
(1993) 09 AHC CK 0078
In the Allahabad High Court
Case No : Special Appeal No. 630 of 1993

Moongalal

APPELLANT

Vs

D.I.G. (Karmik) U.P. Police Headquarter and Others

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Police Act, 1861 — Section 7

Uttar Pradesh Police Regulations, 1948 — Regulation 1, 520

Citation : (1993) 3 AWC 1868

Hon'ble Judges : S.C. Mathur, Acting C.J.; S. Narain, J

Bench : Division Bench

Advocate : Sidheshwari Prasad and Anand Swaroop Dubey, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Mathur, A.C.J.

1. This Special appeal relates to transfer of a Government servant from one district to another. His challenge against the transfer order has failed before the learned Single Judge. He has, accordingly, preferred the instant appeal.

2. By order dated 3rd May, 19.93 the Deputy Inspector General of Police (Personnel) U.P. Police Headquarter, Allahabad, (for short "DIG PHQ"), transferred the Appellant from Maharaj Ganj to Lucknow. At Maharaj Ganj he was posted as Stenographer to the Superintendent of Police. At Lucknow he has been posted at Radio Headquarters.

3. The aforesaid transfer order was challenged by the Appellant on the ground that the DIG PHQ had no jurisdiction to pass the transfer order and the delegation of power in his favour was invalid. The learned Single Judge was of the opinion that there was no lack of power in the DIG PHQ and, therefore, the order of transfer was not invalid. The learned Single Judge has referred to the fact that prior to 6th September, 1966 clerical/ministerial staff working in various offices of the police department, were not part of the police force of the State

and accordingly such staff was not governed by the provisions of the U.P. Police Regulations but with effect from the said date the ministerial/clerical staff also become part of the police force of the State and come to be governed by the U. P Police Regulations and under the U.P. Police Regulations it was permissible for the DIG PHQ to pass the transfer order.

4. In the instant appeal the learned Counsel for the Appellant has reiterated the pleas raised by him before the learned Single Judge. We have heard him at some length.

5. It is not disputed by the learned Counsel for the Appellant that prior to 6th September, 1966 clerical/ministerial staff working in various offices of the police department was not part of the police force of the State but such staff became part of the U.P. Police Force after the said date by virtue of the Government Order issued on that date. By this Government Order the ministerial/clerical staff not only became part of the police force but they were also assigned police ranks according to the scale in which they drew salary. The Government Order refers to the scale of pay and the corresponding police rank with, letter (M) mentioned against the rank. This Government Order is prospective in operation which is apparent from the fact that it uses the word "hence-forth". It is undisputed that the Appellant was appointed subsequent to issue of the Government Order dated 6th September, 1966. Accordingly he will be entirely governed by the provisions contained in the Police Regulations and not by corresponding provisions contained in the U.P. Police Office Manual.

6. Chapter XXXIV of the Police Regulations deals with "transfers" Regulation 520 falling under this chapter reads as follows:

Transfer of Gazetted Officers are made by the Governor in Council.

The Inspector General may transfer Police Officers not above the rank of inspector throughout the province.

The Deputy Inspector General of Police of the range may transfer inspectors, sub-inspectors, head constables and constables, within his range: provided that the postings and transfers of inspectors and reserve sub-inspectors in hill station will be decided by the Deputy Inspector General of Police, Headquarters....

Under the above provision the Deputy Inspector General of Police of the range is competent to effect transfer of inspectors and sub-inspectors. Paragraph 313 of the U.P. Police Office Manual mentions the scale of pay of various ministerial posts. Stenographers are divided into two categories, senior scale stenographers and junior scale stenographers. The pay scale of senior scale stenographers is mentioned as Rs. 65-5-130 and of junior scale stenographers as Rs. 50-1 1/2-65. This appears to be unrevised scale of pay. In Government Order dated 6th September, 1966 the pay of assistant sub-inspector of police ranges from Rs 100 to 250 and of sub-inspector of police from Rs. 150 to 290. The Appellant, it appears, would either carry the police rank of assistant sub-inspector of police or

sub-inspector of police He would, therefore, be covered by Regulation 520. Accordingly the DIG would be competent to effect Appellant's transfer.

7. Learned Counsel for the Appellant, however submits that under Regulation 520, DIG of the range is competent to transfer and not the DIG PHQ. In our opinion the submission is misconceived. The Deputy Inspector General of police exercises jurisdiction over a particular area of the State which is described as "range". The expression range, therefore, indicates the extent of his jurisdiction. U.P. Police Headquarter controls the entire police force of the State. The Deputy Inspector General of Police posted at the Police Headquarter exercises jurisdiction over the entire State of Uttar Pradesh. Accordingly his range of jurisdiction is the entire State of Uttar Pradesh. In this manner, in our opinion, the Deputy Inspector General of Police posted at Police Headquarter would be competent to effect order of transfer of an Inspector or Sub-Inspector of Police from one range to another. The transfer of the Appellant is admittedly from one range to another. The Deputy Inspector General of Police of a range would be competent to effect transfer within his range; a transfer outside his range will have to be made by someone exercising jurisdiction over the place where the concerned officer is sought to be posted. Such jurisdiction will obviously be available to the Police Headquarter/DIG.

8. Learned Counsel for the Appellant submitted that Regulation 520 is contrary to Regulation 1 which reads as follows:

1. The Inspector-General is the head of the Police Department and the adviser of the Governor in Council, on all questions of police administration. All orders from the Governor, in Council to a member of the police force are issued through him, except in cases of urgency when copies of any orders issued direct to subordinate officers are sent to him. No police officer may correspond, with the Governor in Council except through him, unless specially authorized by rule. As a matter of administrative routine, he is concerned only with gazetted-officers, the general allocation of staff and the general distribution of funds, complete responsibility in regard to the non-gazetted staff being delegated to Deputy Inspector-General, except in regard to the posting, transfer and grant of leave to inspectors in certain cities and stations and to the posting, transfer and promotion of the clerical staff, which can most conveniently be regulated by him.

(Emphasis supplied)

On the basis of the emphasised portion it is submitted by the learned Counsel that the power to transfer a member of the clerical staff cannot be delegated by Inspector General of Police. On this basis it is submitted that the delegation of power contained in Regulation 520 is invalid.

9. U.P. Police Regulations is compilation of Government Orders issued from time to time. Certain regulations are referable to Section 7 of the Police Act; they have statutory force, Other regulations do not have statutory force; they only contain guidance for the officers and officials concerned. A later Government

Order supersedes the earlier Government Order on the same subject. If Government Order referable to Regulation 520 was issued subsequent to Government Order referable to Regulation 1, the former will prevail over the latter. There is no material on record to show that the Government Order referable to Regulation 1 was issued subsequent to the Government Order referable to Regulation 520. Accordingly we are unable to sustain the Appellant's plea that Regulation 520 is invalid as it is contrary to Regulation 1.

10. It also needs to be pointed out that Regulation 1 prohibits Inspector General of Police from delegating his power to transfer clerical staff to Deputy Inspector General of Police but it does not prohibit the State Government from making fresh prescription of the authority competent to effect transfer. In our opinion, Regulation 520 contains a fresh and independent conferment of power upon the Deputy Inspector General of Police.

11. We have mentioned, hereinabove, that the U.P. Police Regulations is mostly compilation of the Government Orders issued from time to time except a few provisions which are referable to statutory provisions. Chapter XXXII, which bears the heading "Departmental Punishment and Criminal Prosecution of Police Officers," contains regulations which have been framed in exercise of powers conferred under section, 7 of the Police Act, 1861. The regulations contained in this Chapter have therefore statutory force as held by their Lordships of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . The regulations contained in Chapter XXXIV have not been framed either u/s 7 of the Police Act or under any other statutory force. Regulation 520 dealing with transfers falls under this chapter.

12. By reference to the provisions of Government of India Act, 1935 and of Constitution of India, the learned Counsel for the Appellant tried to submit that the regulations have statutory force. Even by acceptance of this argument the impugned order of transfer does not suffer from any infirmity as in our opinion the transfer order is fully within the ambit and scope of Regulation 520.

13. In view of the above, the appeal fails and is hereby dismissed with costs to the Respondents.