
(1997) 09 AHC CK 0033

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30806 of 1997

Head Constable 91 TP (Traffic Police) Nirpat Singh

APPELLANT

Vs

Senior Superintendent of Police

RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:

Police Act, 1861 — Section 12

Citation : (1997) 3 UPLBEC 1913

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Tej Pal, for the Appellant;

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The order dated 27th May 1997, Annexure-5 to the writ petition, is the subject matter of challenge in the present writ petition. In the said order the petitioner who is Head constable, was transferred from Traffic department to Armed Police with immediate effect by the Senior Superintendent of Police, Jhansi. The said order has been assailed by Sri Tejpal learned counsel for the petitioner on the ground that the Senior Superintendent of Police do not have any power to transfer a Police personnel from Civil Police to other branch of the force. Secondly, he contends that the Head constable can never be transferred from the Civil Police to Armed force- His third contention is that the petitioner is a Head constable, would be entitled to further promotion in the Traffic department in a period shorter than that he would be getting if he is sent to the Armed force. Therefore the said order of transfer would result in penal consequences. He next contends that by reason of the orders framed by the Inspector General of Police, u/s 12 of the Police Act, having statutory force and such rules having been framed, extract whereof is contained in Annexure "4" of the writ petition, the same is binding on the respondents and by reason of specific provision contained therein the petitioner is entitled to continue at least for three years in the Traffic department from the date of his induction in the said

department.

2. The last contention of Sri Tejpal learned counsel for the petitioner is that the petitioner can be removed from the Traffic department either on his own choice or on the ground of unsuitability. But in the present case the petitioner has not been removed from the Traffic department on the ground of unsuitability. On these grounds the impugned order of transfer is bad. He also contends that once he is removed from the Traffic department he cannot be reinducted because of the provisions contained in the said order. For all these reasons the impugned order should be quashed.

3. Learned Additional Chief Standing counsel on the other hand contends that the said rule do not have any statutory force and it is only guideline. He secondly contends that the petitioner cannot claim any right to remain in the Traffic department, particularly when there is no vacancy on the post of Head constable in the said department. He points out from the impugned order itself that there being two posts, four Head constables having been sought to be posted against two sanctioned posts, it was not possible to accommodate the petitioner. Therefore, he has been sought to be removed. According to him the Senior Superintendent of Police is competent to post him in the Armed Police. He has opposed the said contention of Sri Tejpal.

4. I have heard Sri Tejpal learned counsel for the petitioner and Sri D. R. Chaudhary, learned Additional Chief Standing Counsel at some length. The facts remained that by order dated 26-3-1997 the petitioner was transferred to the Traffic department from Armed Police. The said order is Annexure "2" to the writ petition. Thus it appears that the petitioner belonged to Armed Police. He was inducted to Traffic department only by an order dated 26-3-1997. From the order dated 27-5-1997 it appears that there were four Head constable against two sanctioned posts of Head constable, Therefore two were found surplus.

5. In that view of the matter the impugned order was passed by repatriating the petitioner from Armed Police from where he has been inducted to the Traffic department. In the present facts and circumstances of the case it is not necessary to go into the questions as to whether the order contained in Annexure "4" to the writ petition is enforceable or binding or not. In as much as from the said order it has been pointed out that the maximum period a person can be inducted in the Traffic department is five year for constable and three years period is for Head Constable. Therefore the petitioner cannot claim that if he remains in the Traffic department he will get shorter period for promotion. By reason of this provision he cannot claim to remain in the Traffic Department for more than three years in view of the fact that he is a Head constable. But at the same time it is provided in Clause (1) (vi) of the said order that the maximum age limit for constable and Head Constable in the Traffic department will be 35 years. From the affidavit it appears that the petitioner is about 34 years of age on the date of affirming the affidavit. Clause I (vii) of the said Order provides completion or stipulated period on attainment of the age or 35 years, which ever

is later will entail removal from the Traffic department. Thus it appears that Head constable can be retained either upto 35 years or till three years from induction. But this order is not a service condition which can be enforced as a legal. These are only administrative instruction for the purposes of regulating the working of a particular branch of Police department. Now in the present case the petitioner originally belonged to Armed Police from where he had been inducted to. The Traffic Deptt. Therefore it cannot be said that his repatriation is transfer from the Civil Police to Armed Police. Therefore the contention that he cannot be transferred because of Regulation 525 which does not conceive transfer of a Head constable, cannot be sustained. Regulation 525 provides that such transfer even can be effected but with the approval of Inspector General of Police Since the petitioner had been a member of Armed Police his repatriation cannot be treated as transfer within the meaning of Regulation 525. Therefore the contention of the petitioner cannot be accepted.

6. In the facts and circumstances of the case the order does not suffer from any infirmity, as observed earlier. The writ petition thus fails and is accordingly dismissed. There will be, however, no order as to costs.

7. Let a copy of this order be given to the learned counsel for the petitioner on payment of usual charges within a week.