

33. Accordingly, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

34. The writ petitions are **allowed**. The matter is **remanded** to the authority concerned for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder, within a period of two months from the date of production of certified copy of this order.

35. Any amount deposited by the petitioner pursuant to the impugned orders, shall be subject to the outcome of the fresh orders to be passed by the authority concerned.

(2025) 3 ILRA 332

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 26.03.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE AJAI KUMAR SRIVASTAVA-I, J.

Writ - A No. 2359 of 2025

Munna Lal	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

Counsel for the Petitioner:

Sri Mohd. Nasir, Sri Mohd. Yasir, Sri Navneet Yadav

Counsel for the Respondents:

C.S.C.

CIVIL LAW – Constitution of India, 1950 – Article 226 - Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 - Rule 10(2) - Uttar Pradesh Government Servant's Conduct Rules, 1956- Writ Petition – challenging the Tribunal's

order – Disciplinary proceedings - Dismissal from service in year 2013 – petitioner claimed that he never received the dismissal order - which prevented him from filing an appeal or revision under Rules, 1991 - Representation in year 2016 – Rejection in year 2016 – 1st Claim petition in year 2016 – order for decide the representation of the petitioner – authority rejected the representation in year 2017 – 2nd Claim Petition in year 2018 – Tribunal dismissed said claim petition, on the grounds of delay – writ petition – Petitioner argued that rejection of representation of the petitioner gave rise to a fresh cause of action, invoking the doctrine of merger - The Court observed that, 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 – and since the petitioner promptly pursued the remedies upon service of the dismissal order, the claim of the petitioner could not held to be time-barred by overlooking the scheme of statutory Rules – held, the rejection of the claim petition merely on the ground of limitation is legally unsustainable in view of the application of doctrine of merger which followed as a result of non-supply of the order passed in the year 2013 giving rise to representation under Rule 25 of Rules, 1991 – consequently, writ petition is allowed – and the matter is remitted to the Tribunal for deciding it afresh on merits – direction issued accordingly. (Para – 28, 32, 35)

Review Petition Allowed. (E-11)

List of Cases cited:

1. Income Tax Appeal No. 86 of 2015 (Umang Agarwal Vs The Commissioner of Income Tax, Central Circle, Allahabad,
2. St. of West Bengal Vs Confederation of St. Government Employees, (2019) 3 Cal LJ 351,
3. Chhajju Ram Vs Neki , 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112],
4. Moran Mar Basselios Catholicos Vs Mar Poulouse Athanasius, AIR 1954 SC 526],
5. Lily Thomas Vs U.O.I., (2000) 6 SCC 224 : 2000 SCC (Cri) 1056,

6. Meera Bhanja Vs Nirmala Kumari Choudhury [(1995) 1 SCC 170],

7. Parsion Devi Vs Sumitri Devi reported in (1997) 8 SCC 715,

8. Thungabhadra Industries Ltd. Vs Govt. of A.P. [AIR 1964 SC 1372],

9. Aribam Tuleshwar Sharma Vs Pishak Sharma reported in (1979) 4 SCC 389,

10. Shanti Conductors (P) Ltd. Vs Assam SEB (2020) 2 SCC 677,

11. Perry Kansagra Vs Smriti Madan Kansagra (2019) 20 SCC 753,

12. S. Murali Sundaram Vs Jothibai Kannan & ors., (2023) 13 SCC 515,

13. Pancham Lal Pandey Vs Neeraj Kumar Mishra & ors., AIR 2023 (SC) 948,

14. M/s. Tata Steel Ltd. Vs Commissioner Trade Tax, Lucknow, 2024 (6) ADJ 248,

15. M/s. M.M.I. Tobacco Pvt. Ltd. & anr. Vs Iftikhar Alam, 2024 (5) ADJ 708,

16. Rajendra Singh Vs Lt. Governor, Andaman and Nicobar Islands & ors., (2005) 13 SCC 289,

17. Board of Control for Cricket in India & anr. Vs Netaji Cricket Club & ors., (2005) 4 SCC 741.

(Delivered by Hon'ble Attau Rahman
Masoodi, J.)

1. Heard Sri Mohd. Nasir & Sri Abhishek Khare for the petitioner and Sri Praful Yadav, learned Additional Chief Standing Counsel for the State.

2. By means of this writ petition, the petitioner has assailed the judgment/order dated 12.07.2022, rendered by the U.P. State Public Services Tribunal in Claim Petition No. 355 of 2018, by which the claim petition

instituted by the petitioner has been dismissed. The claim petition has primarily been dismissed on the ground of heavy latches.

3. Briefly stated the facts of the case are that disciplinary proceedings were initiated against the petitioner for a major penalty, which ultimately concluded with the passing of the order dated 28.11.2013, whereby the petitioner was dismissed from service. The order of dismissal from service was passed in the backdrop of disciplinary proceedings, which seem to have been initiated against the petitioner, wherein his participation is evident, yet objections from time to time regarding the procedure adopted seem to have been raised by the petitioner. After passing of the final order on 28.11.2013, the petitioner does not seem to have availed of the statutory remedy of appeal available under Rule 20 of the U.P. Police Officer of Subordinate Rank (Punishment and Appeal) Rules, 1991 (here-in-after referred to as "**Rules, 1991**"). Once the appeal was not filed by the petitioner under Rule 20 of the Rules, 1991, the question of filing a revision under Section 23 of the Rules, 1991, never emerged. It was after a period of about two and a half years from the date of passing of the dismissal order on 28.11.2013 that a representation dated 25.04.2016 was filed by the petitioner, addressed to the State under Rule 25 of the Rules, 1991, and in the aforesaid representation, the petitioner made a specific averment as under :-

"उपरोक्त विवादित दण्डादेश की प्रति याची को आज दिनांक तक प्राप्त नहीं कराई गई है। याची को सेवा हटाये जाने एवं अनुपस्थित अवधि दिनांक 09.05.10 से 03-02-13 तक कुल 1027 दिवस का कोई वतन/भत्ता न दिये जाने (दोनों दण्ड) के आदेशों की कार्यवाही याची को अनुपस्थित समय में पूर्ण की गई

है। याची को बचाव का अफसर भी प्रदान नहीं किया गया है। विवादित आदेशों की प्रति प्राप्त न होने के कारण, याची पूर्व में किसी भी अधिकारी को अपील याचिका दायर नहीं की है।"

4. It was a categorical case of the petitioner that the order of dismissal from service based on 28.11.2013 was not served upon him, which prevented him from availing of the remedy of appeal or revision, within the statutory period prescribed under the Rules. Soon after filing the aforementioned representation, it appears that the petitioner approached the U.P. Public Services Tribunal by filing Claim Petition No.1511 of 2016, wherein paragraph no.4(1) of the claim petition reads as under :-

"That the present claim petition is directed against the arbitrary and discriminatory action to terminate the service of the petitioner vide order dated 28.11.2013 under Sub rule A(1) of Rules 14(1) of Punishment and Appeal Rules 1991 and no salary/allowances of his absence for period of 09.05.2010 to 03.02.2013, i.e. 1027 days. It is relevant to state that there was no such punishment order has been provided to the petitioner and entire proceeding for dismissal of the petitioner had been done behind the petitioner. In absence of availability of any punishment order ever passed against the petitioner, the petitioner sought information from the end of Nodal officer, Firozabad vide his application dated 23.01.2016 and the information was made available vide letter dated 09.02.2016 which shows that the entire proceeding for terminating the services of the petitioner was conducted behind his back. In this circumstances, the petitioner had no option except to represent the highest authority of the department and hence he submitted a representation to opposite party no.1 which is still pending. The true copy of

representation dated 25.04.2016 is annexed as Annexure No. 1 to this Claim Petition."

5. It is evident from the paragraph no.4(1) of the claim petition, extracted above, that non-supply of the order of punishment dated 28.11.2013 was specifically pleaded by the petitioner in the claim petition so instituted. The claim petition filed by the petitioner prayed for the following reliefs :-

(i) to direct the opposite parties to consider and decide the petitioner's representation dated 25.04.2016 within stipulated period as fixed by this Hon'ble Tribunal (contained in Annexure No.1)

(ii) to direct the opposite parties to quash Show Cause notice dated 10.09.2013, order dated order dated 28.11.2013 by which the salary for absence period have been withhold being 'No work No pay' and order dated 28.11.2013 through which the petitioner had been dismissed (contented in annexure nos. 2,4&5) with all consequential benefits.

(iii) Any relief or benefits which this Hon'ble Tribunal deems fit and proper including the cost of the application may also be given to applicant.

6. The two distinct reliefs sought by the petitioner ought to have been examined by the learned Tribunal within the domain of its jurisdiction. The learned Tribunal, instead of expressing any opinion on relief clause (ii), chose to dispose of the claim petition in the light of relief clause (i), and the order so passed on 10.08.2016 reads as under :-

"1. Heard the learned counsel for the petitioner. He confines his prayer for disposal of representation dated 25.4.2016

(Annexure-1), which was filed before the opp.party no.1 against the impugned order of dismissal dated 28.11.2013.

2. The main grievance of the petitioner is that he was dismissed from service vide order dated 28.11.2013. The petitioner preferred representation dated 25.4.2016 before the opp.party no.1 which has not yet been disposed of.

3. The prayer of the petitioner is quite innocuous. In the interest of justice, the opp.party no.1 is directed to dispose of representation dated 25.4.2016 (Annexure-1) within a period of two months from the date of receipt of a certified copy of this judgement by a speaking order under communication to the petitioner."

7. It is worthy to note that the learned Tribunal, while passing the above order, did not decide anything on merit insofar as the challenge against the main order dated 28.11.2013 is concerned. This appears to be for the reason that the petitioner had specifically pleaded non-supply of the punishment order to him, regarding which, he had made a representation before the State Government under Rule 25 of the Rules, 1991. Having appreciated the submission of the petitioner on relief clause (i), the Tribunal disposed of the claim petition by issuing a limited direction for deciding the representation dated 25.04.2016.

8. At the first blush, it appears that the tribunal by passing such an order had attempted to do something indirectly which it could not do directly, as the cause against the order dated 28.11.2013 was barred by the period of limitation. This would not be a right understanding of the Tribunal's order. The learned Tribunal rather noticed

the fact that the order of punishment was not communicated to the petitioner, therefore, direction for the disposal of the representation dated 25.04.2016 would serve the ends of justice.

9. For any punitive action taken against an officer of subordinate ranks in the police department, a three-fold remedy is provided under the relevant rules.

10. Firstly, an appeal is provided under Rule 20 of the Rules, 1991, which, for ready reference, is extracted below:

"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 an order inflicting any of the petty punishments enumerated in sub-rules (2) 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 material, statements, arguments relied 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 with 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 the 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 notion or on request from an appellate

authority before whom the appeal is pending transfer the same to any order officer of corresponding rank."

11. A person aggrieved by an order passed by the appellate authority is left with a further opportunity of filing a revision under Rule 23 of Rules, 1991 and the same for ready reference is reproduced hereunder :-

23. Revision — (1) An officer whose appeal has been rejected by any authority subordinate to the Government is entitled to submit an application for revision to the superior authority next to the authority which has rejected his appeal within three months from the date of rejection of appeal as mentioned below:—

(a) to the Police Officer who is the immediate jurisdictional superior authority to the Police Officer who passed the appellate order;

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

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

On such an application the powers of revision may be exercised only when, in consequent of flagrant irregularity, there appears to have been material injustice or miscarriage of justice:

Provided that the revising authority may on its own motion call for and examine the records of any order passed in appeal against which no revision has been preferred under this rule for the purpose of satisfying itself as to the legality

or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided further that no order under the first proviso shall be made except after giving the person effected a reasonable opportunity of being heard in the matter.]

(2) The procedure prescribed for appeal applies also to applications for revision. An application for revision of an order rejecting an appeal shall be accompanied by a copy of the original order as well as the order of appellate authority.

12. There is yet another channel of statutory remedy provided under Rule 25 of Rules, 1991, which for ready reference is also reproduced hereunder :-

25. Powers of Government.—Notwithstanding anything contained in these rules, the Government may, on its own motion or otherwise, call for and examine the records of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and against which no appeal has been preferred under these rules and—

(a) confirm, modify or revise 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:

Provided that where it is proposed to enhance the penalty imposed by any such order the police officer concerned shall be given an opportunity of showing cause against the proposed enhancement.

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.

18. Considered the submissions made by the learned counsel for the parties and perused the material available on record.

19. The case of the claimant-petitioner is that the dismissal order passed by the competent authority dated 28.11.2013 was not served upon him. In these circumstances, the petitioner preferred a representation dated 25.04.2016 under Rule 25 of the Rules, 1991.

20. In the representation moved by the petitioner on 25.04.2016, a specific plea has been taken by him that in absence of availability of any punishment order ever passed against the petitioner, he sought an information from the Nodal Officer, Firozabad vide his application dated 23.01.2016 and the information was made available on 09.02.2016. Having no option, the petitioner preferred the representation dated 25.04.2016 to the higher authority of the department.

21. When the said representation was not decided, he filed a Claim Petition No. 1511 of 2015 which was disposed of vide order dated 10.08.2016 directing the State Government to decide his representation within a period of two months from the date of receipt of a certified copy of the tribunal's order.

22. It is noteworthy to mention here that apart from praying for a direction to decide his representation by the competent authority, the petitioner had prayed for quashing of the show cause notice dated 10.09.2013, dismissal order dated 28.11.2013 and one more order dated 28.11.2013 by which the salary for the period of absence was withheld on the principle of 'No Work No Pay'. The said representation was rejected vide order dated 05.06.2017 which was challenged before the U.P. Public Services Tribunal by filing Claim Petition No. 355 of 2018. The said petition so filed was rejected by means

of the impugned order dated 12.07.2022 on the ground of limitation. The bar of one year postulated under Section 4 of the Uttar Pradesh Public Service (Tribunal) Act, 1976 was construed from the date of original order dated 28.11.2013.

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.

24. The petitioner has evidently approached the Tribunal twice. On one occasion, the Tribunal directed the State Authorities to decide the representation within two months. At this juncture, it is worthwhile to mention that the tribunal instead of issuing a direction for deciding the representation was at liberty to treat the pending representation as non-statutory, and reject the claim petition on the ground of limitation. But while issuing a direction, the tribunal appears to have understood the wider import of statutory rules particularly Rule - 25 of the Rules, 1991.

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 here-in-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.

27. In this case, the petitioner for want of the supply of punishment order could not file an appeal against the original dismissal order which on being supplied belatedly left him open to make a representation under Rule 25 of Rules, 1991 and the same was decided on merit. Once the competent authority decided the representation on merit, the dismissal order essentially merged with the decision on the representation for it being a remedy prescribed under the Rules.

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.

29. The Supreme Court in **Kunhayammed & others v. State of Kerala and another [(2000) 6 SCC 359]**, held that when a superior authority adjudicates a matter on merit, the lower authority's order ceases to have an independent existence. Similarly, in *Union of India v. K. V. Jankiraman [(1991) 4 SCC 109]*, the Court held that once an administrative authority reconsiders an order, limitation should be counted from the date of reconsideration of decision rather than the original order.

30. The rejection of the claim petition by the Tribunal solely on the ground of limitation violates the fundamental principles of natural justice. The petitioner was unaware of his dismissal order until he received an information from the Nodal Officer, Firozabad. It is well-settled principle of procedure that limitation does not begin to run against a party until he has knowledge of the adverse order.

31. A plea has been taken by the respondents that though the dismissal order was alleged to have been served upon the wife of the petitioner on 04.12.2013, but it was not established from the record that it had actually been served upon her. After 2½ years, the Nodal Officer, Firozabad supplied the requisite information on 09.02.2016 that too on the petitioner's application moved on 23.01.2016. Thereafter, on a direction given by the Tribunal, the representation was decided on merit by the competent authority by a detailed order passed on 05.06.2017 against which the petitioner filed a claim petition on 20.02.2018, which ought to have been treated well within time prescribed under the statute.

32. Since the petitioner promptly pursued the remedies upon service of the dismissal order, the claim of the petitioner could not held to be time-barred by overlooking the scheme of statutory Rules understood as above.

33. For the aforementioned reasons, the Court is of the opinion that the rejection of the claim petition merely on the ground of limitation is legally unsustainable in view of the application of doctrine of merger which followed as a result of non-supply of the order passed in the year 2013 giving rise to representation under Rule 25 of the Rules, 1991. Secondly, the petitioner was deprived of an opportunity to contest his dismissal order on merits due to procedural irregularities of service of the order and lastly, limitation cannot run against a party unaware of the adverse action.

34. In view of the foregoing paragraphs, the view taken by the Tribunal is not tenable and calls for interference.

35. Accordingly, the writ petition is **allowed** and the impugned judgment and order dated 12.07.2022 is quashed. The matter is remitted to the Tribunal for deciding it afresh on merits, within a period of six months from the date of receipt of a certified copy of this order, as the matter is lingering since 2013. Parties undertake to co-operate with the proceedings before the Tribunal. No order as to costs.

(2025) 3 ILRA 340
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.03.2025

BEFORE
THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ - A No. 18801 of 2024 connected with
 other cases

Priyankar Upadhyaya	...Petitioner
Versus	
U.O.I. & Ors.	...Respondents