Tussle within CBI

Why in news?

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- There is an ongoing battle within the CBI between the CBI Director Alok Verma and his deputy Rakesh Asthana and both of them have been told to go on leave.
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- Joint Director M. Nageshwar Rao has been asked to take over charge as interim CBI Director.
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How are officers at these levels appointed?

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- Before the Lokpal Act was enacted, the CBI Director’s appointment was done under the Delhi Special Police Establishment Act.
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- Under this, a list of eligible candidates was prepared by a panel comprising the Central Vigilance Commissioner as chairperson, other vigilance commissioners, Home Secretary and Secretary (Coordination and Public Grievances).
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- The final decision would be taken following consultations between the PMO and Home Ministry.
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- Following the enactment of the Lokpal Act, the list is prepared by the Ministry on the basis of seniority and experience in anti-corruption investigations.
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- This list goes to the Department of Personnel and Training, which vets it further.
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- The list then goes to the Lokpal Search Committee.
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- It comprises of\n
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    1. the Prime Minister,
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    2. the Chief Justice of India (Or a representative deputed by CJI) and
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    3. the Leader of the Opposition (LoP) (If no party is large enough, the leader of the largest Opposition party can attend.)
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- The search committee examines the names and sends its recommendation to the government.
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- The decision of the committee could be unanimous or divided with a member recording a note of dissent.
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- The government appoints other subordinate officers in consultation with the CVC after due vetting of integrity and seniority.
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What are the powers of the Director?

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- There is no official No. 2 in the agency — it is informally decided on the basis of seniority.
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- The Director remains the ultimate authority, and no other officer has any independent powers that can bypass his.
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- The Director has the prerogative to assign investigation of a case to an officer.
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- His is also the final call on the action to be taken in a case.
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What is the genesis of the current crisis?

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- In October 2017, the CBI Director handed over a confidential note to the CVC during a panel meeting over the promotion of Asthana to the post of Special Director.
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- The note alleged corruption on Asthana's part with regard to the Sterling Biotech case of August that year.
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- The CVC panel unanimously cleared Asthana's promotion, disregarding Verma's submissions.
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- It said the allegations were not verifiable.
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- In June this year, the Director targeted Asthana again, by probing him for alleged corruption.
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- Asthana hit back by writing to the Cabinet Secretary in August that Verma was interfering in his probes and had tried to stall a raid on Lalu Prasad in the IRCTC case.
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- He also alleged corruption on Verma's part.
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- Less than two months later, Verma got an FIR registered against Asthana as an accused in a case of corruption.
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Was sanction needed before the FIR was filed?

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- Section 17A of the recently amended Prevention of Corruption Act makes **previous approval of the government mandatory** before conducting any investigation into any offence alleged to have been committed by a public servant, where the alleged offence is relatable to discharge of his official functions/duties.
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- It also says, "No such approval shall be necessary for cases involving arrest… on the spot on the charge of accepting or attempting to accept any undue advantage…"
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- CBI has argued that since this was a case of bribery and not of abuse of official position in connection with a decision taken on policy or otherwise, this would not fall under the purview of Section 17A.

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- This, however, is being disputed by many.
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- It is being argued that since in the case against Asthana, no one was caught accepting a bribe “on the spot”, the agency should have taken permission from the government before charging him.
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What are the implications?

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- The turf battle between the two seniormost officers has now cleaved the agency, with other officers taking sides.
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- The most troubling aspect is that only one of them will be proved right and either way, it is the agency that will be shown in a poor light.
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- The procedure for the appointment of CBI Directors, which is made by a committee comprising the PM, the CJI and the LoP, has not stripped the office of controversy.
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- To a large extent, the political leadership must bear the primary responsibility for such controversies.
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- Central agencies are seen as targeting those in Opposition parties, and these recent developments further damages their credibility.
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- Mr.Verma’s vehement objections about Mr.Astana’s suitability was overruled by CVC and so the CVC and the Centre to address the present crisis.
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Source: The Hindu, The Indian Express

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