

(1996) 06 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 1226 of 1995

Assistant Security Officer, Railway Protection Force and Others

APPELLANT

Vs

S. Sivagnanam

RESPONDENT

Date of Decision : 19-06-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 LLJ 597 : (1996) 2 LW 119

Hon'ble Judges : K.A. Swami, C.J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : V.R. Gopalan and R. Gunasekaran, for the Appellant; Vasudevan and Priya, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Lakshmanan, J.—The Assistant Security Officer, Railway Protection Force, Jolarpettai and three others are the appellants in the above writ appeal. They filed the above appeal against the order dated September 29, 1995 of the learned Single Judge of this Court in W.P.12043/85 quashing the order of dismissal of the respondent. A consequential direction to reinstate the respondent with all benefits was also given.

2. The short facts are as follows:-

The respondent was selected and appointed in the Railway Protection Force as a Rakshak by the Assistant Security Officer, Railway Protection Force by his communication dated December 27, 1962. The respondent has put in 20 years of service. The impugned order was passed removing the respondent from service for having consumed alcohol while on duty. The incident took place on December 10, 1982. On that day while functioning as Rakshak at the Arakonam Junction, the respondent was deputed for ticket checking duty at the Southern Railway Magistrate's Court, Madras Egmore between December 4, 1982 and December 10, 1982. One Perumal, Gurunathan and two others who were assigned the task

of taking the ticketless persons convicted by the Magistrate to the Madras Central Prison. The respondent reported duty at 8 O'clock on that date. At that time, the Officer-in-charge of the RPF/PTC/Ms came to duty at about 9:30 a.m. According to the respondent, he was taking treatment as prescribed by the Registered Medical Practitioner. When the Superior Officer Mr. Veerannan came duty, he called the respondent to his room which is near the court inside the Egmore station on platform No. 1 and assigned him the work of regulating the travellers who were fined by the Magistrate for travelling without ticket. Around 11:30 a.m. the respondent's superior sent for him to his office and questioned him about the commotion that was taking place outside. He also abused the respondent since he suspected that the respondent was under the influence of alcohol. He complained to the Deputy Chief Security Officer at Madras Beach and within a few minutes the Force came to Egmore and took statement from the Superior Officer and statement of some other persons. The respondent was sent to Dr. Santhanam For examination at 12 O'clock. He was subjected to various tests after collecting urine and blood samples. On December 16, 1982 the respondent received a communication from the first appellant suspending for a charge for having been found in drunken mood while on duty on December 10, 3 982. The respondent was given the charge that he was found to have consumed alcohol while on duty. According to the respondent, the charge was found to be altered from the one found in the suspension order. On January 8, 1983 the respondent submitted a reply to the above charge stating that he was under treatment from a private doctor due to ill health and that he was under strong medication and hence he used to be drowsy during his duty hours. The first appellant by communication dated February 16, 1983 under Rule 44 of the Railway Protection Force Rules, 1959 issued an order appointing an Enquiry Officer to enquire into the charge against the respondent.

The enquiry was conducted between March 4, 1983 and April 23, 1983. The Enquiry Officer examined four witnesses, Mr. Veerannan, Mr. Perumal as eye witnesses and one Mr. Srinivasan, Inspector, who took the respondent to the doctor on the relevant date and one Dr. Santhanam, who examined the respondent. The respondent submitted his written defence on April 23, 1983. He was issued the show-cause notice by the first appellant on May 16, 1983 asking him to show cause as to why he should not be removed from service. The respondent sent his explanation to the said show cause notice on June 7, 1983. The first appellant by his communication dated June 9, 1983 removed the respondent from service. The respondent sent an appeal on June 18, 1983 to the second appellant who on July 4, 1983 rejected his appeal. The third appellant by his communication dated September 12, 1983 passed an order rejecting the revision petition filed by the respondent on July 8, 1983. The respondent also sent a mercy petition praying for reinstatement to the Director General, the fourth appellant herein by a letter dated May 6, 1985 and the fourth appellant also rejected the same on May 30, 1985. Aggrieved by the orders passed the respondent filed W.P. 12043/85 to quash the orders of the appellant and direct

them to reinstate him with all benefits of continuous service etc.

3. It is contended that the impugned orders are non-speaking and therefore the appellants have not applied their mind before passing the orders. According to the respondent, the enquiry at the most proves, accepting the evidence on record, that the delinquent was smelling of alcohol. u/s 9(1)(i) of the Railway Protection Force Act, 1957 removal can be on the ground that the delinquent was negligent in the discharge of his duty or unfit for the same. Therefore in the absence of any evidence on the misbehavior on the part of the delinquent, the serious penalty of removal was not warranted. It is also contended that the domestic enquiry was vitiated and liable to be set aside since the Enquiry Officer who gave the findings does not distinguish between "influence of intoxication" and the charge of "having consumed alcohol while on duty". The discrepancy with regard to the evidence of witnesses were also mentioned in the affidavit. It is also contended that the order of removal passed by the first appellant is disproportionate to the charge. Therefore, the penalty of removal, in any event, is liable to be set aside.

4. The Divisional Security Commissioner in the office of the Railway Protection Force, Southern Railway filed a detailed counter affidavit, denying the allegations contained in the affidavit filed by the respondent in support of the writ petition. While referring to the allegation with regard to the discrepancy in the evidence tendered by the witnesses, it is stated in the counter that there is nothing worth mentioning in the alleged discrepancy pointed out by the writ petitioner to vitiate the enquiry proceedings. The defence statement was taken into consideration by the Enquiry Officer. The appeals of the respondent were rejected by the Superior Officers, as they found no ground to interfere, as the misconduct of the respondent has been proved. Since the order passed in this case was in order and based on evidence on record, it does not call for any interference by this court.

5. The learned single Judge by his order dated September 29, 1995 allowed the writ petition and set aside the order of removal impugned in the writ petition and directed to reinstate the respondent with all benefits. The learned Judge while allowing the writ petition relying upon the Medical Report submitted by the doctor that the appearance of the delinquent was normal and he was not drowsy and his speech was normal and gait was normal and held that it is not proved that the symptoms found are due to alcohol and the condition is not because of drunkenness. The Report only says that the person was smelling of alcohol. The learned Judge further observed that the report of the blood and urine test is to the effect that the respondent has consumed alcohol but he was not under the influence of alcohol but it does not say when he has consumed. It is also found that there was no material to show that the respondent had consumed alcohol while on duty and therefore serious punishment of removal cannot be sustained. The learned Judge has also observed that it is not proper on the part of the authorities to act on the materials which are not sufficient to prove the charge.

Under these circumstances the learned Judge has allowed the writ petition and quashed the impugned order.

6. Before us it is contended by Mr. V.R. Gopalan, the learned counsel appearing for the appellants that the learned Single Judge has failed to see that in a petition under Article 226 of the constitution the evidence cannot be re-appreciated as though it is an appeal; that in a case of this kind the court should find out whether there has been a violation of the principles of natural justice and whether due opportunity was afforded to the party concerned in the domestic enquiry proceedings; that once it is established that the principles of natural justice had not been flouted and due opportunity had been given, the findings of the disciplinary authority should be accepted; that R.P.F. personnel are equivalent to the military personnel and they come within the definition of "armed forces" and as such strict discipline of R.P.F. personnel that too while on duty is very much expected of and if any lenient attitude is taken, as has been done by the learned Single Judge, in the instant case, the entire morale of the administration will be impaired to a very great extent.

7. Mr. Vasudevan, the learned counsel for the respondent contended that the order of the learned Single Judge allowing the writ petition is perfectly in order, since the learned Judge has specifically held that the evidence let in does not prove the guilt of the accused. Therefore, in the absence of any evidence worth mentioning on the alleged misconduct on the part of the respondent, the serious penalty of removal was not warranted. In any event, the learned counsel contended that the order of removal passed by the first appellant was disproportionate to the charge and therefore the penalty of removal was liable to be set aside. It is further contended that the petitioner has put in more than 20 years service from 1962. Therefore, the alleged stray incident which is not proved should not and cannot form a basis for imposing a major penalty of removal.

8. We have considered the rival claims of the respective parties. The following are our reasons for our conclusion.

It is to be noticed here that Section 10 of the Railway Protection Force Act, 1957 stipulates that officers and Members of the Force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890 other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act. The railway servants are prohibited from consuming alcohol while on duty and it is against Rule 3(1) (iii) of the Railway Services (Conduct) Rules, 1966. According to the appellants, the respondent had violated the Railway Services (Conduct) Rules, 1966. Rule 3 and Rule 22 of the Railway Services (Conduct) Rules, 1966 which are relevant read thus:

" 1. General - (1) Every railway servant shall at all times:-

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a railway or Government servant.

2(i) Every railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all railway servants for the time being under his control and authority;

(ii) No railway servant shall in the performance of his official duties or in the exercises of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable, to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation - Nothing in Clause (ii) of Sub-rule (ii) shall be construed as empowering a railway servant to evade his responsibilities by seeking instructions from or approval of superior officer or authority when such instructions are not necessary under the scheme of distribution of power and responsibilities."

"22. Consumption of intoxicating drink and drugs; (1) A railway servant shall

(a) strictly abide by the law relating to intoxicating drink or drugs in force in any area in which he may happen to be for the time being;

(b) take due care that the performance of his duties is not affected in any way by the influence of any intoxicating drink or drug.

(2) A railway servant shall not-

(a) appear in a public place in a state of intoxication,

(b) habitually use any intoxicating drink or drug to excess;

(c) if he belongs to the category of running staff (both loco and traffic) or is connected directly with train passing, have taken or used any intoxicating drinks or drugs within eight hours of the commencement of duty or take drink or drugs during the course of duty."

9. In this case, it is the case of the railways that the respondent has violated the Railway Services (Conduct) Rules and consumed alcohol while on duty and this charge has been established according to the appellants beyond reasonable doubt per the evidence and documentary proof. Therefore, it is contended that the delinquent has behaved in a manner most unbecoming of a member of a disciplined force and thereby rendered himself unfit to be a member of the Force and therefore the penalty of removal from services is quite in order.

10. The point at issue is whether the respondent has consumed alcohol while on duty or not and the charge of having consumed alcohol while on duty is proved.

10A. It is true, normally in a petition under Article 226 of the Constitution, this court does not interfere with the finding of fact recorded by the domestic tribunal. This Court also does not re-appreciate the evidence as though it is an appellate Court. However, in a case where the evidence on record, on the face of it, does not make out the charge, and the finding is grossly perverse leading to miscarriage of justice, definitely it becomes the duty of this court to look into the matter in a greater detail. The case on hand is one such.

11. In our opinion the documents filed and the evidence tendered, do not at all make out the charge that the respondent had consumed alcohol while on duty. The reasons for such conclusion are as follows:

In the instant case, the charge was framed u/s 9 of the Railway Protection Force Act, 1957 (Act 23, of 1957) read with Rule 44 of the Railway Protection Force Rules, 1959. Section 9 of the Railway Protection Force Act, 1957 reads as follows:

"9. Dismissal, removal etc. of members of the Force - (1) Subject to the provisions of Article 311 of the Constitution and to such rule as the Central Government may make under this Act, any superior officer may -

(i) dismiss, suspend or reduce in rank any (enrolled member) of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any member of the Force, who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit the discharge thereof, namely;

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen days With or without punishment, drill, extra guard, fatigue on other duty.

(c) removal from any office of distinction or deprivation of any special emolument.

(2) Any enrolled member of the Force aggrieved by an order made under Sub-section (1) may, within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed;

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) In disposing of the appeal, the prescribed authority shall follow such procedure as may be prescribed;

Provided that no order imposing an enhanced penalty under Sub-section (2) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order."

12. The charge framed runs thus:

"While functioning as RK/at RPF/Post/AJJ he was deputed for ticket checking duty at Southern Railway Magistrate Court/ Madras Egmore from December 4, 1982 to December 10, 1982 along with SRK Sri Perumal of AJJ/RPF/Post. On December 10, 1982 a report was received from PTC (i.e.) prosecuting ticket checker Sri Veerannan of MS stating that Sri. S. Sivagnanan RK 1551 AJJ was found to have consumed alcohol while on duty at Madras Egmore, which fact was established by DMO/DN/MS vide his letter NOM/MD/43 dated December 31, 1982. Thereby he behaved in a manner most unbecoming of RPF Force. Hence the charge."

As already seen on behalf of the prosecution four witnesses were examined and cross examined by the delinquent with the support of his defence helper Bakthan. No witnesses were examined on behalf of defence. The following exhibits were marked during the course of enquiry:-

"Ex.P1 - Report dated December 10, 1982 of Sri. R.S. Veerannan, PTC/Ms.

Ex.P2 - IPF/MS memo dated December 10, 1982 addressed to DMO/MS.

Ex.P3 - G.D. entry made by IPF/MS vide E.No. 24,25,26 dated December 10, 1982.

Ex.P4 - Report of IPF/MS No. IPF/4/82 of December 10, 1982 addressed to SOR/MAS.

Ex.P5 - DMO/DN/MS report No .M/MD/43 of December 31, 1982 addressed to SOR/MAS.

Ex.P6 - Report December 10, 1982 of S. Perumal, SRK/AJJ addressed to IPF/MS.

Ex.P7 - Case sheet for examination of drunkenness dated December 12, 1982 issued by Dr. O.P. Santhanam, ADMO/MAS Divn/MAS-8".

On December 10, 1982 one R.S. Veerannan, PTC/MS RT 2513 of the Railway Special Metropolitan Magistrate Court, Madras Egmore addressed a communication to ASOR/MS/MAS.

The communication reads as follows:

"Mr. Sivagnanam RK 1551/AJJ came for MS Rly court, duty from December 4, 1982 to December 11, 1982. On December 4, 1982 the above RK came for duty in drunken mood. I advised him not to come for duty with intoxication. Again he came for duty on December 10, 1982 with intoxication. Hence I request you to kindly take necessary action against him."

13.The office of the IPF/MS issued a memo on December 10, 1982 to the District Medical Officer, Madras as follows:

"DMO/MS

Sir,

Sri S. Sivagnanam RK 1551/AJJ attached to TTE squad on duty is faced in intoxicated mood, creating nuisance. Kindly examine and advise please.

Sd/-

Inspector/RPF

Madras Egmore

We have already seen that the respondent was suspended on December 16, 1982 for having been found in a drunken mood while on duty at Madras on December 10, 1982 which was not the charge framed. The charge was for having consumed alcohol while on duty.

There is no dispute about the fact that the respondent was kept under suspension on December 16, 1982 for having found in a drunken mood while on duty at Madras on December 10, 1982. It is significant to notice that the District Medical Officer, Madras gave a report on December 31, 1982 marked as Ex.P5 on the basis of the report of the Tamil nadu Forensic Laboratory that the respondent was found to have consumed alcohol but was not under the influence of the alcohol. It is useful to reproduce Ex.P5 hereunder:

Southern Railway

No. M/MD 43 Office of the DRM/MD/MS

SOR/MAS Dn Dated December 31, 1982

Sub: Sri S.Sivagnanam RK 1551/AJJ attached to TTE Squad on duty

The above named was directed for examination by DPF/MS stating that he is found in intoxicated mood and creating nuisance. He was examined and his blood and urine were taken and sent to Tamil nadu Forensic Laboratory for examination for alcohol content and their report is given below:

1. A. Vial labelled - S. Sivagnanam....

Blood." and containing a reddish turbid liquid.. Detected one hundred and three (103) milligrams per cent (w/v) of ethyl alcohol.

2" A. bottle labeled S.Sivagnanam... Urine" and containing a yellowish turbid liquid. Detected one hundred and thirty two (132) milligrams percent (w/v) of ethyl alcohol)

As per the above report, he has consumed alcohol but was not under the influence of alcohol.

Sd/-

DMO/Dn/MS

The Tamil Nadu Forensic Laboratory Report mentioned in Ex.P5 was not marked at all as an exhibit in the proceedings. Likewise the District Medical Officer who

issued Ex.P5 was also not examined. The charge sheet dated January 25, 1983 was issued by the appellant alleging that the respondent consumed alcohol while on duty at Madras. The basis of the charge is the report of the District Medical Officer contained in the letter dated December 31, 1982. The respondent submitted a reply on February 8, 1983 to the above charge memo stating that he was not doing well on December 10, 1982 and a private medical practitioner gave him some medicine and he was feeling giddy while he was on duty on that day. An enquiry was conducted into the charge sheet dated January 25, 1983 under Rule 44 of the Railway Protection Force Rules, 1959 and the enquiry was conducted on March 4, 1983, March 15, 1983 March 24, 1983, April 4, 1983 and April 23, 1983. One R.S. Veerannan, Prosecuting Ticket Collector was examined as P.W.1. One M. Srinivasan was examined as P.W.2, one S.Perumal was examined as P.W.3 and O.P. Santhanam, Assistant Divisional Medical Officer was examined as P.W.4. It is seen from the proceedings that the District Medical Officer who issued the report dated December 31, 1982 under Ex.PS was not at all examined. The enquiry proceedings do not also show as to who produced the report dated December 31, 1982 especially when the District Medical Officer has not been examined.

14. The Enquiry Officer in his report proceeds on the assumption that the charge against the-respondent was that he was found in an intoxicated mood on December 10, 1982 while on court duty at Railway Magistrate Court, Madras. After referring to the evidence of P.Ws. the Enquiry Officer found that those witnesses deposed that the respondent smelt of alcohol on December 10, 1982. Strangely the Enquiry Officer relies on the report of the. Tamil Nadu Forensic Laboratory mentioned in Ex. P5 which has not even been produced in the enquiry and came to the conclusion that the respondent was under the influence of the intoxication due to the consumption of alcohol while on duty on December 10, 1982. The Enquiry Officer finds that the respondent is guilty of the charge of consuming liquor on December 10, 1982 while on duty. It is on the basis of the said finding, the Assistant Security Officer, who is the disciplinary authority, removed the respondent from service with effect from June 9, 1983. The Senior Security Officer who is the Appellate Authority and to whom the respondent preferred the appeal on June 18, 1983, has confirmed the order of removal contained in the penalty advise dated June 9, 1983 by order dated July 4, 1983. It is challenging the said penalty, the respondent had filed the writ petition which was allowed by the learned Single Judge on September 29, 1995.

15. As already indicated, the respondent was suspended from service on the ground that he was found on drunken mood on December 10, 1982. This allegation was given up in the charge memo which merely stated that the respondent consumed alcohol while on duty December 10, 1982. The basis of the charge ,s the report of the Assistant Divisional Medical Officer and the Medical Report dated December 31, 1982 of the District Medical Officer. Admittedly the District Medical Officer has not been examined and the report said to have been given by him has not been formally proved in a manner known to law in the

departmental enquiry. As a matter of fact, none of the witnesses examined in the departmental enquiry speaks about the report dated December 31, 1982 of the Chief Medical Officer. Despite the same, the aforesaid report has been marked in the departmental enquiry. The Enquiry Officer relies upon the report of the Tamil Nadu Forensic Laboratory which in turn has been referred to in the report dated December 31, 1982 of the District Medical Officer and the said report has not been produced in the departmental enquiry. The report given by the Assistant Divisional Medical Officer, Southern Railway, Madras Division dated December 10, 1982 reads as follows:

Southern Railway

Medical Department

Case Sheet for Examination c "Drunkenness

1. Name and address/Design of Suspect : S.Sivgnanam, Rakshak/Arak :onam, Govidaraja Naickef St., Madras - 600 012.

2. Date of time of examination : Urine and blood samples taken at, 12.05 hrs on December 10, 1982

3. What is the appearance of suspect: Normal

Is he drowsy : No

Are his upper eye lids and features relaxed : No

Are his eyes and face congested : No Is he sweating and slobbering : No

4. How does he behave :

Is he noisy? : No

Boisterous?: No

Silly?: No

Excited?: No

Garrulous? : No

Restless?: No

Heavy?: No

5. His conception of time space normal? (If it is, say Yes/If it is not, repeat "statements indicating the contrary : Yes

6. Test his memory, ask him, for examples, to remember a couple of addresses or to describe the accident to which led to his arrest and ask him to describe some event indicated by a picture in an illustrated paper : Memory not impaired

7. Note his speech, is it thick, nasal lisping, stammering or stumbling? : Normal

Make him repeat difficult words or read aloud a small newspaper notice:

8. Notice his gait. Is it swaying and a toxic? Perform Romberg's test: Gait-normal
9. Are the movements of his hands steady? Test his handwriting by making him write his name, age, occupation and address : Hands - steady
10. Examine his pupils - Note whether they are dilated, contracted or irregular and their reaction to light. Test his sense of pain : Pupils - reactive and normal. Pain perception normal
11. Does he smell of alcohol : Smells of alcohol
12. Are there signs of other diseases such as epilepsy or apoplexy? : No evidence of epilepsy or apoplexy
13. Add any other observation bearing on this matter
 - a) Has the examination revealed symptoms indicating that his condition is not normal? :No
 - b) Is it proved that the symptoms found are due to alcohol: No.
 - c) Is the condition one of drunkenness? : No.

Date : December 10, 1982

Place : Egmore, Madras - 8 Sd/-.....

Signature and designation of examining doctor.

(Dr. D.P. Santhanam)

Asst. Divisional Medical Officer,

Southern Railway

Madras Division.

Madras - 600 008.

A reading of the said report does not indicate that the respondent has either consumed alcohol or he was found in a drunken condition. The Assistant Medical Officer, Southern Railway, Madras Division examined the respondent on December 10, 1982 at 12.05 hrs to find out whether the respondent was drunk. On such examination it was found that his behaviour was normal, his speech was normal, his conception of time and space was normal, his gait was normal and reaction of pupils to light was normal. The Assistant Divisional Medical Officer found that the respondent smelt of alcohol, but, under column (b), he has opined that the symptoms of smelling alcohol was not due to alcohol, and that he was not in a drunken condition.

16. The report of the Enquiry Officer proceeds on the misapprehension that the charge against the respondent was that he was in an intoxicated mood while on

duty on December 10, 1982. The Enquiry Officer also relies on the undisclosed report of the Tamil Nadu Forensic Laboratory to find the respondent guilty of the charge levelled against him. That apart, none of the witnesses speak about Ex.P5 medical Report.

The Enquiry Officer, in our opinion, has not properly understood the charge framed against him and has proceeded on the misapprehension that the charge against the respondent was that he was found in an intoxicated mood on December 10, 1982 while on court duty at Railway Magistrate's Court.

17. On carefully going through the materials on record, it is clear to us that there is no evidence at all to find the respondent guilty of the charge levelled against him. The finding of the Enquiry Officer is not only perverse, but it is also unreasonable and has resulted in miscarriage of justice. We are of the opinion that the finding of the enquiry Officer that the respondent has consumed alcohol while on duty cannot be sustained. As such, we have no hesitation to interfere with the same. That being so, for the reasons stated by us above, there is no ground to interfere with the ultimate conclusion reached by the learned Single Judge.

18. Accordingly, the writ appeal is dismissed. However, there will be no order as to costs.