

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2020
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

COMMON CAUSE

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

PAPERBOOK
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WITH

I.A. No. _____ OF 2020

[Application for Interim Directions]

COUNSEL FOR THE PETITIONER: **PRASHANT BHUSHAN**

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SECTION: PIL (WRIT)
PROFORMA FOR FIRST LISTING

The case pertains to (Please tick/check the correct box):

<input type="checkbox"/>	Central Act: (Title)	CONSTITUTION OF INDIA
<input type="checkbox"/>	Section	UNDER ARTICLE 14, 19 AND 21
<input type="checkbox"/>	Central Rule : (Title)	-NA-
<input type="checkbox"/>	Rule No(s):	- NA -
<input type="checkbox"/>	State Act: (Title)	- NA -
<input type="checkbox"/>	Section :	- NA -
<input type="checkbox"/>	State Rule : (Title)	- NA -
<input type="checkbox"/>	Rule No(s):	- NA -
<input type="checkbox"/>	Impugned Interim Order: (Date)	- NA -
<input type="checkbox"/>	Impugned Final Order/Decree: (Date)	-NA-
<input type="checkbox"/>	High Court : (Name)	-NA-
<input type="checkbox"/>	Names of Judges:	-NA-
<input type="checkbox"/>	Tribunal/Authority ; (Name)	-NA -

1. Nature of matter : Civil ☒ ☐ Criminal

2. (a) Petitioner/appellant No.1 : **COMMON CAUSE**
 (b) e-mail ID: **N.A.**
 (c) Mobile Phone Number: **N.A.**

3. (a) Respondent No.1: **UNION OF INDIA & ORS.**
 (b) e-mail ID: **- NA -**
 (c) Mobile Phone Number: **- NA -**

4. (a) Main category classification: **08 (0812)**
 (b) Sub classification: **OTHER PIL MATTER**

5. Not to be listed before:

6. (a) Similar disposed of matter with citation, if any & case details: **NO SIMILAR MATTER IS PENDING**
 (b) Similar Pending matter with case details: **NO DISPOSED MATTER IS PENDING**

7. **Criminal Matters:**(a) Whether accused/convict has surrendered: Yes No ☐ ☐

(b) FIR No. - NA - Date: - NA -

(c) Police Station: - NA -

(d) Sentence Awarded: - NA -

(e) Period of sentence undergone including period of Detention/ Custody Undergone: - NA -

8. Land Acquisition Matters: - NA -

(a) Date of Section 4 notification: - NA -

(b) Date of Section 6 notification: - NA -

(c) Date of Section 17 notification: - NA -

9. Tax Matters: State the tax effect: - NA -

10. Special Category (first Petitioner/ appellant only): - NA -

☐ Senior citizen > 65 year ☐ SC/ST ☐ Woman/child☐ Disabled ☐ Legal Aid case ☐ In custody - NA -

11. Vehicle Number (in case of Motor Accident Claim matters): - NA -

**(PRASHANT BHUSHAN)**

COUNSEL FOR THE PETITIONER

301, New Lawyers Chambers

Supreme Court of India

New Delhi- 110 001

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CODE: 515**NEW DELHI****DATED: 26.11.2020**

SYNOPSIS

The Petitioner has filed the instant writ petition in public interest under Article 32 of the Constitution of India for the enforcement of fundamental rights of the citizens as enshrined under Articles 14, 19 and 21 of the Constitution of India seeking an appropriate writ, order or direction for quashing the impugned Office Order, dated 13.11.2020, issued by Respondent No.1 retrospectively amending the tenure of Respondent No. 2 as Director, Enforcement Directorate and a direction to the Respondent No.1 to appoint a Director, Enforcement Directorate in a transparent manner and strictly in accordance with the mandate of Section 25 of the Central Vigilance Commission Act, 2003 [hereinafter referred to as the “CVC Act”].

As per Section 25(a) of the CVC Act, Central Government appoints the Director of Enforcement in the Directorate of Enforcement on the recommendation of the Committee consisting of— (i) the Central Vigilance Commissioner — Chairperson; (ii) Vigilance Commissioners — Members; (iii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member; (iv) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member; and (v) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member. Further, Section 25(c) of the Act provides that no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement and Section 25(d) of the Act provides that a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office.

The Respondent No.2 herein, Mr. Sanjay Kumar Mishra, vide order dated 19.11.2018, was appointed as Director of Enforcement in the Enforcement Directorate for a period of two years from the date of assumption of charge of the post or until further orders, whichever is earlier. The said two-year tenure has come to an end on 19.11.2020. Pertinently, the Respondent No. 2 has already reached the retirement age of 60 years in May 2020.

Vide the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1, it was published that the Hon'ble President of India has been pleased to approve the modification in the earlier order dated 19.11.2018, appointing the Respondent No.2, Mr. Sanjay Kumar Mishra, as Director of Enforcement in the Enforcement Directorate, to the effect that a period of '*two years*' written in the order dated 19.11.2018 has been modified to a period of '*three years*'. Thus, by virtue of the impugned Office Order, dated 13.11.2020, the appointment order dated 19.11.2018 has been modified with retrospective effect and the Respondent No.2 herein has been given an additional one year of service as Director of Enforcement in the Enforcement Directorate. Further, as per the news reports the CVC committee had met on 12.11.2020 to recommend the modification to Respondent No.2's appointment.

It is submitted that the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1 is in the teeth of Section 25 of the CVC Act as the said Section provides that a person has to be above the rank of Additional Secretary to the Government of India to be eligible for appointment as a Director of Enforcement. Thus, as the Respondent No.2 has already reached his retirement age in May 2020, therefore, after the end of Respondent No.2's two-year period on 19.11.2020, the Respondent No.2, by virtue of not holding any post above the rank of Additional Secretary, would have been

ineligible for appointment as a Director of Enforcement again. However, the Respondent No.1 has employed a circuitous route in order to ensure that Respondent No.2 gets one more year as Director of Enforcement by way of retrospectively modifying the appointment order dated 19.11.2018 itself. Thus, what could not have been done directly under the Statute has been done indirectly by the Respondent No.1 herein [which is against the principle enunciated by this Hon'ble Court in *Jagir Singh vs Ranbir Singh And Anr.* [(1979) 1 SCC 560]]. It may be noted herein that there is neither any enabling provision in the CVC Act for extension of service of the Director of Enforcement nor any enabling provision which provides for such retrospective modification of appointment orders.

The intention behind Section 25 (d) in providing a minimum tenure of two years to the Director of Enforcement can be understood from a judgment, dated 13.03.2019, passed by this Hon'ble Court in *Prakash Singh & Ors. V. Union of India & Ors.* [W.P.(C) No. 310/1996], which relates to appointments of Director Generals of Police (DGPs) in States. In the said case, this Hon'ble Court vide the judgment reported in (2006) 8 SCC 1, had issued a direction, under Article 142 of the Constitution, to the effect that once a DGP has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. Vide the judgment, dated 13.03.2019, this Hon'ble Court was pleased to hold that what this Court had in mind in issuing the directions in *Prakash Singh* was that the appointment of a Director General of Police in a State should be purely on the basis of merit and to insulate the said office from all kinds of influences and pressures, once appointed the incumbent should get a minimum tenure of two years of service irrespective of his date of superannuation.

Thus, it is clear that the purpose behind Section 25 (d) of the Act, in providing a minimum tenure of two years, is only to insulate the Director of Enforcement from all kinds of influences and pressures. However, the said purpose gets defeated if on the verge of his two-year tenure and much after his retirement age, the Director of Enforcement is given a *de facto* extension in service by adoption of a circuitous route of modifying the initial appointment order itself.

It is submitted that Enforcement Directorate handles a large number of cases involving huge corruption, many of which are politically sensitive in nature and the Director of Enforcement has powers akin to that of the Director of CBI. Such illegalities in appointment of the Director of Enforcement will shake the confidence of citizens in the institution of Enforcement Directorate. Such an action will be totally against the laudable principles highlighting the need of impeccable integrity of persons holding high public offices and the consequent need for insulating the said offices from extraneous influences, as enshrined by this Hon'ble Court in *Vineet Narain v. Union of India*, (1998) 1 SCC 226. It may be noted that vide the afore-mentioned judgment, dated 13.03.2019, this Hon'ble Court was pleased to ensure that no individual is appointed as a DGP at the fag end of his/her career. However, in the instant case, vide the impugned Office Order, dated 13.11.2020, the Respondent No.2 has been given a *de facto* extension as the Director of Enforcement after attainment of his retirement age, which is clearly impermissible under the CVC Act.

It is submitted that this Hon'ble Court, vide its judgment reported as *Alok Kumar Verma v. Union of India*, (2019) 3 SCC 1, while setting aside the order dated 23.10.2018 [vide which the then incumbent CBI Director, Mr. Alok Verma, had been illegally divested of all the work related to the Director, CBI], clearly laid down that the Government

was mandated to strictly follow the mandate of Delhi Special Police Establishment Act, 1946.

It is submitted that in *Ramchandra Keshav Adke v. Govind Joti Chavare*, (1975) 1 SCC 559 and numerous other cases viz. *Babu Verghese and Ors. versus Bar Council of Kerala and Ors.* [1999 (3) SCC 422], *State of Uttar Pradesh v. Singhara Singh* [1964 (4) SCR 485], *Commissioner of Income Tax, Mumbai versus Anjum M.H. Ghaswala & Ors.* [2002 (1) SCC 633], *Captain Sube Singh and ors. versus LG of Delhi and Ors.* [2004 (6) SCC 440], this Hon'ble Court has enunciated the principle that when a statute requires a certain thing to be done in a certain way, then that thing must be done in that way only and that all other methods of its performance are necessarily forbidden. Thus, it is humbly submitted that the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1 by way of which the Respondent No.2 has been given a one-year *de facto* extension as the Director of Enforcement, is illegal [being in violation of Section 25 of the Act] and is therefore, liable to be quashed forthwith.

It is submitted that transparency (an integral facet of Articles 19 and 21 of the Constitution of India) in the decision-making process for the appointment of a person to the sensitive post of Director of Enforcement is highly critical and thus, deliberations and reasoning of the CVC Committee (referred to in Section 25(a) of the CVC Act) in recommending a person to be appointed as the Director of Enforcement, should be made available in public domain.

The Respondent No.2 herein is holding a high public office of substantive character. The Petitioner herein, vide the instant writ petition, is challenging the *de facto* extension in service given to Respondent No.2 by the Respondent No.1 in clear contravention of the provisions of the governing statute, namely, the Central Vigilance

Commission Act, 2003. Thus, in view of the law laid down by a three-judge bench of this Hon'ble Court in *Centre for PIL v. Union of India*, (2011) 4 SCC 1, it is humbly submitted that the instant writ petition is entirely maintainable.

In view of the above, the Petitioner is filing the instant Writ Petition.

LIST OF DATES

DATES	EVENTS
18.12.1997	<p>This Hon'ble Court passed the landmark judgment, dated 18.12.1997, reported as <i>Vineet Narain v. Union of India</i>, (1998) 1 SCC 226, in which, inter alia, the following directions were passed with respect to Enforcement Directorate:</p> <p style="padding-left: 40px;">1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.</p> <p style="padding-left: 40px;">2. The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.</p>
2003	<p>The Central Vigilance Commission Act, 2003 ["CVC Act"] was enacted by the Parliament of India. Section 25 of the CVC Act provides, inter alia, as follows:</p> <p style="padding-left: 40px;"><i>"25. Appointments, etc., of officers of Directorate of Enforcement.—Notwithstanding anything contained in</i></p>

	<p>the Foreign Exchange Management Act, 1999 (42 of 1999) or any other law for the time being in force,—</p> <p>(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—</p> <p>(i) the Central Vigilance Commissioner — Chairperson;</p> <p>(ii) Vigilance Commissioners — Members;</p> <p>(iii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;</p> <p>(iv) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;</p> <p>(v) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;</p> <p>(b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;</p> <p>(c) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;</p> <p>(d) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;</p> <p>(e) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);</p> <p>(f) ...</p> <p>(g) ...”</p>
19.11.2018	<p>The Respondent No.2 herein, Mr. Sanjay Kumar Mishra, vide order dated 19.11.2018, was appointed as Director of Enforcement in the Enforcement Directorate for a period of</p>

	two years from the date of assumption of charge of the post or until further orders, whichever is earlier. The said two-year tenure came to an end on 19.11.2020.
May 2020	The Respondent No. 2, Mr. Sanjay Kumar Mishra, reached the retirement age of 60 years in May 2020.
13.11.2020	Vide the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1, it was published that the Hon'ble President of India has been pleased to approve the modification in the earlier order dated 19.11.2018, appointing the Respondent No.2, Mr. Sanjay Kumar Mishra, as Director of Enforcement in the Enforcement Directorate, to the effect that a period of ' <i>two years</i> ' written in the order dated 19.11.2018 has been modified to a period of ' <i>three years</i> '. Thus, by virtue of the impugned Office Order, dated 13.11.2020, the appointment order dated 19.11.2018 has been modified with retrospective effect and the Respondent No.2 herein has been given an additional one year of service as Director of Enforcement in the Enforcement Directorate.
26.11.2020	The instant writ petition is filed before this Hon'ble Court.

IN THE SUPREME COURT OF INDIA
 (CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2020
 (PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

COMMON CAUSE

(A REGISTERED SOCIETY)
 THROUGH ITS DIRECTOR
 MR. VIPUL MUDGAL
 5, INSTITUTIONAL AREA
 NELSON MANDELA ROAD
 VASANT KUNJ, NEW DELHI-110070
 EMAIL: COMMONCAUSEINDIA@GMAIL.COM
 PH: 9818399055

...PETITIONER

VERSUS

UNION OF INDIA

THROUGH
 REVENUE SECRETARY
 DEPARTMENT OF REVENUE,
 MINISTRY OF FINANCE,
 NORTH BLOCK,
 NEW DELHI- 110 001
 Email ID: rsecy@nic.in

...RESPONDENT NO.1

SANJAY KUMAR MISHRA

DIRECTOR OF ENFORCEMENT
 ENFORCEMENT DIRECTORATE,
 6th FLOOR, LOK NAYAK BHAWAN,
 KHAN MARKET,
 NEW DELHI- 110 003
 Email ID: ed-del-rev@nic.in

...RESPONDENT NO.2

CENTRAL VIGILANCE COMMISSION

THROUGH
 CENTRAL VIGILANCE COMMISSIONER
 SATARKTA BHAVAN, A-BLOCK,
 GPO COMPLEX, INA,

NEW DELHI- 110 023
Email ID: cenvigil@nic.in

...RESPONDENT NO.3

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS UNDER ARTICLE 14, 19 & 21 SEEKING AN APPROPRIATE WRIT, ORDER OR DIRECTION FOR QUASHING THE IMPUGNED OFFICE ORDER DATED 13.11.2020 ISSUED BY THE RESPONDENT NO.1 RETROSPECTIVELY AMENDING THE TENURE OF RESPONDENT NO.2 AS DIRECTOR, ENFORCEMENT DIRECTORATE AND A DIRECTION TO THE RESPONDENT NO.1 TO APPOINT A DIRECTOR, ENFORCEMENT DIRECTORATE IN A TRANSPARENT MANNER AND STRICTLY IN ACCORDANCE WITH THE MANDATE OF SECTION 25 OF THE CENTRAL VIGILANCE COMMISSION ACT, 2003

TO,

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

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the instant writ petition in public interest is being filed under Article 32 of the Constitution of India for the enforcement of fundamental rights of the citizens as enshrined under Articles 14, 19 and 21 of the Constitution of India seeking an appropriate writ, order or direction for quashing the impugned Office Order, dated 13.11.2020, issued by Respondent No.1 retrospectively amending the tenure of Respondent No. 2 as Director, Enforcement Directorate and a direction to the Respondent No.1 to appoint a Director, Enforcement Directorate in a transparent manner and strictly in

accordance with the mandate of Section 25 of the Central Vigilance Commission Act, 2003.

INTRODUCTION OF THE PETITIONER:

1A. That the Petitioner herein, Common Cause, is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a *bona fide* public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Vipul Mudgal, Director of Common Cause, is authorized to file this PIL. The requisite Certificate is filed along with the Vakalatnama. The average annual income of the Petitioner Society for the last three financial years is approximately Rs. 1.54 Crores. (PAN number: AAXPM0305P). The Society does not have a UID number.

The Petitioner herein has no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the Petitioner, which has or could have a legal nexus with the issues involved in the PIL.

The Petitioner herein has not sent any representation to the Respondents herein.

That the instant writ petition is based on the information and/or documents which are in public domain.

THE CASE IN BRIEF:

2. That Enforcement Directorate is a Multi Disciplinary financial investigating agency under the Respondent No.1, whose main functions are to investigate contraventions of the provisions of Foreign Exchange Management Act, 1999 (FEMA), a Civil Law, which came into force w.e.f. 01.06.2000 and to investigate offences of money laundering under the provisions of Prevention of Money Laundering Act, 2002 (PMLA), a criminal law, which came into force w.e.f. 01.07.2005.
3. That with respect to Enforcement Directorate, this Hon'ble Court, in *Vineet Narain v. Union of India*, (1998) 1 SCC 226, had directed as follows:

"58. As a result of the aforesaid discussion, we hereby direct as under:

* * * *

II. Enforcement Directorate

1. A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.

2. The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.

3. In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.

4. Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.

5. Extensions of tenure up to the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.

6. There shall be no premature media publicity by the CBI/Enforcement Directorate.

7. Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.

8. The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.

9. For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.

10. A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for the sake of transparency.

11. In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.

12. The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.” [emphasis supplied]

4. That regarding establishment and powers of the Directorate of Enforcement, FEMA, 1999 provides as follows:

“36. Directorate of Enforcement.—(1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who

shall be called officers of Enforcement, for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

37. Power of search, seizure, etc.—(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.”

5. That Section 25 of the Central Vigilance Commission Act, 2003, hereinafter referred to as the “CVC Act”, provides as follows:

“25. Appointments, etc., of officers of Directorate of Enforcement.—Notwithstanding anything contained in the Foreign Exchange Management Act, 1999 (42 of 1999) or any other law for the time being in force,—

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

- (i) the Central Vigilance Commissioner — Chairperson;*
- (ii) Vigilance Commissioners — Members;*

(iii) *Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;*
 (iv) *Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;*
 (v) *Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;*

(b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;

(c) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(d) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(e) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(f) the Committee referred to in clause (a) shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(g) on receipt of the recommendation under clause (f), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.”

6. That the Respondent No.2 herein, Mr. Sanjay Kumar Mishra, vide order dated 19.11.2018, was appointed as Director of Enforcement in the Enforcement Directorate for a period of two years from the date of assumption of charge of the post or until further orders, whichever is earlier. The said two-year tenure has come to an end on 19.11.2020. A copy of the Office Order, dated 19.11.2018, issued by the

Respondent No.1 is annexed hereto and marked as **ANNEXURE P-1 (Pg. 33)**.

7. That the vide the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1, it was published that the Hon'ble President of India has been pleased to approve the modification in the earlier order dated 19.11.2018, appointing the Respondent No.2, Mr. Sanjay Kumar Mishra, as Director of Enforcement in the Enforcement Directorate, to the effect that a period of '*two years*' written in the order dated 19.11.2018 has been modified to a period of '*three years*'. Thus, by virtue of the impugned Office Order, dated 13.11.2020, the appointment order dated 19.11.2018 has been modified with retrospective effect and the Respondent No.2 herein has been given an additional one year of service as Director of Enforcement in the Enforcement Directorate. A copy of the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1 is annexed hereto and marked as **ANNEXURE P-2 (Pg. 34)**.

8. That the Respondent No. 2 herein, Mr. Sanjay Kumar Mishra, has already reached the retirement age of 60 years in May 2020. Further, as per the news report, dated 16.11.2020, titled "*Govt extends SK Mishra's term as ED director*", published by the Indian Express, the CVC committee had met on 12.11.2020 to recommend the modification to Respondent No.2's appointment. A copy of the news report, dated 16.11.2020, titled "*Govt extends SK Mishra's term as ED director*", published by the Indian Express, is annexed hereto and marked as **ANNEXURE P-3 (Pg.35 - 36)**.

9. It is submitted that the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1 is in the teeth of Section 25 of the CVC Act as the said Section provides that a person has to be above the rank of Additional Secretary to the Government of India to be eligible for appointment as a Director of Enforcement. Thus, as the Respondent No.2 has already reached his retirement age in May 2020, therefore, after the end of Respondent No.2's two-year period on 19.11.2020, the Respondent No.2, by virtue of not holding any post above the rank of Additional Secretary, would have been ineligible for appointment as a Director of Enforcement again. However, the Respondent No.1 has employed a circuitous route in order to ensure that Respondent No.2 gets one more year as Director of Enforcement by way of retrospectively modifying the appointment order dated 19.11.2018 itself. Thus, what could not have been done directly under the Statute has been done indirectly by the Respondent No.1 herein. It may be noted herein that there is neither any enabling provision in the CVC Act for extension of service of the Director of Enforcement nor any enabling provision which provides for such retrospective modification of appointment orders.
10. That the intention behind Section 25 (d) in providing a minimum tenure of two years to the Director of Enforcement can be understood from a judgment, dated 13.03.2019, passed by this Hon'ble Court in *Prakash Singh & Ors. V. Union of India & Ors. [W.P.(C) No. 310/1996]*, which relates to appointments of Director Generals of Police (DGPs) in States. In the said case, this Hon'ble Court vide the judgment reported in (2006) 8 SCC 1, had issued a direction, under Article 142 of the Constitution, to the effect that once a DGP has

been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation.

11. That thereafter, vide order dated 03.07.2018, passed in *Prakash Singh & Ors. V. Union of India & Ors. [W.P.(C) No. 310/1996]*, this Hon'ble Court passed, inter alia, the following direction:

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

A copy of the order dated 03.07.2018, passed by this Hon'ble Court in *Prakash Singh & Ors. V. Union of India & Ors. [W.P.(C) No. 310/1996]*, is annexed hereto and marked as **ANNEXURE P-4 (Pg. 37 - 46)**.

12. That thereafter, vide the judgment, dated 13.03.2019, passed in *Prakash Singh & Ors. V. Union of India & Ors. [W.P.(C) No. 310/1996]*, this Hon'ble Court observed and held as follows:

*“7. Neither of the aforesaid practice, in our considered view, can further the directions of this Court in *Prakash Singh (supra)* or give impetus to what this Court had in mind in issuing the directions in *Prakash Singh (supra)*, namely, that the appointment of a Director General of Police in a State should be purely on the basis of merit and to insulate the said office from all kinds of influences and pressures, once appointed the incumbent should get a minimum tenure of two years of service irrespective of his date of superannuation.*

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

10. We, therefore, clarify the order of this Court dated 3rd July, 2018 passed in I.A. No.25307 of 2018 in Writ Petition No.310 of 1996 to mean that recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers who have a minimum residual tenure of six months i.e. officers who have at least six months of service prior to the retirement."
[emphasis supplied]

A copy of the judgment, dated 13.03.2019, passed by this Hon'ble Court in *Prakash Singh & Ors. V. Union of India & Ors.* [W.P.(C) No. 310/1996], is annexed hereto and marked as **ANNEXURE P5 (Pg. 47 - 55)**.

- 13.** That from the above, it is clear that the purpose behind Section 25 (d) of the CVC Act, in providing a minimum tenure of two years, is only to insulate the Director of Enforcement from all kinds of influences and pressures. However, the said purpose gets defeated if on the verge of his two-year tenure and much after his retirement age, the Director of Enforcement is given a *de facto* extension in

service by adoption of a circuitous route of modifying the initial appointment order itself.

14. That the Enforcement Directorate handles a large number of cases involving huge corruption, many of which are politically sensitive in nature and the Director of Enforcement has powers akin to that of the Director of CBI. Such illegalities in appointment of the Director of Enforcement will shake the confidence of citizens in the institution of Enforcement Directorate. Such an action will be totally against the laudable principles highlighting the need of impeccable integrity of persons holding high public offices and the consequent need for insulating the said offices from extraneous influences, as enshrined by this Hon'ble Court in *Vineet Narain v. Union of India*, (1998) 1 SCC 226. It may be noted that vide the afore-mentioned judgment, dated 13.03.2019, this Hon'ble Court was pleased to ensure that no individual is appointed as a DGP at the fag end of his/her career. However, in the instant case, vide the impugned Office Order, dated 13.11.2020, the Respondent No.2 has been given a *de facto* extension as the Director of Enforcement after attainment of his retirement age, which is clearly impermissible under the CVC Act. A copy article dated, 15.11.2020, titled "*As ED Chief Gets One-Year Extension, Here's a List of Cases He's Probing Against Opposition Leaders*", published by The Wire, is annexed hereto and marked as **ANNEXURE P-6 (Pg.56 - 62)**.

15. That in 2016, a PIL [*Uday Babu Khawadekar v. Union of India & Ors. (W.P.(C) No. 757/2016*)] was filed before this Hon'ble Court seeking appropriate Writ in the form of a writ of quo warranto or any other appropriate writ, order or direction quashing the adhoc

appointment/ extensions granted to Mr. Karnal Singh as the Director of the Enforcement Directorate from August 2015 to November 2016 being illegal and in gross violation of provisions of Section 25(d) of the Central Vigilance Commission Act, 2003 and to hold that the said adhoc appointment/extensions granted to Mr. Karnal Singh are *not est* in law.

16. That vide order dated, 30.01.2017, passed in *W.P.(C) No. 757/2016*, this Hon'ble Court disposed of the aforesaid PIL with a direction to the Union of India to issue a fresh order of appointment, in consonance with, and in compliance of Section 25(d) of the Act, within one week from 30.01.2017 and that the selected Director, Enforcement shall be issued an order of appointment, allowing him to hold his office for a period of two years, from the date on which he assumes office. A copy of the order dated, 30.01.2017, passed by this Hon'ble Court in *W.P.(C) No. 757/2016* is annexed hereto and marked as **ANNEXURE P-7 (Pg. 63 - 67)**.

17. That the Petitioner herein has not filed any other petition seeking the same relief before this Hon'ble Court or before any other court.

18. That the Petitioner herein is filing the instant Writ Petition on the following, inter alia, other grounds.

GROUND

A. Because the Respondent No.2 herein is holding a high public office of substantive character. The Petitioner herein, vide the instant writ petition, is challenging the *de facto* extension in service given to Respondent No.2 by the Respondent No.1 in clear contravention of

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

“1. The two writ petitions filed in this Court under Article 32 of the Constitution of India give rise to a substantial question of law and of public importance as to the legality of the appointment of Shri P.J. Thomas [Respondent 2 in WP (C) No. 348 of 2010] as the Central Vigilance Commissioner under Section 4(1) of the Central Vigilance Commission Act, 2003 (“the 2003 Act”, for short).

2. The Government is not accountable to the courts in respect of policy decisions. However, they are accountable for the legality of such decisions.** While deciding this case, we must keep in mind the difference between legality and merit as also between judicial review and merit review. On 3-9-2010, the High-Powered Committee (“HPC”, for short), duly constituted under the proviso to Section 4(1) of the 2003 Act, had recommended the name of Shri P.J. Thomas for appointment to the post of Central Vigilance Commissioner. The validity of this recommendation falls for judicial scrutiny in this case. **If a duty is cast under the proviso to Section 4(1) on the HPC to recommend to the President the name of the selected candidate, the integrity of that decision-making process is got to ensure that the powers are exercised for the purposes and in the manner envisaged by the said Act, otherwise such recommendation will have no existence in the eye of the law.

Is the writ of quo warranto invocable?

50. Shri K.K. Venugopal, learned Senior Counsel appearing on behalf of Respondent 2, submitted that the present case is neither a case of infringement of the statutory provisions of the 2003 Act nor of the appointment being contrary to any procedure or rules. According to the learned counsel, it is well settled that a writ of quo warranto applies in a case when a person usurps an office and the allegation is that he has no title to it or a legal authority to hold it. According to the learned counsel for a writ of quo warranto to be issued there must be a clear infringement of the law. That, in the instant case there has been no infringement of any law in the matter of appointment of Respondent 2.

51. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the court inter alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority."

52. One more aspect needs to be mentioned. In the present petition, as rightly pointed out by Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner, a declaratory relief is also sought besides seeking a writ of quo warranto.

53. At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration. Further, as held hereinabove, recommendation of the HPC and, consequently, the appointment of Shri P.J. Thomas was in contravention of the provisions of the 2003 Act, hence, we find no merit in the submissions advanced on behalf of Respondent 2 on non-maintainability of the writ petition. If public duties are to be enforced and rights and interests are to be protected, then the court may, in furtherance of public interest, consider it necessary to inquire into the state of affairs of

the subject-matter of litigation in the interest of justice (see *Ashok Lanka v. Rishi Dixit* [(2005) 5 SCC 598]).

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

B. Because with respect to Enforcement Directorate, this Hon’ble Court, in *Vineet Narain v. Union of India*, (1998) 1 SCC 226, had directed as follows:

“58. As a result of the aforesaid discussion, we hereby direct as under:

* * * *

II. Enforcement Directorate

1. **A Selection Committee headed by the Central Vigilance Commissioner and including the Home Secretary, Secretary (Personnel) and Revenue Secretary, shall prepare a panel for appointment of the Director, Enforcement Directorate. The appointment to the post of Director shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee.**

2. **The Director, Enforcement Directorate like the Director, CBI shall have a minimum tenure of two years. In his case also, premature transfer for any extraordinary reason should be approved by the aforesaid Selection Committee headed by the Central Vigilance Commissioner.**

3. **In view of the importance of the post of Director, Enforcement Directorate, it shall be upgraded to that of an Additional Secretary/Special Secretary to the Government.**

4. *Officers of the Enforcement Directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly.*

5. *Extensions of tenure up to the level of Joint Director in the Enforcement Directorate should be decided by the said Committee headed by the Central Vigilance Commissioner.*

6. *There shall be no premature media publicity by the CBI/Enforcement Directorate.*

7. *Adjudication/commencement of prosecution shall be made by the Enforcement Directorate within a period of one year.*

8. *The Director, Enforcement Directorate shall monitor and ensure speedy completion of investigations/adjudications and launching of prosecutions. Revenue Secretary must review their progress regularly.*

9. *For speedy conduct of investigations abroad, the procedure to approve filing of applications for Letters Rogatory shall be streamlined and, if necessary, Revenue Secretary authorised to grant the approval.*

10. *A comprehensive circular shall be published by the Directorate to inform the public about the procedures/systems of its functioning for the sake of transparency.*

11. *In-house legal advice mechanism shall be strengthened by appointment of competent legal advisers in the CBI/Directorate of Enforcement.*

12. *The Annual Report of the Department of Revenue shall contain a detailed account on the working of the Enforcement Directorate.”* [emphasis supplied]

C. Because Section 25 of the Central Vigilance Commission Act, 2003, hereinafter referred to as the “CVC Act”, provides as follows:

“25. Appointments, etc., of officers of Directorate of Enforcement.—Notwithstanding anything contained in the Foreign Exchange Management Act, 1999 (42 of 1999) or any other law for the time being in force,—

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

- (i) the Central Vigilance Commissioner — Chairperson;*
- (ii) Vigilance Commissioners — Members;*
- (iii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;*
- (iv) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;*
- (v) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;*

(b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;

(c) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(d) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(e) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(f) the Committee referred to in clause (a) shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(g) on receipt of the recommendation under clause (f), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.”

- D.** Because the Respondent No.2, Mr. Sanjay Kumar Mishra, vide order dated 19.11.2018, was appointed as Director of Enforcement in the Enforcement Directorate for a period of two years from the date of assumption of charge of the post or until further orders, whichever is earlier. The said two-year tenure has come to an end on 19.11.2020. However, vide the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1, it was published that the Hon'ble President of India has been pleased to approve the modification in the earlier order dated 19.11.2018, appointing the Respondent No.2, Mr. Sanjay Kumar Mishra, as Director of Enforcement in the Enforcement Directorate, to the effect that a period of '*two years*' written in the order dated 19.11.2018 has been modified to a period of '*three years*'. Thus, by virtue of the impugned Office Order, dated 13.11.2020, the appointment order dated 19.11.2018 has been modified with retrospective effect and the Respondent No.2 herein has been given an additional one year of service as Director of Enforcement in the Enforcement Directorate. It is highly pertinent to mention herein that the Respondent No. 2, Mr. Sanjay Kumar Mishra, has already reached the retirement age of 60 years in May 2020.
- E.** Because the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1 is in the teeth of Section 25 of the CVC Act as the said Section provides that a person has to be above the rank of Additional Secretary to the Government of India to be eligible for appointment as a Director of Enforcement. Thus, as the Respondent No.2 has already reached his retirement age in May 2020, therefore, after the end of Respondent No.2's two-year period on 19.11.2020, the Respondent No.2, by virtue of not holding any post above the rank of Additional Secretary, would have been ineligible for

appointment as a Director of Enforcement again. However, the Respondent No.1 has employed a circuitous route in order to ensure that Respondent No.2 gets one more year of service as Director of Enforcement by way of retrospectively modifying the appointment order dated 19.11.2018 itself. Thus, what could not have been done directly under the Statute has been done indirectly by the Respondent No.1 herein. It may be noted herein that there is neither any enabling provision in the CVC Act for extension of service of the Director of Enforcement nor any enabling provision which provides for such retrospective modification of appointment orders. The appointment order dated 19.11.2018 was for appointing the Respondent No.2 herein as Director of Enforcement in the Enforcement Directorate for a period of two years, and not three years, from the date of assumption of charge of the post.

- F. Because this Hon'ble court has consistently held that what cannot be done directly under a given statute cannot be done indirectly. Thus, the impugned Office Order, dated 13.11.2020, being illegal, is liable to be quashed. This Hon'ble Court has held in Para 5 of *Jagir Singh vs Ranbir Singh And Anr.* [(1979) 1 SCC 560] as follows:

"We do not think that it is permissible to do so. What may not be done directly cannot be allowed to be done indirectly, that would be an evasion of the statute. It is a well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance" (per Abbott C.J. in Fox v. Bishop of Chester (1824) 2 B & C 635). "To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined" (Maxwell, 11th Edn., p. 109)". [emphasis supplied]

G. Because the intention behind Section 25 (d) in providing a minimum tenure of two years to the Director of Enforcement can be understood from a judgment, dated 13.03.2019, passed by this Hon'ble Court in *Prakash Singh & Ors. V. Union of India & Ors.* [W.P.(C) No. 310/1996], which relates to appointments of Director Generals of Police (DGPs) in States. In the said case, this Hon'ble Court vide the judgment reported in (2006) 8 SCC 1, had issued a direction, under Article 142 of the Constitution, to the effect that once a DGP has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. Vide the judgment, dated 13.03.2019, this Hon'ble Court observed and held as follows:

“7. Neither of the aforesaid practice, in our considered view, can further the directions of this Court in Prakash Singh (supra) or give impetus to what this Court had in mind in issuing the directions in Prakash Singh (supra), namely, that the appointment of a Director General of Police in a State should be purely on the basis of merit and to insulate the said office from all kinds of influences and pressures, once appointed the incumbent should get a minimum tenure of two years of service irrespective of his date of superannuation.

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

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

10. We, therefore, clarify the order of this Court dated 3rd July, 2018 passed in I.A. No.25307 of 2018 in Writ Petition No.310 of 1996 to mean that recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers who have a minimum residual tenure of six months i.e. officers who have at least six months of service prior to the retirement.”
[emphasis supplied]

H. Because it is clear that the purpose behind Section 25 (d) of the CVC Act, in providing a minimum tenure of two years, is only to insulate the Director of Enforcement from all kinds of influences and pressures. However, the said purpose gets defeated if on the verge of his two-year tenure and much after his retirement age, the Director of Enforcement is given a *de facto* extension in service by adoption of a circuitous route of modifying the initial appointment order itself. The Enforcement Directorate handles a large number of cases involving huge corruption, many of which are politically sensitive in nature and the Director of Enforcement has powers akin to that of the Director of CBI. Such illegalities in appointment of the Director of Enforcement will shake the confidence of citizens in the institution of Enforcement Directorate. Such an action will be totally against the laudable principles highlighting the need of impeccable integrity of persons holding high public offices and the consequent need for insulating the said offices from extraneous influences, as enshrined by this Hon'ble Court in *Vineet Narain v. Union of India*, (1998) 1 SCC 226. It may be noted that vide the afore-mentioned judgment, dated 13.03.2019, this Hon'ble Court was pleased to ensure that no individual is appointed as a DGP at the fag end of his/her career. However, in the instant

case, vide the impugned Office Order, dated 13.11.2020, the Respondent No.2 has been given a *de facto* extension as the Director of Enforcement after attainment of his retirement age, which is clearly impermissible under the CVC Act.

I. Because in *W.P.(C) No. 1315/2018*, [tagged with *W.P.(C) No. 1309/2018*] the Petitioner herein had sought appropriate writ or direction for quashing of order dated 23.10.2018, vide which the then incumbent Director of Central Bureau of Investigation, Mr. Alok Verma, had been illegally divested of all the work related to the Director, CBI. This Hon'ble Court, vide its judgment reported as *Alok Kumar Verma v. Union of India*, (2019) 3 SCC 1, while setting aside the said order dated 23.10.2018, clearly laid down that the Government was mandated to strictly follow the mandate of Delhi Special Police Establishment Act, 1946. This Hon'ble Court observed and held, inter alia, as follows:

38. *These are the basic facts that cannot be overlooked while gathering the intention of the legislature in making the provisions contained in Section 4-A and Section 4-B of the DSPE Act. An in-depth consideration of the matter leaves us with no doubt that the clear legislative intent in bringing the aforesaid provisions to the statute book are for the purpose of ensuring complete insulation of the office of the Director, CBI from all kinds of extraneous influences, as may be, as well as for upholding the integrity and independence of the institution of CBI as a whole.*

39. *There are certain other relevant facts that cannot be ignored. The provisions of various State enactments (the Police Act), as, for example, the Uttarakhand Police Act, 2007, following the decision of this Court in *Prakash Singh v. Union of India* [*Prakash Singh v. Union of India*, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417], while providing for a tenure of two years to the Director General of Police of the State expressly contemplates removal of the incumbent before expiry of the tenure on certain specified grounds [Sections 20(4) & (5)]. Similarly, Section 6 of*

the CVC Act, which has been extracted above, specifically contemplates certain interim measures against the Central Vigilance Commissioner or a Vigilance Commissioner pending consideration by the Supreme Court of the reference made by the President to the Court for removal of any such incumbent. Removal of any of the aforesaid incumbents holding any of the aforesaid posts is also contemplated on certain contingencies occurring as spelt out by sub-section (3) of Section 6 of the CVC Act. No such provision has been engrafted so far as the office of the Director, CBI is concerned except what is contained in Section 4-B(2) of the DSPE Act, namely, that “the Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of Section 4-A”. As already noticed, Section 4-B including sub-section (2) thereof of the DSPE Act, as it exists on date, were brought in by the same legislation i.e. the CVC Act (Act 45 of 2003).

40. If the legislative intent would have been to confer in any authority of the State a power to take interim measures against the Director, CBI thereby affecting his functioning, surely, the legislation would have contained enabling provisions to that effect and consequently would have been differently worded and drafted. It is against this backdrop that the words “transferred except with the previous consent of the Committee” mentioned in Section 4-B(2) of the DSPE Act has to be understood. If the word “transferred” has to be understood in its ordinary parlance and limited to a change from one post to another, as the word would normally convey and on that basis the requirement of “previous consent of the Committee” is understood to be only in such cases i.e. purely of transfer, such an interpretation would be self-defeating and would clearly negate the legislative intent. In such an event it will be free for the State Authority to effectively disengage the Director, CBI from functioning by adopting various modes, known and unknown, which may not amount to transfer but would still have the same effect as a transfer from one post to another, namely, cessation of exercise of powers and functions of the earlier post. **This is clearly not what the legislature could have intended. The long history of evolution has shown that the institution of CBI has been perceived to be necessarily kept away from all kinds of extraneous influences so that it can perform its role as the premier investigating and prosecuting agency without any fear and favour and in the best public interest. The head of the institution, namely, the Director, naturally,**

therefore, has to be the role model of independence and integrity which can only be ensured by freedom from all kinds of control and interference except to the extent that Parliament may have intended. Such intendment, in our considered view, would require all authorities to keep away from intermingling or interfering in the functioning of the Director. In a situation where such interference may at all be called for, public interest must be writ large against the backdrop of the necessity. The relevance and adequacy of the reasons giving rise to such a compelling necessity can only be tested by the opinion of the Committee constituted under Section 4-A(1) of the DSPE Act in whom the power to make recommendations for appointment of the Director has been vested by Parliament. This alone can provide an adequate safeguard to ensure the independence of the office keeping in view the legislative intent, as found and held by us. In this regard, we feel fortified in saying that the status of the Committee having undergone an upward movement by the amendment brought in by the Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014) it cannot but be said that the legislative intent in shielding and insulating the office of the Director from any kind of extraneous influence has been foremost in the mind of Parliament which intent found manifestation in the changes in law brought about in the circumstances noted above.

41. *There is yet another issue of significance that arises from the weighty arguments advanced in the course of the long debate that has taken place. This is with regard to the application of Sections 14, 15 and 16 of the General Clauses Act, 1897 so as to confer a power in the Central Government to pass the impugned orders including the order of appointment of an acting Director of CBI. **The preceding discussions and our views on the true and correct meaning of the provisions contained in Sections 4-A and 4-B of the DSPE Act leaves us convinced that the aforesaid provisions of the General Clauses Act will have no application to the present case in view of the clear and apparent intention to the contrary that unequivocally flows from the aforesaid provisions of the DSPE Act.*** [emphasis supplied]

- J. Because in *Ramchandra Keshav Adke v. Govind Joti Chavare*, (1975) 1 SCC 559 and numerous other cases viz. *Babu Verghese*

and Ors. versus Bar Council of Kerala and Ors. [1999 (3) SCC 422] , State of Uttar Pradesh v. Singhara Singh [1964 (4) SCR 485], Captain Sube Singh and ors. versus LG of Delhi and Ors. [2004 (6) SCC 440], this Hon'ble Court has enunciated the principle that when a statute requires a certain thing to be done in a certain way, then that thing must be done in that way only and that all other methods of its performance are necessarily forbidden. Thus, it is humbly submitted that the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1 by way of which the Respondent No.2 has been given a one-year *de facto* extension as the Director of Enforcement, is illegal [being in violation of Section 25 of the Act] and is therefore, liable to be quashed forthwith. A Constitution Bench of this Hon'ble Court in Para 27 of *Commissioner of Income Tax, Mumbai versus Anjum M.H. Ghaswala & Ors. [2002 (1) SCC 633]* has held as under:

“It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. *If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119.”* [emphasis supplied]

K. Because transparency (an integral facet of Articles 19 and 21 of the Constitution of India) in the decision-making process for the appointment of a person to the sensitive post of Director of Enforcement is highly critical and thus, deliberations and reasoning of the CVC Committee (referred to in Section 25(a) of the CVC Act) in recommending a person to be appointed as the Director of Enforcement, should be made available in public domain. It is further

submitted that in case the approval of CVC and the two VCs had not been taken for retrospectively modifying the appointment order dated 19.11.2018, then the entire procedure would be liable to be set aside on this ground too. It is submitted that in *Centre for PIL v. Union of India*, (2011) 4 SCC 1, a three-judge bench of this Hon'ble Court was pleased to direct, inter alia, as follows:

“88. No reason has been given as to why in the present case the zone of consideration stood restricted only to the civil service. We therefore direct that:

(i) In our judgment we have held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the members of the High-Powered Committee. As in the present case, if one member of the Committee dissents, that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent. This will bring about fairness in action. Since we have held that legality of the choice or selection is open to judicial review, we are of the view that if the above methodology is followed, transparency would emerge which would also maintain the integrity of the decision-making process.” [emphasis supplied]

L. Because in *Anjali Bhardwaj v. Union of India* [2019 SCC OnLine SC 205], while dealing with a PIL regarding filling up of vacancies for appointment of Information Commissioners in a timely manner, this Hon'ble Court was pleased to observe as follows:

*“10. Much before the enactment of RTI Act, which came on the statute book in the year 2005, this Court repeatedly emphasised the people's right to information to be a facet of Article 19(1)(a) of the Constitution. It has been held that the right to information is a fundamental right and flows from Article 19(1)(a), which guarantees right to speech. This right has also been traced to Article 21 which concerns about right to life and liberty. **There are umpteen number of judgments declaring that transparency is the key for functioning of a healthy***

democracy. In the matter of State of Uttar Pradesh v. Raj Narain¹, a Constitution Bench of this Court held that:

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil secrecy the common routine business, is not in the interest of the public....”

35. Insofar as transparency of procedure is concerned, from the status report it becomes clear that the procedure is now adequately transparent. The Department of Personnel and Training has put on website information in respect of names of the applicants for these posts, names of the members of Search Committee, agenda for the Search Committee, Minutes of the Search Committee etc. It would be pertinent to point out at this stage that after the Search Committee sends its recommendations the Selection Committee has to make the final selection. The composition of the Selection Committee is provided in Section 12(3) of the Act which consists of:

- (i) The Prime Minister, who shall be the Chairperson of the Committee;
- (ii) The Leader of Opposition in the Lok Sabha;
- (iii) The Union Cabinet Minister to be nominated by the Prime Minister.

The Statutory Committee, thus, consists of very high ranking persons.

36. Having regard to the aforesaid, it cannot be said that there is no transparency in the appointment process, when all essential information in respect of each candidate is made available to the public at large. Information in respect of Members of Search Committee, agenda of their meetings and even the Minutes of the Search Committee have also been put on website. The

appointments made, finally, are also in public domain.”
[emphasis supplied]

- M.** Because in 2016, a PIL [*Uday Babu Khalwadekar v. Union of India & Ors. (W.P.(C) No. 757/2016)*] was filed before this Hon'ble Court seeking appropriate Writ in the form of a writ of quo warranto or any other appropriate writ, order or direction quashing the adhoc appointment/ extensions granted to Mr. Karnal Singh as the Director of the Enforcement Directorate from August 2015 to November 2016 being illegal and in gross violation of provisions of Section 25(d) of the Central Vigilance Commission Act, 2003 and to hold that the said adhoc appointment/extensions granted to Mr. Karnal Singh are *not est* in law. Vide order dated, 30.01.2017, passed in *W.P.(C) No. 757/2016*, this Hon'ble Court disposed of the aforesaid PIL with a direction to the Union of India to issue a fresh order of appointment, in consonance with, and in compliance of Section 25(d) of the Act, within one week from 30.01.2017 and that the selected Director, Enforcement shall be issued an order of appointment, allowing him to hold his office for a period of two years, from the date on which he assumes office.
- N.** Because in view of the fact that the impugned Office Order, dated 13.11.2020, and the consequent *de facto* extension granted to Respondent No.2 to serve as Director of Enforcement, is in contravention of the CVC Act, it is most respectfully submitted that the same is liable to be quashed by this Hon'ble Court and the Respondent No.1 may be directed to appoint a Director of Enforcement in the Enforcement Directorate in a transparent manner and strictly in accordance with the mandate of Section 25 of the Central Vigilance Commission Act, 2003.

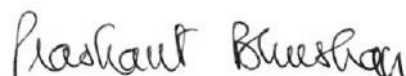
PRAYERS

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

- a. Issue an appropriate writ, order or direction for quashing the impugned Office Order dated 13.11.2020 (Annexure P2), issued by Respondent No.1 retrospectively amending the tenure of Respondent No. 2 as Director, Enforcement Directorate;
- b. Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondent No.1 to appoint a Director, Enforcement Directorate in a transparent manner and strictly in accordance with the mandate of Section 25 of the Central Vigilance Commission Act, 2003;
- c. Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

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

PETITIONER THROUGH:



PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER

DRAWN BY: Pranav Sachdeva & Jatin Bhardwaj, Advocates

FILED ON: 26.11.2020

NEW DELHI

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020**(PUBLIC INTEREST LITIGATION)****IN THE MATTER OF:**

COMMON CAUSE

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

AFFIDAVIT

I, Vipul Mudgal, S/o Shri Jai Kumar Mudgal, the Director of the Petitioner Society, having its office at 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi-110070, do hereby solemnly affirm and state on oath as under:

1. That I am the Director of the Petitioner Society in the aforementioned writ petition and being familiar with the facts and circumstances of the case, I am competent and authorized to swear this Affidavit.
2. That I have read and understood the contents of the Synopsis and List of Dates (Page B to I), Writ Petition (Page 1 to 30), Application for Interim Directions (Page 68 to 72). I state that the facts therein are true to the best of my knowledge, based on documentary evidence, and nothing material has been concealed therefrom. The annexures of the writ petition are true copies of their respective originals.

3. The source of the information is official documents, court records, and information available in the public domain, and information received from reliable sources.
4. That this petition is only motivated by public interest. I affirm that I have no personal interest in this matter.
5. That I have done whatsoever enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.


DEPONENT

VIPUL MUDGAL

Director, COMMON CAUSE

5, Institutional Area

Nelson Mandela Road, Vasant Kunj

New Delhi-110070

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge; that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on this 26 day of November, 2020.


DEPONENT

VIPUL MUDGAL

Director, COMMON CAUSE

5, Institutional Area

Nelson Mandela Road, Vasant Kunj

New Delhi-110070

F.No. A. 12026/10/2018-Ad.I
Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated the 19th November, 2018

OFFICE ORDER NO. 258/2018

The President of India is pleased to appoint Shri Sanjay Kumar Mishra, IRS(IT:84006), Principal Special Director, Directorate of Enforcement as Director of Enforcement in the Enforcement Directorate for a period of two years from the date of assumption of charge of the post or until further orders, whichever is earlier.


(Rajinder Kumar)

Under Secretary to the Government of India

Copy:

1. Shri Sanjay Kumar Mishra, Principal Special Director, Enforcement Directorate, New Delhi.
2. Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
3. Principal Secretary to the Prime Minister, South Block, New Delhi.
4. Central Vigilance Commissioner, Central Vigilance Commission, Satarkta Bhawan, Block A, GPO Complex, INA, New Delhi-110023.
5. Shri S.Basu, Under Secretary, Secretariat of the Appointments Committee of the Cabinet, DoP&T w.r.t. Department of Personnel and Training's communication No. 18/42/2018-EO(SM.II) dated 17.11.2018.
6. PS to FM/PS to MOSF(R)/PPS to Finance Secretary / Chairman, CBIC/ Chairman, CBDT /Members, CBIC/Members, CBDT/ SS(R) / JS(R)/ FA(F)/ Dir(HQ)/ Dir(NC))/ DS(Admn)/ DS(Pers.)/US(AD.IA&B)/ US(ES)/ US(Ad.ED)
7. Deputy Director(Admn), Directorate of Enforcement, Lok Nayak Bhawan, Khan Market, New Delhi -110003.
8. All Zonal Offices of the Directorate of Enforcement.
9. NIC, Department of Revenue for updating the official web-site.
10. Office Order Folder/Spare Copies-----10

TRUE COPY



F.No. A. 12026/10/2018-Ad.I
 Government of India
 Ministry of Finance
 Department of Revenue

New Delhi, dated the 13th November, 2020

OFFICE ORDER

The President of India is pleased to approve the modification in the earlier order dated 19th November, 2018 appointing Shri Sanjay Kumar Mishra, IRS(IT:84006), as Director of Enforcement in the Enforcement Directorate as under:

Earlier Order:

"The President of India is pleased to appoint Shri Sanjay Kumar Mishra, IRS(IT:84006), Principal Special Director, Directorate of Enforcement as Director of Enforcement in the Enforcement Directorate for a period of two years from the date of assumption of charge of the post or until further orders, whichever is earlier."

To be modified as:

"The President of India is pleased to appoint Shri Sanjay Kumar Mishra, IRS(IT:84006), Principal Special Director, Directorate of Enforcement as Director of Enforcement in the Enforcement Directorate for a period of three years from the date of assumption of charge of the post or until further orders, whichever is earlier."



(Arvind Saran)
 Director

Copy:

1. Shri Shri Sanjay Kumar Mishra, Directorate of Enforcement, New Delhi.
2. Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
3. Principal Secretary to the Prime Minister, South Block, New Delhi.
4. Central Vigilance Commissioner, Central Vigilance Commission, Satarkta Bhawan, Block A, GPO Complex, INA, New Delhi-110023.
5. **Shri Amit Shrivastava, Under Secretary, Secretariat of the Appointments Committee of the Cabinet, DoP&T w.r.t. Department of Personnel and Training's communication No. 18/42/2018-EO(SM.II) dated 13.11.2020.**
6. PS to FM/PS to MOSF(R)/PPS to Finance Secretary / Chairman, CBIC/ Chairman, CBDT /Members, CBIC/Members, CBDT/ AS(R) / JS(R)/ FA(F)/ Dir(HQ)/ Dir(NC))/ DS(Pers. & Vig.)/US(AD.IA&B)/ US(ES)/ US(Ad.ED)
7. Deputy Director (Admn), Directorate of Enforcement, Lok Nayak Bhawan, Khan Market, New Delhi -110003.
8. All Zonal Offices of the Directorate of Enforcement.
9. NIC, Department of Revenue for updating the official web-site.
10. Office Order Folder/Spare Copies-----10

TRUE COPY

Prashant Bhushan

<https://indianexpress.com/article/cities/mumbai/govt-extends-mishras-term-as-ed-director-7051879/>

Govt extends SK Mishra's term as ED director

The modified appointment order of Mishra, 60, stated: "The President of India is pleased to approve the modification in the earlier order dated November 19, 2018, appointing Shri Sanjay Kumar Mishra as director of enforcement in the Enforcement Directorate."

Written by [Khushboo Narayan](#) | Mumbai |

Updated: November 16, 2020 12:32:28 pm

The President has modified the 2018 appointment order of IRS officer S K Mishra to ensure that he gets another year as the director of Enforcement Directorate (ED) until November 2020.

Mishra's two-year fixed term as ED director was to end on November 18.

The modified appointment order of Mishra, 60, stated: "The President of India is pleased to approve the modification in the earlier order dated November 19, 2018, appointing Shri Sanjay Kumar Mishra as director of enforcement in the Enforcement Directorate."

It said that his appointment will be for a period of three years instead of two, from the date of assumption of charge of the post, or until further orders, whichever is earlier.

The modification of Mishra's appointment order was done on the basis of Solicitor General's legal opinion, as the CVC Act is silent on the issue of extension for the post of ED director, sources said.

This is the first that an ED director will serve a three-year term instead of two years.

The appointment of director at the ED is governed by Section 25 of CVC Act, 2003. As per the law, no person below the rank of Additional Secretary to the government is eligible for appointment as the director, and the person appointed has a fixed term of not less than two years.

The CVC committee met on November 12 to recommend the modification to Mishra's appointment.

Sources said the government's decision to modify Mishra's 2018 appointment order, instead of issuing an extension or reappointment order, will help it avoid legal challenge. Mishra turned 60 on May 20, the retirement age for government officials.

The government was also considering the ordinance route for amending the CVC Act but did not opt for it because it could have led to problems in Parliament later, sources said.

As the ED director, Mishra has been overseeing a number of sensitive cases, including Augusta Westland, Sterling Biotech, case of Congress leader and former Karnataka minister D K Shivakumar, Yes Bank, and the case of Deepak Kochhar, husband of former ICICI Bank chief Chanda Kochhar.

TRUE COPY

Prafulla Kumar Mishra

ITEM NO.1

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).310/1996

PRAKASH SINGH & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

I.A.No.25307/2018 - Clarification/direction
 I.A.No.130514/2017 -Clarification/direction
 I.A.No.47/2015 - Exemption from filing O.t.
 I.A.No.46/2015 - Intervention application
 I.A.No.60411/2017 - Permission to appear and argue in person
 WITH
 CONMT.PET.(C) No.92/2007 In W.P.(C) No.310/1996 (PIL-W)
 CONMT.PET.(C) No.240/2007 In W.P.(C) No.310/1996 (PIL-W)
 W.P.(C) No.417/2010 (PIL-W)
 W.P.(C)No.42/2011({PIL-W)
 W.P.(C) No.317/2013 (PIL-W)
 (FOR ON IA 80193/2013
 FOR ON IA 21241/2014)
 W.P.(C) No.286/2013 (PIL-W)
 W.P.(C) No.335/2013 (PIL-W)
 CONMT.PET.(C) No.235/2014 In W.P.(C) No. 310/1996 (PIL-W)
 (and FOR PERMISSION TO APPEAR AND ARGUE IN PERSON ON IA 2/2015
 FOR ON IA 3/2015 FOR ON IA 4/2015 FOR ON IA 5/2016
 FOR PERMISSION TO APPEAR AND ARGUE IN PERSON ON IA 6/2016)
 CONMT.PET.(C) No.177/2015 In W.P.(C) No.310/1996 (PIL-W)
 T.C.(C) No.75/2015 (XVI-A)
 T.C.(C) No.76/2015 (XVI-A)
 CONMT.PET.(C) No.1037/2018 in W.P.(C) No.310/1996 (PIL-W)
 (FOR ADMISSION and IA No.57958/2018-EXEMPTION FROM FILING O.T.
 [TO BE TAKEN UP ALONGWITH ITEM NO. 1 I.E. W.P.(C)NO.310/1996])

Date : 03-07-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
 HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

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 Mr. Shakti Vardhan, Adv.
 Mr. Amiy Shukla, Adv.

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Mr. Ambhoj Kumar Sinha, AOR

Dr. Kailash Chand, AOR

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 Mr. Manish Tiwari, Adv.
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 (For UOI)

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Ms.Monika, Adv.

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Mr.S.Manuraj, Adv.

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Mr.Manish Kumar, Adv.

Mr. Ashok Kumar Singh, AOR

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Mr.Naman Kamboj, Adv.

Mr. Shuvodeep Roy, AOR
Mr.Rituraj Biswas, Adv.

Mr.Suhaan Mukerji, Adv.
Ms.Astha Sharma, Adv.
Mr.Harsh Hiroo Gursahani, Adv.
Mr.Amit Verma, Adv.
Mr.Vishal Prasad, Adv.
For M/S. Plr Chambers And Co., AOR

Mr.Guntur Prabhakar, Adv.
Ms.Prerna Singh, Adv.

Mr.Leishangthem Roshmani Kh., Adv.
Ms.Haibam Babina, Adv.

Ms.Prachi Mishra, Adv.
Mr.Arjun Garg, Adv.
Ms.Pragya Garg, Adv.

UPON hearing the counsel the Court made the following
O R D E R

I.A.No.25307 of 2018

Heard Mr.K.K.Venugopal, learned Attorney General for Union of India along with Mr.Maninder Singh, learned Additional Solicitor General, Mr.Prashant Bhushan, learned counsel for the petitioner and Mr.Gopal Sankaranarayanan, learned counsel for the intervenor.

This is an application for modification of the judgment in Prakash Singh and others vs. Union of India & others, (2006) 8 SCC 1. In the said judgment the Court has prescribed a minimum tenure for Director General of Police. Direction No.2 given in the said judgment, which is relevant for the present purpose, reads thus:

“(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.”

It is submitted by Mr.K.K.Venugopal, learned Attorney General, that out of 29 States, only 5 States, namely, the States of Karnataka, Tamil Nadu, Telangana, Andhra Pradesh and Rajasthan have approached the Union Public Service Commission for

empanelment. The other States have not followed the direction. It is further urged by him that some of the States are adopting a method of appointing acting Director Generals of Police whereas such a concept is not perceptible from an analysis of the decision in Prakash Singh's case(supra). We have also been apprised by Mr.Venugopal that some Director Generals of Police are initially appointed on acting basis and thereafter, they are made permanent just before the date of their superannuation as a consequence of which they continue till the age of 62 years.

Mr.Prashant Bhushan, learned counsel appearing for the petitioner would contend that the whole approach of the States is absolutely unacceptable. He further submits that this Court has directed that the Director General of Police will continue for at least two years irrespective of the date of superannuation.

Mr.Gopal Sankaranarayanan, learned counsel for the intervenor would submit that the Union Public Service Commission should act as per the directions of this Court and it is the duty of the Union Public Service Commission and the States to see that the candidates who come within the zone of consideration have two years to go so that there will be a fair competition.

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

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

(b) The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in Prakash Singh's case(supra) and intimate to the States;

(c) The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

(d) None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh's case(supra);

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

(f) Our direction No.(c) should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst

the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.

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

The present directions shall be followed scrupulously by the Union of India and all the States/Union Territories. If any State Government/Union Territory has a grievance with regard to these directions, liberty is granted to them to approach this Court for modification of the instant order.

I.A.stands disposed of accordingly.

Rest of the matters

List after two weeks.

(Chetan Kumar)
AR-cum-PS

(H.S.Parasher)
Assistant Registrar

TRUE COPY

Prashant Bhusan

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****I.A. NO.24616 OF 2019****IN****WRIT PETITION (CIVIL) NO.310 OF 1996****PRAKASH SINGH & ORS.****...PETITIONER(S)/
APPLICANT(S)****VERSUS****UNION OF INDIA & ORS.****... RESPONDENT(S)****WITH****I.A.NO. 115064/2018, I.A.NO. 20735/2019,
I.A.NO.11484/2019****JUDGMENT****RANJAN GOGOI, CJI****I.A. NO.24616 OF 2019**

1. On an earlier occasion, this Court had the occasion to deal with another application for clarification of this Court's order dated 3rd July, 2018 [i.e. I.A. No.144172 of 2018] though in a different context. While passing the order on the said I.A. on 16.1.2019, this Court referring to the principles underlying the judgment of this Court in **Prakash Singh & Ors.** vs.

Union of India & Ors.¹ had specifically noticed the relevant directions issued under Article 142 of the Constitution of India, which are in the following terms:

“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.”

2. Thereafter this Court took note of the fact that different States have enacted their respective Police Acts and/or have carried out further amendments in their

¹ (2006) 8 SCC 1

respective Police Acts. However, all such amendments did not wholly follow the dictum laid down by this court in **Prakash Singh** (supra). This had led to filing of writ petition (i.e. Writ Petition (Civil) No.286 of 2013 challenging the validity of the provisions of Police Acts enacted by different States.

3. Primary ground of challenge in Writ Petition (Civil) No.286 of 2013 is that the enactments are not in tune or rather negate the directions of this Court in **Prakash Singh** (supra).

4. The present application (I.A. No.24616 of 2019) has been filed by the applicants/petitioners for adequate clarification of the directions contained in the order dated 3rd July, 2018, (passed in I.A. No.25307 of 2018 in Writ Petition No.310 of 1996) which are extracted below. Specifically, the directions in clauses (e) and (f) have been argued to be necessary to be clarified by this Court.

“(a) All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of

retirement of the incumbent on the post of Director General of Police;

(b) The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in Prakash Singh's case(supra) and intimate to the States;

(c) The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

(d) None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh's case(supra);

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

(f) Our direction No.(c) should be considered by the Union Public Service

Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.

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

[emphasis supplied]

5. The grievance raised by the applicants/petitions is two-fold.

To do away with the practice of States appointing the Director General of Police on the last date of the normal tenure of an incumbent “so as to ensure that such incumbents get extended term of two years in view of the directions of this Court contained in **Prakash Singh** (supra)” clarifications were issued by this court by order dated 3rd July, 2018 in paragraph (e) and (f), quoted above. The said directions do not seem to have ended the controversy inasmuch as it is now the grievance of the applicants/petitioners that the Union Public Service Commission while empanelling officers for consideration for

appointment to the post of Director General of Police is considering the minimum residual tenure required to be taken into account as two years. In the process, according to the applicant, many suitable and eligible officers are being left out.

6. Having read and considered the decision of this court in **Prakash Singh** (supra) we are of the view that what was emphasized in **Prakash Singh** (supra) is a minimum tenure of two years for an incumbent once he is appointed as the Director General of Police. The direction issued by this Court neither contemplated the appointment of a Director General of Police on the eve of his retirement nor the practice now adopted by the Union Public Service Commission in making the empanelment, i.e. empanelling officers who have at least two years of tenure.

7. Neither of the aforesaid practice, in our considered view, can further the directions of this Court in **Prakash Singh** (supra) or give impetus to what this Court had in mind in issuing the directions in **Prakash Singh** (supra), namely, that the appointment of a Director General of Police in a State

should be purely on the basis of merit and to insulate the said office from all kinds of influences and pressures, once appointed the incumbent should get a minimum tenure of two years of service irrespective of his date of superannuation.

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

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

10. We, therefore, clarify the order of this Court dated 3rd July, 2018 passed in I.A. No.25307 of 2018 in Writ Petition No.310 of 1996 to mean that recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers who have a minimum residual tenure of six months i.e. officers who have at least six months of service prior to the retirement.

11. The above direction, naturally, will hold the field until the validity of the Police Acts in force which provides to

the contrary are examined and dealt with by this Court in Writ Petition (Civil) No.286 of 2013.

12. All the Interlocutory Applications are disposed of in terms of the above.

....., CJI
[**RANJAN GOGOI**]

....., J
[**L. NAGESWARA RAO**]

....., J
[**SANJIV KHANNA**]

NEW DELHI
MARCH 13, 2019

TRUE COPY

Prashant Bhasin

<https://thewire.in/government/enforcement-directorate-sanjay-mishra-extension>

As ED Chief Gets One-Year Extension, Here's a List of Cases He's Probing Against Opposition Leaders

In recent times, the number of ED cases against opposition leaders have piled up unprecedentedly.

15/Nov/2020

New Delhi: Enforcement Directorate (ED) chief Sanjay Kumar Mishra, who is overseeing multiple cases of alleged money laundering against opposition leaders, received a one-year extension days ahead of the end of his two-year fixed tenure. On Saturday, the finance ministry modified its order dated November 19, 2018, through which the 1984-batch Indian Revenue Service officer was appointed as ED director, to extend his tenure with the approval of the president of India. With this exceptional decision by the Union government, Mishra's tenure will now be for a period of three years.

The ED enforces two Central laws – the Prevention of Money Laundering Act (PMLA) and the Foreign Exchange Management Act (FEMA). The agency has been pursuing money-laundering probes into a range of high-profile bank fraud cases registered by the Central Bureau of Investigation (CBI), and cases related to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act. It has also carried attachment and seizure of properties in alleged terror-funding cases linked to FIRs filed by the National Investigation Agency.

Mishra had taken over from the IPS officer Karnal Singh, who was the first ED director to have been granted a two-year fixed tenure in February

2017 following a Supreme Court ruling on a PIL. Before his appointment in the ED, Mishra was posted as the chief commissioner of the Income Tax Department in Delhi. He was empanelled as an additional secretary in the Central government, following which he became eligible for the position of ED chief.

The Union government's decision to extend Mishra's term will likely come under scrutiny amidst allegations that Central investigation agencies like the CBI, NIA and ED are increasingly being used to specifically target opposition leaders. In recent times, the number of ED cases against opposition leaders have piled up unprecedentedly, and critics of the government say that since the CBI itself has to follow a number of stipulated, long-drawn investigation procedures, the ED is being employed by the Union government overtly for political gains.

Here is a list of cases which the ED is currently probing against opposition leaders under the stewardship of Mishra.

1. One of the most high-profile cases under the ED is the alleged Rs 2,500 crore loan fraud in the Maharashtra State Cooperative Bank (MSCB). The case, which was previously being probed by the Economic Offence Wing (EOW), is based on a Mumbai police FIR registered in August 2019 on the directions of the Bombay high court.

The agency has sent summons to National Congress Party chief Sharad Pawar with regard to allegations against bank director Sharad Pawar's nephew and former Maharashtra deputy chief minister Ajit Pawar, and 70 former functionaries of the bank. The NCP chief had alleged that the Union government specifically targeted him to contain his political influence ahead of the Maharashtra assembly elections last year.

2. The ED is also investigating the role of former Haryana chief minister and Congress leader Bhupinder Singh Hooda and senior Congress leader Motilal Vora over alleged irregularities in land allotments in Panchkula to Associated Journals Limited owned by Congress president Sonia Gandhi and Rahul Gandhi. This case also fell in the ED's lap months ahead of last year's Haryana assembly elections.

3. Similarly, around three months before the 2017 Uttar Pradesh assembly polls, the ED started investigating deposits of Rs 104 crore in a bank account linked to the Bahujan Samaj Party and around Rs 1.5 crore in the account of BSP supremo Mayawati's brother Anand Kumar. In January 2019, months ahead of the last parliamentary polls, the ED raided seven offices in UP in the alleged Rs 1,400 crore Dalit memorials scam during Mayawati's tenure as the state's chief minister.

4. Around the same time, the ED also registered a money-laundering case against former UP chief minister and Samajwadi Party chief Akhilesh Yadav in an illegal mining case.

5. One of the most hotshot cases the ED is probing is the INX media case, relating to foreign exchange violations under FEMA. The CBI had arrested former finance minister P.Chidambaram in this case. Chidambaram's son Karti Chidambaram is also an accused in the case. "The INX scam was detected by the ED in 2016 while it was investigating a similar approval given to the Aircel-Maxis deal in 2006, when Chidambaram was finance minister," [India Today reported](#).

6. The ED has also been going after the Karnataka Congress chief D.K.Shivkumar on alleged money-laundering charges. The ED arrested Shivkumar, about two weeks after the CBI arrested Chidambaram, in September 2019, following income tax department raids at his house, and

alleged recovery of unaccounted wealth in his house. Both Chidambaram and Shivkumar were lodged in Tihar Jail, New Delhi.

Chidambaram's arrest was touted as Union home minister Amit Shah's apparent revenge as the former was the Union home minister when Shah was arrested in July 2010 in the Sohrabuddin Sheikh fake encounter case. Shivkumar has emerged as a dark horse in reviving the fortunes of the Karnataka Congress, and is being seen as a potential chief ministerial candidate for the grand-old party.

7. Priyanka Gandhi's husband Robert Vadra is also under the lens of the ED for alleged irregularities in a number of land deals. The agency has raided Vadra's Skylight Hospitality at least eight times, and has attached his assets.

8. While Dravida Munnetra Kazhagam (DMK) leaders A. Raja and Kanimozhi have been probed previously by the ED in the 2G scam cases, the agency is currently pursuing cases of money laundering, including the Aircel-Maxis case, in which the Tamil Nadu-based opposition party's Dayanithi and Kalanithi Maran are accused.

9. Similarly, the ED is also pursuing cases against Y.S. Chowdary and Narayan Rane. While probing, ED attached Chowdary's assets worth Rs 316 crore in April 2019 in a bank fraud case. Two months later, the Telugu Desam Party leader switched sides to join the BJP.

Former Maharashtra chief minister from the Congress Rane faced money-laundering charges when he had quit the Congress and launched his Maharashtra Swabhiman Paksha. However, in October 2019, he merged his party with the BJP. Since then, there is no information available on the progress of the cases against him.

10. In 2019, senior Congress leader Ahmed Patel, known to be a close aide of Sonia Gandhi's, also faced ED's heat. The agency probed Patel's son and son-in-law in the Sterling Biotech money-laundering case.

11. Similarly, in August 2019, ED also arrested then Madhya Pradesh chief minister Kamal Nath's nephew Ratul Puri in a multi-crore bank loan fraud case. Puri is also being investigated in the AgustaWestland VVIP chopper scam.

12. YSR Congress leader and current Andhra Pradesh chief minister Jagan Mohan Reddy has also been facing ED's scrutiny in a range of money laundering cases and alleged land scams. His recent friendly gestures towards the Centre are being seen by the opposition as Reddy's attempt to curry favour with the Narendra Modi government.

13. Jammu and Kashmir National Conference veteran leader Farooq Abdullah has also been grilled over his alleged role in the multi-crore J&K Cricket Association scam.

14. Rajasthan chief minister Ashok Gehlot and his former deputy Sachin Pilot were also named by the ED over around Rs 24 crore losses in one Rajasthan ambulance scheme case.

15. Opposition leaders like Raj Thackeray, Om Prakash Chautala (who is currently lodged in jail in another case), Naveen Jindal, Lalu Prasad Yadav, his son Tejashwi Yadav and daughter Misa Bharati, and many others are also being probed by the ED in different cases.

§

Opposition leaders have alleged that the ED has cherry-picked its targets on the directions of the Union government, and that it has not been functioning autonomously. They have also said that the moment some of

the tainted opposition leaders ingratiate themselves with BJP, the ED appears to lose interest in cases against them.

Many such leaders have figured prominently in the opposition's claims of partisanship. The most prominent examples given by opposition leaders are of Mukul Roy, who switched to the BJP from the Trinamool Congress (TMC), and Assam's Himanta Biswa Sarma, who crossed over from the Congress. Both were named in the multi-crore Saradha chit fund scam but the ED has mostly ignored them while probing these cases. Bellary's infamous Reddy Brothers and their alleged role in mining scams also appears to be similarly on the back-burner.

The ED, under Mishra, has also had several run-ins with international non-governmental organisations like Amnesty International. While probing Amnesty's functioning in India – which NGOs have alleged in a part of a “political witch-hunt” against rights advocacy organisations – the ED conducted a probe against Amnesty India International's alleged FEMA violations but could not find anything incriminating at the end. It has also probed AAP leader Tahir Hussain for alleged money-laundering, but, curiously, only after he was arrested in a Delhi riots case. Similarly, it started probing the funds received by the Tablighi Jamaat after its conference shot to the limelight in the initial days of coronavirus outbreak.

Commentators have said recently that the ED has surpassed the CBI as the primary investigation agency over the last few years. It is handling the most sensitive, high-profile cases – those which constantly get media attention. Mishra, who got an extension on Saturday, is credited the most for propelling the ED's functioning to the national limelight.

“Much of the ED's transformation has taken place under director S.K. Mishra, who took charge in October 2018. An unassuming officer from the

Indian Revenue Service, Mishra prefers to keep a low profile. Even a photograph of the director is not available on the ED website. Mishra works six days a week out of the ED's modest headquarters in Lok Nayak Bhavan near Khan Market in Delhi. He oversees an organisation which has a working strength of 1,273 officers against a sanctioned strength of 2,066 officers. Only about 400 of them are investigators," The Week reported last year.

This transition from a small enforcement agency to one of the most significant institutions under the leadership of Mishra has got frenetic media attention. However, much of the opposition's claims of selective targeting against it has also emerged in the light of its really poor conviction rate.

"...for all its powers and show of strength, the agency has a rather poor record in terms of taking cases to the logical conclusion. Of around 2,400 cases that it has registered under the PMLA since 2005, only eight have ended in conviction. Its investigation too has remained tardy, with prosecution complaints having been filed in only 688 cases till June 2019," the Indian Express reported in September 2019. A detailed examination of the ED's conviction rate was also done by *The Wire*.

TRUE COPY

Rashant Bhushan

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION(C)No.757 of 2016

UDAY BABU KHALWADEKAR

.....PETITIONER

VERSUS

UNION OF INDIA AND ORS.

.....RESPONDENTS

O R D E R

1. We have heard learned counsel for the rival parties.
2. Mr.Mukul Rohatgi, learned Attorney General representing the Union of India states, that the appointment of Shri Karnail Singh, IPS, to the post of Director, Enforcement, has been made vide order dated 27.10.2016, in compliance of and in consonance with the Fundamental Rule 56.
3. Based on the above Rule, it is submitted, that the appointment of Shri Karnail Singh, to the post of Director, Enforcement, could have been made, only till the date of his superannuation in the Indian Police Service.
4. The submission advanced at the hands of the learned

Attorney General is vehemently contested, by the learned counsel appearing on behalf of the petitioner. In this behalf, reliance has been placed on Section 25 of the Central Vigilance Commission Act, 2003 (hereinafter referred to as 'the Act'), which is extracted hereunder:

"25. Appointments, etc., of officers of Directorate of Enforcement.-Notwithstanding anything contained in the Foreign Exchange Management Act, 1999(42 of 1999) or any other law for the time being in force,-

(a) The Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of-

- | | | | |
|-------|-----|-----|-----|
| (i) | xxx | xxx | xxx |
| (ii) | xxx | xxx | xxx |
| (iii) | xxx | xxx | xxx |
| (iv) | xxx | xxx | xxx |
| (v) | xxx | xxx | xxx |

(b) While making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;

(c) No person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(d) A Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(e) A Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(f) The Committee referred to in clause (a) shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of

Enforcement;

(g) On receipt of the recommendation under clause (f), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation."

(Emphasis is ours)

A perusal of Clause(d) of Section 25 reveals, that the appointment of the Director, Enforcement could not be for a period less than two years from the date on which an incumbent assumes his office.

5. We are of the considered view, that a statutory rule can never override a legislative enactment, and as such, the date of superannuation would have no consequence whatsoever with reference to Clause (d), which is explicit and clear. Additionally, learned counsel are fully justified in pointing out, that Section 25, extracted hereinabove, postulates, that the aforesaid provision would have an overriding effect above "...any other law for the time being in force...". The aforesaid mandate contained in Section 25 of the Act, leaves no room for any doubt, that even if there had been a legislative enactment to the contrary, the instant provision, mandating a period of not less than 2 years, from the date on which the incumbent assumes office, could not have been varied.

6. In view of the above, the instant petition is disposed of with a direction to the respondent - Union of India to issue a fresh order of appointment, in consonance with, and in compliance of Section 25(d) of the Act, within one week from today. The selected Director, Enforcement shall be issued an order of

appointment, allowing him to hold his office for a period of two years, from the date on which he assumes office.

.....CJI.
(JAGDISH SINGH KHEHAR)

.....J.
(N.V.RAMANA)

NEW DELHI;
JANUARY 30, 2017.

ITEM NO.9

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s).757/2016

UDAY BABU KHALWADEKAR

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

Date : 30/01/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Mr. Farrukh Rasheed, Adv.
 Mr. Nizam Pasha, Adv.
 Mr. Rajesh Inamdar, Adv.
 Mr. Javedur Rahman, Adv.

For Respondent(s) Mr. Mukul Rohatgi, AG
 Mrs. V. Mohana, Sr. Adv.
 Ms. Madhavi Divan, Adv.
 Ms. Nidhi Khanna, Adv.
 Mr. Saurab Kirpal, Adv.
 Mr. M. K. Maroria, Adv.

Mr. B. Krishna Prasad, Adv.

Upon hearing the counsel the Court made the following
O R D E R

The instant petition is disposed of with a direction to the respondent - Union of India to issue a fresh order of appointment, in consonance with, and in compliance of Section 25(d) of the Act, within one week from today. The selected Director, Enforcement shall be issued an order of appointment, allowing him to hold his office for a period of two years, from the date on which he assumes office.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

TRUE COPY

Prashant Bhasin

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. _____ OF 2020

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

COMMON CAUSE

...PETITIONER / APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

APPLICATION FOR INTERIM DIRECTIONS

To,

The Hon'ble Chief Justice of India and His Hon'ble Companion Justices of the
Hon'ble Supreme Court of India.

The humble application of the
Applicant above-named;

MOST RESPECTFULLY SHOWETH: -

1. That the Petitioner/Applicant has filed the accompanying writ petition in public interest under Article 32 of the Constitution of India for the enforcement of fundamental rights of the citizens as enshrined under Articles 14, 19 and 21 of the Constitution of India seeking an appropriate writ, order or direction for quashing the impugned Office Order, dated 13.11.2020, issued by Respondent No.1 retrospectively amending the tenure of Respondent No. 2 as Director, Enforcement Directorate and a direction to the Respondent No.1 to appoint a Director, Enforcement Directorate in a transparent manner and

strictly in accordance with the mandate of Section 25 of the Central Vigilance Commission Act, 2003.

2. That the Applicant herein is filing the instant application seeking issuance of interim direction to the Respondents herein to keep the operation of the impugned Office Order, dated 13.11.2020, in abeyance till the pendency of the instant writ petition. It is humbly submitted that the averments made by the Applicant in the accompanying writ petition may kindly be treated as part of the instant application, which are not repeated herein for the sake of brevity.
3. That the Respondent No.2 herein, Mr. Sanjay Kumar Mishra, vide order dated 19.11.2018, was appointed as Director of Enforcement in the Enforcement Directorate for a period of two years from the date of assumption of charge of the post or until further orders, whichever is earlier. The said two-year tenure has come to an end on 19.11.2020. Pertinently, the Respondent No. 2 has already reached the retirement age of 60 years in May 2020.
4. That vide the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1, it was published that the Hon'ble President of India has been pleased to approve the modification in the earlier order dated 19.11.2018, appointing the Respondent No.2, Mr. Sanjay Kumar Mishra, as Director of Enforcement in the Enforcement Directorate, to the effect that a period of '*two years*' written in the order dated 19.11.2018 has been modified to a period of '*three years*'. Thus, by virtue of the impugned Office Order, dated 13.11.2020, the appointment order dated 19.11.2018 has been modified with retrospective effect and the Respondent No.2 herein has been given an additional one year of service as Director of

Enforcement in the Enforcement Directorate. Further, as per the news reports the CVC committee had met on 12.11.2020 to recommend the modification to Respondent No.2's appointment.

5. It is submitted that the impugned Office Order, dated 13.11.2020, issued by the Respondent No.1 is in the teeth of Section 25 of the CVC Act as the said Section provides that a person has to be above the rank of Additional Secretary to the Government of India to be eligible for appointment as a Director of Enforcement. Thus, as the Respondent No.2 has already reached his retirement age in May 2020, therefore, after the end of Respondent No.2's two-year period on 19.11.2020, the Respondent No.2, by virtue of not holding any post above the rank of Additional Secretary, would have been ineligible for appointment as a Director of Enforcement again. However, the Respondent No.1 has employed a circuitous route in order to ensure that Respondent No.2 gets one more year as Director of Enforcement by way of retrospectively modifying the appointment order dated 19.11.2018 itself. Thus, what could not have been done directly under the Statute has been done indirectly by the Respondent No.1 herein [which is against the principle enunciated by this Hon'ble Court in *Jagir Singh vs Ranbir Singh And Anr.* [(1979) 1 SCC 560]]. It may be noted herein that there is neither any enabling provision in the CVC Act for extension of service of the Director of Enforcement nor any enabling provision which provides for such retrospective modification of appointment orders.
6. That it is clear from the judgment, dated 13.03.2019, passed by this Hon'ble Court in *Prakash Singh & Ors. V. Union of India & Ors.* [W.P.(C) No. 310/1996] that the purpose behind Section 25 (d) of the Act, in providing a minimum tenure of two years, is only to insulate

the Director of Enforcement from all kinds of influences and pressures. However, the said purpose gets defeated if on the verge of his two-year tenure and much after his retirement age, the Director of Enforcement is given a *de facto* extension in service by adoption of a circuitous route of modifying the initial appointment order itself.

7. It is submitted that Enforcement Directorate handles a large number of cases involving huge corruption, many of which are politically sensitive in nature and the Director of Enforcement has powers akin to that of the Director of CBI. Such illegalities in appointment of the Director of Enforcement will shake the confidence of citizens in the institution of Enforcement Directorate. Such an action will be totally against the laudable principles highlighting the need of impeccable integrity of persons holding high public offices and the consequent need for insulating the said offices from extraneous influences, as enshrined by this Hon'ble Court in *Vineet Narain v. Union of India*, (1998) 1 SCC 226. It may be noted that vide the afore-mentioned judgment, dated 13.03.2019, this Hon'ble Court was pleased to ensure that no individual is appointed as a DGP at the fag end of his/her career. However, in the instant case, vide the impugned Office Order, dated 13.11.2020, the Respondent No.2 has been given a *de facto* extension as the Director of Enforcement after attainment of his retirement age, which is clearly impermissible under the CVC Act.
8. That in case the approval of CVC and the two VCs (who are part of the CVC Committee referred to in Section 25(a) of the CVC Act) had not been taken for retrospectively modifying the appointment order dated 19.11.2018, then the entire procedure would be liable to be set aside on this ground too.

9. In view of the afore-mentioned facts and circumstances, it is most respectfully submitted that interim direction may kindly be issued to the Respondents to keep the operation of the impugned Office Order, dated 13.11.2020, in abeyance till the pendency of the instant writ petition.

P R A Y E R

In the above circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) Direct the Respondents to keep the operation of the impugned Office Order, dated 13.11.2020, in abeyance till the pendency of the instant writ petition;
- (b) Pass such other or further order (s) as this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the Applicant.

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

FILED BY:

Prashant Bhushan

PRASHANT BHUSHAN

Counsel for the Petitioner / Applicant

Dated: 26.11..2020

New Delhi

SECTION: PIL (WRIT)**IN THE SUPREME COURT OF INDIA**

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

COMMON CAUSE

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

FILING INDEX

S. NO.	PARTICULARS	COPIES	C. FEE
1.	Writ Petition with Affidavit	1	520/-
2.	ANNEXURE P1 to P7	1	NIL
4.	I.A. for Interim Directions	1	100/-
3.	Vakalatnama	1	10/-

*Prashant Bhushan***(PRASHANT BHUSHAN)**

COUNSEL FOR THE PETITIONER

301, New Lawyers Chambers

Supreme Court of India

New Delhi- 110 001

E-mail ID: prashantbhush@gmail.com**CODE: 515**

New Delhi

Dated: 26.11.2020

DOL RAJ BHANDARI, REGD. CLERK, ID NO. 3745

MOB NO. 9868255076

VAKLATNAMA
IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. _____ OF 2020
PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

Common Cause

...Petitioner

Versus

Union of India & Ors.

...Respondents

I, Vipul Mudgal, S/o Shri Jai Kumar Mudgal, the Director of the Petitioner Society, duly authorized by the Appellant organisation to act on its behalf in the instant appeal, do hereby appoint and retain Mr. Prashant Bhushan, Advocate on Record of the Supreme Court, to act and appear for the Petitioner society in the above Petition and our behalf to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any degree or order passed there in, including proceeding in taxation and application for review, to file and obtain return of document and to deposit and receive money on may/our behalf in the said petition/appeal Reference and application, Review Petition and to represent me/us and to take all necessary steps on may /our behalf in the above matter, I. We agree to rectify all acts done by the aforesaid advocate on record in pursuance of this authority.

Dated 26 day of November, 2020

(Signed)

Accepted, certified and identified the client.

Prashant Bhushan

PRASHANT BHUSHAN
ADVOCATE-ON-RECORD

[Signature]

CLIENT
(Vipul Mudgal)
Director of the Petitioner Society
VIPUL MUDGAL
 Director, COMMON CAUSE
 5, Institutional Area
 Nelson Mandela Road, Vasant Kunj
 New Delhi-110070

MEMO OF APPEARANCE

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

Please enter my appearance on behalf of the Petitioner in the matter mentioned above:
 New Delhi dated this, the 26 day of November, 2020.

Yours faithfully,

Prashant Bhushan

(PRASHANT BHUSHAN)
 Advocate for the Petitioner
 CODE: 515

The address for service of the said Advocate on record is: -

- 301, New Lawyer Chambers, Supreme Court, New Delhi
- E-mail: prashantbhush@gmail.com
- Ph: 9811164068

CERTIFICATE OF REGISTRATION OF
SOCIETIES.

(ACT XXI OF 1860)

NO. S/ 11017 of 19 80.

I hereby certify that

"Common Cause"

has this day been registered

under the Societies Registration Act XXI of 1860.

Given under my hand at Delhi this

5th

day of

June

One Thousand Nine Hundred and

Eighty

Registration Fee of
Rs. 50/- paid.

REGISTRAR OF SOCIETIES:
DELHI ADMINISTRATION, DELHI.

Signature