

**Tej Pal Singh Vs. Deputy Inspector General of Police, P.A.C., Agra and Another**

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**Court :** Allahabad

**Decided On :** Mar-24-1999

**Reported in :** 1999(2)AWC1244

**Judge :** R.R.K. Trivedi, J.

**Acts :** Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rules 1A, 5, 13, 14, 14(2) and 17; Civil Services (Classification, Control and Appeal) Rules, 1930 - Rules 49A, 55 and 55A; [Constitution of India](#) - Article 311 and 311(2)

**Appeal No. :** C.M.W.P. No. 10812 of 1999

**Appellant :** Tej Pal Singh

**Respondent :** Deputy Inspector General of Police, P.A.C., Agra and Another

**Advocate for Def. :** V.S. Tripathi, S.C.

**Advocate for Pet/Ap. :** P.N. Saxena, Adv.

**Judgement :**

**R.R.K. Trivedi, J.**

1. Heard learned counsel for the petitioner and Shri V. C. Tripathi. learned standing counsel. As the petition can be disposed of on a short question of law, learned counsel for parties have agreed that this petition may be decided finally at this stage.

2. This petition has been filed challenging the order dated 24.2.1999 by which petitioner has been suspended from the post of A.S.I. (M) for the allegations mentioned in the order that he made unwarranted comments against superior authorities and indulged in dialogue with them and this way had shown disobedience to his superior authorities. At the end of the order in para 3, Sher Singh, Assistant Commandant had been directed to hold a preliminary inquiry and submit a report within a week.

3. Learned counsel for the petitioner has submitted that under Rule 17 of U. P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the Rules), the order of suspension can be passed when there is full-fledged inquiry and not a preliminary inquiry, the object of which is to collect material for prima facie satisfaction of the disciplinary authority to form an opinion whether full-fledged inquiry should be initiated against the delinquent officer and whether an order of suspension may be passed. Learned counsel has submitted that from a conjoint reading of Rules 5, 13 and 14 also, it is clear that full-fledged Inquiry is required only in cases of major punishment. Under Rule 14 (2), minor punishments are awarded only after informing the police officer in writing about the action proposed to be taken. Major punishment according to Rule 4 are ; dismissal from service, removal from service, reduction in rank including reduction to a lower-scale or to a lower stage in a time scale. Learned counsel has submitted that respondent No. 2 has illegally passed this order under Rule 17 at the stage of preliminary inquiry and the order suffers from manifest error of law. In support of his submissions, learned counsel has placed reliance in case of State of U. P. v. Jai Singh Dixit. 1974 ALJ 862 (FB) ; Shri A. G. Benjamin v. Union of India (Supreme Court Service Rulings Vol. 13, p. 328 and RE. Rev. B. P. Sugandhar Bishop in Medak v. Smt. D. Dorothy Dayasheela Ebeneser, JT 1996 (6) SC 221.

4. It has also been submitted that respondent No. 2 was not competent in law to pass the order of suspension against the petitioner as he is not the appointing authority and the power of suspension has not been delegated to him by any order.

5. Learned standing counsel, on the other hand, submitted that respondent No. 2 instead of using the words that inquiry is contemplated, has mentioned Rule 17 in the order which satisfies the requirement. It has also been submitted that the order also contains a direction to hold preliminary inquiry which also establishes that a full-fledged inquiry against the petitioner is contemplated. Learned standing counsel has submitted that the allegations against the petitioner are of insubordination which cannot be tolerated in a disciplined force and action is justified against him. The order does not suffer from any error of law.

6. I have thoroughly considered the submissions of the learned counsel for the parties. There is no doubt that words 'inquiry' and 'preliminary inquiry' are used for denoting different stages of an action against an employee. Preliminary inquiry is normally resorted to by the disciplinary authority to collect evidence and material for forming opinion whether a full-fledged disciplinary inquiry may be initiated against the delinquent employee or not. In case of *State of U. P. v. Jai Singh Dixit* (supra), a Full Bench of five Judges of this Court while considering the provisions of Rule 49A of the Rules, held as under :

'The inquiry contemplated by Rule 49A cannot have reference to an informal preliminary inquiry or a fact-finding inquiry preceding the actual disciplinary proceeding, otherwise it shall be permissible to suspend a Government servant pending such informal inquiry, but not after charges have been framed and regular departmental proceeding is pending. This shall lead to an anomalous situation. We are, therefore, of opinion that the 'inquiry' contemplated by Rules 49A and 1A has reference to the formal departmental inquiry, and not to any informal preliminary inquiry or fact-finding inquiry preceding the initiation of the formal disciplinary proceeding.'

7. The Full Bench gave opinion that suspension pending an inquiry under Rule 49A of U. P. Civil Services (Classification, Control and Appeals) Rules or Rule 1A

of U. P. Punishment and Appeal Rules, may be ordered at any stage prior to or after framing of charges, when on objective consideration, the authority concerned is of the view that a formal departmental inquiry under Rules 55 and 55A of the C.C.A. Rules or Rule 5 or 5A of the U. P. Punishment and Appeals Rules is expected or such an inquiry is preceding.

8. In the case of Shri A.G. Benjamin (supra), Hon'ble Supreme Court in para 5 of the judgment held that in the preliminary inquiry explanation of the Government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary inquiry makes out a prima facie case against the Government servant, that a formal departmental inquiry is started into the conduct of the Government servant. Para 5 which is very relevant for the purpose of this case is being extracted below :

'..... In other words, the appropriate authority possesses two powers to terminate the services of a temporary public servant. It can either discharge him purporting to exercise as the provisions of Article 311 will be applicable. But even where it is intended to take action by way of punishment, it often happens that something in the nature of a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry, the explanation of the Government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the Government servant that a formal departmental enquiry is started into the conduct of the Government servant.....When a preliminary enquiry of this nature is held in the case of a temporary Government servant it must not be mistaken for the regular departmental enquiry made by the Government in order to inflict one of the three major punishments already indicated. So far as the preliminary enquiry is concerned there is no question of its being governed by Article 311(2) for the preliminary enquiry is really for the satisfaction of Government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of the temporary Government servant concerned. There is no element of punitive proceedings in such an enquiry ; the idea in holding such an enquiry is not to punish the temporary Government servant but just to decide

whether he deserves to be continued in service or not.'

9. In the case of Rt. Rev. B. P. Sugondhor Bishop in *Medak v. Smt D. Dorothy Dayasheela Ebeneser* (supra) also, the Apex Court distinguished the preliminary enquiry from full-fledged enquiry in para 5 of the judgment which is being reproduced below :

'We find it difficult to appreciate how the Division Bench thought it fit to quash the preliminary enquiry particularly when the appellant had made it clear, by the time the Division Bench disposed of the appeal, that the formal enquiry was yet to be held. Obviously, the purpose of constituting the Commission of Enquiry was to hold only a preliminary enquiry to ascertain whether there was some truth in the complaints made against respondent No. 1 and whether there was enough material on the basis of which misconduct of respondent No. 1 could be proved. The learned Judges failed to appreciate that at that stage no formal charge was required to be framed nor even participation by respondent No. 1 was necessary. The Executive Committee had only broadly indicated to the Commission of Enquiry the nature and scope of enquiry which they had to make and a copy of the term of reference was served upon respondent No. 1 only to enable her to put forward her explanation so that that also could be considered along with the report of the Commission of Enquiry before taking decision as to whether a full-fledged regular enquiry was required to be made against her. There was hardly any role for the Court to play at that stage. The learned single Judge had rightly dismissed the writ petition as premature and it was not proper for the Division Bench to set aside that order and quash the constitution of the Commission of Enquiry and holding of a preliminary enquiry. It should have been appreciated that it was futile to pass such an order as the Executive Committee had already taken a decision by that time to hold a regular full-fledged enquiry and appointed as Enquiry Officer for that purpose.'

10. From a perusal of the three judgments mentioned above, the scope, object and purpose of preliminary enquiry and subsequent disciplinary enquiry which follows, has been made clear, in Rule 17 of the Rules, only word 'enquiry' has been used. Rule 17 as it stands is *pari materia* to Rule 49A of C.C.A, Rules. The

Full Bench in the above case has already said that the word 'enquiry' has been used only to denote a full-fledged disciplinary enquiry. If Rules 5, 13 and 14 of the Rules, are read together, there remains no doubt that the legislative authority had in mind both preliminary enquiry and full-fledged disciplinary enquiry but while framing Rule 17, it has used only word 'enquiry' which clearly demonstrates that the legislative intent was that order of suspension shall be passed only when the authority is satisfied that there is prima facie case for holding a full-fledged enquiry against the delinquent official and not before that.

11. Learned standing counsel has submitted that Rule 17 has been mentioned in first paragraph of the order which satisfies the requirement that an enquiry is contemplated against the petitioner. However, the submission of the learned standing counsel cannot be accepted. A disciplinary enquiry is contemplated against the police officer has to be stated by the disciplinary authority as a matter of fact which discloses his decision under Rule 17. Rule 17 only contains a provision conferring power on the authority. In my opinion, merely mentioning of the Rule cannot satisfy the requirement of Rule 17 that an enquiry is contemplated. As already discussed above, 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 full-fledged enquiry against the delinquent officer. Thus full-fledged and formal 'disciplinary' inquiry and preliminary enquiry are mutually exclusive. They cannot go together. If the order speaks for holding of 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.

12. In my opinion, the order passed by respondent No. 2 suspending the petitioner was uncalled for at this stage when only preliminary enquiry has been directed against him. The order suffers from a manifest illegality and cannot be sustained.

13. As the impugned order has been found otherwise illegal for the reasons mentioned above, in my opinion, it is not necessary to enter into the discussion whether respondent No. 2 has power to suspend the petitioner or not.

14. The writ petition is accordingly allowed and the order dated 24.2.1999, Annexure-1 to the writ petition, suspending the petitioner, and Annexure-11 to the writ petition, asking him to hand over charge, are quashed. There will be no order as to costs.

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