



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) No. 13645 of 2023)

UNION OF INDIA & ORS.

... APPELLANTS

VERSUS

RAMDHANI PRASAD

... RESPONDENT

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. Leave granted.
2. The present appeal assails the judgment and order dated 12.01.2023 passed by the High Court of Judicature at Allahabad in Second Appeal No. 676 of 1991, whereby the High Court dismissed the second appeal preferred by the present appellants and affirmed the judgment and order dated 07.12.1990 passed in Civil Appeal No. 30 of 1989 by the learned Additional Civil Judge, Gorakhpur (for brevity, “the First Appellate Court”). The High Court held that the respondent had been appointed as a ‘Rakshak’

in the Railway Protection Special Force (for brevity, “the RPSF”) by the Commandant/Chief Security Officer and therefore, his removal by the subordinate authority i.e. the Adjutant/Assistant Commandant, was in violation of Article 311(1) of the Constitution of India (for brevity, “the Constitution”).

2.1. The First Appellate Court allowed the appeal preferred by the present respondent and reversed the judgment and order dated 03.12.1988 passed in Case No. 2662 of 1986 by the learned Additional Munsif Magistrate, Gorakhpur (for brevity, “the Trial Court”). The First Appellate Court held that the respondent had been appointed by the Commandant/Chief Security Officer pursuant to the call letter dated 03.05.1979, whereas the order of removal dated 18.03.1983 was passed by the Adjutant, who was subordinate to the appointing authority. Therefore, it was held that the removal was contrary to Article 311(1) of the Constitution. It was further held that the *ex-parte* departmental enquiry had denied the respondent a reasonable opportunity of defending himself, particularly in view of his medical condition and accordingly, declared the

order of removal dated 18.03.1983 and the departmental appellate order dated 07.11.1984 invalid.

2.2. The Trial Court, on the other hand, held that the present respondent (original plaintiff) was validly appointed as a Rakshak by the Assistant Commandant *vide* Battalion Order dated 04.12.1979, upon successful completion of his initial training. It further held that the Adjutant was competent to pass the order of removal in accordance with the applicable Railway Protection Force Rules, 1959 (for brevity, “the Rules”) and that the order of removal had been validly passed.

3. As per the pleadings of the parties, the material facts giving rise to the present appeal are set out hereinbelow:

3.1. The respondent was enlisted as a Recruit (under training) for the post of Rakshak in the RPSF and was called upon to report for training at the Battalion headquarters of 2Bn RPSF, Gorakhpur, *vide* call letter dated 03.05.1979 issued by the Commandant. The said call letter, *inter alia*, provided that the appointment was subject to successful completion

of the prescribed initial training and provided for a period of probation.

3.2. Upon successful completion of the initial training, B.O. No. 2BN/9/4/9/409 dated 04.12.1979 was issued by the Assistant Commandant from Headquarters, 2nd Battalion, RPSF, Gorakhpur, recording that the concerned recruits had been appointed as Rakshaks with effect from 04.12.1979 and posted to their respective battalions. The respondent, at Serial No. 47, was allotted personal number 2612 and posted to the 7th Battalion.

3.3. Thereafter, Battalion Order No. 461/1979 dated 29.12.1979 was issued by the Adjutant for Commandant. The said Order was subsequently superseded by Battalion Order No. 58/1980 dated 25.02.1980 issued by the Adjutant for Commandant, which recorded that the concerned Rakshaks had already been issued appointment orders with effect from 04.12.1979 by the Assistant Commandant of the 2nd Battalion and were accordingly to be treated as regular Rakshaks with effect from that date.

- 3.4.** While in service, the respondent was granted 15 days of Casual Leave along with Permission Leave from 09.05.1982 to 26.05.1982 however he failed to resume duty on 27.05.1982 and remained absent until 06.08.1982, for a period of 72 days, without any intimation to the competent authority.
- 3.5.** Consequently, a charge-sheet dated 01.10.1982 was issued to the respondent under Rule 44 of the Rules, stating gross negligence and breach of discipline. The respondent acknowledged receipt of the charge-sheet and submitted his response. Thereafter, the Enquiry Officer fixed the departmental enquiry for 01.01.1983 and communicated the same to the respondent.
- 3.6.** *Vide* order dated 01.01.1983, the Enquiry Officer recorded that the respondent had failed to appear for the enquiry and that the memorandum of charges could not be served upon him. The Enquiry Officer thereafter recorded the statement of the concerned Company Commander, who deposed that the respondent had been granted leave from 09.05.1982 to 26.05.1982 but had failed to resume duty on 27.05.1982.

It was further stated that the respondent subsequently reported for duty on 05.08.1982 along with a private medical certificate, whereupon he was sent for medical examination and was taken on duty after being declared fit. Thereafter, the Enquiry Officer proceeded *ex-parte* and submitted his report to the disciplinary authority.

3.7. On 24.02.1983, the Enquiry Officer submitted his report holding that the charges levelled against the respondent stood established.

3.8. Thereafter, a Show Cause Notice dated 26.02.1983 was issued by the Adjutant to the respondent proposing the penalty of removal from service. The respondent did not submit any representation in response to the said notice. Consequently, the Adjutant passed the order dated 18.03.1983 removing the respondent from service. Aggrieved thereby, the respondent preferred an appeal before the Commandant, which came to be rejected *vide* order dated 07.11.1984.

3.9. Aggrieved by the order of removal and the departmental appellate order, the respondent instituted a civil suit before

the Trial Court seeking, *inter alia*, a declaration that the order of removal dated 18.03.1983 and the appellate order dated 07.11.1984 were illegal, void and contrary to the principles of natural justice and Article 311 of the Constitution. The Trial Court dismissed the suit, holding that the respondent had been validly appointed by the Assistant Commandant and that the order of removal had been validly passed by the Adjutant, who was an officer not below the rank of Assistant Commandant.

3.10. Thereafter, the respondent preferred an appeal before the First Appellate Court. The First Appellate Court allowed the appeal and held that the order of removal dated 18.03.1983 and the appellate order dated 07.11.1984 were invalid, as the respondent had been appointed by the Commandant/Chief Security Officer, whereas the order of removal had been passed by the Adjutant, who was subordinate in rank to the appointing authority and accordingly, the order of removal was in violation of Article 311(1) of the Constitution.

3.11. Aggrieved by the judgment of the First Appellate Court, the appellants preferred a second appeal before the High Court. The High Court, by the impugned judgment and order dated 12.01.2023, dismissed the second appeal and affirmed the judgment of the First Appellate Court. The High Court proceeded on the basis that the respondent had been appointed by the Chief Security Officer/Commandant, whereas his removal had been ordered by the Assistant Security Officer/Assistant Commandant/Adjutant, who was subordinate to the appointing authority, and consequently held that the order of removal was in violation of Article 311(1) of the Constitution.

3.12. Aggrieved by the impugned judgment and order passed by the High Court, the appellants have preferred the present appeal before this Court.

4. Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing on behalf of the appellants, made the following submissions:

4.1. Learned counsel submitted that the impugned judgment proceeds on an erroneous factual premise that the

respondent was appointed by the Chief Security Officer/Commandant. According to learned counsel, the appointment order dated 04.12.1979 demonstrates that the respondent was appointed as a Rakshak by the Assistant Commandant, 2nd Battalion, RPSF, Gorakhpur. The earlier communication dated 03.05.1979 issued by the Commandant was merely a call letter requiring the selected candidates to join initial training and did not constitute an appointment order. It is submitted that the Call Letter was merely a direction to report for the mandatory initial training and did not constitute an appointment, as there is no provision within the RPSF framework to appoint any staff prior to the successful completion of the initial training. Therefore, it is submitted that the High Court as well as the First Appellate Court erred in treating the call letter dated 03.05.1979 as the appointment order of the respondent and on that basis holding that the Assistant Commandant/Adjutant was subordinate to the appointing authority.

- 4.2.** It is further submitted that the appointment order dated 04.12.1979 was accompanied by the posting order of the respondent to the 7th Battalion, RPSF and thus constituted the operative appointment order. The subsequent Battalion Order No. 58/1980 dated 25.02.1980 further confirmed that, upon successful completion of initial training, the respondent had been appointed as a Rakshak with effect from 04.12.1979. Reliance is placed on ***Ramanand Singh v. State of Bihar***,¹ wherein this Court held that appointment and posting orders can be simultaneously issued.
- 4.3.** It is contended that under the Rules, the Assistant Security Officer/Assistant Commandant was competent to appoint a Rakshak under Rule 20 read with Schedule I and was also empowered under Rule 43 read with Schedule II to impose the prescribed disciplinary penalties, including removal from service. Therefore, the Adjutant/Assistant Commandant who passed the order dated 18.03.1983 was not an authority subordinate to the appointing authority,

¹ (1984) 2 SCC 447.

but an authority competent to exercise the relevant disciplinary powers under the Rules.

4.4. It is further contended that the respondent had been proceeded against for gross negligence and breach of discipline on account of his prolonged and unauthorised overstay after expiry of sanctioned leave. A charge-sheet dated 01.10.1982 was issued under Rule 44 of the Rules, which, according to the appellants, was acknowledged by the respondent and followed by his written defence. Then, an Enquiry Officer was appointed and the respondent was informed of the date of enquiry. Despite such notice, the respondent failed to appear, resulting in the enquiry proceeding *ex-parte*. Thereafter, the disciplinary authority considered the enquiry report and issued a show-cause notice before passing the order of removal dated 18.03.1983.

4.5. Learned counsel further relied upon the service record of the respondent to contend that the incident in question was not an isolated instance but formed part of a pattern of overstaying sanctioned leave on earlier occasions. It is

submitted that the respondent had remained absent without authority for a substantial period from 27.05.1982 to 06.08.1982, despite being required to resume duty on 27.05.1982. It is further submitted that although the respondent was given full opportunity to participate in the enquiry and was even declared “fit for travel” by the railway doctor, he willfully failed to attend the departmental enquiry and that is why the enquiry proceeded *ex-parte*.

4.6. It is urged that the respondent has been out of service since his removal on 18.03.1983 and therefore, the well-settled principle of “No work, no pay” applies to him, which provides that the employee has to prove by leading evidence that he was not gainfully employed during the period he remained out of employment. Reliance is placed upon the decision of this Court in the case of ***P. Karuppaiah (Dead) through Legal Representatives v. General Manager, Thiruvalluvar Transport Corporation Limited.***²

4.7. Lastly, it is submitted that the present case is covered by the judgment of this Court in the case of ***Union of India &***

² (2018) 12 SCC 663.

Anr. v. Chandra Pal Pandey and the connected matter,³

wherein it was held that the power of appointment does not rest exclusively with the Chief Security Officer only and other superior officers can also make appointments, in accordance with the delegation and rules. Therefore, learned counsel prayed that the impugned judgment be set aside and the order of removal of the respondent be restored.

5. Mr. Mananjay Mishra, learned counsel appearing on behalf of the respondent, submitted that the impugned judgment of the High Court does not warrant any interference of this Court.

- 5.1. It is submitted that the respondent was appointed by the Commandant/Chief Security Officer, 2nd Battalion, RPSF, Gorakhpur and not by the Assistant Commandant. The communication dated 03.05.1979 issued by the Commandant was the appointment order pursuant to which the respondent joined the service and underwent initial training. The subsequent order dated 04.12.1979 issued by the Assistant Commandant was only a posting

³ 1993 Supp (2) SCC 176.

order issued after completion of training and could not be treated as the respondent's appointment order.

5.2. It is also submitted that the respondent had also been issued a certificate of appointment by the Chief Security Officer/Commandant and that the First Appellate Court had correctly appreciated the documents on record, particularly Paper No. 65-Ka, establishing that the respondent had been appointed by the Commandant. The finding of the First Appellate Court, according to the respondent, was based upon the documentary evidence and was rightly affirmed by the High Court.

5.3. It is further submitted that once the Commandant/Chief Security Officer is treated as the appointing authority, the order of removal dated 18.03.1983, passed by the Adjutant/Assistant Commandant, was contrary to Article 311(1) of the Constitution, since the removing authority was subordinate in rank to the authority which had appointed the respondent. Reliance is placed upon the judgment of this Court in ***Krishna Kumar v. Divisional***

Assistant Electrical Engineer, Central Railway,⁴

wherein this Court held that the protection under Article 311(1) is attracted with reference to the authority by which the employee was appointed and that delegation of the power of appointment does not alter the hierarchical status of the delegate. An officer subordinate in rank does not become equal in rank merely because certain powers of appointment have been delegated to him. Learned counsel submitted that the principle in ***Krishna Kumar (supra)*** supports the case of the respondent and the relevant enquiry was not merely whether the Assistant Commandant possessed disciplinary powers under the RPF Rules, but who had appointed the respondent. If the Commandant/Chief Security Officer was the appointing authority, the subsequent conferment or exercise of disciplinary powers by a subordinate officer could not overcome the constitutional protection under Article 311(1).

5.4. Learned counsel also relied upon ***Ramanand Singh (supra)*** in support of the proposition that the question of

⁴ (1979) 4 SCC 289.

the appointing authority has to be determined from the actual appointment and the contemporaneous orders constituting the appointment and posting of the employee. It is submitted that on a proper appreciation of the documents in the present case, the order dated 03.05.1979 issued by the Commandant constituted the appointment, whereas, the order dated 04.12.1979 merely related to posting after completion of training.

5.5. Learned counsel stated that the appellants' reliance upon Rule 20 read with Schedule I and Rule 43 read with Schedule II of the RPF Rules, 1959, is misplaced. It is contended that the fact that the Assistant Security Officer/Assistant Commandant/Adjutant may have been vested with certain powers under the Rules did not answer the constitutional question under Article 311(1) and the material question remained whether the authority passing the order of removal was subordinate in rank to the authority which had appointed the respondent.

5.6. It is submitted that the departmental enquiry itself stood vitiated by a gross violation of the principles of natural

justice. The respondent had been directed to appear before the Enquiry Officer on 01.01.1983, but he could not attend because he was suffering from illness and was undergoing treatment at the Railway Hospital, Gorakhpur. Despite the respondent having intimated his illness, the Enquiry Officer proceeded *ex-parte* and concluded the proceedings on the very same day after recording the evidence of the prosecution witness. It is urged that the contemporaneous medical record established that the respondent was under treatment from 29.12.1982 to 07.03.1983 and was declared fit only on 08.03.1983. Therefore, the respondent could not have been treated as deliberately avoiding the enquiry. The subsequent medical correspondence obtained by the department itself corroborated the illness of the respondent during the relevant period.

- 5.7.** It is further submitted that the respondent had requested supply of the charge-sheet and relevant documents so as to enable him to prepare his defence, however, the charge-sheet was never duly served upon him and, significantly, the contemporaneous proceedings dated 01.01.1983

recorded that the memorandum of charges could not be served upon the respondent on account of his non-appearance and that the enquiry thereafter proceeded *ex parte*. Learned counsel submitted that consequently, the respondent was deprived of a meaningful opportunity to defend himself. It is further submitted that the show-cause notice dated 26.02.1983 was also not served upon the respondent and was returned undelivered, while he was undergoing treatment at the Railway Hospital. Therefore, it is submitted that the final order of removal dated 18.03.1983 was passed without affording him an effective opportunity to represent against the findings of the enquiry.

- 5.8.** On the allegation of unauthorised overstay, learned counsel submitted that the respondent had suffered an accident on 25.05.1982, resulting in a fracture of his left hand and the respondent continued being absent after expiry of leave due to the treatment for his injury. Thereafter, the respondent reported back, produced medical documents, was medically examined and then he was declared medically fit. Thereafter, the respondent approached the department and

repeatedly sought permission to resume duty and then pursued his departmental remedies and instituted civil proceedings challenging the removal order. Therefore, it is submitted that the subsequent conduct of the respondent also demonstrates that he had not voluntarily abandoned service and thus the allegation of deliberate or habitual misconduct is without any merit.

5.9. Lastly, learned counsel submitted that the First Appellate Court had, upon appreciation of the evidence, set aside the orders dated 18.03.1983 and 07.11.1984 and the High Court had rightly affirmed those findings and therefore, the present appeal ought to be dismissed.

6. Having heard learned counsel for the parties and having perused the material on record, the principal question which arises for our consideration is whether the respondent was appointed to the post of Rakshak by the Commandant/Chief Security Officer pursuant to the Call Letter dated 03.05.1979, as held by the First Appellate Court and affirmed by the High Court, or whether his appointment was made by the Assistant Commandant/Assistant Security

Officer pursuant to the B.O. No. 2BN/9/4/9/409 dated 04.12.1979.

7. The answer to this question must be analyzed from the contemporaneous documentary record. The Call Letter dated 03.05.1979, was issued by the Commandant, to the selected candidates to report for the prescribed initial training and the respondent was required to undergo such training before being appointed as a regular Rakshak. The Call Letter made the proposed appointment expressly conditional upon successful completion of such training. The relevant paragraphs of the Call Letter read as under:

“4. Your appointment as a RK in RPSF, in scale of Rs.200-240 plus allowances and special pay, will subject to your successful completion of initial training. You should note that your failure to qualify the prescribed training will render you liable to be discharged from service.

...

9. If you accept the offer on the terms and conditions stipulated above, you should report to No.2 Battalion Railway Protection Special Force, P.O., Rejshi Camp, Gorakhpur [U.P] by 3.5.79 failing which it will be deemed that you are not interested in the appointment as such your candidature for the post will be treated as cancelled.

...

Sd/-
COMMANDANT”

8. Upon successful completion of the initial training, Battalion Order No. 2BN/9/4/9/409 dated 04.12.1979, was issued by the Assistant Commandant, which records the appointment of the

recruits as Rakshaks with effect from 04.12.1979 and were posted to the respective Battalions. The respondent was allotted personal number 2612 and posted to the 7th Battalion. Subsequently, Battalion Order No. 58/1980 dated 25.02.1980 expressly recorded that the appointment orders as Rakshaks had already been issued with effect from 04.12.1979. The relevant paragraphs of the Battalion Order dated 04.12.1979 reads as under:

“On successful completion of initial training the following RK/ Rects. Of ‘E’ [Tra] Coy who are already allocated to different Battalions are appointed as RK in grade Rs.200-240 and Rs.25/- Spl. Pay per month with affect from 4.12.1979, plus usual allowance admissible under rules from time to time are posted to the Bns as noted against each.

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*Sd/-
ASSTT. COMMANDANT
NO.2BN / RPSF/GKP.”*

9. On perusal, we are of the view that the distinction between the two documents is material. The Call Letter dated 03.05.1979 did not contain an unconditional declaration that the respondent stood appointed as a regular Rakshak, however, it expressly made the proposed appointment conditional upon successful completion of initial training and used expressions such as “accept the offer” and “candidature for the post”. Consequently, the respondent was

required to successfully complete the prescribed training before his appointment could take effect as a regular member of the RPSF.

10. In contrast, the Battalion Order dated 04.12.1979 recorded that on successful completion of initial training, the concerned recruits were “appointed as RK” in the prescribed grade with effect from 04.12.1979 and were posted to the respective Battalions. The submission of the respondent that the Order dated 04.12.1979 was merely a posting order is misplaced, because an order may validly operate as both an order of appointment and an order of posting as held in the decision of ***Ramanand Singh (supra)***.
11. The subsequent Battalion Order No. 58/1980 dated 25.02.1980 also recorded that the recruits, including the respondent, who had successfully completed their initial training and whose appointment orders as Rakshaks with effect from 04.12.1979 had already been issued, were to be treated as regular Rakshaks. It further recorded that the personal numbers subsequently allotted under the earlier order stood cancelled since personal numbers had already been allotted under the order dated 04.12.1979.

- 12.** However, the First Appellate Court proceeded on the basis that the Call Letter dated 03.05.1979 constituted the appointment order and that the Order dated 04.12.1979 was merely a posting order. The High Court adopted the same approach and consequently proceeded to examine the validity of the removal order on the basis that the Commandant/Chief Security Officer was the appointing authority. In our view, the Courts below erred in the interpretation of the language used in the two documents.
- 13.** It is well settled that while determining the authority by which an employee was appointed for the purposes of Article 311(1) of the Constitution, the court is required to ascertain the authority which in fact made the appointment with reference to the order of appointment and the statutory or regulatory framework governing such appointment. Once that authority is identified, the constitutional protection under Article 311(1) has to be examined with reference to the hierarchical position of the authority which subsequently passes the order of dismissal or removal.
- 14.** A similar view was taken by this Court in ***Krishna Kumar (supra)***, the relevant paragraphs are reproduced as under:

“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.

...

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."

- 15.** Applying the aforesaid principle to the present case, we are of the view that the appointment of the respondent as a regular Rakshak was made pursuant to Battalion Order No. 2BN/9/4/9/409 dated 04.12.1979 issued by the Assistant Commandant, 2nd Battalion, RPSF, Gorakhpur. The name of the respondent, personal number and posting are specifically recorded therein. The subsequent Battalion Order dated 25.02.1980 further confirms that his appointment as a regular Rakshak had already been made with effect from 04.12.1979. Thus, the documents do not support the conclusion of the First Appellate Court and the High Court that

the Commandant/Chief Security Officer was the authority which appointed the respondent.

- 16.** Having determined the identity of the appointing authority, the next question is whether the Adjutant who passed the Order of Removal dated 18.03.1983 was subordinate in rank to the Assistant Commandant who had appointed the respondent and whether the removal of the respondent was in accordance with the law. The relevant extract of the Order of Removal is reproduced as under:

“I have no option to held the case indefinitely and by his conduct makes to believe that he is not interested in his service. I confirm the penalty as proposed in the show cause notice of removal from service with immediate effect.

*Sd/-
(I. J. Singh)
Adjutant.*

No. 7BN/DAR/MAJ/28/82- 678

Dated 18.03.1983”

- 17.** At this stage, it is relevant to refer to the statutory scheme governing the appointment and disciplinary control of members of the RPSF. Section 4 of the Railway Protection Force Act, 1957 (for brevity, “the RPF Act”) recognises the offices of Chief Security Officer, Security Officer and Assistant Security Officer as offices of superior officers and provides that such officers shall exercise the powers and authority conferred upon them by or under the Act.

Section 6 of the Act provides that the appointment of members of the Force shall rest with the Chief Security Officer, who is required to exercise that power in accordance with the Rules made under the Act. However, the proviso to Section 6 expressly contemplates that the power of appointment may also be exercised by such other superior officer as the Chief Security Officer concerned may specify in that behalf. Thus, the statutory scheme does not make the Chief Security Officer the exclusive authority competent to make appointments to the Force. Section 6 of the RPF Act is reproduced as under:

“6. Appointment of members of the Force – The appointment of members of the Force shall rest with the Chief Security Officers who shall exercise that power in accordance with Rules made in this Act.

Provided that the power of appointment under this section may also be exercised by such other superior officers as the Chief Security Officer concerned may by order specify in this behalf.”

- 18.** The Rules framed under the Act give effect to this statutory scheme. Rule 20 provides that the powers of superior officers to appoint members of the Force shall be as specified in Schedule I. Schedule I expressly confers upon the Assistant Security Officer the power to appoint Senior Rakshaks and Rakshaks. The same are reproduced as under:

“20. POWERS OF APPOINTMENT: - *The powers of superior officers to appoint members of the Force shall be as specified in Schedule-I.*

...

*SCHEDULE-I
(Rule 20)*

Powers of Superiors Officers to make appointments to the Force.

<i>Chief Security Officer</i>	<i>Security Officer</i>	<i>Assistant Security Officer</i>
<i>All Members of the Force</i>	<i>Sub-Inspectors, Assistant Sub-Inspectors, Head Rakshaks, Senior Rakshaks, Rakshaks</i>	<i>Senior Rakshaks, Rakshaks</i>

...”

- 19.** Thus, the statutory scheme, read with the Rules, recognises the Assistant Security Officer as a competent authority to appoint a Rakshak.
- 20.** Similarly, the disciplinary powers are distributed by the Rules. Rule 43 provides that the disciplinary authority, for the purpose of imposing any particular penalty or passing any disciplinary order, shall be the authority specified in Schedule II in whose administrative control the member of the RPSF is serving and shall include any authority superior to such authority. Schedule II confers upon the Assistant Security Officer the power to impose the penalty of removal upon Senior Rakshaks and Rakshaks. The same is reproduced as under:

“43. DISCIPLINARY AUTHORITY: *The disciplinary authority in respect of a member of the Force for the purpose of imposing any particular penalty or the passing of any disciplinary order shall be the authority specified in this behalf in Schedule II in whose administrative control the member is serving and shall include any authority superior to such authority.*

...

SCHEDULE II
(See rules 40 and 43)

<i>Sl. No</i>	<i>Nature of Disciplinary Order</i>	<i>Inspector General</i>	<i>Chief Security Officer</i>	<i>Security Officer</i>	<i>Assistant Security Officer</i>
1.	<i>Suspension</i>	<i>All Members of the Force</i>	<i>All Members of the Force</i>	<i>All Members of the Force</i>	<i>All Members of the Force of and below the Class of Sub-Inspectors</i>
2.	<i>(a) Dismissal</i>	<i>Do.</i>	<i>Do.</i>	<i>All members of the Force except Inspectors and Sub-Inspectors</i>	<i>No powers</i>
	<i>(b) Removal</i>	<i>Do.</i>	<i>Do.</i>	<i>Do.</i>	<i>Senior Rakshaks and Rakshaks</i>

...”

- 21.** Section 9 of the RPF Act is also relevant for our consideration, it provides that subject to Article 311 of the Constitution and the Rules made under the Act, any superior officer may dismiss, suspend or reduce in rank a member of the RPSF whom he considers remiss or negligent in the discharge of his duty or unfit for the same. Thus, Section 9 makes the exercise of disciplinary

power subject both to Article 311 of the Constitution and Rule 43 of the Rules. Section 9 is reproduced as under:

“9. Dismissal, removal, etc. of members of the Force – (1) Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may -

(i) dismiss, suspend or reduce in rank any member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or ...”

22. On a conjoint reading of Sections 6 and 9 of the RPF Act and Rules 20 and 43 read with Schedules I and II of the Rules, it is inferred that although control in the matter of appointment rests with the Chief Security Officer, the statutory scheme permits the exercise of the power of appointment by other superior officers competent under the Rules. The Rules expressly confer upon the Assistant Security Officer the power to appoint Senior Rakshaks and Rakshaks and also confer upon such authority the power to impose the penalty of removal upon Senior Rakshaks and Rakshaks.

23. This interpretation is consistent with the decision of this Court in ***Chandra Pal Pandey (supra)***, wherein Sections 6 and 9 of the RPF Act were considered in conjunction with the Rules framed thereunder, and it was held that the expression that appointment “shall rest” with the Chief Security Officer does not mean that the

power of appointment is exclusively vested in that officer. The proviso to Section 6 itself contemplates exercise of the power by other superior officers and the Rules may validly confer such power upon them. The relevant paragraphs are reproduced as under:

“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.

15. A bare reading of Section 9 of the Act also shows that it is only subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under the Act, that any superior officer could exercise the powers mentioned in Section 9(1)(i) of the Act. If only the Chief Security Officer, who is one of the superior officers, alone has the powers of dismissal on the hypothesis that he alone was competent to appoint members of the Force then Section 9 of the Act would not have been worded in the manner it has been so enacted.”

- 24.** Applying the above discussion to the facts of the present case, the Order dated 04.12.1979 was issued by the Assistant Commandant, 2nd Battalion, RPSF, Gorakhpur, expressly appointing the respondent as a Rakshak with effect from

04.12.1979 upon successful completion of his initial training. The appellants have placed on record that Shri I.J. Singh, the Adjutant, who passed the Order of Removal dated 18.03.1983, was of the same rank as the Assistant Commandant/Assistant Security Officer who had made the appointment. The Trial Court, upon consideration of the pleadings and evidence, recorded a finding that the Adjutant was not lower in rank than the Assistant Commandant. The respondent has not disputed the same and has not placed anything on record to establish that the Adjutant was subordinate in rank to the Assistant Commandant who had appointed the respondent, neither before this Court nor before the Courts below. As discussed hereinabove, the Assistant Commandant/Assistant Security Officer/Adjutant is competent to impose the penalty of removal upon the Rakshaks under the Rules. At this stage, it is relevant to note that the constitutional prohibition contained in Article 311(1) is attracted only where the order of dismissal or removal is passed by an authority subordinate in rank to the authority by which the employee was appointed, whereas, this essential ingredient of Article 311 is absent in the facts of the present case.

- 25.** Accordingly, we are of the view that the respondent was appointed as a regular Rakshak by the Assistant Commandant/Assistant Security Officer, 2nd Battalion, RPSF, Gorakhpur, pursuant to the Battalion Order No. 2BN/9/4/9/409 dated 04.12.1979 and the said order operated as the appointment order as well as the posting order. The Call Letter dated 03.05.1979 issued by the Commandant was only a communication requiring the selected candidates to report for and undergo the prescribed initial training and did not constitute the operative appointment order.
- 26.** Consequently, the Order of Removal dated 18.03.1983, having been passed by an authority which was not subordinate in rank to the authority which had appointed the respondent and which was competent under Schedule II of the Rules to impose the penalty of removal upon a Rakshak, cannot be held invalid on the ground of violation of Article 311(1) of the Constitution. Therefore, the contrary conclusion reached by the First Appellate Court and affirmed by the High Court is unsustainable.
- 27.** The respondent has raised a contention before us that the departmental enquiry stood vitiated on account of violation of the principles of natural justice. The Trial Court, upon consideration

of the material on record, rejected the said contention and held that the respondent had full knowledge of the charge-sheet, the appointment of the Enquiry Officer and the disciplinary proceedings and that there was no material to establish that he had sought an opportunity to participate in the enquiry or had otherwise approached the department before the order of removal was passed. However, the First Appellate Court took a different view and held that, having regard to the fact that the respondent was ill on 29.12.1982 and that the enquiry was fixed for 01.01.1983, proceeding *ex-parte* on the date fixed, without affording him a further opportunity, had resulted in denial of a reasonable opportunity of defence. The First Appellate Court also relied upon the medical record showing that the respondent remained under treatment up to 07.03.1983 and was declared fit on 08.03.1983 and consequently, held that the departmental proceedings were contrary to the principles of natural justice. The High Court, while affirming the judgment of the First Appellate Court, did not record any finding on the issue of violation of the principles of natural justice.

28. Upon perusal of the material on record, it transpires that the respondent had acknowledged receipt of the charge-sheet dated 01.10.1982 and had submitted his response thereto. Thereafter, the Enquiry Officer fixed the enquiry for 01.01.1983 and notice of the same was communicated to the respondent. The respondent failed to appear on the date fixed, whereupon the Enquiry Officer proceeded *ex-parte* and submitted his report holding the charges to be established. Thereafter, a Show Cause Notice dated 26.02.1983 proposing the penalty of removal from service was issued to the respondent, however, he did not submit any representation thereto. The principles of natural justice require that a reasonable opportunity of defence be afforded to the delinquent employee. In the present case, the respondent was made aware of the disciplinary proceedings and was afforded an opportunity to participate therein. Accordingly, on the facts and circumstances of the present case, the departmental enquiry cannot be held to be vitiated merely on the ground that it proceeded *ex-parte* and therefore, the contention raised by the respondent alleging violation of the principles of natural justice is rejected.

29. For the aforesaid reasons, the present appeal is allowed. The judgment and order dated 12.01.2023 passed by the High Court of Judicature at Allahabad in Second Appeal No. 676 of 1991 is hereby set aside. Consequently, the judgment and order passed by the First Appellate Court is also set aside. The Trial Court has not committed any error while dismissing the suit filed by the present respondent (original plaintiff). Accordingly, the Order of Removal of the respondent dated 18.03.1983 passed by the Adjutant is hereby restored.

30. Pending application, if any, shall stand disposed of.

.....**J.**
[ARAVIND KUMAR]

.....**J.**
[VIPUL M. PANCHOLI]

NEW DELHI
SEPTEMBER 24, 2026