

**IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL JURISDICTION**

Writ Petition (Civil) No.310 of 1996

Prakash Singh & Ors.

...Petitioners

Versus

Union of India

...Respondent

**AND WITH
Contempt Petition (C) No 13 of 2023 In WP (C) No 310 of 1996**

O R D E R

1 By a notification dated 6 January 2023, the Government of Nagaland in its Home Department (Police Establishment Branch) appointed Shri Rupin Sharma, IPS (NL:92) to hold charge as Director General of Police¹, Nagaland with effect from 7 January 2023.

2 An Interlocutory application has been filed by the State of Nagaland, IA No 205019 of 2022, seeking a direction to the Union Public Service Commission² to strictly comply with the mandate in ***Prakash Singh v Union of India***³ and to include the name of Shri A Sunil Acharya in the panel of eligible officers.

1 "DGP"
2 "UPSC"
3 (2006) 8 SCC 1

3 During the course of the deliberations before the UPSC, it has emerged that Shri A Sunil Acharya, an officer borne on the Nagaland cadre, who is presently on deputation to the Union Government had not consented to being considered for appointment on the post of DGP in Nagaland.

4 In the order of this Court dated 9 January 2023, the Union Ministry of Home Affairs was called on to file an affidavit on (i) whether concurrence of an officer is necessary for empanelling the officer for appointment as DGP where the officer is on central deputation; (ii) if (i) is in the affirmative, the specific rule requiring such concurrence; and (iii) whether the services of Shri A Sunil Acharya are required due to the exigencies of service on central deputation or whether he can be empanelled for the post of DGP, Nagaland in view of the fact that a sufficient number of eligible officers are not available for empanellment.

5 The Union Ministry of Home Affairs has clarified the position, stating that (i) the consent of the officer is not required for the purpose of empanellment as DGP of the State; (ii) Mr A Sunil Acharya who is on central deputation is posted as Additional Secretary in the Cabinet Secretariat; and (iii) having regard to the nature of the posting, it would not be possible to relieve him for appointment as DGP, Nagaland.

6 The contention of the State of Nagaland, as urged before this Court by

Shri Balagopal, Advocate General is that the decision in **Prakash Singh** requires that the DGP of the State be selected by the State government from amongst the **three** senior-most officers of the department who have been empanelled for promotion to that rank by the UPSC on the basis of their length of service, 'very good record' and range of experience for heading the police force. Hence the Advocate General urges that the UPSC could not have recommended only one officer and that Shri A Sunil Acharya should have also been empanelled.

7 The UPSC has framed guidelines for preparation of the panel for appointment to the post of DGP in 2009. The guidelines *inter alia* stipulate that officers belonging to IPS of the concerned cadre not below the rank of Additional Director General (ADG) and who have completed at least 30 years of service as on the date of the occurrence of the vacancy for which the panel is prepared would fall within the zone of consideration. The eligibility criterion of 30 years' service is based on the Promotion Guidelines issued by Union Ministry of Home Affairs on 15 January 1999 in respect of IPS officers, in which it is stipulated that officers of ADG rank shall be eligible for promotion to the DG rank if they have put in 30 years of service.

8 Subsequently, on 22 May 2019, UPSC has stipulated that the empanellment committee will assess officers in pay matrix level 15 only in the

event that no officers in pay matrix level 16 or an insufficient number officers to prepare a panel of three officers exists.

9 On 15 November 2022, UPSC addressed a communication to the Ministry of Home Affairs indicating that it should be empowered to relax the eligibility criterion of 30 years' service to 25 years in the case of states with smaller sanctioned cadre strength such as Himachal Pradesh, Manipur, Nagaland, Uttarakhand, Tripura and Sikkim in case a sufficient number of eligible officers with the requisite qualifying service is not available to form a panel of three officers.

10 In its response dated 12 December 2022, the Union Ministry of Home Affairs has informed UPSC that MHA, being the cadre controlling authority of IPS officers, has no objection if UPSC relaxes the eligibility criterion of 30 years of service to 25 years in case a sufficient number of eligible officers with the requisite qualifying service are not available to form a panel of three officers. However, it has been stated that in view of the provisions of the IPS (Pay) Rules 2016 the post of DGP in pay matrix Level 17 should be filled up from officers from the Level 16 pay matrix and any deviation would require relaxation under the AIS (Conditions of Service - Residuary Matters) Rules 1960. Further, the response states that the latter rules (of 1960) mandate the prior approval of the Central Government in the Ministry of Home Affairs if UPSC includes an officer of

Level 15 pay matrix in the panel for DGPs and the State Government selects the officer of Level 15 pay matrix.

11 Undoubtedly, the direction in **Prakash Singh** provides that the State shall appoint an officer to the post of DGP from a list of three senior-most officers empanelled by the UPSC. The direction in **Prakash Singh** is that the DGP of the State shall be selected by the State government from amongst the three senior-most officers of the department who have been empanelled for promotion to that rank by the UPSC. This however does not imply that the State would be at liberty to completely bypass the requirements of the decision in the event that in a given case, less than three officers who fulfill the eligibility requirements are available for empanellment.

12 In the present case, evidently the State of Nagaland, had no objection to **two** officers being empanelled (instead of three), provided the list also included the name of Shri A Sunil Acharya, who is presently on central deputation. The consent of the officer would have no bearing on whether he should be empanelled, as clarified by MHA. However, the position before the Court is that in view of the nature of the officer's present assignment, he cannot be spared by the Union government for being empanelled for the post of DGP, Nagaland.

13 The contention of the State of Nagaland is that in view of the communications dated 15 November 2022 and 12 December 2022 of UPSC and

MHA, UPSC should relax the minimum 30 years' service eligibility requirement by considering officers within the cadre of the State of Nagaland who have less than 30 years' service.

14 Responding to the above submission, it has been urged on behalf of the UPSC by Mr Naresh Kaushik, counsel, that it would not be open to the State of Nagaland to insist that UPSC should grant such a relaxation. Moreover, it has been stated that UPSC is still in the process of considering whether to allow its guidelines to envisage such a relaxation in the future and even if UPSC were to relax the guidelines, this would apply prospectively. UPSC submits that, at the present time, since there is an officer who fulfills the eligibility requirements, there is no reason why his appointment should not take place.

15 As already noted above, Shri Rupin Sharma has already been appointed on 6 January 2023 to hold charge of the post of DGP, Nagaland. We are not inclined to issue a direction of this Court mandating that UPSC must relax the eligibility requirement from 30 years' service to 25 years. The Court cannot be unmindful of the fact that any mandate, under judicial directions, for relaxing the eligibility requirement from 30 years to 25 years would result in a situation where, despite an officer of the requisite qualification and eligibility being available, an officer who is junior as much as by five years could be appointed to the post of DGP. This would not be in the interests of the police service and

would open the door to arbitrary selections.

16 In the present case, the State has placed absolutely no objection in regard to the empanelled officer, namely, Shri Rupin Sharma. Whether relaxation should take place in future of the requirement of 30 years of qualifying service is a matter for the UPSC/MHA to determine. This is not a matter where the Court should by mandatory direction command that such a relaxation should be granted particularly where a duly qualified officer is available and has been empanelled by the UPSC.

17 We, therefore, direct that the State of Nagaland shall now pass consequential orders for the implementation of the above directions within a period of a week for the appointment of the officer who has been duly empanelled by the UPSC for the post of DGP, Nagaland.

18 The Interlocutory Application which has been filed by the State of Nagaland shall accordingly stand disposed of.

19 Pending applications, if any, stand disposed of.

Contempt Petition (C) No 13 of 2023 In WP (C) No 310 of 1996

1 In view of the order passed by this Court in IA No 205019 of 2022, it would not be expedient in the interest of justice to pursue the exercise of the

contempt jurisdiction any further.

2 The Contempt Petition is disposed of.

3 Pending applications, if any, stand disposed of.

Writ Petition (Civil) No 310 of 1996

1 List the Petition on 11 April 2023.

.....CJI
[Dr Dhananjaya Y Chandrachud]

.....J
[V Ramasubramanian]

.....J
[J B Pardiwala]

**New Delhi
January 23, 2023**

ITEM NO.7

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
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.310/1996

PRAKASH SINGH & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(With IA No.144787/2022 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 144785/2022 - INTERVENTION APPLICATION)

WITH CONMT.PET.(C) No.13/2023 in W.P.(C) No. 310/1996 (PIL-W)

Date : 23-01-2023 These matters were called on for hearing today.

CORAM :

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN
HON'BLE MR. JUSTICE J.B. PARDIWALA**

Mr. Raju Ramachandran, Sr. Adv. (A.C)

Ms. Archana Pathak Dave, Adv. (A.C)

**For Petitioner(s) Mr. Prashant Bhushan, AOR
 Mr. Rahul Gupta, Adv.**

**For Respondent(s) Ms. Kaveeta Wadia, Adv.
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 Mr. Ravinder Singh, Adv.
 Mr. Sristya Mohanty, Adv.
 Ms. Raveesha Gupta, Adv.
 Ms. Bantika Haryani, Adv.
 Mr. Sanjeev Kaushik, Adv.**

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Mr. Himanshu Chakravarty, Adv.
Ms. Muskan Surana, Adv.
Ms. Shruti Venugopal, Adv.

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Mr. Raju Ramchandran, Sr. Adv.
Ms. Archana Pathak Dave, Amicus Curiae

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Mr. Gopal Singh, AOR

Ms. Hemantika Wahi, AOR

Mr. T. Harish Kumar, AOR

Mr. T.V. George, AOR

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Mr. V.N. Raghupathy, AOR
Mr. Md. Apzal Ansari, Adv.

Mr. Rajeev Kumar Dubey, Adv.
Mr. Kamendra Mishra, AOR

Mr. Ranjan Mukherjee, AOR
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Mr. R. Bala, Sr. Adv.
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Mr. Chinmayee Chandra, Adv.

Mr. Padmesh Mishra, Adv.
Mr. Anandh Venkataramani, Adv.
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Ms. Sonali Jain, Adv.
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Mr. Kuldip Singh, AOR

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Mr. P.V. Dinesh, AOR

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Mr. Shailesh Madiyal, AOR

Mr. M. Shoeb Alam, AOR

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Mr. K.V. Girish Chowdary, Adv.
Mr. Naveen Sharma Bhardwaj, Adv.
Ms. Niti Richhariya, Adv.

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

- 1 IA No 205019 of 2022 is disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

Contempt Petition (C) No 13 of 2023 In WP (C) No 310 of 1996

- 1 The Contempt Petition is disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

Writ Petition (Civil) No 310 of 1996

- 1 List the Petition on 11 April 2023.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar

(Signed order is placed on the file)