
(1991) 10 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No's. 1574 of 1984 and 1779, 1815 and 1816 of 1985

Dayashankar Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Railway Protection Force Act, 1957 — Section 2, 4, 6, 9
Railway Protection Force Rules, 1959 — Rule 43, 44(5), 44(6)

Citation : (1992) 1 BomCR 665 : (1992) 94 BOMLR 30

Hon'ble Judges : Sujata Manohar, J;P.S. Patankar, J

Bench : Division Bench

Advocate : A.H. Sayed, G.K. Massand and G.R. Meghani, in W.P. No. 1574 of 1984, S.M. Dange, in W.P. No. 1779 of 1985, for the Appellant; V.N. Lokur and S. Sankararamakrishnan in W.P. No. 1816 of 1985, for the Respondent

Final Decision : Allowed

Judgement

Sujata Manohar, J.—Dayashankar Singh, Ramchandra Mourya, Kailash Meena and Bhiku Shripati Kanjale are the petitioners in these Writ Petition Nos. 1815 of 1985, 1574 of 1984, 1816 of 1986 and 1779 of 1985 respectively. These petitioners were appointed as Rakshaks in the Railway Protection Force some time during the period 1965 to 1971. At the material time, these petitioners were working as Rakshaks with the Western Railway.

2. Dayashankar Singh was at the material time, assigned the duty of guarding Mahalaxmi Yard which is a property belonging to the Western Railway. Mahalaxmi Yard adjoins a siding known as Kachra siding where railway coaches which are scrapped are stored. Kailash Meena and Ramchandra Mourya were, at the material time, assigned the duty of guarding the coaches in Kachra siding. Mahalaxmi Yard is surrounded by high walls and wire fencing on all sides. The entrance to Mahalaxmi Yard is only through the main gate. The duty of guarding the main gate at the material time was assigned to Bhiku Shripati Kanjale.

3. On 27th September, 1982 Senior Rakshak Putlaji had taken around of the Mahalaxmi Yard and had not noticed anything unusual. On the morning of 28th September, 1982 however, when he took a casual check of Mahalaxmi Yard he found some disturbance in the grass. On closer inspection he found that there was some property hidden in the grass which was covered by freshly cut grass. Thereupon at about 9 O'Clock in the morning of 28th September, 1982 he informed Assistant sub-Inspector D'Souza about this discovery. D'Souza inspected Mahalaxmi Yard along with Senior Rakshak Putlaji Yadav and saw the property lying in the grass. He instructed Head Rakshak Harisingh to keep a watch on the property because he had found the property in the railway premises and he had not received any memo from anywhere regarding shortage or theft of any property. Harisingh, in turn, informed Head Rakshak Ram Briksha Ram about this at the time of relinquishing his charge when his duty time was over.

4. From the evening of 29th September, 1962 Sub-Inspector Sonawane and some officers of the CIB Branch kept a watch on the Mahalaxmi Yard. Sonawane has deposed that at about 5 a.m. on the morning of 30th September, 1982, five Rakshaks were spotted in the Mahalaxmi Yard discussing something and behaving in a "suspicious manner". Thereupon Sonavane along with the panchas and CIB Staff reached the spot. Seeing them arriving the five Rakshaks dispersed and resumed their respective beats. The five Rakshaks have been identified by Sonawane as the petitioners herein and one Uttam Patil. The CIB Officers took possession of the property, namely, four aluminium frame window shutters freshly torn from a railway coach. The chalk markings on these frames showed that they belonged to Coach No. 3092 which was stabled in the Kachra siding. Altogether four sets of window shutters were found to be hidden beneath the grass which had been freshly cut and spread over all the aluminium shutters in order to conceal them.

5. The petitioners along with the fifth Rakshak Uttam Patil were suspended with effect from 2nd October, 1982. They were served with charge- sheets on 29th October, 1982. One Chaturvedi IPS was appointed as Enquiry Officer to enquire into the charges. He has examined a number of witnesses including Sonavane, D'Souza, Putlaji and Harisingh. The defendants submitted their statements in writing. They have also cross examined the witnesses and have led the evidence of one witness. After the completion of enquiry, the Enquiry Officer has submitted a report dated 14th September, 1983 in which he has found the petitioners guilty of the charges against them. On 2nd November, 1983 show cause notices were issued to the petitioners asking them to show cause why they should not be removed from service. The petitioners gave their reply to the show cause notice. Thereafter, after considering the entire material on record, the Senior Security Officer has passed an order dated 31st December, 1983 removing the petitioners from service. The petitioners filed an appeal from this order which has been dismissed. The present writ petitions are filed challenging the order of removal of the petitioners from service.

6. The first contention raised on behalf of the petitioners is that the order of removal is in violation of Article 311 of the Constitution of India in as much as the petitioners have been removed from service by an authority subordinate to that by which they were appointed. In order to decide this issue we have to ascertain, first, who was the appointing authority in the case of the petitioners. The appointment of the petitioners is governed by the Railway Protection Force Act, 1957 and the Railway Protection Force Rules, 1959. The latter have been framed by the Central Government in exercise of powers conferred on it by section 21 of the Railway Protection Force Act 1957. As per the Rules, every person who is recruited as a Rakshak is required to undergo an initial programme of training. On his successfully completing the initial training programme, he is appointed as a Rakshak. As per Rule 23 of the Rules "Every person shall, (i) at the time of his joining the initial training course, execute an agreement in the form in Appendix "A"; and (ii) on appointment as a member of the Force, make a solemn affirmation in the form in Appendix "B" and also receive a certificate of appointment as prescribed u/s 7 of the Act. Section 7 lays down that every member of the Force shall receive on his appointment a certificate in the form specified in the Schedule, under the seal of the Chief Security Officer or such other superior officer as the Chief Security Officer may specify in this behalf, by virtue of which the person holding such certificate shall be vested with the powers of a member of the Force. In the present case the petitioners have not produced their certificates of appointment. The respondents have not filed any affidavit in reply. Mr. Lokur, learned advocate appearing for the respondents, however, at the hearing, produced before us the agreements executed by the petitioners at the time of their joining the initial training course as per Rule 23. All these agreements are signed by the Assistant Security Officer as the appointing authority. Mr. Lokur has also produced before us the office orders of appointment and posting issued in respect of these petitioners on their completion of initial training whereby they have been appointed as Rakshaks and posted at various places as specified in the office orders. These office orders are also signed by the Assistant Security Officer. It would thus appear that the appointing authority in the case of the petitioners was the Assistant Security Officer.

7. Under Rule 20 of the Railway Protection Force Rules, 1959, the Power of the Superior Officers to appoint members of the Force shall be as specified in Schedule I. Under Schedule I, the Chief Security Officer has the power to make appointments of all members of the Force. The Security Officer has the power to appoint Sub-Inspectors, Assistant Sub-Inspectors, Head Rakshaks, Senior Rakshaks and Rakshaks; while the Assistant Security Officer has the power to appoint Senior Rakshaks and Rakshaks.

8. The petitioners have however drawn our attention to section 6 of the Railway Protection Force Act, 1957. Section 6 states as follows:

"6. Appointment of members of the Force:--- The appointment of members of

the Force shall rest with the Chief Security Officers who shall exercise that power in accordance with rules made under this Act:

Provided that the power of appointment under this section may also be exercised by such other officer as the Chief Security Officer concerned may by order specify in this behalf."

In view of this section, therefore, it is clear that the power of making appointments of members of the Force lies with the Chief Security Officer. The other officers can exercise this power only if the Chief Security Officer so specifies by an order. It is, therefore submitted by the petitioners that Rule 20 which has been framed by the Central Government, is in violation of section 6 and is therefore bad in law. Despite Rule 20, therefore the Assistant Security Officer has no power to appoint the petitioners. In our view this is not the correct way of reading section 6 and Rule 20. u/s 6 itself, the proviso lays down that the power of appointment may be exercised also by such other superior officers as the Chief Security Officer may by order, specify. The rule must therefore be read harmoniously with section 6. Therefore, if the Chief Security Officer by order specifies the superior officers as per Rule 20 read with Schedule I of the Railway Protection Force Rules, they would have the power to make appointments of members of the Force as set out in Schedule I to the Rules.

9. In the present case however, no such order passed by the Chief Security Officer has been produced before us. Mr. Lokur initially submitted that the appointment of the petitioners is therefore bad in law because it is not in accordance with the provisions of section 6 of the Railway Protection Force Act 1957. He further submitted that if this is so, the petitioners are not entitled to the protection of Article 311 of the Constitution.

10. Mr. Lokur relied upon a judgment of the Supreme Court in the case of Chandra Mohan v. State of Uttar Pradesh, reported in AIR 1966 S.C. 1987 in this connection. In the case before the Supreme Court, the appointments of advocates and Judicial Officers as District Judges under the U.P. Higher Judicial Service Rules was under challenge. The Supreme Court held that the rules for appointment of District Judges were illegal and the appointments made thereunder were bad in law. Mr. Lokur also relied upon a judgment of the Supreme Court in the case of Chandramouleshwar Prasad Vs. The Patna High Court and Others, . In that case also the Supreme Court held that the appointment of the District Judge by the Government without consultation of the High Court was not valid and, therefore, it set aside the appointments.

11. Mr. Lokur submits that the appointments of the petitioners are in violation of section 6 of the Act and hence they are bad in law. Since the petitioners are not validly appointed members of the Railway Protection Force, they are not entitled to the protection of Article 311.

12. There is considerable force in this argument. But the orders of appointment in the case of the petitioners were made more than 25 years ago. The petitioners

have always been considered, during this period, as duly appointed Rakshaks under the Railway Protection Force Act, 1957 and have been treated as such and have received their salaries and emoluments as such. We do not think it would be proper, now, to hold that the appointments of the petitioners are bad in law and therefore they are not entitled to the protection of Article 311 of the Constitution. We therefore propose to treat the petitioners as duly appointed by the Assistant Security Officer who was duly authorised by the Chief Security Officer in this behalf. In fact, as set out hereinafter Mr. Lokur also, at the end of his argument, stated that he did not wish to challenge the validity of the appointment orders of the petitioners.

13. The petitioners however, contend that we should ignore the fact that the petitioners were actually appointed by the Assistant Security Officer. We should presume that the petitioners were appointed by the Chief Security Officer because he alone has the power u/s 6 of the Railway Protection Force Act, 1957 to appoint Rakshaks. This submission, in our view, has no merit.

14. In the first place it is not correct to say that u/s 6 only the Chief Security Officer has the power to appoint a Rakshak. The other superior officers would also have the power to appoint Rakshaks provided the Chief Security Officer so specifies by an order in that behalf. Therefore, there can be no presumption that the petitioners have been appointed only by the Chief Security Officer. Moreover, the factual position is to the contrary. When the documents produced by the respondents show that the appointing authority in the case of the petitioners was the Assistant Security Officer, we cannot presume that the appointments were made by the Chief Security Officer.

15. In view of this factual position, viz., that the appointing authority in the case of the petitioners was the Assistant Security Officer, we have to see which authority has passed the order of removal. The order of removal has been passed by the Senior Security Officer who is higher in rank than the Assistant Security Officer. Article 311 of the Constitution refers to the factual position in case of appointment and removal of persons employed in Civil capacities under the Union or a State. It says that no person who is a member of a civil service of the Union or in all-India service, inter alia shall be dismissed or removed by an authority subordinate to that by which he was appointed. The respondents have not been removed by an authority subordinate to that by which they were appointed. Hence there is no violation of Article 311.

16. Our attention in this connection has been drawn to a decision of a Single Judge of this High Court in the case of Bhimrao F. Patil Vs. Chief Security Officer, Western Railway and Another, . This case also dealt with the Railway Protection Force Act, 1957 and the rules framed thereunder. The petitioner in that case was also a Rakshak under the Railway Protection Force Act, 1957. He was appointed as a Rakshak in 1971 and his letter of appointment was signed by the Assistant Security Officer. He was removed from service by the Security Officer. It was, inter alia, contended before the learned Single Judge that the order of removal

was bad in law and ultra vires the Act because the Security Officer was not authorised by the Chief Security Officer to make the appointment and consequently to pass an order of removal. The learned Single Judge held that the infirmities in the order of appointment cannot be got over by the illegality attached to the order of removal. He said that though rules permit the Security Officer and the Assistant Security Officer to pass an order of removal of a Rakshak, these rules, to the extent that they do not comply with the requirements of the proviso to section 6, are invalid. With respect, we do not agree with this reasoning of the learned Single Judge.

17. Dismissal, removal etc., of members of the Railway Protection Force is governed by section 9 of the Railway Protection Force Act, 1957. It is 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 rules as the Central Government may make under this Act, any superior Officer may -

(i) dismiss, suspend or reduce in rank any 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 for 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 or other duty;

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

(2) Any member of the Force aggrieved by an order made under sub-section (1) may appeal against the order to such authority as may be prescribed, and the decision of the said authority thereon shall be final".

Therefore, the power to dismiss or remove any member of the Force is conferred u/s 9 to any superior officer. A "superior officer" is defined u/s 2(f) of the Railway Protection Force Act to mean any of the officers appointed u/s 4 and includes any other officer appointed by the Central Government as a superior officer of the Force. Section 4 which deals with the appointment and powers of the superior officers lays down that the Central Government may appoint a person to be the Inspector-General of the Force and may appoint other persons to be Chief Security Officers, Security Officers or Assistant Security Officers, of the Force. Therefore, the Security Officers and the Assistant Security Officers are included in the category of superior officers. u/s 9 they have the power of dismissal, removal etc., subject naturally to the provisions of Article 311 of the Constitution and such rules as the Central Government may make under this Act.

18. As per the Railway Protection Force Rules, Rule 43 provides that the

disciplinary authority in respect of a member of the Force for the purpose of imposing any particular penalty or the passing of any disciplinary order shall be the authority specified in this behalf in Schedule II in whose administrative control the member is serving and shall include any authority superior to such authority. Under Schedule II to these Rules the power of removal is granted in respect of all members of the Force to the Inspector-General and the Chief Security Officer, the power to remove all members of the Force, except Inspectors and Sub-Inspectors, is given to the Security Officer; while the power to remove the Senior Rakshaks and Rakshaks is granted to the Assistant Security Officer. Obviously these provisions are subject to Article 311. But looking to the provisions of section 6 under which power of appointment can also be conferred on these superior officers, giving the above officers power of removal as set out above does not violate per se, Article 311. We have to examine each case to see if there is any violation of Article 311. The order of removal is legally passed in the present case by the Senior Security Officer who is superior in rank to the Assistant Security Officer. The order of removal, therefore, is in accordance with the Act and the Rules which do not per se, violate Article 311.

19. The only question, therefore, that would arise would be whether this order of removal of the petitioner by the Senior Security Officer is in violation of Article 311. As the appointment was by the Assistant Security Officer and the removal is by the Senior Security Officer, there is no violation of Article 311 either. In these circumstances the learned Single Judge, in our view, was in error when he held that there was any illegality attached to the order of removal. As far as the power of appointment is concerned, in our view, section 6 and Rule 20 have to be read harmoniously as Rule 20 would come into operation only in those cases where the Chief Security Officer has by an order, granted authority to the superior officers concerned to make an order of appointment.

20. Our attention has been drawn by the petitioners to a decision of the Allahabad High Court in the case of Aziz Khan v. Security Officer (West) N.E. Railway, reported in AIR 1976 All 700. In that case also the Allahabad High Court was required to consider the provisions of section 6 of the Railway Protection Force Act, 1957 and Rule 20. The Allahabad High Court, with respect, rightly said that to the extent there was inconsistency between section 6 and Rule 20, the section would prevail over the rule. In the case before the Allahabad High Court, however, there was a dispute as to who had appointed the petitioner as a Rakshak. The Allahabad High Court held that they were unable to say on the basis of the documents produced before it that the petitioner was appointed by an Assistant Security Officer. The Court in that case was shown the order passed by the Assistant Security Officer recruiting the petitioner with effect from 18th March, 1967 as a Rakshak (undertraining). The Court said that there was a distinction between "recruitment" and "actual appointment" and it, therefore, did not rely upon the order of recruitment. It then held that since u/s 6, the chief Security Officer alone had the power to make appointments at the relevant time, it should be presumed (underlining ours) that the appointment was by the Chief

Security Officer. Therefore, his services could be terminated only by the Chief Security Officer and not by the Security Officer. The case, therefore, turns upon the fact that the Court had presumed in that case that the appointment was by the Chief Security Officer. In the case before us, however, there is material to show that the appointment was made by the Assistant Security Officer. In view thereof, we cannot make any presumption to the contrary. It is true that before us also, the actual certificate of appointment has not been produced by the petitioners. But the respondents have produced not merely the agreement of appointment at the time of recruitment of the petitioners, but also the office orders issued appointing the petitioners and posting them. These are all signed by the Assistant Security Officer as an appointing authority. In view of this documentary evidence it is not open to the petitioners to contend that they should be presumed to have been appointed by the Chief Security Officer.

21. The next decision which was relied upon the petitioners was *Ram Sukh Misra v. Deputy Chief Security Officer, Northern Railway*, reported in 1983 (2) All India 501. In that case also there was no material before the Court to show that on the date the petitioner was appointed, the Chief Security Officer had empowered any other superior officer to exercise the power of the Chief Security Officer to make appointments to the Force. The appointing authority of the petitioner, who was also a Rakshak, was, therefore, presumed by the Court to be the Chief Security Officer. The Court, therefore, held that he could be removed from service by the Chief Security Officer and not by any other person. The impugned order which was passed by an officer lower in rank was held as unsustainable. Once again, this case proceeds on the footing that the petitioner was appointed by the Chief Security Officer. Such is not the case here.

22. In the case of *Sher Bahadur Singh v. Union of India*, reported in 1977 Labour and Industrial Cases, 1562, of the two petitioners, Sher Bahadur Singh was in fact, appointed by the Security Officer. The Court rejected the submission made on behalf of Sher Bahadur Singh that though the Security Officer had issued an order in his case appointing him, it should be deemed that the order had been made by the Chief Security Officer. The Court said that it is not permissible to draw such a presumption. Hence in his case, since his order of compulsory retirement was by the Security Officer, the order was valid and the Court dismissed his petition. In the case of the other petitioner before the Allahabad High Court, his order of appointment was produced which showed that he was selected for appointment as Assistant Sub-Inspector under an order of the Chief Security Officer. His order of compulsory retirement from service, therefore, by the Security Officer was considered as bad in law and the order of compulsory retirement in his case was set aside.

23. In the case of *Union of India v. Baban Singh*, reported in 1982 Lab & Ind 89, the Allahabad High Court was required to consider a case where the plaintiffs were appointed as Rakshaks under the Railway Protection Force Act, 1957 by an Assistant Security Officer. The Court said that it would be immaterial for the

application of Article 311 of the Constitution whether the power to appoint the plaintiffs as Head Rakshaks legally vested u/s 6 in the Chief Security Officer. The Court said that Article 311 of the Constitution is concerned with the factual position and not with the question as to who had the competence to appoint the Government servant who is sought to be removed from service. It held that the plaintiffs were actually appointed by the Assistant Security Officer and were removed by the Security Officer, who was admittedly an officer superior in rank to an Assistant Security Officer. Hence there was no violation of Article 311.

24. Our attention was also drawn to a decision of the Andhra Pradesh High Court in *B. Ramkrishna v. Assistant Security Officer, Railway Protection Force, South Central Railway, Secunderabad*, reported in 1974, Indian Law Reporters, 870 at page 873. This judgment has upheld the provisions of section 9 and Rule 21 of the Railway Protection Force Act, 1957 and Railway Protection Force Rules, 1959. The Court has observed in the course of its judgment that initially the first contention which has been raised before it was in connection with the appointment of the petitioners there. It was realised that both the petitioners in that case had been appointed by the Assistant Security Officer. When it was felt that the validity of the appointment of the petitioners would come into question, this argument was not further pursued.

25. In the case before us also, after making his detailed submissions on the point, Mr. Lokur has finally stated that he does not wish to challenge the validity of the appointment of the petitioners at this stage on the ground that they had been appointed by the Assistant Security Officer. He has, therefore, not pressed the question of validity of the appointment of the petitioners. We have, therefore, proceeded on the basis that the petitioners were validly appointed by the Assistant Security Officer. They have been paid out of the consolidated fund for the last 25 years or more. We, therefore, presume that the official act of appointment was done in a legal manner. If the appointment was by the Assistant Security Officer, then the order of removal, which is passed by the Senior Security Officer, does not violate Article 311 of the Constitution.

26. It was next contended by the petitioners that the enquiry against the petitioners is vitiated on account of the fact that the Enquiry Officer has himself cross examined the witnesses. This indicates bias on his part. The petitioners rely upon a decision of the Karnataka High Court in the case of *Abdul Wajeed v. State of Karnataka*, reported in 1981 A I L 388. In the case before the Karnataka High Court the Enquiry Officer cross examined witnesses supporting the petitioner suggesting that they were uttering falsehoods. After examining the record of the enquiry proceedings the Court held that the conduct of the Enquiry Officer clearly suggested a bias on his part. It indicated that he had made up his mind to find the petitioner guilty. Hence enquiry was set aside.

27. The conduct of the Enquiry Officer in the present case does not suggest any such bias. We have gone through the record of the enquiry. The question of the Enquiry Officer are meant to elicit correct information from the witnesses. They

do not indicate any bias. The ratio of Abdul Wajeed's case does not therefore apply.

28. What we have to consider in the case of a departmental enquiry is whether the principles of natural justice have been observed and whether the Enquiry Officer has acted fairly or whether he has shown any bias in conducting the enquiry and arriving at the conclusion which he has arrived at. The first thing which we have to remember in the present case is that there was no presenting officer in this enquiry. It was the Enquiry Officer who was required to examine evidence in the course of the departmental proceedings. The two relevant rules in this connection are Rules 44(5) and 44(6) of the Railway Protection Force Rules 1959. Under Rule 44(5) the member charged may be permitted by the enquiry authority to present his case with the assistance of any other member of the force of the zonal Railway in which the member so charged is working. Under Rule 44(6) the enquiring authority shall in the course of the enquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The member of the force shall be entitled to cross-examine witnesses examined in support of the charges, to give evidence in person and to produce defence witnesses. If the enquiry authority declines to examine any witnesses on the ground that his evidence is not relevant or material it shall record its views in writing.

29. In the present case the entire oral evidence which was led before the Enquiry Officer is recorded. The questions put in cross-examination by the petitioners or on their behalf, as well as the replies given have been recorded verbatim. So have the questions which have been asked by the Enquiry Officer and answered by the witnesses. This gives a very correct picture of what transpired before the Enquiry Officer. A perusal of the evidence shows that each of the witnesses examined before the Enquiry Officer was allowed to be cross-examined at length by the petitioners or on their behalf. The petitioners have also led their own evidence. It is true that a few questions have also been asked by the Enquiry Officer which have been described as cross-examination by the Enquiry Officer. A perusal of the questions and answers however, clearly shows that the questions asked were elucidatory in nature. The replies which were given have also been recorded. At times the Enquiry Officer has also permitted the petitioner to further cross-examine the witnesses after he has elucidated these answers. In our view, the questions which have been asked by the Enquiry Officer have been merely with a view to ascertain the correct position as to facts at the material time. They do not indicate any bias on his part. Looking to these circumstances, in our view, the Enquiry Officer has not shown any bias against the petitioner. He has conducted the enquiry in a fair manner.

30. It is next submitted that the charges which were framed were vague and this has affected the enquiry. We must therefore examine the charges framed against each of the petitioner, as the charges are not identical. The charges which have been framed against Bhiku are as follows:

"Shri Biku...is hereby charged with remissness / negligence in the discharge of duty / unfitness for duty in that he:---

1) left his duty beat-MX stores Main Gate in the night of 29/30-9,82 without permission.

2) was found moving in a suspicious manner MX (S) yard at about 5.30 hrs. on 30-9-1982 along with RKs Ramchandra Mourya. Daya Shankar Singh, Kailash M. and Uttam Patil.

3) is suspected to have been involved in removing and finding the stolen materials weighing about 75 Kgs., freshly broken from Coach No. 3092.

In connection with charges 2 and 3 it is possible to say that these charges are somewhat vague. Charge No. 2 deals with moving in a suspicious manner at about 5.30 hours on 30-9-1982 in the company of four other Rakshaks. It is not clear what is meant by "moving about in a suspicious manner". The statement of allegations which accompanies these charges, however, mentions that "the CIB/ BCT along with his staff keeping a watch over the area at about 5.30 hours on 30-9-1982 noted these Rakshaks moving in the yard in a suspicious manner but on seeing the CIB staff they dispersed". The charge does leave some vagueness as to what exactly was the conduct of these Rakshaks which gave rise to suspicion. The third charge on the face of it merely indicates suspicion that he has been involved in removing and hiding the stolen material. But, even if we ignore the charges 2 and 3 against Bhiku, the first charge itself, which is very specific, is quite serious. The only duty which was assigned to Bhiku as a Rakshak was to guard the railway property. For this purpose he was assigned the duty of guarding the main gate of Mahalaxmi Yard. The fact that he left his duty beat without permission and thereby left the main gate of the Mahalaxmi store yard unguarded, is itself a serious charge which would warrant a serious punishment. The vagueness of the other two charges, therefore, in our view, does not affect the enquiry or the findings of the Enquiry Officer against Bhiku regarding the 1st charge. The 1st charge is itself grave enough to warrant the punishment awarded to him.

31. As far as the other three petitioners are concerned the charges against them are quite specific. The charge as against Daya Shankar Singh is to the following effect :---

"Shri Daya Shankar Singh ... is hereby charged with remissness/negligence in the discharge of duty/unfitness for duty in that he while on duty in the night of 29/30-9-1982 in MX (S) Yard where stolen material weighing about 175 Kgs. freshly broken and removed from Coach No. 3092 was found hidden in his duty beat and recovered by CIB Staff".

In the case of Ramchandra Mourya and Kailash Meena, the charges are identical. Both are charged with remissness/negligence in the discharge of duty/unfitness for duty in that they failed to prevent or detect the theft of material weighing

about 175 Kgs. freshly broken and removed from Coach No. 3092 which was stabled in their duty beat. It is seen from these charges that in the case of the other three petitioners the only charge was remissness or negligence in discharge of duties inasmuch as the petitioner did not carry out their duty of guarding the property within their duty beat. This is also the first charge in the case of Bhiku. When this charge is established as proved, it is sufficiently grave to warrant the punishment which has been inflicted.

32. It is next submitted that the enquiry is vitiated because there is no evidence whatsoever in support of the charges. Therefore, the charges cannot be said to be proved at all. In this connection, we will first examine the charges against Ramchandra Mourya and Kailash Meena. It has come in evidence before the Enquiry Officer that these two Rakshaks were given the duty, at the relevant time, of guarding inter alia, Coach No. 3092 which was at Kachra Siding. It has also come in evidence that window frames weighing 175 Kgs., were removed from Coach No. 3092 and were hidden in grass in the Mahalaxmi Yard. There is evidence which establishes that the window frames which were found hidden in the Mahalaxmi Yard belong to Coach No. 3092. Since Ramchandra Mourya and Kailash Meena were assigned the duty of guarding Coach No. 3092, the fact that these window frames disappeared from the coach while they were assigned the duty of guarding the coach, would establish their negligence or remissness in the discharge of their duty to guard the coach. There is also evidence to show that these aluminium frames came to be hidden in the Mahalaxmi Yard either on the night of 27th September or in the early morning of 28th September, 1982 and were discovered in the morning of 28th September, 1982 by Putlaji. Neither Kailash Meena nor Ramchandra Mourya reported the theft of these window frames from the coach. It is not for us to consider the adequacy or otherwise of evidence which was before the Enquiry Officer. But this is not a case where it can be said that there is no evidence before the Enquiry Officer for holding the charges as proved against Ramchandra Mourya or Kailash Meena.

33. In the case of Bhiku Shripati Kenjale the first charge relates to his leaving his duty at the main gate on the night of 29th/30th September, 1982 without permission. Here also there is enough evidence before the Enquiry Office to show that Bhiku was not at his allotted beat at the main gate of Mahalaxmi Store on the night of 29th/30th September, 1982 or early morning of 30th September, 1982. In his case also, therefore, it cannot be said that there was no evidence at all against him or that the finding given against him is perverse.

34. In the case of Dayashankar Singh, however, the charge is that he was remiss or negligent in the discharge of his duty, inasmuch as, while he was on duty on the night of 29/30th September, 1982 in the Mahalaxmi Yard, stolen property was found hidden in his duty beat and recovered by the CIB Staff. As the stolen material was found and recovered from his duty beat, he was held responsible for the same. In this connection we have seen the entire evidence which has been recorded by the Enquiry Officer. From the evidence on record, it appears

that in fact the theft had already been discovered by Putlaji on the morning of 28th September, 1982; and he had reported this theft to his superior Officer D'Souza. D'Souza had instructed the staff on duty to keep a watch over this stolen property. This information was passed on to Harisingh and from Harisingh to Ram Briksha Ram. There is evidence which shows that by the morning of 28th September, 1982 the Rakshaks who were assigned the duty of guarding Mahalaxmi Yard were aware of the fact that stolen property was hidden in the grass in the Mahalaxmi Yard. Daya Shanker Singh, who was on duty on the night of 29th cannot be expected, in these circumstances, to report the theft of this stolen material laying in his duty beat on the night of 29th morning of 30th September because he was aware that all his superior officers were also aware of the discovery of this theft and a watch has been kept. There is therefore no material evidence which would indicate any negligence or remissness on the part of Dayashanker Singh in not reporting the stolen property hidden in the grass in his duty beat on 29th/30th September, 1982. The evidence of D'Souza shows that he had instructed CIB as well as the Head Rakshaks and others in charge of Mahalaxmi Yard to keep a watch on the stolen property, presumably in order to nab the thieves in case they come to collect the hidden property. Dayashanker Singh, therefore cannot be expected to again report on 29th/30th September, the theft of these materials which had already been discovered by then.

35. The only evidence against Dayashankar Singh is that he was found together with Bhiku, Ramchandra Mourya, Kailash Meena and Uttam Patil in the Mahalaxmi Yard at about 5.30 a.m. and that on seeing the arrival of Sonavane and the CIB staff, they all dispersed. This evidence does not in any way establish or even support the charge which has been levied against Dayashankar Singh.

36. Dayashankar Singh has not been charged with any remissness or negligence in the discharge of his duty on the night of 27th/28th September, 1982 when the stolen property came to be hidden in his duty beat. This charge has not been framed against him. Hence we need not go into this aspect of the question. From the evidence on record, therefore, we find that there is no material at all to convict Dayashanker Singh of the charge which has been actually framed against him. The findings of the Enquiry Officer against Dayashankar Singh are therefore not warranted as they are not based on any evidence.

37. It was also submitted on behalf of the petitioners that they were not allowed to have the assistance of a lawyer in the enquiry and hence the enquiry is vitiated. Rule 44(5) permits the Rakshaks to be represented by any other member of the Railway Protection Force working in the same zonal railway. The petitioners were represented by another member of the Force. Looking to the nature of the charges and the findings, the enquiry does not appear to be complicated. We also do not have any material which would indicate that the Enquiry Officer was a trained lawyer or that the petitioners were prejudiced in any manner by reason of the fact that a lawyer was not allowed to represent them. The departmental representative of the petitioners quite effectively, cross-

examined the various witnesses before the Enquiry Officer. There is therefore no substance in this connection.

38. It is next contended on behalf of the petitioners that Regulation 19 in Chapter XVI of the Railway Protection Force Regulations, 1966, which have been framed under Rule 32 of the Railway Protection Force Rules, 1959, requires a preliminary enquiry to be held before the Departmental Proceedings are instituted. Since such a preliminary enquiry was not held, the Departmental Proceedings are vitiated. This submission also has no merit.

39. Under Regulation 19, "It is the responsibility of the superior officer alone to take a decision, after such preliminary enquiry as, considered necessary, on whether the offence is such as to warrant a departmental enquiry as envisaged in Rule 44..." Clearly, there is no compulsion to hold a preliminary enquiry. It is for the superior officer to take a decision whether a departmental enquiry is warranted. And he may do so either on the basis of the material which is already there before him, or if he finds it necessary, after holding such preliminary enquiry as he may consider necessary. There is, therefore, no mandatory requirement of a preliminary enquiry.

40. It was also submitted before us that under Regulation 21(vi) in Chapter XVI, the oral statement of the party charged is required to be recorded to confirm his written statement and to clarify points which may be necessary. In the present case, each of the petitioners was asked to give such an oral statement. The petitioners, however, requested the Enquiry Officer that they may be permitted to submit a statement in writing. This was permitted. In these circumstances this contention also has no merit.

41. In the premises, in our view, the enquiry which was held was by a competent authority in accordance with the procedure prescribed in that behalf. The rules of natural justice have also not been violated. We are not sitting in appeal over the findings of fact which were arrived at by the Enquiry Officer. So long as the evidence reasonably supports the conclusion that the delinquent Rakshak is guilty of the charge, it is not for us to review that evidence and to arrive at an independent finding on that evidence. Petitions of Ramchandra Mourya, Kailash Meena and Bhiku Shripati Kenjale have no merit and they are dismissed with costs.

The rule is discharged in each of these petitions.

The petition of Dayashanker Singh, Writ Petition No. 1815 of 1985 is allowed and the rule is made absolute in terms of prayer (a) therein. The petitioner Dayashanker Singh will be entitled to all consequential benefit.

No order as to costs.