

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

APPEAL NO. 217 OF 2025

IN THE MATTER OF:

Surti Mohammed Irfan

...APPELLANT

Versus

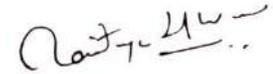
State of Gujarat and Ors.

...RESPONDENTS

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THROUGH


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REJOINDER ON BEHALF OF THE APPLICANT IN RESPONSE TO WRITTEN SUBMISSIONS DATED 10.09.2025 FILED BY RESPONDENT NO. 3 APPELLATE AUTHORITY

1. The present Appeal has been filed under Section 18(1) read with Section 16(a) of the National Green Tribunal Act, 2010, challenging the legality and correctness of Order no. ENV-10-2024-AO-06-T Cell dated 06.06.2025 issued by the Appellate Authority constituted as per the provisions of Section 28(1) of the Water (Prevention and Control of Pollution) Act, 1974, by the State Government of Gujarat (hereinafter referred to as 'Appellate Authority').
2. That vide order dated 3.09.2025, this Hon'ble Tribunal had granted the Appellate Authority one weeks' time to file their response in the present Appeal. Accordingly, 'Written Submissions' dated 10.09.2025 were filed by the Appellate Authority, wherein the Appellate Authority has made certain submissions which effectively seek to assail the issues raised by the Appellant in the present Appeal. Accordingly, and so as to assist this Hon'ble Tribunal in determination of the legal questions apparent herein, the Appellant seeks to respond to the 'Written Submissions' dated 10.09.2025 made by the Appellate Authority.

3. At the outset, the Appellant denies each and every averment and conclusion made in said 'Written Submissions' which is contrary to and/or inconsistent with what has been submitted on record in the present Appeal. Furthermore, nothing stated in the present Rejoinder on behalf of the Appellant shall be construed as an admission for the want of any specific and para-wise denial or non-traverse unless and until the same is specifically admitted hereinafter.

I. THE APPELLATE AUTHORITY IS THE APPROPRIATE FORUM FOR ADJUDICATION OF THE CHALLENGE TO GRANT OF IMPUGNED CCA DATED 20.11.2024

4. The Appellate Authority, in Para 7 of their Written Submissions, has stated that the appeal was dismissed vide the impugned order dated 6.06.2025 on the ground of "judicial comity and propriety" as an existing Original Application was filed by the present Appellant was pending before this Hon'ble Tribunal.
5. However, the Appellant rejects such a submission as being thoroughly misconceived and untenable in law. That the initial Appeal was preferred by the present Appellant challenging the grant of the Consolidated Consent and Authorization ('CCA') dated 20.11.2024 granted by the Gujarat Pollution Control Board ('GPCB') *inter alia* under provisions of Section 25 of the Water Act, 1974.
6. That as per the provision of Section 28 of the Water Act, 1974, any person aggrieved by an order made by the GPCB under Section 25 must necessarily prefer an appeal before the Appellate Authority. Accordingly, the existence of any O.A. before this Hon'ble Tribunal is a non-issue and has no bearing on the statutorily prescribed procedure for challenge to Orders made under Section 25 of the Water Act, 1974, regardless of the issues involved in the said O.A.

7. Therefore, the aforementioned submissions of the Appellate Authority are liable to be rejected as being thoroughly misconceived and untenable in law.

II. NON-JOINDER OF INDUSTRY AS PARTY RESPONDENT IS NOT AN INCURABLE DEFECT

8. The Appellate Authority, in Para 8 of their Written Submissions, has stated that the “manifest and obvious vice of non-joinder of necessary party” renders the appeal liable to be dismissed.
9. However, the Appellant rejects such submissions as being contrary to established precedent as laid down by the Hon’ble Supreme Court in **Prabodh Verma and Ors. v. State of Uttar Pradesh and Ors.** reported in **1985 AIR 167**, annexed at **Pgs. 319-355** of the present Appeal.
10. Herein, the Hon’ble Supreme Court has clearly held that the non-joinder of necessary parties is not an incurable defect, and parties must be provided an opportunity of curing such defects.
11. Furthermore, the Appellant seeks to rely on Rule 8(vii) of the Gujarat Water (Prevention and Control of Pollution) Appeal Rules, 1982, which specifically mandates that any defects that are found in the Appeal form “*shall be intimated to the appellant*”, who is then provided an opportunity of correct the same.
12. Accordingly, if the Appellate Authority has deemed the non-joinder of necessary party to be a defect, the same ought to have been notified to the present Appellant, and an opportunity of curing the said defect ought to have been provided. However, without adhering to such prescribed procedure, the Appellate Authority conducted a hearing of the said Appeal, and proceeded to issue the impugned Order dated 6.06.2025, defeating their statutory mandate.

III. DOCTRINE OF SEVERABILITY OUGHT TO BE APPLIED TO THE
IMPUGNED CCA ORDER

13. The Appellate Authority, in Para 11 of their Written Submissions, has stated that the Appellate Authority cannot "split the impugned Consolidated Consent and Authorization" and declare only a part thereof to be bad in law.
14. Notwithstanding the fact that the impugned order dated 6.06.2025 nowhere mentions the same as a ground for dismissal of the appeal, the Appellant rejects the said submission of the Appellate Authority as being untenable in law.
15. The Appellant submits that the impugned CCA dated 20.11.2024 clearly mentions that said CCA is being issued in exercise of powers conferred under Section 25 of the Water Act, 1974, Section 21 of the Air Act, 1981, and Rule 6(b) of the Hazardous and Other Waste Rules, 2016. Furthermore, the said CCA clearly trifurcates the various sets of conditions imposed under each statute.
16. It is further submitted that each statute confers independent Appellate jurisdiction on the Appellate Authority, as is evident on bare perusal as follows:

(a) Section 28 of the Water Act provides: "Any person aggrieved by an order made by the State Board under section 25, 26 and 27 of this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as the State Government may think fit to constitute."

(b) Section 31 of the Air Act provides: "Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as the State Government may think fit to constitute."

(c) Rule 24 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules provides: "Any person aggrieved by an order of suspension or cancellation or refusal of authorisation or its renewal passed by the State Pollution Control Board may, within a period of thirty days from the date on which the order is communicated to him, prefer an appeal in Form 12 to the Appellate Authority, namely, the Environment Secretary of the State."

17. It is submitted that the applicable statutory regime at no point states that an appeal under any one statute can only be preferred when appeals are also preferred under the remaining statutes. That accepting the submissions of the Appellate Authority would undeniably lead to the said conclusion, which would be outside of the confines of the relevant statutory provisions.
18. It is further submitted that the consolidation of the CCA into a single administrative order does not divest or diminish the Appellate Authority's inherent power to examine each statutory component separately and distinctly.
19. Furthermore, the Appellant submits that the CCA dated 20.11.2024 clearly mentions that it is being issued for the following industrial activities:
- i. Processing of Cloth*
 - ii. Dry Processing of Cloth (job work of stantering and finishing)*
 - iii. Dry Processing of cloth (job work of calendaring)*
 - iv. Dry Processing of cloth (job work of felt & zero)*
20. Therefore, it is patently evident that the CCA dated 20.11.2024 permits multiple industrial activities that do not involve any discharge of effluent or wastewater. Accordingly, the Appellant submits that the concerned industry could carry out 3 out of 4 of the permitted industrial processes without possessing any Consent issued under Section 25 of the Water Act, 1974, as they involve dry processes.
21. That the first appeal was preferred by the Appellant precisely due to violations of the Water Act, 1974, viz., failure to ensure Zero Liquid Discharge in operation of the industrial unit. Accordingly, the Appellant submits that CCA dated 20.11.2024 could have been invalidated to the extent of violations of the Water Act, 1974, as detailed in the first Appeal, by applying the Doctrine of Severability – which has been extended to administrative orders as well.

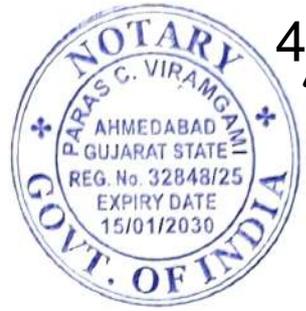
22. In support thereof, the Appellant relies on the order of the Hon'ble Allahbad High Court in **Gajendra Prasad Saxena v. State of U.P 2015** reported in **AHC 35456** annexed and marked herewith as **ANNEXURE A-10**, and the order of the Hon'ble Supreme Court in **Pawan Kumar Tiwary and Ors. v. Jharkhand State Electricity Board and Ors.** reported in **2025 INSC 1000**, annexed and marked herewith as **ANNEXURE A-11**.

23. *Arguendo*, the Appellant relies on Rule 8(vii) of the Gujarat Water Appeals Rules, 1982, and states that any material defects apparent in the first Appeal, including the requirement of filing separate Appeals under the Air Act, 1981, and the Hazardous and Other Waste Rules, 2016, ought to have been notified to the Appellant, who would then take the necessary remedial steps.

IV. 'ANY PERSON AGGRIEVED' INCLUDES PRESENT APPELLANT

24. The Appellate Authority, in Para 13 of their Written Submissions, states that "it would not be appropriate to give a wider meaning to the term 'any person'". However, the Appellant rejects such submission as being thoroughly misconceived, contrary to established precedent, and untenable in law.

25. The Appellant has previously submitted the orders of this Hon'ble Tribunal in Appeal 56/2012/SZ (Pgs. 139-149), O.A. 141/2025 (Pgs. 300-318), as well as Judgment dated 5.05.2000 of the Hon'ble High Court of Gujarat in S.C.A. No. 11 of 1989 (Pgs. 136-138), and the Hon'ble Supreme Court in C.A. 4763-4764 (Pgs. 223-299), all of which categorically reject the interpretation being sought to be furthered by the Appellate Authority, and have upheld the interpretation of 'any person aggrieved' to include the Appellant. Accordingly, the submissions of the Appellate Authority must necessarily be rejected by this Hon'ble Tribunal.



Pass any other order as deemed fit by this Hon'ble Tribunal in the interest of justice, equity, and good conscience in the prevailing facts and circumstances.

Isham. Y. Surti

APPELLANT

THROUGH

Maitreya Prithwiraj Ghorpade

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COUNSEL FOR THE APPELLANT

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VERIFICATION

I, Surti Mohammed Irfan, r/o 4051 Behind Old Anjuman School, Gollimda, Astodia Road, Ahmedabad - 380001 do hereby verify that the contents of the present Rejoinder abovementioned are true to my personal knowledge and nothing material has been concealed therefrom.

Date: **11 NOV 2025**

Place:

Isham. Y. Surti

APPELLANT

SIGNED BEFORE ME

[Signature]
PARAS C. VIRAMGAMI
NOTARY
GOVT. OF INDIA

11 NOV 2025



SR. No. A/300 /2025

PARAS C. VIRAMGAMI
NOTARY
GOVT. OF INDIA

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...RESPONDENT

AFFIDAVIT

Surti Mohammed Irfan, r/o 4051 Behind Old Anjuman School, Gollimda, Astodia Road, Ahmedabad – 380001 do hereby solemnly affirm and state as under:

1. That I am the Appellant in the above titled Appeal and am conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

Surti M. Irfan

DEPONENT

VERIFICATION

11 NOV 2025

Verified on this ___ of ___ 2025 that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed therefrom.

Surti M. Irfan

DEPONENT

SOLEMNLY AFFIRMED
BEFORE ME

PARAS C. VIRAMGAMI
NOTARY
GOVT. OF INDIA

11 NOV 2025





Orders reserved on 10/3/2015

Delivered on 19/3/2015

AFR

Court No. - 59

Case :- WRIT - A No. - 20632 of 2009

Petitioner :- Gajendra Prasad Saxena

Respondent :- State Of U.P. Thru Its Secy. Food & Civil
Supplies & Ors

Counsel for Petitioner :- Anil Bhushan

Counsel for Respondent :- C.S.C.

Hon'ble Yashwant Varma,J.

The petitioner, a Senior Assistant in the Department of Food and Civil Supplies has sought to assail the validity of the order dated 22/5/2007 passed by the respondent no.3 as affirmed in appeal by the respondent no.2 vide is order dated 25/2/2009. In terms of the impugned order and consequent to culmination of the disciplinary proceedings taken against him he has been inflicted the following punishments:

- (a) A recovery of Rs.59927/- on account of excess withdrawal from the G.P.F. Account.
- (b) Recovery of a sum of Rs.412789.68/- from him;
- (c) the stoppage of one increment with cumulative effect.
- (d) the recordal of an adverse entry in the character roll of the petitioner.

This order passed by the respondent no.3 has been affirmed by the respondent no.2 acting as the Appellate Authority under the

relevant rules.

This Court has heard Shri Adarsh Bhushan in support of the writ petition and Shri Ravi Shankar Prasad, learned Additional Chief Standing Counsel appearing on behalf of the State respondents.

The salient facts which may be noticed and as would be relevant for disposal of the instant writ petition are as follows. The petitioner was initially appointed as a Class-III employee in the respondent Department in 1975. He was promoted to the post of Senior Assistant in 1978 and upon attaining the age of superannuation retired on 29/2/2008.

It appears that on 18/7/2005, a charge-sheet was issued against him alleging therein that because of his negligence and misconduct the Government had suffered huge losses consequent to his failure to rectify supplies and accordingly disciplinary proceedings were instituted against him. Upon receipt of the said charge-sheet, the petitioner appears to have elicited further information from the Department vide his letter dated 16/8/2005 and ultimately submitted a reply on 26/9/2005 denying the charges levelled against him. The Inquiry Officer upon receipt of the reply of the petitioner appears to have proceeded in the matter and ultimately submitted a report dated 21/1/2006. The objections of the petitioner were invited upon the findings recorded in the said inquiry report and after receipt of the same and upon a consideration of the reply submitted by the petitioner, the impugned order dated 22/5/2007 came to be passed. Aggrieved by the aforesaid, the petitioner preferred a Departmental appeal which also came to be dismissed by the order dated 25/2/2009.

Shri Adarsh Bhushan, learned counsel for the petitioner has submitted that the impugned order is clearly arbitrary and illegal inasmuch as in the course of the inquiry proceedings the petitioner was neither called before the Inquiry Officer to submit his case, no

witnesses were examined in his presence, he was afforded no opportunity of cross-examination nor was the petitioner provided any of the documentary evidence relied upon and referred to in the inquiry report. He has submitted that the provisions of the *U.P. Government Servant (Discipline and Appeal) Rules, 1999* apply in the facts of the present case and that since a major penalty of stoppage of one increment with cumulative effect had been imposed upon him, the same could not have been inflicted without following the procedure prescribed under the Rules aforementioned and holding of a detailed oral inquiry.

Learned counsel for the petitioner has submitted with reference to the pleadings taken in the writ petition and the inquiry report submitted in this regard to contend that the inquiry proceedings were taken ex-parte and that the impugned order is liable to be quashed consequently.

Learned Standing Counsel has on the other hand submitted that grave and serious charges had been levelled against the petitioner including those of having caused loss to the Department. He has submitted that the Inquiry Officer has recorded cogent grounds and has taken into consideration evidence existing on record while recording his conclusion that Charge Nos.1, 2, 3, 7 and 8 stood proved against him. He has further drawn the attention of the Court to the fact that insofar as Charge Nos. 4 and 9 are concerned, the same were found to have been partly proved and Charge Nos.5 and 6 were not found proved against the petitioner.

It is the admitted case of parties that the provisions of Rules, 1999 referred to hereinabove govern the proceedings taken against the petitioner. In order to appreciate the rival contentions canvassed before this Court, it would be apposite to refer to the following

relevant provisions of the aforesaid rules.

"3. Penalties. -*The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants:-*

Minor Penalties:-

- (i) Censure;*
- (ii) Withholding of increments for a specified period;*
- (iii) Stoppage at an efficiency bar;*
- (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.*
- (v) Fine in case of persons holding Group 'D' posts:*

Provided that the amount of such fine shall in no case exceed twenty-five per cent of the months pay in which the fine is imposed.

Major Penalties:-

- (i) Withholding of increments with cumulative effect;*
- (ii) Reduction to a lower post or grade or time-scale or to a lower stage in a time scale;*
- (iii) Removal from the service which does not disqualify from future employment;*
- (iv) Dismissal from service which disqualifies from future employment.*

Explanation.- The following shall not amount to penalty within the meaning of this rule, namely:-

- (i) Withholding of increment of a Government Servant for failure to pass a Departmental examination or for failure to fulfil any other condition in accordance with the rules or orders governing the service;*
- (ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficiency bar;*
- (iii) Reversion of a person appointed on probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and*

orders governing such probation;

(iv) Termination of the service of a person appointed on probation during or at the end of the period of probation in accordance with the terms of the service or the rules and orders governing such probation.

7. Procedure for imposing major penalties.-*Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner:*

(i) The Disciplinary Authority may himself inquire into the charges or appoint an authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary authority:

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned Department.

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(iv) The Charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce

evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged-Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant record desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence

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or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of witnesses and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case, the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi) The Disciplinary Authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority having regard to the circumstances of the case so permits:

Provided that this rule shall not apply in following cases:-

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner

provided in these rules; or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules.

10. Procedure for imposing minor penalties.-*(1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.*

(2) The Government servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reasons thereof shall be given. The order shall be communicated to the concerned Government servant."

The Inquiry Officer in terms of his report and as noticed above found that Charge Nos.1, 2, 3, 7, and 8 stood fully proved, Charge Nos. 4 and 9 were found partly proved and Charge Nos. 5 and 6 were found to be not proved against the petitioner. This report was accepted by the Disciplinary Authority and the petitioner was also provided an opportunity to submit his representation against the same. The order of the Disciplinary Authority records that despite the said opportunity being afforded to the petitioner he submitted no reply. It was in the above background that the Disciplinary Authority proceeded to inflict upon the petitioner the four punishments enumerated hereinabove. It becomes relevant to note here that the charge on the petitioner having caused loss to the extent of Rs.4,12,789.68/-stood comprised in Charge No.1. Similarly, the charge of withdrawal of Rs. 59927/- from the G.P.F. was also found

proved against the petitioner.

This Court finds that the punishment (a), (b) and (d) are liable to be classified as minor penalties. The recovery of loss caused to the Government by negligence or breach of orders from the pay and other dues of the employee is clearly classified as a minor penalty. Insofar the imposition of minor penalties are concerned they are governed by the provisions of Rule 10. This Rule does not envisage the appointment of any Inquiry Officer or the Department instituting regular disciplinary proceedings as envisaged and provided for in Rule 7. The only requirement that Rule 10 places upon the Disciplinary Authority is that he would inform the Government servant of the substance of the charges against him and call for his explanation. The Disciplinary Authority thereafter considering the said explanation and the relevant records may proceed to impose the penalties described as minor penalties under Rule 3.

The only major penalty which has been inflicted upon the petitioner is that of withholding of one increment with cumulative effect. The provisions and procedures laid down in Rule 7 were liable to be followed in respect of the imposition of this penalty alone.

There is no dispute with the basic proposition advanced by Shri Adarsh Bhushan, learned counsel for the petitioner that before imposition of a major punishment an oral inquiry must necessarily be held. Shri Adarsh Bhushan has in this connection relied upon a judgment rendered by a learned Single Judge of this Court in *Writ Petition No. 10637 of 2007, Shiv Prasad Ram Vs. State of U.P. & Ors, decided on 25/11/2010*. For our purposes, it would be relevant to notice what the learned Single Judge held in the above matter. The relevant extracts whereof read as under:

"4. A Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director & another, 2000

(1) U.P.L.B.E.C. 541, considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma Vs. U.P. Cooperative Spinning Mills & others, 2001 (2) UPLBEC 1475 and Laturi Singh Vs. U.P. Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005.

5. An oral inquiry would be necessary even if the delinquent employee has failed to submit reply to the charge sheet. In State of U.P. & another Vs. T.P. Lal Srivastava, 1997 (1) LLJ 831, the Hon'ble Apex Court held that even if the employee has failed to submit reply to the charge sheet, it would not absolve the Inquiry Officer from proceeding with the oral inquiry and submit report as to whether charge is proved or not. After recording of evidence, he will find out whether the charge is proved or not and submit report to the disciplinary authority. The aforesaid exposition of law makes it clear that the delinquent employee has a right to defend himself at different stages. When the charge sheet is served upon him, he has a right to submit his reply and in case he does not submit reply, that itself would not amount to admission of guilt or that the charge stand proved. If the allegations are serious and may result in major penalty, the disciplinary authority may appoint Inquiry Officer. Such Inquiry Officer, thereafter would have to fix a date for oral evidence. At

this stage the delinquent employee has a right to participate in the oral inquiry, examine witnesses, if produced by the Department, and after the evidence of the Department is completed, the delinquent employee may produce evidence in his defence. During the course of oral inquiry, the delinquent employee has right to participate at every stage and date and if there is any failure in participation on one or more occasions, the Inquiry Officer cannot deny him participation from the subsequent stage. The delinquent employee can participate at subsequent other stage also. The Inquiry Officer, after completion of oral inquiry, will submit its report after discussing the entire material and if any charge is proved, the disciplinary authority shall supply a copy of the inquiry report to the delinquent employee and he would again have a right to submit reply to the inquiry report.

6. Non holding of oral inquiry, therefore, is a serious flaw which vitiates the entire disciplinary proceeding, including the order of punishment."

This Court does not dispute the proposition advanced by Shri Adarsh Bhushan, nor does it disagree with what was recorded by the learned Single Judge in the judgment aforementioned. If the Department felt that a major punishment was liable to be imposed upon the petitioner it was obliged and mandated to follow the procedure prescribed in Rule 7. This ordinarily would have set the controversy to rest. The Court, however, is further obliged to consider the question as to whether the non-following of the procedure prescribed under Rule 7 would also invalidate the imposition of minor

penalties. Or to put it differently, will the impugned order fall in entirety on account of this flaw in the procedure adopted by the Respondents?

In the opinion of this Court, minor penalties were not liable to be inflicted after following the procedure prescribed under Rule 7. The procedure of a detailed oral inquiry was liable to be followed only in respect of the imposition of the punishment of stoppage of one increment with cumulative effect. The learned counsel for the petitioner has not advanced any submissions touching upon the merits of the charges levelled against him nor has it been contended before this Court that the findings returned by the Inquiry Officer in respect of the charges found proved against him were arbitrary and unsustainable. In fact as noticed above, the sole submission canvassed by Sri Bhushan was the failure of the Respondents to hold an oral enquiry which was mandated for imposition of a major penalty.

This Court has gone through the inquiry report and finds that the Inquiry Officer has duly applied his mind to the charges levelled and on the basis of the evidence before him recorded his conclusions with respect to Charge Nos.1, 2, 3, 7 and 8.

The question therefore is whether the order impugned is to be quashed in entirety or whether the doctrine of "partial quashing" is to be applied in the facts and circumstances of the case. In other words this Court would have to consider whether the objectionable part of the order is severable from the valid.

The principle of an unconstitutional provision of a statute being severed and struck down leaving other parts untouched is well known. The said principle of severability has been extended to orders also. This is how the above position was explained by the

Constitution Bench of the Apex Court in *Y. Mahboob Sheriff and*

Sons Vs. Mysore State Transport Authority AIR 1960 SC**321.**

"(10a) This brings us to the question of relief to be granted to the petitioners. It is contended on behalf of the Department that all that this Court can do is to quash the order of December 15, 1958, and send the case back to the Authority for consideration of the question of renewal afresh. On the other hand, the petitioners contend that this Court should quash the illegal condition limiting the duration of the renewal to one year and direct the Authority to specify a period of not less than three years and not more than five years in conformity with Section 58(1)(a) in the order of renewal. This raises the question of severability of a part of the order passed by the Authority. The principles on which any unconstitutional provision can be severed and struck down leaving other parts of a statute untouched were laid down by this Court in *R.M.D. Chamarbaugwalla v. The Union of India*, 1957, S.C.R. 930:(S) AIR 1957 SC 628) and the first principle is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. This principle relating to statutes was extended by this Court to orders in *Shewpujanrai Indrasanrai Ltd. v. The Collector of Customs*, 1959 SCR 821; (AIR 1958 SC 845), where a part of the order of the Collector of Customs was quashed. The question therefore resolves into this: would the Authority have ordered renewal if it knew that it could not reduce the period of a permit to below three years? Looking at the facts of these cases which we have set out earlier, it is to our mind obvious that the Authority would have granted renewal in the circumstances of these cases when it did so in December 1958. The previous permits in these cases had expired on March 31, 1958, and the petitioners had been plying their stage carriages right up to the time when the order was passed on December 15, 1958; they could not do so

without a permit in view of S. 42 of the Act. Therefore, renewal in these cases was certain when the order was passed on December 15, 1958. In the circumstances it is open to us to sever the illegal part of the order from the part which is legal, namely, the grant of the renewal."

Following the principle laid down above, the doctrine of severability was applied to an order of dismissal with retrospective effect by the Apex Court in **R. Jeevaratnam Vs. State of Madras AIR 1966 SC 951** in the following manner:-

"4. The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service".

The above position in law as struck by the Hon'ble Supreme Court was reiterated again in **State Bank of Patiala Vs. Ram Niwas Bansal (2014) 12 SCC 106** in the following words:-

"15. Regard being had to the nature of controversy, we shall proceed to deal with the first point first, that is, whether the order of removal could have been made with

retrospective effect. Mr Patwalia, learned Senior Counsel appearing for the employee, has submitted that the disciplinary authority could not have passed an order of removal by making it operational from a retrospective date. He has commended us to a three-Judge Bench decision in R. Jeevaratnam v. State of Madras [R. Jeevaratnam v. State of Madras, AIR 1966 SC 951] . In the said case, the appellant therein instituted a suit for a declaration that the order of dismissal from service was illegal and void. The trial court dismissed the suit and the said decree was affirmed in appeal by the High Court. One of the contentions raised before this Court was that the order of dismissal dated 17-10-1950 having been passed with retrospective effect i.e. 29-5-1949, was illegal and inoperative. This Court opined that an order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The said principle has been followed in Gujarat Mineral Development Corpn. v. P.H. Brahmbhatt [(1974) 3 SCC 601 : 1974 SCC (L&S) 102]."

One may in this connection also usefully refer to the enunciation of the principle of severability as laid down by the Apex Court in **State of Mysore Vs. K. Chandrasekhara Adiga (1976) 2 SCC 495.**

"27. The only question that remains to be considered is, whether the High Court should have quashed the order of assignment in toto or only the illegal part of it. This

question depends on the exigencies of each case because this Court is not fettered in the exercise of its discretion by the technical rules relating to the issue of writs by the English courts. The first point to be considered in the context of making an appropriate order or direction in such cases is whether the valid and the invalid portions of the order are severable, and if so, whether after excision of the invalid part, the rest remains viable and self-contained. In the instant case the illegal condition in the order of assignment is not an integral part of the assignment, in the sense, that its deletion cannot render the rest which has been found to be valid, truncated and ineffective."

This Court is of the opinion that in light of what was found by the Enquiry Officer on the evidence and material before it, the Disciplinary Authority would have been fully justified in imposing the minor penalties finding mention in the impugned order. In situations like these the Court is also mindful of what the Apex Court held in ***State of Orissa Vs. Bidyabhusan Mohapatra AIR 1963 SC 779-***

"9.The recommendation of the Tribunal was undoubtedly founded on its findings on Charges 1(a), 1(c), 1(d) and Charge (2). The High Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained because in arriving at the findings the Tribunal had violated rules of natural justice.....Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have

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weighed with the authority in dismissing the public servant.....”

In the opinion of the Court, therefore, the impugned order of punishment is clearly severable. The part of the impugned order insofar as it imposes minor penalties upon the petitioner cannot be upset or set-aside by this Court either in exercise of its powers of judicial review or on the basis of the submissions advanced by the learned counsel for the petitioner.

In a position of this nature, this Court exercising powers under Article 226 of the Constitution of India can very well proceed to partially quash an order if it finds that the invalidity can be earmarked and separated/excised from the otherwise valid part of the order assailed before it. In the facts of the present case, this Court finds that the invalidity by which the impugned order suffers pertains only to the imposition of major penalties. The said part of the order is severable and it is to that extent alone that this Court feels compelled to interfere. It is the undisputed position that under the Rules, 1999 insofar as the power of imposition of minor penalties is concerned, the same was not liable to be preceded by an oral enquiry. The Rules, 1999 only mandated that the authority would elicit an explanation from the concerned employee and proceed to pass orders after taking the same into consideration. The authority, therefore, would have been fully justified in making the order impugned on the basis of the response submitted by the Petitioner and the material before him. This Court is further convinced in arriving at the above conclusion in light of the fact that the findings recorded by the Enquiry Officer and the Disciplinary Authority have not been assailed on merits before this Court and the submissions have been confined to the infraction of Rule 7 of the Rules, 1999 and the principles of natural justice.

Accordingly, and in view of the above, this writ petition is partly allowed. The impugned order insofar as it imposes punishment of stoppage of one increment with cumulative effect is hereby quashed. Consequential reliefs, if any, which are liable to flow to the petitioner shall be considered by the respondents in light of what is recorded by this Court hereinabove.

OrderDate:-19/3/2015

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

CIVIL APPEAL NO(S). _____ of 2025
SPECIAL LEAVE PETITION (CIVIL) NO(S).26860-26863 OF 2023

PAWAN KUMAR TIWARY AND OTHERS ...APPELLANT(S)

VERSUS

**JHARKHAND STATE ELECTRICITY BOARD
(NOW JHARKHAND URJA VIKAS NIGAM
LIMITED) AND OTHERS ...RESPONDENT(S)**

J U D G M E N T

ARAVIND KUMAR, J.

1. Leave granted.
2. The present appeals arise from the common order dated 22.12.2021 passed by the Division Bench of the High Court of Jharkhand at Ranchi in LPA Nos. 512 and 647 of 2018, whereby the Division Bench allowed the appeals of the respondents and set aside the appellants' appointments to Class III posts, reversing the relief granted to them by the learned Single

Judge in W.P. (S) Nos. 1248 and 1269 of 2010. Civil Review Nos. 5 and 6 of 2022 filed thereafter also came to be dismissed by order dated 07.08.2023. Hence, the appellants/writ petitioners are before this court assailing the correctness of the said orders.

The brief facts necessary for adjudication of the present appeals are set forth below:

3. The appellants, namely, Pawan Kumar Tiwary, Hemant Kumar Choubey, and Amar Kumar, were appointed to Class IV posts in the Jharkhand State Electricity Board (hereinafter referred to as "JSEB") during the years 2004–2006.

4. On 07.01.1999, the Bihar State Electricity Board, Patna issued Standing Order No. 812 regarding appointment to Non-Technical Class III posts through internal advertisement. The said Standing Order referred to Resolution No. 7305 dated 02.12.1998, wherein the Board resolved to fill up vacant posts of non-technical Class III by departmental candidates. The Standing Order explicitly stated that the percentage of vacancies against sanctioned posts to be filled through departmental candidates should not exceed the percentage indicated against each post.

5. Pursuant thereto, the Director, Personnel, JSEB vide Letter No. 1341 dated 25.06.2008 invited applications for appointment to the posts of

Routine Clerks, Junior Accounts Clerk, Lower Division Assistant and other posts through internal process as per the qualifications prescribed for the relevant posts. Subsequently, vide Letter No. 144 dated 19.01.2009, it was notified that candidates who have applied for Correspondence Clerk/Junior Accounts Clerk, may also apply for appointment to the post of Lower Division Assistant, if interested. The appellants submitted their applications in the prescribed format for the posts of Routine Clerk and Lower Division Assistant and thereafter they appeared in the examination conducted by the Board. On 15.02.2009, the Board published the list of successful candidates. Appellant No.1(Pawan Kumar Tiwary) and Appellant No.3 (Amar Kumar) figured in the list of successful candidates for the post of Routine Clerk (hereinafter referred to as "RC"), and Appellant No.2 (Hemant Kumar Choubey) figured in the list of successful candidates for the post of Lower Division Assistant (hereinafter referred to as "LDA"). Subsequently, their appointments were made vide Office Orders No. 758 and 759 dated 24.04.2009 and the appellants joined their respective posts and started working.

6. The Secretary of JSEB vide office order No.860 dated 07.05.2009 stated that implementation of all orders related to internal appointments on the post of RC, LDA and other posts stood adjourned i.e., stayed without assigning any reason. The present appellants along with other appointees

made representations through their service association before the competent authority for redressal of their grievances. However, no response was received.

7. Thereafter, on 27.05.2009, JSEB constituted a three-member Enquiry Committee to enquire about all the internal appointments made, citing certain irregularities and illegalities. On 27.06.2009, the Enquiry Committee submitted its report stating appointments were not made in adherence to the prescribed rules of qualification, and additionally, the appointments were made beyond the sanctioned vacancies for internal appointments. Accordingly, the Enquiry Committee held all the appointments made through various office orders to be unconstitutional, including Office Order No. 758 and 759 dated 24.04.2009 through which present appellants were appointed.

8. After the release of the Enquiry Report, the Chairman of JSEB issued a directive on 07.10.2009, to take action against the administrative personnel responsible for causing the irregular and illegal appointments beyond prescribed qualifications and sanctioned strength. In the same directive, the Chairman declared three officers responsible and cancelled the appointments made internally.

9. The present appellants made multiple representations for restoring the appointments made, however, there was no response from JSEB. On 22.07.2010, vide Office Order No.881, JSEB cancelled the appointments of the appellants citing the appointments were irregular and not in accordance with appointment and reservation rules.

10. The appellants along with other appointees whose appointments stood cancelled filed W.P. (S) No. 1248 of 2010 praying for quashing of Office Order dated 07.05.2009 whereby their appointments were stayed. The Writ Petition came to be amended later to include the prayer to quash Office Order No. 881 dated 22.07.2010 whereby the appellants' appointment stood cancelled. It is important to note here that another W.P. (S) No. 1269 of 2010 was filed by other aggrieved appointees whose appointments were cancelled for being in contravention of the sanctioned strength. Both the writ petitions, namely, W.P. (S) No. 1248 and 1269 of 2010 came to be disposed of by a common judgment/order dated 14.08.2018 passed by the Single Judge of High Court of Jharkhand.

11. The Single Judge partly allowed the Writ Petitions and quashed the orders impugned therein, namely, Office Orders dated 07.05.2009 and 22.07.2010 and directed JSEB to issue fresh order of appointment on their promotional post on which they were earlier promoted/decision was taken

to promote, whichever is applicable. However, the Single Judge held that their appointment shall for all intent and purpose be treated as fresh appointment and they would not be entitled for any back wages, seniority or other benefit based on their earlier appointment/promotion. The Single Judge placed reliance on *Vikas Pratap Singh & Others. v. State of Chhattisgarh & Others*¹ wherein this Court had held that where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity, the appointee is terminated, taking a sympathetic view, order of termination ought to be quashed, and appointee should be reinstated. Accordingly, the Single Judge observed that candidates/appointees have not committed fraud, and having fulfilled all eligibility criteria their appointment cannot be held to be unconstitutional or illegal.

12. The findings of the Single Judge were challenged by both JSEB as well as the appellants. While JSEB in L.P.A. No. 647 of 2018 sought to challenge the direction of fresh appointments to the appellants, the appellants in L.P.A. No.512 of 2018 challenged the denial of consequential benefits such as seniority and back wages. The Division Bench by its order/judgement dated 22.12.2021 allowed L.P.A. No. 647 of 2018 and dismissed L.P.A. No.512 of 2018. The Division Bench was of the view that

¹ (2013) 14 SCC 494

even though there is no element of fraud but if the process of selection has been found to suffer from unfairness and malpractice, then the entire selection process is required to be cancelled. Further, it held that appointments were held to be illegal since they were beyond the sanctioned strength, and in such a situation there is no question of consideration of the element of fraud. The Division Bench also distinguished between irregular and illegal appointment and reiterated that appointment made beyond sanctioned strength is illegal as it is an encroachment upon the quotas of posts to be filled up from direct recruitment.

13. The appellants took exception to the above order dated 22.12.2021 and preferred Civil Review No. 5 & 6 of 2022 to assail the findings of the Division Bench. The High Court in exercise of its review jurisdiction dismissed the review petitions on the ground that no new facts were made out by the appellants and as such, the scope of review is extremely limited, and finding no infirmity with the Division Bench's order dated 22.12.2021, the High Court vide Order dated 07.08.2023 dismissed the Civil Review No.5 & 6 of 2022 filed by the appellants. Hence, the appellants are now before us.

14. We have heard Shri Gopal Shankarnarayanan and Shri Puneet Jain, learned Senior Counsels appearing for the appellants and Shri Navaniti Prasad Singh, learned Senior Counsel appearing for the respondents.

15. Shri Gopal Shankarnarayanan, the learned Senior Counsel appearing for the appellants No.1 and No.3 challenged the findings of the Division Bench on various grounds. It was submitted that appointment of the appellants Nos.1 and 3 to promoted Class III posts was not beyond the cadre strength and even the report of the Enquiry Committee found that appointment of Routine Clerk was not beyond the cadre strength. The cadre strength of routine clerk posts was 23, out of which 22 were lying vacant and 50% were to be filled through in-service candidates through internal advertisement which would come to 11 posts. He would also contend that appellants had also fulfilled the criteria of two years' experience which is very much evident from the date of joining of appellants. It was further submitted that orders of cancellation of appointment are hit by principles of natural justice as before issuance of said orders, appellants were not given any notice or show cause. It was also contended that it is not a case where any misconduct is alleged to have been committed by the appellants, but for no fault on part of the appellants, they are subjected to suffer. Additionally, Shri Puneet Jain, the Learned Senior Counsel appearing for appellant No.2 submitted that for Lower Division Assistant (LDA) 5 posts were available

as per rules and the approval was given for 25 posts by the Secretary in the interest of JESB due to extreme shortage of LDA, and that the approval was with the knowledge of the Chairman. Further, it was submitted that 10% of the vacant posts were allocated for internal recruitment, and 51 posts were vacant, hence 10% of that would be minimum 5 posts which was within the cadre strength. It was further urged that appellant No.2 has attained the age of 50 years and has lost his eligibility to appear in any departmental examination once he attained the age of 50 years, hence this was his last opportunity for promotion.

16. Per contra, Shri Navaniti Prasad, learned Senior Counsel for the respondents urged that the findings of the Division Bench which were confirmed in Review did not call for any interference. It was also urged that no substantial question of law was raised in the present appeals.

17. We have given our thoughtful consideration to the present appeals and considered the submissions of the rival parties and perused records. It is relevant to note that while the Enquiry Report held various appointments unconstitutional, namely 537 posts which were filled up through internal appointment in different cadres such as Routine Clerk, Lower Division Assistant, Correspondence Clerk, Junior Accounts Clerk, Manpower and Branch Clerk, and Writ Petitions and LPAs were preferred by various

appointees, our findings and observations are confined only to the appellants herein, namely, Pawan Kumar Tiwary, Hemant Kumar Choubey, and Amar Kumar.

- 18.** The questions that arise for our consideration are as below:
- I. Whether the findings of the Division Bench with respect to illegality in the appointment of appellants warrant interference?
 - II. If the appointment is held to be legal, whether they are entitled to any consequential benefits?

RE: POINT 1

19. The primary basis on which the Division Bench set aside the appellants' appointments was on the basis of conclusion having been arrived at that appointments were made beyond the sanctioned strength. However, we find this conclusion to be factually incorrect and legally unsustainable as evident from the analysis that follows.

20. The contention that there was an "excess appointment" namely it was beyond the sanctioned strength was not substantiated by any reliable material by the respondent – Board. No contemporaneous record has been shown that contradicts the sanctioned strength status at the time of appointments. In fact, the Standing Order No.812 highlights the posts were

duly sanctioned and advertised through proper channels, followed by selection through established norms of scrutiny.

21. Evidently, the Enquiry Report itself records that appointments to the post of Routine Clerk were within the sanctioned strength. Specifically, out of 23 sanctioned posts, 22 were vacant, and internal recruitment was permitted for 50%, i.e., 11 posts. The appellants Pawan Kumar Tiwary and Amar Kumar were appointed within this quota. Similarly, in the case of Hemant Kumar Choubey, the post of LDA had 51 vacancies, and the 10% quota allowed for at least 5 appointments, which were duly approved by the competent authority. Despite this, the Division Bench broadly stated that appointments were made beyond sanctioned strength and hence illegal, without distinguishing between individual cases. During oral arguments, this Court demanded an explanation regarding this specific finding in the Enquiry Report, at which point the learned Senior Counsel for the respondents fairly submitted that the appointments of the present appellants was within prescribed sanctioned strength. At the outset, this admission during the course of hearing would deter us from going into every factual aspect, however, given that the Division Bench and the Review Court has overlooked these glaring facts, we deem it necessary to satisfy our conscience and make our detailed observations.

22. The Division Bench also placed reliance on the procedural deviation from the regular advertisement process, by observing that the internal notice issued by the Chief Engineer did not amount to a proper recruitment notification. While procedural irregularities, if proven to be mala fide or substantially affecting fairness, may vitiate a selection process, in the present case, the selection was conducted through tests and interviews overseen by a selection committee. The entire process culminated in formal appointment letters being issued. As held by this Court in *Secretary, State of Karnataka and Others v. Umadevi (3) and Others*², mere technical irregularities in appointment processes and in the absence of evidence of illegality, arbitrariness or fraud cannot be a ground to undo appointments, especially when the appointees are not at fault.

23. The Division Bench appears to have blurred the distinction between irregular and illegal appointments. In *Vikas Pratap Singh* (supra), this Court held that an appointment made without following every procedural formality may be irregular, but it does not become illegal unless it violates statutory provisions or is made without the existence of a post. This Court observed that if the appointment is to a sanctioned post, made by a competent authority, and not tainted by fraud or deceit, it cannot be labelled illegal

² (2006) 4 SCC 1

merely due to some procedural lapse. The facts of the present case are squarely covered by this reasoning. The posts were sanctioned, the appellants were duly qualified, and the appointments were made by the competent authority after following due process of selection and at worst, any infirmity could only render the appointments irregular, not illegal. In *R.S. Garg v. State of U.P. and Others*³, this Court held that appointments made within sanctioned strength, even if temporary or irregular, do not automatically become illegal unless shown to be in violation of statutory rules. There is no evidence or even a finding that the posts were not available or were created in violation of recruitment rules.

24. It is by now well settled in service jurisprudence that the validity of an individual appointment must be assessed on the basis of the appointee's own merit, eligibility, and conformity to the applicable rules. Courts must resist the tendency to issue blanket invalidations of entire batches of appointments merely on the basis of procedural infirmities that affect only a portion of the appointments. The principles of fairness, proportionality, and individual justice are foundational to administrative law and demand that a case-by-case analysis be undertaken before issuing sweeping orders of cancellation.

³ (2006) 6 SCC 430

25. This Court has in several decisions, including *State of Bihar v. Upendra Narayan Singh and Others*⁴, emphasized that when appointments are found to be irregular, the inquiry must focus on whether such irregularity amounts to illegality, and whether the appointee had any role or knowledge of the deviation. If not, and the appointee was otherwise eligible, qualified, and appointed against a sanctioned vacancy, there is no justification for nullifying such appointment. The present appellants, as evidenced by record, fulfilled all eligibility conditions, were appointed within the sanctioned strength, and underwent the requisite selection process.

26. It is here that the doctrine of severability assumes great significance. The rule is grounded in equity and legal logic: where bad can be separated from good, the good must not perish with the bad. The doctrine, though largely applied in constitutional and statutory interpretation, has gained considerable traction in service jurisprudence where a set of appointments are sought to be invalidated *en masse*.

27. The doctrine of severability is not merely a tool of constitutional adjudication but a principle of fairness. In service law, it protects deserving employees from the fallout of administrative missteps not attributable to them.

⁴ (2009) 5 SCC 65

28. In *Kumari Shrilekha Vidyarthi and Others v. State of U.P. and Others*⁵, this Court has emphasized that the State, even in contractual or administrative matters, cannot act arbitrarily and must be guided by constitutional values. These observations gain special relevance in cases where authorities, rather than conducting granular scrutiny, proceed to cancel entire appointments in a sweeping manner.

29. The case in hand presents a textbook scenario where the appellants' appointments were lumped together with others without individualized examination. The Enquiry Report itself conceded that appointments of Routine Clerks were within the cadre strength, and there is no dispute that the appellants fulfilled the prescribed qualifications and eligibility norms. There is also no suggestion of mala fides, misrepresentation or procedural breach on their part. At this juncture, it is pertinent to mention, that learned Senior Counsel appearing for the respondents during the course of hearing fairly submitted that the appointments of the present appellants fell within the sanctioned strength.

30. The right to employment, though not a fundamental right, is nevertheless protected under Article 14 and 16 of the Constitution insofar as

⁵ (1991) 1 SCC 212

it requires fair, just, and non-arbitrary treatment of similarly situated individuals. The appellants' dismissal, without issuing a show cause or opportunity of hearing, is a clear violation of principles of natural justice, and falls afoul of the law laid down in *Maneka Gandhi v. Union of India and Another*⁶, wherein it was held that “*even an administrative order which involves civil consequences must be made consistently with the rules of natural justice.*”

31. The jurisprudence around *irregular* versus *illegal* appointments must not be blurred. An irregular appointment is one where procedure is not strictly followed but the appointee is otherwise qualified and the post is sanctioned. An illegal appointment, on the other hand, is *void ab initio*, such as where the appointee is ineligible or the post does not exist. When appointments are questioned on grounds of irregularity, the inquiry must not end with detecting the infirmity but must proceed further to distinguish those whose appointments are unimpeachable. Justice demands separation, not erasure.

⁶ (1978) 1 SCC 248

32. The High Court failed to apply the test of individual scrutiny, which is now a bedrock requirement in service jurisprudence. When appointments of large numbers of persons are questioned, courts and authorities must:

- (i) Separate the legally sustainable from the unsustainable
- (ii) Apply the test of eligibility and sanctioned strength
- (iii) Assess whether there was fraud or misrepresentation
- (iv) Provide an opportunity of hearing before cancellation

33. The action of the Board in cancelling the appellants' appointments *en masse* without affording them an opportunity of hearing and without considering the legality of each appointment separately reflects not only a violation of principles of natural justice but also abdication of the duty to make reasoned, individualized decisions.

34. As discussed hereinabove, facts upon being evaluated in their entirety, reveal that the appellants were appointed against sanctioned vacancies, pursuant to an internal selection process, and were fully eligible for the posts in question. There is neither any suggestion nor proof of fraud, collusion, or misrepresentation on their part. At best, the process suffers from procedural lapses not attributable to the appointees. Such infirmities, however, render the appointments irregular, not illegal.

35. It must be underscored that the jurisprudential divide between irregular and illegal appointments is neither artificial nor academic. An appointment may be irregular if it deviates from established procedure, but it crosses into the realm of illegality only where it violates statutory mandates, is made without the existence of a sanctioned post, or is tainted by fraud. Conflating the two categories leads to manifest injustice, particularly when individuals, who have no role in the procedural defect, are visited with the severest consequence of termination.

36. There is also an urgent need to discourage the mechanical application of cancellation orders affecting large groups of appointees without differentiation. Service jurisprudence in India must evolve to reflect a nuanced, fact-specific approach that separates the legally sustainable appointments from those that are vitiated. It is neither just nor desirable to extinguish the careers of deserving employees merely for administrative convenience or to avoid the labour of segregation. A practice of indiscriminately declaring entire batches of appointments as void undermines not only the morale of sincere employees but also the credibility of the public administration. This Court deems it necessary to underscore that in all future cases of large-scale appointment irregularities, authorities and courts must mandatorily consider the possibility of segregation and

apply the doctrine of severability before taking the extreme step of cancellation.

37. Courts, therefore, must exercise heightened care and adopt a calibrated approach, especially in matters involving mass appointments. The doctrine of severability must not be relegated to a post-facto exercise; it ought to inform the judicial inquiry from the threshold. Early-stage discernment of whether appointments can be segregated based on sanctioned strength, eligibility, and absence of wrongdoing, enables the court to preserve what is lawful while excising only what is vitiated. Such an approach aligns with constitutional morality, protects institutional credibility, and ensures that administrative missteps do not culminate in judicial overcorrection.

38. In the present case, each appellant: (i) fulfilled the eligibility conditions; (ii) was appointed through a transparent internal selection process; (iii) was within the sanctioned cadre strength; (iv) was not found guilty of any misconduct or fraud. To uphold the Division Bench's order would be to punish the innocent for faults not attributable to them. This would be a miscarriage of justice.

39. The present case, resting as it does on demonstrably sanctioned posts and unblemished individual merit, deserves protection under these

principles. Accordingly, we have intervened and the impugned orders passed by the Division Bench and confirmed in review are set aside to the extent they relate to the appellants herein. The appointments of the appellants vide Office Orders dated 24.04.2009 are declared to be legal and valid.

40. Before concluding, we are constrained to clarify that the observations made in the present case, particularly our invocation of the doctrine of severability and the imperative of individualized scrutiny, must not be construed as laying down an inflexible rule of universal application. We are fully cognizant of the cautionary principles articulated by this Court in *State of West Bengal v. Baishakhi Bhattacharyya (Chatterjee) and Others*⁷, wherein, after an exhaustive analysis of precedent and the evidentiary record, this Court observed:

“19. The following principles emerge from the aforesaid discussion:

- When an in-depth factual inquiry reveals systemic irregularities, such as malaise or fraud, that undermine the integrity of the entire selection process, the result should be cancelled in its entirety. However, if and when possible, segregation of tainted and untainted candidates should be done in consonance with fairness and equity.*
- The decision to cancel the selection en masse must be based on the satisfaction derived from sufficient material collected through a fair and thorough investigation. It is not necessary for the material collected to conclusively prove malpractice beyond a reasonable doubt. The standard of evidence should be reasonable certainty of systemic malaise. The probability test is applicable.*
- Despite the inconvenience caused to untainted candidates, when broad and deep manipulation in the selection process is*

⁷ (2025) SCC OnLine SC 719

proven, due weightage has to be given to maintaining the purity of the selection process.

• Individual notice and hearing may not be necessary in all cases for practical reasons when the facts establish that the entire selection process is vitiated with illegalities at a large scale.”

41. The **Baishakhi** principle rightly recognizes that where the recruitment process is irredeemably marred by pervasive fraud or institutional malaise, the Court may be compelled albeit reluctantly to nullify the entire selection process in the larger interest of constitutional integrity. In such cases, exception to the principle of natural justice would not lead to potential injustice to untainted candidates and the necessity of maintaining public confidence in institutional processes ought to take precedence.

42. However, the case at hand stands on a demonstrably different factual and legal footing. There is neither any allegation nor proof of fraud, impersonation, or collusion by the appellants. The internal recruitment process in question, albeit allegedly irregular in procedural respects, was conducted through a structured examination and selection mechanism pursuant to duly sanctioned vacancies. The selection was made by a competent authority, and the appointments were not impugned on grounds of mala fides, corruption, or extraneous considerations.

43. It is precisely this material distinction that warrants a calibrated approach. To mechanically apply the drastic remedy of en masse cancellation in such a scenario where the appointments are otherwise regular, fall within the sanctioned strength, and are untainted by illegality, would be to conflate irregularity with illegality, and to punish the innocent for administrative lapses they neither caused nor participated in. The doctrine of severability is not only available but must be invoked to uphold the constitutional guarantee of equal treatment under Articles 14 and 16.

44. Thus, while we draw guidance from the *Baishakhi* judgment as to the outer limits of judicial tolerance in the face of systemic corruption, we hold that in the absence of demonstrable malaise and where individual appointments are legally sustainable, we must lean in favour of preservation, not obliteration.

RE: POINT 2

45. While we have held that the appellants' appointments were legal and within the sanctioned strength, we are also mindful of the settled principle that in the absence of actual service rendered, back wages are not ordinarily granted, particularly where the employee did not discharge any duties during the period of cancellation. Accordingly, while the appellants shall be entitled to continuity in service and restoration of seniority with effect from the date

of their initial appointment on 24.04.2009, they shall not be entitled to arrears of salary for the period they were out of service. However, to protect their future service rights, they shall be granted notional fixation of pay and other consequential benefits subject to applicable rules such as increments and promotion eligibility.

46. We refer to the principles laid down in *Union of India and Others v. K.V. Jankiraman and Others*⁸, where this Court held that seniority and other service benefits can be protected through notional fixation, even if back wages are not granted. Similarly, in *Gowramma C. (Dead) by legal representatives v. Manager (Personnel), Hindustan Aeronautical Limited and Another*⁹, it was held that the doctrine of "no work, no pay" does not preclude the grant of notional service benefits, particularly where the fault lies not with the employee but with the administration.

47. Thus, the appellants shall be deemed to have continued in service from the date of their original appointments for the purpose of seniority, promotion, and pensionary benefits, but shall not be entitled to actual back wages for the intervening period. Their pay shall be notionally fixed as per rules, and future emoluments shall be computed accordingly.

⁸ (1991) 4 SCC 109

⁹ (2022) 11 SCC 794

48. At the cost of repetition, we reiterate that our findings and observations made herein above are limited and confined to the appellants only and it does not apply to none else of these proceedings.

49. We reiterate for future guidance that where multiple appointments are challenged on general grounds, authorities and courts must undertake a detailed fact-specific analysis before concluding that all such appointments are void. The doctrine of severability must not remain a mere theoretical doctrine but must guide real administrative action and judicial reasoning in service matters.

50. In consequence to the above discussion, the appeals stand allowed and the appointments of the appellants made by Office Order Nos.758 and 759 dated 24.04.2009 are declared to be legal and valid by quashing the Office Order No.860 dated 7.05.2009 and the Office Order No.881 dated 22.07.2010 insofar as appellants are concerned. In the light of the facts of this case, we make no order as to costs.

51. We have also considered I.A. No. 184914 of 2024 seeking impleadment. The *lis* before us is confined to the appellants, namely, Pawan Kumar Tiwary, Hemant Kumar Choubey and Amar Kumar, whose appointments have been examined in detail above and found sustainable only because they were within the sanctioned strength. The scope of these

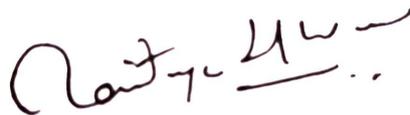
appeals is thus case-specific and limited to them alone. The applicants in the present I.A. are not necessary parties for the adjudication of the issues arising here, and their rights, if any, are not concluded by this judgment. They are at liberty to pursue the remedies available to them in accordance with law and no opinion is expressed in that regard. Accordingly, the I.A. stands dismissed.

....., J.
[J.K. MAHESHWARI]

....., J.
[ARAVIND KUMAR]

New Delhi;
August 19, 2025.

TRUE COPY

A handwritten signature in black ink, appearing to be 'Ravi Kumar' with a flourish at the end.