

(2009) 05 AHC CK 0279
In the Allahabad High Court

Constable 103 Yogendra Pal Singh and others	APPELLANT
Vs	
State of U.P.and others.	RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0279

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

Final Decision : Disposed Of

Judgement

S.N.H. Zaidi, J.

Heard the learned counsel for the appellants Sri Rakesh Kumar Singh and Sri Mukund Tiwari for the State.

The appellants, who are the Constables, challenge their order of transfer from Civil Police to Government Railway Police.

The writ petition has been dismissed by the learned Single Judge after making the following observations:

"Mr. Anil Saran, learned Standing Counsel submits that the transfer order has been passed after due approval from the Board. Accordingly, no case for interference under Art. 226 of the Constitution of India is made out. The writ petition is dismissed."

Learned counsel for the appellants has drawn the attention of the Court and has brought on record two judgements passed by the learned Single Judge under the similar circumstances, raising the same issue, namely, Writ Petition No. 4554 (SS) of 2008, in re: Vinod Kumar vs. State of U.P. and others, decided on 5.8.08 and Writ Petition No. 7809 (SS) of 2008, in re: Rizwan Ali vs. The State of U.P. and others, decided on 20.3.09, wherein the learned Single has taken a view that the Police Establishment Board did not make recommendations after applying its own mind as to whether the Constable should be transferred or not and that mere approval granted by the Board on a transfer order passed by the

State Government is not in compliance with the ratio of the judgement passed by the apex court in the case of Prakash Singh and others vs. Union of India and others, (2006) 8 SCC 1, by a detailed reasoning that the Board's approval is not sufficient for transfer of the police constable.

The learned Single Judge observed as under:

"(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 decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfer of officers over and above the rank of Superintendent of Police, and the 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 promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State."

That being the position, the writ petition could not have been dismissed, that too on the mere statement of the learned Standing Counsel that the transfer order has been passed after due approval from the Board.

We also place on record that the learned Standing Counsel ought to have himself apprised the learned Single Judge about the decision given by him earlier under the similar circumstances instead of giving such a statement and getting the petition dismissed.

It is duty of the Standing Counsel to bring the correct facts to the notice of the Court.

We, therefore, set aside the order dated 25.2.09 passed by the learned Single Judge and remit the matter to the learned Single Judge having jurisdiction, who will decide the writ petition on merits, without being influenced by any observation made in this order, as we have not expressed our view on the issues in question.

Let the writ petition be listed before the learned Single Judge in the next week, as fresh.

The special appeal is allowed. No order as to costs.