

NATIONAL CAPITAL TERRITORY OF DELHI

National Capital territory of Delhi Compliance with Supreme Court Directives on Police Reform

The Government of the National Capital Territory (NCT) of Delhi has, according to CHRI's information, filed two affidavits before the Supreme Court in the *Prakash Singh* case.¹

The first affidavit, filed on 3rd January 2007 by the Chief Secretary of NCT Delhi, argues that implementation of many of the Supreme Court directives is in the jurisdiction of the Ministry of Home Affairs, Government of India and not the NCT Administration. This is supported by an affidavit filed on the same day by then Commissioner of Delhi Police Dr. K.K. Paul. The second affidavit, filed by the Chief Secretary on 30th March 2007, claims that the NCT is in compliance with directives 4 and 5 and will take further steps based on the outcome of a review petition filed in February 2007 by the Union of India and Union Territories.

In August 2007 all review petitions were dismissed by the Supreme Court. Despite the dismissal there is continued reluctance on behalf of both the NCT administration and the Union Government to take steps to implement most of the directives thus characterising Delhi as non compliant. Although there have been recent pronouncements by the Home Minister and the Union Home Ministry in the media stating that some of these directives are being implemented, these have yet to be substantiated with government orders, notifications or legislation.

1. State Security Commission

Directive 1

Constitute a binding State Security Commission to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, and (iii) evaluate the performance of the state police. In the composition of this Commission, governments have the option to choose from any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee.

Neither the NCT administration nor the Union Government has constituted a State Security Commission (SSC) for Delhi. A few weeks after the Chief Ministers' conference (18 August 2009), a news report from the national daily *The Times of India* stated that the Home Ministry has cleared a proposal to set up a State Security Commission in all Union Territories.² However, as of today's date, there is no official, public statement to this effect from the Ministry.

¹ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1

² The Times of India, "Delhi to get 29 new police stations, 6,400 more cops," 4th September 2009 <<http://timesofindia.indiatimes.com/news/city/delhi/Delhi-to-get-29-new-police-stations-6400-more-cops/articleshow/4960848.cms>>



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Creation of a State Security Commission

The NCT Government has in its January 2007 affidavit stated that it has *no powers* to make laws pertaining to Entry 2 of List II of the Seventh Schedule of the Constitution (police). As such, it could not implement this directive. The Union Government, in an affidavit filed in March 2008, argued that it would be more appropriate for there to be one State Security Commission (SSC) for all the Union Territories rather than separate bodies, in view of the small population of the Union Territories. As of date, neither the Union Government nor the NCT administration have taken any steps to create a State Security Commission or any similar body that will ensure that the government does not exercise unwarranted influence or pressure on the police as envisaged by the Supreme Court.

Conclusion

Though the NCT Government may rightly state that implementation of this directive is out of its jurisdiction, the Union Government has no such justification for its inaction. Its failure to establish an SSC long after the Supreme Court's dismissal of its review petition is indicative of its strong reluctance to implement this directive in letter and spirit. Therefore, Delhi is not compliant with this directive.

2. Selection and tenure of the DGP

Directive 2

Ensure that the Director General of Police is appointed through a merit based, transparent process with the involvement of the UPSC and enjoys a minimum tenure of two years.

The NCT claims in its affidavit dated March 2007 that its Commissioners of Police have, by and large, a tenure of two years. However, it has not elaborated on the selection or removal processes of the Commissioner. A news report from the national daily *The Times of India* stated that the Home Ministry has recently approved giving two year fixed tenure to key police functionaries of the rank of Inspector and above.³ The Home Ministry, however, has not issued any public announcement or notification to this effect. As of today's date, neither the NCT Government nor the Union Government have institutionalised tenure through legislation or government order.

Selection

³ The Times of India, "Delhi to get 29 new police stations, 6,400 more cops," 4th September 2009 <<http://timesofindia.indiatimes.com/news/city/delhi/Delhi-to-get-29-new-police-stations-6400-more-cops/articleshow/4960848.cms>>



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Both affidavits filed by the NCT Delhi Government are silent on the selection criteria for the post of Commissioner of Police set out by the Apex Court. The Union Government, in its review petition, prayed that the Supreme Court modify this directive by removing the UPSC from the selection process. At the same time, it has not taken any steps to ensure that empanelment of candidates for this post be carried out by any similar independent body. To ensure a modern, professional, efficient, and service minded police organisation, it is crucial that the head of the organisation is selected based on merit and experience.

Subsequent to the dismissal of the review petition no government order or legislation has been passed to implement the Apex Court's directive.

Tenure

The affidavit filed by the NCT Delhi Government in March 2007 states without referencing any source that "in the NCT of Delhi, tenures of Commissioners of Police have, by and large, been of two years."

The NCT Government does not support this assertion with any notifications, orders, rules or subordinate legislation. Neither does it support it with data about tenures held by Commissioners in the past. Whilst there is a possibility that Commissioners do generally hold two year terms there is nothing on paper that institutionalises this practice.

Thereafter the Union Government, in its March 2008 affidavit, states that it has issued an advisory to Union Territories, including Delhi on this matter. The advisory dated May 2007 merely states that "it is *advised* that...it *may be* ensured that the tenure of the police officers at key functional positions is kept, *as far as possible*, at a minimum of two years." The words "may be ensured" and "as far as possible" clearly reveal the non binding nature of the Union Government's advice, which can be ignored altogether. The very drafting of the advisory indicates that the intent of the Union Government to implement this directive in the Union Territories, including Delhi, is extremely weak.

Removal

Both affidavits filed by the NCT Delhi Government and the affidavit filed by the Union Government are all silent on the removal process for the Delhi Commissioner of Police. The Apex Court had elaborated on the grounds of removal in its judgment to ensure that the Chief of Police could not be removed by the government for political reasons and could thus carry out his duties without fear or favour.

Conclusion



Any steps that have taken by the Union Government with regard to providing a fixed two year tenure to the Delhi Commissioner of Police is mere window dressing. No action has been taken at all to bring the process for selecting and removing the Commissioner of Police in line with the Supreme Court judgment. In this regard, Delhi remains in gross non compliance with directive two in both letter and spirit.

3. Tenure for police officers on operational duties

Directive 3

Ensure that other police officers on operational duties (Superintendents of Police in-charge of a district, Station House Officers in-charge of a police station, IGP (zone) and DIG (range)) also have a minimum tenure of two years.

The NCT Government has through its affidavit dated March 2007 asserted that officers on operational duties have a stable tenure, but does not define what constitutes a “stable tenure”. A news report from the national daily *The Times of India* stated that the Home Ministry has recently approved giving two-year fixed tenure to key police functionaries of the rank of Inspector and above.⁴ The Home Ministry, however, has not issued any public announcement or notification to this effect. As of today's date, neither the NCT Government nor the Union Government have institutionalised tenure or grounds for removal of officers vis legislation or government order.

Tenure

As argued above with regard to tenure of the Commissioner of Police, neither the NCT Government nor the Union Government have institutionalized tenure for officers on operational duties. In its March 2007 affidavit, the NCT Government argued that “for officers of the ranks of IGs and others, there is a stable tenure,” without going into any specifics of what constitutes a “stable” tenure. No paper evidence in the form of government/departmental orders, rules or subordinate legislation have been annexed to support the claim. As argued earlier with respect to directive two, the Union Government has only the token step of issuing an advisory to all the Union Territories, including Delhi, stating that “it is *advised* that...it *may be* ensured that the tenure of the police officers at key functional positions is kept, *as far as possible*, at a minimum of two years.”

Removal

⁴ The Times of India, “Delhi to get 29 new police stations, 6,400 more cops,” 4th September 2009 <<http://timesofindia.indiatimes.com/news/city/delhi/Delhi-to-get-29-new-police-stations-6400-more-cops/articleshow/4960848.cms>>



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Both affidavits filed by the NCT Government and the affidavit filed by the Union Government are silent on the removal process for officers on operational duties. The Apex Court had elaborated on the grounds of removal in its judgment to ensure that these officers would not be vulnerable to unwarranted political interference and could thus carry out their duties without fear or favour.

Conclusion

No concrete steps have been taken by either the Union Government or the NCT administration to provide the security of a fixed two year tenure to officers on operational duties. In this regard, Delhi remains in gross non compliance with directive three in both letter and spirit.

4. Separation between Investigation and Law & Order

Directive 4

Separate the investigation and law and order functions of the police.

Separation (compliance)

In his January 2007 affidavit, then Commissioner of Delhi Police K.K. Paul stated that “the process for the separation from law & order duties is under progress and an Inspector Investigation has been posted in each of the Police Stations. Further, Sub Inspectors/Investigating Officers have also been earmarked for investigation who are normally not withdrawn for other routine duties.” This was reiterated by the NCT Government in its March 2007 affidavit, where it observed that “there already is a separation of law and order functions from investigation.”

Conclusion

The NCT Government has effected separation in every police station within its jurisdiction making it compliant with this directive.

5. Police Establishment Board

Directive 5

Set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. This Board will comprise the Director General of Police and four other senior officers of the police



department, and will be empowered to dispose of complaints from SPs and above regarding discipline and other matters.

As of date no Police Establishment Board (PEB) has been set up in NCT Delhi. However the day after the Chief Ministers' conference (18 August 2009), a news report from the national daily *The Indian Express* stated that the Home Minister has cleared a proposal to set up Police Establishment Boards in the Union Territories.⁵ Reportedly, the required legal vetting is currently underway, after which, the Boards may be in place by mid-September. However, as of today's date, there is no official, public statement to this effect from the Home Ministry. This article clearly highlights the absence of a PEB for Delhi and raises questions on the veracity of the earlier NCT affidavit.

Creation of a Police Establishment Board

In his January 2007 affidavit, then Commissioner K.K. Paul stated his objection to a PEB being constituted for Delhi, arguing that it would "only dilute and undermine the Commissioner's authority and hence his capacity to lead and command." The NCT Government, however, in its March 2007 affidavit, claimed that a PEB for the NCT has been set up with the Commissioner as Chairman and four Special Commissioners of Police as its members. This assertion is not supported by any government order or notification. Moreover, the affidavit does not specify the mandate or powers of the PEB. As such, one is unable to assess whether the Board that was purportedly constituted satisfies directive five in its totality.

Conclusion

Though the March 2007 NCT affidavit claims that a PEB has been set up, its failure to substantiate that assertion with an order or notification to that effect indicates a lack of transparency. The recent Indian Express article that claims that the PEB is still in the process of being set up by the Union Home Ministry clearly highlights that Delhi remains non compliant with this directive at the time of writing.

6. Police Complaints Authorities

Directive 6

Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt, rape in police custody, extortion, land grabbing and serious abuse. The Complaints Authorities are binding on criminal and disciplinary matters.

⁵ Indian Express, "To insulate police from netas, Govt to let Delhi show the way", 18 August 2009, <http://www.indianexpress.com/news/To-insulate-police-from-netas--Govt-to-let-Delhi-show-the-way/503353>



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The state level authority is to be chaired by a retired judge of the High Court or Supreme Court to be chosen by the state government out of a panel of names proposed by the Chief Justice. It must also have three to five other members (depending on the volume of complaints) selected by the state government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission. Members of the authority may include members of civil society, retired civil servants or police officers or officers from any other department.

The district level authority is to be chaired by a retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her. It must also have three to five members selected according to the same process as the members of the state level Police Complaints Authority.

A news report from the national daily *The Times of India* stated that the Home Ministry has recently decided to set up Police Complaints Authorities for all Union Territories.⁶ The Home Ministry, however, has not issued any public announcement or notification to this effect. As of today's date, neither the NCT Delhi administration nor the Union Government has constituted a Police Complaints Authority (PCA) for Delhi.

Creation of a Police Complaints Authority

In their affidavits, both then Commissioner K.K. Paul and the NCT Government submit that as there are already several authorities hearing complaints against Police Officers in Delhi, having a PCA as an additional institution would not serve much purpose. This argument is without merit. Contrary to existing complaints mechanisms, the PCA has the power to make binding recommendations on the state government. The PCA will also be a specialised body dealing with only police abuse while the other complaints mechanisms have a much wider mandate.

Conclusion

The failure of the Union Government and NCT Administration to take any steps towards establishment of a PCA for Delhi reveals its complete non compliance with this directive.

⁶ The Times of India, "Delhi to get 29 new police stations, 6,400 more cops," 4th September 2009 < <http://timesofindia.indiatimes.com/news/city/delhi/Delhi-to-get-29-new-police-stations-6400-more-cops/articleshow/4960848.cms>>



7. Recommendations

In light of the above analysis, the following should be considered:

1. To direct immediate compliance with directives 1, 2, 3, 5 and 6.
2. To direct the Union Government and NCT Government to report to the Monitoring Committee regarding compliance within 1 month's time; and
3. To issue a notice of contempt against the Union Government if it fails to comply with directives 1, 2, 3, 5 and 6 with respect to Delhi within one month's time.

New Delhi, 9 October 2009

Commonwealth Human Rights Initiative

