

(2009) 05 AHC CK 0594
In the Allahabad High Court

Anek Pal Singh

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0594

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Disposed Of

Judgement

S.N.H. Zaidi, J.

This is a bunch of special appeals filed by police personnels, challenging the order passed by the learned Single Judge, dismissing the writ petition assailing the order of transfer them from Civil Police to Government Railway Police under different orders.

The appellants are in the police establishment and hold the post of Sub Inspector or below the rank of Sub Inspector, including that of Constable.

The challenge made to their transfer orders was rejected by the learned Single Judge by a common order dated 9.10.07.

When the special appeals were taken up for preliminary hearing before the Division Bench of this Court consisting of Hon'ble the Chief Justice and Hon'ble D.P. Singh, J, after giving opportunity to the State, passed a detailed interim order, considering the ratio of the judgement passed in the case of Prakash Singh and others v. Union of India and others (2006) 8 SCC 1 observed that the period for constitution of Police Establishment Board though has expired as granted by the Supreme Court and review petition also being dismissed, the State of U.P. has yet not constituted the said Board. In the interim order, it was observed that the aforesaid judgement would apply only to the police personnels, holding the rank of Sub Inspector or above and that since an order of status quo is continuing since the filing of the writ petition, the same will continue in respect of Sub Inspector/Personnels, holding the rank of Sub Inspectors or higher rank than

Sub Inspector in special appeals also.

The special appeals have now come up for hearing.

The learned counsel for the State submits that the order of the learned Single Judge cannot be interfered merely on the ground that in the aforesaid case of Prakash Singh (supra), the Supreme Court had directed for constitution of Police Establishment Board with powers of transfer of police personnels, and it cannot be argued that till the Police Establishment Board is constituted, no transfer would be effected in the entire police department and, therefore, the impugned transfer orders, which were passed at the time when there was no Board, the same cannot be said to be illegal or without authority of law.

Sri Amit Bose, learned counsel for the appellant, however, submitted that the constitution of the Police Establishment Board under the orders of the apex court will not be confined only to the transfer of the officers/Personnels, holding the rank of Sub Inspector or over and above the Sub Inspector, but, in fact, all transfers have to be effected on the recommendation of the Police Establishment Board.

Relying upon Para 31(5) of the report in the case of Prakash Singh (supra), which reads as under, it has been submitted that though the State Government is the final authority but normally it has to accept the recommendation made by the Police Establishment Board and if it did not agree with the said recommendation then for some good reason, any other orders can be passed.

"Para 31. With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforesaid position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations.

(1).....

(2).....

(3).....

(4).....

Police Establishment Board

(5). There shall be a Police Establishment Board in each State, which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the department. The State Government may interfere with the decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorised to make appropriate recommendations to the State Government regarding the postings and transfers

of officers of and above the rank of Superintendent of Police, and Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotions/transfers/disciplinary proceedings or there being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State."

The questions raised though require consideration but in view of the fact that the Police Establishment Board has been constituted in the State of Uttar Pradesh on 12.3.08, the learned counsel for the appellants submits that these appeals be disposed of with a direction that the matter of these officers be referred to the Police Establishment Board and fresh orders be passed in accordance with law, we do not find it necessary to delve on this issue in the present case.

Sri Mukund Tiwari, learned Additional Chief Standing Counsel, does not dispute the aforesaid position.

The notification said to have been issued on 12.3.08, photocopy of which has been produced before us, be placed on record.

We, therefore, leave the question of competence of authority to transfer the appellants at a time, when the Police Establishment Board was not constituted, open, as the parties' counsel agree that fresh orders may be directed to be passed on the recommendation of the Police Establishment Board, so far the appellants are concerned.

We, therefore, set aside the order passed by the learned Single Judge dated 9.10.07 and dispose of all the appeals with a direction that the matters of the appellants be referred to the Police Establishment Board, who may give its recommendations, without any undue delay, say, preferably within a maximum period of one month from the date of receipt of a certified copy of this order and necessary orders be passed accordingly.