
(2007) 07 AHC CK 0091
In the Allahabad High Court

Bhoopendra Singh

APPELLANT

Vs

Uttar Pradesh Sarkar and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 229, 235, 309

Evidence Act, 1872 — Section 145

Police Act, 1861 — Section 13, 15A, 2, 3, 4

Citation : (2008) 5 AWC 4282

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—In Civil Misc. Writ Petition No. 16436 of 2006, Bhoopendra Singh v. of U.P. and Ors. a learned Single Judge of this Court, down by a coordinate Bench in Civil Misc. Writ Petition No. 6525 of 2004 (SS), Deep Narayan Singh v. State of U.P. and Ors. decided on 2.1.2006, since reported in 2006(2) ESC 1036(LB) (The case has been reported in the name of Udai Pal Singh etc. etc. v. State of U.P. and Ors.) has referred the matter to be decided by a larger Bench by

Whether Rule 4(1)(iv) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rule, 1991, is ultra vires the provisions of Section 7 of the U.P. Police or not and whether the law to the said extent has been correctly laid down in Deep Narayan's case (supra) or not.

2. The Hon'ble Acting Chief Justice vide order dated 22.2.2007, has been pleased to place to place the matter before the Division Bench.

3. All other writ petition have been connected with Civil Misc. Writ Petition No. 16436 of 2006 by the orders passed by the Court.

Facts of Bhoopendra Singh's case :

4. Bhopendra Singh is a Sub Inspector in Civil Police and was posted at P.S. Meghapura, Moradabad. In respect of certain plot of land situate at Vishnudham. Colony Tulapur, Bareilly, some enquiry was instituted by the Deputy Inspector General of Police, Bareilly. The Superintendent of Police (City), Bareilly conducted the enquiry and recommended for taking legal action. He had found that the petitioner had violated the provisions of the U.P. Government Servant Conduct Rules, 1956 and recommended for separate departmental proceeding and for his transfer to a far off place. The matter was referred by the Deputy Inspector General of Police, Bareilly Range, Bareilly to the Inspector General of Police, Bareilly Zone, for referring the matter to the Police Head Quarter and also to the Deputy Inspector General of Police Moradabad Range, Moradabad. The Senior Superintendent of Police Moradabad had issued a show cause notice on 30.12.2005 calling upon the petitioner to show cause as to why a censure entry be not given. The show cause notice dated 20.12.2005 is under challenge in the present writ petition on the ground that the Lucknow Bench of this Court in the case of Deep Narayan Singh (supra) has held that minor punishment of censure entry cannot be awarded to an errant police officer and the Rule 4(1)(b)(iv) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as "the Rules") has been declared ultra vires the provisions of Section 7 of Police Act, 1861 (hereinafter referred to as "the Act"). In all other connected matters, either censure entry has been awarded or a notice has been issued as to why censure entry be not given.

Law laid down in Deep Narayan Singh's case :

5. The learned Single Judge hearing the matter of Deep Narayan Singh (supra) and other connected matters, has formulated the following legal issues for decision:

Whether the punishment of "censure entry" as provided Subordinate Ranks (Punishment and Appeal) Rules 1991 (for short as the "Rules") is ultra vires the provisions of Section 7 of the Police Act, 1861 (Act No. V of 1861).

6. After referring to various decisions of this Court and of the Apex Court, the learned Single Judge has held as follows:

(i) a misconduct entry when compared to censure entry, may not be grave in nature as the meaning of this term does not necessarily imply corruption or criminal intent whereas misconduct entry would be mere punishment, the censure entry is admittedly a penalty. Penalty is regarded to be of greater dimension as compared to punishment. A misconduct entry may be a punishment of lighter nature in comparison to censure entry, the latter seems to be of greater dimension, seriously affecting the right and interest of an employee. It is, therefore, a serious penalty as compared to a misconduct.

(ii) Censure entry is on the same footing is penalty provided in Section 7(e) of the Act.

(iii) The punishment of censure entry being provided under the heading "Minor Penalties" in Rule 4 of the Rules is not at all in conformity with the provisions of Section 7 of the Act. If censure entry was also considered to be a punishment of equal footing as provided in cause (e) it would have been incorporated in the section on itself. Nothing prevented the legislature from incorporating the penalty of censure entry in Section 7 of the Act. Rule 4(1)(b)

(iv) Rule 4(i)(b)(iv) of the Rules being in conflict with Section 7 of the Act, is ultra vires. Censure incorporated in Rule 4(a)(b)(iv) is not in furtherance of Section 7 of the Act which authorises the State Government to frame the rules consistent with the Act.

(v) The word "penalty" as used in Rule 4 was to the extent a substantive law and is not a mere procedure

(vi) The rule making authority cannot assume a power to formulate the provision of censure entry which is a minor penalty and not incorporated in Section 7 of the Act by incorporating in the subordinate legislation.

(vii) The State Government in exercise of its power u/s 46(2) of the Act cannot frame a rule in regard to the procedure for exercise of various powers provided by the Act.

Reasons for disagreement by the learned Single Judge while referring the matter:

(i) Section 7 of the Act opens with the words "subject to provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act" conveys the idea of a provision yielding place to another provision to which it is made subject. The delegation of power is wide enough and is not condition.

(ii) There is no dearth of legislative competence so as to dilute the State from framing any rule and the rule in question does not dilute the provision of Section 7 of the Act which is in addition to the punishments already referred to therein.

(iii) None of the Rules including Rule 4(1)(b)(iv) runs counter to the provision of Section 7 of the Act and they are neither inconsistent nor they, impliedly or expressly, repeal the provisions of Section 7 of the Act.

(iv) The comparison of the Rules in question with Regulation 478 of the U. P. Police Regulations (hereinafter referred to as "the Regulations") would not be appropriate as the Regulations stand on a different footing than the Rules which are a creation under the powers conferred on the State Government u/s 7 read with Section 46 itself.

(v) The framing of the Rules for awarding censure does not run counter to any provision of the Act. It rather supplement the same and is not against the object for which the rule making power has been conferred.

(vi) The conclusion drawn in the judgment of Deep Narayan Singh's case (supra)

that the subordinate legislation cannot include the power to frame any substantive rule and can only make a provision for procedure, overlooks the real meaning and content of Section 7, of the Act.

(vii) Causing of some inconvenience to some people would not render the rule invalid.

(viii) By providing a lesser punishment of censure entry in the Rules helps the delinquent officials to be awarded a lesser punishment keeping in view the proportionality and the gravity of the delinquency. The legislature, therefore, will be presumed to have delegated such powers in respect of at least awarding lesser punishments as are referred to in Section 7 of the Act. The State Government is not denuded of its power in making the provision of minors punishment, like censure, under the rule making power.

Rival submissions:

7. We have heard Sarvsri S.P. Pandey, B.N. Singh, Vishnu Bihari Tiwari and Pramod Kumar Sinha, appearing on behalf of the various petitioners, and Sri C.B. Yadav, learned Chief Standing Counsel, appearing on behalf of the State respondents.

8. Sri. S.P. Pandey, learned Counsel, who led the arguments, submitted that u/s 7 of the Act, where major and minor punishments have been specified, it is not open to the State Government to provide for any other minor punishment in the form of awarding censure entry. He heavily relied upon the decision of the Lucknow Bench in the case of Deep Narayan Singh (supra) and submitted that the view taken by the learned Single Judge is the correct view and should be upheld. He referred to the decision of the Apex Court in the case of Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, and submitted that the Act ought to be considered a complete code by itself. This being the position, he submitted that the State Government could not have framed any rule providing for different punishment.

9. Sri B.N. Singh, learned Counsel, attacked the referring order itself and submitted that the same is bad and misconceived. Referring to the decisions of the Apex Court in the case of K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras, and Punjab National Bank Vs. New Delhi Municipal Committee, he submitted that the words "subject to" occurring in Section 7 should not be considered in a manner so as to defeat or whittle down the provision of that Section itself. He further submitted that the State Government had issued a notification stating therein that no censure entry should be awarded in view of the decision of this Court in the case of Deep Narayan Singh (supra) and, therefore, the authorities cannot award the censure entry.

10. Sri Vishnu Bihari Tiwari, learned Counsel, submitted that the rule making authority cannot assume a power not specifically provided for, more so when the substantive law of punishment has been adequately dealt with by Section 7 of the

Act.

11. Sri Pramod Kumar Sinha, learned Counsel, relying upon the decision of the Apex Court *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, submitted that the delegated power to legislate by making rules for carrying out the purpose of the Act is a general delegation without laying own any guidelines and cannot be so exercised to bring into existence substantive right or obligation or disabilities not contemplated by the provisions of the Act.

12. In reply, Sri C.B. Yadav, learned Chief Standing Counsel, submitted that Section 7 of the Act opens with the words "subject to the rules framed by the State Government", and, therefore, it has been made subject to any other punishment being provided by the State Government by rules and if under the Rules, a minor punishment of awarding censure entry has been prescribed, it cannot be said that the provisions of Section 7 of the Act has been violated or contravened or is in excess thereof. He referred to in extenso to the Full Bench decision of this Court in the case of *Vijay Singh and Others Vs. State of Uttar Pradesh and Others*, and the decision of the Apex Court in the case of *Chandra Prakash Tiwari (supra)*. Apart from it, he has also relied upon the following decisions:

(i) *Mahendra Singh Vs. State of U.P. and Others*,

(ii) *Ram Sharan Vs. The Deputy Inspector General of Police, Ajmer Range and Others*, and

(iii) *Chaman Singh v. State of U.P. and Ors.* 1988 ACR 765.

13. He further submitted that this Court in the case of *Ram Charit Pandey v. State of U.P. and Ors.* 1999 (17) LCD 992, had already held that the punishment of censure was in consonance with the provisions of Section 7 of the Act and if the learned Single Judge who had decided the case of *Deep Narayan Singh (supra)* was not agreed with the said decision, instead of taking a contrary view, he ought to have referred it to a larger Bench. The decision, in any event, has not considered the binding effect of the decision of the Division Bench of this Court in the case of *Chaman Singh (supra)* wherein the provision of Regulation 478(bc) of the Regulations which provided for awarding misconduct entry, had been upheld for giving effect to the provisions of the Act. The decision in *Deep Narayan Singh (supra)* is therefore, per incuriam and, in any event, it does not law down the correct law.

Provisions of law :

14. Before entering into the merits of the case, we deem is proper to reproduce the relevant provisions of the Act, the Regulations and the Rules:

Act:

2. Constitution of force: The entire police-establishment under a State Government shall, for the purposes of this Act, be deemed to be one police-force

and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act. the pay and all other conditions of service of members of the subordinate ranks of any police-force shall be such as may be determined by the State Government.

7. Appointment, dismissal, etc. of inferior officers. - Subject to the provisions of Article 311 of the Constitution, and to such rules as the State Government may, from time, make under this Act, the Director-General-cum-Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unfit for the same; or may award any one or more of the following punishments to any police-officer of the subordinate ranks who shall discharge his duty in a careless or negligent , manner, or who by any act of his own, shall render himself unfit for the discharge thereof namely:

- (a) fine of any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days with or without punishment-drill, extra guards, fatigue or other duty;
- (c) deprivation of good-conduct pay;
- (d) removal from any office of distinction or special emolument;
- (e) withholding of increments or promotion including stoppage at an efficiency bar.

46. Scope of Act: (1) This Act shall not, by its own operation, take effect in any presidency, State or place. But the State Government by an order to be published in the Official Gazette, may extend the whole or any part of this Act to any Presidency, State or place, and the whole or such portion of this Act, as shall be specified in such order shall, thereupon, take effect in such presidency, State or

(2) When the whole or any part of this Act shall have been so extended, the State" Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act-.

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(b) to prescribe the time, manner and conditions within and under which claims for compensation u/s 15A, are to be made, the particulars to be stand in such claims the manner in which the same are to be verified, and the proceedings (including local inquiries, if necessary) which are to be taken consequent thereon; and

(c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may, from time to time be amended, added to or cancelled by the State Government.

Regulations

478.-All police officers appointed u/s 2 of the Police Act are liable to the following departmental punishments:

- (a) Dismissal or removal from the force, as defined in paragraph 481;
- (b) Reduction as defined in paragraph 482;
- (ba) With-holding of promotion;
- (bb) With-holding of increment including stoppage at an efficiency bar;
- (bc) misconduct entry in the character roll;

Head Constable and Constables may also be punished with-

- (c) Confinement to quarters (this term includes confinement to Quarter Guard) for a term not exceeding fifteen days;
- (d) Punishment drill;
- (e) extraguard duty ;

Constables may also be punished with

- (f) Fatigue duty, which should be restricted to the following tasks -
 - (i) Tent pitching;
 - (ii) Drain digging;
 - (iii) Cutting grass, cleaning jungle and picking stones from parade grounds;
 - (iv) Repairing huts and butts and similar work in the lines;
 - (v) Cleaning Arms.

478-A. The punishment noted at (a) and (b) in paragraph 478 maybe awarded only after departmental proceedings. vide paragraph 490 to 494, Orders concerning (ba) may also be passed under Chapter XXX and those concerning (bb) may be passed as provided for in paragraph 463 or paragraph 482-A as the case may be. The punishment noted at (bc) may also be awarded when departmental proceedings, vide, paragraphs 490 to 494 are taken initially with a view to awarding one of the punishment noted at (a), (b), (ba) and (bb) and the punishing authority ultimately considers it sufficient to award only former as a less severe punishment.

Rules:

4. Punishment - (1) The following punishments may, for good and sufficient reasons and as hereinafter provided be imposed upon a Police Officer namely:

(a) Major Penalties:

(i) Dismissal from service,

(ii) Removal from service,

(iii) Reduction in rank including reduction to a lower scale or to a lower stage in a time scale.

(b) Minor penalties:

(i) With-holding of promotion,

(ii) Fine not exceeding one month's pay,

(iii) With-holding of increment, including stoppage at an efficiency bar,

(iv) Censure.

(2) In addition to the punishments mentioned in Sub-rule (1) Head Constable and Constables may also be inflicted with the following punishments -

(i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days, extra guard or other duty),

(ii) Punishment Drill not exceeding fifteen days;

(iii) Extra guard duty not exceeding seven days;

(iv) Deprivation of good conduct pay

(3) In addition to the punishments mentioned in Sub-rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following task:

(i) Tent pitching;

(ii) Drain digging;

(iii) Cutting grass cleaning jungle and picking stones from parade grounds;

(iv) Repairing huts and butts and similar work in the lines;

(v) Cleaning Arms.

5. Procedure for award of punishment.- (1) The cases in which major punishments enumerated in Clause (a) of Sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in Sub-rule (a) of Rule 14.

(2) The cases in which minor punishments enumerated in Clause (b) of Sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the

procedure laid down in Sub-rule (2) of Rule 14.

(3) The cases in which minor penalties mentioned in Sub-rule (2) and (3) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in Rule 15.

14. Procedure for conducting departmental proceedings.- (1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in Sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I.

(2) Notwithstanding anything contained in Sub-rule (1) punishments in cases referred to in Sub-rule (2) of Rule 5 may be imposed after informing the police officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

(3) The charged police officer shall not be represented by counsel in any proceedings instituted under these rules.

Scheme of the statutory provisions:

15. From a perusal of the aforesaid provisions, we find that the Act received the assent of the Governor General in Council on 22.3.1861. It is a preconstitutional enactment and by virtue of Article 372 of the Constitution of India, the Act continues to be in force.

16. A Full Bench of this Court in the case of Vijay Singh (supra) has held that the Act being preconstitutional, would continue to remain in operation by virtue of Article 313 and 372 of the Constitution of India. In paragraphs 16, 17, 18, 19, 24, 27 and 28 of the reports, the Full Bench held as follows:

16. Police Act, 1861 is one of the earliest enactment immediately subsequent to the Indian mutiny of 1857. Preamble thereof provides that it was expedient to reorganize the police and to make it a more efficient instrument for the prevention and detection of crime. After the commencement of the Constitution into force in 1950, police became the State subject as it appears at item No. 2 of List-II of 7th Schedule, which reads as Police (including railway and village police) subject to the provisions of Entry 2A of List-I. Entry 2A of List-I provides for deployment of any armed force of the Union of India or any other force subject to the control of Union. Thus, it becomes clear that the police is a subject of State List and State Government is competent even to amend the Act and it has been amended by the States from time to time. The pre-Constitution law continues to remain operative by virtue of provisions of Articles 313 and 372 of the Constitution. A Constitution Bench of Hon'ble Supreme Court in The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, examined the issue of continuation and validity of the pre-Constitution

laws and held that such provisions are valid and enforceable, observing that "Pre-Constitution law made by a competent authority, though it has lost its legislative competency under the Constitution, shall continue in force provided the law does not contravene other provisions of the Constitution". While deciding the said case, reliance had been placed upon large number of the judgments of different High Courts and also the judgment of Hon''ble Apex Court in *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, wherein the Constitution Bench had held that the coal tax originally imposed u/s 51 of the Central Provinces Local-self Government Act, 1920, on 2nd March, 1935 was valid and continued to be valid after Government of India Act, 1935 and the Constitution, by virtue of Article 372 of the Constitution.

17. Police service may, under certain circumstances, be considered as separate and distinguishable from any other State public service for the reason that police is subject matter of Entry 2 of List-II and State public service falls under Entry 51 of List-II, therefore, it cannot be held that whatever laws are framed for State public service, will automatically become binding for police personnel unless to that extent. There can be no doubt to the settled legal proposition that any order issued under the provisions of an Act has statutory force. Section 2 of the Act 1861 empowers the State Government to frame Rule or issue Government Order. It reads as under:

"The entire police establishment under a (Provincial Government)...shall be formally enrolled...and shall be constituted in such a manner as shall from time to time be ordered by the Provincial Government.

Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government.

18. Section 46(2) of the Act 1861 provides that the State Government may, from time to time, by notification in the official gazette, make Rules consistent with the Act. Enrollment/recruitment of police personnel or anything related to that is not provided under Rule 46 (2), therefore, Section 2 is the exclusive provision empowering the State to issue government orders from time to time for enrollment of police personnel and constitution of police force.

19. In *The State of Rajasthan Vs. Ram Saran*, the Hon''ble Apex Court, while interpreting the provisions, of Section 3 of the Act, 1961 held that State Government alone is empowered to frame Rules regulating the condition of service of "members of the police force.

24. In *Ajay Kumar Bhuyan & other v. State of Orissa & other*, : (2003)1SCC707 , while considering a similar issue, the Apex Court held that any order issued by the Government or Rule framed in exercise of the powers of Section 2 of the Act has a legal/statutory basis and, therefore, binding. In this context, the Hon''ble Apex Court also considered the scope and application of Article 313 of the Constitution of India placing reliance upon its earlier judgments in *Union of India*

(UOI) and Others Vs. Majji Jangamayya and Others, and B.N. Nagarajan (supra) [B.N. Nagarajan v State of Mysore AIR and held that pre- Constitution law/unless is in contravention of the law framed after the Constitution, shall remain in force. More so, it has also categorically been held that Article 313 of the Constitution does not change the legal character of the document, meaning thereby if a pre-Constitution Act still has not been repealed and is in consonance with the provisions of the Constitution, it will remain the Act. Its sanctity, rigour and stature is not changed and the submission that any Rule framed under the proviso to Article 309 can even supersed the pre-Constitution Act, cannot be accepted.

... .. 27. In Babu Ram Upadhyay (supra) The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyay, the Constitution Bench of Hon'ble Supreme Court held that by virtue of the provisions of Article 313 of the Constitution, the provisions of the Act 1861 even today are in force and any Government Order issued under it is mandatory in

28. Another Constitution Bench in Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others, considered the same issue and explained the scope of provisions of Article 313 of the Constitution and held that pre-Constitution Act remains enforceable unless repealed or is in fact in contravention of the law framed after the commencement of the Constitution into force. The Court held that by virtue of Article 313, the Police Regulations as well as the Tribunal Rules insofar as they were not inconsistent with the provisions of the Constitution, remain in operation even in post-Constitution era. There are certain observations in both the above referred cases in favour of the petitioner-appellants but in both the cases the issue involved herein was not directly there, as both the cases had been in relation to disciplinary proceedings and the Apex Court held that provisions therein were subject to the provisions of Article 311 of the Constitution.

17. A Division Bench of this Court in the case of Subhash Chandra Sharma v. State of U.P. and Ors. 2003(3) AWC 2637, has also taken the same view. The Apex Court in the case of Chandra Prakash Tiwari (supra) has also taken the same view.

18. In the case of Mahendra Singh (supra) this Court has held as follows:

6. Section 7 does not in terms make provision for any enquiry, it merely provides that the exercise of disciplinary power shall be subject to rules framed by the state Government. Chapter 32 of the Police Regulations lays down these rules. It provides for a departmental trial for punishment to be inflicted u/s 7 of the Police Act.

19. In the case of Ram Sharan (supra) the Apex Court has held as follows:

4. It is true that u/s 2 of the Police Act, the entire police establishment under a State Government is for the purpose of the Act, deemed to be one police force,

and pay and all other conditions of service of members of the subordinate ranks of any police force have to be determined by the State Government.

20. Section 2 of the Act empowers the State Government to determine the pay and other conditions of service of members of the subordinate ranks of police force. Section 7 of the Act which opens with the words "Subject to the provisions of Article 311 of the Constitution, and to such rules as the State Government may, from time to time, make under this Act", gives way to the provisions of the Rules made in this behalf and makes the provisions of Section 7 of the Act subservient to such Rules. It empowers various officers of the State Police Force to take disciplinary action and to award punishment, major and minor, to the officers of the subordinate ranks. It empowers the officers to either dismiss, suspend or reduce any police officer of the subordinate ranks who are found remiss or negligent in the discharge of duty or found unfit or award one or more punishment to officers of subordinate ranks who are found to discharge duty in carelessness or negligent manner or are found unfit to discharge thereof, which are considered to be minor punishment. It includes fine to any amount not exceeding one month's pay; confinement to quarters for a term not exceeding fifteen days with or without punishment - drill, extra guards, fatigue or other duty; deprivation of good conduct pay; removal from any office of distinction or special emolument; and withholding of increments or promotion including stoppage at an efficiency bar.

21. Sub-section (2) of Section 46 of the Act empowers the State Government to make rules consistent with the Act. Clause (c) thereof empowers the State Government to make general rules for giving effect to the provisions of the Act.

22. Regulation 478 provides for various punishments, major and minor. By the U.P. Gazette dated 6.4.1968, misconduct entry in the character roll was also provided for as a punishment to a subordinate officer.

23. The Rules have been framed under Sub-sections (2) and (3) of Section 46 read with Sections 2 and 7 of the Act. It provides for imposition of punishments, major and minor, the procedure to be followed as also the right of appeal etc. The Rules comprehensively deals with the aforesaid provisions.

24. Thus, from a reading of the aforesaid provision, we are of the view that under the provisions of Sections 2, 7 and 46 of the Act very wide powers have been given to the State Government to frame rules regarding the conditions of services of the members of the police force, impositions of punishment, major and minor, as also the procedure to be followed by the authorities while awarding major and minor punishment. The provision of Section 7 has been made subject to the provisions of Article 311 of the Constitution, and to such rules as the State Government may, from time to time, make under this Act, meaning, thereby that if the State Government has framed any rule providing for punishment and the procedure to be followed. Section 7 Will give way to such Rules.

25. In the case of Chaman Singh (supra) the Division Bench has held that

Section 7 of the Act is subject to such rules as the State Government may, from time to time, make.

Discussions :

26. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

27. While discussing the scheme of the statutory provisions, we have already come to the conclusion that Section 7 of the Act which provides for imposition of punishment, out of which some are major punishment and some are minor punishment, has been made subject to the provision of Article 311 of the Constitution of India and the rules framed by the State Government. Prior to framing of the Rules, major and minor punishments were dealt with by Regulation 478 of the Regulations framed by the State Government. Regulation 478 has been held to be valid, specially Clause (bc) which provides for awarding misconduct entry in the character roll In the case of Chaman Singh (supra) the Division Bench of this Court has, after quoting the observations of the Apex Court in the case of Babu Ram Upadhaya (supra), held that the Police Regulations embodied in Chapter XXXII in which Regulations 478 and 478-A forms part, has been framed u/s 7 read with Section 46 of the Act. It may be mentioned here that the aforesaid punishment is not mentioned in Section 7 of the Act.

28. The words "subject to" occurs in different articles of the Constitution of India. In Clause (2) of Article 229 of the Constitution of India, the Chief Justice of the Court has been authorised, to prescribe by rules, the conditions of service of the officers and servants of a High Court. However, it is subject to the provisions of any law made by the legislature of the State.

29. A Constitution Bench of the Apex Court in the case of State of Bihar and Anr. v. Bal Mukund Sah and Ors. AIR 2000 SC 296, has held as follows:

95....Article 229(2) which is directly in point provides in express terms that subject to the provisions of any law made by the legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by the rules made by the Chief Justices or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purposes.

30. It has further held as follows:

It is true that the power conferred by Article 309 is "subject to" the provisions of the Constitution. But it is fallacious for that reason to contend that the Governor cannot frame rules regulating the recruitment and conditions of service of the judicial officers of the State. In the first place, the power of control conferred upon High Courts by the first part of Article 235 is expressly made subject, by the second part of that Article, to laws regulating conditions of service of its judicial officers. The first part of Article 235 is, as it were, subject to a proviso which carves out an exception from the area covered by it. Secondly the

Governor, in terms equally express, is given the power by the proviso to Article 309 to frame rules on the subject. A combined reading of Articles 235 and 309 will yield the result that though the control over subordinate Courts is vested in the High Court, the appropriate legislature, and until that legislature acts, the Governor of the State, has the power to make rules regulating the recruitment and the conditions of service of judicial officers of the State. The power of the legislature or of the Governor thus to legislate is subject to all other provisions of the Constitution like, for example, Articles 14 and 16. The question raised before us is primarily one of the location of the power, not of its extent. The second part of Article 235 recognises the legislative power to provide for recruitment and the conditions of service of the judicial officers of the State. The substantive provision of Article 309, including its proviso, fixes the location of the power. The opening words of Article 309 limit the amplitude of that power."

"The opening words of Article 309, "subject to provisions of this Constitution" do not exclude the provision contained in the first part of Article 235. It is thus clear that though the legislature or the Governor has the power to regulate seniority of judicial officers by laying down rules of general application, yet that power cannot be exercised in a manner which will lead to interference with the control vested in the High Court by the first part of Article 235.

31. In the case of *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, , the Apex Court while considering the provision of Article 229 of the Constitution of India, has held as follows:

6...In this context Clause (2) of Article 229 may now be read with the proviso appended thereto.

Subject to the provision of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such: as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or Officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

If there is a law made by the Legislature of the State then subject to that law otherwise without it, the Chief Justice or some other Judge or officer of the Court authorised by the Chief Justice is empowered to make rules laying down the conditions of service of the High Court staff.

32. In the case of *Tulsipur Sugar Company Ltd. Vs. State of U.P. and Others*, the Apex Court while considering the provisions of Sections 6 and 6-A of the U.P. Industrial Disputes Act, has held as follows:

Therefore, the word "subject to, the provisions of Section 6A" in Sub-Section (5) of Section 6 must mean that though an award has become final on its being

published it does not immediately or automatically begin to be operative as that finality is subject to the expiry of periods and the powers of the State Government u/s 6A.

33. In the case of B.S. Vadera Vs. Union of India (UOI) and Others, a Constitution Bench of the Apex Court while considering the provisions of Article 309 of the Constitution of India, has held as follows:

24. It is also significant to note that the proviso to Article 309, clearly lays down that "any rules so made shall have effect, subject to the provisions of any such Act". The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning unless hedged-in, by any limitations. The rules, which have to be "subject to the provisions of the Constitution shall have effect, subject to the provisions of any such Act. That is, if the appropriate Legislature has passed an Act, under Article 309, the rules, framed under the Proviso, will have effect, subject to that Act; but, in the absence of any Act, of the appropriate Legislature, on the matter, in our opinion, the rules, made by the President or by such person as he may direct, are to have effect, both prospectively and retrospectively. Apart from the limitations, pointed out above, there is none other imposed by the proviso to Article 309, regarding the ambit of the operations of such rules. In other words the rules, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority.

34. In the case of Tara Singh Vs. The State, , while considering the provision of Section 145 of the Evidence Act. the Apex Court has held as follows:

I see no reason why Section 145, Evidence Act, should be excluded when Section 288 states that the previous statements are to be "subject to the provisions of the Indian Evidence Act." Section 145 falls fairly and squarely within the plain meaning of those words. More than that. This is a fair and proper provision and is in accord with the sense of fairplay to which Courts are accustomed."

"The matter is deeper than that and, giving effect to the plain meaning of the words "subject to the provisions of the Indian Evidence Act" as they stand, I hold that the evidence in the Committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by Section 145, Evidence Act."

"If the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence. then it must in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence u/s 288.

35. The Apex Court in the case of Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, has held that "Subject to" is an expression whereby limitation is expressed. The Apex Court has further noticed the dictionary meaning of

"subject to" stating -

90. Furthermore, the expression "subject to" must be given effect to.

91. In Black's Law Dictionary, Fifth Edition at page 1278 the expression "Subject to" has been defined as under:

Liabie, subordinate, subservient, inferior, obedient to; governed or affected by; provided tint; provided, answerable for Homan v. Employers Reinsurance Corporation 345 Mo. 650 : 136 SC 2d 289, 302

36. The Apex Court has followed the aforesaid principle in a subsequent decision in the case of S.N. Chandrashekar and Another Vs. State of Karnataka and Others, , wherein Section 14 of the Karnataka Town and Country Planning Act, 1961 provided that the changes of land use or development would be subject to the procedure laid down in Section 14 of the Act. Considering the impact of the words "subject to" used in Section 14, the Apex Court held that they are of some significance and the said words must be given full effect to. The Apex Court also held that the meaning of the said words had been noticed in Ashok Leyland Ltd (supra)

37. In the case of Chandra Prakash Tiwari (supra) the Apex Court while considering the provisions of Section 7 of the Act has held as

23. The opening words "subject to the provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act" is not only relevant but is of utmost importance. It is true that the Section is restrictive in nature but under the same heading itself gives a guidance that the same includes appointments as well and the Rules spoken of is to be under the Police Act only...

38. In the case of K.R.C.S. Balalakrishna Chetty and Sons & Co. (supra) the Apex Court while considering the provisions of the Madras General Sales Tax Act, has held as follows:

5...Section 3 is the charging section and Section 5 gives exemption form taxation but that section clearly makes the holding of a licence subject to restrictions and conditions prescribed under the provisions of the Act and the rules made thereunder because the opening words of that section are "subject to such restrictions and conditions as may be prescribed."

6. u/s 13 an important condition imposed under the Act is the keeping by the dealer and every person licensed of true and correct accounts showing the value of the goods sold and paid by him. Next there is R.5 of the General Sales Tax Rules which provided that if any person desired to avail himself of the exemption provided in Section 5, he had to submit an application in Form I for a licence and the Form of the licence shows that the license was subject to the provisions of the Act and the rules made thereunder which required the licensee to submit returns as required land also to keep true accounts u/s 13. This shows that the

giving of the licence was subject to certain conditions being" observed by the licensee and the licence itself was issued subject to the Act and the rules. But it was contended that the words "subject to" do not mean "conditional upon" but "liable to the rules and the provisions" of the Act. So construed Section 5 will become not only inelegant but wholly meaningless. On a proper interpretation of the section it only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by the under the Act whether in the rules or in the licence itself; that is, a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. The use of the words " subject to" has reference to effectuating the intention of the law and the correct meaning in our opinion, is "conditional upon.

39. In the case of Punjab National Bank (supra) the Apex Court while considering the provision of Section 66 of the Punjab Municipal Act, 1911 has held as follows:

10. We think that the conclusion of the majority is correct. The assessment list for the year commencing from April 1, 1959, had to be settled by March, 31 1959 at the latest; this list was liable to be amended u/s 67 even after March 31, 1959, on any of the grounds mentioned in that section. Section 66 does not say that the amendment of the assessment list should have been made before March 31, 1959. The expression "subject to such amendment as may thereafter be duly made" in Section 66 would indicate that the amendment of the list could be made even after March 31, 1959, as Section 67 provides for amendment of the list "at. any time". And when the list was so amended, it shall be deemed to have been in force for the year which commenced from April 1, 1959, and ended on March 31, 1960, and the tax assessed therein shall be deemed to be the tax for the financial year commencing from April 1, 1959. In other words, it was not necessary that the assessment list-should have been amended before March 31, 1959, in order that the municipal committee may impose house tax on the building for the period from April 1, 1959 to March 31, 1960. An amendment of the list u/s 67 was permissible on any of the grounds mentioned in the section even after March 31, 1959, as otherwise, the expression "at any time" would have no meaning. The words "subject to such amendments as may thereafter be duly made" in Section 66 postulate that a list finalized before 1st January or 1st April is liable to be amended thereafter u/s 67. The building was certainly liable to be included in the assessment list which was finalized on March 31, 1959, but by some mistake it was not so included. The list was, therefore, liable to be amended u/s 67. That was done. When the list was amended, the tax assessed for the building shall be deemed to be the tax for it in the year which commenced from April 1, 1959, and ended on March 31, 1960.

40. Applying the principles laid down in the aforesaid cases to the facts of the present case, we are of the considered opinion that as Section 7 has been made subject to the rules framed by the State Government Rule 4(1)(b)(iv) of the

Rules which provides for awarding censure entry for the misconduct, is a valid piece of legislation and would not be beyond the scope of Section 7 of the Act. It may be mentioned here that the punishment which have been provided in Section 4 of the Rules is to be treated as supplanting the punishment as provided u/s 7 of the Act. We may further

41. We may further add that in the case of Chandra Prakash Tiwari (supra), the Apex Court while considering the provision of Section 2 of the Act, has held that on scrutiny of the language it appears that the proviso is of the widest possible amplitude. It has further held that as a matter of fact, a perusal of the provisions of the Act, in particular that of Section 46, makes it abundantly clear that the Statute (the Police Act) ought to be treated as a complete Code by itself. There is thus a special statute concerning the Police Force and within its fold induce the appointment, dismissal, placement and all other steps required to organise the Police and make it more efficient instrument for the prevention and detection of crime. Administrative instructions have admittedly been in use since the beginning of the formation of a separate cadre of Police in Uttar Pradesh.

42. The power to make appointment, prescribe the conditions of service do encompass within its fold the power to provide punishment, both major and minor, depending upon the misconduct of a police personnel. Awarding of an entry of misconduct or censure is a minor punishment for which a procedure has been prescribed under Rule 14(2) of the Rules which do conform to the provisions of Article 311 of the Constitution of India and also the principles of equity, fair play and

43. Once a rule has been framed by the State Government providing for punishment to be given to the delinquent police personnel for the alleged misconduct, it will have supremacy over the punishment provided u/s 7 of the Act as Section 7 shall yield to any rule framed thereunder which provides for the same subject. The preamble of the Rules can also be resorted to for deciding the validity of Rule 4(i)(b)(iv) of the Rules. The preamble reads as follows:

In exercise of the powers under Sub-sections (2) and (3) of Section 46 read with Sections 2 and 7 of the Police Act, 1861 (Act No. 5 of 1861) and all other power enabling him in this behalf and in supersession of all existing rules issued in this behalf, the Governor is pleased to make the following rules with a view to regulating the departmental proceedings, punishment and appeals of the Police Officers of the subordinate ranks of the Uttar Pradesh Force:

44. From the aforesaid it is seen that the Rules have been framed in supersession of all existing rules issued in this behalf and for regulating the departmental proceedings, punishment and appeals of the police officers of the subordinate ranks of Uttar Pradesh.

45. The decision of the Apex Court in the case of Kunj Behari Lal Butail (supra) relied upon by Sri Pramod Kumar Sinha, would not be applicable in the facts of the present case for the reason that the Rules have been specifically framed u/s

2 and 7 read with Section 45(2) of the Act. It has not been framed only for carrying out the purpose of the Act. Therefore, the disabilities provided under the Rules cannot be said to be prohibited under the provision of the Act.

46. The entire matter of punishment by way of censure entry under Rule 4(1)(b) (iv) of the Rules can be viewed from another angle also. As held by the Apex Court in the case of State of Madhya Pradesh Vs. Ram Ratan, . in criminal and quasi-criminal jurisprudence where the penalties are prescribed, it is implicit thereunder that a major. penalty would comprehend within its fold the lesser penalty. If a major penalty is proposed looking to the circumstances of the case, at that stage after taking into consideration the representation bearing on the subject and having an impact on the question of penalty, a minor penalty was always be awarded. In penal statute, maximum sentence for each offence is provided but the matter is within the discretion of the judicial officer awarding sentence to award such sentence within the ceiling prescribed by law as would be commensurate with the gravity of the offence and the surrounding circumstances except where minimum sentence is prescribed and Court's discretion is by legislation fettered. It is thus incontrovertible that, if any particular penalty is specified as tentatively proposed in the second show cause notice, the disciplinary authority after taking into consideration the representation made by the delinquent government servant can award that penalty or any lessor penalty and in so doing Article 311(2) will not be violated. In fact, this leaves open a discretion to the punishing authority which accords with reasons, fair play and justice. The censure entry being a lesser penalty can otherwise be also awarded even if it was not specifically mentioned in the Act or the Rules.

47. In the case of Deep Narayan Singh (supra) the learned Single Judge has noted the decision of the coordinate Bench in the case of Ram Charit Pandey (supra) wherein the Court had held that the punishment of censure was in consonance with the provisions of Section 7 of the Act. However, it was not followed on the ground that it was not discussed in the said decision that the censure entry amounts to a penalty and it was not a mere entry.

48. A Full Bench of this Court in the case of State of Uttar Pradesh and Others Vs. Firm Deo Dutt Lakhan Lal, , has held that when it is found that there was a conflict between the two decisions, the refusal to refer the case to a larger Bench does not seem to be justified by the fact that the question was not elaborately discussed in one decision as in the other.

49. In the case of Oriental Insurance Co. Ltd. and Others Vs. Verda Ram and Others, a Full Bench of this Court has held that the judicial discipline and propriety must combine to curb any tendency on the part of any Judge to brush aside any binding judicial precedent under the purported cover of the per incuriam label.

50. Even though, in the present case, we find that the learned Single Judge has not used the word per incuriam but has brushed aside the binding precedent in

the case of Ram Charit Pandey (supra) on the ground that the said case did not discuss that censure entry amounts to a penalty and it was not a mere entry. Such an approach by the learned Single Judge, with great respect we say, was not proper.

51. In view of the foregoing discussions, we are of the considered opinion that the view taken by the learned Single Judge in the case of Deep Narayan Singh, (supra) is not the correct view. The provisions of Rule 4(1)(b)(iv) of the Rules are valid and intra vires. The punishment by way of censure entry can be awarded to the delinquent police personnel depending upon the gravity of the misconduct.

52. No other point has been pressed.

53. In the result, all the writ petitions fail and are dismissed.