

**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA**

WRIT PETITION No.9450 OF 2019

Between:

Bharat Sanchar Nigam Limited,
Rep.by its Chairman-cum-Managing Director,
Bharat Sanchar Bhavan, H.C.Mathur Lane,
Janpath, New Delhi and others.

.... Petitioners

And

A.Tirumal Raj, s/o. A.Shiva Raj,
Aged 45 years, occu:Ex-Junior Telecom Officer(Civil),
(under the order of dismissal), O/o. the Sub-Divisional
Engineer (Civil), Bharat Sanchar Nigam Limited,
Mahaboobnagar and another.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 14.02.2022

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

&

THE HON'BLE DR JUSTICE G.RADHA RANI

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO
&
THE HON'BLE DR. JUSTICE G.RADHA RANI**

+ WRIT PETITION NO.9450 of 2019

% 14.02.2022

Bharat Sanchar Nigam Limited,
Rep.by its Chairman-cum-Managing Director,
Bharat Sanchar Bhavan, H.C.Mathur Lane,
Janpath, New Delhi and others.

.... Petitioners

Vs.

\$ A.Tirumal Raj, s/o. A.Shiva Raj,
Aged 45 years, occu:Ex-Junior Telecom Officer(Civil),
(under the order of dismissal), O/o. the Sub-Divisional
Engineer (Civil), Bharat Sanchar Nigam Limited,
Mahaboobnagar and another.

.... Respondents

!Counsel for the petitioners : Ms.P.Sarada, standing counsel
for BSNL for petitioners

Counsel for the Respondents : Mr. K.R.K.V. Prasad, counsel
for 1st respondent

<Gist :

>Head Note:

? Cases referred:

(1979) 4 SCC 289
(2011) 7 SCC 789

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE DR. JUSTICE G.RADHA RANI**

WRIT PETITION No.9450 OF 2019

ORDER: *(Per Hon'ble Sri Justice P.Naveen Rao)*

The first respondent was working as Junior Telecom Officer (Civil) at the relevant point of time. On 26.03.2007, he was arrested and was in custody for three days. His arrest was consequent to the complaint filed against him alleging that he indulged in bigamous marriage. On investigation, police filed charge sheet against the 1st respondent. The criminal Court took cognizance of the offence alleged and he was placed on trial in C.C.No.524 of 2007 in the Court of XIII Additional Chief Metropolitan Magistrate (Mahila Court), Nampally at Hyderabad.

2. Disciplinary proceedings were also initiated against him by framing charges on 31.10.2007. The charge sheet contained two charges. Firstly, it was alleged that he suppressed about his arrest and detention and secondly he contracted second marriage, which is in violation of Conduct Rules. The enquiry officer held both the charges proved.

3. While so, by judgment dated 10.06.2011, the trial Court convicted the first respondent on the offence alleged and was sentenced to undergo three years rigorous imprisonment and fine of ₹ 3,000/-. By order dated 10.10.2012, the first respondent was dismissed from service based on the charges proved in the domestic enquiry and that he was convicted and sentenced by

criminal Court. The appeal preferred by the first respondent to the Chief General Manager was rejected on 01.08.2013.

4. In the meanwhile, challenging the conviction and sentence imposed by the trial Court, the first respondent preferred CrI.A.No.296 of 2011. The first appellate Court allowed the said Criminal Appeal setting aside the conviction and sentence by the judgment dated 14.03.2013. The Court is informed that estranged wife preferred CrI.R.C.No.1025 of 2014 before this Court challenging the acquittal granted by the first appellate Court and the said CrI.R.C. is pending consideration of this Court.

5. Challenging the order of dismissal from service, the first respondent filed O.A.No.1382 of 2013 before the Central Administrative Tribunal, Hyderabad Bench. Before the Central Administrative Tribunal, the first respondent contended that the order of dismissal from service is vitiated on the ground that incompetent authority passed the order and, therefore, the order is vitiated on that ground alone. According to the first respondent, the Chief General Manager is the appointing authority, and he alone is competent to dismiss him from service, whereas the order of dismissal was passed by the Chief Engineer, who is subordinate to the appointing authority. The order of dismissal was also assailed on the ground that the appellate Court granted acquittal and therefore the order of dismissal could not have been made by referring to the conviction accorded by the trial Court and the findings in departmental proceedings are also not valid in view of the judgment of the appellate Court.

6. With reference to the second aspect, the Tribunal rejected the contention of the first respondent and upheld the disciplinary action taken against the first respondent even though he was acquitted by the appellate Court. This finding of the Tribunal has become final, as the first respondent has not assailed the said finding.

7. On the first aspect, the Tribunal agreed with the contention of the first respondent and held that the order of dismissal was passed by an authority lower in rank to that of the Chief General Manager. The order is vitiated on that ground and accordingly the order of punishment, as affirmed by the appellate authority, was set aside with a direction to reinstate the first respondent into service. The Tribunal further directed the second respondent to pass final order after serving the copy of enquiry report and affording opportunity of hearing. Aggrieved thereby, the Bharat Sanchar Nigam Limited (BSNL) is before this Court.

8. According to learned counsel for the petitioners – BSNL, by order dated 05.02.1998, the first respondent was appointed as Junior Engineer by the Superintending Engineer, whereas the order of dismissal from service was passed by the Chief Engineer, the authority higher in rank to that of the appointing authority and therefore the Tribunal erred in setting aside the punishment.

8.1. It is further contended that the disciplinary action of employees working in BSNL is governed by separate set of Rules called 'BSNL Conduct, Disciplinary and Appeal Rules, 2006' (CDA Rules). Rule 34 of the CDA Rules specified the authorities competent to impose punishment and appellate/reviewing

authorities as listed in Annexure appended to the Rules. As per the Annexure, against the major penalty, the disciplinary authority is shown as General Manager/Equivalent Officer dealing in Human Resources and the Director/Chief General Manager/equivalent authority as appellate authority. The Table also mentions that General Manager or equivalent Officer dealing with Human Resources in the Circle Office as the appointing authority. Learned counsel contends that the General Manager is equivalent to that of Chief Engineer and the Chief Engineer passed the order of punishment against which the first respondent preferred appeal to the Chief General Manager as envisaged by the Annexure appended to the Rules. That being so, she would contend, it is no more permissible for the first respondent to contend that incompetent authority passed orders of dismissal from service.

9. In response to this contention, learned counsel for the first respondent Sri K.R.K.V.Prasad submits that the first respondent was appointed as Draftsman by the proceedings dated 25.11.1991 issued by the Deputy General Manager (Admn.) on behalf of the Chief General Manager, Telecom. Further, the order of absorption absorbing in BSNL was passed by the Director, who is equivalent in rank to that of Chief General Manager and therefore, the Chief General Manager being the appointing authority, an Officer lower in rank to that of the Chief General Manager cannot pass the dismissal order and therefore the order is *ex facie* illegal.

9.1. He further submits that BSNL has formulated Recruitment Rules on 14.08.2001. According to the schedule appended to these Recruitment Rules, for the post of Junior Engineer, the Chief

General Manager is treated as appointing authority and therefore an authority lower in rank to that of Chief General Manager cannot dismiss the Junior Engineer (which is now called as Junior Telecom Officer) from service. He therefore submits that the Tribunal has come to the right conclusion and does not warrant interference.

9.2. Learned counsel for respondent submitted that in supercession of the 2001 Recruitment Rules, new Recruitment Rules i.e., Recruitment Rules of Junior Telecom Officer (Telecom) were notified in the year 2015 and Note-2 appended to the schedule, reiterates that the Chief General Manager shall be the Appointing Authority. Thus, consistently, BSNL has recognized the Chief General Manager alone as Appointing Authority.

9.3. He further submitted that as clarified by letter No.28-1/89-CSE dated 09.03.1989 by the Department of Telecommunications, the Chief General Manager continues to be the Appointing Authority and therefore, by the time the respondent was appointed as Junior Telecom Officer, the Chief General Manager is designated as Appointing Authority and since the order of dismissal was passed by an authority lower than the Appointing Authority, same is illegal. In support of said contention, learned counsel for respondent placed reliance on the judgment of the Supreme Court in **Krishna Kumar Vs Divisional Assistant Electrical Engineer and others**¹.

10. In response to the submissions that the first respondent was initially appointed as Draftsman by the Chief General Manager and

¹ (1979) 4 SCC 289

that his absorption order was issued by the Director, learned counsel for the petitioners submits that the first respondent was appointed in February, 1998 as Junior Engineer and this order of appointment was issued by the Superintending Engineer. She further submits after the formation of BSNL, all the orders of absorption were signed by the Director, that the order of absorption was not an appointment, but it is only the acknowledgment of bringing the services of employees either to belonging to the DoT into the service of BSNL, a corporate entity. Therefore, it does not take the status of orders of appointment.

10.1. Learned standing counsel for BSNL clarified that proceedings No.4-6/86-CSE dated 28.10.1986 clearly demarcates the authority competent to make recruitment and authority competent to make appointment. While the Superintendent Engineer (Civil) is designated as Appointing Authority, the Chief General Manager of the Telecommunication Circle was designated as Recruiting Authority. The Memo dated 09.03.1989 retains the Superintending Engineer (Civil) as Appointing Authority, entrusted the entire recruitment to the Chief General Manager. She therefore submitted that as on the date of appointment of the respondent, the Superintending Engineer (Civil) was Appointing authority to the post of Junior Telecommunication Officer and he has appointed the respondent.

11. Two issues arise for consideration. Firstly, whether the order of absorption on 07.02.2002 signed by the Director would amount to an order of appointment superseding the order of appointment issued in February, 1998 in the name of

Superintending Engineer in order to hold that an authority lower in rank than the appointing authority has passed the order of dismissal. Secondly, even if absorption is an order of appointment, having regard to the specific provision in the CDA Rules, which clearly envisage the appointing authorities and the disciplinary authorities merely because an order of absorption was issued in the name of Director, will the order of dismissal from service by the Chief Engineer would vitiate.

12. The first respondent was appointed as Junior Engineer (Junior Telecom Officer) vide proceedings issued by the Superintending Engineer dated 05.02.1998. On the date of dismissal, he was working in the said capacity. On the date of his appointment, he was in the service of Department of Telecommunications (DoT). Later, Bharat Sanchar Nigam Limited (BSNL) was established transferring the Telecom services to BSNL. Employees of Government of India were permanently transferred to BSNL and BSNL became employer. At the stage of transfer of services, the orders of absorption were issued by the Director. By relying on the order of absorption, it is vehemently contended that appointing authority is Director/Chief General Manager.

13. This contention is stated to be rejected. Order of absorption does not amount to order of appointment. By order of absorption into BSNL, first respondent has not acquired a new status. He continued to be Junior Telecom Officer to which post he was appointed by the Superintending Engineer. What is changed is only status of employment, from Government of India service to BSNL service.

14. It is appropriate to note at this stage that BSNL is corporate entity. The first respondent, on absorption in BSNL, lost the status of the Government servant and, therefore, the protective shield under Article 311 of the Constitution of India is no more available. The first respondent, being an employee of statutory corporation, shall be governed by the Rules formulated by the employer.

15. There are two kinds of Rules, which require consideration. The first set of Rules were notified on 14.08.2001, called 'The Junior Telecom Officer (Civil) Recruitment Rules, 2001 (the Rules, 2001), which are the rules concerning the recruitment to the post of Junior Telecom Officer, and the 'BSNL Conduct, Disciplinary and Appeal Rules, 2006' (CDA Rules), which specifically deal with the conduct and discipline of the employees, punishments that can be imposed, the authorities competent to impose minor/major punishments and appellate authorities. It also specifies appointing authorities.

16. Rule 33 of the CDA Rules specified penalties that can be imposed on an employee divided into: (A) Minor penalties and (B) Major penalties. Rule 34² deals with the Disciplinary Authority as specified in the Schedule. Rule 43³ clearly specifies that DoT employees on absorption are governed by those Rules. Rule 45

² **Rule 34. Disciplinary Authority:** (1) The Disciplinary Authority, as specified in the schedule or any authority higher than it may impose any of the penalties specified in Rule 33 on any employee. (2) The Disciplinary authority competent to impose any of the penalties specified in Rule 33 can institute disciplinary proceedings against the employee. Any authority higher than the Disciplinary Authority can direct the Disciplinary Authority to institute disciplinary proceedings against any employee. (3) The Disciplinary Authority competent to impose penalties specifies in clause (a) to (e) of Rule 33 can institute disciplinary proceedings against any employee for the imposition of any of the penalties in clause (f) to (j) of Rule 33.

³ **Rule 43. Special provisions in respect of D.O.T staff on permanent absorption in BSNL – Conferring safeguards relating to security of service on dismissal/removal:**

The D.O.T. employees on absorption in BSNL shall be governed by these rules from the date of their absorption in the company/date of issue of these rules. However, dismissal/ removal from the service of BSNL after absorption, for any subsequent misconduct shall not amount to forfeiture of his retirement benefits for the service rendered in the Central Government. Also in the event of dismissal/removal of such an employee from BSNL (i.e. D.O.T. staff permanently absorbed in BSNL), the employee concerned will be allowed protection to the extent that D.O.T. will review such order before final decision is taken by BSNL.

provides remedy of appeal and Rule 46⁴ specifies appellate authorities, as listed in the table in the schedule.

17. According to Rule 10 of the Rules 2001, initial constitution of the cadre comprises of Officers absorbed in BSNL. Schedule appended to the Rules, 2001 specifies eligibility criteria and appointing authority. According to column-13 of the Schedule, the Chief General Manager is the appointing authority.

18. The CDA Rules specify the General Manager or equivalent cadre Officer as appointing authority and disciplinary authority and the Director/Chief General Manager as appellate authority. Vide proceedings No.10-5/2012-WS&I, dated 24.01.2013, it is clarified that ***“equivalent means equivalent Officer in the concerned wing, i.e., BSNL Finance, Civil, Electrical, Architecture, etc.”***. First respondent belong to Civil wing and in Civil wing, the Chief Engineer is equivalent in rank to General Manager.

19. It is interesting to note that CDA Rules were amended making changes in the texture of few provisions, one of which is Rule 37(5) of the CDA Rules. Addition to the sub-rule by way of amendment reads as, ***“Disciplinary Authorities specified in BSNL CDA Rules, 2006 can initiate major penalty proceedings but before imposing any major penalty prior approval of the appointing authority is***

⁴ **Rule 46. Appellate Authority:**

(1) An employee, including a person who has ceased to be in Company's service, may prefer an appeal against all or any of the orders specified in Rule 45 to the authority specified in this behalf in the Schedule.

(2) Notwithstanding anything contained in sub-rule (1) --- (i) an appeal against an order in a common proceeding held under Rule 39 shall lie to the authority to which the authority functioning as the Disciplinary Authority for the purpose of that proceeding is immediately subordinate; (ii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the Appellate Authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

(3) An employee may refer an appeal against order imposing any of the penalties specified in Rule 33 to the Director (HRD), BSNL Board where no such appeal lies to him under Sub-Rule 1, or Sub-Rule 2, if such penalty is imposed by any authority other than the Director (HRD) BSNL Board on such employee in respect of his activities connected with his work as an office bearer of the recognized union/association.

necessary”. Thus, in case an authority lower in rank to the appointing authority acts as the disciplinary authority, he must seek approval of the appointing authority before imposing major penalty. In the instant case, first respondent was appointed as Junior Telecom Officer by the Superintending Engineer, who is subordinate to the Chief Engineer. Further, in CDA Rules, the General Manager (i.e., Chief Engineer) is shown as Appointing Authority and as Disciplinary Authority. Therefore, if punishment is imposed by General Manager (i.e., Chief Engineer), there is no need to seek approval from any authority.

20. It is also necessary to note one other crucial aspect. First respondent was appointed as Junior Engineer (Junior Telecom Officer) in the DoT before formation of BSNL and absorbed in BSNL. To safeguard the interests of all such employees, the procedure evolved by the Government of India also required ratification of decision by the competent authority of BSNL to impose major penalty, as employee was appointed in Government of India service before absorption in BSNL. In the instant case, the proposal to impose punishment of dismissal was ratified by the Deputy Secretary, DoT, vide his letter No.68-25/2012-Vig.II dated 16.07.2012. Only after the ratification, the punishment of dismissal was imposed. Order of dismissal from service refers to ratification granted by the competent authority in DoT. It is not the case of the first respondent that the Deputy Secretary, DoT was incompetent to ratify the decision.

21. Since learned counsel for first respondent placed heavy reliance on Rules, 2001 to contend that Chief Engineer is not

competent, it is necessary to consider both rules carefully to ascertain whether there is any conflict in the provisions and whether they can be reconciled.

22. The fundamental principle of interpretation of statutes is to ascertain the intendment of rule making authority to see whether there is any conflict and whether they can be reconciled. Further, if there is an apparent conflict, to assess which provision would prevail. It is necessary to reconcile/harmonize two sets of rules to bring out true intent of the rule making authority.

23.1. In **Balwant Singh Vs Jagdish Singh**⁵, the Hon'ble Supreme Court held as under:

“33. Furthermore, it is also a well-settled canon of interpretative jurisprudence that the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious.....”

23.2. In **Ajoy Kumar Banerjee Vs. Union of India**⁶, the Hon'ble Supreme Court held as under:

“26.....Interpretation of a provision or statute is not a mere exercise in semantics but an attempt to find out the meaning of the legislation from the words used, understand the context and the purpose of the expressions used and then to construe the expressions sensibly.

xxxx

39. From the text and the decisions, four tests are deducible and these are: (i) The legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provisions, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, *Maxwell on the Interpretation of Statutes*, Twelfth Edn., pp. 196-198.”

23.3. In **Maya Mathew Vs. State of Kerala and others**⁷, the Hon'ble Supreme Court held as under:

⁵ (2010) 8 SCC 685

⁶ (1984) 3 SCC 127

“20. What logically follows from the principle enunciated in the two decisions is that ***if any special rule is subsequent to the general rule, then the question of examining whether the prior general rule will prevail over a later special rule will not arise at all*** having regard to the categorical provision contained in Rule 2 of the General Rules. The principle laid down in those decisions will not apply where the special rule is made subsequent to the general rule.”

(emphasis supplied)

23.4. In **Jairaj Ispat Ltd Vs. A.P. Regulatory Commission**⁸, this

Court held as under:

“27. The latin maxim *Generalibus specialia derogant* means that special things derogate from general things. One of the applications of the Rule of Harmonious Construction is that when there is a law generally dealing with a subject and another dealing particularly with one of the topics comprised therein, the general law is to be construed as yielding to the special in respect of the matters contained therein. The principle that the particular or special rule must control or cut down the general rule is however inapplicable where the two provisions do not relate to the same subject [See *Bengal Immunity Co. Ltd. v. State of Bihar*, AIR 1955 SC 661].

xxx

38. ***The general rule to be followed in the case of a conflict between two provisions is that the later abrogates the earlier one (Leges posteriores priores contrarias abrogant)***. To this general rule there is a well known exception, namely, *Generalia specialibus non derogant* (general things do not derogate from special things). In other words, a prior special law would yield to a later general law, if either of the two following conditions are satisfied:

- (i) The two are inconsistent with each other.
- (ii) There is some express reference in the later to the earlier enactment.”

(Emphasis supplied)

24. Guided by the law enunciated in above decisions, it is necessary to examine the width and scope of two sets of rules and to assess whether there is any conflict. To this extent, it is necessary to note following aspects:

(i) The Rules, 2001 deal with recruitment of a Junior Telecom Officer and the CDA Rules deal with particular aspect of service conditions of Junior Telecom Officer, namely, conduct and discipline of a Junior Telecom Officer. Thus, in the field of conduct

⁷ (2010) 4 SCC 498

⁸ 2012 (2) ALD 739

and discipline, the CDA Rules are Special Rules and they shall prevail even if there is inconsistency vis-à-vis Rules, 2001;

(ii) CDA Rules are notified later to Rules, 2001. The CDA Rules also specify the appointing authority to the post of Junior Telecom Officer as General Manager (i.e., the Chief Engineer in Civil branch). Thus, if there is a conflict, the later Rules shall prevail. Further, it cannot be assumed that when BSNL notified CDA Rules specifying the disciplinary authorities, it was not aware that 2001 Rules specified the Chief General Manager as appointing authority;

(iii) first respondent was appointed as Junior Telecom Officer by the Superintending Engineer, whereas order of dismissal was made by the Chief Engineer. He was not appointed after 2001 Rules were notified. Thus, though protective shield of Article 311 of the Constitution of India is not available to first respondent after his absorption in BSNL, even assuming that underlying principle of Article 311 of the Constitution of India applies to BSNL, the authority who dismissed first respondent is higher in rank to the authority who appointed him;

(iv) and most important to note is that first respondent was appointed in the Department of Telecommunications before his services were absorbed in BSNL. The Department of Telecommunications mandated the BSNL to seek its ratification of decision of BSNL to dismiss/remove an employee, who was appointed in the Government of India and later absorbed in BSNL. Accordingly, ratification was sought and the competent authority of the Department of Telecommunications ratified the proposal to

dismiss first respondent from service and then only order of dismissal was notified.

25. From the above analysis, it is clear that CDA Rules 2006 govern the disciplinary aspects of first respondent employment. CDA Rules, 2006 are later to 2001 Rules. CDA Rules designate the Chief Engineer as competent to dismiss a Junior Telecom Officer.

26. We have gone through the proceedings dated 28.10.1986 and letter dated 09.03.1989. From the reading of paragraph-2.1 of the proceedings dated 28.10.1986, it is clear that *“The concerned Superintending Engineer (Civil) will remain the appointing authority while a designated General Manager of the Telecommunications Circle will be the recruiting authority”*.

27. While so, it appears there was some kind of inconvenience caused in resorting to recruitment various cadres because of several authorities were authorized to make recruitment. In order to overcome this problem and also to ensure timely filling up of posts, a decision was taken to entrust the responsibility to make recruitment to Non-Gazetted posts, including Junior Engineer, which was later re-designated as Junior Telecom Officer, by the Chief General Manager of the concerned State. From the reading of paragraph-2 of letter dated 9.3.1989, it is clear that Appointing Authority remains unchanged i.e., Superintending Engineer (Civil). These two documents amplifies the stand of standing counsel for petitioners that on the day when first respondent was appointed as Junior Telecom Officer, the Superintending Engineer was the appointing authority and he made the appointment.

28. It is not necessary that the appointing authority alone should make recruitment. A different authority can be a recruiting authority, some times even an outsider can be entrusted to make recruitment. For example, in all higher cadre posts in the State of Telangana, the Telangana State Public Service Commission is the Recruiting Authority. On an indent placed by the Appointing Authority or higher authority, the Public Service Commission initiates the process of recruitment, makes selections and sends list of selected candidates to the Appointing Authority, who in-turn, on due verification of the antecedents and eligibility of the candidates recommended for appointment, makes the appointments. Thus, it is always permissible for the employer to designate different authorities for different purposes. Therefore, merely because Chief General Manager of concerned State/Circle/Zone is designated as Recruiting Authority, he cannot *per se* become an Appointing Authority, unless it is otherwise specifically, indicated as is evident from the 2001 Rules and subsequent Rules. Thus, as on the date of appointment of respondent as Junior Telecom Officer, the Superintending Engineer (Civil) was Appointing Authority and he appointed the respondent. Therefore, the contention of the learned counsel for respondent that Chief General Manager is Appointing Authority by referring to the correspondence dated 28.10.1986 and dated 09.03.1989 is not valid.

29. The decision of the Hon'ble Supreme Court in **Krishna Kumar** (supra) does not come to the aid of the first respondent for two reasons. Firstly, in the said case, though, subsequently, the Divisional Assistant Electrical Engineer was designated as the

Appointing Authority to the post of Train Lighting Inspector, the employee therein was appointed by the Chief Electrical Engineer and was working in the said position when order of removal was passed. The Divisional Assistant Electrical Engineer is subordinate to the Chief Electrical Engineer. The Hon'ble Supreme Court held that as the employee was appointed by the Chief Electrical Engineer, merely because there is change in the designation of the Appointing Authority and a lower rank officer is authorized to make appointment to the post of Train Lighting Inspector, the employee cannot be removed by an authority lower in rank to that of the Chief Electrical Engineer. Secondly, the concerned employee was in employment of Department of Railways, Union of India and said employee has the protection of Article 311 of the Constitution of India. In case on hand, respondent ceased to be a Government servant on his absorption into the services of BSNL and thereafter the protection of Article 311 is not available to him. We are not shown any other decision that envisages that even an employee of a statutory corporation cannot be removed/dismissed from service by an authority lower in rank to that of designated Appointing Authority or authority who appointed the employee in the post. At any rate, in the instant case, respondent was appointed by Superintending Engineer, whereas, order of dismissal from service was passed by the Chief General Manager an authority higher in rank to that of initial appointing authority.

30. Learned counsel for respondent also placed reliance on judgment of the Supreme Court in **Jagdish Prasad Vs State of**

Rajasthan⁹ to contend that schedule appended to a statute cannot in any way wipe out main provisions of the Rules in effect and spirit. It is settled principle of law, as held by Hon'ble Supreme Court in **Jagdish Prasad** (paragraph-26) that a schedule to Rules cannot abrogate, reduce or alter the scheme of the main provisions and shall have to be in conformity with intendment of the Rule making authority. It is not the case of the learned respondent counsel that schedule appended to CDA Rules, 2006 is in conflict with the main provision in the CDA Rules, 2006. Hence, we fail to see how this judgment is relevant for the case on hand.

31. Thus, the order of dismissing the first respondent from service is not vitiated as the Chief Engineer of BSNL is the competent authority to dismiss the Junior Telecom Officer and this order was preceded by ratification by the Deputy Secretary, Government of India. The Tribunal has misdirected itself in considering the issue and grossly erred in holding that the order of dismissal was passed by incompetent authority.

32. Before parting with this case, we intend to place on record the fact that case was argued extensively and was directed to be listed for judgment on 08.02.2022. A day before the case was coming up for judgment, learned counsel for first respondent filed Memo enclosing certain administrative orders and decisions and requested the court to permit him to make further submissions. Though we expressed our displeasure to make such request, however, in order to give a fair opportunity, we heard again extensively.

⁹ (2011) 7 SCC 789

33. For the aforesaid reasons, the order of Tribunal cannot be sustained. It is accordingly set aside. The Writ Petition is allowed. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

JUSTICE G.RADHA RANI

Date: 14.02.2022
KH/KKM/tvk

Note: LR copy to be marked: Yes

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE DR. JUSTICE G.RADHA RANI**

WRIT PETITION No.9450 OF 2019

Date: 14.02.2022

Kh/kkm