can be imposed upon the employee. This Court in the matter of Kamla Charan Misra and Sohan Lal (supra) has taken the view that once the enquiry proceeding initiated has not been completed as provided in the Rule and ultimately minor penalty may not be imposed. In present case too, this fact is very much clear that enquiry proceeding was initiated after suspension of petitioner for imposing major penalty but ultimately without completing the same, minor penalty has been imposed, which is in-violation of Rule as well as law laid down by Apex Court as well as of this Court, therefore, such order can not be sustained in the eye of law.

26. In view of above, the order dated 22.09.2000 passed by the respondent No.3/District Magistrate Ballia as well as order dated 30.04.2003 passe by respondent No.2/Commissioner, Azamgarh Region Azamgarh are hereby quashed. The writ petition succeeds and is allowed.

27. The respondents are at liberty to proceed in accordance with law.

(2023) 5 ILRA 1548
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.03.2023

BEFORE

THE HON'BLE SUNEET KUMAR, J.
THE HON'BLE RAJENDRA KUMAR-IV, J.

Writ-A No. 18527 of 2021

State of U.P. & Ors. ...Petitioners
Versus
Raj Kumar Singh ...Respondent

Counsel for the Petitioners:
C.S.C., Sri Jagdish Pathak

Counsel for the Respondent:
Sri Ram Narain

A. Civil Law - Disciplinary proceedings - Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 - Rule 14 - *Issue:* Whether the Tribunal was competent to usurp the role of an appellate authority by setting aside the punishment order when, admittedly, the factum of the charge of overstay of leave was not denied by the employee? *Held:* Courts/Tribunals are not to act as appellate authorities in disciplinary proceedings. Tribunal exceeded its jurisdiction in setting aside the impugned order passed by the Disciplinary Authority imposing punishment on the respondent. At most, Tribunal could have remitted the matter to the Disciplinary Authority to pass a fresh order. Tribunal was not within its jurisdiction and competence to set aside the punishment while sitting in appeal without returning a finding that the disciplinary enquiry stood vitiated for breach of statutory provisions of the Rules, 1991, or that the punishment was not commensurate with the guilt or perverse. (Para 35, 36)

B. Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 - Appendix-1 of Rules, 1991 - Appendix-1 of the Rules, 1991, specifically provides that the Inquiry Officer may recommend the proposed punishment after concluding the departmental proceedings. The proviso to this Appendix provides that the Inquiry Officer may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the charged police officer. (Para 32)

List of Cases cited:

1. Syed Yakoob Vs K.S. Radhakrishnan AIR 1964 SC 477

2. *U.O.I.Vs P. Gunasekaran* 2015 (2) SCC 610

3. *U.O.I.Vs Flight Cadet Ashish Rai* 2006 (2) SCC 364

4. *Hombe Gowda Educational Trust Vs St. of Karn.* 2006 (1) SCC 430

5. *Krushnakant B. Parmar Vs U.O.I. & anr.* 2012 (30) LDC 519

6. *Masood Asghar Vs Uttar Pradesh State Public Service Tribunal, Indira Bhawan, Lucknow & ors.* 2019 (5) ADJ 179 (DB) (LB)

(Delivered by Hon'ble Suneet Kumar, J.
&
Hon'ble Rajendra Kumar -IV, J.)

1. Heard Ms. Monika Arya, learned Additional Chief Standing Counsel for the petitioners and Sri Ram Narain, learned Counsel for the respondent.

2. The respondent-petitioners by the instant writ petition are assailing the order dated 23 March, 2021, passed in Claim Petition No.707 of 2016, by the State Public Services Tribunal, Lucknow (for short, "Tribunal"), allowing the petition of the applicant-respondent setting aside the order of punishment imposed upon the applicant-respondent in disciplinary proceedings.

3. The short question that arises for consideration is, as to whether the Tribunal was competent to usurp upon itself the role of an appellate authority by setting aside the punishment order, when admittedly, the factum of the charge of overstay of leave was not denied by the employee.

4. The facts giving rise to the instant writ petition is that the respondent was working as a Constable since 2003, he was charged for unauthorized absence from duty from 10 November, 2006 to 09 August, 2007, and for the subsequent development of having been arrested, and imprisoned in case crime no.252 of 2008, under Section 25 Arms Act; case crime no.252 of 2008, under Sections 8/20 NDPS Act and case crime no.184 of 2008, under Section 392 & 411 IPC. In all the cases charge sheet has been submitted against the respondent.

5. Disciplinary proceedings came to be initiated under Rule 14(1) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 (for short, "Rules, 1991"), for imposition of major penalty. It appears that respondent did not participate in the inquiry, consequently, he came to be dismissed from service by order dated 09 August, 2007, purportedly passed under Rule 8 (2) of the Rules, 1991. The order, however, came to be quashed by this Court in Writ-A No.16992 of 2008, vide order dated 18 April, 2008. The Court, however, left it open to the authorities to conduct an inquiry against the respondent as per rules.

6. On the date of passing of the order by the Court, respondent was languishing in jail on being arrested in the aforenoted criminal cases. The respondent came to be bailed out on 16 July, 2008, but did not report for duty, nor, did he appear before the authority for reinstating him in service. In other words, respondent did not inform the authorities about his imprisonment and registration of criminal cases against him. It is only in the year 2013, he gave an application on 05 April, 2013, to the concerned authority requesting for reinstatement in service. Thereafter, respondent came to be reinstated in service and a fresh disciplinary proceedings was sought to be initiated against him in compliance of the order of the State Government dated 17 January, 2014.

7. A fact finding inquiry was setup to report with regard to his unauthorized

absence and subsequent custody of the respondent in the criminal cases. The Officer submitted a preliminary inquiry report on 30 June, 2014, and supplementary report on 23 September, 2014. Thereafter, respondent was issued charge sheet dated 07 October, 2014, initiating disciplinary proceedings under Section 14(1) of the Rules, 1991, on a charge of being absent unauthorizedly from 16 November, 2016, and for being arrested and imprisoned in the criminal cases lodged against the respondent. The respondent submitted his objections dated 24 October, 2014, to the charge admitting his absence, but furnished explanation for his absence. The witnesses noted in support of the charge were examined in the presence of the respondent and was allowed to cross examine the witnesses on the date and time fixed by the Inquiry Officer. Thereafter, respondent was permitted to file his defence by the Inquiry Officer vide communication dated 05 November, 2014. The respondent filed his reply / application dated 15 November, 2014, submitting that he did not desire to produce any other evidence or witness in defence and requested the Inquiry Officer to consider his explanation submitted earlier and pass appropriate orders. The statement of the respondent was also recorded on the same date i.e. 15 November, 2014. Thereafter, Inquiry Officer submitted Inquiry Report dated 07 January, 2015, wherein, the charge of unauthorized absence was proved against the respondent.

8. The charge against the respondent was that he was directed on 16 November, 2006, to proceed from Agra to the place of his destination at Lucknow University, along-with, Manik Chandra and report for duty at Lucknow, but in midway he vanished and did not join the team at the destination in Lucknow. Further, respondent had suppressed the registration of the FIR lodged against him and did not inform the authorities with regard to his arrest. Accordingly, Inquiry Officer was of the view that the conduct of the respondent falls under the category of grave indiscipline and carelessness towards his duty. The Inquiry Officer taking a lenient view however recommended punishment to revert the respondent on the lowest pay scale for three years and not to pay salary and other emoluments for the period of unauthorized absence from duty i.e. 16 November, 2006 to 09 August, 2007.

9. Disciplinary Authority issued show cause notice dated 15 February, 2015, calling upon the respondent to submit his objection to the proposed punishment. The respondent filed objections to the notice on 03 March, 2015. Third petitioner - Commandant, 15th Batallion, Agra / Disciplinary Authority, vide order dated 14 May, 2015, imposed punishment of reduction to the lowest pay scale for three years for unauthorized absence from 10 November, 2006 to 09 August, 2007.

10. Aggrieved, respondent filed an appeal before the second petitioner - Deputy Inspector General of Police, PAC Agra, which came to be dismissed by a speaking order dated 26 December, 2015. The respondent instead of filing revision before next higher officer, approached the Tribunal by instituting a claim petition challenging the impugned orders of punishment.

11. The learned Tribunal allowed the claim petition returning a finding that Inquiry Officer had ignored the medical certificates submitted by the respondent which was a justified explanation for his

absence. A finding was returned that the absence was not willful but due to compelling circumstances. The Tribunal was of the opinion that no inquiry was made by the Inquiry Officer with regard to the validity of the medical certificates submitted by the respondents in defence of his unauthorized absence. Further, Tribunal was of the view that the Inquiry Officer committed an illegality proposing the punishment that ought to be awarded to the respondent, therefore, Disciplinary Authority without application of mind mechanically awarded the punishment proposed by the Inquiry Officer.

12. Learned Tribunal set aside the impugned punishment orders primarily on the ground that no inquiry or investigation was made by the Disciplinary Authority or Appellate Authority with regard to the validity of the medical certificates submitted by the respondent, consequently, the medical certificates could not have been disbelieved by the Inquiry Officer.

13. Learned Standing Counsel appearing for the State submits that the learned Tribunal committed an error in sitting in appeal over the findings returned by the Inquiry Officer. The Inquiry Officer did not recommend any punishment, rather, proposed the punishment that may be imposed upon the respondent. The Disciplinary Authority after show cause notice imposed the punishment by a reasoned and speaking order. It was always open to the Disciplinary Authority to have imposed a severe punishment having regard to the nature of charge against the respondent.

14. It is further submitted that the medical certificates clearly shows that the respondent was an outdoor patient for simple health issues and did not require in-house hospitalization. In the circumstances, the respondent ought to have informed the authorities about his absence and subsequent arrest.

15. It is further submitted that the Inquiry Officer had rightly not accepted the medical certificates as on the face of it, did not disclose any serious ailment which required indoor treatment or confinement to bed. It is finally submitted that Tribunal committed an error usurping upon itself the role of the Disciplinary Authority in setting aside the punishment, rather, the matter should have been remitted to the Disciplinary Authority to pass a fresh order of punishment. The Tribunal could not have set aside the order of punishment without returning a finding that the disciplinary proceeding was vitiated and nonest for non compliance of the provisions of Rules, 1991, or, otherwise.

16. Learned Counsel appearing for the respondent does not dispute the facts and admits that respondent employee had participated in the disciplinary proceedings, filed his objections and cross examined the witnesses. In other words he does not dispute that the procedure contemplated under Rules, 1991, was not duly complied.

17. On specific query, he categorically submits that the factum of the charge of unauthorized absence and that the respondent was arrested in criminal cases was not disputed, but reliance was placed on the medical certificates to explain and justify the unauthorized absence. It is, therefore, submitted that the Tribunal has not committed any illegality or infirmity in setting aside the punishment order, having

regard to the medical certificates. The absence from duty was not wilful and deliberate.

18. Rival submissions fall for considerations.

19. The facts inter-se parties are not disputed.

20. It is settled principle of law that the Courts / Tribunal in exercise of its power of judicial review of disciplinary proceedings cannot sit in appeal and examine the sufficiency of the evidence led in the disciplinary proceedings. The judicial review of disciplinary proceedings is confined and limited to the procedure as to whether the disciplinary proceedings was conducted fairly as per the Rules and that the respondent employee was given full and fair opportunity to present his case before the Inquiry Officer.

21. The Tribunal / Court in exercise of jurisdiction of judicial review of disciplinary proceedings can interfere only when conclusions of the Inquiry Officer is perverse or based on no evidence. On appreciation of evidence, it is not open for the Tribunal / Court to substitute its own opinion based on the appreciation of material on record on the charges proved.

22. A finding of fact recorded by the Disciplinary Authority cannot be challenged on the ground that the relevant and material evidence adduced before the Disciplinary Authority is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact drawn from the said fact are within the exclusive jurisdiction of the Tribunal. [Refer: Syed Yakoob versus K.S. Radhakrishnan1; Union of India versus P. Gunasekaran2; Union of India versus Flight Cadet Ashish Rai3 and Hombe Gowda Educational Trust versus State of Karnataka4].

23. In the admitted facts of the present case, the factum of the charge of unauthorized absence and subsequent arrest and confinment in jail is not disputed. Further, it is admitted that while on duty the respondent vanished in between and did not report at the station of duty along-with his colleague. It is admitted that the respondent did not inform the authorities that he could not report for duty due his severe illness. It is also admitted that he came to be arrested subsequently in three criminal cases of serious nature and on being enlarged on bail on 16 July, 2008, he reported for reinstatement on 05 April, 2013 i.e. after a lapse of almost five years of absence.

24. In the circumstances, since the year 2006 till 2013, for almost seven years, the respondent being a member of a disciplined Force absented himself without information which is a gross misconduct. The Inquiry Officer on perusal of the medical certificates submitted by the respondent in his defence was justified in not accepting the certificates as it was procured by the respondent to justify his unauthorized absence. The medical certificates relied upon by the respondent has been placed on record.

25. The medical certificates were obtained from Medical Superintendent Officer, Community Health Center Sadabad, Mathura, dated 07 December, 2016, certifying that the respondent was suffering from "pain with tenderness'. Accordingly, in the opinion of the Medical Officer, the absence of the respondent from 17 November, 2006 to 07 December, 2006,

was absolutely necessary for "restoration of his health'. The other medical certificate dated 26 October, 2007, issued by the Senior Medical Officer, District Hospital, Mathura, records that since the respondent was suffering from "acute lumbar with sciatica', therefore, advised to take rest from 20 February, 2007 to 26 October, 2007. The other medical certificate issued by the District Hospital, Mathura, which is undated, records that respondent was issued OPD No.203920 and advised 15 days plus 8 weeks rest from 08 December, 2006 to 19 February, 2007. It is further noted that the certificates are not relied for M/C (medical certificate) purpose.

26. Supreme Court in ***Krushnakant B. Parmar versus Union of India and another5,*** has held that the absence of the employee must not be wilful but under compelling circumstances. Paragraph 16 and 17 of the report is extracted:-

"16. The question whether `unauthorized absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful."

27. The medical certificates submitted by the respondent, in the opinion of the Inquiry Officer, did not inspire confidence for the reason that the respondent was an outdoor patient and the medical illness of the respondent was not of serious nature so as to preclude him from reporting for duty. The Inquiry Officer opined that had the medical illness of the respondent been so serious, then in that event, from Sadabad station he would have proceed to the nearby Agra station for treatment, where superior medical facilities are available. In the circumstances, the explanation of the respondent that he fell ill at Sadabad and from there he went home, based on the medical certificates was not accepted. It is not a case that the Inquiry Officer ignored the medical certificates or disbelieved it, rather, the explanation of the respondent based on the medical certificates submitted by him was not accepted by the Inquiry Officer. The medical certificates admittedly record illness of minor nature. Further, respondent was an outdoor patient and it is not his case that he was confined to bed and was not possible to report for duty. In other words, it is not a case of compelling nature to avoid duty. It is a case of deliberate and willful absence from duty.

28. It is admitted by learned counsel for the respondent that the medical prescription and treatment undertaken by the respondent in support of the medical certificates was not produced, nor, filed before the Inquiry Officer. Further, he admits that the respondent was an outdoor patient. It is also not the case of the respondent at any point of time, that respondent had informed the department of his absence due to his illness or due to his detention in jail pursuant to the FIRs.

29. On the question as to whether the enquiry officer can propose the punishment in his report. In the ***State of Uttaranchal and others versus Kharak Singh6***, the Supreme Court relying upon an earlier decision rendered in ***A.N. D'Silva versus Union of India7,*** on considering the question whether an enquiry officer can indicate the proposed punishment in his

report, the Court pointed that it is for punishing/disciplinary authority to impose an appropriate punishment and the enquiry officer has no role in awarding punishment. The question of imposing punishment can only arise after enquiry is made and the report of the enquiry officer is received. It is for the punishing authority/disciplinary authority to propose the punishment and not for the enquiry authority.

30 . In ***Kharak Singh*** (supra) the Court observed that though there is no specific bar in offering views by the enquiry officer, but, in the given facts, it was held that the enquiry officer exceeded his limit by saying that the delinquent officer has no right to continue in government service and he be dismissed from service with the immediate effect.

31. We have perused Appendix-1 of Rules 91, which provides as follows:

"PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER [See RULE 14(1)]

Upon institution of a formal enquiry such police officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending himself .....

..... The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. ***The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.".***

32. Appendix-1 of Rules, 1991, therefore, specifically provides that Inquiry Officer may recommend proposed punishment after concluding the departmental proceedings. Proviso to this Appendix provides that the Inquiry Officer may also separately from this proceedings make his own recommendation regarding the punishment to be imposed on the charged police officer.

33. Division Bench of this Court in ***Masood Asghar Versus Uttar Pradesh State Public Service Tribunal, Indira Bhawan, Lucknow and others8***, relying upon an earlier decision observed that the Inquiry Officer making recommendation of the punishment is merely an irregularity and that would not vitiate the enquiry. The only requirement is that the delinquent employee must have notice of the proposed punishment. Paragraph no.9 reads as under :-

"9. A Division Bench of this Court at Allahabad in Yash Pal Singh's case supra has treated the recommendation of the Inquiry Officer, on the point of punishment, as an irregularity and has relegated the matter to the disciplinary authority to reconsider the award of punishment, applying his own mind to the facts of the case. The aforesaid facts are not disputed by the Standing Counsel."

34. In view thereof, we are of the opinion that the learned Tribunal exceeded its jurisdiction in setting aside the impugned order passed by the Disciplinary Authority imposing punishment on the respondent. At the most, Tribunal could have remitted the matter to the Disciplinary Authority to pass a fresh order. The Tribunal was not within its jurisdiction and competence to set aside the punishment

sitting in appeal without returning a finding that the disciplinary enquiry stood vitiated for breach of statutory provisions of the Rules, 1991, or that the punishment was not commensurate to the guilt, or perverse.

35. In ***P. Gunasekaran*** (supra), Supreme Court reiterated and cautioned the Court / Tribunals not to act as an appellate authority in disciplinary proceedings.

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer....."

[Refer: B.C. Chaturvedi versus Union of India and others9 and S. Sreesanth versus The Board of Control for Cricket in India10]

36. In any case, in our opinion, the punishment imposed upon the respondent is of much lesser rigour and not commensurate to the guilt having regard to the fact that respondent was member of a disciplined Force, a more severe punishment was warranted in the given facts. The Disciplinary Authority took a liberal view while imposing punishment having regard to the fact that the respondent was absent from almost seven years and of having indulged in criminal activity.

37. For the reasons recorded herein above, impugned judgement and order dated 23 March, 2021, passed by the Tribunal is set aside and quashed.

38. Accordingly, the writ petition is allowed.

39. No cost.

(2023) 5 ILRA 1555
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2023

BEFORE

THE HON'BLE VIVEK CHAUDHARY, J.

Writ-A No. 13327 of 2020

Ranveer Singh & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Sri Akhilesh Mishra, Sri Rahul Mishra, Sri Utsav

Counsel for the Respondents:
C.S.C., Sri Shri Ram Pandey

Civil Law - Jal Sansthan (Rural) U.P. Nagarpalika Non-Centralized Services Retirement Benefits Regulation, 1984 (Rules of 1984) - Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021 - *Issue:* Whether services rendered before regularization by daily wage employees who worked on Class III posts in the Jal Sansthan and were later regularized in continuation of their services is to be counted for the purpose of pension and other retiral benefits ? *Held:* Daily rated employees perform the same duties as regular employees and are throughout treated as regular employees. They were also regularized in continuation of their work charge services. So far as the Act of 2021 is concerned, the same is applicable only to employees of the State Government. Even otherwise, the Act of 2021 has already been read down by this Court in its judgment dated 17.02.2023 passed in Writ-A No.8968 of 2022 (*Dr. Shyam Kumar Vs. State of U.P. and others*). Respondents were directed to ensure regular payment of pensionary and other retirement benefits to the petitioners, who have already retired,