

K.C. Sharma and anr. Vs. the Controller of Defence Accounts (Pensions), Allahabad

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Court : Allahabad

Decided On : Jan-04-1956

Reported in : AIR1956All480

Judge : Mootham, C.J. and ;Agarwala, J.

Acts : [Constitution of India](#) - Article 311 and 311(2)

Appeal No. : Special Appeal No. 117 of 1955

Appellant : K.C. Sharma and anr.

Respondent : The Controller of Defence Accounts (Pensions), Allahabad

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : J.N. Chaterji, Adv.

Disposition : Appeal dismissed

Judgement :

Agarwala, J.

1. The appellants were recruited in the Military Accounts Department (now known as the Defence Accounts Department) on 13-1-1943 and 3-5-1943, respectively as

temporary routine grade clerks. At that time there were two grades of clerks namely (1) temporary routine grade clerks and (2) clerks. There was a rule that only those who were graduates could be appointed clerks. There were certain exceptions in the case of Muslims with which we are not concerned.

2. In 1944 there was a reconstitution of the grades. Instead of two grades three grades were made and were called grades A. B. and C. The former routine grade clerks were put down in grade C and the former 'clerks' were put down in grades A and B according to their qualifications. The appellants were put down in grade C on this reconstitution.

3. In the same year the appellants passed a departmental examination and were promoted to grade B as temporary clerks. On 14-7-1945, the first appellant and on 6-12-1951, the second appellant entered into a formal agreement of service with Government. These agreements were in a prescribed form I. A. F. Z-2055, a copy of which is on the record although the actual agreements have not been produced.

4. In 1947 the three existing grades of clerks were again reorganised into two grades, namely upper division clerks and lower division clerks. The former clerks of grades A and B were placed in the grade of upper division clerks and the grade C clerks were placed in the grade of lower division clerks.

As the appellants had been temporarily promoted to grade B they were classified as upper division clerks but their services continued to be temporary. There is nothing on the record to show that the appellants were ever confirmed as upper division clerks and we agree with the learned Judge that their promotion to that grade was and remained temporary. Clause 1 of the form of agreement executed by the appellants provided that

'The employee shall remain and continue in the service of the Government asand shall during such service

and it is said on their behalf that the blank space in this paragraph of the agreement was completed by the insertion of the words 'clerks B grade.' As the original agreements have not been produced we cannot accept this assertion as

established, and even if it be the case that the agreements were so completed the agreements would not prove that the appellants had been confirmed in that grade.

(5) In 1951 Government decided to retrench a number of posts in the upper division grade and this necessitated the reversion to the lower division of a number of clerks. In this reshuffle of the clerks the appellants were two of the unfortunate persons who were reduced to the grade of lower division clerks. The appellants appealed to the higher authorities but as they were unsuccessful they filed a petition in this Court under Article 226 of the Constitution praying that the order relegating them to the rank of lower division clerks be quashed on the ground that the provisions of Article 311 of the Constitution had been contravened.

The learned Judge dismissed the petition on the ground that the reversion of the appellants to their substantive appointments did not attract the provisions of that Article of the Constitution. The learned Judge pointed out that even if an employee is given a temporary promotion in a post temporarily created in a higher grade, he does not thereby acquire a vested right to continue in the higher grade so long as he is not confirmed therein, and that as long as he remains unconfirmed in the higher grade he is liable to be reverted.

With respect we agree with this opinion. So long as a person is holding a temporary promotion in a higher grade he may be reverted to his substantive appointment at the discretion of the competent authority, and if he is so reverted he cannot invoke the provisions of Article 311 of the Constitution. Reversion in such circumstances does not amount to a reduction of rank within the meaning of that Article.

6. We are therefore of opinion that there is no substance in this appeal and it is accordingly dismissed but we make no order as to costs.

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