
(2012) 12 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 56469, 53087, 57121, 57420
and 61247 of 2012

Dev Nandan Upadhyay and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Citation : (2013) 2 ADJ 365

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Vijay Gautam and Gulab Chandra, for the Appellant;

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner is a sub-inspector in the police force and has been transferred by the impugned order from Civil Police to GRP. The petitioner, being aggrieved by the transfer order, has filed the present writ petition on the limited ground that no sanction was obtained from the Director General of Police, which is a mandatory requirement contemplated under the second part of Regulation 525 of U.P. Police Regulations. A counter-affidavit has been filed and with the consent of the parties, the writ petition is being decided at the admission stage itself. For facility, Regulation 525 of the U.P. Police Regulation is extracted hereunder:

525. Constable of less than two years" service may be transferred by the Superintendent of Police from the armed to the civil police or vice versa. Foot police constables may be transferred to the mounted police at then-own request. Any civil police constable of more than two and less than ten years; service may be transferred to the armed police and vice versa by the Superintendent of police for a period not exceeding six months in any one year. All armed police constables of over two years; service and civil police constables of over two and under ten years" service may be transferred to the other branch of the force for any period with the permission of the Deputy Inspector General.

In all other cases for transfer of Police Officers from one branch of the force to another or from the police service of other provinces to the Uttar Pradesh Police requires the sanction of the Inspector General.

2. The entire plank of the petitioner is, that the second part of Regulation 525 contemplates that a police officer can be transferred from one branch of the force to the another branch only with the sanction of the Inspector General, now called the Director General of Police.

3. The learned counsel for the petitioner contended that the impugned order has been, passed by the Deputy Superintendent of Police, Establishment on behalf of DIG, Establishment and that no sanction has been obtained from the DGP. Consequently, the transfer order is ex facie illegal and has been passed without any authority of law.

4. The second part of Regulation 525 refers to police officers. The question is, whether a Sub-inspector falls under the category of a police officer or not. In the matter of Jai Narayan Prasad v. State of U.P. and others, 2008(9) ADJ 267, a learned Judge held that all the members of the police force, namely, gazetted and non-gazetted are police officers, which has also been reiterated by this Court in the case of Chandra Shekhar Rawat v. State of U.P. and others, (Writ Petition No. 57117 of 2012) decided on 3.2.2012 and consequently, the Court is not dwelling on this issue. In brief, the Court finds that Regulation 397 and 398, prescribes who are gazetted officers and who are non-gazetted officers. For facility, the said Regulations are extracted hereunder:

397. The gazetted officers of the Force are-

- (1) Inspector-General
- (2) Deputy Inspector-General
- (3) Superintendents.
- (4) Assistant Superintendents.
- (5) Deputy Superintendent.

398. The non-gazetted officers of the Force are-

- (1) Inspectors.
- (2) Sub-Inspectors
- (3) Head Constables
- (4) Constables

5. A perusal of the aforesaid Regulations read with the Police Act and other provisions of the Regulations will make it abundantly clear that a Sub-inspector is also called a police officer. This Court in Chandra Shekhara Rawat (Supra) also distinguished the decision of the Supreme Court in State of U.P. and Others Vs.

Jasvir Singh and Others, , holding that the observation of the Supreme Court that the second part of Regulation 525 only relates to a Police Officer and not to a Police Constable, was not a binding precedent and could not be taken into consideration nor could it be read in isolation.

6. The Supreme Court in the case of Prakash Singh and Others Vs. Union of India (UOI) and Ors, , has directed all the State Governments to establish a Police Establishment Board for the purpose of deciding the transfers, postings, promotions and other service related matters of officers and below rank of Deputy Superintendent of Police. For facility, the direction of the Supreme Court as given in paragraph 31(5) is extracted hereunder:

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 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 transfers of officers of 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.

7. Pursuant to the aforesaid directions, the State Government issued a notification in the year 2008, and established four Police Establishment Boards on 12.3.2008 for considering and deciding the transfers, postings and promotions. The Police Establishment Board has approved the transfer order of the petitioner by its order at 17th August, 2011, pursuant to which, the consequential order was passed on 21st August, 2011 by the Deputy Superintendent of Police Establishment on behalf of DIG Establishment. Consequently, the order of transfer was passed in accordance with law by the Police Establishment Board as per the directions of the Supreme Court.

8. The learned counsel for the petitioner contended that even though, the transfer order has been approved by the Police Establishment Board, nonetheless, sanction from the Director General of Police was required to be obtained under the second part of Regulation 525, which still holds the field and that the establishment of the Police Establishment Board does not supersede the Regulations, which are already in existence.

9. There is no quarrel with the aforesaid proposition made by the learned counsel

for the petitioner. The transfer orders have to be made in accordance with the Regulations framed under the U.P. Police Regulations, in view of Rule 26 of the U.P. Sub-Inspector and Inspector, (Civil Police) Service Rules, 2008, which has been dealt at length by a Full Bench of this Court in Vinod Kumar (Constable C.P. 20J) and another v. State of U.P. and others, 2010 (7) ADJ 315 and consequently, the Court is not dwelling on this issue.

10. The full Bench held that the Police Establishment Board is only supplementary to the provision relating to transfers provided in the Regulations. The question, therefore, still remains as to whether any sanction was given by the Director General of Police as required under the second part of Regulation 525. In this regard, the learned Standing Counsel has placed a Government Order dated 21st March, 1990, by which the powers of the Director General of Police for transfer of Police Officers have been delegated to the Deputy Inspector General of Police. For facility, the said Government order dated 21st March, 1990 is extracted hereunder:

Uttar Pradesh Police Regulation ke prastar 1 evam 525 me Police Mahanirikshak, Uttar Pradesh ko police Bal ke arajpatrit अधिकारियों/karmchariyon ke ek sakha se dusri sakha ke sthanantaran karne ke adhikar prapt hain.

2. Main is adesh dwara Uttar Pradesh Police Mukhyalaya, Allahabad me niyukt Police Mahanirikshak, Karmik, ko Uttar Pradesh Police ke samast stur ke arajpatrit अधिकारियों/karmchariyon ke Uttar Pradesh Police/Bal ki ek sakha se dusri sakha ko sthanantarn karne ka adhikar tatkalik prabhav se pratinidhitwa karta hoon.

3. Main Police Adhikshak, Karmik, Uttar Pradesh Police Mukhyalaya, Allahabad ko Uttar Pradesh Police Bal Head Constable/Constable stur ke karmchariyon ko ek sakha se dusri sakha me sthanantaran karne ka adhikar tatkalik prabhav se pratinidhanit karta hoon.

Sd/- (Dr. R.P. Mathur) Police Mahanideshak/ Police Mahanirikshak, Uttar Pradesh
21.3.90

This Government Order was considered in the case of Satendra Singh v. State of U.P. and others, 2008 (1) ESC 499, where the issue was with regard to the transfer of a constable from one branch to another branch i.e. from Civil Police to GRP and the second part of Regulation 525 was relied upon by that petitioner. The Court, after considering the aforesaid Government Order dated 21st March, 1990, held that since the power has been delegated to the Deputy Inspector General of Police Establishment, the transfer order was passed by the Competent Authority. The said judgment was affirmed by a Division Bench by its judgment dated 17th July, 2007, which has also been reported in 2008 (1) ESC 506.

The establishment of Police Establishment Board by the Government Order dated 12.3.2008 indicates that the establishment would be headed by a Inspector General of Police, who is a higher Authority than the DIG and that the DIG

Establishment is also a member of that Board. Therefore, the approval of the transfer order of the petitioner by the Police Establishment Board, by necessary implication, has the tacit approval of the delegated Authority, i.e., DIG (Establishment) on behalf of DGP, while sitting as a member of the Police Establishment Board. Consequently, the contention of the petitioner that the transfer order was passed by a person who did not have the Authority of law or the fact that it did not have the sanction of the DGP, is erroneous.

In the light of the aforesaid, this Court does not find any error in the transfer order.

The writ petition fails and is accordingly dismissed.