

(1956) 09 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 298 of 1955

Narayan Prasad Rewany

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 26-09-1956

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 49
Constitution of India, 1950 — Article 311
Criminal Procedure Code, 1898 (CrPC) — Section 337, 337(3), 339
Orissa Service Code, 1939 — Rule 93, 93A

Citation : AIR 1957 Ori 51

Hon'ble Judges : Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : A. Das, for the Appellant; A.G., for the Respondent

Judgement

Narasimham, C.J.—This is an application under Article 226 of the Constitution by one Shri N. P. Rewany, an Agricultural Sub-Overseer who has been kept under suspension from 1948, and against whom no final order of punishment has yet been passed.

2. The facts which are not challenged are as follows: The applicant was working at Sambalpur as Agricultural Sub-Overseer under the Director of Agriculture and Food Production, Orissa, on a pay of Rs. 85/- per month in 1847 and 1948. One Bimbardhar Pradhan, District Food Production Officer, Sambalpur was his immediate superior. Sometime in March 1948 the said Bimbardhar Pradhan was arrested by the police for offences under Sections 409, 477A and 120B, Indian Penal Code, started at the instance of the Agricultural Department, and he was immediately placed under suspension. During the investigation of that case, the applicant Rewani was also arrested on the 12th July 1948 but was released on bail on the same date.

On the 11th September 1948, the Director of Agriculture and Food Production, by his Order No. 8670 of that date, placed him under suspension with effect from

the date of his arrest, namely the 12th July 1948. That order, was actually communicated to the applicant only on the 14th October 1948. But he continued to discharge his duties till the 31st October 1948 on which date he was relieved. The police case ended in the submission of charge-sheet against Bimbadhar Pradhan, the applicant N. P. Rewani, and another person, During the commitment enquiry, the applicant was granted pardon by the Additional District Magistrate of Sambalpur u/s 337 of the Criminal P. C., on the 21st December 1948, and he was made an approver in that case.

The trial against Bimbadhar Pradhan was held in the Court of the Assistant Sessions Judge, Sambalpur, and ended in his acquittal on the 10th November, 1951. The applicant, being the approver, was one of the principal witnesses in that case against the said Bimbadhar Pradhan and the learned Judge made some adverse comments on the applicant's evidence,

3. While the Sessions case against the said Bimbadhar Pradhan was going on, the applicant submitted a representation to the District Agricultural Officer, Sambalpur, praying for reinstatement on the ground that he was helping the departmental enquiry by agreeing to become a key witness. His representation was strongly recommended by the District Agricultural Officer and the Public Prosecutor in charge of the case also made an endorsement to the effect that:

"there is no legal objection to reinstate Shri Rewani in his former post."

The Director of Agriculture and Food Production, however, refused to pass any interim order and in his letter No. 276 dated the 6th January 1951, informed the Assistant Director of Agriculture, Western Range, Sambalpur, that the question of reinstating the applicant would be considered only after the termination of the Sessions case. But though the Sessions case ended on the 10th, November 1951 no immediate action was taken against the applicant, either by way of continuing the departmental enquiry against him, or else of placing him on trial u/s 339, Cr. P. C., on the ground that he had forfeited the conditions under which pardon was granted.

The applicant made repeated representations to the Director of Agriculture and Food Production and also sought a, personal interview with the Director with a view to represent his case, but no action appears to have been taken on his representations for some years. The Assistant Director of Agriculture, Western Circle, Sambalpur, sent a letter on the 25th June 1953 to the Director of Agriculture and Food Production stating that the applicant was not a desirable person to be retained in the Department. On receipt of that letter the Director ought to have immediately framed specific charges and continued the departmental proceedings against the applicant.

This, however, was not done and all the representations of the applicant remained unattended. But on the 9th November, 1954, nearly three years after the termination of the Sessions case, the Director, after a review of the conduct of the applicant in that case, thought that he was guilty of the offences with which

he was charged in the original criminal case and therefore asked him to show cause why he may not be dismissed from service.

Apparently, this order was passed with a view to satisfy the requirements of art 311 of the Constitution, though no specific charge was framed against the applicant regarding the offence said to have been committed by him. This defect appears to have been noticed subsequently and we are informed that a fresh charge has been framed, and the applicant has been called upon to show cause why he may not be departmentally punished, but we understand from the Advocate-General that further proceedings in respect of that departmental enquiry have been held up pending the decision of this Court on this application under Article 226 of the Constitution.

4. Before discussing the various legal and constitutional questions involved, I should point out that, the way in which the proceedings against the applicant have been kept pending for eight years by the Director of Agriculture and Food Production reveals a deplorable state of affairs. Till the termination of the sessions trial against Bimbadhar Pradhan on the 10th November 1951 the Director was undoubtedly right in not passing any final order against the applicant. But as soon as that sessions trial terminated he should have made up his mind as to whether, in view of the nature of the evidence given by the applicant in the sessions trial and the adverse comments made against him by the Assistant Sessions Judge, he should be reinstated in service, or else whether the departmental proceedings should be continued and brought to a speedy conclusion.

If he decided to adopt the latter course, he ought to have framed specific charges as provided in R. 55 of the Civil Services (Classification, Control and Appeal) Rules (which has been substantially reproduced at page 41 of the Orissa Service Code, Vol. II (1952 Edition) and come to a clear finding as to whether those charges were proved. Then he should have come to a tentative decision as to the nature of the punishment that he proposed to pass and given the applicant notice, as required by the provisions of art 311, to show cause why that punishment should not be inflicted.

But for some reasons or other which is not clear from the papers filed before us the Director seems to have completely ignored the fact that the applicant was remaining under suspension for several years. His repeated representations for expediting the passing of final orders on the proceedings pending against him remained unattended, and it was only on the 9th November 1954, about three years after the termination of the sessions case, that the Director suddenly decided to dismiss him from service and ask him to show cause against dismissal.

This notice to show cause against dismissal has now been withdrawn and specific charges have been framed against the applicant. Such undue protraction of departmental proceedings not only causes heavy financial loss to Government who have to pay subsistence allowance to a person who is doing no work, but it

is also grossly unjust to the public servant concerned, because during the period of suspension he cannot seek any other source or employment and the pittance of subsistence allowance granted to him will not ordinarily suffice even for bare maintenance. In the counter-affidavit filed by the Director it was stated that the delay in drawing up proceedings was due to "non-availability of records and other circumstances beyond the control of this department".

The Director could, in no case, have obtained the original records of the criminal case, and he should have obtained copies and continued his departmental proceedings. As regards "other circumstances beyond the control of the Department", it is obvious that this Court can say nothing, in the absence of further information. We trust, however, that Government would look into the matter, fix the responsibility for the delay and also take effective steps to prevent the recurrence of such unreasonable delays in completing departmental proceedings against Government servants.

5. As fresh proceedings have been drawn up against the applicant we do not wish to say anything about the merits of the allegations" made against him, either with regard to his guilt in the original criminal case under Sections 409, 477A and 120B, Indian Penal Code, in which he was a co-accused, until he was made an approver, or else with regard to his conduct as an approver during the sessions trial.

6. Mr. A Das on behalf of the applicant challenged the validity of the order of suspension on two grounds which require careful examination The actual order of suspension is quoted below:

"OFFICE OF THE DIRECTOR OF AGRICULTURE & FOOD PRODUCTION, ORISSA.

Order No. 8670 dated 11-9-48.

Sri N. P. Rewany, Agricultural Overseer, Sambalpur, is placed under suspension with effect from the date of his arrest by the Pofice.

During the period of his suspension he must remain at his head quarters and should not leave it on any account without the permission of the District Food Production Officer, Sambalpur, or the undersigned.

He is allowed subsistence allowance equal to one half of his average pay and dearness allowance as permissible on his subsistence allowance in accordance with the Finance Department Memorandum No. 1137-F dated 17th February 1948.

Sd/- P. Parija Director of Agriculture & Food Production, Orissa.

Memo No. 8671/FP, dated the 11th Sept, 1948.

Copy forwarded to the District Food Production Officer, Sambalpur, for information and necessary action with reference to his letter No. 3716 dated 25th July 1948. Under Rule 93 of the Orissa Service Code, a Government servant

under arrest will be "treated as under suspension with effect from the date of his arrest. So Shri Rewany cannot be allowed to continue in service even though he has been released on bail.

Sd/- P. Parija, Director of Agriculture & Food Production, Orissa.

Memo. No. 5017 dated 8th October, 1948.

Copy forwarded to Shri N.P. Kewani, Agricultural Overseer, Sambalpur, for information and guidance. He should hand over charge of the office records, cash and other Government articles to Shri K.B. Dehuri, Agricultural Overseer, immediately.

Sd/- D. C. Mohanty, 8-10-48, District Food Production Officer, Sambalpur."

Mr. Das urged that (1) the order of suspension should take effect only on the date on which the Government servant was placed under suspension and cannot be given retrospective effect and (2) the order ceased to be operative when the sessions trial against Bimbadhar Pradhan terminated on the 10th November 1951, and if the Director of Agriculture and Food Production wanted to continue the order of suspension he ought to have issued a fresh order after that date.

7. Though the order of suspension is dated 11th September 1948 the applicant stated that he received it only on the 14th October 1948 and that he was actually relieved of his duties only on the 31st October 1948. These dates, as given by him, have not been contradicted in the counter-affidavit filed by the Director and may, therefore, be taken as correct. The first question for consideration, therefore, is whether an order of suspension can be passed with retrospective effect from the date of the applicant's arrest, namely 12th July 1948.

There is a direct authority in support of Mr. Das's contention that the order of suspension cannot have retrospective effect, especially when the Government servant concerned actually worked in his post till 31st October 1948. (See Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee, . With respect I would agree with the reasons given by the learned Judges of the Calcutta High Court in that decision and held that the order of suspension passed against the applicant would have effect only from the 31st October 1948 when he was actually relieved of his duties and placed under suspension. The applicant is clearly entitled to full salary from the 12-7-1948 to the 31-10-1948.

8. For appreciating the second contention raised by Mr. Das it is necessary to quote Rules 93 and 93-A of the Orissa Service Code, Vol I:

"93. A Government servant against whom proceedings have been taken either for his arrest for debt or on a criminal charge shall be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay and allowance (other than any subsistence allowance that may be granted in accordance with the

principles laid down in Rule 90) for such periods until the final termination of the proceedings taken against him. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of his case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt) of its being proved that the officer's liability arose from circumstances beyond his control.

93-A. A Government servant against whom a criminal charge or a proceeding for arrest for debt is pending shall also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e. g., while released on bail) if the charge made or proceeding taken against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such, or involves moral turpitude. In regard to his pay and allowances, the provisions of rule 93 shall apply."

In the order of suspension (quoted above) it was not clearly stated whether the applicant was suspended in pursuance of Rule 93 or 93-A of the Orissa Service Code (Vol I). In the memo forwarding a copy of that order to the District Food Production Officer, Sambalpur, however, there is a reference to rule 93. In the counter affidavit filed by the Director also, a reference was made to rule 93 only.

But in view of the admitted position that though the applicant was arrested on the 12-7-1948 by the Police in connection with the criminal case he was immediately released on bail it is obvious that Rule 93 would not, in terms, apply. Under that rule if a Government servant is arrested on a criminal charge he shall be considered to be under suspension for the period during which he is detained in custody or is undergoing imprisonment, and no specific order from his superior authority suspending him from service is necessary.

But where, as in the present case, after his arrest on a criminal charge, he is released on bail Rule 93 has no application and in pursuance of Rule 93-A a specific order by his superior officer placing him under suspension is necessary. Such a specific order (quoted above) was passed in the present, case on the 11-9-1948, and it should be held to be an order passed under Rule 93-A. Doubtless, as provided in that rule, the applicant's pay and allowance during the period of suspension would be controlled by the provisions of rule 93.

9. It should be noted that an order of suspension under Rule 93-A, Orissa Service Code, (Vol I) is quite different from an order of suspension pending a departmental enquiry against a Government servant. It is true that there is no express provision in the Civil Services (Classification, Control and Appeal) Rules authorising the passing of an interim order of suspension pending enquiry, though R. 49 of the said Rules mentions "suspension" as one of the penalties that may be imposed on a Government servant. But it is now well settled by authority that Government have the implied power to place a Government servant under suspension pending the completion of the departmental enquiry.

This is recognised in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, .

But an order of suspension passed under Rule 93-A of the Orissa Service Code (Vol. I) stands on a different footing. As soon as a criminal charge is made against a Government servant and he is arrested and released on bail and it is clear that the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties, or involves moral turpitude, the competent authority is bound to place him under suspension by virtue of that rule.

At that time no departmental proceeding is Initiated against him, but he is placed under suspension pending the termination of the criminal proceeding.

If the criminal proceeding ends in his conviction, the appropriate authority would subsequently consider the question of taking departmental action by way of further punishment as provided in proviso (a) to Clause (2) of Article 311 of the Constitution. Even if the criminal proceeding ends in his acquittal it is still open to the superior authority to draw up departmental proceedings against him in respect of his conduct in the criminal case and punish him. This is specially provided for in Instruction No. 5 at page 42 of Orissa Service Code (Vol. II, 1952 Edition).

Hence, so long as a criminal charge is pending against a Government servant, of the nature described in Rules 93 and 93-A, the question of drawing up departmental proceedings does not arise. It is clearly the duty of the superior authority, after the termination of the criminal proceeding to decide whether he should start fresh departmental proceedings or not, and whether the order of suspension passed under Rule 93-A should be continued till the completion of the departmental proceedings.

He must apply his mind specially to the changed circumstances arising out of the completion of the criminal proceeding, and then pass clear orders as to whether the previous order of suspension under Rule 93-A should be continued or not.

10. The next question for consideration is as regards the duration of the order of suspension passed under Rule 93-A. Does it, by its own force, continue to be operative until the competent authority makes up his mind to terminate the departmental proceedings one way or the other, or else does it cease to be operative as soon as the criminal proceeding, on the basis of which the Government servant was arrested and released on bail, has terminated. I am inclined to take the latter view.

11. for the purpose of facilitating the construction of the aforesaid rule, the material portions of the same may be quoted:

"93-A. A Government servant against whom a criminal chargeis pending shall also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e.g., while released on bail)." The words "pending" and "during periods while

released on bail" are significant and show clearly that it is an interim order of suspension which remains in force during the pendency of the criminal proceeding. It is true that Rule 93-A does not contain express words like "until the final termination of the proceedings taken against him" occurring in Rule 93, but the two rules have to be read together and when so read and construed it seems clear that they refer to interim orders of suspension so long as a criminal proceeding is pending against a Government servant, whether he is detained in custody during the proceeding or else Whether he is released on bail.

Hence, if the order of suspension dated the 11th September 1948 be held to be an order passed in pursuance of Rule 93-A of the Orissa Service Code (Vol. I) it must follow that that order expired when the sessions case terminated on the 10th November 1951 and it could not have any force after that date unless the competent authority, by a fresh order prolonged its life until the completion of the departmental enquiry.

12. The Advocate General on behalf of the State of Orissa. however, raised the following two arguments against this view:

(i) A specific written order continuing the previous order of suspension is not necessary if from the conduct of the parties, it is clear that all of them knew that the order of suspension would continue until the termination of the departmental proceedings.

(ii) As the applicant was not actually tried in the sessions case but was made an approver at the commitment stage, it should be held that the criminal proceeding against him did not terminate until the competent authority finally decided that he should not be placed on trial u/s 339 of the Criminal Procedure Code.

13. In my opinion neither of these two contentions can prevail.

14. Suspension of a Government servant pending an enquiry into his conduct is itself in the nature of an interim punishment as it involves substantial reduction in pay and it is fundamental that the imposition of any punishment should be made by a specific order of the competent authority. I have already held that the previous order of suspension passed against the applicant on the 11th September 1948 expired on the 10th November 1951 on the termination of the criminal proceeding in the Court of the Assistant Sessions Judge.

Unless therefore, the competent authority passes a fresh order to that effect, there can be no question of the previous order continuing. The continuance or otherwise of an order of suspension passed against a Government servant cannot be inferred from the conduct of the parties.

15. With regard to the second contention of the Advocate-General, it should be pointed out that even now the authorities have not decided whether the applicant, as approver, fulfilled the conditions of the pardon, or else whether he should be placed on trial for the original charge under the provisions of Section 339, Criminal Procedure Code. It will therefore, be fantastic to say that until they

choose to make up their mind on this question, the original criminal charge for which he was arrested on the 12th July 1948 still remains pending.

The police submitted one charge-sheet against the applicant, Shri Bimbadhar Pradhan, and another person, and it was during the commitment enquiry that he was granted pardon and made an approver u/s 337 of the Cri. P. C. He was arrested and released on bail on the same date, namely the 12th July 1948, and continued to remain on bail by virtue of Sub-section (3) of Section 337 until the termination of the trial in the Court of the Assistant Sessions Judge on the 10th November 1951.

In Sultan Ahmad Vs. Emperor, it was pointed out that the expression "termination of the trial" occurring in Section 337(3) of the Cri. P. C. would govern not only "detention in custody" referred to in that subsection but also the words "unless he is already on bail" occurring in the same sub-section.

Hence, it must be held that the bail that was granted to the applicant in the criminal proceeding ceased to be effective on the termination of the sessions trial of Bimbadhar Pradhan on the 10th November 1951. The expression "bail" occurring in Rule 93-A of the Orissa Service Code (Vol. I) must also be given the same meaning and on the admitted facts of the present case it must be held that the pending criminal charge in consequence of which the applicant was arrested, released on bail, and placed under suspension under Rule 93-A, expired when the Sessions case terminated.

The contingency that he may still be placed on trial for the very same charge in view of the provisions of Section 339 of the Cri. P. Code, would not prolong the life of the order of suspension. In any case, it will be academic to consider this point, because though nearly five years have elapsed after the passing of the judgment in the Sessions case we have not been informed that any steps have been taken to prosecute the applicant u/s 339 of the Cri. P. C. The criminal charge against the applicant must, therefore, be held to have terminated long ago.

16. I am aware of the decision of the Nagpur High Court in Gooalkrishna Naidu v. State of M.P. AIR 1952 Nag 170 (D) where it was held that an order of suspension passed under a rule similar to Rule 93-A of the Orissa Service Code continued to remain in force even though the conviction of the Government servant concerned was set aside on appeal. That case, however, is clearly distinguishable.

There the Government servant was placed under suspension after his arrest on a charge of corruption. He was convicted by the trial Court but acquitted on appeal by the Sessions Judge who held that there was no proper sanction for his conviction.

The Sessions Judge, however, did not acquit him of the offence with which he was charged. Subsequently, a fresh sanction was obtained and his trial

continued. The learned Judges of the Nagpur High Court held in those circumstances that inasmuch as there was no order of "acquittal" passed against the Government servant concerned and the accusation against him persisted due to the starting of the prosecution after obtaining fresh sanction the original order of suspension continued to remain in force.

In the present case, however, the criminal case in which the accused was arrested ended in the acquittal of the persons placed on trial. The applicant became an approver and was therefore not placed on trial. But by virtue of Sub-section (3) of Section 337, Cri. P. O., his bail also must be deemed to have terminated on the date of acquittal of his accomplices.

There is thus of case pending against him, apart from the contingency (which is now very remote) of his being prosecuted u/s 339 of the Cri. B. C.

17. I would, therefore, hold that the order of suspension, dated the 11th September 1948, had no effect (i) from the 12th July 1948 to the 31st October 1948 and (ii) after the 10th November 1951, until a fresh order is passed by the competent authority. The applicant is entitled to full salary for the aforesaid periods.

18. It is doubtless open to the competent authority to place him again under suspension, complete the departmental proceedings, and dispose of the same according to law. We trust, however, that the proceedings will be expedited and not allowed to drag on for years.

19. Let a writ accordingly issue directing the payment of full salary for the periods mentioned above. The applicant is also entitled to costs. Hearing fee is fixed at Rs. 100/- (Rupees one hundred).

20. I agree.