THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR (M.P.)

NO. CGIT/LC/ R/70/2019
Present: P.K.Srivastava
H.J.S. (Retd)

1. **The Secretary,**
   Koyla Udyog Kamgar Sangthan,
   B/337, NCH Colony, S.E.C.L., Gevra Project,
   District Korea (Chhattisgarh) 495 452

Workman

Vs

1. **Chairman-cum-Managing Director,**
   S.E.C.L., Sipat Road,
   Bilaspur (CG)

2. **Director (Office), S.E.C.L.,**
   Sipat Road,
   Bilaspur (CG)

Management

(JUDGMENT)

(Passed on this 5th day of December, 2025)

As per letter dated 25/10/2019 by the Government of India, Ministry of Labour, New Delhi, the reference has been made to this Tribunal under ***Section-10 of Industrial Disputes Act, 1947*** (in short the '***Act'***) as per Notification ***No. J-1(3-2)/2019-IR*** dt. 25/10/2019. The dispute under reference relates to:-

*"एसईसीएल, प्रबंधन व्दारा डेलीगेशन ऑफ पावर **(Delegation of Power**) के व्दारा स्थाई आदेशों में किए गए संशोधन संविधान के अनुच्छेद **311 (1)** के अंतर्गत विधिक रुप से उचित है या नहीं? यदि नहीं, तो एसईसीएल प्रबंधन के क्षेत्रीय महाप्रबंधकों, उपक्षेत्रीय प्रबंधकों तथा खदान प्रबंधकों के व्दारा उन संशोधित स्थाई आदेशों से प्राप्त शक्तियों का प्रयोग करते हुए की गई अनुशासनात्मक कार्यवाहियाँ विधिक रुप से उचित है या नहीं एवं एसईसीएल प्रबंधन व्दारा उन संशोधनों पर तत्काल प्रभाव से प्रतिबंध न लगाना उचित है अथवा नहीं? यदि नहीं तो*

संबंधित सभी कर्मकार जिनको संशोधित स्थाई आदेशों से प्राप्त शक्तियों का प्रयोग करते हुए सेवा से बर्खास्त किया गया है, वह क्या अनुतोष पाने के हकदार है.?"

After registering the case on the basis of reference, notices were issued to the parties. They appeared and filed their respective statement of claim in defense.

It is the case of the workers Union that it is registered union under the *Trade Union Act*, having registration No. NGP/4672, issued by Competent Authority and is authorized to raise disputes on behalf of its members. The applicant is Secretary of the said Union, authorized by the Union on this behalf. According to the Union, the management of S.E.C.L. has notified its Certified Standing Orders, made under the provisions of the *Industrial Employment (Standing Orders) Act, 1946*, which is applicable to the management and employees of the company, no amendment can be made in these Certified Standing Orders without permission of Competent Authority and if there is any proposal for amendment, it requires to be approved by the Central Government, who is the Competent Authority but the management of S.E.C.L. has made amendments neither without such approval nor by getting approved by the Competent Authority which is illegal and arbitrary. Further, rules specifically provide that the appropriate government, by notification in official Gazette, may direct that any power exercised by it under rules there under shall in relation to such matter and subject to such conditions, if any, that may be specified in this direction to be exercised by such Officer or Authority subordinate. The management has made amendments permitting delegation of power by way of authorizing Subordinate Officer to take disciplinary action against the employees without the approval of Appropriate Government/ Central Government. Hence, such amendments are bad in law.

Furthermore, under clause 2.3 of the Certified Standing Orders, it has been provided that '*Competent Authority*' means an Officer specifically nominated by Chairman/Managing Director concerned by an order in writing for the purpose of standing orders, such orders shall be put on notice-board and copies sent to concerned registered Tribunal whereas in the case in hand, no such amendment was put on

notice-board nor was it communicated to any Union. Thus, disciplinary action against employees, taken by Subordinate Officers has no sanction of law.

It is also the case of Union that the Director Personnel, is Appointing Authority of the employees whereas the standing orders have been amended providing delegation of powers to terminate or punish employees to Officers Subordinate to the Appointing Authority which is in violation of Article 311(1) of the Constitution of India, hence, bad in law.

The delegation of power and amendments in the model standing orders made by the management authorizing the Unit Head and Section Head to take disciplinary action against the employees is in violation of Article 311(1) because they are Officers Subordinate to the Appointing Authority which is Director Personnel of these amendments made on various dates i.e., 09.12.1991, 12.12.1991, 16.12.1991, 31.03.2008 and 01.04.2008, nominating various authorities for taking disciplinary action and punishment lower than the Appointing Authority is against constitution, hence, unjust, illegal and arbitrary. The workman Union has thus prayed that holding these delegations as mentioned vide amendment orders mentioned above de-horse of Article 301 of the Constitution of India, disciplinary actions including the terminations, dismissals and removals passed by different authorities of the management company be held illegal and they be held entitled to be reinstated with all back wages, in service as well post retiral benefits.

Case of the management is mainly that the South Eastern Coal Field Limited is one of the eight Subsidiary Companies of Coal India Limited (CIL) which is under administrative control of Ministry of Coal, is registered in Companies Act, the standing orders with respect to the company was originally certified by Shri S.K. Mukhopadhyay, Regional Labour Commissioner (C) Bombay/Certifying Officer on 08.07.1991, which was again certified and authenticated by Mr. G.R. Manjhi, Deputy Labour Commissioner (Central)/Appellate Authority on 05.11.1992, amending certain clauses of the standing orders. The amendments made in the certified orders have been certified by the Regional Labour Commissioner (Central), Raipur, vide his order dated

15.01.2009, a writ petition No. 16517/2016 and writ appeal against order of the Single Bench in the said writ W.A. No. 1412/2023 have been dismissed by Hon'ble High Court of M.P., which was filed against these certifications.

It is further the case of management that the amendments have been included following the due process as mentioned in the Act. Hence, certified by law also it has been pleaded that Article 311(1) of the Constitution of India has no application in the case in hand.

Both the sides have field photocopy documents, which are not disputed and shall be referred to as and when require.

I have heard argument of Learned Counsel for Union Mr. Arun Patel and Mr. Anoop Nair, Learned Senior Counsel for management of S.E.C.L., assisted by Learned Counsel, Mr. Neeraj Kewat. I have gone through the record as well.

On perusal of record in light of rival arguments, following Issues came up for determination, in the case in hand:-

1) Whether the employees of management of SECL hold a civil post and are entitled to protection under Article 311(1) of the Constitution of India?

2) Whether the aforesaid amendments have been duly promulgated/notified and in what force of law?

Issue No.1,

Main argument of Learned Counsel for management of S.E.C.L. is that the members of the applicant Union do not hold civil posts, hence, are not entitled to protection under Article 311(1) of the Constitution of India. Learned Counsel has referred to certain judgments in this respect, which are as follows:-

i. Tekraj Vasandi v/s Union of India & Ors., (1988) 1 SCC 236, Held

"1. While we were referring to the cases in an earlier part of our judgment, we have noticed the caution indicated by this Court that even if some institution becomes "State" within the meaning of Article 12, its employees do not become holders of civil posts so as to become entitled to the cover of Article 311. They would, however, be entitled to the benefits of Part III of the Constitution. It is

unnecessary to examine the appellant's case keeping Articles 14 and 16 of the Constitution in view as on the concession of Dr Anand Prakash the proceedings will have to reopen"

ii. Som Prakash Rekhi v/s Union of India & Anr., (1981) 1 SCC 449, Held

"In the present instance, the source of both, read in the light of Sections 3 and 7, is saturated with State functions. Avowedly, the statutory contemplation, as disclosed by Section 7, is that the Company should step into the shoes of the executive power of the State. The legislative milieu in which the second respondent came to be the successor of Burmah Shell suggests that the former is more than a mere company registered under the Companies Act. It has a statutory flavour acquired under Section 7. Moreover, everything about the second respondent in the matter of employees, their provident, superannuation and welfare funds, is regulated statutorily unlike in the case of ordinary companies. Sections 9 and 10 deal with these aspects. These two provisions which regulate the conditions of service and even provide for adjudication of disputes relating to employees indicate that some of the features of a statutory corporation attach to this government company. Sections 9 and 10, in terms, create rights and duties vis-a-vis the Government company itself apart from the Companies Act. An ordinary company, even a government company simpliciter has not the obligations cast on the second respondent by Sections 9 and 10. And, Section 11 specifically gives the Act primacy vis-a-vis other laws. Section 12, although it has no bearing on the specific dispute we are concerned with in this case, is a clear pointer to the statutory character of the Government company and the vesting of an authority therein. This provision clothes the Government company with power to take delivery of the property of Burmah Shell from every person in whose possession, custody or control such property may be. There are other powers akin to this one in Section 12. The provision for penalties if any person meddles with the property of the second respondent emphasises the special character of this Government company. Equally unique is the protection conferred by Section 16 on the Government company and its officers and employees "for anything which is, in good faith, done or intended to be done under this Act". Such an immunity does not attach to employees of companies simpliciter, even if they happen to be Government companies. In the same strain is the indemnity conferred by Section 18. This review, though skeletal, is sufficient strikingly to bring home the point that the Corporation we are concerned with is more than a mere government company. Whatever its character antecedent to the Act, the provisions we have adverted to have transformed it into an instrumentality of the Central Government with a strong statutory flavour superadded and clear indicia of power to make it an "authority". Although registered as a company under the Indian Companies Act, the second respondent is clearly a creature of the statute, the Undertaking having vested in it by force of Section 7 of the Act. The various provisions to which our attention was drawn, an elaboration of which is not called for, emphasise the fact that the second respondent is not a mere company but much more than that and has a statutory flavour in its operations and functions, in its powers and duties, and in its personality itself, apart from being functionally and administratively under the

thumb of Government. It is a limb of Government, an agency of the State, a vicarious creature of statute working on the wheels of the Acquisition Act. We do not mean to say that for purposes of Article 309 or otherwise this Government company is State but limit our holding to Article 12 and Part III.

iii. Pyarelal Sharma v/s Managing Director & Ors, (1989) 3 SCC 448, Held

"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 12-9-1974 and as such from that date the Managing Director 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."

iv. State of U.P. v/s Chandrapal Singh & Anr., (2003) 4 SCC 670, Held

"In Registrar of Coop. Societies v. Fernando [(1994) 2 SCC 746 : 1994 SCC (L&S) 756 : (1994) 27 ATC 188] referring to the two aforementioned decisions of this Court, the position is made clear thus in para 16 : (SCC pp. 750-51)

"16. It was on the basis of this GO, on 20-3-1989 the Registrar issued the charge memo. In this connection, it is worthwhile to refer to a recent decision of this Court reported in P.V. Srinivasa Sastry v. Comptroller and Auditor General [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645] . The relevant observations at pp. 1323-24 are as under : (SCC pp. 422-23, paras 4-5 and 6)

'But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time, this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such

proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

In the case of State of M.P. v. Shardul Singh [(1970) 1 SCC 108] the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his inquiry report to the Inspector General, who was the appointing authority. The Inspector General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311(1) of the Constitution. This contention was accepted by the High Court. But this Court said : (SCC p. 112, para 10)

"We are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that article."

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Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding."

v. Union of India & Ors. v/s Hasmukhbhai Heerabhai Rana, (2006) 12 SCC 373, Held

"There is no dispute that the departmental proceeding can be initiated by a person lower in rank than the appointing authority. But the final order can be passed only by the appointing authority or an authority higher than it. The law relating to initiation (sic of disciplinary proceeding) by a person lower in rank than the authority competent to pass final order has been the subject-matter of adjudication in many cases. (See State of M.P. v. Shardul Singh [(1970) 1 SCC 108] and State of U.P. v. Chandrapal Singh [(2003) 4 SCC 670 : 2003 SCC (L&S) 556] .)"

vi. State Bank of India v/s S. Vijay Kumar & Ors., (1990) 4 SCC 481, Held

Held that, employees of State Bank of India do not hold civil posts and are not entitled to protection under Article 311(1) of the Constitution of India, in this case, the Hon'ble Supreme Court found that the rules governing the services made by the Bank contained such provisions in the rules itself.

vii. Ajit Kumar Nag v/s General Manager, IOCL., (2005) 7 SCC 764, Held

"10. Having heard the learned counsel for the parties, we are of the view that the appeal as well as the writ petition deserve to be dismissed. So far as preliminary

objection as to maintainability of the petition in this Court and the applicability of res judicata in the appeal is concerned, it is true that the appellant had not taken the ground as to vires of clause (vi) of Standing Order 20 either before the learned Single Judge or before the Division Bench of the High Court. At the same time, however, when he has approached this Court against the decision of the High Court and has raised this ground, it would not be appropriate to preclude him from arguing the case on the vires or validity of clause (vi) of Standing Order 20. Moreover, he has also filed a substantive petition for the said purpose under Article 32 of the Constitution. The preliminary objection, therefore, does not impress us and we have allowed both the parties to argue the case on vires of Standing Order 20(vi) as well as on merits.

11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

12. As far as the status of the appellant is concerned, it must be stated that Mr Rao, Senior Advocate fairly conceded at the hearing of the appeal and the writ petition that the appellant is not governed by Article 311 of the Constitution since he cannot be said to be "civil servant". In this connection, it will be profitable to refer to a decision of the Constitution Bench of this Court in S.L. Agarwal (Dr.) v. G.M., Hindustan Steel Ltd. [(1970) 1 SCC 177 : (1970) 3 SCR 363] (Hindustan Steel Ltd. I). In that case, A was appointed as Assistant Surgeon by the Board of Directors of the Corporation for one year. After completion of the probation period, he was employed on contract basis and his services were terminated in accordance with the terms of the contract. He filed a writ petition

in the High Court contending that his services were wrongly terminated which was violative of Article 311 of the Constitution. The Corporation contended that Article 311 was not applicable to him as he was employed by the Corporation and he neither belonged to civil service of the Union nor held a civil post under the Union.

13. Upholding the objection and considering the ambit and scope of Article 311, this Court held that an employee of a Corporation cannot be said to have held a "civil post" and, therefore, not entitled to protection of Article 311. According to the Court, the Corporation could not be said to be a "department of the Government" and employees of such Corporation were not employees under the Union. The Corporation has an independent existence and the appellant was not entitled to invoke Article 311. Hindustan Steel Ltd. (I) [(1970) 1 SCC 177 : (1970) 3 SCR 363] has been followed by this Court in several cases. (See Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi [(1975) 1 SCC 421 : 1975 SCC (L&S) 101] , Som Prakash Rekhi v. Union of India [(1981) 1 SCC 449 : 1981 SCC (L&S) 200] , A.L. Kalra v. Project & Equipment Corpn. of India Ltd. [(1984) 3 SCC 316 : 1984 SCC (L&S) 497] , Tekraj Vasandi v. Union of India [(1988) 1 SCC 236 : 1988 SCC (L&S) 300] , Pyare Lal Sharma v. Managing Director [(1989) 3 SCC 448 : 1989 SCC (L&S) 484] , State Bank of India v. S. Vijaya Kumar [(1990) 4 SCC 481 : 1991 SCC (L&S) 852 : (1990) 14 ATC 787] and Satinder Singh Arora v. State Bank of Patiala [1992 Supp (2) SCC 224 : 1992 SCC (L&S) 660 : (1992) 21 ATC 118] .)

14. In view of the above pronouncements of this Court, there is no doubt that the respondent Corporation is right in submitting that the appellant cannot invoke Article 311 by describing him as holding "civil post" under the Union or a State. Article 311 of the Constitution, therefore, has no application to the facts of the case."

viii. Dr. S.L. Agrawal v/s General Manager, Hindustan Steel, (1970) 1 SCC 177, (Five Judges Bench) Held

"6. The question that arises in this case is: whether the employees of a Corporation such as the Hindustan Steel Ltd., are entitled to the protection of Article 311? This question can only be answered in favour of the appellant if we hold that the appellant held a civil post under the Union. It was conceded before us that the appellant could not be said to belong to the civil service of the Union or the State. Article 311, on which this contention is based, reads as follow:

"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 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 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;

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

(c) where the President or Governor, as the case may be, is satisfied that in the interest of security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

7. Clause (2) of the article, which gives the protection opens with the words "no such person as aforesaid" and these words take one back to clause(1) which describes the person or persons to whom the protection is intended to go. Clause (1) speaks of (i) persons who are members of (a) a Civil Service of the Union, or (b) an all-India Service or (c) a Civil Service of a State or (ii) hold a civil post under the Union or a State. (a), (b) and (c) refer to the standing services which have been created in the Union and the States and which are permanently maintained in strength. In addition to the standing services there are certain posts which are outside the permanent services. The last category in Article 311(1) therefore speaks of such posts on the civil side as opposed to the military side. Incumbents of such posts also receive protection.

8. In the present case the appellant did not belong to any of the permanent services. He held a post which was not borne on any of the standing services. It was, however, a civil post as opposed to a military post. So far the appellant's case is clear but the clause speaks further that such posts must be under the Union or a State. The question thus is whether the servant employed here can be said to have held the post under the Union or a State? The appellant contends that since Hindustan Steel Limited is entirely financed by the Government and its management is directly the responsibility of the President, the post is virtually under the Government of India.

9. This argument ignores some fundamental concepts in relation to incorporated companies. In support of the contention that the post must be regarded as one under the Union the appellant relies on some obiter observations of a Single Judge in M. Verghese v. Union of India [AIR 1963 Cal 421] . In that case the petitioners were drivers working for the Durgapur Project under Hindustan Steel Limited. The learned Single Judge considered the question by analysing the set up

of Hindustan Steel Limited. He found that it was a Government company and a private limited company, although it did not include in its name any notice that it was a private company. He referred in detail to the various provisions in the Articles of Association as also in the Indian Companies Act which rendered the ordinary company law inapplicable in certain respects and conferred unlimited powers of management on the President of India and his nominees. He also found that Hindustan Steel Limited was entirely owned by the Union of India. From this the learned Judge wished to infer that Hindustan Steel Limited was really a department of the Government but he did not express this opinion and decided the case on another point. The appellant contends that the conclusion which the learned Single Judge did not draw in the Calcutta case is the conclusion to draw in this appeal. We must, according to him, hold that there is no difference between Hindustan Steel Limited and a Department of the Government and that the service under Hindustan Steel Limited is a service under the Union.

10. On the other hand, in State of Bihar v. Union of India [(1970) 1 SCC 67] . Hindustan Steel Limited was not held to be a "State" for purposes of Article 131. The question whether Hindustan Steel Limited was subject to the jurisdiction of the High Court under Articles 226 and 227 was left open. In dealing with the above conclusion, reference was made to the incorporation of Hindustan Steel Limited as an independent company and thus a distinct entity. In Praga Tools Corpn. v. C.V. Imanual [(1969) 1 SCC 585] it was pointed out that a company in which 88% of the capital was subscribed by the Union and the State Governments could not be regarded as equivalent to Government because being registered under the Companies Act it had a separate legal existence and could not be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. Similar views were also expressed in the High Courts. In Lachmi v. Military Secretary to the Government of Bihar [AIR 1956 Pat 398] the expression "civil post under the Union or the State" was held to mean that the civil post must be in the control of the State and that it must be open to the State to abolish the post or regulate the conditions of service. Although the case concerned a Mali employed in Raj Bhavan, it was held that it was not a post under the State even though the funds of the State were made available for paying his salary. In a later case Subodh Ranjan Ghosh v. Sindhri Fertilisers and Chemicals Ltd. [AIR 1957 Pat 10] the employees of the Sindhri Fertilizers were held not entitled to the protection of Article 311. Our brother Ramaswami (then Chief Justice) noticed that the corporation was completely owned by the Union Government; that the Directors were to be appointed by the President of India who could also issue directions. He nevertheless held that in the eye of law the company was a separate entity and had a separate legal existence. In our judgment the decision in the Patna case is correct. It has also the support of a decision reported in Ram Babu Rathaur v. Divisional Manager, Life Insurance Corporation of India [AIR 1961 All 502] and another in Damodar Valley Corporation v. Provat Roy. [LX CWN 1023] Our brother Ramaswami relied in particular upon an English case Tamlin v. Hennaford [(1950) 1 KBD 18] . In that case it was held in relation to a business that although the minister was really incharge, the corporation was different from the Crown and the services of the

corporation were not civil services. Justice P.B. Mukherjee of the Calcutta High Court, to whose judgment we referred earlier distinguished the English case by pointing out certain differences between the Corporation in that case and Hindustan Steel Limited. He pointed out that (a) in the English Corporation no shareholders were required to subscribe the capital or to have a voice in the affair, (b) the capital was raised by borrowing and not by issuance of shares, (c) the loss fell upon the consolidated fund and (d) the corporation was non-profit making. In our judgment these differences rather accentuate than diminish the applicability of the principle laid down in the English case to our case. The existence of shareholders, of capital raised by the issuance of shares, the lack of connection between the finances of the corporation and the consolidated fund of the Union rather make out a greater independent existence than that of the corporation in the English case. We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of "a civil post under the Union" as stated in the Article. The appellant was not entitled to the protection of Article 311. The High Court was therefore right in not affording him the protection. The appeal fails and is dismissed but in the circumstances of the case we make no order about costs.

ix. Satinder Singh Arora v/s State Bank of Patiala & Ors., (1992) Supp (2) SCC 224, (Three Judges Bench) Held

Held that, Bank Officers are not holders of civil posts, hence, not entitled to be protected by Article 311(1) of the Constitution of India.

x. Basant Lal Wadehra v/s Union of India, 1996 SCC online Delhi 926, Held

"42. The question of questions requiring consideration for resolving the above controversy is whether the peti-tioner was holding a 'Civil Post' at the relevant time i.e on 8.2.83 while working as Chairman-cum-Managing Director of Coalfields Limited (respondent No. 3). In case Lachmi v. Military Secy, to the Government of Bihar (AIR 1956 Pat. 398) the expression 'Civil Post' under the Union or the State was held to mean that the 'Civil Post' must be in the control of the Union or the State and that it must be open to the Union or the State to abolish the post or to regulate the conditions of service. Patna High Court in a later case, Subodh Ranjan Ghosh v. Sindri Fertilisers And Chemicals Limited,, (AIR 1957 Pat. 10) held that the employees of Sindhri Fertilisers were not entitled to the protection of Article 311 of the Constitution. Same view has been taken by the High Court of Allahabad in case Ram Babu Rathaur v. Divisional Manager. Life Insurance Corporation of India (AIR 1961 All. 502) and by the High Court of Calcutta in case Damodar Valley Corporation v. Provat Roy (60 Cal. WN 1023). In case Tamlin v. Hannaford (1950-1 KB-18) it was held in relation to a business that although the ministry was really incharge the Corporation was different from the 'Crown' and the services of the 'Corporation' were not Civil Services. The Supreme

Court in case Dr. S.L Aggarwal v. The General Manager, Hindustan Steel Limited reported as (1970) 1 SCC 177: AIR 1970 SC 1150: (1970 SLR 351 (SC)] held:-

"We must, therefore, hold that the Corporation which is Hindustan Steel Limited in this case is not a depart-ment of the Government nor are the servants of it holding posts under the State. It has its independent exis-tence and by law relating to corporations it is distinct even from its members. In these circumstances, the ap-pellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of 'a civil post under the Union' as stated in the Article. The appellant was not entitled to the protection of Article 311."

43. The Supreme Court in case K.C Joshi v. Union of India reported as (1985) 3 SCC 153: AIR 1985 SC 1046: [1958 (2) SLR 214 (SC) observed :

"Even if the employees of the Corporation, which is an instrumentality of the State, cannot be said to be the members of a civil service of the Union or an, All-India service or hold any civil post under the Union, for the purpose of Articles 310 and 311 and, therefore, not entitled to the protection of Article 311, they would nonetheless be entitled to protection of the fundamental rights enshrined in Articles 14 and 16 of the Constitution."

44. In view of above cited decisions of the various High Courts and the Supreme Court, we are of the view that the petitioner while working as Chairman-cum-Managing Director of Coalfields Limited (respondent No. 3) was not holding a 'Civil Post' within the meaning of Articles 310 and 311 of the Constitution and the protection available to the holders of a 'Civil Post' under the provisions of Article 311 of the Constitution is, therefore, not available to the petitioner."

Though, it has been submitted by Learned Counsel for the Union that all the laws flow from Constitution of India and are subordinate to it. Any law, rule or regulation which is not in conformity with the Constitution is *ultra-vires* and cannot be given effect to. I am not inclined to accept this argument in the light of proposition laid down in the aforesaid Judgments.

In the light of above discussion, it is held that since the employees of SECL do not hold a civil post hence, they are not entitled to protection of Article 311(1) of Constitution of India.

Issue No. 1 is answered accordingly.

Issue No. 2-

In the light of findings on issue No. 1, this issue is answered against the Union.

In light of above discussion and findings, the reference is answered as follows.-

AWARD

"Holding that the Employees and Officers of the Management of SECL do not hold Civil Post and hence are not entitled to protection under Article 311(1) of Constitution of India, the Delegation of Powers by the Management of SECL by way of Amendments in the Standing Orders is held justified in law. The actions taken by the Area General Managers, Sub-Area Managers and Mines Managers under the Amended Standing Orders with respect to disciplinary proceedings are held justified in law. The punishment orders passed by these Authorities under Amended Standing Orders warrant no interference.

No order as to cost.

DATE:- 05-12-2025

(P.K.SRIVASTAVA)
PRESIDING OFFICER