

**(2010) 09 AHC CK 0234**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 25016 of 2010

Jagannath Prasad Gaur and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 14-09-2010

**Acts Referred:**

Constitution of India, 1950 — Article 14, 142, 162

Police Act, 1861 — Section 2

Uttar Pradesh Civil Police Constable and Head Constable Service Rules, 2008 — Rule 26

Uttar Pradesh Police Regulations, 1948 — Regulation 520, 521, 522, 523, 524

**Citation :** (2010) 09 AHC CK 0234

**Hon'ble Judges :** Dilip Gupta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Dilip Gupta, J.—The petitioners, who are Constables and Head Constables in the U.P. Police, have sought the quashing of the order dated 26th April, 2010 issued by the Deputy Inspector General of Police, Establishment, Uttar Pradesh for transfer of the Head Constables Civil Police (Special Category) and Constables, Civil Police pursuant to the decision taken by the Police Establishment Board on 26th April, 2010. The petitioners have also sought the quashing of the Government Order dated 19th February, 2010 as also Clause 5 of the general transfer policy dated 21st April, 2010 issued by the Chief Secretary, Uttar Pradesh Government.

2. The Police Establishment Board took the decision in view of the Government Order dated 11th July, 1986 which provides that Head Constables and Constables should not be posted in their home district or in districts adjoining their home district. The Government Order dated 19th February, 2010 exempts the implementation of the Government Order dated 11th July, 1986 for such police personnel who have been posted for security of VIPs" with the approval of the Government. Clause 5 of the transfer policy dated 21st April, 2010 of the State Government provides that the said policy shall not be applicable for the Police

Department.

3. Sri Vijay Gautam, learned Counsel for the petitioners has made following submissions:

1. The decision taken by the Police Establishment Board for transfer of Constables/Head Constables on the basis of the Government Order dated 11th July, 1986 is bad in law since it fails to take notice of the subsequent Government Order dated 25th March, 1995 which has amended Clause 5 of the Government Order dated 11th July, 1986. It is his submission that by the subsequent Government Order dated 25th March, 1995 the condition imposed in Clause 5 of the Government Order dated 11th July, 1986 that the Head Constables/Constables posted in home district or in districts adjoining home district shall be transferred has been diluted and it has been provided that they shall be transferred if they are posted in home district or in police stations adjoining the home district.

2. Though the Supreme Court in Prakash Singh and Others Vs. Union of India (UOI) and Ors, directed for constitution of "State Security Commission" in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad policy guidelines so that the State Police always acts according to the laws of land and the Constitution of the country, but the State Government has not constituted the "State Security Commission". It is his submission that it is only the "State Security Commission" that can take a decision to accept or not to accept the principles laid down in the Government Order dated 11th July, 1986 and, therefore, the Police Establishment Board could not have taken a decision to transfer the Head Constables/Constables for implementation of the Government Order dated 11th July, 1986. The decision taken by the Police Establishment Board is, therefore, contrary to the decision of the Supreme Court in Prakash Singh (supra) and deserves to be set aside.

3. A perusal of the decision taken by the Police Establishment Board on 26th April, 2010, which has been produced at the time of hearing of the writ petition, shows that the decision has been taken in a callous manner without application of mind and without giving reasons. The decision also does not show any independent application of mind by the Police Establishment Board which only took a formal decision to accept the proposal placed before it.

4. The Government Order dated 11th July, 1986 deserves to be set aside as it is discriminatory in nature since in view of the Government Order dated 19th February, 2010, the police personnel deputed for security of VIPs" are exempted, .

5. Clause 5 of the general transfer policy dated 21st April, 2010 issued by the Chief Secretary, State of U.P. which exempts the Police Department deserves to be set aside as there is no rational basis for exempting the police department from the said Policy.

4. Sri Piyush Shukla, learned Standing Counsel appearing for the respondents has supported the impugned order and has made following submissions:

1. The petitioners are not justified in placing reliance upon the Government Order dated 25th March, 1995 since not only has it been found to be doubtful and an inquiry has also been constituted, but the subsequent Government Order dated 28th October, 2009 makes it clear that the transfer of Head Constables/ Constables shall continue to be made in accordance with the Government Order dated 11th July, 1986. It is, therefore, his submission that when the Government has taken a decision to implement the Government Order dated 11th July, 1986, the decision taken by the Police Establishment Board on the basis of the Government Order dated 11th July, 1986 does not suffer from any illegality.

2. The functions of the State Security Commission and the Police Establishment Board are entirely different. While the State Security Commission has been constituted by the Supreme Court in the judgment rendered in Prakash Singh (supra) to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police, the Police Establishment Board has been constituted to decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. Thus, non-constitution of the State Security Commission cannot in any manner invalidate the decision taken by the Police Establishment Board for transfer of the Head Constables/Constables and nor can it be said that the decision taken by the Police Establishment Board on 26th April, 2010 is contrary to the decision of the Supreme Court in Prakash Singh (supra).

3. The Police Establishment Board had considered the proposal submitted for transfer of Head Constables and Constables posted in districts adjoining their home district in the light of the Government Order dated 11th July, 1986 and after examination of the records of 1947 Constables whose proposals were placed before it, took the decision since they were posted in districts adjoining their home district. The Police Establishment Board was not required to pass a separate order for each and every Constable and it cannot be urged that there was lack of independent application of mind merely because the proposal prepared for implementing the Government Order dated 11th July, 1986 had been placed before it.

4. The Government Order dated 11th July, 1986 cannot be said to be discriminatory merely because the police personnel deputed for security of VIPs" are exempted from the said order since they form a different class.

5. Likewise, Clause 5 of the General Transfer Policy dated 21st April, 2010 of the State Government which exempts the Police Department, is not discriminatory in nature.

6. Transfer of a government employee is not only an incident inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any specific condition to the contrary in the rules or conditions of

service and only when an order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, the Courts may interfere otherwise the transfer orders should not be interfered with as a matter of course. In support of this submission he has placed reliance upon the decisions of the Supreme Court in State of U.P. and Others Vs. Gobardhan Lal, The Government of A.P. Vs. G. Venkata Ratnam, Somesh Tiwari Vs. Union of India (UOI) and Others, and Airports Authority of India Vs. Rajeev Ratan Pandey and Others,

5. I have considered the submissions advanced by learned Counsel for the parties.

6. It needs to be noticed, before advertng to the contentions of the parties, that an interim order was passed in this petition on 7th May, 2010 staying the transfer order for the reason that the transfer order of so many Constables was passed without examining the cases individually and without application of mind which was against the directions of the Supreme Court in Prakash Singh (supra). The State of U.P. filed Special Appeal No. 850 of 2010 against the grant of the said interim order. In Special Appeal, it was urged by learned Counsel for the petitioners-respondents that the constitution of the Board for transfer of Constables was not in accordance with the directions given by the Supreme Court in Prakash Singh (supra) as it was not presided by the Deputy Inspector General of Police but by Additional Director of Police. This contention was accepted in Special Appeal and the interim order was found to be justified for this reason. The relevant observations are as follow:

We have given our thoughtful consideration to the various plea raised by the learned Counsel for the parties. We find that even if the learned Single Judge has stayed the order of transfer of the respondents on the ground that the Board has not applied its mind and has acted mechanically, the issue raised by Sri Vijay Gautam, learned Counsel for the respondents that the Board was not properly constituted, goes to the very root of the matter and if this Court comes to the conclusion that the Board was not properly constituted in terms of the direction given by the Hon'ble Supreme Court, the entire order of transfer stood vitiated. The order passed by the learned Single Judge would be justified, though on a different ground....

In view of the foregoing discussions we are of the considered opinion that the Board which had considered and approved the transfer order in question was not constituted in accordance with the specific directions given by the Hon'ble Supreme Court and, therefore, the transfer order has not been passed in accordance with law.

(emphasis supplied).

7. This decision rendered in this Special Appeal was placed before another Division Bench hearing Special Appeal No. 1093 of 2010 which, after noticing the conflict of views in two Division Bench judgments of the Court in Shishu Pal

Singh v. State of U.P. and Ors. 2010 (3) ADJ 241 (DB) and Special Appeal No. 850 of 2010 State of U.P. and Ors. v. Jagannath Prasad Gaur and Ors. decided on 28th May, 2010 arising out of the interim order passed on 7th May, 2010 in this writ petition, referred the matter to the Full Bench to answer the following issue:

(i). Whether pursuant to framing of the U.P. (Civil Police) Constable and Head Constables Service Rules, 2008, the directions issued by the Supreme Court in the case of Prakash Singh and Others Vs. Union of India (UOI) and Ors, in exercise of power under Article 142 of the Constitution of India, are no longer applicable in view of what is set out in paragraph 31 of the judgment?

8. The Full Bench answered the reference by the order dated 18th August, 2010. It was pointed out by the learned Standing Counsel that looking to the strength of the Police Constables, it was not possible for the State Government to appoint one Board pursuant to the directions issued by the Supreme Court in Prakash Singh (supra) and so the notification dated 12th March, 2008 was issued constituting four different Boards for various ranks of police personnel. The State had also drawn the attention of the Full Bench to the U.P. (Civil Police) Constable & Head Constable Service Rules, 2008 (hereinafter referred to as the "2008 Rules"), particularly to Rule 26 which provides that in regard to the matters not specifically covered by the Rules or special orders, persons appointed to the service shall be governed by the rules, regulations and orders applicable generally to Government Servants serving in connection with the affairs of the State and it was pointed out that transfer was covered by Regulations 520 to 526 of the U.P. Police Regulations framed under the Police Act. The Full Bench observed that the Police Act and the Rules made thereunder and/or statutory orders passed u/s 2 of the Police Act constitute a self contained Code relating to police service in the State, which is part of the civil services of the State. The Full Bench after noticing that the 2008 Rules do not contain any provision for setting up of Boards for effecting transfers observed that the notification dated 12th March, 2008 issued by the State Government constituting the four Boards cannot be said to be issued in exercise of the powers u/s 2 of the Police Act, but was issued to give effect to the directions issued by the Supreme Court under Article 142 of the Constitution in Prakash Singh (supra) and shall be binding till such time as the State enacts legislation for constituting the Boards.

9. The Full Bench thereafter examined Regulations 520 to 525 contained in Chapter XXXIV of the U.P. Police Regulations dealing with transfers and observed:

These Regulations are an exercise in subordinate legislation. It is no doubt true that the Hon'ble Supreme Court in Prakash Singh (supra) had directed the constitution of the Police Establishment Boards as also directed that the Board is to decide all transfers below the rank of Deputy Superintendent of Police. The directions have not held that the legislations in force in the matter of transfer are illegal. The directions to an extent supplement the law in force. The said directions, therefore, have to be read along with Regulations in the context that if the authorities under the Regulations in exercise of the power have at the local

level proposed the transfers in terms of the policy, that has to be decided by the Police Establishment Board before the transfers are given effect to.

The question then is, what is the meaning of the expression "decide". We open with a caveat. Judgments cannot be read as statutes and so interpreted. The judgment must speak for itself. The expression "decide" has to be considered in the context of direction No. 5, which is to establish the Police Establishment Boards where the Supreme Court has used the expression "decide"....

Thus, the expression is used in the context of a decision making process to settling questions. Thus, the Board itself need not determine every act of transfer, it could decide on the proposals before it....

The directions of the Supreme Court are to enable the State to enact legislation to achieve the desired objective as set out in the judgment of Prakash Singh (supra). Thus, the directions cannot be read literally, but will have to be considered in their broader aspect, which would also be to consider the "existing law" and the ultimate exercise of control by the Board to effect the transfers. The expression "decide", therefore, will have to be read in that context.

We may only mention that once a direction is issued by the Supreme Court, in the absence of a legislation, those directions to that extent will be part of additional conditions of service, as that would be law, and any violation of law, would give right to a person in whose favour, the law has been enacted and who complains of breach thereof. To that extent, the observations by the learned Judge in Bhanu Pratap (supra) would not be correct. The direction for setting up of the Boards by itself does not mean that all transfers would be personally done by the Boards. If under the Regulations, there is specific transfer policy and the authorities have proposed the transfers, the Board will exercise its powers to decide on those transfers. The power, therefore, will have to be read in that context, meaning thereby, before effecting transfer it is the Board which must ultimately decide the transfers. Considering the number of police personnel in service, it is not possible to read the directions issued under Article 142 to have conferred the power on the Board alone, when there is an existing law in force or legislation has been enacted subsequently.

10. The Full Bench then examined whether the Board had been validly constituted and in this connection observed:

The next question, we have to answer is, what is the effect of the notification, which has constituted the four Boards. The only objection is to the constitution of one of the Boards, which is headed by the Inspector General of Police (Establishment) and not by the Director General of Police and which is empowered to consider the transfer of Head Constable and Constable. The learned Division Bench, considering the matter in Jagannath Prasad Gaur (supra), was of the opinion that the Board had not been constituted in terms of the directions in Prakash Singh (supra). It is true that the Chairman of the Board is not the Director General of Police, but the Inspector General of Police

(Establishment). We have earlier quoted the sanctioned strength of the police personnel in the State of Uttar Pradesh. Insofar as the Constables are concerned, the State carried out an exercise of transfer of about 50,000 (Fifty Thousand) Constables under an "existing law". The transfers have been effected by the Board, as constituted. These transfers are regular transfers in terms of the Regulations under the Police Act. The Regulations themselves provide for regular transfer after completing a particular tenure at a station on the administrative instruction in force. In other words, in respect of such transfers, question of any application of mind, really does not arise. If any person has any grievance in respect of his individual case considering the hardship, if any, on account of transfer, then the redressal mechanism provided for, will continue to govern him....

The judgment in *Prakash Singh* (supra) was to ensure that in the matter of transfers and promotions etc., the officers and men would be considered based on their merit and uninfluenced by any political decision, patronage or consideration. Merely, because one of the functionaries named by post in the directions of the Supreme Court, is not in the Board, per se would not make the entire action of transfers void or non est. The administrative instructions are an exercise of the executive power of the State under Article 162 of the Constitution of India, which power extends to matters with respect to which the Legislature of the State has power to make laws. The transfers will have to be done in terms of the Police Regulations in force. To that extent, Rule 26 of the Rules, 2008 will have to be so read with the expression "orders applicable generally to Government Servants serving in connection with the affairs of the State" which includes the Regulations. It is only in an area where conditions of service are not covered by the Act, Rules or Regulations, with the rules in the matter of conditions of service applicable to other Government Servants, would be applicable. As long as the Regulations are in force, they will continue to be applicable in the matters of transfer. The Regulations also provide for regular transfers, which are transfers not on account of administrative exigency or in public interest. Rule 26 cannot be read to mean that all existing rules and regulations in the matter of conditions of service including transfer are no longer in force. Rule 26 only contemplates a situation where there is a vacuum or no provision....

In our opinion, therefore, considering the fact that the Rule 26 of the Rules, 2008 makes applicable the rules pertaining to the government servants, i.e. persons appointed to public services and posts in connection with the affairs of the State, and as Regulation 520 deals with the transfers of the police personnel, who are also a part of the public services of the State, therefore, insofar as the police are concerned, the Regulation pertaining to transfer would continue to apply to them. Therefore, though one of the Boards constituted is not strictly in terms of the directions issued by the Supreme Court in *Prakash Singh* (supra), nonetheless considering the exercise that has to be done and the provisions for transfer, as contained in the Police Regulations, there has been sufficient

compliance....

In these circumstances, we are clearly of the opinion that, though we have found that the notification constituting the Board is not traceable to Section 2 of the Police Act, the same at the highest, amounts to an irregularity and not illegality and would not vitiate the transfers, if they have been done in terms of the Regulations and after the approval of the Board....

(emphasis supplied)

11. It is in the light of the answers given by the Full Bench that the submissions advanced by learned Counsel for the parties in this petition have to be examined.

12. The first submission of learned Counsel for the petitioner is that the Police Establishment Board has failed to take into consideration the Government Order dated 25th March, 1995 which had amended paragraph 5 of the Government Order dated 11th July, 1986 for transfer of Constables and Head Constables posted in home district or in districts adjoining the home district. It is his submission that the condition imposed in paragraph 5 of the Government Order dated 11th July, 1986 had been modified by the subsequent Government Order dated 25th March, 1995 to the extent that the Constables and Head Constables posted in police stations adjoining the home district shall be transferred and non consideration of this Government Order has vitiated the decision taken by the Police Establishment Board and, therefore, the transfer order deserves to be set aside.

13. Learned Standing Counsel on the other hand has placed before the Court the Government Order dated 28th October, 2009 and has contended that the policy of transfer of Constable/Head Constables is to be governed by the Government Order dated 11th July, 1986 alone without the amendment alleged to have been incorporated in March, 1995 in paragraph 5 of the Government Order dated 11th July, 1986.

14. It is seen that the Government Order dated 11th July, 1986 was issued regarding appointments and transfers of Constables, Head Constables, Sub-Inspectors and Inspectors of Police. Paragraph 5 of the said Government Order provides that Head Constables and Constables shall not be posted in their home district or in districts adjoining their home district. The Government Order dated 25th March, 1995, on which reliance has been placed by learned Counsel for the petitioners, amends paragraph-5 of the Government Order dated 11th July, 1986 to the extent that the Constables and the Head Constables shall not be posted in their home district or in police stations adjoining their home district. The genuineness of the said Government Order dated 25th March, 1995 was doubted in the subsequent Government Order dated 28th October, 2009 and so an inquiry was set up. It was also noticed that a proposal for not posting the Head Constables/Constables in police stations adjoining the home district was submitted in 1992 but the State Government did not accept this proposal and this decision was intimated to the Inspector General of Police, Allahabad on 27th

June, 1992. The Government Order dated 28th October, 2009 thereafter mentions that the Government Order dated 11th July, 1986 shall continue to operate. In such circumstances, when a decision had been taken for implementation of the Government Order dated 11th July, 1986 without the amendment said to have been made by the Government Order dated 25th March, 1995, it cannot be said that the decision taken by the Police Establishment Board for transfer of the Constables/Head Constables on the basis of the Government Order dated 11th July, 1986 is bad in law. This apart, no factual foundation has been laid in the writ petition as to whether the petitioners were posted in police stations adjoining the home districts or not. Thus, for this reason also, the contention of learned Counsel for the petitioner cannot be accepted.

15. The second contention of the learned Counsel for the petitioners is that the State Government has not constituted the State Security Commission despite the direction of the Supreme Court in *Prakash Singh* (supra) and the State Security Commission alone could have taken a decision to implement the Government Order dated 11th July, 1986.

16. This submission of the learned Counsel for the petitioners cannot be accepted. The State Security Commission was required to be established for an entirely different purpose namely for ensuring that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad policy guidelines so that the State Police always acts according to the laws of land and the Constitution of the country. The matters relating to transfers, postings, promotions and other service related matters of officers and of below the rank of Deputy Superintendent of Police are required to be dealt with by the Police Establishment Board as is clear from direction No. 5 contained in paragraph 31 of the judgment rendered by the Supreme Court in *Prakash Singh* (supra) which is as follows:

#### 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 the 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 postings 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 promotions/transfers/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of

the police in the State.

17. In the present case, we are concerned with the transfers and postings of the Head Constables and Constables for which the Police Establishment Board alone has to take a decision. Thus, the absence of State Security Commission does not vitiate the decision taken by the Police Establishment Board for transfer of the petitioners even if such a decision is based on the general transfer policy formulated by the State Government in the Government Order dated 11th July, 1986.

18. The third submission of the learned Counsel for the petitioners is that the Police Establishment Board took the decision to transfer 1947 Constables and Head Constables from one district to another district without application of mind in a cryptic manner without assigning any reason. Elaborating his submission, learned Counsel for the petitioners has submitted that the proposal submitted by the Director General of Police/Deputy Inspector General of Police has been blindly accepted by the Police Establishment Board without independent application of mind. In this connection, learned Counsel for the petitioners has placed reliance upon the decisions of the Supreme Court in *Onkar Lal Bajaj Vs. Union of India* (UOI) and *Another etc. etc.*, and *Cyril Lasrado (dead) by Lrs. and Others Vs. Juliana Maria Lasrado and Another*,

19. A perusal of the decision taken by the Police Establishment Board shows that the service records and the proposal submitted by the Police Officers for transfer of the Constables/Head Constables were examined in the light of the Government Order dated 11th July, 1986 and thereafter the decision was taken.

20. As noticed hereinabove, the Full Bench had examined this issue and had observed that it was not necessary for the Police Establishment Board to determine every act of transfer and it will suffice if it decides on the proposals before it. The Full Bench emphasised that the direction for setting up of the Board by itself does not mean that all transfers will be personally done by the Board and if there is a specific transfer policy and the authorities propose the transfers, the Board will exercise its powers to decide on those transfers. The Full Bench further observed that considering the number of police personnel in service, the power will have to be read in that context meaning thereby, that before effecting transfer it is the Board which must ultimately decide the transfers and that it is not possible to read the directions issued by the Supreme Court under Article 142 in the case of *Prakash Singh* (supra) to have conferred the power on the Board alone when there is an existing law in force or legislation has been enacted subsequently.

21. The Government Order dated 11th July, 1986 has been issued u/s 2 of the Police Act. The Police Establishment Board was, therefore, required to examine whether the cases of police personnel referred in the proposal fell within the ambit of the Government Order dated 11th July, 1986 and this is what it had examined. The decision taken by the Police Establishment Board shows that the

proposal with the service record were placed before the Board and on examination it found that the names of the Constables/Head Constables included in the proposal were in accordance with the Government Order dated 11th July, 1986. The Police Establishment Board was not required to give separate decision in each case particularly, when it was considering the proposal for transfer of 1947 police personnel. It cannot, therefore, be urged that the Police Establishment Board had not taken an independent decision merely because the proposal had been placed before it. This apart, it is not the case of the petitioners that they are not covered by the Government Order dated 11th July, 1986.

22. Learned Counsel for the petitioners has placed reliance on the decision of the Supreme Court in *Onkar Lal Bajaj (supra)* and *Cyril Lasrado (supra)*.

23. In *Onkar Lal Bajaj (supra)* the Supreme Court set aside the decision taken by the Government for en masse cancellation of allotments of petrol pumps since it was unjustified and arbitrary and taken without application of mind to any of the relevant consideration. The Supreme Court further held that a decision has to be tested on the touchstone of justice, equity and fair play and if the decision has taken into consideration other matters, though on the face of it, the decision may look legitimate, if the reasons are not based on values but to achieve popular accolade, the decision cannot be allowed to operate. In the present, case the decision to transfer the Constables/Head Constables has been taken on the basis of the Government Order dated 11th July, 1986 and it cannot be said that it has not taken into account relevant consideration.

24. In *Cyril Lasrado (supra)* the Supreme Court noticed that the basic issue raised by the appellant was the unexplained delay in filing the writ petition but the High Court did not consider this aspect before disposing the writ petition. It is in this context that the Supreme Court observed that some reason should have been given.

25. These decisions, therefore, do not help the petitioners.

26. It is, therefore, not possible to accept the third contention of the learned Counsel for the petitioners.

27. The fourth submission of the learned Counsel for the petitioners is that the Government Order dated 11th July, 1986 is discriminatory in nature for the reason that it seeks to exempt police personnel posted for the security of VIPs" from the operation of the Government Order dated 11th July, 1986. It is not possible to accept this contention of the learned Counsel for the petitioners. The police personnel posted for the security of VIPs" perform entirely different duties than the other police personnel and form a class by themselves. The exemption of such police personnel cannot, therefore, be said to be discriminatory.

27. Reference in this connection can be made to the decision of the Supreme Court in *U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and Another*, in

which it was observed:

It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.

Every classification, to be legal, valid and permissible, must fulfil the twin- test, namely,

- (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and
- (ii) such differentia must have a rational relation to the object sought to be achieved the statute or legislation in question.

29. The fifth submission of the learned Counsel for the petitioner is that Clause 5 of the transfer policy dated 21st April, 2010 should be set aside as there is no rational basis for exempting the police department from this policy since the said policy has been made applicable to all the State Government officers/employees.

30. Sri Piyush Shukla, learned Standing Counsel, however, submitted that the transfers of police personnel is governed by Regulations 520 to 525 of the Police Regulations and orders issued u/s 2 of the Police Act and, therefore, the Government had taken a decision to exempt the Police Department from the general transfer policy applicable to the State Government officers/employees. It is his submission that because of the nature of duties assigned to the police personnel who are more than three lacs and thirteen thousands from the level of Constables to the level of the Inspectors, it was necessary to have a separate transfer policy for them instead of a general transfer policy applicable to the employees of the State.

31. This submission of the learned Counsel for the petitioners cannot also be accepted. The transfer of police personnel is governed by Regulations 520 to 525 and such orders issued u/s 2 of the Police Act. Looking to the strength of the personnel in the Police Department it cannot be said that the decision to exempt the Police Department from the operation of the transfer policy dated 21st April, 2010 is discriminatory in nature.

32. Thus, as none of the contentions advanced by the learned Counsel for the petitioners have any force, the petition is liable to be dismissed.

33. Learned Standing Counsel has also placed before the Court decisions of the Supreme Court dealing with transfer and has contended that unless it is established that the transfer order has been passed for mala fide reasons or in violation of the statutory provision or by an authority not competent to pass the order, the Courts should desist from interfering with the transfer orders.

34. In *Gobardhan Lal* (supra), the Supreme Court examined this issue and observed as follows:

It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of situation concerned. This is for the reasons that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

(emphasis supplied)

35. These principles have also been pointed out by the Supreme Court in *G. Venkata Ratnam* (supra), *Somesh Tiwari* (supra) and *Airports Authority of India* (supra).

36. In the absence of allegations of mala fide and as the transfer order has been issued on the basis of the decision taken by the Police Establishment Board which was required to take a decision pursuant to the direction issued by the Supreme Court in *Prakash Singh* (supra) and such decision has been taken for

implementation of the Government Order dated 11th July, 1986, it will not be appropriate to interfere with the transfer in view of the aforesaid decisions of the Supreme Court.

37. Thus, for all the reasons stated above, the writ petition is dismissed. Interim order stands discharged.