

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6853/2004

(From the judgement and order dated 21/11/2003 in SA No. 663/2003
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

JASVEER SINGH

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and with prayer for
interim relief)) (For Final Disposal)

Date: 23/01/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s)

Mr. P.K. Jain,Adv.

For Respondent(s)Mr. Shail Kumar Dwivedi, AAG

Mr. T.N. Singh, Adv.

Mr. Manoj Dwivedi, Adv.

Ms. Vibha Dwivedi, Adv.

Mr. Gunnam Venkateswara Rao ,Adv

Mr. Kamlendra Mishra,Adv. (NP)

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. No order as
to costs.

(Ajay Kr. Jain) (Vijay Aggarwal)
Court Master Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 622 OF 2008
(Arising out of SLP(C) No. 6853 of 2004)

Jasveer Singh....Appellant

Versus

State of U.P. & Ors.Respondents

O R D E R

1. Heard learned counsel for the parties.

2. Leave granted.

3. This appeal is directed against the judgment and order dated 21.11.2003 passed by the Division Bench of the High Court of Judicature at Allahabad affirming the order dated 03.09.2003 of the learned Single Judge whereby the writ petition filed by the appellant herein against his transfer from the civil police to the armed police was dismissed.

4. The limited question that arises for our consideration is whether a person who has worked in armed police can be transferred to the armed police and vice versa or not. In this connection our attention was invited to the U.P. Police Regulations which have presumably been framed under the Police Act, 1861. This Court had an occasion to examine the legal sanctity of these Regulations in the case of The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya 1961 (2) SCR, 679 where it has been held that "Presumably they were also made by the Government in exercise of its power under S. 46(2) of the Police Act." Therefore these Regulations have a legal sanction under the Police Act as they have been framed under Section 46(2) of the Act and are statutory in nature.

5. The Regulations with which we are concerned in the present case are 396, 397, 398 and 525. Regulation 396 deals with appointments in the police force which consists of Provincial Police, Civil, Armed and Mounted police etc. Regulation 397 defines the Gazetted Officers of the force and Regulation 398 defines the non-Gazetted officers of the force. Regulation 398 which is relevant for the the controversy at hand reads as under :-

"398. The non-gazetted officers of the Force are -

(1) Inspectors.

(2) Sub-Inspectors.

(3) Head Constables.

(4) Constables."

Regulation 525 of the U.P. Police Regulations gives a power to the Superintendent of Police to transfer any constable of less than two years' service from the armed to the civil police or vice versa.

Regulation 525 which has a bearing on the case at hand reads as under :-

"525. Constable of less than two years' 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 years' service may be transferred to the armed police and vice versa by the Superintendent of Police 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 for 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."

Regulation 525 clearly contemplates that a constable of less than two years' service may be transferred from the armed to the civil police or vice versa by the Superintendent of Police, Foot police may be transferred to the mounted police at their own request, any 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. Thus it is clear that the Superintendent of Police can transfer any constable from the armed police to the civil police and vice versa who have put in over two years and less than ten years' service for a period not exceeding six months in any one year and armed police constables of over two years' service and civil police constables of over two and under ten years' service may be transferred to 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 sanction of the Inspector General.

6.Learned counsel for the State of U.P. pointed out that Regulation 525 in first part puts a condition of more than two years but less than ten years' of service whereas under the second part of the said Regulation a general power has been given for transfer of any police officer from one branch to another branch or from the police service of other Provinces to the Uttar Pradesh Police with the prior sanction of the Inspector General.

7.We regret to say that we do not agree with the submission of the learned Counsel for the State of U.P. Second part of Regulation 525 gives power of transfer in respect of a Police Officer and not a police constable. The police constable is covered by the first part of Regulation 525 and once there is a specific provision for transfer of constables in the first part of Regulation 525 then the second part of the said regulation cannot be said to deal with them.

8.Now, in this legal background, we will revert back to the facts of the present case.

9.It is admitted by learned counsel for the State that the respondent herein has put in more than ten years' of service and he has been transferred from civil police to armed police. Therefore, in our opinion, the order of the Superintendent of Police transferring the respondent from civil police to the armed police is bad as he did not have the power in terms of Regulation 525. The said Regulations are statutory in character as they have been framed under Section 46 of the Police Act, 1861. Therefore, the Superintendent of Police has breached the statutory Regulations.

10.Consequently, we allow this appeal and set aside the impugned judgment and order passed by the Division Bench of the High Court as also the order passed by the learned Single Judge. We direct that the respondent may be re-transferred to the civil police within a period of three months from the date receipt of copy of this order.

11.Appeal allowed. No order as to costs.

.....J.
(A.K.MATHUR)

.....J.
(B. SUDERSHAN REDDY)

New Delhi
January 23, 2008