
(2003) 02 AHC CK 0057
In the Allahabad High Court
Case No : C.M.W.P. No. 13901 of 2002

Dilip Kumar Upadhyay and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Uttar Pradesh Police Regulations, 1948 — Regulation 525, 61, 65

Citation : (2003) 2 AWC 1115

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Umesh Narain Sharma and Anil Kumar Bajpai, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the Impugned order of the U. P. State Public Service Tribunal dated 27.3.2002 Annexure-1 to the writ petition and for quashing the orders dated 13.4.2001 and 3.8.2001 by which the petitioners have been promoted to the post of Head Constables in the armed police. The petitioners have also prayed for a mandamus directing the respondents to promote the petitioners as Head Constables in civil police.

2. The petitioners were appointed as Constables in civil police in 1993. It is alleged in paragraph 2 of the writ petition that although the petitioners were inducted in the civil police, the D.I.G., Police Allahabad in exercise of powers under Regulation 525 of the Police Regulations had transferred the entire 1993 batch of constables recruited in Allahabad to the armed police in 1997. In paragraph 3 of the writ petition, it is stated that the State Government constituted a Special Task Force in Allahabad in 1998 and the petitioners were inducted in the Special Task Force. The Special Task Force was created for the purposes of eradicating crime from Allahabad and to forcefully and effectively combat organised crimes being conducted by various groups and individuals in Allahabad. It is alleged that the petitioners were inducted in the Special Task Force due to their exemplary courage, honesty and integrity and the Special Task

Force basically carries out the work of civil police.

3. Regulation 396 of the Police Regulations states that the police force shall consist of the following bodies :

(i)

Provincial Police, Civil, Armed and Mounted

Appointed and enrolled under Act V of 1861,

(ii)

Government Railway Police

(iii)

Village Chaukidars

Appointed in Agra under Act XVI of 1873 and in Oudh under Act XVIII of 1876. Not enrolled under Act V of 1861.

4. Regulation 65 of the Police Regulations lays down the functions of the Armed Police which is as follows :

"The Armed Police are intended for the protection of treasuries, tehsils and lockups, for the escort of treasure, prisoners and Government property, for service on magazine and quarter guards, for the suppression and prevention of disorder and crime of violence, and for the pursuit and apprehension of dangerous criminals.

This Branch of the force is under the Special charge of Deputy Inspector Generals who are responsible that Superintendents maintains discipline and efficiency."

5. The function of the civil police is purely prevention of crime. The petitioners who were appointed as constables in civil police had the job to prevent crimes. In this connection. Regulation 61 states as follows :

"Constable of the civil police will not be armed except on special occasions. Their principal duty is the prevention of crime. They must be courteous and considerate to the public whose servants they are.

Every constable on duty, except when deputed on special detective work requiring disguise, shall wear the prescribed uniforms."

6. Since 1998 the petitioners were responsible for eliminating a large number of hardened criminals In police encounters and busting international arms trade in Allahabad and unearthing fake currency, etc. Some of the achievements claimed by the petitioners are menttoned in paragraph 10 of the writ petition. The S. P. (City), Allahabad considering the outstanding performance as well as exemplary bravery and courage of the petitioners by risking their lives, sent letters dated 29.12.1998 to the S.S.P., Allahabad for giving out-of-turn promotion to the

petitioners to the next higher post. True copies of such letters are Annexures-2 and 3 to the writ petition. In these letters all the details of the work of the petitioners are given.

7. The S.S.P., Allahabad seconded the proposals made by the S.P. (City), Allahabad and forwarded the same to the D.I.G., Allahabad Range vide letter dated 13.3.1999. The D.I.G., Allahabad Range also recommended out-of-turn promotion of the petitioners and the matter was accordingly considered by a Committee constituted for this purpose. The petitioners were given out of turn promotion by order dated 13.4.2000 of the Director General of Police, U. P., and they were posted as head constables in the armed police and not in the civil police. True copy of the order dated 13.4.2001 is Annexure-4 to the writ petition.

8. Thereafter the S.S.P., Allahabad vide letter dated 20.4.2001 to the Director General of Police, U. P. Lucknow highlighted the brave and daring acts of the petitioners and requested that the petitioners be posted as head constables in civil police as per Government Order dated 3.2.1994 in order to boost their morale. The S.S.P., Allahabad wrote that the order of promotion sending the petitioners In armed police does not encourage the petitioners to continue to perform functions with bravery and courage but is demoralising and ruining. True copy of the letter dated 20.4.2001 is Annexure-5 to the writ petition. On receiving the said letter, the Director General of Police directed the D.I.G. (Establishment), Police Headquarter to enquire into the matter and submit a report. The D.I.G. (Establishment) submitted a detailed report dated 20.5.2001 stating that the contents of the letter of the S.S.P., Allahabad and his recommendation that the petitioners be given out-of-turn promotion as head constables in civil police is correct. True copy of the letter dated 20.5.2001 is Annexure-6 to the writ petition.

9. The Inspector General of Police (Establishment), Police Headquarter U. P. wrote a letter dated 8.6.2001 to the D.I.G., Allahabad Range seeking further enquiries to confirm the contents of the letter dated 20.4.2001 written by the S.S.P., Allahabad. True copy of the letter dated 8.6.2001 of the Inspector General of Police (Establishment) is Annexure-7 to the writ petition. In pursuance of the aforesaid letter, the D.I.G., Allahabad Range wrote a letter dated 10.7.2001 to the Inspector General of Police (Establishment) stating that the petitioners were instrumental in the achievements indicated in the letter of the S.S.P., Allahabad, and he further stated that the petitioners had shown exemplary courage, bravery and integrity and to boost their morale, they should be given out-of-turn promotion as head constables in civil police. True copy of the letter dated 10.7.2001 is Annexure-8 to the writ petition. However, by the impugned order dated 4.8.2001 the Director General of Police has not approved the transfer of the petitioners from armed police to civil police but approved their promotion as head constables in armed police. True copy of the impugned order dated 4.8.2001 is Annexure-9 to the writ petition.

10. Aggrieved against the said order, the petitioners filed a writ petition which

was dismissed on the ground of alternative remedy before the U. P. Public Service Tribunal. The petitioners then filed a claim petition before the U. P. Public Service Tribunal but the same was dismissed on the ground that in view of paragraph 525 of the Police Regulations, a police constable can be transferred from civil police to armed police and vice versa with the approval of the Inspector General of Police and also on the ground that the petitioners had not made any representation to the police authorities against the order dated 13.4.2001 and 4.8.2001. Aggrieved, this writ petition has been filed in this Court.

11. As regards the ground given in the order of the Tribunal that the petitioner had not moved representation against the orders dated 13.4.2001 and 4.8.2001, it may be mentioned that the petitioners have been making representations regarding their claim of transfer from armed police to civil police and on the basis of their representations, recommendations have been made by the S.P. (City), Allahabad, S.S.P., Allahabad, D.I.G. Allahabad Range as well as the Inspector General of Police (Establishment), U. P. as stated in various paragraphs of the writ petition e.g., paragraphs 14, 15, 16, 17, etc. to the writ petition. However, all these letters and recommendations seem to have had no affect since the Director General of Police by the impugned order dated 4.8.2001 has not approved the transfer of the petitioners from armed police to civil police vide Annexure-9 to the writ petition. In these circumstances, it is difficult for us to understand what useful purpose would be served by asking the petitioners to again make representation.

12. Now coming to the merits of the case, we have to consider the petitioners' plea that they should be posted in civil police and not in the armed police.

13. In this connection Regulation 525 of the Police Regulations states :

"Constable of less than two years service may be transferred by the Superintendent of Police from the armed to the civil police and vice versa. Foot police constables may be transferred to mounted police at their own request. Any civil police constable of more than two and less than 10 years service may be transferred to the armed police and vice versa by the Superintendent for a period not exceeding six months in any one year. All armed police constables of over two years' service and civil police of over two and under 10 years service may be transferred to other branch of the force for any period with the permission of the Deputy Inspector of General.

In all other cases, the transfer of police officers from one branch of the force to another or from the police service of other Provinces to Uttar Pradesh Police requires the sanction of the Inspector General."

14. It has been admitted in paragraph 12 of the counter-affidavit that the civil police and armed police constitute different cadres. The functions of the two are also different, as stated in paragraph 20 of the writ petition.

15. A perusal of Regulations 61 and 65 along with Regulation 525 shows that

ordinarily armed police and civil police constitute different cadres and that has also been admitted in paragraph 12 of the counter-affidavit. However, as stated in Regulation 525, transfer of police officers from one branch of the force to another requires the sanction of the Inspector General of Police (now the Director General of Police).

16. Thus, though it is evident that armed police and civil police constitute different cadres, yet transfer can be done from one cadre to the other with the sanction of the Director General of Police. However, this does not mean that the Director General of Police can act arbitrarily in this connection. Having the power is one thing and exercise of that power is another. Although the Director General of Police has the power to transfer a policeman from armed police to civil police and vice versa, yet he cannot do this arbitrarily. In the present case, the petitioners' service record appears to be exemplary and they have requested for posting in civil police and recommendations have been made by the S.P. (City) Allahabad, S.S.P., Allahabad, D.I.G., Allahabad Range and Inspector General of Police (Establishment) in support of their claim. However, without giving any good reason, the Director General of Police has rejected the request and recommendations vide order dated 4.8.2001 Annexure-9 to the writ petition. No reason at all has been given in the order dated 4.8.2001.

17. In our opinion, although the order dated 4.8.2001 is not a quasi-judicial order but is an administrative order, yet it is now established in administrative law that the line between a quasi-judicial order and administrative order has become thin vide A.K. Kraipak and Others Vs. Union of India (UOI) and Others, In that decision, the Supreme Court observed : "The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. "

18. Now-a-days, the requirement of administrative law is that administrative authorities should act fairly. In Tata Iron and Steel Co. Ltd. v. Union of India (2001) 2 SCC 41, the Supreme Court observed : "Doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law field to ensure the rule of law." In all fairness, the Director General of Police should have given some reason why he is rejecting the request of the petitioners and recommendations of senior officers made to him, but he has not done so. The petitioners were, therefore, rightly aggrieved that their requests and recommendations of the senior officers have not been considered properly after due application of mind.

19. In view of this, we allow this writ petition and quash the impugned orders dated 13.4.2001, 4.8.2001 and 27.3.2002 and the matter is remanded to the Director General of Police, U. P. to again apply his mind to the matter keeping the service record of the petitioners along with recommendations of the higher authorities as mentioned in the writ petition and other relevant factors in mind and pass a fresh order in this connection.

20. Petition is allowed. No order as to costs.