
(2002) 07 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. 27043 of 2002

Rajendra Prasad Maurya

APPELLANT

Vs

Dy. Inspector General of Police (Establishment) and Another

RESPONDENT

Date of Decision : 25-07-2002

Acts Referred:

Police Act, 1861 — Section 10

Uttar Pradesh Police Regulations, 1948 — Regulation 525

Uttar Pradesh Provincial Armed Constabulary Act, 1948 — Section 4

Citation : (2002) 4 AWC 2677 : (2002) 95 FLR 214 : (2002) 3 UPLBEC 2710

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Jagannath Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri Jagannath Singh for petitioner and learned standing counsel for respondents.

2. A transfer order by which petitioner, working as Stenographer in the Office of Superintendent of Police (Jamunapar), Allahabad, as Sub -Inspector (M) to P.A.C. Allahabad has been challenged on the ground that an officer working in ministerial branch of police force U. P. cannot be transferred to Provincial Armed Constabulary and secondly on the ground that petitioner is suffering from heart trouble and has been advised treatment at Allahabad.

3. It is contended by counsel for petitioner that Deputy Inspector General of Police (Establishment), Police Head Quarter, Allahabad has no power to transfer petitioner to P.A.C. and that such a power can only be exercised by Director General of Police, U. P. as provided in Regulation 525 U. P. Police Regulations. Petitioner has not been listed/enrolled u/s 4 of U. P. P.A.C. Act, 1948. A Government Order relied upon by the respondents cannot override the provisions of Police Regulations made under the U. P. Police Act, 1861 inasmuch as the Government Orders and departmental instructions cannot override statutory

provisions of law. He has relied upon K. Kuppusamy and Another Vs. State of T.N. and Others, and Union of India and Ors. v. Arun Kumar Roy. (1981) 1 SCC 675. in support of his submission that statutory rules cannot be overridden by executive orders or executive practice and that a notification cannot override statutory rules governing service condition of the employees. He submits that a representation has been made with regard to medical condition of petitioner which has not been considered by the respondents.

4. Learned standing counsel has relied upon a notification dated 21-29 March 1990 by which Director General of Police has, in exercise of powers under Clause 1 of regulation 52/45 of U. P. Police Regulations delegated the powers of transferring non-gazetted officers and employees of U. P. Police from one branch to another to Dy. Inspector General of Police (Personnel) Police Headquarter, Allahabad and has further delegated the powers of transfer of Head Constable/ Constables level employees from one branch to another to Police Superintendent (Personnel), U. P. Police Headquarter, Allahabad. He has also relied upon a policy decision taken by Inspector General of Police (Personnel) U. P., Police Headquarter, Allahabad dated 16.11.1989 to all the Zonal Police Inspectors General/ Police Inspectors General, P.A.C. and Ors. with regard to the period of posting from the non-gazetted officers and employees of police ministerial cadre with reference to his earlier letters dated 9.12.1985 and 25.1.1989. By these demi-official circular letters, It has been clarified that during the entire period of service employees of police ministerial cadre shall have to serve for a minimum period of 10 years in P.A.C. Battalions/Units to be divided in three stages, namely 4 years in the first stage, and 3 years in second and third stages, and that a posting of atleast three years shall be given at one place which could be extended upto 5 years. In paragraph 12 of this circular letter, it has been provided that the orders of transfer to P.A.C. Battalion/Unit shall be issued at the central level of Police Headquarter. These employees of ministerial staff shall be ordinarily allotted the concerned zone/P.A.C. Headquarter and thereafter the concerned Inspector General of Police. Dy. Inspector General of Police/P.A.C. shall allot to them the same D.I.G, area/sector who shall give them posting in the districts and battalions in their respective areas. In special circumstances the D.I.G. Police Headquarter, P.A.C. and D.I.G. Zone can directly transfer such officer/ employees to the district/units.

5. The Provincial Armed Constabulary Act, 1948 was enacted for constitution and regulation of United Provinces Armed Constabulary. Section 3 of the Act provides that there shall be raised and maintained by the State Government a force to be called the Pradeshik Armed Constabulary and it shall be constituted in one or more companies in such manner or for such period as may be prescribed. Section 5 of the Act provides that subject to Sections 6 to 8, every member of P.A.C. shall upon his appointment and as long as he continues to be a member thereof, be deemed to be a police officer, and subject to any terms, conditions and restrictions as may be "prescribed, to have and be subject to, in so far as they are not inconsistent with this Act or any rules made thereunder, all the

powers, privileges, liabilities, penalties, punishments and protection as a police officer, duly enrolled has or is subject to by virtue of the Police Act, 1861, or any other law for the time being in force, or any rules or regulations made thereunder.

6. The officers and employees of P.A.C. are as such subject to provisions of Police Act, 1861, or any rules or regulations made thereunder. They have same powers, privileges, liabilities, penalties, punishment and protection as a police officer duly enrolled by virtue of Police Act, 1861. Section 10 of the Act provides that the Commandant or an Assistant Commandant may notwithstanding anything contained in Section 9, at any time revert to Uttar Pradesh Police any officer of the Pradeshik Armed Constabulary who has been seconded from the police force. The provisions of Police Act, 1861 and U. P. P.A.C. Act, 1948 do not restrict transfer of police officer from U. P. Police to P.A.C. and vice-versa. The powers of transfer are to be found under Regulation 525 of the police regulations. These powers can be exercised by Inspector General of Police and have been delegated by the then Director General of Police/Inspector General of Police, U. P. by notification dated 21/29.3.1999 to Deputy Inspector General of Police (Personnel), Police Headquarter, Allahabad in respect of non-gazetted officer and employees ; and to Superintendent of Police (Personnel) U. P. Police Headquarter, Allahabad in respect of employees at the level of Head Constable/Constables from one branch to another branch. The branch in this notification includes P.A.C. which has been constituted as a branch of police in U. P., members of which are deemed to be police officer and/or to the Provincial Police Act, 1861.

7. The power to transfer as such is vested in Deputy Inspector General (Personnel), U. P. Police Headquarter ; Allahabad and has been rightly exercised by him in transferring petitioner from Police to P.A.C.

8. The Government Orders are neither inconsistent nor run contrary to the scope and object of Regulation 525 of U. P, Police Regulations and only provided for delegation which has not been restricted by Regulation 525 and as such, the decision cited above are not applicable to the present case.

9. So far as the medical ground set up by petitioner, the Court finds that he is taking treatment as O.P.D. Patient at Nazareth . Hospital, Allahabad for hypertension since 7.3.2001. Petitioner has not been given posting by the competent authority in P.A.C. as yet. He has a right to represent to the competent authority in P.A.C. for a suitable posting, where the facilities of his treatment are available.

10. In the facts and circumstances of the case, no case for interference with the transfer order has been made out. The writ petition is accordingly dismissed.