

(2006) 07 GAU CK 0003
In the Gauhati High Court
Case No : Writ Petition (C) No. 4826 of 2000

Rajat Kumar Das Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(2)
Penal Code, 1860 (IPC) — Section 307, 448, 506

Citation : (2008) GLT 269 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : J.M. Choudhury, P. Kataki and N.P. Das, for the Appellant; R. Bora, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—Heard Mr. P. Kataki, learned Counsel for the Petitioner and Mrs. R. Bora, learned Standing Counsel, BSNL.

2. The order dated 28.8.2000 recording "deemed suspension" of the Petitioner with effect from 7.8.2000 the date of his conviction in G.R. Case No. 867/1999 by the learned Chief Judicial Magistrate, Tezpur constitutes the subject matter of challenge in the instant proceeding.

3. The Petitioner, who at the relevant time was serving as Sub-Divisional Officer (Phones), in the then department of Telecommunication was charged as having threatened the then Telecom District Manager, Tezpur with a pistol for transferring him therefrom. On a complaint being lodged on the incident, GR. Case No. 867/99 was registered and on completion of the investigation, charge-sheet under Sections 448 / 506 IPC was submitted. The learned Sessions Judge on a consideration of the materials collected discharged the Petitioner/accused of the charge u/s 307, but remanded the matter to the learned Chief Judicial Magistrate, Tezpur for trial under Sections 448 / 506 IPC. On the completion of the trial, by the judgment and order dated 7.8.2000 the Petitioner was convicted

under the above two provisions of the Code and was sentenced accordingly. At or about the same time, a parallel enquiry was held by the departmental authority which, according to the Petitioner was later on abandoned. He has asserted in the petition that following his conviction, the learned trial court had allowed him to remain on previous bail. He, thereafter preferred an appeal in the court of the learned Sessions Judge, Sonitpur, Tezpur which was registered as Criminal Appeal No. 38 (S-3) 2000 and the learned lower appellate court by order dated 17.8.2000 while admitting the appeal stayed the operation of the judgment and order of the learned trial court permitting him to remain on previous bail.

4. The Petitioner has contended that immediately on his conviction, a move was initiated to place him under suspension which materialized in the form of the impugned order dated 28.8.2000. The Petitioner has assailed this order mainly on the ground that Rule 10(2)(b) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as the "Rules") under which the same had been passed is not attracted to the facts and circumstances of the case, the Petitioner not having been imprisoned at all inspite of his conviction under Sections 448 / 506 IPC.

5. The respondents in their counter while supporting the impugned action have contended that in view of the unruly conduct of the Petitioner, his conviction, as well as, the adverse materials collected against him in course of the preliminary enquiry, he was not fit to be retained in service and therefore, was rightly placed under suspension. According to him (them), following the preliminary enquiry, in the related departmental case, the Petitioner's conduct was construed to be unbecoming of a government servant.

6. Mr. Kataki while reiterating the pleaded facts referred to the Explanation appearing under Rule 10(2)(b) of the Rules to contend that as the condition precedent for invoking of powers thereunder i.e., the detention of the incumbent concerned in jail for 48 hours following his conviction is imperatively essential, the impugned order on the face of the records is unsustainable in law and is therefore liable to adjudged illegal and non est. As the Petitioner had been allowed to remain on previous bail by the learned trial court, whereafter the learned lower appellate court had stayed the operation of the conviction and had also allowed him to remain on previous bail, there was no occasion for him to be detained and therefore the respondents wholly misconstrued Rule 10(2)(b) in applying the same in the facts and circumstances of the case. Mr. Kataki has further submitted that on a revision petition being filed by the Petitioner before this Court, the sentence of imprisonment has been set aside, while maintaining the sentence for fine.

7. Ms. Bora has argued that Rule 10(2)(b) being invocable on the conviction of the incumbent concerned, the impugned order was validly passed and that the release of the Petitioner on bail is wholly inconsequential. As the conduct of the Petitioner was found to be most undesirable warranting his temporary lay off from service, the impugned order of suspension passed in administrative

exigency does not call for any interference of this Court.

8. I have carefully weighed the rival submissions. A plain reading of the order dated 28.8.2000 impugned before this Court discloses that the same had been passed in exercise of powers under Rule 10(2)(b) of the Rules. Thereby the Petitioner has been construed to be under deemed suspension with effect from 7.8.2000 i.e. from the judgment and order of the learned trial court convicting him under Sections 448 / 506 IPC and sentencing him as a consequence thereof. The respondents have denied in categorical terms the Petitioner's assertions that the learned trial Court as well as appellate court had allowed him to remain on previous bail and that therefore he did not suffer detention following his conviction.

9. Rule 10(2)(b) deals with two eventualities under which a Government servant can be deemed to have been placed under suspension-

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

ii) Secondly, with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation to Rule 10(2)(b) illustrates that the period of forty-eight hours referred to in Clause (b) of sub-rule would have to be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, would be taken into account.

(Emphasis supplied)

10. A plain reading of Rule 10(2)(b) along with the explanation makes it obvious that for the purpose of construing a Government servant to be in deemed suspension with effect from the date of his conviction, he has to be imprisoned and the period of forty-eight hours has to be computed from the commencement thereof, intermittent periods if any, to be taken into account as well. The sine qua non for the applicability of Rule 10(2)(b) therefore is the detention of the Government servant concerned following his conviction. In other words, if inspite of his conviction in a criminal case, a Government servant is not detained, he cannot be treated to be under deemed suspension in terms of Rule 10(2)(b) of the Rules.

11. In the case in hand, the pleaded facts reveal that though the Petitioner had been convicted as above, he did not suffer any detention in view of timely orders of bail both by the learned trial court and the lower appellate court. As it stands today, by dint of the decision of this Court, the sentence of imprisonment awarded by the learned trial court has been effected. As noticed hereinabove, the facts narrated in the petition pertaining to bail and the offence though

disputed by the respondents, it is not their categorical case that as a result of his conviction in the criminal case, he was imprisoned and had remained in detention of over 48 hours.

12. In the above premise, I am persuaded to hold that the impugned order of suspension against the Petitioner which is apparently in exercise of powers under Rule 10(2)(b) of the Rules is unsustainable in law. It is thus set aside. The above notwithstanding, it would be within the discretion of the respondents, if they deem it fit and proper to pursue the departmental proceeding bearing on the conduct of the Petitioner which led to his conviction in the criminal case. This, however, should not be construed to be a direction to the respondents to take any decision either way. It is made clear that action if any, taken against the Petitioner would be after following the procedure prescribed by law and would be subject to the challenge if any made by the Petitioner as legally permissible.

13. The petition stands allowed in the above terms. No costs.