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**(2006) 11 BOM CK 0009**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 156 of 2003**

Ashok Udaram Pathrabe

APPELLANT

Vs

Maharashtra Remote Sensing Application Centre and Others

RESPONDENT

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**Date of Decision :** 29-11-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227, 311, 311(1), 311(2)  
Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 6, 7

**Citation :** (2007) 1 ALLMR 717 : (2007) 1 MhLj 519

**Hon'ble Judges :** V.C. Daga, J;A.B. Chaudhari, J

**Bench :** Division Bench

**Advocate :** C.S. Kaptan, for the Appellant; A.R. Patil, for the Respondent

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## Judgement

V.C. Daga, J.—This petition is directed against the order dated 8th May, 2000 passed by the respondent No. 3 and the order dated 1st June, 2001 passed by the respondent No. 1; communicated to the petitioner vide letters dated 11th February, 2002 and 11th September, 2002; whereby the petitioner came to be dismissed from service after departmental enquiry. The Facts

2. The facts giving rise to the filing of this petition are as under:

3. The petitioner was working as Accounts Officer with the Maharashtra Remote Sensing Application Centre, Nagpur (the " MRSAC" for short); which is a Society registered under the Societies Registration Act. It receives grant from the State Government. It has to function as per the policy of the State Government.

4. It has framed its own bye-laws and service rules known as the "Service Rules and Procedure" for the Personnel and Administrative affairs. The post of Accounts Officer in the pay-scale of Rs. 2000-3500 was created from 3-11-1992 with due approval from the Government of Maharashtra. The petitioner was appointed as Accounts Officer by an order dated 14-10-1994.

5. The Governing Body of the MRSAC comprises of the Chief Secretary of the State as Ex-officio Chairman and 12 members which include Secretaries to the

Planning, Agriculture and Co-operation, Irrigation, Rural Development Departments, Chief Conservator of Forest, Director of Technology etc. The Governing Body of the MRSAC approved and passed a resolution on 15th June, 1992 authorising the Executing Committee to make appointment to the posts upto the pay-scale of Rs. 2200-3700. The Executive Council of the MRSAC consists of the Director as Chairman with three other members of the Governing Body.

6. The petitioner, during the course of employment, came to be served with charge-sheet dated 1-6-1999 for having committed acts constituting misconduct. The charge-sheet contained the following charges:

(A) That, the petitioner claimed an amount of Rs. 4116/- for journey from Nagpur to Kolhapur and back without giving proof of purchasing tickets. The ticket numbers given by petitioner in the claim were false as communicated by the Railway Authority.

(B) Petitioner had shown gross indifferent behaviour by -

(i) not preparing the T.A. Bills of the Director for the month of March, 1999 for journey to Sindhudurg, Mumbai, Hyderabad and raised several objections without any authority and did not pay the amount.

(ii) disobeying orders of superiors and tried to evade responsibility of settlement of final bill of the sub-consultants/contractors.

(C) The petitioner raised unwarranted objection regarding the salary bills of some MRSAC staff and stalled payment of salary and created unpleasant atmosphere. He did not obey the order of the Director.

(D) Petitioner published news item in newspaper maliciously on 13th March, 1999, 16th March, 1999, 18th March, 1999 and 29th April, 1999.

(E) Petitioner deliberately avoided to sign the attendance Register for six months from October, 1998 to March, 1999.

(F) On 17-5-1999 the petitioner refused to accept the letter of suspension and removed some confidential documents from the office.

(G) Petitioner tried to put pressure on the Director to revoke order of suspension.

7. The petitioner was informed that the departmental enquiry would be conducted against him under the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. One Shri M. P. Tanksale was appointed as an Enquiry Officer while one Shri D. B. Deore was appointed as Presenting Officer to represent the MRSAC administration.

8. The departmental enquiry was commenced from September, 1999. It was completed in the month of March, 2000. The Enquiry Officer submitted his report and held the petitioner guilty of Charge Nos. (A), (B)(i), B(ii) and (C) having been proved and held that charge Nos. (D), (E) and (G) were not proved;

whereas charge No. (F) was partly proved.

9. A show-cause notice was issued by the Director to the petitioner on 13-4-2000 along with copy of enquiry report, calling upon him to show-cause, within seven days, as to why he should not be dismissed from service and amount of Rs. 4116/- on account of LTC claim be not recovered from him.

10. The petitioner submitted his reply to the said show-cause notice vide his letter dated 24-4-2000 and requested for grant of personal hearing and ultimately, he came to be dismissed from service by an order dated 8th May, 2000 issued by the Director of MRSAC.

11. The petitioner preferred appeal against the above order before the Governing Body. The Governing Body dismissed his appeal without recording any reasons in support of its order.

12. The petitioner, thereafter, preferred revision before the Chairman of the MRSAC on 22-9-2001. However, the revision also came to be dismissed.

13. The present petition has been preferred by the petitioner under Articles 226 and 227 of the Constitution of India to challenge the above adverse orders.  
Submissions

14. Mr. C. S. Kaptan, learned Counsel for the petitioner would urge that the disciplinary enquiry stood vitiated against the petitioner since the charge-sheet was issued by the Director and not the Competent Authority viz. the appointing authority. According to him, the Director, MRSAC was neither appointing authority nor disciplinary authority for the post of Accounts Officer. He placed reliance on Rules 6 and 7 of the MCSR (D and A) Rules in support of his submissions.

15. Mr. Kaptan further submits that, during the course of enquiry, the documents demanded by the petitioner were not supplied to him and that has caused prejudice to the defence raised by the petitioner, he further urged that the findings of the Enquiry Officer being perverse, the enquiry is liable to be set aside.

16. Mr. Kaptan while elaborating his submissions, took us through the Memorandum of Association of the MRSAC and urged that, initially, the power to appoint was with the Director in view of clause 13 (b) of the Memorandum of Association. However, subsequent to the resolution adopted in the 9th Governing Body meeting held on 15-6-1992, the power to appoint candidates against already approved technical and non-technical posts upto the pay-scale of Rs. 2200-3700 was given to the Executive Committee. As such, in his submission, after 15th June, 1992 the Director had no power to appoint any person to the post falling within the pay-scale of Rs. 2200-3700. Mr. Kaptan, thus, submits that the action of dismissal taken by the Director, MRSAC not being in accordance with the rules and the same being beyond the powers of the Director, is liable to be quashed and set aside.

17. Mr. Kaptan would further urge that the findings of the Enquiry Officer on charge No. 1 is unsustainable since letters dated 25-2-2000 and 8-2-2000 were not placed during the enquiry. By virtue of the letter dated 25-2-2000 the Divisional Office, Commercial Branch of the Central Railway informed the Director MRSAC that upon investigation it was found that Ticket No. 91828867 was issued Ex-Nagpur to Howrah in AC 2-tier by 2859 on 5-11-1997 for Rs. 1233/- and the same was cancelled on 5-11-1997 vide Ticket No. 71830283 and amount of Rs. 1223/- was refunded, to the purchaser. By another letter dated 8-2-2000 it was informed by the Divisional Commercial Manager, South Eastern Railway that 1st class coach was withdrawn from the composition of Maharashtra Express Train No. 7384 ex-Gondia with effect from 3-10-1996. In his submission, these two letters could not be allowed to be read in evidence.

18. Mr. Kaptan also assailed findings on Charge No. 2, contending that charge leading to non-payment of T.A. bills of the Director was nothing but exhibits biased approach on the part of the Director, MRSAC as against the petitioner. He further urged that rest of the charges; which were held to be proved against the petitioner, were not based on evidence and that the Enquiry Officer did not properly consider the evidence brought on record. He further urged that Director, MRSAC was interested in removing the petitioner from service. The Director was biased against the petitioner. In his submission, the Director himself could not have taken decision on his own to initiate departmental action against the petitioner. He, thus, urged that the entire action of the respondents is vitiated and the same is liable to be quashed and set aside and the petitioner is liable to be reinstated in service with all back-wages with all consequential monetary and other benefits.

19. Per contra, Mr. A.R. Patil, learned Counsel appearing for respondents supported the action of dismissal of petitioner from service and urged that the appointing authority of the petitioner as per Service Rules was and is the Director of MRSAC. He relied upon appointment letter which was issued in favour of the petitioner appointing him as Accounts Officer; under the signature of the Director. He, thus, urged that the Director, MRSAC being appointing authority has rightly taken action against the petitioner.

20. Mr. Patil also placed reliance on the Memorandum of Association of the Society in general and on clause 13(b) in particular to contend that the Director was very much entitled to appoint person on the post of Accounts Officer and take disciplinary action against such person and consequently, inflict punishment on him.

21. Mr. Patil also placed reliance on the service rules whereunder appointing authority is defined as Director of the MRSAC. He also urged that the Director being the Chief Executive Officer was entitled to frame charges and issue charge-sheet to the petitioner. That, under the resolution adopted in the meeting of the Governing Body, it does not supersede or overrule the powers of the Director already given to him. As such, the impugned action is liable to be sustained,

22. Mr. Patil also urged that the issue about absence of authority in the Director to inflict punishment or that he is not an appointing authority is being canvassed for the first time before this Court and as such, contention raised in this behalf should not be entertained by this Court.

23. Mr. Patil further urged that the Enquiry Officer was independent retired IAS officer. He has conducted enquiry in consonance with the principle of natural justice. Enquiry being fair, proper, the petitioner could not demonstrate any breach of the principles of natural justice much less any prejudice suffered by him though wild allegations against the Enquiry Officer and the Director of MRSAC are made.

24. Mr. Patil brought to our notice that the respondent MRSAC has been registered as Society under the Societies Registration. It has framed its own Articles of Association to govern its administration. Articles of Association do make a provision giving power to the Director to appoint and prescribe terms and conditions governing their service contracts. That the relevant clause 13 reproduced hereinbelow provides for functions and powers of the office bearers:

13. Functions and Powers of the Office Bearers:

(a) The Chairman of the Governing Body shall preside over all the meetings of the Governing Body. He will also guide and supervise in general the working of the center.

(b) The Director of the Centre shall be the Chief Executive Officer of the Centre. Subject to the general superintendence, direction and control of the Governing Body and such general or special instructions that the Governing Body may issue from time to time, he shall be responsible for convening the meetings, for appointment of staff and prescribing terms and conditions governing their service contracts, for maintenance of the records and for making all correspondence for and on behalf of the Centre. He shall formulate, co-ordinate and supervise the programmes and projects undertaken by the Centre to ensure their successful implementation.

25. Mr. Patil also brought to our notice the Minutes of the Eighth Meeting of the Governing Body of the MRSAC whereunder Service Rules annexed as Appendix-I to the Minutes are framed. That Clause 1.4 thereof defines various phraseologies and words used in the said Service Rules. Following definitions relevant for the purpose were pressed into service by Mr. Patil:

(iii). "DIRECTOR" means the Director of the MAHARASHTRA REMOTE SENSING APPLICATIONS CENTRE, NAGPUR.

(iv) ... (v)...

(vi) "APPOINTING AUTHORITY" means the Director of the Centre.

(vii)...

(viii) " "SELECTION COMMITTEE" means a Committee constituted by the Director, MRSAC for recruitment purpose against the post approved by the Governing Body under the general authority or the powers given by the Governing Body, MRSAC consisting of Director, MRSAC as Chairman, one or two members of Governing Body as members and two to four Expert members nominated by the Director, MRSAC, with the Administrative Officer as Member Secretary of the Committee.

26. Based on the above Rules, Mr. Patil tried to contend that the Director was the Appointing Authority and, therefore, he was well within his right to inflict punishment on the petitioner.

27. As against the above, in rejoinder, Mr. C. S. Kaptan pressed into service extract of Minutes of 9th Meeting of the General Body of MRSAC held on 15-6-1992 wherein vide item No. 6, a resolution was adopted by the Governing Body captioned as "Approval of Powers of Executive Committee", bestowing powers of appointment on the Executive Committee, the relevant clauses of which read as under:

The powers proposed in the agenda note were considered by the Governing Body and the powers approved by the Governing Body are as under:

The Administrative Officer of MRSAC is nominated as "Secretary" not as Member-Secretary and committee shall exercise the following powers:

a) To appoint candidates against the already approved technical and non-technical posts upto a pay scale of Rs. 2200 to 3700.

b) ...

c) To recommend the cases of promotion, punishment etc. of MRSAC employees to Governing Body.

(Emphasis supplied).

28. Mr. Kaptan, based on the aforesaid resolution adopted in the 9th Governing Body meeting held on 15th June, 1992 urged that the service rules incorporated in Appendix-I stand superseded and the powers to appoint candidates against technical, and non-technical posts were and are given to the Executive Committee whereas power to punish was and is with the Governing Body based on the recommendation of the Executive Committee. He, thus, urged that the powers of the Director are taken away and are given to the Executive Committee, Mr. Kaptan submits that the Director never had power to appoint; he only had power to issue appointment order as per clause 1.2 of Appendix-II annexed to the statement showing delegation of power to the Director. In the alternative, he submits that if at all the powers to make appointments at one point of time were assumed to be in favour of the Director prior to 14th June, 1992, the same cannot be assumed in his favour on the date when the appointment of the petitioner was made and punishment was inflicted on him.

29. Mr. C. S. Kaptan, borrowing assistance from the judgment of the Apex Court in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , pressed into service the principle of statutory interpretation contained in latin maxim *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws) and went on to urge that the later resolution has abrogated the earlier contrary resolution. According to him, subsequent resolution adopted in a Governing Body meeting held on 15th June, 1992 must hold the field. Consequently, the punishment of dismissal inflicted by the Director is without authority of law.

30. Mr. Patil, on the other hand, however, urged that as per rules which govern the service conditions of the staff of the MRSAC, the Director was specifically empowered to initiate such action and appoint the person like petitioner and, therefore, he was well within his right not only to initiate departmental enquiry and issue charge-sheet, but to punish employee like the petitioner herein.

31. Mr. Patil further urged that the Appellate Authority has rightly rejected appeal and thereafter revision was properly decided against the petitioner. According to him, no interference with the impugned orders is warranted.

#### Consideration

32. Having heard rival parties, one of the contentions on the merits of the matter is that during the course of enquiry, the documents demanded by the petitioner were not supplied to him and that has caused prejudice to the defence raised by the petitioner. However, it is clear from the record that the documents demanded by the petitioner (at page 101 of the petition) containing 18 documents were already supplied to the petitioner. We are satisfied that the documents which were relied upon by the petitioner, were supplied to him during the course of enquiry. The Enquiry Officer, by a reasoned order, has considered the request of the petitioners on the documents demanded by him vide his letter dated 16-9-1999 and directed the employer to supply documents which were relevant to the charges levelled against him. We were taken through the said order dated 8-10-1999 (Annexure-IX) and we are satisfied that the order passed by the Enquiry Officer was in accordance with law.

33. Apart from the above, the petitioner could not establish any prejudice suffered by him due to non-supply of certain documents which, in the opinion of the Enquiry Officer, were not relevant to the charges framed against the petitioner. Thus, the contention raised by the petitioner that the documents demanded were not supplied to him and that non-supply of certain documents has caused prejudice to him, is devoid of any substance.

34. Learned Counsel appearing for the parties, have also taken us through the evidence brought on record against each charge levelled against the petitioner. The petitioner himself did not enter in the witness box. He did not offer himself for cross-examination. He did not produce any material to show that he had travelled from Nagpur to Kolhapur with a view to avail of the Leave Travel

Concession (L.T.C). On the contrary, ticket numbers given by him were turned out to be false and bogus. These numbers did not relate to the journey of the petitioner from Nagpur to Kolhapur.

35. The petitioner did not disclose any details with respect to his return journey. He did not produce any ticket muchless ticket numbers or train number, during the course of enquiry, to show that he had actually travelled back from Kolhapur to Nagpur. Had he really travelled back from Kolhapur to Nagpur, it would not have been difficult for him to give tickets or ticket numbers with train number to establish his defence. Had he offered himself for cross-examination, he would have been exposed very badly. He thus kept himself away from the witness box. In this case, the employer had moved an application for permission to cross-examine the petitioner. The said application was strongly opposed by the petitioner. He refused to enter into witness.

36. The bounden duty of a party, personally knowing the whole circumstance of the case, to give evidence on his own behalf and to submit to cross-examination, has been considered by the Privy Council in the case of Gurbaksh Singh v. Gurdial Singh reported in 29 Bom. LR. 1392. The relevant portion reads as under:

It is the bounden duty of a party, personally knowing the whole circumstance of the case, to give evidence on his own behalf and to submit to cross-examination. His non-appearance as a witness would be the strongest possible circumstance going to discredit the truth of his case.

37. This Court has also taken similar view in the case of Pirgonda Hongonda Vs. Vishwanath Ganesh and Others, . The relevant head note reads as under:

Normally a party to the suit is expected to step into the witness box in support of his own case and if a party does not appear in the witness-box it would be open to the trial Court to draw an inference against him. If a party fails to appear in the witness box, it should normally not be open to his opponent to compel his presence by issue of a witness summons....

38. Here is a case wherein the actual travel with the benefit of LTC has not been proved by the petitioner in the witness box in spite of calling upon petitioner to offer himself for cross-examination. Where a party does not enter into witness box and states its own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct, as has been held by this Court in Martand v. Radhabai AIR 1931 Bom. 97.

The aforesaid principle would hold good even while considering the case of departmental enquiry.

39. Under these circumstances, finding recorded by the Enquiry Officer on the first charge has been adequately proved. As a matter of fact, the first charge/misconduct alleged against the petitioner itself is a very serious charge against the petitioner which leads to an act constituting fraud, dishonesty and

concealment on the part of the petitioner. The said charge has been proved against the petitioner beyond doubt and, therefore, it is not possible for us to hold that the said charge has not been proved against the petitioner.

40. The second submission of Mr. Kaptan that the Director, MRSAC was biased against the petitioner, also does not hold good since no evidence was produced by the petitioner during the course of enquiry to substantiate his defense. He did not enter in the witness box to depose in support of his defence. No documentary evidence in support of his defence is available on record. The enquiry officer has recorded adverse finding on this count with which no fault can be found. In this view of the matter, it is not possible to accept the contention advanced by Mr. C. S. Kaptan so far as second charge is concerned.

41. The third charge as well as other charges, which were held to be proved by the Enquiry Officer, are concerned, there is sufficient evidence on record to establish those charges. No fault can be found with the view taken by the Enquiry Officer and disciplinary authority. No perversity could be demonstrated by the petitioner. The appreciation of evidence and the findings reached by the Enquiry Officer cannot be faulted.

42. At this juncture, it is needless to mention that as per the law laid down by the Apex Court in the case of B.C. Chaturvedi Vs. Union of India and others, , a judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

43. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappraise the evidence or the nature of punishment.

44. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode

of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence, if the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding; and mould the relief so as to make it appropriate to the facts of that case.

45. In Union of India (UOI) Vs. H.C. Goel, , the Apex Court held that if the conclusion upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

46. In the case at hand, findings of the Enquiry Officer are based on evidence brought on record during the course of enquiry. The findings are reached that some of the charges, grave in nature, are proved, against the petitioner. It was within the exclusive domain of the Enquiry Authority to reach that conclusion. There is sufficient evidence in support of the findings recorded by the Enquiry Officer and accepted by the Disciplinary Authority outrightly.

47. In the above view of the matter, contentions raised by Mr. C. S. Kaptan on merits of proof of charges, is devoid of any substance and the same is liable to be rejected.

48. Having said so, now we turn to the technical questions raised by Mr. C. S. Kaptan that the charge-sheet has been issued by the Director, who is not an Appointing Authority of the petitioner. As such, the enquiry is vitiated.

49. It is not in dispute that the petitioner cannot seek any protection under Article 311 of the Constitution of India since it applies to the members of Civil Services of the Union or an All India Service or a Civil Service of a State or a member who holds a civil post under the Union or a State as held by the Apex Court in the case of State of Bank of India Vs. S. Vijaya Kumar, and followed in the case of Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, .

50. The above judgment of the Apex Court in SBI v. S. Vijayakumar is considered by the learned Single Judge of this Court in case of Mannlal Yadao Vs. Presiding Officer, Second Labour Court and another, and it is held that petitioner, an employee of the Road Transport Corporation in that case, could not claim the protection of Article 311(1) of the Constitution of India since he does not hold a civil post and was an employee of the Corporation.

51. Even otherwise, Article 311 of the Constitution of India does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that enquiry should be done at its instance.

52. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, as held in the case of State of Madhya Pradesh and Others Vs.

Shardul Singh, and followed in the case of State of U.P. and Another Vs. Chandrapal Singh and Another, .

53. The above decisions of the Supreme Court are followed by the Supreme Court in later two decisions in the case of Inspector General of Police and another Vs. Thavasiappan, and Director General of Police and Others Vs. R. Janibasha, .

54. All the above four cases are considered by the Supreme Court in the case of Steel Authority of India v. Dr. R.K. Divekar reported in 1998 L IC 2122. In the Last case, the Supreme Court quoted the portion of judgment from Director General, E.S.I. and another Vs. T. Abdul Razak, etc., as under:

With regard to initiation of disciplinary proceedings by the Regional Director, we find that the legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be controlling authority who may be an officer subordinate to the appointing authority.

55. In the case of State of U.P. v. Chandrapal Singh (supra), it is observed by the Supreme Court in paragraph 8 as under:

Thus, looking to the terms and contents of Article 311(1) of the Constitution, it does not follow that even initiation or conduct of inquiry proceeding should be by that authority itself, which is empowered to dismiss or remove an official under the said article, unless there is an express rule governing the official requiring it to be so.

56. In the above view of the matter, the charge-sheet issued by the Director, MRSAC who is superior officer to the petitioner is perfectly legal and valid. On this count, submission made by Mr. Kaptan is devoid of any substance and is liable to be rejected.

57. Having held that the issuance of the charge-sheet by the Director-superior officer is legal and valid, let us turn to the question as to whether the said superior officer was competent to inflict punishment of dismissal.

58. In the case of State of M.P. v. Shardul Singh (supra) the Apex Court categorically held that only right guaranteed to civil servant under Article 311(2) of the Constitution of India is that he shall not be removed by an authority subordinate to that by which he was appointed. However, it is not in dispute that the petitioner did not have such right since he was not a person holding civil post being an employee of the MRSAC. As such, petitioner cannot claim protection under Article 311(1) or (2) of the Constitution.

59. Having considered the rival submissions advanced by the learned Counsel for the parties to the petition, it is clear that the Director had a power to appoint as per service Rules upto 14th June, 1992 i.e. prior to later resolution dated 15th June, 1992. In view of the subsequent resolution dated 15th June, 1992 the said

power stood abrogated. The power to punish either stands vested with the Executive Council or on its recommendation in favour of the governing body. Since we are not called upon to decide as to who is competent to inflict punishment - whether the Executive Committee or the Governing Body, we refrain ourselves from making any observation in that behalf. However, we are of the considered opinion that the Director of MRSAC did not have power to punish the employee appointed after 15th June, 1992. Since the petitioner was appointed on 14-10-1994, his appointing authority was Executive Committee and not the Director. As per delegation of duty, he was only empowered to issue appointment order.

60. In the above view of the matter, the last submission made by Mr. C. S. Kaptan referred to in paragraphs 27 to 29 (*supra*) for the reasons canvassed by him needs acceptance. The order of dismissal or removal of the petitioner from service issued by the Director is liable to be quashed and set aside being without authority of law.

61. Having said so, now the question that needs consideration is : what relief the petitioner should get in the present petition. Turning to the pleadings and prayer clauses incorporated in the petition, one has to reach to the conclusion that there are no pleadings in the petition to show that the petitioner was unemployed during the period of removal till the date of filing of the petition or thereafter. No demand is made in the petition for back-wages. In other words, no relief is claimed with respect to the back-wages, maybe, because of gainful employment of the petitioner. In that view of the matter, the petitioner would not be entitled to claim back-wages.

62. Having held that the Director, MRSAC had no power to remove/dismiss the petitioner from service, order of removal/dismissal is in patently in violation of the rules/resolutions of the MRSAC.

63. We, set aside order passed by the Director, MRSAC and, hold that the order passed by the Director, MRSAC removing petitioner from service is bad and illegal. The petitioner must accordingly be deemed to continue in service until, if so advised, the MRSAC takes appropriate steps to bring his service to an end. Rule is made absolute in terms of this order with no order as to costs.