
(1997) 09 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31489 of 1997

Yaghya Deo Sharma

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Citation : (1997) 09 AHC CK 0078

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—By an order dated 26th June, 1997, contained in Annexure1 to the writ petition along with 209 other persons the petitioner was transferred to Provincial Armed Constabulary, at the places mentioned in the said order respectively. Sri A.K. Dixit, learned Counsel for the petitioner, has assailed the said order on the ground that the order having been passed by the Supdt. of Police (Personnel), U.P. is wholly without jurisdiction since the Supdt. of Police is not empowered to pass such a transfer order. According to him it is only the Inspector General of Police, who can issue such order of transfer. The second ground is that the petitioner having spent 22 years in Civil Police, he is not liable to be transferred to Provincial Armed Constabulary in view of the order contained in Regulation 525 of U.P. Police Regulations. According to him such transfer would affect the service conditions of the petitioner to the effect that he belonged to Civil Police, Whereas he is being permanently transferred to Armed police. In support of his contention he relied on Regulation of U.P. Police Regulations and contends that only Supdt. of Police can transfer in such cases. He also relies on Regulation 525 of the Regulation, which according to him prohibits transfer of a constable having completed more than 22 years of service, from one branch to another.

2. Sri Parihar, learned Standing Counsel on the other hand contends that Regulations1 contemplates delegation of power by the Inspector General of Police. In exercise of such power of delegation the Inspector General of Police

has issued an order dated 21/29th March, 1990, by which the power to transfer was delegated to the Deputy Inspector General of Police (Personnel) posted at the Headquarter to transfer all categories of nongazetted employees from one branch to another, while the Supdt. of Police (Personnel) Headquarter was empowered to transfer a constable and Head constable from one branch to another. According to him by virtue of such delegation of power the Supdt. of Police (Personnel) Headquarter is competent to issue an order of transfer. He also contends that under Regulation 525 of the Regulations, even if a person has completed 22 years of service, can very well be transferred. He further contends that by reason of such an order of transfer from Civil Police to Armed police, the petitioner's service condition is not altered and the same is permissible under U.P. Police Regulations and the petitioner is governed there by and he can very well be transferred.

3. After hearing Sri Dixit, learned Counsel for the petitioner and Sri Parihar, learned Standing Counsel, it appears that both of them have relied on Regulation 1 and Regulation 525 of the Regulations respectively, in support of their respective cases. It is, therefore, necessary to refer to the said two Regulations, which are quoted below:

"1 The Inspector General, is the head of the Police Department and the adviser of the Governor in Council on all questions of Police administration. All orders from the Governor in Council to a member of the Police force are issued through him, except in cases of urgency when copies of any orders issued direct to subordinate officers are sent to him. No police officer may correspond with the Governor in Council except through him, unless specially authorised by rule. As a matter of administrative routine he is concerned only with gazetted officers, the general allocation of staff and the general distribution of funds, complete responsibility in regard to the nongazetted staff being delegated to Deputy Inspector General, except in regard to the posting, transfer and grant of leave to inspectors in certain cities and stations and to the posting, transfer and promotion of the clerical staff, which can most conveniently be regulated by him."

"525 Constable of less than two years service may be transferred by the Superintendent of Police from the armed to the civil police or viceversa, Police constable may be transferred to the mounted police at their own request. Army Civil Police constable of more than two and less than ten years 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 years service and civil Police constables of over two and under ten years 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."

4. A plain reading of Regulation 1 shows that the Inspector General of Police is mostly concerned, as a matter of administrative routine with the gazetted officers. The expression used "as a matter of administrative routine he is concerned only with the gazetted officers", rather shows that the Inspector General will normally deal with the gazetted officers only. Then again the other expression used in the said sentence "general allocation of staff and the general distribution of funds, complete responsibility in regard to the nongazetted staff being delegated to Deputy Inspector General, except in regard to the posting, transfer and grant of leave to inspectors in certain cities and stations and to the posting, transfer and promotion of the clerical staff, which can most conveniently be regulated by him, " indicates that the transfer and posting of all nongazetted staff is to be delegated to the Deputy Inspector General excepting those of Inspectors, that too in certain cities and stations and to the posting, transfer and promotion of the clerical staff. The said regulation has used the expression "delegated" to connote that the power of Inspector General is subject to delegation and that was for the purposes of administrative exigency. For the sake of administration, the authority is given to the Inspector General to delegate his powers to the subordinate. It is not expected that the Inspector General would remain busy with the matter of transfer and posting of all Police personnel in the force, particularly when the strength of the force has increased. In the present situation for the sake of administration it is open to the respondents to take administrative decision. The Regulations regulate the manner in which administration is to be carried on. It does not create complete absence of jurisdiction but it conceived delegation of power to his subordinates.

5. Then again the said regulations can not be read independent of Regulation 525. The question of transfer is being dealt in Chapter XXXIV, which contains Regulations 520 to 526. The principle of delegation having been admitted in Regulation 1 the same has to be read with the provisions contained in Chapter XXXIV, particularly Regulation 525. It can not be interpreted to contradict each other. The two provisions are to be reconciled together so as to achieve the aim and object. The question of transfer having been specifically dealt with in Chapter XXXIV the same has to be given such a meaning so as to make the same workable. Then again on reading of Regulation 525 no technicalities stand in the way of delegating such a power to the subordinates. Apart from the said aspects as is provided in Regulation 525 transfer from one branch to another can be made in respect to different categories of persons in respective manner provided there in. A constable having less than two years of service can be transferred by the Supdt. of Police from Armed police to the Civil Police or vice versa. Thus, the Supdt. of Police is empowered to transfer a constable who has put in less than two years of service either from Civil Police to Armed police or from Armed Police to Civil police. He can also transfer a constable for more than two years and less than ten years of service from Armed police to the Civil Police and vice versa. But for a period not exceeding six months in any one year. The Supdt. of Police can transfer all Armed police for

over two years service and Civil police for over two years and under ten years of service to any other branch of the force for any period but with the permission of the Deputy Inspector General.

6. Thus, the above situation clearly indicates that such power of transfer from the Civil Police to Armed Police is vested with the Supdt. of Police with regard to different categories of personnel, as indicated above. Therefore, by virtue of the said delegation, as contended by Sri Parihar, learned Standing Counsel through the order dated 21/29th March 1990 is not conferring any new power or right on the Supdt. of Police, but the same powers which are already stood vested in him but with certain restrictions. He also can transfer any Police officer from one branch to another or from Police Service of other Provinces to the Uttar Pradesh Police. But in such case sanction of the Inspector General is required. Therefore, the Supdt. of Police has also power to transfer constable from one branch of force to another or from police service of other Province to U.P. Police with the sanction of the Inspector General. It is only a reelaboration of power which already vested in the Supdt. of Police.

7. Even if the said contention on ceived of some doubt but still then the order dated 21/29th March, 1990 can not be said to be invalid because of the reason that such transfer can very well be made by the Supdt. of Police with the sanction either of the Deputy Inspector General in certain cases and with that of the Inspector General in all cases without any restriction. Even if this order can not be treated a delegation the same can be treated as general sanction given to the Supdt. of Police for the purposes of transferring constables from one branch to another.

8. On reading this Regulation 525 after reconciling Regulation1 it appears that the power can very well be delegated or in other words sanction can be given. On both counts the order dated 21/29th March, 1990 can be placed in either of the situation, namely, it may be considered a delegation or it may be considered a sanction, the result would be the same. Therefore, it cannot be said that there is any infirmity in the said order, which has however, been vehemently objected to by the learned Counsel for the petitioner.

9. Since the service of the police constable is governed by the Police Regulations he cannot claim any benefit outside the Regulations. Regulation itself postulates transfer from one branch to another. Therefore, the petitioner can not have any grievance on account of the said transfer for the simple reason that he might be placed in a different branch instead of Civil branch, to which he belonged. The question that the petitioner had put in 22 years of service, can not stand in the way because by virtue of Regulation 525 the Supdt. of Police can transfer such constables with the sanction of Inspector General. The order dated 21/29th March, 1990, if treated as sanction given generally or delegation and there by delegating powers of sanction to the Supdt. of Police the order of transfer can not be said to be invalid. Twenty two years of service does not stand in the way, in any manner, particulailly when Regulation 525 conceived of the transfer of any

police officer from one branch to another branch by the Supdt. of Police with the sanction of Inspector General.

10. In that view of the matter I do not find any infirmity in the order impugned. Therefore, I am not inclined to interfere with the same in exercise of writ jurisdiction. In the result the writ petition fails and is accordingly dismissed. There will, however, be no order as to costs.

11. Let a copy of this order be given to the learned Counsel for the petitioner on payment of usual charges with in a week.