



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 3479 of 2026

Raj Shekhar Upadhyay

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Devansh Misra
Counsel for Respondent(s)	:	C.S.C.

Court No. - 6

HON'BLE PRAKASH PADIA, J.

1. Heard Shri Devansh Mishra, learned counsel for the petitioner and Shri Amit Saxena, learned Senior Counsel/ learned Additional Advocate General, State of U.P. assisted by Shri R.S. Umraon, learned Standing Counsel for the State-Respondents.

2. The present writ petition has been filed inter-alia with the following prayer:-

"(i) Issue writ, order or direction in the nature of Certiorari quashing the impugned office order dated 31.01.2026 passed by the Under Secretary, Department of Excise, Government of Uttar Pradesh bearing Letter No. 56/E-1/Thirteen-2026-1861101 as well as the charge sheet dated 31.01.2026 issued by the Respondent Nos.2 and 3 bearing Letter No. 169/E-1/Thirteen-2025-1861101/2024 (Annexure-1 to the writ petition);

(ii) issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case in the facts and circumstances of the case; and"

3. By means of the present petition, the petitioner seeks to assail the legality and validity of the office order dated 31.01.2026 passed by the Under Secretary, Department of Excise, Government of Uttar Pradesh as well as the charge sheet dated 31.01.2026 sought to be issued under Article 351-A of the Civil Service Regulations. It has been contended on behalf of the petitioner that the order as well as the charge sheet impugned has been issued without obtaining any prior sanction by the

Governor as mandatorily required under Article 351 proviso (a-i) inasmuch as although the impugned order and the charge sheet is referred to the same being issued on behalf of Her Excellency, the Governor. However, the short counter affidavit filed by the respondent nos. 1, 2 and 4 in its Annexure- SCA-11 at page nos. 31, 33, 37 and 38 reflect that the sanction has been granted by the Departmental Minister while in terms of Article 351-A there is neither any sanction by the Governor nor there is any mandatory compliance of the said provision.

4. The petitioner further submits that the event in respect of which proceedings under Article 351-A have been instituted against the petitioner occurred between the period 09.01.2021 to 12.02.2021. While the charge sheet and the order initiating the disciplinary proceedings under Article 351-A of the Civil Service Regulations came to be issued on 31.01.2026 i.e. after a lapse of 04 years as stipulated in the proviso (a)(ii) read with Explanation (a) of Article 351-A of the Civil Service Regulations.

5. Per contra, Shri Amit Saxena, the Additional Advocate General appearing on behalf of the respondents has contended that in the order impugned as well as the charge sheet, it has been categorically stated that approval from Her Excellency, the Governor has been taken prior to the institution of proceedings under Article 351-A.

6. It has further been sought to be argued that on the basis of the Uttar Pradesh Authentication (Order and Other Written) Rules, 1975, it is the officer authorized on instruction of the Departmental Minister, who is required to act on behalf of Her Excellency, the Governor as the order or the charge-sheet in question otherwise could not have been issued under the signature of Her Excellency, the Governor itself.

7. In respect of the proceedings being time barred, it has been contended by the respondents that the show cause notice had been issued to the petitioner on 29.10.2024 within the 04 years period and the petitioner deliberately chose not to respond to it, in such circumstances, the petitioner cannot take benefit of his own wrong.

8. Counsel for the petitioner placed reliance upon Article 351-A of Civil Service Regulations, which is extracted as under:-

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or Negligence, during his service, including service rendered on re-employment after retirement;

Provided that -

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

(i) shall not be instituted save with the sanction of the Governor,

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a), and

(c) the Public Service Commission, UP, shall be consulted before final orders are passed.

Explanation - For the purposes of this article -

(a) Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from and earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court, and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court".

9. The contention of the parties with regards to sanction of Governor is concerned, although it has been stated that Her Excellency, the Governor has granted the necessary approval for purposes of institution of proceedings under Article 351-A be that as it may in the short counter affidavit, there is neither any document on record to suggest that the matter was presented before Her Excellency, the Governor for granting necessary sanction for institution of proceedings rather it is the Departmental Minister who had granted the approval while acting on behalf of the Governor.

10. It is further submitted that Article 166(2) and 166(3) of the Constitution of India provides for authentication to be made on behalf of the Governor in respect of executive action. It is noteworthy that the grant of sanction under Article 351-A is not an executive action. Further the bare reading of the text and language of Article 351-A of Civil Service Regulations itself demonstrates the legislative intent that **"The Governor reserves to himself the right of liberty for withholding the pension or any part thereof"**. The said issue has been considered by the Division Bench of this Hon'ble Court in **Z.U. Ansari Vs. State of U.P., Writ-A No. 19485 of 2012** subsequently followed in Writ-A No. 393 of 2025- **Smt. Sarita Yadav Vs. State of UP. and 3 others.**

11. Furthermore the Lucknow Bench of this Court in a recent judgment of this Court in **Gaya Prasad Vs. State of U.P. and another** bearing **Special Appeal No. 408 of 2021** has categorically terms held as follows:

"21. In terms of the provisions contained in Article 351-A of the CSR, it is the Governor who reserves to himself the right of withholding or withdrawing a pension or any part of it and right of ordering the recovery from a pension. Opening words of Article 351-A, namely, 'The Governor reserves to himself the right' are very important to be noticed. The use of this phrase would mean that no one else has a right including Disciplinary Authority or Appointing Authority to withdraw or withhold pension and ordering recovery from pension in respect of government servant who has retired on attaining the age of superannuation. In this view, the action, if any, against a government servant, who has retired, is permissible to be taken only by the Governor and no one else."

12. The aforesaid judgment has subsequently been upheld by the Hon'ble Apex Court in **Special Leave Petition (Civil) Diary No. 33809 of 2023** in its order dated 17.02.2025.

13. While advertising to the argument pertaining to the proceedings being time barred, the learned Additional Advocate General could not dispute the fact that the proviso appended to Article 351 A provides for period of 04 years is to be computed from the date of occurrence of the event while the explanation appended to Article 351-A provides that the institution of proceedings shall be from the date of framing of charge.

14. It is not in dispute that the event in respect of which proceedings under Article 351-A have been drawn pertains to 09.01.2021 to 12.02.2021 and the charge-sheet and order initiating proceedings under Article 351-A have been issued on 31.01.2026 i.e. more than 04 year period.

15. Prima Facie case is made out in favour of the petitioner.

16. Admit.

17. Issue notice. Since all the respondents have already been represented, notices need not be issued.

18. As prayed, six weeks' time is granted to the counsel for the respondents to file counter affidavit. Petitioner will have two weeks thereafter to file rejoinder affidavit.

19. List after the exchange of affidavits.

20. Until further orders of this Court, effect and operation of the office order dated 31.01.2026 as well as the Charge-sheet dated 31.01.2026 issued by the Respondent Nos.2 & 3, copies of which were appended collectively as Annexure-1 to the writ petition, shall remain stayed.

(Prakash Padia,J.)

May 4, 2026
Swati