

(2006) 01 AHC CK 0007
In the Allahabad High Court
Case No : Writ Petition No. 17 (S/S) of 2005

Udaipal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Constitution of India, 1950 — Article 20, 311
Police Act, 1861 — Section 15A, 2, 23, 46(1), 46(2)
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 4, 4(1)

Citation : (2006) 5 AWC 5374 : (2006) 3 UPLBEC 2308

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : Ganga Singh, A.P. Singh, Amit Bose, R.K. Upadhyay, Balram Singh, Y.K. Mishra, Sabir Ali, Jitendra Singh, R.N. Singh, D.K. Tripathi, D.M. Tripathi, Trishita Singh, Shailendra Pratap Singh, Rana M.P. Singh, L.K. Pathak, S.W.H. Rizvi, Pradeep Kumar Singh, Ashok Kumar Singh, S.K. Pathak, R.N. Singh, Suresh Sharma, Madhumita Bose, Rajesh Singh Chauhan, Benkat Raman Singh, M.B. Tiwari, Rajesh Kumar Verma, Sunder Lal, I.P. Singh, M.P. Tiwari, Shatrohan Lal and H.P. Srivastava, for the Appellant; S.C. Yadav, Addl. C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Bhanwar Singh, J.—Heard learned Counsel, named below:

S/Shri Ganga Singh, A. P. Singh, Amit Bose, R. K. Upadhyay, Balram Singh, Y.K. Mishra, Sabir Ali, Jitendra Singh, R.N. Singh, D. K. Tripathi, D. M. Tripathi, Trishita Singh, Shailendra Pratap Singh, Rana M. P. Singh, L. K. Pathak, S. W. H. Rizvi, Pradeep Kumar Singh, Ashok Kumar Singh, S. K. Pathak, R.N. Singh, Suresh Sharma, Ms. Madhumita Bose, Rajesh Singh Chauhan, Benkat Raman Singh, M. B. Tiwari, Rajesh Kumar Verma, Sunder Lal, I. P. Singh, M. P. Tiwari, Shatrohan Lal and H. P. Srivastava--all appearing on behalf of the Petitioners. Also heard Mr. S. C. Yadav, learned Additional Chief Standing Counsel for the

State.

2. The facts of all the above cases are different but the legal issue is common and the same can be formulated as follows : Whether the punishment of "censure entry" as provided under Rule 4 (1) (b) (iv) of the U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (for short as the "Rules") is ultra vires the provisions of Section 7 of the Police Act, 1861 (Act No. v. of 1861).

3. All the writ petitions, numbered above, have been filed by the police officials with the allegations that Section 7 of the Police Act (for short "Act") being specific in description does not permit formulation of a rule inconsistent with it. Some of the writ Petitioners have been awarded censure entries for wrong acts of commission and omission while a few were served with show cause notices. Although it is a long-drawn view of this Court that ordinarily a petition for challenging a show cause notice is premature and is not maintainable as the alternative remedy of submitting a reply to the competent authority is available to a writ Petitioner ; and, there may arise a favourable situation whereby the reply of an aggrieved police official is accepted and the show cause notice discharged but since the legal issue as framed above, may hit at the very root of the validity of Rule 4 (1) (b) (iv) of the rules, even petitions filed against the show cause notice have been linked together with those which were filed by awardees of the censure entries.

4. It is not necessary for me to go into the details of the facts of the various writ petitions as censure entries have been awarded to them on one ground or the other of their being found indifferent or negligent towards their duties. The show cause notices served upon some of the Petitioners also have the same charges.

5. Let me, therefore, delve upon the main issue pertaining to the validity of Rule 4 (1) (b) (iv) of the Rules.

6. In order to appreciate the relevant provisions of Section 7 of the Act and relevant provisions of Rule 4 of the Rules, the provisions of the Section and Rule may be quoted :

7. Appointment, dismissal, etc. of inferior officers.--Subject to provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act, the (Director-General-cum-Inspector General), Deputy Inspectors-General, Assistant Inspectors 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 punishments 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 duty ;
- (c) deprivation 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.

7. A careful perusal of the above quoted provisions would reveal that the competent authorities may award the punishment of dismissal and reduction in rank. These are considered to be the major punishment. The section also postulates for suspension of a delinquent police officer or official of the subordinate ranks. In addition to these, five clauses provide for punishment of fine, confinement to quarters for a term not exceeding fifteen days, deprivation of good conduct pay, removal from any office of distinction or special emolument and withholding of increments or promotion including stoppage at an efficiency bar.

8. In this context, it is noteworthy that Clause (e) pertaining to withholding of increments or promotion including stoppage of an efficiency bar was not initially a part of Section 7 but it was incorporated by way of amendment in the Section (U. P. Amendment Act No. II of 1944).

9. Since withholding of increments is also considered to be a penalty, it was thought appropriate to add the above provision in the list of the minor punishment. Learned Counsel for the State fairly conceded that the censure entry is also a penalty and it very well falls within the ambit of "minor punishment". Question arises if the punishment of censure is also a penalty, why it should not be in conformity with the provisions of Section 7 of the Act. This provision can be incorporated in Section 7 of the Act by making an amended addition. A misconduct entry as envisaged in para 478 (bc) of the Police Regulations is, no doubt, a punishment as it entails civil consequences, yet there is distinction between a "censure entry" and a "misconduct entry". Before the said distinction is precisely enumerated, it would be of great help to make a reference to Rule 4 (1) (b) (iv) of the Rules and para 478 of the Police Regulations.

10. It is noteworthy that the U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 have been framed in exercise of powers conferred upon the Government under Sub-sections (2) (3) of Section 46 read with Sections 2 and 7 of the Police Act. Rule 4 provides as follows :

4. Punishment.--

1. The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely :

(a) Major Penalties:

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

(b) Minor Penalties :

(i) withholding of promotion.

(ii) Fine not exceeding one month's pay.

(iii) Withholding of increment, including stoppage at an efficiency bar.

(iv) Censure.

(2) In addition to the punishments mentioned in Sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments :

(i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).

(ii) Punishment Drill not exceeding fifteen days.

(iii) Extra guard duty not exceeding seven days.

(iv) Deprivation of good conduct pay.

(3) In addition to the punishments mentioned in sub-rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks:

(i) Tent pitching ;

(ii) Drain digging ;

(iii) Cutting grass, cleaning jungle and picking stones from parade grounds ;

(iv) Repairing huts and butts and similar work in the lines ;

(v) Cleaning Arms.

11. Rule 4, as is apparent from above, is divided into three parts. The first part deals with the major and minor penalties while parts 2 and 3 deal with major punishment except deprivation of good conduct pay. It is abundantly clear that the punishment censuring a police official is under the heading "minor penalties". Except the penalty of "censure", all other major and minor penalties are very well covered under the provisions of Section 7 of the Act. Since the physical punishment and that of deprivation of good conduct pay are not regarded as a penalty, their provisions need not be in conformity with the enacted details of Section 7 of the Act. It is perhaps for the same reason that the misconduct entry

as provided in para 478 (bc) of the Police Regulations has not been considered to be as serious as the penalty of a "censure". In this context, the Court's attention was drawn towards a decision of this Court in, Chaman Singh v. State of U. P. and Ors., 1988 (6) LCD 547. In this case, the vires of para 478 including its Clause (bc) was challenged. Having regard to the provisions of Sections 23 and 46(1) of the Police Act, the Court arrived at a conclusion that para 478 was meant for giving effect to the provisions of the Act. On the basis of this reasoning, the misconduct entry was held to be in conformity with Section 7 of the Act. The aforesaid paragraphs in the form of a subordinate legislation was considered to be in the aid of Section 7.

12. It was perhaps on the basis of the same reasoning that an Hon'ble single Judge of this Court in Ram Charit Pandey Vs. State of U.P. and another, held that like para 478, the punishment of "censure" was in consonance with the provisions of Section 7 of the Police Act. It was not discussed in this decision that the "censure entry" amounts to a penalty and it was not a mere entry.

13. It is significant to note that character roll entries are generally made to warn the officials/officers for future guidance. Their act is criticized so that they may rectify their errors in future and in ordinary course, the character roll entries, awarded every year in the service or character rolls of the public servants do contain appreciation for their work and if something is found lacking and the same is recorded in the annual entry, it is considered to be an adverse observation and such adverse entries are communicated to the officials concerned. It depends upon the gravity of such adverse entries that future career of such officials may be adversely affected. And, it is a common experience that in case of lighter observations, such as "the officer needs improvement", "he should work more hard", "he should behave well" etc. do not carry any civil consequences like supersession etc. With such minor adverse entries, an officer can be allowed to cross efficiency bar or to get the next grade of pay-scale or may even be promoted to the next higher rank but the censure entry which is virtually a condemnation of an official for a certain act or the acts would stand as a rock and operate as an impediment to his entitlement of either promotion or super time scale etc. A misconduct entry if compared in regard to a censure entry may not be grave in nature as the meaning of this term does not necessarily imply corruption or criminal intent. In common parlance, "misconduct" is a wrong or improper conduct or bad behaviour. However, if it is intentional, it becomes wilful misconduct. In the Webster's Dictionary, "misconduct" is defined as a misdemeanour or mis-behaviour. In usual parlance, a transgression of some established and definite rule of action where no discretion is left amounts to mis-conduct and although it implies a wrongful intention but not corruption or a criminal intention.

14. On the other hand, the word, "censure" is regarded as synonymous with words, "reproach" and "obloquy". In other words, censure is a disposition to blame and condemn. This term implies a guilty mind for which the wrongdoer is

blamed and condemned. Whereas, mis-conduct entry would be a mere punishment, the censure entry is admittedly a penalty. In common parlance, both the terms, namely "penalty" and "punishment" are considered to be synonyms of each other but the penalty is regarded to be of greater dimension as compared to punishment. Under Clause 1 of Article 20 of the Constitution also, the word, "penalty" is used in the sense of punishment. Normally, the punishments of such offenders liable under the offences of the Indian Penal Code are physical punishments while the penalty is a punishment of civil nature as it incurs civil consequences like stoppage of annual increment or stoppage of promotion etc. The dictionary meaning of the word, "punish" is to cause the offender punished for the offence. As a matter of fact, the word, "punishment" denotes or signifies some offence committed by the person who is punished while any action of the employer or a superior authority to the detriment of his employee or subordinate's interests would be a penalty. Thus, the circumstances like dismissal, supersession, stoppage of pay are the penalties, while imprisonment, fine etc. are the punishment. So a mis-conduct entry may be a punishment of lighter nature as compared to a penalty implied in a censure entry. The latter seems to be of greater dimension seriously affecting the rights and interests of an employee. Having regard to all these distinctions between the two terms, I am of the opinion that the censure entry is a serious penalty as compared to a mis-conduct. In one sense, this penalty is as serious as of withholding of increments or promotion including stoppage of an efficiency bar. If an employee is awarded a censure entry, he is bound to be superseded when the matter of his promotion to the higher rank would be considered and likewise his annual increments may also be withheld and he may also be not permitted to cross the efficiency bar. In other words, the censure entry is on the same footing as the penalty provided in Section 7, Sub-clause (e) of the Police Act. Therefore, in my considered opinion, the penalty of censure entry being provided under the heading of "minor penalties" in Rule 4 of the Rules is not at all in conformity with the provisions of Section 7 of the Act. It may be put in different words that if censure entry was also considered to be a penalty of equal footing as provided in Clause (e) of the said Section, it would have been incorporated in the Section itself. However, it was not so incorporated in the said section as there was no legislative wisdom in doing so. Nothing can prevent the Legislature from incorporating the penalty of censure entry in the provisions of Section 7 of the Police Act. There are numerous State amendments having been made by the State Legislature and as said above, even Clause (e) was added to the said Section by the U. P. State Legislature (U.P. Act 2 of 1944).

15. Having regard to all these legal implications of a censure entry, I am of the view that the provision of Rule 4 (1) (b) (iv) of the Rules being in conflict with Section 7 of the U. P. Police Act is ultra vires.

16. I am not in agreement with the argument of the learned Counsel for the State that the censure entry incorporated in Rule 4 (1) (b) (iv) is in furtherance of Section 46 of the Act which authorizes the State Government to formulate

rules consistent with the Act. Sub-section (2) of Section 46 is relevant from our point of view which postulates as follows :

46. Scope of Act.--(1)

(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 Magistrates 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 inquiries, if necessary) which are to be taken consequent thereon ; and (c) generally, for giving effect to the provisions of this Act.

(3)

17. Clause (c) is relevant for our purpose and this postulates that a rule can be framed for giving effect to the provisions of this Act. No doubt, an award of censure entry will breed discipline among the police force as the wrongdoers would be punished and condemned but there may be an injustice to such officials if they are condemned merely on soliciting their explanation and not by holding a proper disciplinary enquiry by following the prescribed procedure. If a police official is to be punished with major penalties or minor penalties, it is implied in such an action that a disciplinary enquiry will be conducted, a formal charge would be framed against the delinquent official, evidence in support of the charge would be led and the concerned official will be given an opportunity to cross-examine the witnesses produced in support of the charge and further he himself will have a right to lead his own evidence in rebuttal of the charge. Such a full proof prescribed procedure may ensure that a fanciful punishment or an arbitrary decision may not be taken against a delinquent official but this shield of protection is not available to a police officer who is awarded a censure entry and condemned and eventually punished only after seeking an explanation from him. The security lies in the procedure and not in the decision.

18. As a matter of fact, the word, "penalty" as used in Rule 4 impliedly points to the existence of a substantive law and not a mere procedure. A subordinate legislation, such as the police rules does not include the power to frame a rule of substantive law and it would only include an authority to lay down procedure for implementing the substantive provisions of the enabling statute through the rules. It was held in *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, that a delegated power to legislate by making rules for "carrying out the purpose of the Act" is a general delegation without laying down any guidelines ; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself. In

the case in hand, the provision of censure entry which is a minor penalty is not incorporated in Section 7 of the Police Act which is the residuary provision of substantive law, therefore, the rule making authority cannot assume a power to formulate that by incorporating in the subordinate legislation, i.e., the Rules. Section 7 of the Act does not lay down any procedure for inflicting the punishment provided for and therefore, the provisions have been subjected to rules of procedure that can be framed under the Police Act. If the statutory interpretation as enshrined in the principle, "ejusdem generis" is followed, the position would be that the State Government in exercise of powers u/s 46(2)(c) of the Police Act cannot frame a rule with regard to substantive law as it can frame rules only with regard to the procedure for exercise of various powers provided by the Police Act. Punishments to be inflicted on police officers are substantive provisions and no rule providing for a punishment not mentioned in Section 7 can be framed by the State Government. Express mention of the punishment that can be inflicted on a police officer in Section 7 of the Police Act, excludes all other punishments which can be inflicted and since the punishment of censure has not been provided in Section 7 of the Act, the said punishment cannot be allowed to be there in Rule 4 (1) (b) (iv) of the Rules. In these circumstances, it is extremely doubtful that by rules framed under Police Act, the punishment of censure could be prescribed and as such, the provisions of Rule 4 (1) (b) (iv) of the rules is ultra vires.

19. Learned Counsel for the State Shri S. C. Yadav referred to a decision of this Court in *Nurul Hasan v. Senior Superintendent of Police, Lucknow* and Anr. 1983 (3) LCD 208, and contended with reference to this decision that U. P. Police Regulations are in conformity with Section 7 of the Police Act and therefore on the same analogy, Rule 4 (1) (b) (iv) of the Rules should also be regarded as intra vires. In that case, suspension orders of police officials were questioned. The Court in the given facts and circumstances of the said case, though quashed the suspension orders, yet upheld the validity of the Police Regulations authorizing the competent authority to issue suspension orders in the matter of departmental enquiry or a judicial enquiry. However, since the Regulations do not provide ipso facto suspension during investigation or trial of a case, suspension order issued without there being a disciplinary proceeding or even a contemplated proceeding was considered to be bad. The facts of this case are entirely different from the cases in hand. Here, the validity of the censure entry has been questioned on the ground that existence of such power is not present in the Act itself.

20. It is noteworthy that the power of suspension is clearly provided under the provisions of Section 7 of the Act and therefore, such a power can also be incorporated in the subordinate legislation framed as rules or regulation. Therefore, I am of the view that this citation is of no avail in the matter of a penalty which is incorporated in rules but not in Section 7 of the Act.

21. It is perhaps on account of the above legal position that the power of

awarding censure entry was not included in paragraph 478 of the Police Regulations which provides as follows :

478. All police officers appointed u/s 2 of the Police Act are 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) fatigue duty which should be restricted to the following tasks :
 - (i) tent-pitching ;
 - (ii) drain-digging ;
 - (iii) cutting grass, cleaning jungle and picking stones off parade grounds ;
 - (iv) repairing huts and butts and similar work in the lines ;
 - (v) cleaning arms.

22. From a careful perusal of the above regulation and the provisions postulated thereunder, it is obvious that the power of awarding censure entry is not provided because Section 7 of the Act does not authorize to formulate the said provision. Exclusion of the penalty of censure entry from paragraph 478 clearly and categorically lends assurance to the legal proposition that Section 7 of the Act does not authorize formulation of this kind of penalty in the rules or regulations.

23. In view of all what has been discussed above, I am of the decisive opinion that the provisions of Rule 4 (1) (b) (iv) containing a provision of censure entry is ultra vires the provisions of Section 7 of the Police Act. It, therefore, deserves to be quashed.

24. Order accordingly. All the writ petitions are allowed. Sub-clause (iv) of Rule 4 (1) (b) of U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal)

Rules, 1991 is hereby quashed. A writ of certiorari is issued to this effect. The censure entries awarded to those Petitioners who have been communicated of such penalty are hereby quashed. In the matter of those Petitioners who have been served a show cause notice, it is provided that the opposite parties are restrained from awarding censure entries. All such notices would also stand quashed.