
(2004) 11 AHC CK 0159
In the Allahabad High Court
Case No : Writ Petition No. 6886 (S/S) of 2004

Paras Nath Yadav

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 23-11-2004

Acts Referred:

Citation : (2004) 11 AHC CK 0159

Hon'ble Judges : Abdul Mateen, J

Final Decision : Allowed

Judgement

A. Mateen, J.—Heard learned Counsel for the petitioner and learned Standing Counsel who has accepted notice on behalf of respondents No. 1 to 4.

Since a purely legal question is involved in the writ petition, as such, with the consent of the parties I disposed of this writ petition at the admission stage itself.

The order under challenge in this writ petition is order of suspension dated 9102004 passed by the Superintendent of Police, Kheri placing the petitioner under suspension indicating therein that the petitioner is not performing duties of armed force and is showing negligence in performance of official duty. In column No. 2 of the impugned order it is indicated that the Circle Officer (Lines) Kheri shall initiate preliminary enquiry within fifteen days and submit his report to the Superintendent of Police, Kheri who has placed the petitioner under suspension.

2. Submission of learned Counsel for the petitioner is that the petitioner has been placed under suspension in contemplation of departmental enquiry, but as it comes out from the impugned order of suspension itself, the matter with respect to conducting preliminary enquiry is still pending with the Circle Officer (Lines), Kheri and since with respect to the charges of misconduct of the petitioner a full fledged enquiry has not been ordered to be initiated rather a preliminary enquiry has been ordered to be drawn against the petitioner to be conducted by the Circle Officer (Lines), Kheri, as such the petitioner cannot be placed under suspension.

3. Learned Counsel for the petitioner has placed reliance on the judgment reported in Tej Pal Singh v. Deputy Inspector General of Police, P.A.C.. Agra Sector Agra and another, [1999 (17) LCD 654, and on the strength of said case it has been argued that when an incumbent working in the police department is placed under suspension and it has been directed that preliminary enquiry is to be conducted, suspension of such an incumbent is illegal.

4. I have carefully gone through the aforesaid decision of this Court referred to above and am of the opinion that the case of the petitioner is fully covered by said judgment wherein this Court has held that a preliminary enquiry is held when the authority feels that material is not sufficient for forming opinion that there is prima facie case for holding fullfledged enquiry against the delinquent officer. Thus fullfledged and formal disciplinary inquiry and preliminary enquiry are mutually exclusive. They cannot go together. If the order speaks for holding a preliminary enquiry, it excludes the possibility of there being any disciplinary enquiry as at that stage there is total absence of prima facie satisfaction on the part of the disciplinary authority to initiate formal disciplinary enquiry.

5. In view of the law laid down by this Court in the case of Tej Pal Singh (supra) the order passed by the Superintendent of Police, Kheri dated 9102004 (Annexure1 to the writ petition) placing the petitioner under suspension was uncalled for at this stage when he himself has directed the Circle Officer (Lines),Kheri to initiate preliminary enquiry against the petitioner. Thus the order suffers from manifest illegality and cannot be sustained.

6. In the result, the writ petition is allowed. Order dated 9102004 passed by the Superintendent of Police, Kheri (Annexure1 to the writ petition) is hereby quashed. However, it will be open for the authorities concerned to proceed in accordance with the relevant rules and law enunciated by this Court in the above referred case.

7. No order as to costs.