

(2015) 04 AHC CK 0080

In the Allahabad High Court

Case No : Civil Misc. Delay Condonation Application No. 147520 of 2015 and
Special Appeal Defective No. 331 of 2015

State of Uttar Pradesh and Others

APPELLANT

Vs

Kunwar Singh and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Citation : (2015) 5 ADJ 600 : (2015) 111 ALR 256 : (2015) 4 AWC 3721 :
(2015) 4 ESC 1915

Hon'ble Judges : D.Y. Chandrachud, C.J.;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : A.K. Roy, S.C., for the Appellant; Shailesh Upadhyay, Advocates for
the Respondent

Final Decision : Disposed off

Judgement

1. This special appeal has arisen from a judgment and order of a learned Single Judge dated 27 November 2014.

2. The first and the second respondents were posted as Head Constables in the civil police at Ghaziabad, while the third and the fourth respondents were posted as Constables in the civil police at Saharanpur. By an order dated 22 July 2011 passed by the Deputy Superintendent of Police (Establishment), Allahabad, the respondents were transferred from civil police to government railway police. The orders of transfer provided that on the expiry of a term of three years, they would be sent back to their parent department. Following the orders of transfer, the respondents were relieved from civil police and joined the government railway police. On 30 May 2008, a circular was issued by the Police Headquarters of which, Clause 2, inter alia, provided that Constables, Head Constables and Sub Inspectors from the civil police would be repatriated after the completion of three years in the government railway police. On 2 March 2012, this administrative arrangement was modified by providing that after the expiry of three years, the personnel would be repatriated on the basis of seniority. The

respondents in their writ petition had a grievance that though they had completed a tenure of three years in the government railway police in the month of August 2014, they had not been repatriated. The respondents contended that the circular dated 2 March 2012 would not apply to them retrospectively.

3. The learned Single Judge relied upon a decision of another learned Single Judge in *Rakesh Kumar Singh v. State of U.P. and Ors.* 1 The learned Single Judge held that after the expiry of three years, the personnel who have been transferred from civil police to government railway police would have to be repatriated again and the modification which was made by the circular dated 2 March 2012 would take effect only prospectively. The view of learned Single Judge in *Rakesh Kumar Singh (supra)* is as follows:--

"Having heard the learned counsel for the petitioner and the learned standing counsel, the Court is not at all impressed by the stand taken by the respondents. The respondents are bound to comply with the terms and conditions mentioned in the transfer orders. The transfer orders were patently clear, namely that the police personnels, who are being transferred from Civil Police to G.R.P. would be repatriated again to Civil Police immediately upon completion of three years of service in G.R.P. This condition imposed in the transfer order was passed on the basis of the circular of the respondents dated 30.5.2008. The stand of the respondents that the circular dated 30.5.2008 has been modified and therefore, the petitioners cannot be transferred is patently misconceived. The modification made by the respondents as per the circular dated 2.3.2012 can only be made prospective and cannot apply to those police personnels who had already been transferred as per the circular dated 30.5.2008."

4. The learned Single Judge brushed aside the submission of the Police Headquarters that there was an acute shortage of staff in the government railway police, as a result of certain interim orders passed in writ petitions questioning transfers from the civil police to the government railway police. The aforesaid judgment was followed by the learned Single Judge in the present case and, accordingly, a direction was issued to relieve the respondents within two months for joining in accordance with the conditions mentioned in the order of transfer, subject to the liberty being available to the State to transfer them in accordance with the transfer policy.

5. The issue as to whether a Constable, Head Constable and Sub Inspector of the civil police can be transferred to the government railway police has been resolved in a judgment of a Full Bench of this Court in *Om Prakash Singh v. State of U.P.* 2 The Full Bench has formulated its decision in the following propositions:

"(i) A police constable working in the civil police who has rendered service for more than ten years can be transferred to another branch, as explained above, in view of the provisions of Regulation 525 of the Uttar Pradesh Police Regulations;

(ii) The government railway police is a branch of the police force and hence the transfer of a civil police constable who has put in more than ten years" service to

the government railway police would not be prohibited, subject to compliance with the norms stipulated in Regulation 525 of the U.P. Police Regulations."

6. There is no statutory bar on the transfer of police personnel from the civil police to the government railway police in view of the judgment of the Full Bench which holds that the government railway police is a branch of the police force. The issue before this Court is whether a condition in the order of transfer to the effect that the police personnel transferred to the government railway police would be repatriated in the civil police at the end of three years would confer a vested right for repatriation so as to be enforceable by the issuance of a writ of mandamus.

7. Initially, as the record indicates, the policy of the State as borne out by a circular dated 30 May 2008 of the Police Headquarters was that Constables, Head Constables and Sub Inspectors would ordinarily be sent from the civil police to government railway police for three years and, on the expiry of which, they would be sent back to the parent department. This policy was modified on 2 March 2012 by the issuance of another administrative circular. Both the earlier circular dated 30 May 2008 as well as the subsequent circular dated 2 March 2012 are only administrative circulars. An administrative circular does not confer a vested right against a transfer or an enforceable right to the effect that a transfer should be made in a particular manner or at a particular point in time. Ultimately, it is for the State to decide whether the transfer or continuance of police personnel in a particular branch is in the interest of administration. The public interest must prevail. If there is a shortage of staff in a particular branch or even otherwise if a need is felt by the administration to retain staff in a particular branch, the authority must have the discretion to organize transfers and postings. The police force is a disciplined force.

8. We are unable to subscribe to the view which weighed with the learned Single Judge in the decision of Rakesh Kumar Singh (*supra*). The learned Single Judge held that the modification which was made by the circular dated 2 March 2012 would be only prospective and would not apply to police personnel who had already been transferred under the earlier circular dated 30 May 2008. Once it is held that both the government railway police as well as the civil police are branches of the police force, as has been laid down by Full Bench in Om Prakash Singh (*supra*), it is impossible to accept, as a fundamental principle of law, that the State can be restrained from making orders of transfer in accordance with Regulation 525 of the Police Regulations, which were noticed in the Full Bench decision of Om Prakash Singh (*supra*). Administrative circulars in areas such as matters of transfer and posting are issued in public interest and in view of administrative exigencies and are capable of being modified. These do not confer any vested right, nor has any right been taken away with retrospective effect, as has been held by the learned Single Judge in Rakesh Kumar Singh (*supra*).

9. For these reasons, the view which was taken by the learned Single Judge in the impugned judgment and order placing reliance on the earlier judgment in

Rakesh Kumar Singh (*supra*) is, with respect, erroneous and calls for interference in the special appeal. The special appeal is, accordingly, allowed by setting aside the impugned judgment and order dated 27 November 2014. In consequence, the writ petition filed by the respondents shall stand dismissed.

10. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

11. The delay of 121 days in filing the special appeal is condoned in the interest of justice since sufficient cause has been shown in the affidavit filed in support of the delay condonation application.

12. The application stands disposed of. There shall be no order as to costs.

1 C.M.W.P. No. 62128 of 2012 (decided on 18 December 2012)

2 Special Appeal No. 616 of 2011 (decided on 7 March 2014)