

Court No. - 4

Case :- WRIT - A No. - 9694 of 2025

Petitioner :- Sunil Kumar

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

Counsel for Petitioner :- Shyam Lal

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for petitioner and learned Standing Counsel for the State respondents.

2. By means of this petition filed under Article 226 of the Constitution petitioner though has prayed for quashing of various orders passed by the authorities imposing penalty in the nature of adverse entries of censure, withholding of salary for certain period, etc, however, now learned counsel for the petitioner submits that petitioner is confining his prayer for a writ of mandamus to command the state Government to consider and decide the representation made by the petitioner on 17.05.2025.

3. Learned Standing Counsel has raised preliminary objection as to the maintainability of this petition on the ground that petitioner should have first exhausted alternative statutory remedy of appeal before preferring revision.

4. Meeting the preliminary objection learned counsel for petitioner has placed reliance upon Division Bench judgment of this Court at Lucknow in the case of **Munna Lal vs. State of U.P. Through Principal Secretary Home Department Lucknow and 2 others Writ - A No.- 2359 of 2025** wherein meeting the similar objection the Court vide paragraphs 13, 14, 15, 16, 17, 23, 25, 26 and 28 has held thus:

"13. Rule 25 of the Rules, 1991, operates in a different field and for a definite purpose, both for the State as well as for an aggrieved person. Two aspects of the rule are evident. Firstly, the rule provides for a remedy notwithstanding anything envisaged under any other rules of the Rules, 1991. Secondly, this provision is invoked by the State suo moto or otherwise where an appeal is not instituted by an aggrieved person. The power under Rule 25 of the Rules, 1991, has been conferred for definite purposes mentioned in the statutory rules itself, which are of wide import.

14. Learned counsel for the petitioner, in the backdrop of the aforesaid facts, has argued that the representation dated 25.04.2016, which was preferred under Rule 25 of the Rules, 1991, has been decided by the competent authority by passing a detailed and reasoned order on merit. It is, thus, argued that once a statutory representation was decided by the State by passing an order on merit, the principle of merger would apply insofar as the period of limitation against the cause of action, which had initially accrued to him against the order dated 28.11.2013, merged into the order dated 05.06.2017. The submission is that once the competent authority proceeded to decide the representation on merit, the matter was again looked into at the higher level and the whole cause assumed a new frame and form. That being so, the learned Tribunal, while rejecting the claim petition on the ground of limitation computed with effect from the date of the original order dated 28.11.2013, fell in error, and therefore, the impugned judgment passed by the Tribunal purely on the ground of limitation suffers from an apparent error of law, calling for interference in the exercise of jurisdiction vested in this Court by virtue of Article 227/226 of the Constitution of India.

15. Learned counsel for the petitioner, to buttress his argument, has placed reliance upon a judgment rendered by Hon'ble the Apex Court in the case of S.S. Rathore vs. State of Madhya Pradesh : (1989) 4 SCC 582.

16. Per contra, learned counsel for the State, placing reliance upon a Division Bench judgment of this Court rendered in the case of Amol Kumar Sharma v. Uttar Pradesh Public Service Tribunal, 2021 SCC OnLine All 457, has argued that once the remedy under Rule 25 of the Rules, 1991, was held to be a non-statutory remedy, the principle of merger, as put forth by the learned counsel for the petitioner, would not be applicable in the facts and circumstances of the present case.

17. Learned counsel for the State, on the basis of instructions, has further argued that a copy of the order dated 18.11.2013 was served upon the wife of the petitioner on 04.12.2013, and any averment to the contrary made in the representation or claim petition is wholly unfounded. It has also been argued that the view taken by the learned Tribunal does not suffer from any illegality and the judgment so rendered deserves affirmation.

23. Though it has been acknowledged by the Tribunal that no limitation is provided in Rule 25 of the Rules, 1991, but the claim petition preferred by the petitioner stands rejected solely on the ground that the representation was preferred by the petitioner without availing the statutory remedy of appeal/revision. The representation was held to be non-statutory which on its rejection would not enable the petitioner to claim the benefit of limitation from a subsequent date, the tribunal has opined.

25. When the petitioner approached the Tribunal second time against the rejection of his representation decided on merit, the claim petition was rejected by computing the period of limitation from the date of original order passed in 2013 rather looking into the consequence of merger, which Rule - 25 of the Rules, 1991 is capable to bring about. Such a provision operates as a residuary power with the state to nullify the actions which do not stand in conformity with law by taking suo motu notice and exceptionally the jurisdiction is available to the aggrieved person as well in appropriate cases,

as at hand.

26. *The second claim petition could not be thrown out simply because the petitioner had not availed statutory remedies available under law, inasmuch as, the order dated 28.11.2013 had not been supplied to the petitioner till 09.02.2016 when he approached the Nodal Officer, Firozabad for its supply. Thereafter, the petitioner immediately approached the Tribunal as noted herein-above. The doctrine of merger came into operation to subsume a lower authority's decision into that of the higher authority when a remedy was pursued and dealt with on merit exhaustively.*

28. *It follows, therefore, that the period of limitation ought to have been reckoned not from the date of the original dismissal order but from the date when the statutory representation was decided. The Tribunal erred in dismissing the claim petition solely on the ground of limitation without appreciating that the petitioner had diligently pursued his remedies and the doctrine of merger had come into effect."*

5. From the observations made above by the Division Bench while dealing with issue of limitation whether to run from the date of order of punishment or from the date of order passed upon representation of the petitioner, a conclusion can be absolutely drawn that power vested with the State Government under Section 13 of the Rules, 1991 are power of revision and a delinquent employee may directly approach the state government against the order of punishment without exhausting first the remedy of statutory appeal. Rule 13 of 1999 Rules is reproduced as under:

"13. Revision.- Notwithstanding anything contained in these rules, the Government may of its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

(a) confirm, modify or reverse the order passed by such authority; or

(b) direct that a further inquiry be held in the case, or

(c) reduce or enhance the penalty imposed by the order; or

(d) make such other order in the case as it may deem fit".

6. Upon a bare reading of the above provisions, it becomes explicit that power vested with the State Government is with a very wide discretion to call for and examine the records of any case decided by an authority subordinate to it. The question may be as to whether authority sitting in revision will examine order of another immediate subordinate to it or even appellate and disciplinary authority. The words and expression "in exercise of power conferred on such authority by these rules" the words "such

authority" that exercises power duly vested under the rules, would include all the authorities that have been entrusted with the power to decide a case. Rule 7 of 1991 Rules provides for an officer of police department not below the rank of Deputy Inspector General to be disciplinary authority to accord punishments specified under Rule 4 of the said rules. Similarly Rule 20 of the 1991 rules prescribe for statutory appeal against the order of the disciplinary authority and appellate authority, a next superior authority to the disciplinary authority in different rank of officers who have been inflicted upon with punishment. Rules 7 and 20 of the 1991 Rules are reproduced hereunder:

"7. Powers of punishment.- (1) *The Government or any officer of police department not below the rank of the Deputy Inspector General may award any of the punishments mentioned in Rule 4 on any Police Officer.*

(2) *The Superintendent of Police may award any of the punishments mentioned in sub-clause (iii) of Clause (a) and Clause (b) of sub-rule (1) of Rule 4 on Inspector and Sub-Inspectors.*

(3) *The Superintendent of Police may award any of the punishments mentioned in Rule 4 on such Police Officers as are below the rank of Sub-Inspectors.*

(4) *Subject to the provisions contained in these rules all Assistant Superintendents of Police and Deputy Superintendents of Police who have completed two years of service as Assistant Superintendents of Police and Deputy Superintendents of Police as the case may be, may exercise powers of Superintendent of Police except the power to impose major punishments under Rule 4.*

(5) *Notwithstanding anything contained in these rules Reserve Inspector, Inspector or Station officer may award punishments of drill and fatigue duty to any constable under his charge for a period not exceeding three days but he shall inform the Superintendent of Police concerned of his order immediately and in any case within 24 hours of passing the order."*

"20. Appeals.- (1) *Every Police Officer, against whom an order of punishment mentioned in sub-clauses (i) to (iii) of Clause (a) and sub-clauses (i) to (iv) of Clause (b) of rule 4 shall be entitled to prefer an appeal against the order of such punishment to the authority mentioned below:*

(a) *to the Police Officer, who is the immediate jurisdictional superior authority to the Police Officer who passed the order of punishment.*

(b) *to the Director General of Police who may either decide the appeal himself or nominate any Additional Director General for deciding it;*

(c) *to the State Government against the order passed under Clause (b).*

(2) *No appeal shall lie against the order inflicting any of the petty*

punishments enumerated in sub-rules 92) and (3) of Rule 4.

(3) Every officer desiring to prefer an appeal shall do so separately.

(4) Every appeal preferred under these rules shall contain all materials, statements, arguments relief on by the Police Officers preferring the appeal, and shall be complete in itself, but shall not contain disrespectful or improper language. Every appeal shall be accompanied by a copy of final order which is the subject of appeal.

(5) Every appeal, whether the appellant is still in service of Government or not, shall be submitted through the Superintendent of Police of the district or in the case of Police Officers not employed in district work through the head of the office to which the appellant belongs or belonged.

(6) An appeal will not be entertained unless it is preferred within three months from the date on which the Police Officer concerned was informed of the order of punishment.

Provided that appellate authority may at his discretion, for good cause shown extend the said period up to six months.

(7) If the appeal preferred does not comply with the provisions of sub-rule (4) the appellate authority may require the appellant to comply with the provisions of the said sub-rule within one month of the notice of such order to him and if the appellant fails to make the above compliance the appellate authority may dispose of the appeal in the manner as it deems fit.

(8) The Director- General or an Inspector General may for reasons to be recorded in writing, either on his own motion or on request from an appellate authority before whom the appeal is pending transfer the same to any other officer of corresponding rank "

7. Thus both the disciplinary authority as well as the appellate authority are subordinate authorities to the State Government being functionaries of police department of the State Government. However State Government may also be an appellate authority for the purposes of Rule 23 of the 1991 Rules the discretion to impose punishment by disciplinary authority and discretion to affirm or reverse such decision by appellate authority, such authorities being subordinate to the state Government, are subject to extraordinary power vested with the State Government. An employee, therefore, can always apply to the State Government directly against the final order of disciplinary authority and/ or appellate authority without exhausting the alternative remedy. However, I may hasten to add, the powers of the state government under Rule 23 are only discretionary, may be exercised suo motu or on an application being filed and shall not be confused with vide power vested with the appellate authority under punishment and appeal rules. Thus, ordinarily power of appeal be first exhausted and state government

should also encourage while dealing with representations directly made against punishment orders that aggrieved employee should approach it only exceptionally. Power of revision cannot be equated with the power of statutory appellate authority even in service jurisprudence.

8. In the case of **Prachand Sharma v. State of U.P. and others (2004) 4 SCC 113** Supreme Court has held that government authorities under U.P. Government Servants (Discipline and Appeal) Rule 1999 if pass orders would be an authority subordinate to the state government within the meaning of Rule 13 of the 1999 rules but the authority even if on deputation to any corporation where 1999 rules are applicable by adoption, while exercising power of disciplinary authority/ appellate authority-revisional authority, such authority would not be an authority subordinate to government under Rule 13 of the 1999 rules for mere adoption of 1999 rules. Vide paragraph 8 the Court has held thus:

"8. The learned counsel for the appellant also draws our attention to Rule 13 to indicate that if the rule is to be applicable, as it is, then the Government will have power to revise the order only in case it has been passed by an authority subordinate to it. The Managing Director or the Chairman are the authorities and functionaries of the corporation. Incumbent of such officers may even though sometimes be government servants on deputation but while working as Chairman or the Managing Director or any authority in the organization or the corporation, the would not be subordinate to the Government. It is again to be noticed that then perhaps the right to invoke the revisional powers may be available only to the "government servant concerned" as provided under Rule 13 and may not be available to the employee of the corporation. Therefore, it is submitted and in our view, rightly, the adoption of rules is implemented in a manner as they fit in the structure of the adopting organization and not as a straitjacket application to the adopting organization. It has also been pointed out that according to the provisions of Rule 13, as it is, an order can be subjected to the revisional power of the State only if the order has been passed in exercise of any power conferred under the Rules of 1999. It is submitted that the order passed by the Managing Director or the Chairman cannot be said to be orders passed under the U.P. Rules of 1999 and not under the Rules as adopted by the Corporation "

9. Supreme Court though has discussed 1999 Rules but Rule 13 of 1999 Rules and rule 23 of 1991 rule are *pari materia* and hence principles regulating the field would dependent upon the same analogy.

10. In view of the above discussions, since power is there with the State Government and representation has been made by the petitioner, I dispose of this petition with the direction to the

direction to the respondent No. 1 to decide the representation of the petitioner dated 17.05.2025 in accordance with law, as expeditiously as possible within a period of two months from the production of certified copy of this order

Order Date :- 16.7.2025

Atmesh