

(2025) 09 AHC CK 0717
In the Allahabad High Court
Case No : Writ A No. 4470 Of 2023

Shiv Bachan Gautam

APPELLANT

Vs

State Public Services Tribunal

RESPONDENT

Date of Decision : 10-09-2025

Acts Referred:

Bharatiya Nyaya Sanhita, 2023 — Section 148
Official Secrets Act, 2023 — Section 3, 4, 5
Indian Penal Code, 1860 — Section 121(A)
Code of Criminal Procedure Act, 1973 — Section 167(2), 439, 482, 483

Citation : (2025) 09 AHC CK 0717

Hon'ble Judges : Shree Prakash Singh, J

Bench : Division Bench

Advocate : Pranjal Jain, Nitin Mathur, Purnendu Chakravarty

Final Decision : Dismissed

Judgement

Manjive Shukla, J

1. Heard Shri Om Prakash Misra, learned counsel for the petitioner and Shri Kumar Sambhav, learned Standing Counsel appearing for the respondent nos.2 to 5.

2. The captioned writ petition has been filed assailing therein, the judgment and order dated 22.03.2023 passed by the learned State Public Services Tribunal, Indira Bhawan, Lucknow in Claim Petition No.1332/2020 (Shiv Bachan Gautam vs. State of U.P. and others) whereby, the claim petition had been dismissed.

3. The facts of the case, in brief, are that initially disciplinary proceedings were conducted against the petitioner and a punishment order was passed on 27.02.2004 whereby, punishment in the form of reversion at the basic pay for one year was imposed against him. The petitioner preferred an appeal against the order dated 27.02.2004 which was dismissed on 02.08.2004, and thereafter, a revision was filed which was allowed vide order dated 04.03.2005 with

direction to the Superintendent of Police, Agra to prepare a fresh charge-sheet against the petitioner and conduct fresh enquiry in the matter. Thereafter, again disciplinary proceedings were conducted against the petitioner and the Superintendent of Police (Railways), Prayagraj passed the punishment order dated 07.12.2007 whereby, the petitioner was dismissed from service. Again, the petitioner preferred an appeal which was dismissed vide order dated 18.08.2012, and thereafter, the revision filed by the petitioner was also dismissed vide order dated 25.08.2013.

4. The petitioner in the aforesaid circumstances challenged the punishment order dated 07.12.2007, the appellate order dated 18.08.2012 and the revisional order dated 25.08.2013 by filing Claim Petition No.555/2014 before the learned State Public Services Tribunal, Indira Bhawan, Lucknow. The learned Tribunal after considering the entire material in detail, allowed the Claim Petition No.555/2014 vide judgment and order dated 27.10.2016 and set aside the order of punishment of dismissal from service along with the appellate order and the revisional order with a liberty to the respondents to impose appropriate punishment against the petitioner. The learned Tribunal in its judgment and order dated 27.10.2016 had recorded a categorical finding that the punishment of dismissal from service was shockingly disproportionate to the alleged misconduct and found that the disciplinary authority had awarded excessive punishment of dismissal to the petitioner.

5. The judgment and order dated 27.10.2016 passed by the learned Tribunal in Claim Petition No.555/2014 was complied with by the respondents and the petitioner was reinstated in service on 07.03.2017. Thereafter, the respondents instituted a preliminary enquiry and proceeded to take decision in respect of the matter of payment of salary to the petitioner for the period from 11.12.2007 to 07.03.2017, as per the applicable rules. It is noteworthy that after setting aside of the order of dismissal from service by the learned Tribunal, the respondents have not imposed any punishment against the petitioner.

6. The Superintendent of Police (Railways), Prayagraj issued a show cause notice on 04.11.2018 to the petitioner whereby he was required to file his reply on the issue as to why he may not be denied salary for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay'. The petitioner submitted his reply on 30.11.2018. The Superintendent of Police concerned had passed an order on 13.12.2018 whereby, he has denied salary to the petitioner for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay'. The Superintendent of Police in his order dated 13.12.2018 had recorded a finding that the petitioner was dismissed from service vide order dated 07.12.2007 and the said punishment order had been set aside by the learned Tribunal only on the ground of proportionality of the punishment and not on the merit of the charges levelled against him. Therefore, since the petitioner admittedly had not worked for the period from 11.12.2007 to 07.03.2017, he is not entitled for salary of the said period on the principle of 'No Work No Pay'. The petitioner filed an appeal

against the order dated 13.12.2018 which had been dismissed vide order dated 06.11.2019 and thereafter, he filed a revision which had also been dismissed vide order dated 07.09.2020.

7. The petitioner in the aforesaid circumstances filed the Claim Petition No.1332 of 2020 (Shiv Bachan Gautam vs. State of U.P. and others) before the learned Tribunal challenging therein, the order dated 13.12.2018, the appellate order dated 06.11.2019 and the revisional order dated 07.09.2020. The petitioner in his claim petition took the ground that the Fundamental Rule 54-A(3) of the Financial Hand Book Volume-II (Part II to IV) provides that if the dismissal order of a government servant is set aside by the court on merits of the case, the period intervening the date of dismissal and the date of reinstatement shall be treated as duty for all purposes and the government servant shall be paid the full pay and allowances for the said period. Learned Tribunal considered the grounds raised in the claim petition and has dismissed the claim petition vide judgment and order dated 22.03.2023.

8. It has been submitted on behalf of the petitioner that the order dated 07.12.2007 whereby, he was dismissed from service had been set aside by the learned Tribunal vide judgment and order dated 27.10.2016 passed in Claim Petition No.555/2014 on the ground that on the basis of the alleged misconduct, the petitioner could not have been dismissed from service and the punishment of dismissal from service is shockingly disproportionate, therefore, it is apparent that the learned Tribunal had interfered with the punishment of dismissal from service on merits of the punishment. It has further been submitted that the learned Tribunal vide its judgment and order dated 27.10.2016 passed in Claim Petition No.555/2014 had granted liberty to the respondents to impose any proportionate punishment against the petitioner but the respondents have not imposed any punishment, as such it is apparent that there was no material available against the petitioner on the basis of which any punishment could have been imposed.

9. Shri Om Prakash Misra, learned counsel appearing for the petitioner has argued that where the order of dismissal from service is set aside by the court, the decision in respect of the pay and allowances for the period from the date of dismissal from service till the date of reinstatement of the government servant is to be taken under Fundamental Rule 54-A of the Financial Hand Book Volume-II (Part II to IV) and Fundamental Rule 54-A(2)(i) provides that in the case the order of dismissal is set aside by the court not on merits but on procedural grounds, the government servant will be paid such amount (not being the whole) of the pay and allowances which he would have been entitled, had he not been dismissed from service, as the competent authority may determine after giving notice to the government servant and further Fundamental Rule 54-A (3) provides that if the dismissal order of a government servant is set aside by the court on merits of the case, the period intervening the date of dismissal and the date of reinstatement shall be treated as duty for all purposes and he shall be

paid full pay and allowances for the period to which he would have been entitled, had he not been dismissed from service. It has further been argued that the petitioner's order of dismissal from service had been set aside by the learned Tribunal on the ground that the punishment of dismissal from service was shockingly disproportionate to the alleged misconduct and therefore, setting aside of the order of dismissal from service is on merits, more particularly when the respondents themselves have not imposed any punishment against the petitioner, therefore, the case of the petitioner is to be dealt with under Fundamental Rule 54-A(3) of the Financial Hand Book Volume-II (Part II to IV) and he is entitled for full pay and allowances for the period from the date of order of dismissal from service till the date of his reinstatement in service.

10. Shri Om Prakash Misra, learned counsel appearing for the petitioner has also argued that the learned Tribunal, in the impugned judgment and order dated 22.03.2023, had recorded a finding that the setting aside of the order of dismissal from service is neither on merits nor on procedural grounds, therefore, the petitioner's case is not covered either under Fundamental Rule 54-A(2)(i) or under Fundamental Rule 54-A (3) of the Financial Hand Book Volume-II (Part II to IV) whereas, the said finding on its face is erroneous as it is apparent that the learned Tribunal found that on merits of the case the punishment of dismissal imposed against the petitioner was shockingly disproportionate and thereby set aside the punishment order, therefore, in view of the provisions made in Fundamental Rule 54-A(3) the petitioner is entitled for full pay and allowances for the period from the date of order of dismissal from service till the date of his reinstatement in service.

11. Shri Om Prakash Misra, learned counsel appearing for the petitioner, however, has submitted that if the petitioner is paid 50% of the pay and allowances admissible to him for the period from 11.12.2007 to 07.03.2017, the petitioner would gracefully accept it.

12. Shri Kumar Sambhav, learned Standing Counsel appearing for the respondents has argued that the order by which the petitioner was dismissed from service had not been set aside by the learned Tribunal on merits; rather it found the punishment of dismissal from service disproportionate to the alleged misconduct, and therefore, the petitioner's case does not fall in the ambit of Fundamental Rule 54-A (3) of the Financial Hand Book Volume-II (Part II to IV).

13. It has further been argued that since Fundamental Rule 54-A(2)(i) of the Financial Hand Book provides that in the cases where punishment order is set aside by the court on procedural ground, the government servant shall be paid the pay and allowances (not being the whole) for the period from the date of order of dismissal from service till the date of reinstatement, as determined by the competent authority but since in the case of the petitioner the order of dismissal from service had not been set aside on procedural ground, therefore, he is also not entitled to get the benefit of the provisions made in Fundamental Rule 54-A (2)(i).

14. Shri Kumar Sambhav, learned Standing Counsel appearing for the respondents has also argued that a show cause notice was issued to the petitioner whereby he was required to file his reply on the point as to why he may not be denied the pay and allowances for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay' and thereafter the competent authority, after considering the reply of the petitioner, had passed the order dated 13.12.2018 wherein it had been stated that admittedly the petitioner has not worked for the period from 11.12.2007 to 07.03.2017 therefore, he is not entitled for the pay and allowance for the said period on the principle of 'No Work No Pay'. It has thus been argued that there is neither any illegality nor infirmity in the judgment and order dated 22.03.2023 passed by the learned Tribunal in Claim Petition No.1332/2020 therefore, the writ petition filed by the petitioner is liable to be dismissed by this Court.

15. We have considered the rival arguments advanced by the learned counsels appearing for the parties and have perused the documents available in the record of the writ petition.

16. We find that the disciplinary proceedings against the petitioner were initiated and the disciplinary authority passed an order on 27.02.2024 whereby, the punishment in the form of reversion to the basic pay for one year was imposed upon him. Later on, the said punishment order was set aside by the revisional authority vide his order dated 04.03.2005 and direction was issued to the Superintendent of Police to issue fresh charge-sheet, and conduct fresh disciplinary enquiry and pass a punishment order. The Superintendent of Police (Railways), Prayagraj passed the punishment order on 07.12.2007 whereby, the petitioner was dismissed from service. The petitioner preferred a statutory appeal against the punishment dated 07.12.2007 which was dismissed on 18.08.2012, and thereafter revision was filed, that too was dismissed vide order dated 25.08.2013.

17. The petitioner challenged the punishment order dated 07.12.2007, the appellate order dated 18.08.2012 and the revisional order dated 25.08.2013 by filing Claim Petition No.555/2014 and the learned Tribunal had allowed the said claim petition and had set aside the punishment order dated 07.12.2007 by which the petitioner was dismissed from service. The learned Tribunal in its judgment and order dated 27.10.2016 passed in Claim Petition No.555/2014 had recorded a finding that the punishment of dismissal from service is shockingly disproportionate to the alleged misconduct and therefore, is unsustainable in the eyes of law. Learned Tribunal further granted liberty to the disciplinary authority to impose any lesser punishment on the petitioner.

18. We further find that after passing of the judgment and order dated 27.10.2016 by the learned Tribunal in Claim Petition No.555/2014, the respondents instituted a preliminary enquiry but did not impose any punishment against the petitioner in terms of the liberty granted by the learned Tribunal and the petitioner was reinstated in service on 07.03.2017. In respect of pay and

allowances for the period from 11.12.2007 to 07.03.2017, the disciplinary authority issued a show cause notice on 04.11.2018, whereby the petitioner was required to show cause as to why he may not be denied pay and allowances of his post for the period from 11.12.2007 to 07.03.2017 on the principle of 'No Work No Pay'. The petitioner filed his reply and thereafter the competent authority passed an order on 13.12.2018 whereby, the petitioner has been denied the pay and allowances for the period from 11.12.2007 to 07.03.2017.

19. It is noteworthy that in the cases where the order of dismissal from service of a government servant is set aside by any court, the decision in respect of pay and allowances to the said government servant from the date of his dismissal till the date of his reinstatement is taken as per the provisions made in the Fundamental Rule 54-A of the Financial Hand Book Volume-II (Part II to IV). For ready reference the Fundamental Rule 54-A of the Financial Hand Book Volume-II (Part II to IV) is extracted as under:-

"54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court. (2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal, or compulsory retirement, as the case may be, and the date of reinstatement shall be treated

as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

NOTE—Where the Government servant does not report for duty within reasonable time after the issue of the orders of reinstatement after the dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge."

20. Fundamental Rule 54-A(2)(i) of the Financial Hand Book Volume-II (Part II to IV) provides that in case of setting aside of the order of dismissal from service of a government servant on procedural grounds, he shall be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, as the competent authority may determine after giving notice.

21. The provisions of Fundamental Rule 54-A(2)(i) of the Financial Hand Book Volume-II (Part II to IV) are subject to the provisions of Fundamental Rule 54 (7) which reads as under:-

"54 (7). The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowance admissible under Rule 53."

22. Thus, from the provisions made in Fundamental Rule 54-A(2)(i) of the Financial Hand Book, it is apparent that if the order of dismissal from service of a government servant had been set aside by the court on procedural grounds and thereafter he is reinstated in service, the government servant concerned shall be paid pay and allowances for the period from the date of dismissal from service till the reinstatement, which would not be less than the subsistence allowance admissible to him, if he would have been placed under suspension, meaning thereby it can be more than the subsistence allowance admissible to him, what exactly should be the amount is to be determined by the competent authority taking into consideration relevant facts and circumstances.

23. Fundamental Rule 54-A(3) of the Financial Hand Book on the other hand provides that if the order of dismissal from service of a government servant had

been set aside by the court on merits of the case, he shall be entitled for full pay and allowances for the period starting from the date of dismissal from service till his reinstatement.

24. Learned Tribunal in the impugned judgment and order dated 22.03.2023 has recorded a finding that the Tribunal vide its earlier order dated 27.10.2016 passed in Claim Petition No.555/2014 had set aside the order of dismissal from service on the ground that the punishment imposed against the petitioner was disproportionate to his alleged misconduct, therefore, the setting aside of the punishment order is neither on merits of the case nor on procedural grounds, as such, the petitioner would not be entitled for any benefit of pay and allowances either admissible under Fundamental Rule 54-A(2)(i) or 54-A(3) of the Financial Hand Book.

25. Assuming for a moment that Fundamental Rule 54-A(2)(i) and (3) were not applicable and there was no provision which was applicable to the peculiarity of the situation, the Tribunal had to step in and decide the case as per principles of equity, good conscience and justice. After all some decision had to be taken regarding regularization of period from the date of dismissal till reinstatement, as also, the pay and allowances payable for the said period. Guidance could be taken in this regard from the provisions and principles contained in Fundamental Rule 54-A.

26. Once the Tribunal vide judgment dated 27.10.2016 held that the punishment of dismissal was shockingly disproportionate and accordingly set aside the dismissal order dated 07.12.2007 albeit with liberty to impose a lesser punishment but, no punishment, what to say, a lesser punishment was imposed even after conducting a preliminary enquiry post the order dated 27.10.2016, the setting aside of the dismissal order was certainly not on procedural grounds, it was on the ground of quantum of punishment i.e. the punishment was excessive and disproportionate. In fact, the State authorities by their conduct in not imposing any punishment inspite of the liberty granted by the Tribunal negated the entire disciplinary proceedings. The Tribunal has failed to appreciate the matter in correct perspective.

27. Without going into the question any further as to applicability of Fundamental Rule 54-A (2) (i) & (3), we have no doubt that the petitioner could not have been totally denied pay and allowances for the relevant period on the principle of 'No Work No Pay' as, the petitioner was kept out of service on account of punishment of dismissal which was illegal and excessive and was ultimately set aside.

28. The learned counsel appearing for the petitioner in all fairness submitted that only 50% of the admissible pay and allowances for the period from 11.12.2007 to 07.03.2017 may be paid to the petitioner.

29. In view of the discussion made hereinabove, we are of the view that in the facts and circumstances of the case, this would be a fair and reasonable amount to be paid to the petitioner subject to the petitioner furnishing a certificate by

him stating therein that he was not gainfully employed at any place from the date of dismissal till his reinstatement.

30. In view of the aforesaid reasons, this writ petition is allowed. The impugned order dated 22.03.2023, passed by the learned State Public Services Tribunal, Indira Bhawan, Lucknow in Claim Petition No.1332/2020 (Shiv Bachan Gautam vs. State of U.P. and others), is hereby set aside and the claim petition is allowed. The orders dated 30.11.2018, 06.11.2019 and 07.09.2020 are also quashed. We direct the respondents to pay 50% of the pay and allowances admissible to the petitioner for the period from 11.12.2007 to 07.03.2017 within two months from the date of presentation of a certified copy of this order. Needless to say that the aforesaid payment shall be made to the petitioner subject to furnishing a certificate by him stating therein that he was not gainfully employed at any place from the date of dismissal till his reinstatement.