

(2018) 03 UK CK 0042

In the Uttarakhand High Court

Case No : SPECIAL APPEAL NO.978, 981, 983, 985, 987, 988, 991, 994, 995
996, 998, 999, 1000, 1001 OF 2017

STATE OF UTTARAKHAND AND OTHERS

APPELLANT

Vs

DHYAN SINGH AND OTHERS

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Government of India Act, 1935 &mdash Article 241 (2) (b)
Uttarakhand Police Act, 2007 — Section 38
U.P Fundamental Rules, — Rule 9 12, 12A, 13, 14, 14A, 14B, 15, 49, 86, 86A

Citation : (2018) 03 UK CK 0042

Hon'ble Judges : K.M. JOSEPH, C.J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Anil Kumar Bisht, Vinay Kumar, Shobhit Saharia

Final Decision : Disposed Off

Judgement

,,,,

K .M. Joseph, C.J.Â Â Â Â Â Â Â",,,,,

1. These Appeals being connected, we are disposing of the same by a common judgment.Â",,,,,

2. We take Special Appeal No. 987 of 2017 as the leading case, which arises from Writ Petition (S/S) No. 132 of 2016.Â Â We may notice the case",,,,,

of the petitioners, 14 in number, in brief:",,,,,

After creation of the State of Uttarakhand in the year 2000 and formation of the Uttarakhand Police Force on 31st December, 2001, the Government",,,,,

issued an order dated 31.12.2001.Â By the same, Bomb Detection and Disposal Squad and the Dog Squad were established.Â It is mentioned in the",,,,,

order that three units of Bomb Detection and Disposal Squad are being

established in the State and it was to consist of three Sub Inspectors, twenty" ,,, ,
 one Head Constables and three Constables (Drivers).Â An order was passed on
 31.10.2006 by the Director General of Police, whereby Bomb" ,,, ,
 Disposal Squad (hereinafter referred to as BDS) established in the State of
 Uttarakhand was allocated to District Udham Singh Nagar, District" ,,, ,
 DehradunÂ and District Haridwar.Â Pursuant to the same, Annexure-2 order
 dated 22.11.2006 was passed, by which BDS in different Battalions of" ,,, ,
 PAC were allotted to different Districts (three in number).Â It is further
 mentioned in Clause 3 of the order dated 22.11.2006 that the posts allotted to ,,, ,
 the concerned District will be treated to be the part of the allocated cadre
 strength of the concerned District.Â The order further recited that the ,,, ,
 BDS along with its equipment and employees were to be immediately relieved for
 the allocated Districts.Â Another additional BDS for District ,,, ,
 Haridwar came to be allocated vide Annexure-3 order dated 29.11.2007.Â Â Â ,,, ,
 3. There are as of today, seven teams of BDS in the State of Uttarakhand.Â
 Petitioners are persons, who have been appointed in PAC.Â Many of" ,,, ,
 them have been appointed prior to the creation of the State of Uttarakhand;
 some of them have been appointed after creation of the State of ,,, ,
 Uttarakhand.Â Â Paragraph-9 of the writ petition refers to the dates, on which
 the petitioners have been transferred to BDS.Â In the order dated" ,,, ,
 12.04.2013, it is provided that the tenure of the appointment in BDS will
 ordinarily be of five years.Â Annexure-6 is produced to show that on 11th" ,,, ,
 July, 2013, directives were issued by the Police Headquarters laying parameters
 for promotion of the Constables, Armed Police / PAC to the post of" ,,, ,
 Head Constables, Armed Police / PAC.Â Â Queries were raised by the Selection
 Committee.Â In reply, the Inspector General informed the" ,,, ,
 Chairman of the Selection Committee that the Head Constables Armed Police /
 PAC, who are included in the selection of the promotional" ,,, ,
 examination after their promotion, can be posted on the post of Head Constable
 in BDS (Annexure-7).Â Next, reference is made to order dated" ,,, ,
 11.11.2014 issued by the Inspector General of Police.Â It is said to be issued in
 reply to the Chairman of the Selection Committee in regard to the ,,, ,
 query relating to the lien of Constables of PAC posted in other branches of
 Police.Â It is, inter alia, stated therein that in the Department, the post of" ,,, ,
 Constable in BDS is not sanctioned; only the posts of Head Constable and Sub

Inspector are sanctioned in BDS.Â It is also mentioned therein that,,,,
at present in BDS, maximum Constables / Head Constables have come by way of transfer from PAC.Â It is also mentioned that the Constables",,,,,
appointed in BDS will have their lien in their cadre, i.e. P.A.C. / Armed Police, and on promotion, they will again be transferred against the vacancies",,,,,
in BDS.Â Â,,,,

4. Members of the PAC, who are transferred against the vacancies of the Armed Police vide orders dated 12.11.2008 and 15.10.2008 and who have",,,,,
been transferred to the Armed Police after approval of the Additional Director General of Police, are, therefore, deemed to have been transferred in",,,,,
terms of Paragraph No. 525 of the Police Regulations and their lien stands snapped from the PAC.Â It is further mentioned that the lien of the,,,,
employee will be determined as provided in Communication dated 11.11.2014 in respect of promotional exercise / transfer.Â The employees of PAC, ",,,,,
whose lien has not been determined and who are posted in specialized units, their lien will continue in their original cadre.Â There is reference to a",,,,,
further Communication dated 11.12.2014 (Annexure-9) in the light of Communication dated 11.11.2014.Â Â,,,,

5. Petitioners have filed representation as Annexure-10 stating that since the date of their appointment in BDS for all practical purpose, their lien stood",,,,,
snapped from PAC, inasmuch as they were not considered / informed about the promotional exercise on the post of Head Constables in PAC held in",,,,,
the year 2007 and 2009.Â It is further stated in the representation that some of the persons were promoted on the post of Lance Nayak and after,,,,
their transfer to District Police, their honorarium on the post of Lance Nayak has been stopped.Â Â The writ petitioners also produced Annexure-15",,,,,
order dated 07.03.2015.Â This purports to be the minutes of the meeting of the Police Establishment Committee.Â The Committee relied on,,,,
Paragraph No. 525 of the Police Regulations and concluded that the members of one branch can be transferred permanently or temporarily to another,,,,
branch and that by the said transfer, lien can also be transferred.Â It is on these allegations that the writ petitioners had approached this Court.Â The",,,,,
reliefs, which they have sought in the writ petition, are as follows:",,,,,

â??(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 12th April 2013 issued by the Inspector General of",,,,,

Police, headquarters, Uttarakhand, Dehradun inasmuch as the same has been issued without the same being approved by the Uttarakhand Police",,,,

Establishment Committee as is mandate of law.Â,,,,

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned communication dated 11th November 2014 issued by the Inspector",,,,

General of Police, Headquarters, Uttarakhand, Dehradun, so far as it relates to the members of PAC who are posted in Bomb Disposal Squad of the",,,,

Districts; as the same has not been approved by the Uttarakhand Police Establishment Committee.Â,,,,

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to treat the petitioners as members of the District Armed",,,,

Police as the Bomb Disposal Squad is a part of District Armed Police of the concerned District of the State.Â??Â,,,,

6. The pleadings were exchanged.Â The learned Single Judge, who heard all the petitions together after referring to the pleadings and referring to the",,,,

decision of the Police Establishment Committee dated 07.03.2015, inter alia, has held the petitioners till date are being paid salary by the District",,,,

Armed Police and not from the PAC. They have also vacated the accommodation allotted to them in PAC. They have deposited their Kits allotted to",,,,

them in PAC and their PAC Badges were surrendered too.Â As per Clause 3 of the Office Order dated 22.11.2006, the posts allotted to the",,,,

concerned District were to be treated the part of the allotted strength of the concerned District. In other words, the transferred employees stood",,,,

absorbed. Decisions were taken, however, contrary to the letter dated 22.11.2006 on 12.04.2013 and 11.11.2014, it was decided that all the members",,,,

of PAC, who were transferred against the vacancies of the Armed Police vide order dated 12.11.2008, will be deemed to be transferred in terms of",,,,

Paragraph No. 525 of Police Regulations and their lien would cease from PAC. It is stated that the respondents have not taken into consideration the",,,,

decision taken on 07.03.2015 in the meeting of the Police Establishment Committee.Â Thereafter, the learned Single Judge referred to Regulation 525",,,,

of the Police Regulations and finally held as follows:,,,,

â??19. The petitioners have become members of District Armed Police. They have vacated their accommodation allotted to them in PAC and they",,,,

are also not considered for promotion in their parent cadre in 2007 and 2009.â??,,,,

7. Thereafter, the writ petitions were disposed of as follows:" ,,,,

â??20. Accordingly, all the writ petitions are allowed. The respondents are directed to consider the case of the petitioners as per Annexure No. 2" ,,,,

dated 22.11.2006 and as per Paragraph No.8 of Annexure No.8 dated 11.11.2014 read in conjunction with Regulation No. 525 of the Police,,,,

Regulations, within ten weeks from today.â??" ,,,,

Unit of

Bomb

Disposal,

Squad /

Name of

District",Number of Posts,,,,"Name of the

allotted District

,"Sub

Inspector A.P.Â","Head

Constable

A.P.Â","Constable

Driver",

st

Battalion

PAC",01,07,01,"Udham

Singh

Nagar

th

Battalion

PAC",01,07,01,Haridwar

Dehradun,01,07,01,Dehradun

3. Accordingly, the above allotted posts are amalgamated in the sanctioned strength of the concerned Districts.Â" ,,,,

Sd/- 22.11.08,,,,

(Jeewan Chandra Pandey),,,,,

Addl. Director General of Police (Admn.) Uttarakhand, Dehradun.Â",,,,,

Copy is being forwarded to the following with the reference that it is ensured that the above Bomb Disposal Squad is relieved immediately along with,,,,

equipments and employees to their allotted Districts.Â Till the appropriate arrangements is made in the Districts the above Squads will remain in the,,,,

Battalions, but the administrative and operational control will be that of the concerned District Police.â?"",,,,,

15. No doubt, on the one hand, it is specifically stated that the posts mentioned therein are amalgamated in the sanctioned strength of the concerned",,,,,

District, but the learned Standing Counsel would point out that at the bottom of the said Communication, it is specifically stated that till the appropriate",,,,,

arrangement is made, the Squad will remain in the Battalions, but the administrative and operational control will be that of the concerned District",,,,,

Police.Â Â",,,,,

16. We may at this juncture notice that much turns on the concept of lien in this case. The issue as to what is lien is no longer res integra as it has,,,,

been the subject matter of catena of decisions of the Honâ??ble Apex Court.Â We may refer to the judgment of the Honâ??ble Apex Court in the,,,,

case of State of Madhya Pradesh and others vs. Sandhya Tomar and another reported in (2013) 11 SCC 357.Â Therein, we may only notice",,,,,

paragraph 10:,,,,

â??10. â??Lienâ? connotes the civil right of a government servant to hold the post â??to which he is appointed substantivelyâ?.Â The necessary,,,,

corollary to the aforesaid right is that such appointment must be in accordance with law.Â A person can be said to have acquired lien as regards a,,,,

particular post only when his appointment has been confirmed, and when he has been made permanent to the said post.Â â??The word â??lienâ??"",,,,,

is a generic term and, standing alone, it includes lien acquired by way of contract, or by operation of law.â? Whether a person has lien, depends upon",,,,,

whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to",,,,,

the said post.â??",,,,,

17. In this connection, we must remind ourselves that the concept of lien is not something, which is diversified from the provisions, which have been",,,,,

made in various States.Â As far as this State is concerned, there is no dispute that the matter is governed by the Uttar Pradesh Fundamental",,,,,

Rules.Â These Rules have been made by the Governor acting under Article 241 (2) (b) of the Government of India Act, 1935.Â The fact that they",,,,,

continued to have the operation even today and that too in this State is not a matter of dispute.Â â??Lienâ? has been defined in Rule 9 of the U.P.,,,,,

Fundamental Rules, which reads as follows:",,,,,

â??(13) Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence,",,,,

a permanent post, including a tenure post, to which he has been appointed substantively.â??",,,,,

18. Thereafter, it is relevant to notice Rules 12, 12A, 13, 14, 14A, 14B and 15 of the U.P. Fundamental Rules, which read as under:",,,,,

â??12. (a) Two or more government servants can not be appointed substantively to the same permanent post at the same time.,,,,,

(b) A government servant cannot be appointed substantively, except as a temporary measure, to two or more permanent posts at the same time.",,,,

(c) A government servant cannot be appointed substantively to a post on which another government servant holds a lien.,,,,,

12-A. Unless in any case it be otherwise provided in these rules, a government servant on substantive appointment to any permanent post acquires a",,,,,

lien on that post and ceases to hold any lien previously acquired on any other post.,,,,,

13.Â Unless his lien is suspended under rule 14 or transferred under rule 14-B, a government servant holding substantively a permanent post retains a",,,,,

lien on that post:",,,,,

(a) while performing the duties of that post;,,,,,

(b) while on foreign service, or holding a temporary post, or officiating in another post;" ,,,,,

(c) during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to",,,,,

the new post from the date on which he is relieved of his duties in the old post;,,,,,

(d) while on leave, except on leave granted under rule 86 or 86-A, as the case may be; and",,,,,

(e) while under suspension.,,,,,

Orders of Governor regarding rule 13.,,,,,

Â Government servants who are appointed as officers of the Army in India Reserve of Officers, shall retain a lien on their permanent posts under the",,,,,

Government during the period for which they are called to service in the Defence Department.,,,,,

14. (a) The lien of a government servant on a permanent post which he holds substantively shall be suspended if he is appointed in a substantive.,,,,,

capacity:.,,,,,

(1) to a tenure post, or",,,,,

(2) to a permanent post outside the cadre on which he is borne, or",,,,,

(3) provisionally, to a post on which another government servant would hold a lien had his lien not been suspended under this rule.",,,,,

(b) The Government may, at their option, suspend the lien of a government servant on a permanent post which he holds substantively if he is deputed",,,,,

out of India or transferred to foreign service, or, in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or",,,,,

officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which",,,,,

he holds a lien for a period of not less than three years.,,,,,

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a government servant's lien on a tenure post may in no circumstances be",,,,,

suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.",,,,,

(d) If a government servant's lien is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the government",,,,,

servant appointed to hold it substantively shall acquire a lien on it; provided that the arrangements shall be reversed as soon as the suspended lien,,,,,

revives.,,,,,

(e) A government servant's lien which has been suspended under clause (a) of this rule shall revive as soon as he ceases to hold lien on a post of,,,,,

the nature specified in sub-clause (1), (2) or (3) of that clause.",,,,,

(f) A government servant's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceases to be on deputation out,

of India, or on foreign service, or to hold a post in another cadre, provided that a suspended lien shall not revive because the government servant takes

leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India, or on foreign service or to hold a post in

another cadre and the total period of absence on duty will not fall short of three years, or that he will hold substantively a post of the nature specified

in sub-clause (1), (2) or (3) of clause (a).

Orders of the Governor regarding rule 14,

When it is known that a government servant on transfer to a post outside his cadre is due to retire on superannuation pension within three years of

his transfer, his lien on the permanent post cannot be suspended.

14-A. (a) A government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him

without a lien or a suspended lien upon a permanent post.

(b) In a case covered by sub-clause (2) of clause (a) of rule 14, the suspended lien may not, except on the written request of the government servant

concerned, be terminated while the government servant remains in Government service.

14-B. Subject to the provisions of rule 15, the Government may transfer to another permanent post in the same cadre the lien of a government servant

who is not performing the duties of the post to which the lien relates, even if that lien has been suspended.

15. (a) a government servant may be transferred from one post to another; provided that, except (1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a government servant shall not be transferred substantively to, or, except in a case covered by rule 49, appointed to officiate in, a post carrying less

pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under rule 14.

(b) Notwithstanding anything to the contrary contained in these Rules, the Governor may in the public interest transfer a government servant to a post

in another cadre or to an ex-cadre post.

(c) Nothing contained in clause (a) of this rule or in clause (13) of rule 9 shall operate to prevent the retransfer of a government servant to the post on,,,,

which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of rule 14.â??",,,,,

19. Apparently, the attention of the learned Single Judge has not been drawn to the statutory framework, within which the principles relating to lien",,,,,

have found expression.Â Now, it is relevant to refer to Regulation 525 of the U.P. Police Regulations, which reads as follows:",,,,,

â??525. Constable of less than two yearsâ?? service may be transferred by the Superintendent of Police from the armed to the civil police or vice,,,,

versa. Foot police constables may be transferred to the mounted police at their own request. Any civil police constable of more than two and less than,,,,

ten yearsâ?? service may be transferred to the armed police and vice versa by the Superintendent for a period not exceeding six months in any one,,,,

year. All armed police constables of over two yearsâ?? service and civil police constables of over two and under ten yearsâ?? service may be,,,,

transferred to the other branch of the force for any period with the permission of the Deputy Inspector-General.,,,,,

In all other cases, the transfer of Police Officers from one branch of the force to another or from the police service of other Provinces to the Uttar",,,,,

Pradesh Police requires the sanction of the Inspector-General.â??",,,,,

20. In the first place, we may examine whether the Uttar Pradesh Police Regulation is having any statutory force.Â This question arose before the",,,,,

Honâ??ble Apex Court in Udaibir Singh vs. State of Uttar Pradesh reported in AIR 1957 SC 142, where we notice that in Paragraph 12, inter alia, it",,,,,

has been stated as follows:-,,,,

â??12. â??It is not as if these police regulations are rules framed by the Inspector-General in accordance S. 12; but they are the result of the State,,,,

Government laying down the mode of conduct and how the officers have to perform their duties.â??",,,,,

21. We may also notice that in the case of Kharak Singh vs. State of U.P. and others reported in AIR 1963 SC 1295, the question arose before a",,,,,

Constitution Bench of the Honâ??ble Apex Court, whether Chapter 20 of the Regulations had any statutory force and the following are the",,,,,

discussions and findings:-,,,,

(5) Though learned Counsel for the respondent started by attempting such a justification by invoking S. 12 of the Indian Police Act he gave this, up and conceded that the regulations contained in Ch. XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be a law which the State is entitled to make under the relevant cls. (2) to (6) of Art. 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Art. 19(1), nor would the same be a "procedure established by law" within Art. 21.

22. Having regard to the course, which we intend to adopt, we do not think that it is apposite to dwell at greater length in regard to the impact of the fundamental rules, which we have referred to, relating to lien. It is quite clear that the judgment of the learned Single Judge does not reflect any consideration of the statutory rules. There is also a case for the appellants that though the writ petitioners have been transferred to BDS from PAC, and though the posts, which have been created vide order dated 31.12.2001, are permanent, no post of Constable has been created by the said order. The writ petitioners have been transferred temporarily. Regulation 525 of the U.P. Police Regulation comes under the Chapter XXXIV relating to transfers. Incidentally, we notice that a Bench of this Court had an occasion to consider the impact of Regulation 525 in a different context in the case of Vivek Singh and others vs. Constable 243 CP Mohan Singh Tomkiyal and others reported in 2016 (2) UD., 521.

23. On the one hand, going by order dated 22.11.2006 and paragraph 3 thereof, it would appear that the intention was that the posts, which have been allotted, are amalgamated with the sanctioned strength of the concerned District. There is also the aspect relating to 582 persons receiving differential treatment. Acquisition of lien, suspension of lien and termination of lien are matters, which are dealt with in the statutory rules, which continue to apply to the State of Uttarakhand. The Police Establishment Committee has apparently taken the view that the lien can be transferred acting under Regulation 525 of the U.P. Police Regulations. It is profitable to note that Regulation 525 of the U.P. Police Regulations is silent regarding the creation, suspension and extinguishment of the lien and it deals with only transfer. The Police Establishment Committee is a creation of the

Uttarakhand Police Act, 2007 (Section 38).Â It is vested with certain functions under Section 38 of the Uttarakhand Police Act, 2007.Â No doubt, it",,,,

has taken a decision on 07.03.2015 purporting to lay down that there is power under Regulation 525 to transfer the lien.Â Â We do not wish to say",,,,

anything further; we set aside the judgment and the matter be redone having regard to the Fundamental Rules and the effect of Regulation 525 of the",,,,

U.P. Police Regulations, which as we have noticed, is not statutory and also the case of the discrimination, which is sought to be defended by the",,,,

appellants, as being done on a valid basis.Â We would think that the matter must be redone having regard to the issues which actually arise for",,,,

consideration.Â",,,,

24. At this juncture, Mr. Shobhit Saharia, learned counsel appearing on behalf of the writ petitioners in SPA No.987 of 2017, SPA No.1001 of 2017," ,,,,

SPA No. 999 of 2017, SPA 996 of 2017, SPA 994 of 2017 and SPA No.995 of 2017 would submit that in regard to the petitioners in these cases, their",,,,

petitions may not survive for consideration as the writ petitioners have competed in the selection for the posts of Sub-Inspector (Civil Police) and have",,,,

succeeded in getting selection and the matter need not go back and can be closed.Â",,,,

25.Â Accordingly, we dispose of the Appeals as follows:Â Â The Appeals are allowed. We set aside the judgment of the learned Single Judge in all",,,,

the cases, remit the matter back to consider the matter having regard to the effect of the Fundamental Rules, which we have referred to and also the",,,,

various aspects, which are projected by the parties before the learned Single Judge." ,,,,

As far as SPA No.987 of 2017, SPA No.1001 of 2017, SPA No. 999 of 2017, SPA 996 of 2017, SPA 994 of 2017 and SPA No.995 of 2017 are",,,,

concerned, the judgment of the learned Single Judge is set aside.Â Â",,,,

Â We request the learned Single Judge to dispose of the writ petitions as early as possible.",,,,