



2026:AHC:17868

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 15558 of 2025

Amrita Yadav

.....Petitioner(s)

Versus

The State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Atipriya Gautam, Saundraya Giri, Sr. Advocate
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Vijay Gautam, learned Senior Counsel assisted by Ms. Vaishnavi Srivastava holding brief of Ms. Atipriya Gautam, learned counsel for the writ petitioner and Sri R.S. Umrao, learned Standing Counsel for the State.
2. This Court entertained the writ petition on 16.10.2025 and required the learned Standing Counsel to obtain instructions, which have been produced before this Court.
3. The case of the writ petitioner is that he was appointed as a Sub-Inspector in the year 2012 under Dying in Harness Rules. However, while the writ petitioner was performing his duties, he was implicated in a Criminal Case No.111 of 2017, under Sections 7, 13(2) read with Section 13(1)(D) of the Prevention of Corruption Act. The writ petitioner came to be convicted by the Court of Special Judge, Prevention of Corruption Act (V.B.U.P.S.E.B.)/ Addl. Sessions Judge, Meerut on 05.09.2024 in Criminal Case No.24/79/2017.
4. Being aggrieved with the same, the writ petitioner preferred a Criminal Appeal No.10957 of 2024 in which on 12.08.2025, the writ petitioner was granted bail and the sentence awarded to the writ petitioner was suspended during the pendency of the case. On account of the aforesaid criminal case, the writ petitioner was confined in jail from 04.09.2024 to 20.08.2025 and thereafter without issuing a show cause notice, the order impugned came to be passed by the DIG, Meerut Range, Meerut, dismissing the writ petitioner from service on the ground of conviction in a criminal case on 04.05.2025.

5. Questioning the said order, the writ petitioner has filed the present petition.

6. Learned counsel for the writ petitioner has submitted that first of all, the Disciplinary/ Appointing Authority had erred in law in dispensing with the regular inquiry in view of Rule 8 (2)(a), as it was a fit case wherein a departmental inquiry ought to have been conducted. Further submission is that once the sentence itself stands stayed by this Court in a criminal appeal preferred by the writ petitioner, without holding of a regular inquiry was a condition precedent. Further submission is that even the writ petitioner was not put to notice before imposing the said punishment. Reliance has also been placed upon the judgment of the coordinate Bench of this Court in **Civil Misc. Writ Petition No. 2153 of 2025, Santosh Kumar Singh vs. State of U.P. and others**, decided on 12.05.2025 and **Writ-A No.359 of 2021, Madho Saran Shukla vs. State of U.P. and others**, decided on 30.10.2025.

7. Learned Standing Counsel who appears for the respondents has supported the order while contending that once the writ petitioner stood convicted, then the authorities after deliberating the issue had to come to the conclusion that it was a perfect case for non-holding of inquiry under Rule 8(2)(a) of the 1991 Rules. It is also contended that mere stay of the suspension is entirely different from stay of the conviction. According to him, still the conviction sword is hanging on the neck of the writ petitioner.

8. Sri R.S. Umrao, learned Standing Counsel submits that there is only one irregularity i.e. with relation to the fact that the writ petitioner was not put to notice.

9. I have heard the submissions so made across the Bar and perused the records carefully.

10. Facts are not in issue. It is not an issue that the writ petitioner being a Sub-Inspector, his service conditions are governed under the provisions of Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules 1991. The order impugned dismisses the services of the writ petitioner while invoking the provisions contained under Rule 8(2)(a) of the 1991 Rules. The basic reason attributable for dismissing the writ petitioner is conviction in a criminal trial, thus the punishment order of dismissal is on the ground of conduct, which led to his conviction in a criminal trial.

Apparently, the writ petitioner is not being put to notice before passing of order impugned. Though the respondents were of the opinion that regular departmental enquiry is not necessary. In Santosh Kumar Singh (supra), the following was observed:-

"8. Looking to the impugned order, whereby the services of the petitioner has been dismissed, this Court finds that the order has been passed as a consequence to the conviction in a criminal case, as if, dismissal from service was to take place ifso facto. In view of the judgments cited above, this Court finds that the Courts have stressed upon the principle that at least an opportunity be afforded to an employee to offer an explanation as to why his services may not be dispensed with on the ground that he has been convicted in a criminal case and to explain his position regarding the same. This, according to the judgment is the safeguard from an action by virtue of proviso to Article 311(2) of the Constitution, Article 311(2) is reproduced hereinunder :

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

9. This Court finds that in case of Ram Kishan (supra), a Co-ordinate Bench of this Court has followed not only the judgment of Tulsi Ram Patel (supra), but also the Division Bench judgment in case of Shyam Narayan Shukla Vs. State of U.P. 1988 (6) LCD 530 as well as another Division Bench judgments in cases of Sadanand Mishra Vs. State of U.P. 1993 LCD 70 and Shanker Das Vs. Union of India 1985 (2) SCR 358.

10. It is true that authority may proceed to dismiss a government servant on account of such government servant getting convicted in a criminal case but nevertheless this discretion that is based upon the doctrine of pleasure can not be taken to be an absolute one. Here, it has been rendered subject to condition that before passing the order finally terminating the services of such an employee, the authority shall consider conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon.

11. Paragraph nos. 9, 10, 11, 12, 13 and 14 of the judgment of Ram Kishan (*supra*) read as under:

"9. In *Union of India vs. Tulsiram Patel*, (1985) 3 SCC 398, Hon'ble Supreme Court has considered the provisions of Article 311(2) of the Constitution of India and held as under:-

"The second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry."

10. In *Shyam Narain Shukla vs. State of U.P.*, (1988) 6 LCD 530, a Division Bench of this court has considered similar question and held as under:-

"In view of the above decision of the Supreme Court, it has to be held that whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him. In the matter of consideration of conduct as also the quantum of punishment the employee has not to be joined and the decision has to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is not to be given an opportunity of hearing at that stage."

11. Another Division Bench of this Court in *Sadanand Mishra v. State of U.P.* 1993 LCD 70 held that on conviction of an employee of a criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction, is also considered. It was further held that the scrutiny or exercise of conduct of an employee leading to his conviction is to be done *ex parte* and an opportunity of hearing is not to be provided for this purpose to the employee concerned.

12. In *Shankar Das v. Union of India*, 1985 (2) SCR 358, Hon'ble Supreme Court while referring to power under Clause (a) of second proviso of Article 311(2) of the Constitution of India, has observed as under: -

"Be that power like every other power has to be exercised fairly, justly and reasonably."

13. Proviso (a) to Article 311 of the Constitution of India, is an exception to clause (2) of Article 311, which is applicable where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. In case of *Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan*, 1976 (3) SCC 190 (para-21), Hon'ble Supreme Court considered Article 311(2), Proviso (a)

and held that this provision confers power upon the disciplinary authority to decide whether in the facts of a particular case, what penalty, if at all, should be imposed on the delinquent employee, after taking into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features, if any, present in the case and so on and so forth. The conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry, if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry, if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service. In Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, 2010 (8) SCC 573 (Paras-24 and 25), Hon'ble Supreme Court explained the meaning of the words 'moral turpitude' to mean anything contrary to honesty, modesty or good morals.

14. Thus, in view of the law laid down by Hon'ble Supreme Court in the cases of Tulsiram Patel (supra), T.R. Chellapan (supra) and Shankar Das (supra), and two Division Bench judgments of this court in Shyam Narain Shukla (supra) and Sadanand Mishra (supra), it can safely be concluded that while removing the petitioner from service, the respondents were bound to consider the conduct of the petitioner, which has led to his conviction in the session trial. This was the condition precedent for the competent authority to acquire jurisdiction to impose punishment of removal from service. However, the impugned order is unfortunately silent and does not show consideration of conduct of the petitioner which has led to his conviction in the S.T. No.178 of 2005. It was necessary for the respondents, while passing the impugned order, to consider the conduct of the petitioner leading to his conviction and then to decide what punishment is to be inflicted upon him. This has not been done by the respondent No.2 while removing the petitioner from service. Therefore, the impugned order cannot be sustained and is hereby quashed."

12. Very recently, a Co-ordinate Bench of this Court in case of Manoj Kumar Katiyar (supra) has reiterated the same principle and has discussed the fact of that case in which also, conviction in a criminal trial, the services of the petitioner had been dispensed with. The Court vide paragraph no. 22 held that the order of dismissal is not come within the ambit of proviso to Article 311(2) of the Constitution of India and then quashed the order remitting the matter to be decided afresh."

11. Since the writ petitioner has not been put to notice before imposition of

penalty of dismissal, thus the order impugned cannot be sustained.

12. At this stage learned Standing Counsel has made a statement as per the instructions of his client that the punishment order be set aside and matter be remitted back to pass a fresh order.

12. Accordingly, the writ petition stands **disposed of** in the following terms:-

(a) Order dated 04.05.2025 passed by Respondent no.3, DIG, Meerut Range, Meerut is set aside.

(b) Matter stands remitted back to the authority to pass fresh orders after issuing show cause notice to the writ petitioner.

13. The status of the writ petition, which is today, shall be maintained till passing of the fresh orders.

January 27, 2026

N.S.Rathour

(Vikas Budhwar,J.)