

(2011) 04 AHC CK 0090

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21037 of 2011

Kushal Pal Singh Chahal

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Police Act, 1861 — Section 2
Police Regulations — Regulation 520
Police Rules, 2008 — Rule 26

Citation : (2011) 04 AHC CK 0090

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioner has rushed to this Court questioning the validity of the transfer order dated 19.02.2010 passed by Inspector General of Police Meerut Range Meerut and the consequential order of relieving dated 02.04.2011 passed by Senior Superintendent of Police Ghaziabad.

2. Petitioner is Sub-Inspector and has been posted as Public Relation Officer, at the Office of Senior Superintendent of Police Ghaziabad. Earlier Petitioner was posted at District Meerut and in the month of February, 2009 he has been transferred from Meerut to District Ghaziabad and Petitioner claims to have joined at District Ghaziabad on 15.02.2009. Petitioner has been transferred under the order passed by Inspector General of Police Meerut Range Meerut from Ghaziabad to Bulandshahar and thereafter order of reliving has been passed on 02.04.2011. At this juncture present writ petition in question has been filed questioning the validity of the transfer order as well as relieving order.

3. On presentation of present writ petition in question precise argument advanced on behalf of Vijay Gautam, Advocate has been to the effect that in the present case before effecting the transfer at no point of time any concurrence has been taken from the Police Establishment Board, as such transfer order

cannot be enforced.

4. Learned Standing counsel on this plea being raised had been asked to obtain necessary instruction and requisite instructions in question has been obtained and thereafter with the consent of the Petitioner present writ petition has been heard and is being decided.

5. Issue which has been raised in the present case is as to whether an incumbent can be transferred without decision having being taken by the Board constituted.

6. In paragraph 31 of the judgment rendered in Prakash Singh (supra), the Supreme Court, while dealing with transfer of police personnel, directed the Central Government, State Governments and Union Territories for compliance of certain directions till framing of the appropriate legislations. Direction No. 5 was for the establishment of a Police Establishment Board and it reads 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.

(emphasis supplied)

7. Pursuant to the aforesaid directions of the Supreme Court, the State Government issued the Government Order dated 12th March, 2008 constituting four Police Establishment Boards for transfer of police personnel at different levels. The Board constituted for taking a decision with regard to the transfer of the Constables, Head Constables and Sub-Inspectors consists of the following officers is:

- (i) Inspector General of Police (Establishment) - Chairman,
- (ii) Deputy Inspector General of Police (Establishment) - Member,
- (iii) Superintendent of Police (Karmik) - Member,
- (iv) Additional Superintendent of Police (Karmik)/Deputy Inspector General of

Police (Karmik) - Member.

8. The constitution of the aforesaid Board was assailed in a number of writ petitions in this Court on the ground that it is not in accordance with the directions issued by the Supreme Court in *Prakash Singh (supra)* since it is not headed by the Director General of Police but in Special Appeal No. 1093 of 2010 decided on 18th August, 2010, the constitution of this Board was upheld by the Full Bench of the Court and it was observed:

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....

In the instant case, there is legislation governing transfers, but there is no provision for constitution of Boards. The Boards have been constituted by the State in exercise of its executive powers. It is now well settled that in an area, where rule or existing law is silent in the matter of conditions of service, administrative instructions can be issued to fill in the void or gap, which the State has done. However, we have held that the notification for reasons given cannot be held to be an exercise of power u/s 2 of the Police Act.

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.

The State has substantially complied with the requirement by enacting legislation, the only area, not covered by the State by such legislation, is Constitution of Board in respect of which, they have constituted the Boards in exercise of the executive power. The notification will continue to apply till the State makes a rule u/s 2 of the Police Act or any other provisions by enacting legislation to constitute the Boards.

(emphasis supplied)

9. Government Order dated 27.11.2008 has proceeded to clarify that Zonal Inspector General of Police and Regional Deputy Inspector General of Police can transfer the police personnel at different levels of Constables, Head Constables, Sub-Inspector and Inspectors within their area in accordance with the provisions of Regulation 520 contained in the Police Regulations and the Police Establishment Board is required to take a decision only if such police personnel are required to be transferred outside the Range/Zone. Thereafter Government Order dated 8th April, 2010 has been issued which mentions that though four Police Establishment Boards have been constituted by the State Government by the order dated 12th March, 2008, but looking to the massive strength of the police Constables, Head Constables, Sub-Inspectors and Inspectors in the State, difficulties are experienced by this Board to take decision in each matter and so far transfer of such police personnel within the range or at the district level two different Boards have been constituted.

10. In Civil Misc. Writ Petition No. 56648 of 2010 (Sanjay Kumar Tripathi v. State of U.P. and Ors.) decided on 07.10.2010 wherein transfer order made with concurrence of Regional Board constituted at Regional Level were not approved of and said transfer orders were set aside by mentioning as follows:

It is, therefore, seen that the decision to transfer the Petitioner has been taken by a regional Board which is entirely different from the Board constituted by the Government Order dated 12th March, 2008. It cannot, therefore, be said that the decision to transfer the Petitioner has been taken by the competent Board. The decision to transfer the Petitioner is, therefore, illegal and cannot be sustained.

The impugned transfer order is, accordingly, set aside. It shall, however, be open to the Board constituted by the Government Order dated 12th March, 2008 to take a fresh decision with regard to transfer. The writ petition is, accordingly, allowed to the extent indicated above.

11. Against the said judgment and order dated 07.10.2010 passed in aforesaid Writ Petition Special Appeals had been preferred leading one being Special Appeal No. 1837 of 2011 (State of U.P. and Others Vs. C.P. Ravindra Singh (1155/379) and Others, , decided on 01st February, 2011 and therein constitution of Regional Boards has been accepted and transfer order with the concurrence of the Regional Board have been approved of. Relevant paragraph-13 to 15 are being extracted below:

13. Now a question comes in the mind of the Court that apart from the modernisation of the police force, what was the specific event/s which came in the mind of the Supreme Court in Prakash Singh (supra) to form the Police Establishment Board. The Supreme Court in its interim judgment, as aforesaid, wanted to ensure setting up of a mechanism for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. The Court expressed

its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons, which has not only demoralizing effect on the police force but is also alien to the envisaged constitutional machinery. It was observed that apart from demoralizing the police force, it has also the adverse effect of politicising the personnel and, therefore, it is essential that prompt measures are to be taken. The Supreme Court further observed that the popular perception all over the country appears to be that many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interference at various levels starting from transfer and posting of policemen of different ranks, misuse of police for partisan purposes and political patronage quite often extended to corrupt police personnel. It was also observed that not only the Minister In-charge, Home Affairs, but all the Commissions and Committees entrusted to give suggestion to the Court to come to an appropriate finding, have broadly come to the same conclusion on the issue of urgent need for police reforms. Convergent views are as follows:

- (a) State Security Commission at the State level;
- (b) Transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure;
- (c) Separation of investigation work from law and order; and
- (d) a new Police Act which should reflect the democratic aspirations of the people.

14. According to us, pluralistic view in the place and instead of singular view is one of the devices to maintain transparency. It avoids possibilities of motivated action, biasness or influence in the cases of transfer. To that extent, there is no conflict between Prakash Singh (supra) and the steps taken by the State. The only issue is whether the State has strictly complied with or sufficiently complied with the direction of the Supreme Court in Prakash Singh (supra). According to the Full Bench of this High Court in Vinod Kumar (supra), direction has been sufficiently complied with. Learned Chief Standing Counsel has given an explanation by saying that the position of the State of Uttar Pradesh as regards its vastness and population may not be similar with various other States. Therefore, if the Board is constituted strictly in compliance with the direction of the Supreme Court then the State will not get full time engagement of such officers to maintain the law and order situation of the State. To that, it is desirable that the State should explain such position before the Supreme Court. It is expected that by now it has been done by the State. But so far as the existing position is concerned, this Division Bench will be governed by both, Prakash Singh (supra) and Vinod Kumar (supra) and a conjoint reading of both the judgments speaks that a mode or mechanism of plurality has been adopted by the State, in spite of the existing law. Therefore, this Court does not find any reason to negate the orders of transfer, as were impugned in the writ petition.

15. Thus, in totality, we do not find any reason to interfere with the orders of

transfer. Hence, all the aforesaid special appeals are allowed upon setting aside the orders, impugned therein, passed by the learned Single Judge.

However, no order is passed as to costs.

12. On the parameter as laid down it is clearly reflected that transfer orders can be effected only with the concurrence of Police Establishment Board constituted under Government Order dated 12.03.2008 and thereafter in consonance with the Government Order dated 27.11.2008 transfer order could have been effected by the Zonal Inspector General of Police and Regional Deputy Inspector General of Police within their area following the provision as contained under Regulation 520. Thereafter another Government Order has been issued on 08.04.2010 which mentions that four Police Establishment Boards vide Government Order dated 12.03.2008 have been constituted but looking to the massive strength of the police Constables, Head Constables, Sub-Inspectors and Inspectors in the State, difficulties are experienced by the Board constituted under Government Order dated 12.03.2008 to deal with such situation, in such a situation two different Board have been constituted to deal with the transfer of such police personnels within the range and within the District and constitution of the has been approved by Division Bench of this Court in the case of State of U.P. v. Ravindra Singh.

13. In pith and substance transfer order after 8th April 2010 has to be effected within the range, in case there is approval of the Board constituted at Regional Level under Government Order dated 08.04.2010. In the present case accepted position is that transfer order has been passed on 19.02.2010 but same was not implemented and given effect to and vide consequential order dated 02.04.2011 same was sought to given effect to by the Senior Superintendent of Police, in such a situation and in this background as Regional Board had already been constituted it was incumbent and obligatory on the part of the authorities that before proceeding to enforce the order of transfer due concurrence by the Board constituted under Government Order dated 08.04.2010 ought to have been taken.

14. In the present case such exercise has not been undertaken as such relieving order dated 02.04.2011 passed by Senior Superintendent of Police, Ghaziabad is hereby quashed and set aside. Matter be placed before the Regional Board constituted under Government Order dated 08.04.2010 and thereafter further consequential action be taken in accordance with law.

15. With the above direction present writ petition is allowed.

16. No order as to cost.