
(1975) 09 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 1280 of 1974

A.N. Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-09-1975

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 5(2), 5(5)

Citation : (1975) 41 CLT 1387

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : P. Palit, for the Appellant; B. Pal, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner is an employee under the South Eastern Railway and was working as Guard "B" in the Chakradharpur Division with headquarters at Jharsuguda. He is a member of the South Eastern Railway Men's Union and was the Assistant Secretary of its Jharsuguda Unit by May, 1974. There was a concerted move for a strike and call to begin it from May 8, 1974 had been given. During the night of 1st May, 1974, the Petitioner was served with an order of detention under the Maintenance of Internal Security Act, 1971, and he was taken into custody. On 18.6-1974, the order of detention was revoked and on the following day he was released from jail custody. As it appears the Petitioner had been suspended from service with effect from 2-5.1974 and even though he was released, the order of -suspension was not revoked and the Petitioner was not taken back into service. He, therefore has moved this Court for a direction that the continuance of suspension is null and void and the Petitioner should be deemed to be on duty. In the counter affidavit "given by the Divisional Personnel Officer the continuance of suspension has been justified on the basis of a disciplinary proceeding initiated against-Petitioner.

2. The essential facts are not in dispute. On 29-5-1974, an order had been made by the competent authority to the following effect. Whereas a case against Shri

(Petitioner) in respect of a critical offence is under investigating,

And whereas the said Shri....

was detained in custody on ... for a

period exceeding forty-eight hours,

Now, therefore, the said Shri is deemed to

have been suspended with effect from the date of detention i.e. in terms of Rule 5(2) of Railway Servants" (Discipline and Appeal) Rules, 1968 and shall remain under suspension until further orders,"

The only question in dispute is the true scope and meaning of Rules 5(2)(a) and 5(5) of the Railway Servants" (Discipline and Appeal) Rules, 1966 (hereinafter to be referred to as "the Rules"). The relevant portions of the said rule are as follow:

"5. Suspension

(1) xx xx xx

(2) A railway servant shall be deemed to have been placed under suspension by an order of the competent authority

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

xx xx xx

(6)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) where a railway servant is suspended or deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the railway servant shall continue to be under suspension until the termination of all or any of such proceedings.

xx xx xx

It is conceded by Mr. Pal for the Railway Administration that under sub rule (2) of Rule 5 the suspension is a deeming one and a written order was not necessary. The impugned order is, however, said to be really under Rule 5(2)(a) of the Rules and even though the criminal charge has been wiped out and the Petitioner is now facing a disciplinary proceeding, no fresh order of suspension was necessary as the order made under Rule 5(2)(a) is still operating. Mr. Palit for the Petitioner, on the other hand, claims that the criminal charge having been come to an end,

if in the opinion of the administrative superior the Petitioner is to be continued under suspension, an order in terms of Rule 5(5)(b) of the Rules is necessary; and in the absence of such an order continuance of suspension would be unauthorised.

3. We find force in the contention raised on behalf of the Petitioner. Admittedly the initial suspension was following the detention of the Petitioner in jail custody for more than forty eight hours. - Rule 5(2) does not deal with the period of suspension. On the other hand, as rightly pointed out by Mr. Pal, the appropriate rule for such purpose is Rule 5(5). The two clauses of Sub-rule (5) have to be read together and in a harmonious way. Sub-rule (5)(a) does contemplate that an order of suspension is to remain in force until it is modified or revoked. Sub-rule (5)(b), however, contemplates a situation where there is a deemed order of suspension either on the basis of criminal charge or otherwise and when any other disciplinary proceeding is commenced against the delinquent, the order of suspension already in existence may continue till the termination of such proceeding provided such direction is given. As already stated, in this case Petitioner was suspended on account of his detention and that order of suspension was, therefore, in connection with a criminal charge coverable by term "otherwise" appearing in Clause (b) of sub rule (5). When a disciplinary proceeding" was initiated, it was open to the appropriate authority to make an order under Rule 5(5)(b) of the Rules. Mr. Pal emphasised upon the use of word "may" in Clause (b). Undoubtedly the intention is to confer discretionary power on the prescribed authority but as we have already said it is necessary to read Clauses (a) and (b) together for a harmonious construction. If we accept Mr. Pal's contention that an order of suspension made under Sub-rule (5)(a) would survive the proceeding in connection with which it is made even though not continued, by a specific order on account" of subsequent proceeding the purpose of Sub-rule (5)(b) would be frustrated and, in fact, the provision would be rendered nugatory. On the other hand, it is legitimate to hold that the order of suspension would not last beyond the proceeding in connection with which it is made and in case that suspension is intended to continue, an order under Clause (b) has to be made.

4. Admittedly no order under Clause (b) has been made in this case. We" have already noticed that there is no dispute that the basis for the deemed suspension has gone. In these circumstances, unless a further order under Clause (b) of Rule 5(5) is made, Petitioner cannot be made to be continued under suspension. We would accordingly accept the contention of the Petitioner that the continuance of order of suspension after the order of detention was revoked, in the absence of a further order under Clause (b) of Rule 5(5) is unauthorised and accordingly must be quashed. The writ application is allowed to the extent indicated above. The Petitioner shall have his costs assessed at Rs. 50/ -..

N.K. Das,

5. I agree.