(2025) 5 ILRA 531
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.05.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 49169 of 2010

Smt. Krishna Kant Gupta ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Ashok K. Jaiswal, Ashok Khare, Shesh Kumar Srivastava

Counsel for the Respondents:
C.S.C., S.K. Verma

A. Service Law - Service Jurisprudence - Disciplinary Proceedings - Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, Rule 7(3) - Prolonged Unauthorized Absence - Principle of "Test of Prejudice" in Service Jurisprudence - Even if procedure prescribed is not strictly followed to award major punishment, the delinquent has to show how he is prejudiced - Punishment order is not vitiated unless the delinquent shows prejudice in defending himself properly and effectively, and if no prejudice is established, no interference is called for. (Para 11)

B. Petitioner, an Assistant Teacher, charge-sheeted for prolonged unauthorized absence for a period of 5 years, without any information or application for leave – In inquiry petitioner was not able to produce any document which could explain his absence - Major penalty of dismissal was passed - Petitioner argued that no inquiry report was submitted - State argued that petitioner did not submit any reply to charge-sheet or show-cause notice despite publication in newspaper, and no explanation for absence was provided. *Held:* Even if procedure prescribed was not strictly followed, the delinquent has to show how he is prejudiced. It is not a case where oral evidence was required, the only requirement was that petitioner had to submit her explanation and reasons for her absence of 1220 days - Petitioner did not deny the allegation; there was substantial compliance with the principle of natural justice as she was given opportunity to submit her reply, however, no reply was submitted despite publication in newspaper - Petitioner did not deny her absence of 1220 days even vaguely, no document such as sanction of leave or application for leave or medical certificate was placed on record, therefore, there was no prejudice caused to her - Punishment not disproportionate, considering the nature of allegation. (Para 12, 13)

Dismissed. (E-5)

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri Shesh Kumar Srivastava, learned counsel for petitioner and Sri Lal Mani, learned Standing Counsel for State.

2. The petitioner, an Assistant Teacher, was served with a charge-sheet that from 01.07.2004 to 18.05.2009 i.e. in a period of 5 years, she remained absent for 1220 days without any information or application for leave. An inquiry was conducted and since petitioner was not able to produce any document which could explain his absence, a major penalty of dismissal was passed by an order dated 02.06.2010 by District Basic Education Officer, Jalaun, impugned in present case.

3. Learned counsel for petitioner has vehemently submitted that procedure prescribed to award major punishment in terms of Rule 7(3) of Uttar Pradesh Government Servant (Discipline and Appeal) Rule, 1999, was not followed. Learned counsel further submitted that no inquiry report was submitted to petitioner. No oral evidence was recorded and petitioner was not given any opportunity for cross-examination of any witness. Learned counsel referred a recent judgment passed by Supreme Court in case of **Satyendra Singh Vs. State of Uttar Pradesh and Another, 2024 SCC OnLine SC 3325** and its relevant paragraph Nos. 17 and 18 are reproduced hereinafter :-

"17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negi Vs. Punjab National Bank and others, (2009) 2 SCC 570 and Nirmala J. Jhala Vs. State of Gujarat and Another, (2013) 4 SCC 301, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.

18. As a consequence, thereof, the High Court fell into grave error of law while interfering in the well-reasoned judgment rendered by the Tribunal whereby, the Tribunal had quashed the order imposing penalty upon the appellant."

4. Per contra, learned Standing Counsel for State submitted that petitioner remained absent in aforesaid period of 5 year for 1220 days, without information, permission or sanction of leave, even thereafter also petitioner remained absent and since there was no requirement of any oral evidence as well as petitioner has not able to produce any document, that leave was sanctioned, therefore, major punishment was awarded after substantial compliance of procedure prescribed in aforesaid rules.

5. In present case, a charge-sheet dated 27.10.2010 was issued upon petitioner, wherein it was specifically stated that she remained absent without any permission or sanction of leave between 01.07.2004 to 18.05.2009 for about 1220 days. The details of period of absence and days as mentioned in charge-sheet are reproduced hereinafter :-

अनुपस्थित तिथि	दिनांक की संख्या
1- 01.07.2004 से 13.12.2004 तक	184
2- 01.01.2005 से 24.04.2005 तक	114
3- 09.11.2005 से 31.12.2005 तक	53
4- 01.01.2006 से 31.12.2006 तक	365
5- 01.01.2007 से 01.07.2007 तक	182
6- 02.07.2008 से 18.05.2009 तक	322

6. Petitioner has not submitted any reply to the charge-sheet though it is a case of petitioner that charge-sheet was never served. In absence of any explanation, an inquiry report was submitted to Basic Education Officer, Jalaun who issued a notice to petitioner along with inquiry report, wherein charges were found to be proved.

7. The petitioner has not submitted any reply to show-cause notice despite notice was published in newspaper and, therefore, since no document was

submitted by petitioner to explain his absence of 1220 days, therefore, a major punishment was awarded.

8. It may be a case where procedure prescribed in above referred Rules was not strictly followed that the copy of inquiry report was not submitted though an opportunity was granted to petitioner to submit his reply and a publication was published in a newspaper.

9. It is not a case where oral evidence was required. The only requirement was that petitioner has to submit his explanation and reasons for his absence of 1220 days in a period of 5 years. There is no material that petitioner has denied the allegation. The writ petition is also silent on any explanation to such long absence.

10. In the aforesaid circumstances, the Court takes note of a judgment passed by Supreme Court in **Union of India and others Vs. Dilip Paul, 2023 SCC OnLine SC 1423,** wherein principle of test of prejudice in service, jurisprudence was considered.

11. The Court is of view that in such cases, even if procedure prescribed was not strictly followed to award major punishment, the delinquent has to show how he is prejudiced so much as that she was denied to submit explanation for long absence. The relevant paragraph Nos. 59 and 60 of **Union of India and others (supra)** is reproduced hereinafter :-

"i) Principle of "Test of Prejudice" in Service Jurisprudence

59. The "test of prejudice" is a well settled canon of law that may be applied where any procedural impropriety or violation of rule of *audi alteram* is alleged. This Court in *State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364 held that the test is to ascertain whether the violation of such procedure or process resulted in a prejudice being caused or a loss of fair hearing. The relevant observations are reproduced below:—

"11. ... Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principle underlying Section 99 CPC and Section 465 CrPC is applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/material in support of his case after the close of evidence of the other side. If no such opportunity is given at all in spite of a request therefor, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. The position can be stated in the following words : (1)

Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this score have to be judged on the touchstone of prejudice, as explained later in this judgment. In other words, the test is : all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.

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28. ... In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [[1964] A.C. 40 : [1963] 2 All ER 66 : [1963] 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (Calvin v. Carr [[1980] A.C. 574 : [1979] 2 All ER 440 : [1979] 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

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33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the

ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

(Emphasis supplied)

60. In the case of *State of U.P. v. Harendra Arora, (2001) 6 SCC 392*, this Court further expanded the applicability of the "Test of Prejudice" to even procedural provisions which are fundamental in nature with the following relevant observations being reproduced below:—

"13. The matter may be examined from another viewpoint. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be

available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the enquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. …"

(Emphasis supplied)"

12. In the above background, the Court takes note that in writ petition, the petitioner has not denied his absence of 1220 days even vaguely. No document such as sanction of leave or application for leave or medical certificate was placed on record, therefore, the Court is of view that since there was substantial compliance of principle of natural justice that she was given opportunity to submit her reply, however, no reply was submitted despite publication in newspaper, she has not appeared, therefore, the Court takes note that even this matter is remitted back to conduct the inquiry from the stage where procedure was not strictly followed would have no effect since petitioner has no explanation to her long absence of 1220 days, therefore, there is no prejudice caused to her. Petitioner's case has failed in 'test of prejudice'. It will also not be in the interest of justice since in present case, in the writ petition, petitioner has not made even a statement of denial of charge. No document was placed on record which could support her defence or contradict the allegations.

13. In the aforesaid circumstances, since the Court is of view that absence of 1220 days, between 2004 to 2009 remained absolutely unexplained, therefore, there is no need to interfere with punishment which is not disproportionate, considering the nature of allegation, this writ petition is accordingly, **dismissed.**

(2025) 5 ILRA 537
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 371 of 2025

Alakh Prasad @ Alakh Dev & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
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Counsel for the Respondents:
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Civil Law - U.P. Consolidation of Holdings Act, 1953 — Sections 5, 12, 11(1) & 48 — U.P. Zamindari Abolition and Land Reforms Act, 1950 — Section 157-A — Jurisdiction of consolidation authorities —