

(2020) 01 PAT CK 0422

In the Patna High Court

Case No : Letters Patent Appeal No. 833 Of 2014, Civil Writ Jurisdiction Case No. 11307 Of 2011

State Of Bihar And Ors

APPELLANT

Vs

Manoj Madhup And Anr

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

General Clauses Act, 1897 — Section 6
Government of India Act 1935 — Section 240
Police Act, 1861 — Section 7
States Reorganisation Act, 1956 — Section 115(7), 116(1), 116(2)
Companies Act, 1956 — Section 619, 620
Bihar Police Manual, 1978 — Rule 639, 653, 653(a), 653(b), 656, 659(a), 659(b), 659(d), 659(e), 668, 672, 824A, 825, 828, 853, 853(A)
Bihar Service Code, 1979 — Rule 74, 165
Bihar Board's Miscellaneous Rules, 1958 — Rule 3
Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 — Rule 2(iii), 2(j), 14, 18, 32
Food Corporation of India (Staff) Regulation, 1971 — Regulation 56, 57, 58, 59

Citation : (2020) 01 PAT CK 0422

Hon'ble Judges : Shivaji Pandey, J;S. Kumar, J;Mohit Kumar Shah, J

Bench : Full Bench

Advocate : Anjani Kumar, Amit Kumar Jha, Shailendra Kumar Singh, Ambuj Nayan Choubey, Sanjay Kumar Singh

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties.

This case has been referred before this Full Bench in view of the order dated 5.10.2016 passed by the Division Bench and this Full Bench has been called upon to answer the question of law as to whether a government servant can be dismissed from service by an authority who is the appointing authority in terms of the Rule, although the incumbent was appointed by an authority, higher in rank than the appointing authority, as much as, learned Single Judge has held

that the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur has not appointed the present writ petitioner, hence, in terms of Article 311 of the Constitution of India read with Rule 825 of the Police Manual, he cannot pass an order of removal of the writ petitioner from his service, since he was appointed by the Inspector General of Police. Interestingly, the Deputy Inspector General of Police under Rule 825 has an authority to inflict punishment of removal to the rank of Sub-Inspector but, the present petitioner, being a Sub-Inspector, was in fact appointed by the Inspector General of Police.

The short facts of this case are that Sri Manoj Madhup, respondent no.1, on recommendation of Central Selection Board of Police Headquarters, Bihar was appointed to the post of Sub-Inspector of Police in August, 1994 by the Inspector General of Police (Admn), Bihar, Patna. After the bifurcation of the State of Bihar, he was posted as Officer In-charge, Panapur (O.P.) under the police station Kanti, Muzaffarpur. As per his claim, on 30.10.2007, he got inflicted with high fever suddenly whereafter got himself examined before the Kanti Referral Hospital, a Government Hospital, at 2.30 PM and the temperature was recorded as 104 degree F, as such, he was advised to take rest for three days by the attending doctor. As per his claim, he recorded in the station diary, entry No. 503, at 15.30 PM, about his sickness and handed over the charge to S.I. Krishna Murari Prasad which he informed to the Police Information Room (P.I.R.) through wireless. The attending doctor, namely, Dr. Y.K. Singh advised him complete bed rest for three weeks on 2.11.2007 as in his opinion, Manoj Madhup was suffering from jaundice and prescribed medicines. Consequently, the entry was made in the station diary of the status of the petitioner to be sick. On 26.3.2008, on account of his remaining absent, he was put under suspension with effect from 25.3.2008 and his Headquarter was fixed as Police Line Muzaffarpur. Accordingly, he reported to the Police Line, Muzaffarpur but, he failed to reply within three days to the show-cause issued with regard to his absence, which was on account of illness of his father. In the meanwhile, on 23.4.2008, the departmental proceeding was initiated against the petitioner and Sri Chhatranil Singh, A.S.P. (Town) was made the Conducting Officer. He appeared before the Conducting Officer, submitted his show-cause, explained the cause of his absence, which accordingly was sufficient and good reason for his absence on account of protracted illness. While the proceeding was pending, he approached the Superintendent of Police, Muzaffarpur apprising his reasons for being absent, attaching his medical certificate and, thereafter, his suspension was revoked with immediate effect i.e. on 24.2.2009 and it was further directed that his salary should be paid. After enquiry, a show-cause notice was received from the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur by Sri Manoj Madhup (petitioner) as to why he should not be dismissed from service on account of proving of charge of his absence from the O.P. without any reasonable cause and, finally, the Deputy Inspector General of Police, Tirhut Region, Muzaffarpur vide Memo No. 01 dated 3.1.2011 dismissed him from service for an act of misconduct of unauthorized absence which would create adverse impact on other police personnel and the

same was communicated by Senior Superintendent of Police vide Memo No. 282 dated 23.1.2011. The order of dismissal from service was challenged in a writ application bearing C.W.J.C. No. 11307 of 2011 and the learned Single Judge vide order dated 18.12.2012 quashed the order of dismissal having held that Sri Manoj Madhup was appointed by Inspector General of Police, in terms of Article 311 of the Constitution of India read with 825 of the Police Manual, hence he was only the competent authority, who could have passed the order of dismissal/termination/removal from service, as Rule 825 of the Police Manual does not envisage that such power could be exercised by the Deputy Inspector General of Police. Accordingly, the writ Court set aside the order of dismissal and remitted the matter back to the appropriate authority i.e. Inspector General of Police, with a direction to pass a fresh order after considering the second show-cause reply without being influenced by the earlier order of termination passed by the Deputy Inspector General of Police, respondent no.3. The same has been challenged in the present appeal and this Court in the Division Bench, taking note of Rule 653, 656 and 825 of the Bihar Police Manual, 1978 and placing reliance on the judgment of Hon'ble Supreme Court in the case of FCI Vs. Sole Lal reported in AIR (2006) SC 264, doubted the correctness of the order of the learned Single Judge and has referred the matter to the Larger Bench for consideration on following questions of law:-

"(i) Whether, if the appointing authority in terms of the Rule is Deputy Inspector General of Police but the letter of appointment is issued by the office of the Inspector General of Police, then whether the order passed by the Deputy Inspector General of Police can be said to be valid?

(ii) Whether the expression appointing authority and the authority which appointed a candidate have different connotation in law, therefore, the Deputy Inspector General of Police cannot pass an order of punishment?

Submission on the provisions of Police Manual

In terms of the provision of Rule 653 of the Bihar Police Manual, it stipulates that the Inspector General of Police will intimate to each Deputy Inspector General the number of vacancies allotted to each district and the Criminal Investigation/Intelligence Departments, the number of seats to be filled up by direct recruitment and by promotion from the cadre of Assistant Sub-Inspector. Rule 656 deals with process of recruitment as envisaged through Public Service Commission, sub-clause (b) of Rule 656 stipulates that the Deputy Inspector General will issue the appointment letters to the selected candidates on the advice of the Commission and will direct them to report to the Principal Police Training College. On the strength of this provision, it has been submitted by the Additional Advocate General that though the Inspector General of Police has appointed the writ petitioner but, it is a single transaction, every time, the Deputy Inspector General of Police did the job of issuance of appointment letter to the successful candidate. So in view of this provision, it cannot be said that the Deputy Superintendent of Police does not have the power to remove or

dismiss an officer to the rank of Sub-Inspector of Police. He has placed reliance on Section 19 of the General Clause Act as well as Clause 3 of Bihar Board Miscellaneous Rule in support of his submission that the higher authority has same power to exercise the power of lower authority. Further submitted that the Committee of Inspector General of Police and Deputy Inspector General of Police was constituted and in view of Clause 3 of the Board Misc. Rule, the Inspector General of Police has exercised the power of the Deputy Inspector General of Police, put his signature on the appointment letters of successful candidates related to the post of Sub-Inspector of Police. He placed reliance on the provision of Rule 653, 656, 659(b), (d) and (e), 668, 825, 825, 828, 853, 853(A) and also placed reliance on the Police Manual, Vol.-3 Appendix 41 and Appendix 72 and placed reliance on the judgment in the case of State Bank of India Vs. S. Vijaya Kumar reported in AIR 1991 SC 79, para-20, 21, 22, 25; in the case of Union of India & Ors. Vs. Rajendra Singh reported in AIR 1993 SC 205 para-8 & 12 and in the case of FCI & Ors. Vs. Sone Lal reported in AIR 2006 SC 264.

Learned counsel for the respondents has submitted that the petitioner was appointed by the Inspector General of Police, as being civil servant, the service condition is governed by the provision of Article 311 of the Constitution of India read with Rule 825 of the Bihar Police Manual and also placed reliance on Rule 824 (A) of the Bihar Police Manual and certain provisions of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter to be referred to as 'the Discipline & Appeal Rule') viz Rule 2(iii) 2(j), Rule 18 and Rule 32 and also placed reliance on the amendment made in Police Manual adding new Rule 623(A) vide gazette notification dated 8th July, 1992, Rule 639, 653 and 656, submitted that since the provision of 311 and Rule 825 have been framed in the manner that only the person who has appointed the government servant has the authority to dismiss/remove/terminate the employee from service, the doctrine of de facto will apply and not the doctrine of de jure as, in fact, it has to be seen as to who has appointed and not who is legally empowered to remove from the services of Sub Inspector of Police. The learned counsel for the respondent has placed reliance on the judgments N. Somasundaram Vs. State of Madras, 1956 Madras 419 para-41; Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg & Anr., 1977 SC 747 para 28, 1957 MP 120 para 44; Laxmi Narayan Pandey Vs. State of Madhya Pradesh, 2013 16 (SCT) 874 equivalent to 2013 LIC 1514 para 83 and, on that basis, he has submitted that only the Inspector General of Police could have passed the order of dismissal, as against the petitioner.

The State in reply has placed reliance on the judgment reported in the case of Madan Lal Chawla Vs. The Principal, Harcourt Butler Technological Institute, Kanpur & Ors., AIR 1962 Alahabad 166 para 26, 28; T. Cajee Vs. U. Jormanik Siem & Ors. AIR 1961 SC 276 para-11; Om Prakash Gupta Swadheen Vs. Union of India & Ors., AIR 1975 SC 1265 and finally placed reliance in the case of Union of India & Ors. Vs. B.V. Gopinath reported in 2014 (1) SCC 351 para 39, 40, 43, 44 and 46.

In nutshell, it has been argued that as the petitioner was appointed by the Inspector General of Police, he was/is the only authority to dismiss/remove/terminate the services of Manoj Madhup, the respondent no.1. It has been further submitted that the reference should be answered in the manner that the Deputy Inspector General of Police has wrongly dismissed him from the service as the writ petitioner was appointed by the Inspector General of Police and the connotation of Appointing Authority and the Authority who has appointed a candidate, cannot be construed same in law, one proposes the applicability of de jure principle is the Appointing Authority and the Authority who has appointed a candidate is a concept of de facto, so, both cannot be construed to be having the same meaning.

The seminal question involved for consideration in the present case is as to whether the Deputy Inspector General of police, who was the appointing authority but, the appointment was made by the Inspector General of Police, could have passed the order of dismissal against the petitioner.

In nutshell, the issue is as to whether in case the authority who has appointed is higher in rank than the appointing authority who could have appointed the petitioner, the appointing authority i.e. the Deputy Inspector General of Police, in the present case, in exercise of his power, could dismiss the respondent no.1 from his services and as to whether the same would be in-consonance with Article 311 of the Constitution of India r/w Clause 825 of the Bihar Police Manual, as in both the provisions, it exposit that no civil servant will be dismissed or removed by an authority subordinate to the one which has appointed. Reliance has been placed on the provision of Rule 2(f)(iii) which defines the appointing authority as it mentions as to who has appointed the Government servant to such service, grade or post, as the case may be. So, emphasis has been given as to who has actually appointed the civil servant and further has been placed reliance on 2(j), which defines, the Disciplinary Authority to mean the Appointing Authority or any Authority authorized by it who shall be competent under these Rules to impose on a government servant any of the penalties specified in Rule 14 and reliance has also been placed on Rule 18 which says that a disciplinary authority would take an action on receipt of the enquiry report.

The aforesaid complex issue has been raised by the State to the effect that the Deputy Inspector General of Police, who was the appointing authority, though the writ petitioner was appointed by the Inspector General of Police, cannot be said to be bereft of power to take a decision in the disciplinary matter and pass order accordingly, concisely, jurisdiction of appointing authority to award punishment in terms of Bihar Police Manual is to be considered. The State has submitted that the Inspector General of Police, being senior, has issued the appointment letter, which is a single transaction, hence it cannot be said that the Deputy Inspector General of Police was/is denuded of power to exercise his authority as conferred under the Bihar Police Manual as the Inspector General of Police in terms of Clause-3 of the Board of Miscellaneous Rules may exercise the power of his

junior authority, hence can it be said that it imposes ipso facto embargo on the junior authority who was at the relevant point of time or in the present time is the appointing authority, empowered to take decision. To understand the spectrum of dispute and to resolve the same, this Court will have to examine Article 311 of the Constitution of India as well as different provisions of Bihar Police Manual and connected statutory provisions, which reads as follows:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(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.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]"

In the Government of India Act, 1935, Section 240 deals with the issue relating to tenure of office of persons employed in civil capacities in India. Relevant portion are as follows:-

"240.-(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this subsection shall not apply-

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

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause."

On reading justa opposition, it is lucid that Article 311 and Section 240 of the Government of India Act is similar and same.

Rule 639, 653, 656, 659, 824, 825 and Appendix 41 (4) of the Bihar Police Manual reads as follows:-

"639. Police officers will rank as follows:-

SUPERIOR OFFICERS

- (1) The Inspector-General.
- (2) Additional Inspector-General.
- (3) Deputy Inspector-General.
- (4) Superintendents.
- (5) Assistant Superintendents.
- (6) Deputy Superintendents.
- (7) Reserve Inspectors and other Inspectors.

OTHER OFFICERS

- (8) Reserve Sub-Inspectors.
- (9) Sub-Inspectors.
- (10) Assistant Sub-Inspectors.
- (11) Havildars.
- (12) Naiks.
- (13) Constables.

"653. Sub-Inspectors.-(a) In July, the Inspector-General will intimate to each Deputy inspector-General the number of vacancies allotted to each district and the Criminal Investigation/Intelligence Departments and the number to be filled

by direct recruitment and by promotion of Assistant Sub-Inspector [Rule 659 (a)]. He will also indicate what limitations, if any, are to be observed as to the appointment of any particular sections of the community.

(b) In accordance with Rule 659(a) vacancies up to 50 per cent may be filled by selection from the rank of Assistant Sub-Inspector. The remainder shall be filled in the manner laid down in the following rules.

(c) A requisition shall be sent to Bihar Public Service Commission in the prescribed form in which the informations, about the number of vacant posts, etc. shall be given. The job of holding examination for recruitment to Class III technical and non-technical executive and supervisory posts (including Sub-Inspector) has been given to Bihar Public Service Commission as per Article 320(1) of the Indian Constitution.

656. Selections.-(a) The Public Service Commission shall select the best men for appointment for the post of (i) Reserve Sub-Inspector of armed police, and (ii) Sub-inspector of unarmed police separately depending on the number of vacancies available. While doing this, it is to be noted that for serial (i), the standard of physical tests is higher as given in Appendix 38. Moreover candidates possessing certificates of National Cadet Corps and efficient in sports may be preferred for this post. For serial (ii), preference may be given to those possessing Diploma or degree in criminology. The Commission will bear in mind the desirability of maintaining also approximately the correct percentage of scheduled castes and tribes as given in Appendix 40. The Deputy Inspector-General (Administration) will ensure that verification Rolls in P.M. Form No. 101 are issued in respect of those for whom appointment letters are going to be issued. For this purpose, Superintendents may be directed to get in touch with the authorities concerned for getting it expedited. Thereafter, the candidates shall be referred for medical test before the Civil Surgeon or Deputy Superintendent of Sadar Sub-Divisional Hospital of the place where the candidate resides (see Rule 672). On being declared fit in P. M. Form No. 103 the Deputy Inspector-General will issue appointment letters to the selected candidates on advice of the Commission and will direct them to report to the Principal, Police Training College, on the date fixed generally in January. A detailed list of the candidates appointed will at the same time be sent to the Principal, Police Training College, together with their application forms, verification rolls, medical and other certificates. These papers will form a part of the candidates appointment papers and will be sent to the Superintendents of the districts to which they are subsequently posted [for period of probation (see Rule 668)].

659. Promotion of Assistant Sub-Inspectors.-(a) 50 per cent of the vacancies in the rank of Sub-inspector shall be filled by selection from the rank of Assistant Sub-Inspector who have at least done a minimum of five years service [Rule 653 (b)]. Only selected officers who have shown exceptional merit while serving as Assistant Sub-Inspector will be promoted.

(b) On receipt of information vide Rule 653(a), the Deputy Inspector General will intimate the number of vacancies allotted to each district and call for nominations, to reach him on a date to be fixed.

(c) At least 14 days before nominations are sent to the Deputy Inspector-General the names of the nominees shall be published by district order so that those who are not nominated may have an opportunity of representing their cases before the nominations are actually submitted. Officers having such representations to make should be given interviews and their cases examined with them. In forwarding the nominations a certificate must be given of the dates on which the lists were published and intimations sent to those not nominated. Those not nominated, may submit representation within 14 days to the Deputy Inspector-General which shall be considered by him as early as possible so that in case of necessity, additional nominations may be sent. In selecting Assistant Sub-Inspectors for promotion preference should be given to those who have received special commendation for integrity of character and good detective work.

(d) The Range Deputy-Inspector-General's Board [Appendix 72(3)] shall make selection from those nominated from districts and shall send names for consideration to Central Selection Board [Appendix 72(2)]. This list shall be drawn according to seniority but if any Assistant Sub-Inspector is placed serially above his seniority on the basis of his ability, reasons for such special nomination shall be given. Necessary papers and all papers concerning selection shall be presented before the Central Selection Board [Appendix 72(2)] by the date fixed.

(e) The Central Selection Board [Appendix 72(2)] shall, if necessary, interview the candidates nominated by the Range Deputy Inspector-General's Board and prepare a list of selected candidates for promotion. Names on this list should ordinarily be in order of seniority. If an officer is placed higher in the list than his seniority warrants the reasons for such special nomination shall be recorded. Promotions shall be confined to the selected list framed by the Central Selection Board [Appendix 72(2)] but vacancies shall be filled up range wise according to seniority in the list by the Range Deputy Inspector-General. A copy of the proceedings shall be forwarded to Inspector-General for information who shall endeavour to see that wide disparities do not occur in matter of promotion and confirmation in different ranges and adjustments may be made by suitable transfers of Assistant Sub-Inspectors.

(f) The Central Selection Board shall make 25 per cent more selections of Sub-Inspectors than the number of vacancies so that there is no difficulty in filling casual vacancies. Names beyond 25 per cent may also be kept in this list after getting order of Inspector-General. If anyone in the list does not get promoted in one year, his case shall be reviewed again for inclusion in the next year's list and he shall be placed above them.

(g) Assistant Sub-Inspector shall be on probation for a period of twelve months from the date of the order promoting them to the rank of Sub-Inspector.

824 Description of departmental punishments.-The following punishments which are sanctioned under Section 7 of Act V of 1861 may be inflicted departmentally on a police officer of and below the rank of Inspector :-

- (a) Dismissal,
- (b) removal.
- (c) compulsory retirement.
- (d) reduction in rank.
- (e) forfeiture of last increment(s) or future increment(s),
- (f) black mark or marks,
- (g) censure,
- (h) confinement to quarters for a period not exceeding 15 days,
- (i) punishment drill,
- (j) extra guard or fatigue duty.

Provided that the punishments mentioned in clauses (h) and (j) shall be imposed only on members of rank of constables/Havildars and that in clause (i) shall be imposed only on constables.

Notes. - (1) Superintendents shall use the 'Orderly Room Register' in P. M. Form No. 114, when dealing with cases of misconduct and breaches of discipline. In this register only matters concerning constables and Havildars can be disposed of.

(2) Forfeiture of pay for overstaying leave (Bihar Service Code, Rule I65) and deductions from pay on account of loss or damage to Government property shall not be treated as punishment.

(3) The withholding of previous or the next increment due should be done carefully, specially with regard to those who are going to retire because this shall effect their pension.

(4) Fatigue duty shall not be awarded at a time for more than two hours, in the same way, punishment drill shall never exceed two hours a day nor one hour at a time in addition to ordinary parades. The fatigue duty shall not be for a period more than two weeks and punishment drill for a period more than one week.

(5) For purposes of punishment, an officer, while officiating in a higher rank, shall be treated as belonging, to that rank irrespective of the rank in which the cause of action arose.

(6) In exercise of the powers conferred by the proviso to Article 309 of Constitution of India and Section 7 of the Police Act (V of 1861) the Governor of Bihar has notified vide Memo. No. II. P.C. 1017/70-P. P.-7275, dated the 18th August, 1970 that the order of compulsory retirement should also be included in

the list of punishments at clause (c) of Rule 824. This can be awarded as punishment in departmental proceedings but such a retirement is different from that effected in accordance with Rule 74 of Bihar Service Code which is not considered a punishment (see Rule 854-A).

824-A. (a) Disciplinary action against members of the Indian Police Service shall be instituted according to All India Services (Discipline and Appeal) Rules, 1969.

(b) Action against Deputy Superintendents and their equivalent ranks shall be taken according to Civil Services (Classification, Control and Appeal) Rules, 1930.

(c) Action against ministerial officers shall be taken according to Bihar Subordinate Services (Discipline and Appeal) Rules, 1935.

(d) The Rules concerning members of Bihar Sashastra police are given in a separate Manual.

(e) For experts and other ranks, action shall be taken according to sub-rule (b) above, if Gazetted, and according to sub-rule (c), if non-Gazetted, unless expressly proposed otherwise for any special person. Inspectors of Police are not included in Civil Services (Classification, Control and Appeal) Rules although they are of Gazetted rank and Rule 824 shall be applicable to them like other Police Officers who are recruited according to Police Act, 1861.

825. Officers empowered to impose punishment.-(a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector-General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in Rule 824.

(c) A Deputy Inspector-General may impose on any police officer subordinate to him and below the rank of Deputy Superintendent any of the punishments in Rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector.

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in Rule 824 except dismissal, removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it [see Rule 16(a)].

(e) The punishments noted in Rules 824 (h) and (i) can be awarded by S. D. P. O. also but its record shall be kept in the office of Superintendent and it shall also, be seen that different yard sticks are not used in awarding punishments.

(f) A list of officers competent to give punishments or ordering of suspension according to Act V, 1861 is given in Appendix 84.

825-A. If in the opinion of the officer competent to pass final orders in a departmental proceeding, the delinquent should be given such a punishment for which he is not competent to pass orders, all papers with the proceeding file shall be sent to the officer competent to give that punishment through proper channel. For example, if orders of Inspector-General are required in a proceeding concerning an Inspector all papers and the file concerned shall be sent to Inspector-General through Deputy Inspector- General.

Appendix 41 (4)

Serial No

Rank

Period of Probation

Appointing Authority

Promoting Authority

1

2

3

4

5

4.

Reserve Sub-Inspector (armed) and its equivalent ranks in technical branches.

Two years for direct recruits and 1 year for promoted.

Deputy InspectorGeneral.

Deputy InspectorGeneral

Apart from the Bihar Police Manual, Clause 3 of the Bihar Board's Miscellaneous Rules, 1958 which postulates the relationship of higher authority to lower authority, would be relevant to be reproduced herein below:-

"3. Relation of higher to lower authority. - A higher authority has all the powers of any lower authority and, further may, with or without appeal, modify or reverse any orders passed by a lower authority, in a matter primarily within the competence of the lower authority, unless, by any law, the order of the lower authority are final."

Certain provision of the Disciplinary and Appeal Rule, 2005 is also relevant to resolve the present dispute, in view of Rule 32 dealing with repealing and saving clause which is not very much relevant for consideration in the present case.

Rule 2(f) defines the appointing authority which reads as follows:-

"2(f) 'Appointing authority' in relation to a Government servant means the authority-

(i) who is empowered to make appointments to the Service of which the government servant is for the time being a member, or

(ii) who is empowered to make appointments to the post which the Government Servant for the time being holds, or

(iii) who has appointed the Government Servant to such Service, grade or post, as the case may be, or

(iv) where the Government Servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, such authority who appointed him to that Service or to any grade in that Service or to that Post"

Rule 2(j) deals with disciplinary authority which reads as follows:-

"2(j) Save as otherwise expressly provided in the Rules of a particular cadre, 'Disciplinary Authority' means Appointing Authority or any other Authority authorised by it who shall be competent under these Rules to impose on a government servant any of the penalties specified in Rule 14 of these Rules"

Rule 18 also says that the disciplinary authority to take decision in the matter of disciplinary matter, would take decision in accordance with law. Rule 18 reads as follows:-

"18. Action on the inquiry report. - (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant."

It has been brought to the notice that in the year 1992, in view of Police Act, major amendment to the provision of Bihar Police Manual has been ingrained, relevant for resolution, the amendment made in 639 provides hierarchy of the officers in the police department which reads as follows:-

"3. नियम 639 के स्थान पर निम्नलिखित प्रतिस्थापित किया जायेगा, यथा - 639 आरक्षी पदाधिकारियों की पंक्तियाँ निम्नलिखित होंगी:-

(क) वरीय पदाधिकारी

(1) महानिदेशक एवं आरक्षी महानिरीक्षक

(2) अपर महानिदेशक

(3) महानिरीक्षक

(4) उप-महानिरीक्षक

(5) अधीक्षक

(6) सहायक अधीक्षक

(7) उप-अधीक्षक

(8) प्रारक्ष निरीक्षक। प्रारक्ष निरीक्षक ;प्रशिक्षणद्ध। निरीक्षक।

(ख) अन्य पदाधिकारी

(1) प्रारक्ष अवर-निरीक्षक। प्रारक्ष अवर-निरीक्षक ;प्रशिक्षणद्ध। अवर- निरीक्षक

(2) सहायक अवर-निरीक्षक

(3) हवलदार

(4)आरक्षी।"

Before dealing with the provision of Constitution in relation with the Bihar Police Manual or the Disciplinary Appeal Rule, it is necessary to understand the contour of the provisions of the constitution and in what manner, the same has to be understood. It will also be appropriate to examine the judgments relied upon by both sides.

The first of the dispute arose in the State of Tamilnadu in the case of N. Somasundaram Vs. State of Madras reported in 1956 Mad 419 wherein N. Somasundaram was appointed in the year 1934 as lower division clerk in the Jail Department in 1934, on 28.4.1947, he was appointed to the category of Reserve Deputy Jailors, the appointment was made by the Inspector General of Prison. On 21.5.1952, the charges were framed against the petitioner by the Superintendent of Jail, he submitted the explanation, enquiry was conducted by Deputy Superintendent of Jail, enquiry report was submitted and, ultimately, the Superintendent of Jail, vide order dated 21.10.1952, passed the order of dismissal against the petitioner from service, being aggrieved, the appeal was preferred, the Inspector General of Prison substituted the punishment of removal from service in place of dismissal. The validity of the orders passed by the Superintendent of Jail as well as the Inspector General of Prison were challenged on two grounds, (i) the punishment of dismissal passed by the Superintendent was in teeth of Article 311(1) of the Constitution of India, in such view of the matter, was without jurisdiction, as was claimed, the petitioner of that case was appointed by the Inspector General of Prisons, hence could not have been dismissed or removed from service by the Superintendent as he had not appointed the petitioner rather he was appointed by Inspector General of Prison (ii) the principles of natural justice was not observed. The Superintendent of Jail was competent who could have appointed N. Somasundaram to the category of Deputy Jailors but, the appointment letter was, in fact, issued by the Inspector General of Prisons, it was an equally undeniable fact that it was the Superintendent of Jail not the Inspector General of Prison who had passed the order of dismissal from service. The issue which was framed by the Hon'ble Court was as to whether the order of dismissal passed by the Superintendent of Jail, the authority of lower rank to the Inspector General of Prisons under the statutory rule, who was competent to appoint N. Somasundaram, was holding the post of Deputy Jailor and was also competent authority to pass the order of dismissal/removal from service, was legal and valid, in view of fact that N. Somasundaram was appointed by Inspector General of Prison. The Court noted the fact that if, a civil servant is appointed by an authority higher than the one, who, under the rules, is entitled to order the appointment, and, if such an appointment is a valid appointment, then the competence of the lower authority to have ordered the appointment would not confer jurisdiction on that lower authority to pass an order of removal because, the requirements of Article 311(1) forbids such exercise of such assumption of jurisdiction. The authority,

who could have appointed but had not appointed, cannot be construed to mean to be the competent authority to pass an order of dismissal/removal when that competent authority did not, in fact, exercise that power of appointment and it was further held that therefore the competence of the authority to order, removal or dismissal will have to be determined with reference to the requirements of Article 311(1) of the Constitution, as the requirement is that the authority, who has passed the order of dismissal or removal, should not be one subordinate in rank to that by which the civil servant, in question, was appointed and the principle that would apply would be that the authority which in fact has passed the order of appointment of the civil servant, in such manner, being the appointing authority under the rule, would be able to pass the order of dismissal, as per Article 311(1) of the Constitution of India provided the said appointing authority had issued the order of appointment. The relevant portion of the aforesaid judgment reads as follows:-

"21. In 'Sobhagmal v. State', 1954 Raj 207 (210) (AIR V 41) (D). Wanchoo, C.J. observed:

"Obviously therefore Article 311 means that the dismissing authority should be at least co-ordinate in rank with the appointing authority and should not be subordinate in rank. Thus if a person is appointed by the head of one department and he is transferred to another department, he can only be dismissed or removed by the head of the other department."

22. The principle underlying these decisions would appear to support my view that where an authority, higher than the one entitled under the statutory rules to order an appointment, in fact, orders a valid appointment, it is the factum of that appointment that controls the scope of the guarantee conferred by Article 311(1) of the Constitution and, if such a civil servant is dismissed or removed from service by an authority, no doubt, competent under the rules to order the appointment and also to order dismissal, which, however, is lower in rank than the authority which in fact ordered the appointment, such an order would contravene the provisions of Article 311(1) of the Constitution.

23. Normally, when the statutory rules define the authority competent to appoint a civil servant, it would be seldom that an authority higher in rank takes into itself the power to order an appointment in an individual case. But if such an appointment is ordered by the higher authority, it is only that higher authority that can exercise the power of ordering removal or dismissal from service.

24. The statutory rules may vary the appointing authority from time to time. But such variations will not affect the right conferred upon a civil servant by Article 311(1) of the Constitution. The same principle should apply where the power to appoint is validly exercised by an authority higher than the one designated by the rules as appointing authority.

25. Judged by that test there should be little difficulty in answering the question at issue in this case. The petitioner having in fact been appointed by the

Inspector General of Prisons could not have been dismissed from service by the Superintendent of the Jail, who was an authority lower in rank than the authority which appointed the petitioner.

26. Since the provisions of Article 311(1) were violated by the order dated 21-10-1952, the order is liable to be set aside as one passed by an authority without jurisdiction. As I have pointed out earlier that order was modified on appeal by the Inspector General of Prisons would not be sufficient to cure the initial lack of jurisdiction to punish the petitioner."

Similar issue came for consideration before the Madhya Pradesh High Court in the case of Ramchandra Gopalrao Vs. D.I.G. Police reported in AIR 1957 MP 126. Ramchandra Gopalrao was appointed as a Sub-Inspector of Police in the then Ratlam State under the Rules of that State by Dar-bar Order, entered into service of that State. The Ratlam State merged with Madhya Bharat, after the formation of new State, Madhya Bharat, he became member of the Madhya Bharat Police Force, by virtue of ordinance issued by the Raj Pramukh of Madhya Bharat and he was enrolled as a Sub-Inspector and his name was included in the list of Sub-Inspectors maintained by the Inspector General of Police of Madhya Bharat which was published in the Gazette, Madhya Bharat Police.

While exercising the duty, to prevent the apprehension of breach of peace with respect to piece of land between two groups, one Doulat Singh and some other person, while he was at Sutar-khedi, three bullocks belonging to Doulat Singh were stolen, who made a complaint to Deputy Superintendent of Police that Gopal Rao was not properly investigating into the theft, similar application was sent to the Superintendent of Police, ultimately complaint was made of taking bribe from Doulat Singh. A report was submitted by the Deputy Superintendent of Police to the Superintendent of Police who without any further enquiry submitted the finding from the report of the Deputy Superintendent of Police to Deputy Inspector General of Police and Deputy General of Police forwarded a copy of the finding to the petitioner asking him to show-cause as to why he should not be dismissed, the delinquent filed reply, the Deputy Inspector of Police after perusing passed the order of dismissal. Gopalrao, before High Court raised the issue, the order is without jurisdiction, as Deputy Inspector General of Police was not the competent authority, to pass the order of dismissal on two counts, firstly, reasonable notice was not given and second the Deputy Inspector General of Police did not have jurisdiction to pass an order of dismissal, as the order of dismissal has been passed by an authority subordinate in rank to that by which Gopalrao was appointed, as on the formation of Madhya Bharat, he was re-appointed as Sub-Inspector of Police in pursuance of ordinance by the Inspector General of Police as evidenced by the list published in the Madhya Bharat Police Gazette. The petitioner, having been appointed by the Inspector General of Police, he could not have been removed by the Deputy Inspector General of Police even though he might have been competent at the time of the petitioner's re-appointment or dismissal to appoint, remove or dismiss Sub-Inspectors.

The Madhya Pradesh High Court, placing reliance on the judgment passed in the case of Mahesh Prasad Vs. State of U.P. reported in AIR 1955 SC 70 has held that this Article cannot be read as implying that the removal must be by the very same authority who made the appointment or by his direct superior, it is enough if the removing authority is of the same rank or grade. The subordination of the authority dismissing or removing a civil servant must be in respect of rank and not in respect of functions and reliance was placed on the judgment in the case of Privy Council in R.T. Rangachari Vs. Secretary of State reported in AIR 1937 PC 27 (B) and in the case of North-West Frontier Province Vs. Suraj Narain Anand reported in AIR 1949 PO 112 (C) wherein it was held that the authority making appointment could not delegate the power of dismissal or removal so as to destroy the protection afforded by the provision, so that the dismissal of a civil servant by an authority subordinate to that by which he was appointed would be unlawful and inoperative even if the subordinate authority was authorized under the rules to dismiss the civil servant. It is the rank of the person who actually appoints the civil servant that is material and the subordination of the appointing and dismissing authorities must be decided with reference to their rank and not function. The court has held that if the petitioner was in fact appointed by the Inspector General of Police after the formation of Madhya Bharat then it is plain enough that his dismissal by the Deputy Inspector General of Police is unlawful and inoperative even though the Deputy Inspector General of Police was empowered at the time of the petitioner's appointment or subsequently to appoint and dismiss Sub-Inspectors. The Deputy Inspector General of Police is subordinate to the Inspector General of Police is a matter of fact on which there can be no room for any doubt. The Court has ultimately said that the petitioner was appointed on the post of Sub-Inspector of Police after the formation of Madhya Bharat by the Inspector General of Police, an authority, subordinate to the rank, the appointment made is clearly illegal and ultimately held that even after merger, the Deputy Inspector General of Police would be the appointing authority but, the Inspector General of Police after formation of Madhya Bharat had appointed Gopal Rao as a civil servant.

It is relevant to quote relevant portion of the order passed in the case of Ramchandra Gopalrao (supra) which reads as follows:-

"26. So to say would be to ignore the dicta laid down by the Privy Council in the decisions in AIR 1937 PC 27 (B) and AIR 1949 PC 112 (C) and by the Supreme Court in AIR 1955 SC 70 (A) and to stretch and strain the language of Article 311(1) of the Constitution upon a Procrustean bed in order to make it fit to a particular set of circumstances. Once it is appreciated that the removing or dismissing authority need not be the very same authority who made the appointment, and the subordination spoken of in Article 311(1) is of rank and not of function and is as between the removing or dismissing authority and the authority which appointed the civil servant concerned and not the authority which could or would have appointed him, then there can be no escape from the conclusion that, in the circumstances such as those existing in the Rajasthan

case or here, the subordination of the dismissing authority must be determined with reference to that authority in the new State which is equivalent or co-ordinate to the authority which appointed the civil servant concerned in the old State.

27. If for the applicability of Article 311(1) of the Constitution to the civil servants appointed in one State and continued in service, without any fresh appointment, in a newly created State consisting of the State where they were originally appointed, a fiction has to be evolved, then having regard to the above-mentioned decisions, the rational fiction would be one of determining the subordination of the dismissing or removing authority in relation to that authority in the new State which is, equivalent to the authority which appointed the civil servant concerned in the old State, and not that of determining the authority who would have appointed the civil servant in the new State."

Similar issue came before the Apex Court in the case of Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg & Anr. reported in AIR 1977 SC 747. In that case, Mirja Khasim Ali Beg was working as a Conductor in the Road Transport Corporation of the erstwhile State of Hyderabad prior to coming into force of the State Reorganization Act, 1956. On the reorganization of the State with effect from 1956, he was allotted to the new State of Mysore but, those working as Conductors continued posted in the Depots, which became part of the Mysore Government Road Transport Department. A disciplinary proceeding was initiated against him, allegation was made, on certain cash and ticket irregularities alleged to have been committed by him, led to dismissal from service by the Divisional Controller of the Mysore Government Road Transport Department, the dismissal was affirmed by the General Manager of the Mysore Government Road Transport Department.

A separate suit was filed for declaration that the aforesaid orders of dismissal from service passed by the Divisional Controller was illegal, void and inoperative and they continued to be in service and was entitled to full pay. The order of dismissal from service was challenged on the ground that the appointment having been made by the Superintendent, Road Transport Department of the erstwhile State of Hyderabad, who was the head of that Department and consequently, the dismissal could have been affected only by the Head of the Mysore Government Road Transport Department, General Manager but, the order has been passed by the Divisional Controller, being subordinate to Head of Department, is in violation of right guaranteed under Article 311(1) of the Constitution. The claim was made by the Mysore Transport Corporation that the post of Superintendent of Traffic Department, was not existing in the new set up State of Mysore Road Transport Department and the Divisional Controller of the Mysore Government Road Transport Department was competent to appoint and dismiss the employees of the category to which the employees were belonging, as such, it cannot be said that the order of dismissal was bad in any manner. The Hon'ble Apex Court has discussed various judgments and placed reliance on the

judgment passed in the case of N. Somasundaram (supra) having considered the view expounded in the judgment in the case of Gurmukh Singh Vs. Union of India reported in AIR 1963 Punjab 370 wherein the Punjab High Court has taken a view that the word 'subordinate' in Article 311(1) means subordinate in rank and not with reference to the functions exercised. Consequently, when no officer of equal rank to the appointing authority is available then the order of dismissal or removal will have to be passed by the officer superior in rank and, in no circumstances, such an order can be passed by an officer of the lesser rank. Any rule or statute permitting such an action, must be held to be ultra vires as infringing the provisions of Article 311(1) of the Constitution. It has been held in paragraph no.13 of the said judgment that as he was appointed by Superintendent of the Traffic Department of the erstwhile State of Hyderabad who was the head of the Road Transport Department of that State, competent to pass order in the matter of dismissal even though the post of Superintendent was not available but, the order could have only been passed by the higher authority. It is relevant to quote paragraph no.13 which reads as follows:-

"13. In the instant cases, the first respondents were undeniably appointed by the Superintendent of the Traffic Department of the erstwhile State of Hyderabad who was the head of the Road Transport Department of that State. On the coming into force of the States Reorganisation Act, 1956 on November 1, 1956, they were to be deemed by virtue of sub-section (1) of Section 116 of the States Reorganisation Act to have been appointed with effect from that date to the posts held by them on that date by the appropriate authority in the new State of Mysore which could not in the context mean an authority other than the one equivalent to or co-ordinate in rank with the aforesaid authority in the erstwhile State of Hyderabad. The authority equivalent to or coordinate in rank with the aforesaid authority on the relevant date being the General Manager of the Mysore Government Road Transport Department according to the appellants own admission as contained in answer to the aforesaid interrogatories served on them by the first respondents, he alone could be considered to be the "competent authority" in terms of sub-section (2) of Section 116 of the States Reorganisation Act, 1956. The fact that there was no post of Superintendent of the Traffic in the Mysore Government Road Transport Department in the State of Mysore is of no consequence. Such being the position, the first respondents could not have been dismissed from service by an authority lower or subordinate in rank to the General Manager of the Transport Department as it would tantamount to deprivation of the guarantee enshrined in Article 311 of the Constitution read with Section 115(7) of the States Reorganisation Act, 1956. The first contention urged on behalf of the appellants which runs counter not only to Contention No. 4 raised by the Corporation in its Statement of Case before this Court and the admission made by it in answer to the aforesaid interrogatories but also to Section 115(7) and Section 116 of the States Reorganisation Act, 1956 is, therefore, rejected."

A similar issue came for consideration before the Chatisgarh High Court in the

case of Laxmi Narayan Pandey Vs. State of Madhya Pradesh reported in 2013 (16) SCT 874 : 2013 LabIC 1514. In this case, Laxmi Narayan Pandey was initially appointed as Constable, later on, was promoted as Head Constable by the order of the Deputy Inspector General of Police and, accordingly, he was appointed by promotion on the post of Head Constable by the order of the Deputy Inspector General but, the order of dismissal was passed by the Superintendent of Police. The issue was formulated that the order was required to be passed by the authority competent to impose penalty of dismissal upon the Government servant. In this perspective, it has to be examined as to whether the Superintending of Police is competent to impose penalty of dismissal from service on the said Laxmi Narayan Pandey, a Head Constable and ultimately it has been held that Laxmi Narayan Pandey could have been dismissed/removed or reduced in rank only by the Deputy Inspector General of Police. It is relevant to quote paragraph no.10 & 11 which reads as follows:-

"10. Therefore, the order was required to be passed by authority competent to impose penalty of dismissal on all such Govt. servants. It has therefore to be examined as to whether under the law, the Superintendent of Police was competent to impose the penalty of dismissal from service on petitioner-Laxmi Narayan Pandey, a Head Constable. Laxmi Narayan Pandey was appointed by way of promotion by the order of DIG, who is higher in rank than the Superintendent of Police. The constitutional protection guaranteed under Article 311(1) of the Constitution of India is as follows.

311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Therefore, it is clear that the protection is that a Govt. servant shall not be dismissed or removed by an authority sub-ordinate to that by which he was appointed. Therefore, the insistence is not on the authority who is competent to impose the penalty of dismissal or removal or reduction of the rank, but the authority who actually appointed, (please see *Dharam Dev Mehta v. Union of India* (1980) 2 SCC 205 : (AIR 1980 SC 557), *State U.P. v. Ram Naresh Lal* : (1970) 3 SCC 173 : (AIR 1970 SC 1263) and *Sampuran Singh v. State of Punjab* (1982) 3 SCC 200 : (AIR 1982 SC 1407). Therefore, even if it were to be assumed that perforce the provision contained in the schedule appended to the Rule of 1966, the Superintendent of Police has been designated as an authority competent to impose the penalty of dismissal or removal, the constitutional protection guaranteed to petitioner-Laxmi Narayan Pandey would require that in case a penalty of dismissal or removal is proposed, it is to be imposed only by DIG or by any other higher authority, (please see *Somasundaram N. v. State of Madras*, AIR 1956 Mad 419, *Gurmuk Singh v. Union of India*, AIR 1963 Punj 370 and *Balakdas v. Asstt. Security Officer*, AIR 1960 AP 183). The Superintendent of Police is an authority sub-ordinate to the Dy. Inspector General of Police under the statutory scheme of Police Regulations.

11. As an upshot of above discussions, I am of the considered view that the petitioner-Laxmi Narayan Pandey could not be dismissed, removed or reduced in rank except by the order of DIG. Therefore, the competent authority to pass an order of common proceedings under Rule 18 of the Rules of 1966 was the DIG and not the Superintendent of Police.-----"

Again in the case of Krishna Kumar Vs. Divisional Assistant Electrical reported in 1979 AIR SC 1912 : 1979 SCR (1) 50, the petitioner Krishna Kumar was appointed as a Train Lighting Inspector by the Chief Electrical Engineer but, was removed by the Divisional Assistant Engineer. The argument was made by the Railway that the Divisional Assistant Engineer was also delegated with power to make appointment and, as such, he has rightly exercised the power and accordingly took decision to remove the petitioner. It has been held that it has to be determined with reference to the state of affairs existing on the date of appointment and, it is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding the post, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of Divisional Assistant Electrical Engineer in regard to making appointment to the post held by civil servant, cannot confer the power to remove him.

It is relevant to quote relevant portion of the order which reads as follows:-

"4. Article 311(1) of the Constitution provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The simple question for determination is whether, as alleged by the appellant, he was removed from service by an authority subordinate to that which had appointed him. The relevant facts are but these and these only: The appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer and was removed from service under an order passed by the Divisional Assistant Electrical Engineer, Central Railway, Nagpur. The narrow question, therefore, for consideration is whether the Divisional Assistant Electrical Engineer is subordinate in rank to the Chief Electrical Engineer. None of the affidavits filed by Shri Sarathy, who passed the order of removal says that the post of Divisional Assistant Electrical Engineer is equivalent to that of the Chief Electrical Engineer in the official hierarchy. That the former is not higher in rank than the latter is self-evident. In the circumstances, it seems clear that the appellant was removed from service by an authority which is subordinate in rank to that by which he was appointed.

5. In defence of the legality of the order of removal, counsel for the respondents relies on para 2 of Respondent 1's affidavit, dated January 7, 1978, wherein he has stated that the power to make Appointments to the post of the Train Lighting Inspector was delegated to certain other officers including the Divisional

Assistant Electrical Engineer. It is urged that since the Divisional Assistant Electrical Engineer has been given the power to make appointments to the post of the Train Lighting Inspector, he would have the power to remove any person from that post. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorisation made in favour of Respondent 1 in regard to making appointments to the post held by the appellant cannot confer upon Respondent 1 the power to remove him. On the date of the appellant's appointment as a Train Lighting Inspector, Respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him.

6. Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer, in other words, does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated to him. 7. Since the appellant was appointed by the Chief Electrical Engineer and has been removed from service by an order passed by Respondent 1 who, at any rate, was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment, it must be held that Respondent 1 had no power to remove the appellant from service. The order of removal is in patent violation of the provisions of Article 311(1) of the Constitution."

In support of his submission, the appellant has cited the judgment passed in the case of FCI & Ors. Vs. Sone Lal reported in AIR 2006 SC 264 but, this judgment would not be applicable in the fact of this case as the matter relates to an employee of the Food Corporation of India which is though State within the meaning of Article 12 of the Constitution of India but, Part-XIV of the Constitution of India does not apply, and, consequently, the provision of Article 311 does not apply with respect to an employee of the Food Corporation of India rather they are governed by the Food Corporation of India (Staff) Regulation, 1971. The issue of legality of order of dismissal was in consideration of Regulation 56 of the Food Corporation of India (Staff) Regulation, 1971. In that context, the issue was raised that the said person Sone Lal was compulsorily retired by Senior Regional Manager, who was below in rank to the appointing authority, hence the punishment could have been imposed by the Zonal Manager, since it was claimed that he was promoted as Technical Assistant Grade-I by the Zonal Manager. The Hon'ble Apex Court having held that the Zonal Promotion Committee is the final authority for making promotion within the category-III and Zonal Manager has nothing to do with the promotion of the promotion made

by the Committee and, in terms of Regular 56 of the Regulations, it was found that the Regional Manager, F.C.I. was competent to impose punishment of compulsory retirement, in view of the fact that he was governed by the F.C.I. (Staff) Regulations wherein it has been provided that the Senior Manager is the authority who could have passed the order of penalty and approve the action of the management of the F.C.I.

Paragraph nos. 16 & 17 of the aforesaid judgment being relevant reads as follows:-

"16. The Division Bench of the High Court while accepting that the Senior Regional Manager (Appellant 3) was the appointing authority for the post of "Technical Assistant Grade I" (a Group/Category III post) and could impose any penalty (including major penalty), erred in holding that in the present case the "appointing authority" which as per the Explanation appearing below the proviso to Regulation 56 was the authority competent to appoint or a higher authority which (actually) appointed the official concerned was the Zonal Manager (higher authority) and hence the major penalty of compulsory retirement could not have been imposed by the Senior Regional Manager. The Senior Regional Manager/Regional Manager/Zonal Manager are each competent to impose any of the penalties i.e. minor as well as major penalties. It is evident that the Senior Regional Manager is not only the appointing authority for the post held by the respondent but he is also competent to act as disciplinary authority for the purpose of Regulations 56, 57, 58 and 59 of the Regulations and impose major penalties. As per Regulation 56 and Appendix 2 of the Regulations the appointing authority of Category III post is the Senior Regional Manager/Regional Manager and that the Zonal Manager is not the appointing authority. This apart the respondent was not promoted by the Zonal Manager (North) but by the Zonal Promotion Committee though promotion orders are issued from the zonal office only because seniority of Group/Category III is maintained on zonal basis in respect of all the regions under North Zone and the Deputy Zonal Manager posts the promotees within the zone and that the Senior Regional Manager who is equal in rank to the Deputy Zonal Manager had jurisdiction to initiate the proceedings and impose penalty. It is submitted that the proceedings of the Zonal Promotion Committee were not required to be approved nor were approved by the Zonal Manager. Moreover, there is no regulation that provides that the proceedings/promotions made by the Zonal Promotion Committee are to be approved by any higher authority. In fact the file was never put up to the Zonal Manager for approval of the promotion made by the Zonal Promotion Committee.

17. In our view, the mere mention of the designation of the Zonal Manager (North) in the office order of promotion could not lead to the inference that the respondent had been promoted by that officer. Both the learned Single Judge and the Division Bench have also erred in not appreciating that the order dated 28-11-1979/29-11-1979 had been issued on the recommendations of the Zonal Promotion Committee headed by the Deputy Zonal Manager without obtaining

and without any necessity of obtaining approval from Appellant 2. In our view, the Zonal Promotion Committee is the final authority for making promotions within Category III and the Zonal Manager has nothing to do with regard to the promotions made by the Committee."

So, this judgment per-se is not applicable to the present case as the employee of the F.C.I. Corporation are outside the purview of Part-XIV of the Constitution, reference in this connection may be made to the judgment passed in the case of A.K. Bindal & Anr. Vs. Union of India & Ors. reported in (2003) 5 SCC 163 and in the case of Pyare Lal Sharma Vs. Managing Director & Ors. reported in (1989) 3 SCC 448, relevant portion whereof reads as follows:-

Para-17 of the A.K. Bindal case

"17. The legal position is that identity of the Government Company remains distinct from the government. The Government Company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the Government Company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma v. Managing Director AIR 1989 SC 1854). Since employees of Government Companies are not government servants they have absolutely no legal right to claim that government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the Office Memorandum dated 12.4.1993 the Government had been providing the necessary funds for the management of Public Sector Enterprises which had been incurring losses. After the change in economic policy introduced in early nineties, Government took a decision that the Public Sector Undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the government will not provide any funds for the same. Such of the Public Sector Enterprises (Government Companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the Office Memorandum dated 19.7.1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings no revision in pay scale should be allowed. We, therefore do not find any infirmity legal or

constitutional in the two Office Memorandums which have been challenged in the writ petitions."

Para-19 of the Pyare Lal Sharma case

"19. We may now take up the third point. Sharma was appointed as Chemical Engineer by the Board of Directors. The powers of the Board of Directors to appoint officers of Sharma's category were delegated to the Managing Director on September 12, 1974 and as such from that date the Managing Director or became the appointing authority. Needless to say that employees of the company are not civil servants and as such they can neither claim the protection of Article 311(1) of the Constitution of India nor the extension of that guarantee on parity. There is no provision in the Articles of Association or the regulations of the company giving same protection to the employees of the company as is given to the civil servants under Article 311(1) of the Constitution of India. An employee of the company cannot, therefore, claim that he cannot be dismissed or removed by an authority subordinate to that by which he was appointed. Since on the date of termination of Sharma's services the Managing Director had the powers of appointing authority, he was legally competent to terminate Sharma's services."

Rule 3 of the Bihar Board Miscellaneous Rules, 1958 postulates that the higher authority has all the powers of any lower authority and, further may, with or without appeal, modify or reverse any orders passed by a lower authority, in a matter primarily within the competence of the lower authority, hence the same itself indicates that the higher authority can exercise the power and function of the lower authority.

As per judgment of the Hon'ble Apex Court in the case of Union of India & Anr. Vs. Chandra Pal Pandey reported in AIR 1993 SC 205, in paragraph no.8, it has been held as follows:-

"8. It is common case that there was no specific order of delegation by the Chief Security Officer to the Assistant Security Officer delegating the power to make appointment of Rakshaks and the delegation, in fact, by way of abundant caution was made only in 1974."

The Hon'ble Apex Court has dealt with the submission as aforesaid in paragraph no.12 having held that the appointment of members of the Force shall rest with the said authority provided under the Rules made under the Act. The word 'rest' reflects that the overall control of appointment rests with the Chief Security Officer subject to provisions of the Rules. It further stipulates that if the Rules provides for appointment by any other superior authority, it cannot be said to be in derogation of the Act or the purpose of the Act. Paragraph no.14, being relevant, reads as follows:-

"14. A bare reading of the Act, particularly Section 6, will show that the Act contemplates that the "appointment of members of the Force shall rest with the

Chief Security Officer" who is supposed to exercise powers in accordance with the Rules made under the Act. The proviso to Section 6 contemplates other authorities being authorised for making the appointment as may be delegated to such officers by the Chief Security Officer. Therefore, there can be no doubt that the Act contemplates appointment of members of the Force not only by the Chief Security Officer but also by others. The question, therefore, arises is what is the meaning of the expression "appointment of members of the Force shall rest with the Chief Security Officer"? The expression "rest" in this Section conveys the idea of overall control of appointment resting with the Chief Security Officer subject to the provisions of the Rules. As we have stated earlier Section 6 of the Act contemplates appointment of the members of the Force by such authorities as may be authorised. The proviso to Section 6 contemplates specifically written order of delegation by the Chief Security Officer but this does not derogate from the power of the rule-making authority to confer the said power. The Section and the proviso in our opinion do not rest the power of appointment merely with the Chief Security Officer.

What is contemplated is that the Chief Security Officer will have overall control in the matter of appointment and that control be exercised in accordance with the Rules. If the Rules provide for appointment by other superior officers, it cannot be said to be in derogation of the Act or the purposes of the Act."

But, the issue, which has been raised in the present case, has nothing to do with the aforementioned case. In this case, there is nothing on record which specifically stipulates that the appointment of a member of the force is to be made by such authority as may be authorized. If the rules provides for appointment by other superior officer, it cannot be in derogation of the Act or the purpose of the Act. So, this judgment does not apply to the fact of this case as different question was raised in the aforementioned case and has nothing to do with the present case.

The Constitution of a country is a document, is the faith of a nation and contains the fundamental directions for their fulfillment. So much so, an organic, not pedantic, approach to interpretation, must guide the judicial process. The healing art of harmonious construction, not the tempting game of hair-splitting promotes the rhythm of the rule of Law. Constitution is a mechanism under which the law are to be made and not merely an act which declare what the law is to be. It is also well settled that the Constitution must not be construed in a narrow and pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power, must be adopted. An exclusionary clause in any of the entries should be strictly adhered to and, therefore, narrowly construed. The entries should, however, be so read as to not to rob it of its entire content. A broad and liberal spirit should, therefore, inspire those whose duty it is to interpret the Constitution, and the Courts are not free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory. Constitutional adjudication is not strengthened by such an attempt but, it must

seek to declare the law. It must not try to give meaning on the theory of what the law should be, but must so look upon a Constitution that it is a living and organic thing and must adapt itself to the changing situations and pattern in which it has to be interpreted. The constitutional provision must be read in a harmonious way for resolution of conflicting situations arriving in interpretation of constitutional provisions. The constitutional provision should be given the widest amplitude for understanding and interpreting the language of the constitutional provision. The constitution being essentially in the nature of statute, the general rules governing the construction of statutes will also apply to the construction of constitution as well.

The fundamental rule of interpretation is the same, whether it be the provisions of the Constitution or an Act of Parliament, namely, that the court will have to ascertain the intention gathered from the words in the Constitution or the Act, as the case may be, and where two constructions are possible, that one should be adopted which would ensure a smooth and harmonious working of the Constitution and eschew that which would lead to absurdity or give rise to practical inconvenience or make well-established provisions or existing law nugatory. The constitution is to be construed in the same manner as is the principle applied to understand the construction of other statutory provisions. It is undoubtedly true that a constitutional provision is frequently better understood by a knowledge of the evils which led to its adoption. It is well settled principle that in making a construction on a constitution of any clause or part thereof, a court should look to the history of the times and examine the existing state of things when the Constitution was framed and adopted, in order to ascertain the prior law, the mischief, and the remedy. Where two alternative constructions are possible, the court must chose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working and should refrain from giving another interpretation which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction of Constitution should be given in such a manner that it would suppress the mischief and advance an intendment sought to be achieved. It should be interpreted in furtherance of the purpose of constitutional provisions. The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it i.e. according to the intent that made it. Normally, such intent is gathered from the language of the provision but, if words used in the provision are imprecise, protean or evocative or can reasonably bear meaning more than one, then it is legitimate for the court to go beyond and call in aid other well-recognized canons of constructions. When the words of constitutional provision are unambiguous and clear then it is fair to explain those words in their natural and original sense, as has been held by Lord Chief Justice Tyndal in the Sussex Peerage case reported in (1844) 11 Cl & Fin 85, p 143 wherein Lord Chief Justice has said as follows:-

"My Lords, the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which pass the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such cases, but declare the intention of the law-giver."

In the event of conflict in the interpretation of two provisions of the Constitution, the same should be dealt with by applying the principle of harmonious construction and interpretation has to be made, upon fundamentally examining the intention of the constitutional maker and the goal to be achieved, as it reflected from the provision of the Constitution. In the event of ambiguity and not knowing the intention of founding father, consideration of debate of Constituent Assembly would be useful for arriving and extracting out the intention of enacting such provision.

The aforesaid excerpts have been taken from the Interpretation of Statutes by N.S. Bindra.

As has been stated that to interpret the constitutional provision, deliberation made before the Constituent Assembly will give the guideline and intrinsic thought and idea in interpreting such provision in the constitution. In this regard, it must be stated that while the draft preparation was going on, Article 311 of the Constitution of India was Article 282 of the draft Constitution. In order to understand the meaning of the words and contour of Article 311 of the Constitution of India, it will be appropriate and proper to take into consideration the explanatory note prepared by the Ministry of Home Affairs on the revised draft. The relevant part of the explanatory notes prepared by the Ministry of Home Affairs on the Revised Draft reads as follows:-

"EXPLANATORY NOTES PREPARED BY THE MINISTRY OF HOME AFFAIRS ON THE REVISED DRAFT

(i) Tenure of civil servants [vide clauses (2) and (3) of article 282 of the revised draft] : 1. There are at present three important constitutional provisions governing the tenure of all civil servants. The first is that they hold office during His Majesty's pleasure. The second is that the power to remove or dismiss them cannot be delegated to any authority lower in rank than the authority competent to appoint them. The third is that the authority competent to dismiss, remove or reduce a civil servant is required to give him an opportunity to show cause against such action. The Drafting Committee has taken over the last of these provisions from section 240(3) of the present Constitution Act and inserted it as article 282(2) in the Draft Constitution. It is considered necessary that the other two provisions which at present find place in the present Constitution Act as sections 240(1) and 240(2) should be taken over with appropriate changes into the new Constitution. The first is an important safeguard for Governments, as employers : and the second for the civil servants as employees. Hence clauses

(2) and (3) of article 282 of the revised draft.

2. The revised draft also embodies the following changes viz:

(1) While articles 282(1) and 283 of the Draft Constitution refer to the public services of the Union or any State, article 282(2) refers only to civil services and posts. The provisions of this Chapter may conveniently be confined to civil services and posts.

(2) The definition in clause (1) of revised article 282 helps to avoid repetition in the subsequent clauses.

(3) in clause (1) of revised article 282, the wider expression "existing laws", which is defined in article 303(1)(i) of the Draft Constitution, is suggested instead of "rules which are in force immediately before the commencement of this Constitution", in order to cover the laws, orders and regulations which are now applicable to civil services and posts. The reference to "civil services" instead of "public services" is consequential on the other changes proposed in this Chapter and the reference to "an All-India service" is consequential on clause (2) of article 282-A."

The relevant portion of the Constituent Assembly Code reads as follows:-

"Commenting on the Draft Constitution as settled by the Drafting Committee in February, 1948, the Ministry of Home Affairs suggested inter alia that provision should be included in the Constitution to cover three matters relating to the tenure of all civil servants" first, that it should be made explicit that every civil servant held office during the pleasure of the President or the Governor, as the case might be" second, that the power to remove or dismiss a civil servant could not be delegated to an authority lower in rank than the authority competent to appoint him: and third, that the authority competent to dismiss or remove a civil servant or reduce him in rank would be required to give him an opportunity to show cause against such action. Revised provisions were formulated by the Ministry which sought to give effect to these suggestions: and were also accepted by the Drafting Committee.

At subsequent stage, the Drafting Committee framed two fresh articles on this subject. The main change introduced at this stage was that the clause laying down that a civil servant would hold office might be, was expanded so as to provide that every person who was a member of a defence service would also hold office during the President's pleasure. At the instance of the Ministry of Home Affairs, these provisions were considered by the Ministry of Defence, which was also consulted on the question whether the safeguards laying down the procedure to be followed in regard to dismissal, removal and reduction in rank should be made applicable to the defence services.

The Ministry of Defence accepted the provisions as drafted, but was strongly of the view that the defence services should not be brought within the scope of the provisions relating to dismissal, removal and reduction in rank as they applied to

the civil services. This view was accepted by the Drafting Committee.

The amendments proposed by the Drafting Committee and the letters from the Ministries of Home Affairs and Defence are reproduced below."

The two excerpts are indicative of the fact that the power to remove cannot be delegated to any authority lower than the authority competent to appoint them.

The provision of Rule 825 of the Bihar Police Manual is perimateria to Article 311 of the Constitution of India as Rule 825 postulates that no police officer shall be dismissed or compulsorily retired by an authority subordinate to the authority who appointed him and, here also, Article 311(1) of the Constitution of India stipulates that no person, who is a member of a civil service, shall be dismissed or removed by an authority subordinate to that by which he was appointed.

Appendix 41 Clause no. 4 of Volume 3 of Bihar Police Manual prescribes the power of Deputy Inspector General, of having authority of appointment to Sub-Inspector but, the question would be, as to what happens in a situation where though as per Clause 4 prescribes, he is competent to appoint a person but, Clause 825 prescribes that the disciplinary action can be taken by the authority who has appointed. Can the word 'appointed' be construed as an authority competent to appoint, meaning thereby an appointing authority? The word 'appointed' indicates the 'actual action taken', is in fact the action of appointment taken by that authority and the 'appointing authority' indicates the 'capability of an authority to appoint a person'. So, the appointing authority is not same as the expression 'authority which has appointed' which indicates, ultimate action of a particular authority but, proviso 6 of Article 311 (2) stipulates "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", which indicates that the expression 'authority empowered' has been used indicating appointing authority or the authority who is authorized to appoint would be able to exercise the power as provided under proviso (b) of Article 311(2) of the Constitution of India. The word "empower" has been defined in "Advance Law Lexicon" (P. Ramnath Iyer) to mean, 'to invest legally or formally with power, to authorize, to give official authority or legal power'. In Stroud's Judicial Dictionary of words and phrases, the meaning of "Appointed" is as when a statute declares that a class of person shall exercise a certain function, e.g. shall be Improvement Commissioner, each member of that class is appointed to exercise the function. The word 'authority empowered' means that authority who has been empowered to make appointment. So, it is akin to the word 'appointing authority' and it will be construed that the word 'authority empowered' will be construed as the appointing authority but it cannot be said to be identical to the expression "authority appointed".

In the case of Mysore State Road Transport (supra), the Superintendent of Traffic' Department appointed Mirja Khasim Ali Beg and another as the Bus

Conductor, he was the appointing authority in the Hyderabad State and it was not a case that the higher authority than the appointing authority has appointed the Bus Conductor, when he was brought to the Mysore Transport Corporation, that post was not available, so, in that circumstances, the Court has said that as the Superintendent of Traffic was holding the highest post, hence, equivalent to that authority could have taken an action. So, in that case, the issue, as to whether in a circumstance, when an 'authority which has appointed' is higher than the appointing authority in terms of Rule, would the appointing authority has authority to take action against the employee concerned, was not gone into.

In the case of Krishna Kumar (supra), he was appointed by Chief Electrical Engineer as a Train Lighting Inspector, was visited with the order of removal by the Divisional Assistant Electrical Engineer who was below the rank of Chief Electrical Engineer, hence the plea of Divisional Assistant Electrical Engineer being an appointing authority had been rejected. It has been said that the test would be whether or not the authority subordinate in rank to another has to determine with reference to the state of affairs existing on the date of appointment. It is that point of time which would be relevant for consideration. For example, if "A" authority was competent to appoint a civil servant on a particular post but, later on, upon deletion, "B" has been conferred the power of appointment and dismissal, in that context, it has to be seen as on that date who was the appointing authority and not on a subsequent date.

In the case of S.R. Chaudhuri Vs. State of Punjab and Ors. reported in (2001) 7 SCC 126, the Hon'ble Apex Court has held that the constitutional provision are required to be understood and interpreted with object oriented approach. A constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debate in the constituent assembly plays important element in arriving at the true import of meaning of particular 'word' used in particular place of constitution. It's paragraph no.33, being relevant, reads as follows:-

"33. Constitutional provisions are required to be understood and interpreted with an object oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicates that non-member's inclusion in the cabinet was considered to be a 'privilege' that extends only for six months', during which period the member must get elected otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. We must remember that

a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the 'privilege' to extend "only" for six months."

Constitutional guarantee under Article 311(1) was available to the person holding the post. Different letters of the Constituent Assembly indicates that the authority who is competent to appoint would only be entitled to pass an order of dismissal or removal or to take a disciplinary action. In the present case, the Deputy Inspector General of police was the appointing authority, he was empowered to appoint but, in spite of that, the Inspector General of Police had appointed the private respondent. Now in that context, it has been argued and it has been tried to be persuaded that under Rule 825 of the Bihar Police Manual, the Deputy General of Police was actually empowered and has/had the authority to appoint Sub-Inspector, as such, he has the authority to take disciplinary action against the Sub-Inspector of Police. The Madras High Court has dealt with this issue, has held that the disciplinary action of removal/reduction in rank/dismissal can be taken only by the authority who has appointed. But, the question in the present case is that the Deputy Inspector General was capable to appoint Sub-Inspector and is also capable to take disciplinary action against him at the time of appointment, however, in the present case, the Inspector General of Police, who is higher in rank, had appointed the private respondent no.1, hence whether it can be construed that in terms of Rule 825 of the Bihar Police Manual, the Inspector General of Police is the only authority may be higher to the appointing authority, who is legally authorized to take disciplinary action of dismissal/removal/reduction in rank against the Sub-Inspector of Police.

Looking to the entire scheme/mechanism, the intention and upon harmonizing different proviso of Article 311 of the Constitution of India, the same should be interpreted in such a manner so as to find out the true import of the proviso. Article 311(1) of the Constitution of India, stipulates that Government servant can not be dismissed by an authority subordinate to that by which he was appointed and sub-clause (b) of Article 311(2), wherein it has been mentioned "the authority empowered to dismiss or remove a person", may grammatically be not the same and identical but, the tenor and intention of the framer of legislature, considering the discussion in the Constituent Assembly as well as the objection raised by the Home Department by various letters during the course of framing of the Constitution, itself reflects that the person who has authority to appoint is the proper authority to dismiss a Government servant. In such a situation, the word 'authority subordinate to that by which he was appointed' in my view will mean that the authority who has power to appoint will also include the power to dismiss, otherwise, it will lead to an absurd situation in view of sub-clause (b) of Article 311(2) which uses the phrase "the authority empowered to dismiss or remove".

After harmonizing both the provisions, in my view, the true import will be that the authority, who has an authority to appoint a Government servant, will also have the authority to dismiss, remove or reduce in rank.

In that view of the matter, the reference is replied in the terms that the Deputy Inspector General of Police, who was/is the appointing authority, is also vested with the right to dismiss, terminate and reduce in rank and the expression 'appointing authority and the authority which appointed' would mean and construe the same, inasmuch as, the appointing authority, who has been conferred with the power to appoint will also have the authority to dismiss, remove or reduce in rank.

Accordingly, the points of reference framed are answered.

Let the present case be listed before the appropriate Bench for decision on the merit of the case.