

(1999) 02 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 533 (SS) of 1999

Ram Charit Pandey

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Police Act, 1861 — Section 15A, 2, 23, 46, 46(2)
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 15, 4, 4(1), 4(3), 46(2)
Uttar Pradesh Police Regulations, 1948 — Regulation 478, 490, 491, 492, 493

Citation : (1999) 3 AWC 2144

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Amit Bose, for the Appellant; C.S.C., for the Respondent

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner, learned standing counsel and also perused the record.

2. By means of this petition under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the notice dated 5.2.1999 whereby the petitioner has been called upon to show cause as to why censure entry noted in the said notice be not awarded to him. Proper for issuance of a writ, order or direction in the nature of prohibition restraining the respondents from conducting any further proceedings against the petitioner in pursuance of the aforesaid notice as well as prayer for issuance of a writ order or direction in the nature of mandamus commanding the respondents not to enforce the provisions of Rule 4 (1) (b) (iv) of the V. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991. to declare ultra Hires of Section 7 and Section 46(2)(c) of the Police Act have also been made.

3. For deciding the present petition, it is not necessary to state the facts of the

case in detail. It would suffice to state that in connection with an incident of dacoity happened on 15/16.11.1998, the Superintendent of Police, district Sitapur issued the impugned notice dated 5.2.1999 calling upon the petitioner who was holding the post of Inspector of Police Station Hargaon, district Sitapur. to show cause as to why censure entry mentioned in the said notice be not awarded to him. The petitioner instead of showing cause to the Superintendent of Police, Sitapur in reply of the aforesaid notice straightaway filed the present petition in this Court for the above mentioned reliefs.

4. It has been urged by the learned counsel for the petitioner that clause (be) of Regulation 478 and clause (iv) of Rule 4 (1) (b) are ultra vires to the Section 7 and Section 46(2)(c) of the Police Act. In substance It has been contended that Section 7 does not provide for awarding punishment of censure, therefore, in exercise of powers u/s 46(2)(c), provision for awarding punishment of censure could not be provided by the State Government by means of a notification or by enacting the rules which are subordinate legislation. It has further been urged that Regulation 478 of U. P. Regulations and Rule 4 (1) (b) do not provide guideline for inflicting censure entry, consequently the same was arbitrary and was liable to be struck down.

5. On the other hand, learned standing counsel supported the validity of the notice as well as provisions of Regulations 478 of U. P. Police Regulations and Rules (4) (1) (b) (iv) of the U. P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. It was urged that it was within the competence of the State Government to provide for punishment of censure in exercise of its powers u/s 46(2)(c) of the Police Act read with Section 7 of the said Act. It was further urged that sufficient guideline was provided in the Police Regulations for awarding various punishments enumerated u/s 7 and Rule 4 of the aforesaid rules, therefore, according to him the submission made by the learned counsel for the petitioner was liable to be rejected and present petition was also liable to be dismissed.

6. I have considered the submissions made by the learned counsel for the parties.

7. Provisions of Sections 7 and 46 of the Police Act (Act V of 1861). Rule 4 (1) (b) (iv) of U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 and Regulation 478 of U. P. Police Regulations are relevant for the purposes of the present case, which are quoted below :

"Section 7. Appointment dismissal, etc. of inferior officers. --Subject to revisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act. the Inspector General, Deputy Inspector-General. Assistant Inspector-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think fit remiss or negligent in the discharge of his duty or unfit for the same ;

or may award any one or more of the following punishment to any police officer

of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof namely :

- (a) fine to any amount not exceeding one month's pay ;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment-drill, extra guards, fatigue or other duly:
- (c) depravation of good conduct pay ;
- (d) removal from any office of distinction or special emolument ;
- (e) withholding of increments or promotion including stoppage at an efficiency bar."

Section 46. Scope of Act.--(1) This Act shall not by its own operation take effect in any presidency. State or place. But the State Government by an order to be published in the Official Gazette may extend the whole or any part of this Act to any presidency, State or place ; and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency. State or place.

(2) When the whole or any part of this Act shall have been so extended, the State Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act.

(a) to regulate the procedure to be followed by Magistrate and Police Officers in the discharge of any duty imposed upon them by or under this Act ;

(b) to prescribe the time, manner and conditions within and under which claims. for compensation u/s 15A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon : and

(c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by the State Government."

Rule 4 (1) (b) (in) :

"4. Punishment.--(1) The following punishments may. for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely :

(a)

(b) Minor Penalties :

(iv) Censure."

Regulation 478. All police officers appointed u/s 2 of the Police Act arc liable to

the following departmental punishments :

- (a) dismissal or removal from the force, as defined in paragraph 481 :
- (b) reduction as defined in paragraph 482 :
 - (ba) withholding of promotion ;
 - (bb) withholding of increments including stoppage at an efficiency bar ;
 - (bc) misconduct entry in the character roll (U. P. Gazette dated 6th April, 1968) :

Head constables and constables may also be punished with :

- (c) confinement to quarters (this term includes confinement to quarter guard) for a term not exceeding fifteen days :
- (d) punishment drill ;
- (e) extra guard duty :

Constables may also be punished with :

- (f) fatigues duty which should be restricted to the following tasks :
 - (i) tent-pitching :
 - (ii) drain-digging ;
 - (iii) cutting grass, cleaning jungle and picking stones of parade grounds :
 - (iv) repairing huts and butts and similar work in the lines ;
 - (v) cleaning arms.

8. So far as the question of validity of clause (bc) of Regulation 478 of Police Regulations is concerned, the same stands decided against the petitioner by the decision of a Division Bench of this Court in Chaman Singh v. State of U. P. and others 1988 (6) LCD 547. In the said decision after noticing relevant provisions of the Police Act and the Regulation framed thereunder, it was ruled as under :

"For effective enforcement of the above duties, superior officers should have power to punish for dereliction of duty. This would entail power to prescribe the punishments and the authorities who may impose the punishments. Paragraph 478 of which (bc) is a clause prescribes the punishments that may be awarded to police officers appointed u/s 2. Paragraph 478, including clause (bc), is therefore referable to Section 23 of the Act. It cannot therefore be said that it is not "for giving effect to the provisions of this Act." The provisions contained in Paragraph 478, including its clause (bc) is therefore not in excess of the power conferred by Section 46(2)."

It has further been held as under :

"Section 7 itself provides that its provisions are subject to the rules framed by

the State Government. This is apparent from these words used in the section--"subject... to such rules as the State Government may from time to time make." When Section 7 itself makes its provisions subordinate to the rules it cannot be said that Paragraph 478 is not "for giving effect to the provisions of the Act." When it adds to the punishments mentioned in Section 7, nor can it be said that the punishments mentioned therein are exhaustive of the punishments that may be awarded to a police officer governed by the Act.

12. It is true that in paragraph 477 with which Chapter XXXII opens it is mentioned that the rules in that Chapter have been framed u/s 7 of the Act, but thereby it cannot be said that there has been no exercise of power u/s 46(2). In fact the rules have been framed u/s 46(2) read with Section 7. Section 46(2) necessarily comes into picture as Section 7 does not say "subject to the rules framed under this section" but says "subject to such rules as the State Government may from time to time make under this Act." In taking this view we are fortified by the decision of their Lordships of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, In Paragraph 27 of the report their Lordships have observed :

".....Section 7 empowers specified officers to punish specified subordinate officers who are remiss or negligent in discharge of their duties or unfit for the same. Section 46 enables the Government to make rules to regulate the procedure to be followed by the Magistrate and police officers in discharge of any duty imposed on them by or under the Act. u/s 7, read with Section 46 of the Police Act, the Police Regulations embodied in Chapter XXIII have been framed....."

9. I respectfully agree with the view taken in the aforesaid case. The same is also binding on me. On the same reasoning as given in *Chaman Singh's* case (supra), the provisions of Rule 4 (1) (b) (iv) of the U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 cannot be said to be ultra vires either of Section 7 or of Section 46 of the Police Act, as the said rule has also been framed in exercise of power u/s 46 read with Sections 2 and 7 of the Police Act.

The submission made by the learned counsel for the petitioner to the effect that no guideline was provided either under Regulation 478 or under U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 also cannot be accepted. In view of the fact that in Regulation 478A it has specifically been provided that punishment noted at (bc) may be awarded to an officer concerned after giving him notice to show cause as to why the misconduct entry as proposed should not be made in his character roll and further the said punishment may also be awarded when departmental proceedings vide paragraph No. 490 to 494 are taken initially with a view to awarding one of the punishments noted at (a), (b), (ba) and (bb) and the punishing authority ultimately consider it sufficient to award only former as a less severe punishment. Regulations 490 to 494 of U. P. Police Regulations provide

exhaustive procedure and guideline for awarding punishment. Similarly Rule 5 of U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 provides procedure for awarding punishment. It has been provided that the case in which minor penalties mentioned in sub-rules (2) and (3) of Rule 4 may be awarded shall be dealt with in accordance with the provisions laid down in Rule 15. Rule 15 in term provides procedure for awarding minor punishment. The minor punishment is to be awarded in summary manner after informing police officer verbally of the act or omission of which it is proposed to punish him and giving him an opportunity to make verbal representation, therefore. the submission made by the learned counsel for the petitioner that no guideline was at all provided for awarding the punishment of censure cannot be accepted.

10. In the present case as stated above, petitioner has been served impugned show cause notice in which facts of the incident have been stated in detail including the censure entry, which is proposed to be awarded to the petitioner. The petitioner could file his explanation in reply to be said notice before the competent authority and could show and satisfy the said authority that no case for awarding the punishment of censure was at all made out. The petitioner instead of availing of statutory alternative remedy approached this Court straightaway. The writ petition is also liable to be dismissed on the ground of availability of statutory alternative remedy.

11. In view of the aforesaid discussion no case for interference under Article 226 of the Constitution of India is "made out. The writ petition fails and is dismissed in limine.