

Krishna Kumar vs Divisional Assistant Electrical ... on 17 July, 1979

Equivalent citations: 1979 AIR 1912, 1979 SCR (1) 50, AIR 1979 SUPREME COURT 1912, 1979 LAB. I. C. 1314, ILR 1979 HP 123, 1980 SCC (L&S) 1, (1979) SERVLJ 532, (1979) ILR SC 123, 1979 (4) SCC 289, (1979) 2 SERVLR 291

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, Syed Murtaza Fazalali, E.S. Venkataramiah

PETITIONER:

KRISHNA KUMAR

Vs.

RESPONDENT:

DIVISIONAL ASSISTANT ELECTRICAL ENGINEER CENTRAL RAILWAY AND

DATE OF JUDGMENT 17/07/1979

BENCH:

CHANDRACHUD, Y.V. ((CJ)

BENCH:

CHANDRACHUD, Y.V. ((CJ)

FAZALALI, SYED MURTAZA

VENKATARAMIAH, E.S. (J)

CITATION:

1979 AIR 1912

1979 SCR (1) 50

1979 SCC (4) 289

ACT:

Constitution of India, 1950, Article 311(1)-Power to remove an employee rests only with the person who appointed him-A delegate's status is not enhanced to that of the delegator by virtue of delegation of power of appointment-Date of appointment is the starting point when the constitutional guarantee under Art. 311(1) becomes available to the person holding a civil post.

HEADNOTE:

The appellant who was appointed as a Train Lighting Inspector, Nagpur on July 11, 1974 by the Chief Electrical Engineer was removed from service by respondent No. 1; the Divisional Assistant Engineer, Central Railway Nagpur by his

order August 31, 1976. The Writ Petition filed by the appellant in the Bombay High Court challenging the order of removal was dismissed summarily by a Division Bench of that Court.

Allowing the appeal by special leave, the Court

^

HELD: 1. The order of removal is in patent violation of the provisions of Article 311(1) of the Constitution. [53C]

2. Art. 311(1) of the Constitution provides that no person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. [52A]

3. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Art. 311(1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. [52 F-G]

4. Delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. [53 A-B]

The Divisional Assistant Electrical Engineer in the instant case does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated to him the subsequent authorisation made in favour of respondent, in regard to making appointments to the post held by the appellant cannot confer upon respondent 1 the power to remove him. On the date of the

51

appellant's appointment as a Train Lighting Inspector, respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him. [52H, 53 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 755 of 1978.

Appeal by Special Leave from the Order dated 21-10-1976 of the Bombay High Court (Nagpur Bench) in S.C.A. No. 4260/76.

R.K. Garg, Edward Faleire, V.J. Francis and D.K. Garg for the Appellant.

R.P. Bhat and Girish Chandra for the Respondents. The Judgment of the Court was delivered by CHANDRACHUD, C.J. The appellant, Krishna Kumar, was appointed on May 30, 1966 as an Apprentice Mechanic (Electrical) after selection by the Railway Service Commission and on the completion of his training period, he was appointed as a Train Examiner (Electrical). On July 11, 1974 he was appointed as a Train Lighting Inspector, Nagpur under an order passed by the Chief Electrical Engineer. That the order of appointment was made by the C.E.E. is undisputed and indeed there can be no controversy over it. The list of officer declared to be heads of departments shows that Chief Electrical Engineers are heads of their departments. By an order dated August 31, 1976, the appellant was removed from service by respondent 1, the Divisional Assistant Engineer, Central Railway, Nagpur.

The appellant thereupon filed a Writ Petition (No. 4260 of 1976) in the Bombay High Court to challenge the order of removal. A Division Bench of the Nagpur Bench of the High Court dismissed the Writ Petition summarily on October 21, 1976. Being aggrieved by that order the appellant has filed this appeal by special leave.

The Special Leave Petition came up before this Court on February 22, 1978 when a Bench consisting of Justice V.R. Krishna Iyer and Justice Jaswant Singh adjourned the petition for four weeks in order to enable the respondents to file an affidavit stating as to (i) who appointed the petitioner, with special reference to the designation of the Officer who made the order of appointment and (ii) who removed the petitioner from service, with special reference to the designation of that Officer. Pursuant to that direction, two affidavits were filed by Shri S.P. Sarathy, Divisional Assistant Electrical Engineer, Central Railway, Nagpur. The petitioner filed his rejoinder affidavit on February 20, 1978. On a consideration of these affidavits the Court on April 3, 1978 granted special leave to the appellant to file this appeal.

Article 311 (1) of the Constitution provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The simple question for determination is whether, as alleged by the appellant, he was removed from service by an authority subordinate to that which had appointed him. The relevant facts are but these and these only: The appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer and was removed from service under an order passed by the Divisional Assistant Electrical Engineer, Central Railway, Nagpur. The narrow question, therefore, for consideration is whether the Divisional Assistant Electrical Engineer is subordinate in rank to the Chief Electrical Engineer. None of the affidavits filed by Shri Sarathy, who passed the order of removal says that the post of Divisional Assistant Electrical Engineer is equivalent to that of the Chief Electrical Engineer in the official hierarchy. That the former is not higher in rank than the latter is self-evident. In the circumstances, it seems clear that the appellant was removed from service by an authority which is subordinate in rank to that by which he was appointed.

In defence of the legality of the order of removal, counsel for the respondents relies on paragraph 2 of respondent 1's affidavit, dated January 7, 1978, wherein he has stated that the power to make appointments to the post of the Train Lighting Inspector was delegated to certain other officers

including the Divisional Assistant Electrical Engineer. It is urged that since the Div. Asstt. Elect. Engineer has been given the power to make appointments to the post of the Train Lighting Inspector, he would have the power to remove any person from that post. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Art. 311 (1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of respondent 1 in regard to making appointments to the post held by the appellant cannot confer upon respondent 1 the power to remove him. On the date of the appellant's appointment as a Train Lighting Inspector, respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him.

Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer, in other words, does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated to him.

Since the appellant was appointed by the Chief Electrical Engineer and has been removed from service by an order passed by respondent 1 who, at any rate, was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment, it must be held the respondent 1 had no power to remove the appellant from service. The order of removal is in patent violation of the provisions of Article 311 (1) of the Constitution.

For these reasons we allow the appeal, set aside the order passed by the High Court and hold that the order dated August 31, 1976 passed by respondent 1 removing the appellant from service is unconstitutional and, therefore, of no effect. The appellant must accordingly be deemed to continue in service until, if so advised, the government takes appropriate steps to bring his service to an end.

Respondents will pay the costs of the appeal to the appellant.

V.D.K.

Appeal allowed.