Extension of Tenure of ED and CBI Directors

Why in news?

The Centre promulgated two ordinances to extend the tenures of the Directors of CBI and Enforcement Directorate from 2 years to upto 5 years and issued an order to amend the Fundamental Rules, 1922.

What is the amendment about?

- The fifth proviso of Clause (d) of **Rule 56 of the Fundamental Rules, 1922** was amended to extend the services of the Defence Secretary, Home Secretary, Director of IB, Secretary of RAW, the Director of CBI and ED in "public interest".
- The previous list comprised Defence Secretary, Foreign Secretary, Home Secretary, Director of Intelligence Bureau and Secretary of Research and Analysis Wing.
- Though Director of CBI was mentioned in the previous order, the new notification adds the Delhi Special Police Establishment Act, 1946 under which the investigation agency's head is appointed.

> *Director of CBI is appointed under the **Delhi Special Police Establishment Act, 1946** and Director of Enforcement in the Directorate of Enforcement is appointed under the **Central Vigilance Commission Act, 2003.***

What are the concerns of this amendment?

- **Autonomy** – The notification will compromise the autonomy of these two agencies.
- It goes against the spirit of the Supreme Court judgment in *Vineet Narain vs Union of India* (1997) which said that the Directors of the CBI and the ED should have a minimum tenure of 2 years.
- While it did not bar longer terms or extensions, giving an annual extension can be an incentive for displaying loyalty to the ruling government in the discharge of their duties.
- **Ordinance route** - The changes were brought in through the ordinance

route which raises a doubt whether the Government is keen on retaining the present Director of Enforcement, S.K.Mishra.

- **Beyond superannuation** - There is an implied extension for an officer appointed to one of these protected posts if the appointment comes within two years of retirement.
- A further extension beyond superannuation for one year at a time, will render the heads of two investigating agencies under the influence of the Government.

What is the judiciary's view in this case?

- The Supreme Court declined to interfere with the one-year addition to the original term of appointment in Mishra's case.
- It also said that extension of tenure granted to officers who have attained the age of superannuation should be done only in **rare and exceptional cases** and only for **a short period.**
- It also made it clear that no further extension shall be granted to him.
- The protection given by a fixed tenure is meant to dilute the '**doctrine of pleasure'** implicit in civil service but it may be breached, if the extension allowed in exceptional circumstances becomes the rule.

The Doctrine of Pleasure is one of the concepts which has been inherited from the British rule. Under this doctrine, the civil servants were regarded as servants of the crown and these civil servants served at their pleasure.

References

1. https://www.thehindu.com/opinion/editorial/exception-to-the-rule-on-extensions-to-heads-of-cbi-ed/article37511234.ece
2. https://www.thehindu.com/news/national/centre-amends-rules-for-extension-of-tenure-of-ed-cbi-directors/article37508309.ece

SHANKAR IAS PARLIAMENT
Information is Empowering