforesaid reasons, the writ petition is dismissed along with the pending applications.

CHIEF JUSTICE

JYOTI SINGH, J

OCTOBER 12, 2021/*'anb'*