

AFR

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Court No. - 36

1. Case :- WRIT - A No. - 7364 of 2022

Petitioner :- Sunil Kumar Chauhan And 186 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Anil Kumar Dubey, Agnihotri Kumar Tripathi, Jaswant Singh, Satish Kumar Mishra

Counsel for Respondent :- C.S.C.

2. Case :- WRIT - A No. - 7566 of 2022

Petitioner :- Prabhakar Yadav And 69 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Anil Kumar Dubey, Agnihotri Kumar Tripathi, Shashi Singh

Counsel for Respondent :- C.S.C.

3. Case :- WRIT - A No. - 8873 of 2022

Petitioner :- Keshav Yadav And 75 Others

Respondent :- State Of U.P. And 10 Others

Counsel for Petitioner :- Anil Kumar Dubey, Agnihotri Kumar Tripathi, Shashi Singh

Counsel for Respondent :- C.S.C.

4. Case :- WRIT - A No. - 8798 of 2022

Petitioner :- Jitendra Nath Rai And 32 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Anil Kumar Dubey, Agnihotri Kumar Tripathi, Shashi Singh

Counsel for Respondent :- C.S.C.

5. Case :- WRIT - A No. - 8570 of 2022

Petitioner :- Anant Kumar Shukla And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Virendra Kumar

Counsel for Respondent :- C.S.C.

6. Case :- WRIT - A No. - 8494 of 2022

Petitioner :- Rakesh Kumar And 8 Others

Respondent :- The State Of Up And Another

Counsel for Petitioner :- Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

7. Case :- WRIT - A No. - 8337 of 2022

Petitioner :- Krishna Mohan Pandey And 65 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Shashi Singh, Agnihotri Kumar Tripathi, Anil Kumar

Dubey

Counsel for Respondent :- C.S.C.

8. Case :- WRIT - A No. - 8012 of 2022

Petitioner :- Hemadul Hasan And 14 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vishwanath Mishra,Dhiranjan Singh Patel,Sheo Kinkar Singh

Counsel for Respondent :- C.S.C.

9. Case :- WRIT - A No. - 7924 of 2022

Petitioner :- Ravindra Kumar And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sunil Kumar

Counsel for Respondent :- C.S.C.

10. Case :- WRIT - A No. - 7883 of 2022

Petitioner :- Balwan Singh And 146 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Anil Kumar Dubey,Agnihotri Kumar Tripathi,Shashi Singh

Counsel for Respondent :- C.S.C.

11. Case :- WRIT - A No. - 7772 of 2022

Petitioner :- Krishna Kant Singh And 16 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ram Singh

Counsel for Respondent :- C.S.C.

12. Case :- WRIT - A No. - 7648 of 2022

Petitioner :- Phool Chandra Saroj And 13 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Virendra Kumar

Counsel for Respondent :- C.S.C.

13. Case :- WRIT - A No. - 8950 of 2022

Petitioner :- Abhay Kumar And 13 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anil Kumar Dubey,Agnihotri Kumar Tripathi,Shashi Singh

Counsel for Respondent :- C.S.C.

14. Case :- WRIT - A No. - 8986 of 2022

Petitioner :- Manoj Kumar Singh And 63 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Anil Kumar Dubey,Agnihotri Kumar Tripathi,Shashi Singh

Counsel for Respondent :- C.S.C.

15. **Case :-** WRIT - A No. - 9005 of 2022

Petitioner :- Parvez Alam And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

16. **Case :-** WRIT - A No. - 9015 of 2022

Petitioner :- Shashi Kapoor And 139 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Anil Kumar Dubey, Agnihotri Kumar Tripathi, Dilip Kumar Goswami

Counsel for Respondent :- C.S.C.

17. **Case :-** WRIT - A No. - 9037 of 2022

Petitioner :- Ramyatan And 65 Others

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Dilip Kumar Goswami, Agnihotri Kumar Tripathi, Shashi Singh

Counsel for Respondent :- C.S.C.

18. **Case :-** WRIT - A No. - 9040 of 2022

Petitioner :- Surya Prakash And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Atmaram Singh

Counsel for Respondent :- C.S.C.

19. **Case :-** WRIT - A No. - 9068 of 2022

Petitioner :- Constable Umesh Chandra

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

20. **Case :-** WRIT - A No. - 9070 of 2022

Petitioner :- Brijesh Kumar And 13 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

21. **Case :-** WRIT - A No. - 9083 of 2022

Petitioner :- Vikram Singh And 23 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Tripurari Pal, Awadhesh Kumar Pandey, Kunal Shah

Counsel for Respondent :- C.S.C.

22. **Case :-** WRIT - A No. - 9113 of 2022

Petitioner :- Mohd. Shahnavaaz Khan And 11 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Ram Singh

Counsel for Respondent :- C.S.C.

23. Case :- WRIT - A No. - 9116 of 2022

Petitioner :- Sanjay Kumar

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Rakesh Kumar Srivastava, Devid Kumar Singh

Counsel for Respondent :- C.S.C.

24. Case :- WRIT - A No. - 9132 of 2022

Petitioner :- Kamal Kumar Tripathi And 35 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Dilip Kumar Goswami, Agnihotri Kumar Tripathi, Shashi Singh

Counsel for Respondent :- C.S.C.

25. Case :- WRIT - A No. - 9279 of 2022

Petitioner :- Om Pratap Singh And 66 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Dilip Kumar Goswami, Agnihotri Kumar Tripathi, Shashi Singh

Counsel for Respondent :- C.S.C.

26. Case :- WRIT - A No. - 9685 of 2022

Petitioner :- Mahavir Singh And 36 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Dilip Kumar Goswami, Shashi Singh

Counsel for Respondent :- C.S.C.

27. Case :- WRIT - A No. - 10283 of 2022

Petitioner :- Brijesh Kumar Singh 36 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Achche Lal Singh Yadav, Awadhesh Kumar Malviya

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamsery, J.

1. In all these writ petitions similar issues are raised, therefore, with the consent of learned counsel for the parties, all writ petitions are being decided by this common judgment.

2. All the petitioners are Constables or Head Constables in Uttar Pradesh Provincial Armed Constabulary (*hereinafter referred to as "UPPAC"*) and posted at various Districts of Uttar Pradesh in PAC Bn., are being transferred by impugned orders to Civil Police in various Zone/ Commissionerate.

3. Learned counsel appearing on behalf of petitioners as well as respondents have relied on the provisions of Police Act, 1861 (*hereinafter referred to as "Act, 1861"*); The Uttar Pradesh Pradeshik Armed Constabulary Act, 1948 (*hereinafter referred to as "UPPAC Act, 1948"*); U.P. Police Regulations; The Uttar Pradesh Police Constable and Head Constable Service Rules, 2015 (*hereinafter referred to as "Rules, 2015"*); The Uttar Pradesh Pradeshik Armed Constabulary Subordinate Officers Service Rules, 2008 (*hereinafter referred to as "UPPAC Rules, 2008"*); and, The Uttar Pradesh Pradeshik Armed Constabulary Subordinate Officers Service Rules, 2015 (*hereinafter referred to as "UPPAC Rules, 2015"*), and have interpreted in support of their respective arguments.

4. The issue which arises for consideration is, whether the Constables or Head Constables appointed under UPPAC can be transferred to Armed Police in various Zone/ Commissionerate?

5. The legal battle from the side of petitioners was headed by Sri Amit Saxena, learned Senior Advocate assisted by Sri Agnihotri Kumar Tripathi, who has taken this Court on various provisions of above referred Acts and Rules to emphasise that the Constables and Head Constables appointed in UPPAC have an independent cadre whereas Constables and Head Constables of the Armed Police have a different cadre, therefore, they cannot be treated as one cadre as it will adversely affect petitioner's inter se seniority as well as their legible right of promotion. UPPAC was established under UPPAC Act, 1948 whereas Civil Police was set up by Act, 1861.

6. Learned Senior Advocate appearing for petitioners has placed reliance on Rule 41 of erstwhile UPPAC Rules, 2008 as well as Rule 25 of UPPAC Rules, 2015 (currently in force) that, all the officers including Constables and Head Constables may be transferred or posted within PAC from one place to another by order of PAC Establishment Board constituted by the Government. As such, petitioners cannot be transferred to another cadre, i.e., Armed Police which would be against the said provisions. For reference

Rule 41 of erstwhile UPPAC Rules, 2008 and Rule 25 of UPPAC Rules, 2015 are quoted hereunder:

Rule 41 of erstwhile UPPAC Rules, 2008

“41. Transfers.--(1) Quarter Master, Company Commander, Platoon Commanders, Head Constables and Constables and employees posted in other equivalent posts may be transferred or posted within Pradeshik Armed Constabulary from one place to another by the order of Pradeshik Armed Constabulary Establishment Board constituted by the Government.

(2) Quarter Master, Inspector, Armed Police, Traffic Inspector, Sub-Inspector armed police will be selected as prevailing process and norms. The cadres may be transferred or posted Distts./Units/ Pradeshik Armed Constabulary by the order of Police Establishment Board constituted by Government.

(3) Traffic Sub-Inspector will be selected by Traffic Directorate and not be transferred or posted Distts./ Units/ Pradeshik Armed Constabulary by Traffic Directorate.

(4) Name of posts of equivalent ranks of Upper Subordinate Officers of Pradeshik Armed Constabulary, at the time of commencement of these rule are as below:

Inspector Armed Police:

(a) ‘Company commander’ in Pradeshik Armed Constabulary.

(b) ‘Quarter Master’ in Pradeshik Armed Constabulary.

‘Inspector Armed Police’ in districts, training institutions, Government Railway Police and other units.

(c) ‘Traffic Inspector’ in district.

Sub Inspector Armed Police:

(a) ‘Platoon Commander’ in Pradeshik Armed Constabulary.

(b) ‘Subedar Adjutant’ in Pradeshik Armed Constabulary.

(c) ‘Subedar Quarter Master’ in Pradeshik Armed Constabulary.

(d) ‘Sub-Inspector Armed Police’ in districts, training institutions, Government Railway Police and other units.

(e) ‘Traffic Sub-Inspector’ in districts.”

Rule 25 of UPPAC Rules, 2015

“25.(1) Quarter Master, Company Commander, Platoon Commanders, Head Constables and Constables and employees posted in other equivalent

posts may be transferred or posted within Pradeshik Armed Constabulary from one place to another by the order of Pradeshik Armed Constabulary Establishment Board constituted by the Government.

(2) Reserve Inspector, Inspector Armed Police, Traffic Inspector, Sub-Inspector Armed Police will be selected as prevailing process and norms. The cadres may be transferred or posted to Districts/Units/ Pradeshik Armed Constabulary by the order of Police Establishment Board constituted by Government.

(3) Traffic Sub-Inspector will be selected by Traffic Directorate and may not be transferred or posted to Districts/ Units/ Pradeshik Armed Constabulary by Traffic Directorate.

(4) Name of posts of equivalent ranks of Upper Subordinate Officers of Pradeshik Armed Constabulary, at the time of commencement of these rules are as below:

Inspector Armed Police:

- (a) Company commander in Pradeshik Armed Constabulary.*
- (b) Quarter Master in Pradeshik Armed Constabulary.*
- (c) Reserve Inspector/ 'Inspector Armed Police' in districts, training institutions, Government Railway Police and other units.*

Sub Inspector Armed Police:

- (a) Platoon Commander in Pradeshik Armed Constabulary.*
- (b) Subedar Adjutant in Pradeshik Armed Constabulary.*
- (c) Subedar Quarter Master in Pradeshik Armed Constabulary.*
- (d) Sub-Inspector Armed Police in districts, training institutions, Government Railway Police and other units.*
- (e) Traffic Sub-Inspector in districts.”*

7. Learned Senior Advocate further submitted that Armed Police, which is a part of Civil Police, is regulated under Act, 1861 and their transfer are regulated in terms of Regulation 525 of U.P. Police Regulations. The source of recruitment is also different for Civil Police and PAC and are regulated by different set of Rules. It was further argued that in the year 2018 the State Government had issued a Government Order dated 12.01.2018 and Clause 7 thereof provides that before transferring to a Constable and Head Constable from PAC to District Civil Police, application would be invited from willing Constable/Head Constable and seniority list, as per age, would be prepared.

Learned Senior Advocate placed much trust on Clause 5 of said Government Order that, for the purpose of above it was recommended to have suitable amendments in PAC Rules, therefore, it was the stand of Government that without suitable amendments in PAC Act, 1948 any procedure to transfer Constable/ Head Constable from PAC to Civil Police cannot be undertaken and it is admitted case that till date no amendment in this regard is carried out. Learned Senior Advocate also placed reliance on source of recruitment of Constables and Head Constables under U.P. Civil Police and UPPAC to state that both have different procedure. The relevant rules regulating recruitment under Rules, 2015, erstwhile UPPAC Rules, 2008 and UPPAC Rules, 2015 are mentioned hereinafter:

Rule 5 of Rules, 2015

“5. Recruitment to the various categories of posts in the service shall be made from the following sources:-

*(1) **Police Constable**-hundred percent posts of Police Constables shall be filled by direct recruitment through the Board.*

***Note:-**Dependants of personnel of police department deceased during service who apply for the post of Police Constable in the dependant of deceased category shall be recruited by the Board as per the policy decided by the Government.*

*(2) **Head Constable**-(a) hundred percent of the total number of sanctioned posts of Head Constable shall be filled by promotion by the Board on the basis of seniority subject to rejection of unfit, from amongst substantively appointed constables of police who have completed seven years of service as such on the first day of the year of recruitment, including the probation period.*

(b) such Constables of Police promoted to ex-cadre posts of Head Constable Police shall also be eligible for promotion under sub-section (a) who fulfill the requirements.”

Rule 5 of UPPAC Rules, 2008

“5. Recruitment to the various categories of posts in the service shall be made from the following sources:-

*(a) **Constable Pradeshik Armed Constabulary**-Hundred percent post of Constable Pradeshik Armed Constabulary are filled up by direct recruitment.*

The recruitment of dependants of those employees who died during their service is also made in accordance with the Dying-in-Harness Rules, 1974.

*(b) **Head Constable Pradeshik Armed Constabulary**-(i) Hundred percent of the total number of sanctioned posts of Head Constable Pradeshik Armed Constabulary under clause (c) of sub-rule (2) of rule 4 shall be filled by recruitment through promotion by the Board on the basis of seniority subject to rejection of unfit, from amongst substantively appointed Constables, Pradeshik Armed Constabulary, who have completed seven years of service as such on the first day of the year of recruitment, including the probation period.*

(ii) Head Constable Pradeshik Armed Constabulary promoted on ex-cadre posts meeting the requirement will also be eligible for promotion to the post of Head Constable Pradeshik Armed Constabulary under sub-clause (I).

Note:-Candidates who qualify the Physical Efficiency Test, which is of a qualifying nature shall be considered for promotion to the post of Head Constables Pradeshik Armed Constabulary. Details regarding Physical Efficiency Test is given in Appendix 2.

*(c) **Sub-Inspector Armed Police/ Platoon Commander**-(i) Fifty percent of the total number of sanctioned posts of Sub-Inspector Armed Police under clause (b) of sub-rule (2) of Rule 4 shall be filled by Director Recruitment.*

(ii) Fifty percent of the total number of sanctioned posts of Sub-Inspector Armed Police, under clause (b) of sub-rule (2) of Rule 4 shall be filled by recruitment through promotion on the basis of seniority, from amongst substantively appointed Head Constables of various Battalions of Pradeshik Armed Constabulary, District Police and other branches of the Police department, who completed three years of service as such on the first day of the year of recruitment.

(iii) Sub-Inspector Armed Police/ Platoon Commander promoted on ex-cadre posts meeting the requirement will also be eligible for promotion to the post of Sub-Inspector Armed Police/ Platoon Commander under sub-clause (ii).

Note:-Candidates who qualify the Physical Efficiency Test, which is of a qualifying nature shall be considered for promotion to the post of Sub-Inspector Armed Police.”

Rule 5 of UPPAC Rules, 2015

*“5. **Source of recruitment**:-Recruitment to the various categories of posts in the service shall be made from the following sources subject to the*

condition that only male candidates, who are not physically handicapped shall be eligible for direct recruitment to the various category of posts:-

*(a) **Constable Pradeshik Armed Constabulary**-Hundred percent post of Constable Pradeshik Armed Constabulary shall be filled up by direct recruitment by the Board.*

Note:-Dependants of personnel of Pradeshik Armed Constabulary deceased during service who apply for the post of Constable in the dependant of deceased category shall be recruited by the Board as per the policy decided by the Head of Department.

Note:-Dependants of personnel of Pradeshik Armed Constabulary deceased during service who apply for the post of Constable in the dependant of deceased category shall be recruited by the Board as per the policy decided by the Government.

*(b) **Head Constable Pradeshik Armed Constabulary**-(i) Hundred percent of the total number of sanctioned posts of Head Constable Pradeshik Armed Constabulary under clause (c) of sub-rule (2) of rule 4 shall be filled by recruitment through promotion by the Board on the basis of seniority subject to rejection of unfit, from amongst substantively appointed Constables, Pradeshik Armed Constabulary, who have completed seven years of service as such on the first day of the year of recruitment, including the probation period.*

(ii) Such Constables of Pradeshik Armed Constabulary as fulfill the qualification and promoted to ex-cadre posts of Head Constable, Pradeshik Armed Constabulary will also be eligible for promotion to the post of Head Constable, Pradeshik Armed Constabulary under sub-clause (i).

*(c) **Sub-Inspector Armed Police/ Platoon Commander**-(i) Fifty percent of the total number of sanctioned posts of Sub-Inspector Armed Police/ Platoon Commander under clause (b) of sub-rule (2) of Rule 4 shall be filled by Director Recruitment by the Board.*

Note:-Dependants of personnel of Pradeshik Armed Constabulary deceased during service who apply for the post of Platoon Commander in the dependant of deceased category shall be recruited by the Board as per the policy decided by the Government. Provided that every year such posts shall not be more than 5 percent of the posts to be filled by direct recruitment as against the vacancies arising in the previously sanctioned posts of Platoon Commander.

(ii) Fifty percent of the total number of sanctioned posts of Sub-Inspector Armed Police/ Platoon Commander, under clause (b) of sub-rule (2) of Rule 4 shall be filled by recruitment through promotion on the basis of seniority subject to rejection of unfit from amongst substantively appointed Head Constables of Pradeshik Armed Constabulary and Head

Constables Armed Police posted in Pradeshik Armed Constabulary, District Police and other branches of the Police department, who have completed three years of service as such on the first day of the year of recruitment, including the probation period.

(iii) Such Head Constable Pradeshik Armed Constabulary/ Head Constable Armed Police as fulfill the qualifications and promoted to ex-cadre posts of Sub-Inspector Armed Police/ Platoon Commander will also be eligible for promotion to the post of Sub-Inspector Armed Police/ Platoon Commander under sub-clause (ii).

Note:-*Candidates who qualify the Physical Efficiency Test, which is of a qualifying nature shall be considered for promotion to the post of Sub-Inspector Armed Police.*

(d) Inspector Armed Police:-*(i) Hundred percent of the total number of sanctioned posts of Inspectors Armed Police under clause (a) of sub-rule (2) of Rule 4 shall be filled by recruitment through promotion by the Board on the basis of seniority subject to rejection of unfit, from amongst substantively appointed Sub-Inspectors Armed Police/ Platoon Commanders who have completed seven years of service as such on the first day of the year of recruitment, including the probation period.*

(ii) Such Sub-Inspector Armed Police/ Platoon Commander as are promoted to ex-cadre posts of Inspectors Armed Police will also be eligible for promotion to the post of Inspectors Armed Police under sub-clause (ii), who fulfill the qualifications.

Note:-*There shall be no Physical Efficiency Test for promotion to the post of Inspector Armed Police.”*

8. Learned Senior Advocate, in anticipation, has submitted that any reliance by respondents on of Rule 3(n) of UPPAC Rules, 2015 to include the Constables and Head Constables under Subordinate Officers of PAC would be contrary to Section 25 of UPPAC Rules, 2015 which specifically provides that Constables and Head Constables and other employees of UPPAC can only be transferred within UPPAC. He contended that the service rules cannot be overruled by issuing a circular or a Government Order.

9. State-Respondents are represented by Sri Manish Goel, Senior Advocate, learned Additional Advocate General assisted by Sri Vikram Bahadur Yadav, learned Standing Counsel. He submitted that Act, 1861

applies to all the police of State including UPPAC and according to Section 2 of Act, 1861 they deemed to be one Police Force. He further submitted that Section 3 of Act, 1861 provides for Superintendence of Police to vest in the State and shall be exercised by State Government. Relevant Sections 2 and 12 of Act, 1861 are reproduced as under:

“2. Constitution of the force:- The entire police-establishment under a State Government shall, for the purposes of this Act, be deemed to be one police-force and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act, the pay and all other conditions of service of members of the subordinate ranks of any police-force shall be such as may be determined by the State Government.”

“12. Power of Inspector-General to make rules:- The Inspector-General of Police may, from time to time, subject to the approval of the State Government, frame such orders and rules as he shall deem expedient relative to the organisation, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be formed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.”

10. Learned Additional Advocate General emphasised that U.P. Police Regulations are of statutory character having force of law and as such are binding upon all police officers and entire Police Establishment of State are being one Police Force by virtue of provisions contained under Sections 1, 2 and 12 of Act, 1861. Attention of this Court was drawn to Regulation 396 of U.P. Police Regulations that, Provincial Police is also a part of Police Force. Further attention was drawn to Regulations 409 and 525 that, Constable of less than two years service may be transferred by Superintendent of Police from Armed to Civil Police or vice versa. Any Civil Police Constable of more than two and less than ten years service may be transferred to Armed

Police and vice versa by Superintendent of Police. For reference Regulations 396 and 525 of U.P. Police Regulations are quoted hereunder:

“396. The Police force Consists of the following bodies:

<i>(1) Provincial Police, Civil, Armed and Mounted.</i>	<i>Appointed and enrolled under Act V of 1861.</i>
<i>(2) Government Railway Police</i>	<i>Appointed in Agra under Act XVI of 1873 and in Oudh under Act XVIII of 1876. Not enrolled under Act V of 1861.”</i>
<i>(3) Village Chaukidars</i>	

“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 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.”

11. Learned Additional Advocate General has placed reliance on a Full Bench decision of this Court in **Vijay Singh vs. State of U.P., 2005(2) AWC 1191**. He further submitted that provisions of Act, 1861 are applicable upon Members of PAC by virtue of Section 5 of UPPAC Act, 1948, which is reproduced hereinafter:

*“5. **Members of P.A.C. to be deemed Police Officer**:--Subject always to the provisions of Sections 6 to 8 every member of the Pradeshik Armed Constabulary shall upon his appointment and as long as he continues to be a member thereof, be deemed to be a Police officer, and, subject to any terms, conditions and restrictions, as may be prescribed, to have and be subject to, in so far as they are not inconsistent with this Act or any rules made thereunder, all the powers, privileges, liabilities, penalties, punishments and protection as a police officer duly enrolled has or is subject to by virtue of the Police Act, 1861, or any other law for the time being in force, or any rules or regulations made thereunder.”*

12. Further reliance is placed on Section 10 of UPPAC Act, 1948 to contend that a Constable can always be sent to Armed Police without he being requisitioned by the Competent Authority. Learned Additional Advocate General further submitted that Section 15 of UPPAC Act, 1948 provides for making rules in pursuance of which erstwhile UPPAC Rules, 2008 were framed and subsequently UPPAC Rules, 2015 were framed. Selection procedure followed for recruitment in UPPAC is same as being followed for recruitment of Constable in Civil Police with the exception that Constables of PAC are sent for special training that is armourey for seven months. The petitioners are selected through a common selection procedure.

13. Learned Additional Advocate General pointed out that UPPAC Rules, 2015 provides procedure with little change. The initial entry in the service of petitioners being through the procedure for Civil Police and not as per the governing Rules of PAC, i.e., erstwhile UPPAC Rules, 2008 and subsequent UPPAC Rules, 2015. Section 15 of UPPAC Act, 1948 gives the rule making power to State Government pursuant to which State Government can frame rules and erstwhile UPPAC Rules, 2008 and subsequent UPPAC Rules, 2015 were framed. Section 10 of UPPAC Act, 1948 is substantive in character and will supersede any piece of subordinate legislation as it is part and parcel of principal Act, hence the officers who have been selected to Police Force can be transferred from PAC to Civil Police/ Armed Police and such transfer will override any subordinate legislation on the subject, namely, any rule framed under Section 15 of UPPAC Act, 1948.

14. Learned Additional Advocate General has opposed the submissions of learned counsel for petitioner based upon Rule 41 of UPPAC Rules, 2008 and Rule 25 of UPPAC Rules, 2015. He submitted that a purposive construction of aforesaid rules discloses that they are merely a sub-set of Regulation 525, since where transfer is to be effected within PAC, it has been delegated to PAC Establishment Board but where transfer is effected outside the PAC then the power has been vested with a higher officer. In the present case, decision was taken at level of the State Government, i.e., the

Director General of Police, who is the head of Police Forces and PAC Establishment Board as well as Police Recruitment and Establishment Board or any other Board, exclusively fall within his domain. It is within the larger public interest that the Head of Police Forces within State has taken a decision to make transfer which is neither inconsistent with Act, 1861 nor it offends Rules 41 or 25 of UPPAC Rules, 2008 and 2015 and at the same time it subserves the legitimate aim of State. Learned Additional Advocate General also placed reliance on Rule 3(n) of UPPAC Rules, 2015, that it includes a Constable of PAC and no contrary interpretation is possible. For reference Rule 3(n) of UPPAC Rules, 2015 is mentioned hereinafter:

“3(n) ‘Subordinate officer of the Pradeshik Armed Constabulary’ means a person substantively appointed under these rules or orders in force prior to the commencement of these rules to a post of Constable Pradeshik Armed Constabulary, Head Constable Pradeshik Armed Constabulary, Sub-Inspector Armed Police/ Platoon Commander, Inspector Armed Police posted in Pradeshik Armed Constabulary, other units, Armed Police branch of District Police or on deputation.”

15. I have heard learned counsel for parties at length, perused the pleadings, various provisions and case laws cited at the Bar.

16. Before advertng to the rival submissions it would be appropriate to look into the brief history of Police and Act and Rules referred above.

17. The oldest Act is the Police Act, 1861 and its preamble says, “*whereas it is expedient to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime*”. Section 2 of Act, 1861 is for constitution of force and it further provides that, the entire police establishment under a State Government shall for the purposes of this Act, be deemed to be one police force. Section 3 provides superintendence in the State Government and it stipulates that, superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate. According to Section 22 of Act, 1861 Police Officer always on duty and may be employed in any part of district.

18. The preamble of UPPAC Act, 1948 provides that, “whereas it is expedient to provide for the Constitution and regulation of United Provinces Armed Constabulary; it is hereby enacted as follows.” Section 5 provides Members of PAC to be deemed Police Officer and provisions of Act, 1861 in so far as they were not inconsistent with UPPAC Act, 1948 were apply to the members of PAC.

19. Erstwhile UPPAC Rules, 2008 and now UPPAC Rules, 2015 are framed under the powers to make rules as provided under Section 15 of UPPAC Act, 1948.

20. In view of above provisions there cannot be a dispute that according to Act, 1861 there is one Police Force in the State and all other Police Force are included therein and for that Regulation 396 of U.P. Police Regulations is framed under Act, 1861. The Police Force consists of Provincial Police, Civil, Armed and Mounted, Government Railway Police and Village Chowkidars. Therefore, PAC is a part of one Police Force. UPPAC Act, 1948 and rules framed thereunder, i.e., erstwhile UPPAC Rules, 2008 and thereafter UPPAC Rules, 2015 provides procedure for selection of Constable and Head Constable, their promotion and pay etc. There are provisions already exist which has certain overlapping also between Civil Police and PAC. Regulation 525 of U.P. Police Regulations also provides transfer from Armed Police to PAC and vice versa. Section 5 of UPPAC Act, 1948 declares Members of PAC to be deemed Police Officers and accordingly it’s Constables and Head Constables are definitely fall under the purview of a ‘Police Officer’, and as such, according to Regulation 525, they can be transferred to Civil Police and also returned back to PAC.

21. Now the Court proceeds to consider the argument with regard to Rule 41 of erstwhile UPPAC Rules, 2008 and Rule 25 of UPPAC Rules, 2015, which provides that, Head Constables and Constables may be transferred or posted within PAC by order of PAC Establishment Board.

22. Rule 25 of UPPAC Rules, 2015 contemplates transfer within PAC, however, it does not bar or make any estoppel that in any circumstances the officers of PAC cannot be transferred from PAC to Civil Police despite PAC being a part of one Police Force in the State. Rule 30 of UPPAC Rules, 2015 provides overriding effect of anything to the contrary, however, the power of rule is taken from Section 15 of UPPAC Act, 1948 and Section 5 thereof specifically declares the Member of PAC to be deemed police officers and provisions of Act, 1861 in so far as they are not inconsistent with UPPAC Act, 1948 apply to Members of PAC. Reference to Rule 3(n) of UPPAC Rules, 2015 is also necessary, which defines a 'Subordinate Officer of the PAC', which includes Constable and Head Constable. Therefore, provisions of all above referred Acts and Rules have to be read harmoniously and in absence of any specific inconsistency the wider meaning has to be applied.

23. At this stage, learned Senior Advocate appearing for petitioners submitted that it is the case of State that for purpose of effecting transfer from PAC to Civil Police, rules are to be amended accordingly.

24. The said recommendation appears to be in order to dilute confusion or reduce any eventuality of any contrary interpretation. Definitely amendment will clear picture and remove clouds of doubt, if any, however, such opinion cannot be construed to the extent that in case outcome of harmonious construction of provisions of relevant Act and Rules is, that, there is no specific bar for transfer from PAC to Civil Police, still aforesaid opinion would come in way for reaching up to such interpretation.

25. The argument that recruitment of Armed Police and PAC are in accordance with different set of rules and that in case there is inter se transfer it would affect the seniority in Civil Police and PAC, is also no substance so much as the transfer itself does not disturb the inter se merit of the Armed Police and PAC which has been categorically mentioned by learned Additional Advocate General at the Bar as well as no contrary provision is placed on record or referred.

26. I find substance in argument of the learned Additional Advocate General that the impugned orders of transfer are towards the bigger object. The trained PAC personnel are required to work alongwith Civil Police for better administration and maintaining law and order and the decision of transfer was taken under larger public interest.

27. The argument of learned Additional Advocate General found support from following judgments also:

(I) In **Om Prakash Singh and others vs. State of U.P. and others, 2014(7) ADJ 628 (LB)(FB)** the Full Bench answered the question in following terms after adopting a purposive construction which promotes the efficacy of police force and ensure maintenance of discipline:

“(i) A police constable working in the civil police who has rendered service for more than ten years can be transferred to another branch, as explained above, in view of the provisions of Regulation 525 of the Uttar Pradesh Police Regulations;

(ii) The government railway police is a branch of the police force and hence the transfer of a civil police constable who has put in more than ten years' service to the government railway police would not be prohibited, subject to compliance with the norms stipulated in Regulation 525 of the U.P. Police Regulations.”

(II) In **Shiva Kant Dubey vs. State of U.P. and others (Special Appeal No. 312 of 2015), decided on 27.04.2015** Court held that, it is evident that cadre of Constable Driver comprises of incumbents coming from the different branches of the Police Force including P.A.C. It is also clear that irrespective of the source from which an incumbent is drawn, his first posting has to be in P.A.C. and later on he could be transferred to other districts and placed reliance on Full Bench judgment of this Court in **Om Prakash Singh (supra)** that, entire Police Establishment under the State Government is deemed to one Police Force and Police Officers working in different branches of the Police Force, can be transferred from one branch to another.

(III) In **Chandra Prakash Tiwari and others vs. Shakuntala Shukla and others, (2002) 6 SCC 127** Supreme Court has held that Police force

admittedly has a special significance in the administration of the State and the intent of the framers of our Constitution to empower the State Government to make rules therefor has its due significance rather than being governed under a general omnibus rule framed under the provisions under Article 309. When there is a specific provision unless there is a specific repeal of the existing law, question of an implied repeal does not arise.

(IV) In Vijay Singh vs. State of U.P. (supra) Full Bench of this Court held that Act, 1861 has to prevail being a subject matter of special law over General Rules unless the General Rules specifically repeal, the effectiveness of latter Rules and their becoming ineffective or inoperative does not arise. In order to be effective, an express intention is required rather an imaginary repeal. Doctrine of implied repeal cannot be resorted to unless the later enactment expressly repeals or it is crystal clear that legislature intended to repeal the earlier statutory provisions. The question referred that, “whether any order issued by the State Government in exercise of its power Under Section 2 of the Police Act, 1861, has statutory force and occupies the field, and, therefore, there is no scope of application of Rules, 1972”, was answered by Full Bench in affirmative.

(V) In Deepak Tomer and others vs. State of U.P. and others (Writ-A No. 58145 of 2017), decided on 21.12.2017 Court held as under:

“10. The petitioners are Constable in P.A.C. Chapter XVII of P.A.C. Manual which contains Paragraphs-129 to 140 provides the provisions of Detachments and Deputations. The term 'detachment' in relation to armed forces is used to refer to a unit that is assigned to a different base from the parent unit. Chapter XVII of P.A.C. Manual, nowhere provides any provisions for taking consent of the members of P.A.C. Before their detachment or sending them on deputation. In the present case, detachment and deputation of the petitioners for constitution of Special Tiger Protection Force in U.P. is for a period of three years, which is in public interest. Detachments and deputations of the petitioners are in accordance with law and cannot be held as illegal.”

(VI) In State of U.P. and others vs. Babu Ram Upadhyia, AIR 1961 SC 751 Supreme Court held as under:

“10. To appreciate the problem presented and to afford a satisfactory answer it would be convenient to consider the relevant provisions. The Act we are concerned with in this case is the Police Act, 1861 (Act V of 1861). Its constitutional validity at the time it was made was not questioned. Under S. 7 of the Police Act, as it originally stood,

"the appointment of all police officers other than those mentioned in B. 4 of this Act shall, under such rules as the local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, who may, under such rules as aforesaid, at any time, dismiss, suspend or reduce any police-officer."

That section was substituted by the present section in 1937 and later on some appropriate amendments were made to bring it in conformity with the Constitution. Under the amended section,

"Subject to such rules as the State Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendent of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same".

In exercise of the powers conferred on the Government by S. 46 of the Act, the Government made the U. P. Police Regulations prescribing the procedure for investigation and inquiry. We shall deal with the Regulations at a later stage.”

28. In view of above, following are sum up of my findings:

(I) Preamble and Section 2 of Police Act, 1861, which still hold the land of law, contemplates that entire Police Establishment including the Provincial Armed Constabulary shall be deemed to be one Police Force.

(II) The Uttar Pradesh Pradeshik Armed Constabulary Act, 1948 is also enacted in furtherance of Police Act, 1861 and its Section 5 specifically provides Members of Provincial Armed Constabulary to be deemed Police Officers.

(III) The erstwhile Uttar Pradesh Pradeshik Armed Constabulary Subordinate Officers Service Rules, 2008 and Uttar Pradesh Pradeshik Armed Constabulary Subordinate Officers Service Rules, 2015, enacted under Section 15 of Uttar Pradesh Pradeshik Armed Constabulary Act, 1948,

does not and cannot make any rule, contrary to its parent Acts and, therefore, Rule 25 of UPPAC Rules, 2015, which contemplates transfer within PAC cannot be construed that it imposes a bar for transfer from PAC to Civil Police and vice versa as well as any contrary interpretation will be in the teeth of Section 5 of UPPAC Act, 1948.

(IV) U.P. Police Regulations, which are framed under Police Act, 1861, have statutory character having force of law and its regulations provide that Provincial Armed Police shall fall under the Police Force and Constables may be transferred from Armed to Civil Police or vice versa.

(V) The above referred judgments also support to the above findings. The State Government has protected the avenues of petitioners even after their transfer to Civil Police. The interpretation of different Acts and Rules have to be purposive in nature and in furtherance of their objects and in absence of any specific repeal or any provision to overrule the provisions of Police Act, 1861 and U.P. Police Regulations, the Constables and Head Constables in PAC, being deemed Police Officers and part of one Police Force, can be transferred from PAC to Civil Police and vice versa.

Conclusion

29. In view of above findings, I find no illegality, error or irregularity in the impugned orders whereby petitioners, Constables and Head Constables in Provincial Armed Constabulary, are transferred from PAC to Civil Police. Accordingly, all the writ petitions are dismissed.

30. Interim orders, if any, are vacated. Petitioners are directed to join at transferred place immediately and not beyond one week from today, if not already joined.

Order Date :-11.08.2022

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