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

+ CONT.CAS(C) 224/2016 & CM APPL. 15444/2017

DELHI PROSECUTORS WELFARE ASSOCIATION (REGD)

..... Petitioner

Through: Mr.Puneet Mittal, Senior Advocate
with Mr.R.C.S. Bhadoria and
Mr.S.P.Nangia, Advocates.

versus

RAJIV MEHRISHI & ANR

..... Respondents

Through: Mr.Anuj Aggarwal, ASC and Mr.Atul
Goyal, Advocate for R-2.
Mr.Anil Soni, CGSC and Ms.Meera
Bhatia, Advocate for respondent/UOI.
Mr.Gaurav Kohli, Advocate for
Intervenor in Crl. M.A. 31524/2018.

+ W.P.(C) 1091/2013 & CM APPL. 14231/2015 & 9415/2014

GAURAV KUMAR BANSAL

..... Petitioner

Through:

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through: Mr.Viraj R. Datar and Mr.Nitish
Chaudhary, Advocates for
respondent/DHC.
Mr.Dev P. Bhardwaj, CGSC and
Ms.Meera Bhatia and Mr.Jatin Teotia,
Advocate for respondent/UOI.
Mr.Gautam Narayan, ASC for
GNCTD with Ms.Shivani Vij and
Mr.Dacchita Shahi, Advocates.

+ W.P.(CRL) 1549/2009 & CM APPL. 14366/2014, 18506/2013,
13869/2014 & 11196/2015

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr.Afzal Ahmed and
Mr.K.D.Paliwal, Advocates.

versus

STATE

..... Respondent

Through: Mr.Rajeev K. Virmani, Senior
Advocate (Amicus Curiae) with
Ms.Niharika and Mr.Rishabh
Bhargava, Advocates.

Mr.Dev P. Bhardwaj, CGSC and
Ms.Meera Bhatia and Mr.Jatin Teotin,
Advocate for respondent/UOI.

Mr.Mehmood Parcha and Mr.Prateek
Gupta, Advocates for Intervenor in
CM APPL 34070/2018.

Mr.Naresh Kaushik and Mr.Devik
Singh, Advocates for
respondent/UPSC.

Mr.Ripu Daman Bhardwaj, SPP
(CBI) for respondent/CBI.

Mr.Vikas Pahwa, Senior Advocate
with Mr.B.Tyagi and Ms.Aashita
Khanna, Advocates for Intervenor for
Law Officer of CBI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

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30.05.2019

CRL. M.A. 8510/2019 (exemption) in W.P.(CRL) 1549/2009

Allowed, subject to all just exceptions.

Application stands disposed of.

CRL. M.A. 8509/2019 (impleadment) in W.P.(CRL) 1549/2009

Issue notice of this application to the respondents.

Learned counsels appear and accept notices on behalf of the respondents.

Copies of these applications be served to learned counsels for the respondents. Reply to the application be filed before then next date of hearing.

List on 25.07.2019.

CONT.CAS(C) 224/2016 & CM APPL. 15444/2017

W.P.(C) 1091/2013 & CM APPL. 14231/2015 & 9415/2014

W.P.(CRL) 1549/2009 & CM APPL. 14366/2014, 18506/2013, 13869/2014 & 11196/2015

Respondents to show cause as to why relief claimed by the prosecutors be not considered and granted. Let an affidavit be filed by the respondents both Union of India and Government of National Capital Territory of Delhi before the next date of hearing.

As far as compliance of the directions issued by this Court vide order dated 03.09.2015 and subsequent order dated 01.02.2019, in the matter of granting revision of pay scales to the prosecutors as recommended by Government of Delhi is concerned, the same has not been implemented.

We are informed that for certain post the Committee constituted by the UOI had accepted the recommendations of the Delhi Government but in case of certain other posts there are differences and some reductions have been recommended by the Committee, however, the Union of India is still to take a final decision.

We are of the considered view that as far as the service conditions pertaining to prosecutors and service benefit to be extended to them are concerned, the same has been recently considered and decided by the Supreme Court in Civil Appeal No.2357/2017, Government of NCT of Delhi vs. UOI and in the said judgment while considering as to who would be the appropriate Government as authority for dealing with the service conditions and other issues relating to Public Prosecutors and Special Public Prosecutors, while deciding issue No.6 from para 173 onwards. The Hon'ble Supreme Court has gone into the issue in detail and in para 181 the following findings have been recorded and directions issued:

“181. In any case, it may not be necessary to dwell much upon this aspect. The High Court has also categorically held that the power to appoint a Public Prosecutor is relatable to Entries 1 and 2 of List III. In our opinion, the High Court has rightly held that in respect of these entries, the Government of NCT of Delhi has legislative competence under Articles 239AA of the Constitution and that the LC under Article 239AA(4) of the Constitution shall act on the aid and advice of the Council of Ministers. This conclusion of the High Court is in tune with the judgment of the Constitution Bench. We, therefore, hold that Lieutenant Governor, while appointing the Special Public Prosecutor, is to act on the aid and advice of the Council of Ministers. This issue is answered accordingly..”

[Emphasis supplied].”

In the light of aforesaid categorical direction of the Supreme Court, the Union of India (UOI) has no other option but to accept the recommendations made by the Government of NCT of Delhi in its totality and implement the same. Accordingly, we direct the UOI to do so and issue an appropriate notification within one month from today. Needless to mention that the UOI shall extend all the benefits to the prosecutors as

recommended by the Government of NCT of Delhi

List for further consideration on 25.07.2019.

CHIEF JUSTICE, J

BRIJESH SETHI, J

MAY 30, 2019

SSC