

Nandesh Singh and Others Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Oct. 11, 2010

Acts Referred: Constitution of India, 1950 " Article 162

Police Act, 1861 " Section 2

Police Regulations " Regulation 520

Citation: (2011) 4 ADJ 393

Hon'ble Judges: Shishir Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Shishir Kumar, J.

Petitioners who are Constables in U.P. Police has approached this Court for quashing the order of transfer on the

ground that decision to transfer Petitioners has not been taken by concerned Police Establishment Board constituted by the State Government

under the Government Orders dated 12th March, 2008 which has been constituted in pursuance of the Apex Court judgment in Prakash Singh

and Others Vs. Union of India (UOI) and Ors,

2. Learned Standing Counsel appearing on behalf of State has submitted before the Court that Police Constables are being transferred within range

by the Board constituted by the order of the State Government and the Government Order dated 8th April, 2010 issued in continuation of

Government Orders dated 12th March, 2008 and 27th November, 2008. The Government Order has been annexed with the writ petition and it

has been pointed out that four Police Establishment Boards for transfer of police personnel at different levels including Constables, Head

Constables, Sub-Inspectors and Inspectors in pursuance of the direction issued by the Apex Court in Prakash Singh's (Supra) case. Learned

Standing counsel has also placed reliance upon the Government order dated 27th November, 2008 to the effect that Zonal Inspector General of

Police and Regional Deputy Inspector General of Police can transfer police personnel within their area in view of the provisions of Regulation 520

in the Police Regulation and Police Establishment Board is required to take a decision only in case where the police personnel are required to be

transferred outside the range/zone. It has further been submitted that in view of Government Order dated 12th March, 2008, Police Establishment

Board has been constituted but looking the strength of the police personnels in the State, decision has been taken that in each matter of transfer of

such police personnel, it is not possible to get approval, therefore, within the range or at the district level two different Boards have been

constituted. In such circumstances, learned Standing Counsel submits that contention of Petitioner is not acceptable that decision has not been

taken by the Board in consonance of Prakash Singh's case by the Government in view of Government Order dated 8th April, 2010 regarding

transfer of such police personnels and therefore, it does not suffer from any illegality.

3. I have considered these submissions in advance on behalf of parties. Issue raised by Petitioners in the present writ petition is that whether police

personnels like Constables and Head Constables can be transferred even within range without taken any decision by the Board in view of

constitution of the Board by the Government Order dated 12th March, 2008.

4. Issue was considered at length in the Prakash Singh's (Supra) case by the Apex Court The Apex Court was considering and dealing with the

matter regarding transfer of police personnels and subsequently taken a decision and directed State Government Central Government as well as

other Union Territories for compliance of various directions till framing appropriate legislations. Direction was given regarding establishment of

Police Establishment Board which reads as under:

Police Establishment Board

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related

matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising

the Director General of Police and four other senior officers of the Department The State Government may interfere with the decision of the Board

in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the

State Government regarding the postings and transfers of officers of and above the rank of Superintendent of Police, and the Government is

expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of

representations from officers of the rank of Superintendent of Police and above regarding their promotions /transfers/ disciplinary proceedings or

their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

(emphasis supplied)

Pursuant to the aforesaid directions of the Supreme Court, the State Government issued the Government Order dated 12th March, 2008

constituting four Police Establishment Boards for transfer of police personnel at different levels. The Board constituted for taking a decision with

regard to the transfer of the Constables, Head Constables and Sub-Inspectors consists of the following officers is:

- (i) Inspector General of Police (Establishment) - Chairman,
- (ii) Deputy Inspector General of Police (Establishment) - Member,
- (iii) Superintendent of Police (Karmik) - Member,
- (iv) Additional Superintendent of Police (Karmik)/Deputy inspector General of Police (Karmik) -Member.

The constitution of the aforesaid Board was assailed in a number of writ petitions in this Court on the ground that it is not in accordance with the

directions issued by the Supreme Court in Prakash Singh (supra) since it is not headed by the Director General of Police but in Special Appeal

No. 1093 of 2010 decided on 18th August 2010, the constitution of this Board was upheld by the Full Bench of the Court and it was observed:

The judgment in Prakash Singh (supra) was to ensure that in the matter of transfers and promotions etc., the officers and men would be considered

based on their merit and uninfluenced by any political decision, patronage or consideration. Merely, because one of the functionaries named by

post in the directions of the Supreme Court, is not in the Board, per se would not make the entire action of transfers void or non est....

In the instant case, there is legislation governing transfers, but there is no provision for constitution of Boards. The Boards have been constituted by

the State in exercise of its executive powers. It is now well settled that in an area, where rule or existing law is silent in the matter of conditions of

service, administrative instructions can be issued to fill in the void or gap, which the State has done. However, we have held that the notification for

reasons given cannot be held to be an exercise of power u/s 2 of the Police Act In our opinion, therefore, considering the foot that the Rule 26 of

the Rules, 2008 makes applicable the rules pertaining to the government servants, i.e. persons appointed to public services and posts in connection

with the affairs of the State, and as Regulation 520 deals with the transfers of the police personnel, who are also a part of the public services of the

State, therefore, insofar as the police are concerned, the Regulation pertaining to transfer would continue to apply to them. Therefore, though one

of the Boards constituted is not strictly in terms of the directions issued by the Supreme Court in Prakash Singh (supra), nonetheless considering

the exercise that has to be done and the provisions for transfer, as contained in the Police Regulations, there has been sufficient compliance.

In these circumstances, we are clearly of the opinion that, though we have found that the notification constituting the Board is not traceable to

Section 2 of the Police Act, the same at the highest, amounts to an irregularity and not illegality and would not vitiate the transfers, if they have been

done in terms of the Regulations and after the approval of the Board.

The State has substantially complied with the requirement by enacting legislation, the only area, not covered by the State by such legislation, is

Constitution of Board in respect of which, they have constituted the Boards in exercise of the executive power. The notification will continue to

apply till the State makes a rule u/s 2 of the Police Act or any other provisions by enacting legislation to constitute the Boards.

(emphasis supplied)

5. From perusal of record, transfers in the present case of various police personnels have been made without any approval of the Board

constituted by the State Government by order dated 8th April, 2010 which consists of following officers:

1. Regional Inspector General of Police/ Deputy Inspector General of Police-Chairman
2. Deputy Inspector General of Police posted in the range/Senior Superintendent of Police/Superintendent of Police (two of these by seniority)-

Members.

6. Sri Gautam, learned Counsel appearing for Petitioners submits that decision of transfer of Petitioners have not been taken by the Board

constituted in pursuance of the Government Order dated 12th March, 2008 as well as in pursuance of the direction issued by the Apex Court in

Prakash Singh (supra). Therefore, the order of transfer is bad in law and is liable to be set aside.

7. As noticed above, the Apex Court in Prakash Singh (Supra) has directed that the Board shall decide all transfers, postings, promotions and

other service related matters. The Full Bench of this Court in Special Appeal No. 1093 of 2010 connected with other appeals decided on 18th

August, 2010 has observed as under:

The question then is, what is the meaning of the expression "decide". We open with a caveat. Judgments cannot be read as statutes and so

interpreted. The judgment must speak for itself. The expression "decide" has to be considered in the context of direction No. 5, which is to

establish the Police Establishment Boards where the Supreme Court has used the expression "decide". The word "decide" according to the Law

Lexicon by P. Ramanatha Aiyar, 8th Edition, 1987, is as under:

Decide. To determine; to form a definite opinion; to render judgment; to give judgment for or against a party to suit or other proceeding in Court.

AS APPLIED TO FUNCTIONS OF A JURY. ""To decide includes the power and right to deliberate, to weigh the reasons for and against, to

see which preponderate and to be governed by that preponderance.

In K.T. Aiyar, 13th Edition, 2001, the expression "decide" has been set out as under:

Decide. According to Concise Oxford Dictionary "to decide" means "settle question, issues, disputes, by giving victory to one side; give judgment

(between or in favour of, against); bring "come to a resolution"; and "decision" means "settlement (of question etc.); conclusion; formal judgment;

making up one's mind; resolve; resoluteness; decided character". Ramkrushna Gangaram Rathi and Another Vs. Kisan Zingraji Madke and

Others,

In words and phrases Vol. 2, 3rd Edition, 1989 To ""decide"" a matter means to take it into consideration and to settle it." Jude v. Registrar of

Mining Rights Krugerdorfs 1907 TS 1049 per Innes CJ. Thus, the expression is used in the context of a decision making process to settling

questions. Thus, the Board itself need not determine every act of transfer, it could decide on the proposals before it....

(emphasis supplied)

8. In para 18, the Full Bench has observed that Prakash Singh (Supra) was to ensure that in the matter of transfers and promotions, etc., the

officers and men would be considered based on their merit and uninfluenced by any political decision, patronage or consideration. The

administrative instructions are an exercise of the executive power of the State under Article 162 of the Constitution, which power extends to

matters with respect to which the legislature of the State has power to make laws. As long as regulations are in force, they will continue to be

applicable in the matters of transfer. The Full Bench has also observed that though there may be no strict compliance in terms of the directions

issued by the Apex Court in so far as one of the Board is concerned. Though Board has not been constituted strictly in terms and direction issued

by the Apex Court but considering the exercise that has to be done and provisions for transfer as contained in Police Regulation, there has been

sufficient compliance.

9. In such circumstances, it has to be seen that decision of transfer of Petitioners admittedly has been taken by the Regional Board which is entirely

different from the Board constituted by the Government Order dated 12th March, 2008. Therefore, it cannot be said that decision of Petitioners

for transferring them from one place to another has been taken by the Board and in such circumstances, it can easily be held that order of transfer

as it has not been approved by the Board is not legal and in consonance of the judgment of the Apex Court.

10. In view of aforesaid facts and circumstances, the order of transfer is being set aside with liberty to pass fresh orders in view of Government

Order dated 12th March, 2008 and to take a fresh decision accordingly.

11. The writ petition is accordingly allowed.

12. No order as to costs.