

ORISSA HIGH COURT

Rupnarain Singh

Vs

State of Orissa

O.J.C. No. 11 of 1957

(R.L. Narasimham, C.J. and G.C. Das, J.)

20.01.1959

JUDGMENT

R.L. Narasimham, C.J.

1. This is a petition under Article 226 of the Constitution by a Forester attached to the office of the Conservator of Forests, Baripada Circle, against an order (No. 3320/2P-123/54) dated 7-5-1955, reducing his pay to the lowest stage of Rs. 50/- in the scale of Rs. 50-2-70/- per month for a period of two years.

2. From 1950 the petitioner was kept under suspension on various charges of misconduct but it is unnecessary to refer to them in this petition. It is sufficient to say that he was dismissed from service by the Divisional Forest Officer, Baripada Division, on 12-9-1950. But on appeal the Government of Orissa in their letter No. 19850, D-2. F/51-52 dated 20-11-1953, set aside the order of dismissal and directed the Divisional Forest Officer, Baripada, to draw up a fresh proceeding for disciplinary action in accordance with the rules. They further directed that he should be treated as under suspension till the proceedings were disposed of. In pursuance of this direction of the Government, the Conservator of Forests, Baripada Circle, after drawing up a fresh proceeding and obtaining his explanation, passed orders on 19-2-1954, by his office order No. 1418 censuring him for indiscipline and reinstating him in service. But the period during which he was under suspension pending enquiry against him was treated as a substantive punishment of suspension. But after thus reinstated in service, he was again proceeded against departmentally and fresh charges were framed against him by the Divisional Forest Officer in his office order No. 208 dated 28-10-1954. The petitioner submitted his explanation and the Divisional Forest Officer, Baripada Division, did not recommend a severe punishment on this occasion. But the Conservator of Forest Baripada Circle without giving an opportunity to the petitioner, passed the following order of punishment :

"I agree with the finding of the Divisional Forest Officer, Baripada Division. I however do not agree with the punishment recommended by the Divisional Forest Officer.

Mr. Rupnarain Singh, Forester, is reduced with effect from the date of the order to the lowest

stage of Rs. 50/- in the scale of pay of Rs. 50-3-70 fixed for the Foresters, for a period of two years, and this order shall not have the effect of postponing his future increments." The petitioner eventually retired from service on 1-7-1956. He challenged the validity of the order reducing his pay to the lowest stage of Rs. 50/- on the ground that it contravened the provisions of Clause (2) of Article 311 of the Constitution.

3. The facts are all admitted by the Advocate General on behalf of the Forest Department of the State of Orissa, but he contended that the reduction of a Government servant's pay to a lower stage in the same time-scale would not amount to "reduction in rank" within the meaning of Clause (2) of Article 311 and that consequently the petitioner was not entitled to a fresh notice calling upon him to show cause why the proposed punishment of reduction in rank may not be passed against him.

4. The main question for decision in this petition is whether the reduction of the pay of the petitioner to the lowest stage in the time-scale would amount to "reduction in rank" within the meaning of Article 311(2). It was admitted before me that the petitioner was actually drawing the highest pay in the scale namely Rs. 70/- when the order under challenge was passed. There is also no doubt that the order was passed by way of punishment inasmuch as specific charges were framed against him for alleged misconduct, his explanation was taken, and thereafter his pay was reduced.

5. Article 311 of the Constitution is based on Section 240, Sub-Sections (2) and (3) of the Government of India Act 1935, and, as pointed out by their Lordships of the Federal Court in *Afzalur Rahman v. Emperor*¹, in construing the provisions of Section 240, Sub-Section (2) of that Act the long standing service practice based on the statutory rules in force long before the passing of the Government of India Act - which were continued in force by that Act - should be carefully considered. The relevant rules for our purpose will be the Bihar and Orissa Subordinate Service Discipline and Appeal Rules 1935 which, again were based on the Civil Services (Classification, Control and Appeal) Rules. All these rules were saved under Article 313 of the Constitution. In Rule 2 of the Bihar and Orissa Subordinate Civil Services Discipline and Appeal Rules the various clauses of punishment that may be imposed on members of the Subordinate Civil Services have been described and one of the punishments so described (in Clause (iii) of that rule) is "reduction to a lower post or time scale or to a lower stage in the time-scale." The expression "reduction in rank" which is found in Section 240, Sub-Section (3) of the Government of India Act and in Clause (2) of Article 311 of the Constitution is not found in the aforesaid Rule. But bearing in mind the observations of their Lordships of the federal Court mentioned above, it seems reasonable to construe the expression "reduction in rank" as including the punishment of reduction to a "lower stage in a time-scale as described in Clause (iii) of R. 2 of the Bihar and Orissa Subordinate Service Discipline and Appeal Rules, 1935.

6. The learned Advocate General contended that reduction to a lower stage in the same time-scale would not amount to 'reduction in rank' and that reduction to a lower post alone would amount to such reduction in rank, and urged that though the petitioner's pay may have been reduced to the lowest stage in the time-scale his rank as Forester in the Department was not in any way affected. I am unable to accept such a narrow interpretation of the expression "reduction in rank." A Division Bench of this Court held in *Raghunath Sabato v. State*², that reduction to its lower stage in the time scale must necessarily involve reduction in rank. It is true

that the observations in that judgment were not fully accepted by the Rajasthan High Court in *Badri Pratap v. State of Rajasthan*³, but it does not appear that the learned Judges of that High Court read the aforesaid judgment of this Court in full and they seem to have been guided only by the notes of unreported cases as given in the All India Reporter. Moreover the judgment of that High Court was delivered on the 9th October, 1957, but, subsequently, their Lordships of the Supreme Court in the well known Dhingra's case *Parshottam Lal Dhingra v. Union of India reported in*⁴ have made some important observations on this question which would appear to support the view taken by the Division Bench of this Court. In particular I would quote the following passage in the judgment of the Supreme Court, at page 49 :

"But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of the servant to a lower post or rank cannot in any circumstances, be a punishment.

The real test for determining whether the reduction in such cases is or is not by way of punishment, is to find out if the order for reduction also visits the servant with any penal consequences. Thus, if the order entails or provides for the forfeiture of his pay or allowances or loss of his seniority in his substantive rank or stoppage or postponement of his future chances of promotion, then the circumstances may indicate that although, in form, Government had purported to exercise the right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the Rules, in truth and reality Government has terminated the employment as and by way of penalty." It is true that in the aforesaid case their Lordships of the Supreme Court were considering the case of a temporary Government servant whereas here the petitioner was admittedly a permanent Forester. But the observations of the Supreme Court are clear to the effect that wherever there is loss of seniority in the substantive rank of an officer or postponement of the future chances of promotion of the Officer, there would be a punishment by way of reduction in rank. In the present case by reducing the pay of the Forester to the lowest stage in the time-scale for a period of two years he was placed junior to those who were formerly junior to him, thereby resulting in loss of seniority. Moreover apart from monetary loss arising out of reduction in rank, the chances of his promotion were also very much jeopardised on account of his loss of his seniority. In my opinion, therefore, reduction to lower stage in the same time-scale of pay of a Government servant would also amount to reduction in rank within the meaning of Clause (2) of Article 311 of the Constitution.

7. The petitioner was therefore entitled to notice; under Clause (2) of Article 311 calling upon him to show cause why the proposed punishment of reduction in rank may not be passed against him. Admittedly no such notice was issued. The first notice in which charges were framed against him and in which he was called upon to submit his explanation as to why disciplinary action may not be taken against him, will not suffice.

8. The application is therefore allowed and the order of the Conservator of Forests, Buripada Circle (No. 3320 dated 7-5-1955) reducing the petitioner to the lowest stage in the scale of Forester is declared invalid and inoperative. The petitioner is entitled to the pay which he was actually drawing prior to the passing of the aforesaid order of reduction until the date of his superannuation (namely 1-7-1956) that is from 7-5-1955 to 1-7-1956. The State Government should refund to him the balance of pay and allowances which he would have drawn for that

period if the said Order of reduction had not been passed. The State Government should also re-examine the amount of pension that would be payable to the petitioner in consequence of the invalidity of the aforesaid order of the Conservator of Forests, Baripada Circle, dated 7-5-1956.

9. The petition is allowed with costs. Hearing fee Rs. 50/- (Rupees fifty only).

Das, J.

10. I agree.

Petition allowed.

Cases Referred.

¹ AIR 1943 FC 18

² ILR (1954) Cut 684 (at p. 704)

³ AIR 1958 Raj 239

⁴ AIR 1958 SC 36