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March 16

RAM SHARAN

v.

THE DEPUTY INSPECTOR GENERAL OF POLICE,
AJMER RANGE AND OTHERS[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH,
N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.]

Police Act, 1861 (Act 5 of 1861) s. 2—Rajasthan Police—Division of State into ranges—Promotions rangewise—If denying equality before law or equality in matters of public employment—Constitution of India, Arts. 14 and 16.

The system prevailing in the State of Rajasthan for the purpose of promotion of head-constable to the post of Sub-Inspectors of Police was challenged as violative of Arts. 14 and 16(1) of the Constitution. The petitioner, who was promoted to the rank of Sub-Inspector of Police from the rank of head constable, was reverted when a permanent Sub-Inspector returned to the range as he was the junior most approved head-constable in that range, though in other ranges of the State there were many approved head-constables who were junior to him but they continued to officiate as Sub-Inspectors. The petitioners grievance was that if the whole State had been treated as one unit for purpose of promotion to and reversion from the rank of Sub-Inspectors, the petitioner would not have been reverted. He contended, *inter alia*, that the whole police force being one, the practice of promotion of head-constables to officiate as Sub-Inspectors rangewise amounted to denial of equal opportunity before the law and was hit by Arts. 14 and 16 of the Constitution; and that the practice of confining promotions and reversions to officers serving at a particular point of time in one particular range and at the same time making inter-range transfers freely and frequently and as a matter of official routine was bound to produce serious inequalities in promotions and reversions and also very haphazard changes in seniority amongst the officers *inter se*.

Held: (i) The system of giving promotions as evolved in the State cannot be struck down as denying equality before the law or denying equality in the matter of employment in public service, on the ground that the police force being deemed one for the whole State, promotion throughout from constable upwards should be on the basis of the whole State or simply on the ground of possible cases of hardship. The system has been evolved for the efficiency of the police in the State as well as for administrative convenience.

(ii) If there is wholesale abuse of the power of transfer by the Inspector-General of Police, (for he alone can transfer Sub-Inspectors from one range to another), a case of glaring denial of equality before the law or glaring denial of equal opportunity for employment in the service of the State may arise. But a system like this cannot be struck down on the ground that it may be abused. In case of abuse in this wholesale manner a case may arise for striking down the abuse and not the system.

(iii) In the face of Government Order of March 1955, directing not to ordinarily transfer officers drawing less than

Rs. 250/- p.m. outside their home district, it cannot be accepted that free and frequent transfers are made as a matter of routine by the Inspector-General of Police in violation thereof. Further the material that has been placed on the record by the petitioner is insufficient to come to the conclusion that along with this system of promotion, there is also a practice of free and frequent transfers in Rajasthan as a matter of routine of Sub-Inspectors from one range to another.

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ORIGINAL JURISDICTION—Writ Petition No. 175 of 1963. Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

B. D. Sharma, for the petitioner.

S. V. Gupte, *Additional Solicitor-General*, *G. C. Kasliwal*, *Advocate-General*, *State of Rajasthan* and *B. R. G. K. Achar*, for the respondents.

March 16, 1964. The judgment of the Court was delivered by

WANCHOO, J.—This petition under Art. 32 of the Constitution challenges the system prevailing in the State of Rajasthan for the purpose of promotion of head-constables to the post of Sub-Inspectors of Police as violative of Arts. 14 and 16(1) of the Constitution. The petitioner was a head-constable in the former State of Ajmer and was duly included in the approved list of head-constables to be promoted to the rank of Sub-Inspectors of Police in 1955 and was appointed on July 14, 1956 as officiating Sub-Inspector of Police. On November 1, 1956, the former State of Ajmer merged in the State of Rajasthan under the States Reorganisation Act. The petitioner was absorbed in the police service of the State of Rajasthan and a fresh order posting him as officiating Sub-Inspector in Rajasthan was passed on November 1, 1956. According to the petitioner, the practice of Police administration in Rajasthan is that the whole police force of the State is generally under the administrative control of the Inspector General of Police, who is assisted by six Deputy Inspectors General of Police, each Deputy Inspector General of Police being in-charge of administration in one of the six ranges into which the whole State has been divided for administrative convenience. The petitioner however contends that though the State of Rajasthan is divided into six ranges, the Sub-Inspectors in different ranges belong to one cadre and one service and are governed by the same rules and regulations and the same conditions of service as regards pay, leave, pension, promotion, disciplinary action etc. The Sub-Inspectors of Police are also transferable from one range to another. It is usual for the Inspector General of Police to pass orders of transfer from one range to another of three or four Sub-Inspectors every day on an

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average and thus the Sub-Inspectors in the different ranges are similarly situated and similarly circumstanced in all respects. The same is the case with head-constables serving in different ranges of the State. The petitioner further contends that even though the police force is one for the entire State in view of s. 2 of the Police Act, No. 5 of 1861, (hereinafter referred to as the Act) a practice grew up in the State of Rajasthan of treating the members of police force serving at a particular point of time in each range as a separate and distinct unit for purposes of making promotions and reversions. In consequences of this practice, if a vacancy in the cadre of Sub-Inspectors of Police arose in one range, only the seniormost head-constables in that range were considered for promotion to that vacancy, even though there might be more senior head-constables in other ranges who had also been approved for promotion. These head-constables of other ranges were not considered and promotion was made on the basis of the head-constables in the particular range where the vacancy occurred. Similar was the case where reversion had to be made on account of exigency of public service. In view of this practice, the petitioner was reverted in April 1957 when a permanent Sub Inspector returned to the range as he was the juniormost approved head-constable in the Ajmer range, though in other ranges there were many approved head-constables who were junior to him but they continued to officiate as Sub-Inspectors. The petitioner's grievance is that if the whole State had been treated as one unit for purposes of promotion to and reversion from the rank of Sub-Inspectors, the petitioner would not have been reverted. He contends that the whole police force being one, the practice of promotion of head-constables to officiate as Sub-Inspector rangewise amounts to denial of equal opportunity before the law and is hit by Arts. 14 and 16 of the Constitution. It is contended that the practice of confining promotions and reversions to officers serving at a particular point of time in one particular range (i.e. where the vacancy or the surplusage of posts actually occurred) and at the same time making inter-range transfers freely and frequently and as a matter of official routine is bound to produce serious inequalities in promotions and reversions and also very haphazard changes in seniority amongst the officers *inter se*. The practice according to the petitioner allowing free transfers produces results which are violative of the equal protection of law and of equal opportunity to public servants in the matter of employment and thus violates Arts. 14 and 16 of the Constitution.

The petition has been opposed on behalf of the State and the system of promotion within the range is justified on

the basis of the administrative organisation of the police force in the State and efficiency of administration for police purposes. The organisation of the police force in the State is that the whole force is under an Inspector General of Police; but for administrative efficiency the entire area of the State is divided into four ranges each under one Deputy Inspector General of Police. Besides these four ranges there are two other units of the force which are separate administrative units, each under the charge of a Deputy Inspector General of Police, though they are not ranges. These two units are (1) Criminal Intelligence Department and Intelligence Branch, and (2) Railway and Crime Branch. Under the four ranges are the various district organisations of police under Superintendents of Police. The initial recruitment to the police force is made within a district in the rank of constable. These constables are posted in their respective districts after training. This is done with a view to administrative efficiency, as such constables are well acquainted with the conditions, topography, fairs, festivals and customs of their districts. From these constables approved lists are prepared for promotion to head-constable and these lists are prepared districtwise by the Superintendent of Police, who has the power to promote a constable to a head-constable within his district. Once a constable has been confirmed as a head-constable, his further promotion as a Sub-Inspector is by the Deputy Inspector General of Police. For this purpose, all the head-constables in the range consisting of a number of districts of which the Deputy Inspector General of Police is the administrative head are considered as one group for promotion to the rank of Sub-Inspectors. Consequently the Deputy Inspector General of Police prepares an approved list of head-constables on the basis of seniority-cum-merit. Whenever a vacancy occurs in the range, the Deputy Inspector General of Police concerned makes promotion from this approved list according to seniority and if reversion is to take place it is the juniormost head-constable officiating as a Sub-Inspector who reverts. The Inspector General of Police only keeps a list of confirmed Sub-Inspectors as he is the officer who has the power to promote Sub-Inspectors to the rank of Inspectors. Thus, according to the State, this three tier system has always been prevalent in the State; promotion from constable to head-constable is made by the Superintendent of Police and is confined to the district, promotion from head-constable to Sub-Inspector is made by the Deputy Inspector General of Police and is confined to the range, or, as the case may be, within the two units already referred to, and finally promotion from the rank of Sub-Inspector to the rank of Inspector is on a State-wise basis made by the Inspector General of Police

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The case of the State is that this system, has been evolved for administrative efficiency and there is in the circumstances no inequality before the law and no denial of equality in the matter of employment of members of the police force of this description. It is also contended on behalf of the State that this system, is necessary not only in the interest of good administration but also in the interest of efficiency as there are about 20,000 constables, 3,000 head-constables and 1,000 Sub-Inspectors of Police in the whole of the State. It is therefore an extremely difficult job for the Inspector General of Police to order promotion of a constable to the rank of head-constable, and thereafter promote a head-constable to the rank of Sub-Inspector. Apart from that, it is averred that officers on the spot, like the Superintendent of Police who promotes a constable to the rank of head-constable within his district and the Deputy Inspector General of Police who promotes a head-constable to the rank of a Sub-Inspector within his range, or within the two units, know the staff and that is why the rules have provided that promotions would be made either by the Superintendent of Police or the Deputy Inspector General of Police, as the case may be

It is not denied that sometimes on account of administrative reasons or exigencies of service, transfers are made from one district to another or from one range to another; but it is urged that these are rare. The State has emphatically denied the statement of the petitioner that three or four Sub-Inspectors on an average are transferred everyday from one range to another. It is said that the policy of the Government is that transfers of subordinate staff even from one district to another should be rare. In that connection, the State has referred to the Government Order issued to all Heads of Department in March 1955 in which it was said that it had come to the notice of the Government that officers were generally transferred outside their home districts, and sometimes even outside their divisions, thereby causing great hardship to the low paid employees. The Government had therefore decided to order that all officers drawing less than Rs. 250/- p.m. may not ordinarily be transferred outside their home districts, and if the transfer is unavoidable it should, as far as possible, be confined to the division. It may be mentioned that the revenue division would ordinarily be of the same extent as a police range, though not necessarily so. The State therefore contends that transfers of subordinate staff are not freely made as alleged by the petitioner from one district to another or from one range to another, and therefore the system of promotion of head-constables rangewise does not ordinarily result in any hardship due to promotion being confined from head-constables to

Sub-Inspectors within the range and does not result in any inequality before the law or the denial of equal opportunity in the matter of employment in the service of the State.

It is true that under s. 2 of the Police Act, the entire police establishment under a State Government is for the purposes of the Act, deemed to be one police force, and pay and all other conditions of service of members of the subordinate ranks of any police force have to be determined by the State Government. Even so, the Act envisages the organisation of police administration under the Inspector General of Police by creation of ranges under Deputy Inspectors General of Police and districts under District Superintendents of Police. Such organisation is obviously necessary for the efficient functioning of the police force and that is why in practically all the States we find that the administration of the police force, though under one Inspector General of Police, is further sub-divided into ranges under Deputy Inspectors General of Police and districts under Superintendents of Police. Further it cannot be denied that local knowledge is generally speaking conducive to administrative efficiency in the police force and that is the reason for recruiting constables on districtwise basis and providing for their promotion as head-constables also on districtwise basis by the Superintendent of Police who is expected to know their work. The same idea is apparent in the second tier of the system by which head-constables in a range consisting of a number of districts are treated as one for promotion to the rank of Sub-Inspector which is vested in the Deputy Inspector General of Police. By providing promotion within the range, the area is a little widened as compared to a district. Even so, the advantage of local knowledge is still available when such selections are made on a rangewise basis. It is only when we reach third tier and come to promotion of Sub-Inspectors of Police as Inspectors of Police that local knowledge is not insisted upon so much as the work of Inspectors of Police and those above them is more of a supervisory nature. On the other hand so far as the work of a constable, head-constable and Sub-Inspector is concerned, they deal with the public directly and in such a situation local knowledge certainly plays an important part in the matter of efficiency of these ranks of the police force. If the State has evolved the three tier system of giving promotion from constables to head-constables, from head-constables to Sub-Inspectors and from Sub-Inspectors to Inspectors, which is done in the interest of administrative efficiency of the police force, it cannot in our opinion be said that such a system should be struck down on the ground that the police force being deemed one for the whole State, promotion throughout

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from constable upwards should be on the basis of the whole State. Apart from administrative difficulties which may arise if all promotion of members in the police force is concentrated in the hands of the Inspector General of Police which is what the petitioner is contending for, it seems to us that there is a good deal of force in the contention of the State that the three tier system works for the efficiency of the police force of these ranks and is designed with that object. It is not denied that it may sometimes happen that in one range a head-constable may be promoted who may be junior to a head-constable in another range who does not get promotion at the same time because the promotion is rangewise. But it is urged that this has to be balanced against considerations of efficiency which have led to the evolving of the three tier system of promotion already referred to and therefore the system should not be struck down, simply because at times it may happen that a junior head-constable may get promotion while a senior head-constable in another range may have to wait. Balancing the various considerations mentioned above therefore it seems to us that the system in force in the State of Rajasthan evolved as it has been for the efficiency of the police in the State as well as for administrative convenience cannot be said of itself to deny equality before the law or to deny equality in the matter of employment in public service, even though at times it may happen, because of the system that a junior head-constable in one range may get promotion as officiating Sub-Inspector while in another range a senior head-constable may have to wait for some time. We are therefore not prepared to strike down this system as denying equality before the law or denying equality in the matter of employment in the public service, simply on the ground of these possible cases of hardship.

It is however urged that the system is capable of abuse and it is possible for the Inspector General of Police to transfer some Sub-Inspectors from one range to another with a view to deprive head-constables of a particular range of their due promotion and also with a view to favour head-constables of another range who might otherwise be junior on the basis of length of service. Now it is not and cannot be disputed on behalf of the petitioner that transfers from one district to another or from one range to another even in these ranks of the police force may have to be made in the exigencies of public service or for reasons peculiar to a particular officer; nor has it been contended that such transfers can be in any way illegal under the provisions of the Police Act. What is contended is that by means of such transfers it is possible to create conditions in which equality before the law or equality of opportunity in the matter of employment in pub-

lic service may be denied to a head-constable of a particular range. It is true that if there is wholesale abuse of the power of transfer by the Inspector General of Police, (for it is he alone who can transfer Sub-Inspectors from one range to another), a case of glaring denial of equality before the law or glaring denial of equal opportunity for employment in the service of the State may arise. But we cannot strike down a system on the supposition that an Inspector General of Police may abuse his power and create glaring instances of denial of equality before the law or of the equal opportunity of employment in the service of the State. A system like this cannot be struck down on the ground that it may be abused. In case of abuse in this wholesale manner a case may arise for striking down the abuse and not the system.

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This brings us to the allegation made in the petition that inter-range transfers have been freely and frequently made as a matter of official routine and this therefore has resulted in serious inequalities in promotions and reversions. The petitioner also stated in this connection that the Inspector General of Police was making three to four transfers of Sub-Inspectors on an average everyday. The State has emphatically denied this allegation. It is also brought to our notice that the policy of the State Government is that subordinate staff who get less than Rs. 250/- per mensem should not generally be transferred outside their home district, and if the transfer is essential it should as far as possible be confined to the division. Constables, head-constables and Sub-Inspectors generally do not receive more than Rs. 250/- per mensem as pay and therefore the policy of the Government is that such officers should not as far as possible be transferred outside the district and certainly not outside the division as far as possible. In view of this Government Order transfers of Sub-Inspectors should rarely take place outside the range. We are therefore not prepared to accept that there is a policy of free and frequent transfers of Sub-Inspectors as a matter of routine from one range to another, and that makes this system result in serious inequalities in promotions and reversions. In the face of the Government Order of March 1955 we cannot accept free and frequent transfers are made as a matter of routine by the Inspector General of Police in violation thereof. Further the material that has been placed on the record by the petitioner is insufficient to come to the conclusion that along with this system of promotion, there is also a practice of free and frequent transfers in Rajasthan as a matter of routine of Sub-Inspectors from one range to another. In this view of the matter, the petition fails and is hereby dismissed. In the circumstances we make no order as to costs.

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Before we part with this petition we should like to sound a note of warning that the system of promotion of head-constables to Sub-Inspectors within a range can be rationally supported on the basis that inter-range transfers of Sub-Inspectors would be a matter of rare occurrence and would not be effected liberally or for ulterior motives; this is an important aspect of the matter which should always be borne in mind by the authorities concerned in Rajasthan in order to avoid any further challenge to the system.

Petition dismissed.