

(1968) 01 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 2866 of 1965

K. Dakshinamoorthy

APPELLANT

Vs

District Signal Telecommunication Engineer (Works)
Perambur, Madras and Another

RESPONDENT

Date of Decision : 31-01-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 103
Railway Protection Force Act, 1957 — Section 13, 21

Citation : AIR 1969 Mad 201 : AIR 1968 Mad 201 : (1969) 1 LLJ 351

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

**Advocate : Anantan Nair, for P.N. George and P. Shanta Bai, for the Appellant;
S.K.L. Ratan, for the Respondent**

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The petitioner, K. Dakshinamoorthy was employed as a Khalasi in the Signal and Telecommunication Shop in the

Southern Railway. He was drawing a pay of Rs. 72/- at the time when the Railway Authorities dismissed him from the service for serious

misconduct by an order passed on 17-12-1964. Before passing the order of dismissal, a charge was framed against the petitioner for the following

misconduct:

When you were passing through S. & T. Workshop Time Office counter at about 11-38 hours on 14-7-1964 your body and waist were

searched by the RPF Staff at the gate and during the search you were found keeping your left hand pressed tightly with your body. This aroused

suspicion and you were asked to lift your left hand. While lifting your left hand a small paper bundle fell down from your left arm pit. In the bundle

8 bolts with nuts and 10 washers were concealed"".

2. He was kept under suspension pending enquiry. The charge was held proved and he was dismissed by the District Signal and

Telecommunication Engineer (Works), Perambur, Madras (the first respondent). The appeal filed to the higher appellate authority was dismissed

and the petitioner has filed this writ petition under Article 226 of the Constitution for the issue of a writ of certiorari.

3. Two points were urged by the learned Counsel for the petitioner at the time of the hearing of the Writ Petition, in support of the petitioner's

prayer. One is that at the time when the alleged search mentioned in the charge was made by the Railway Protection Force Staff at the gate, there

was an obligation on the part of the searching personnel to comply with the requirements of Section 13 of the Railway Protection Force Act, 1957

as well as Rule 18 of the Rules framed under the Railway Protection Force Act on 10-9-1959. The second argument relied upon by the

petitioner's learned Counsel is that the requirements of the Conduct and Discipline Rules, in particular. Rule 1712, which permits a Railway servant

accused of a departmental irregularity to have the help of another Railway servant to defend him had not been complied with in this case and to

that extent, the enquiry has been vitiated.

4. Taking up the first point. Section 13 of the Act mentioned above gives power to search without warrant to senior officers of the Railway

Protection Force including a Senior Rakshak and this power is similar to the power conferred on officers in charge of Police Stations in the

Criminal Procedure Code. Section 13(2) provides that the provisions of the Code of Criminal Procedure, relating to searches under that Code

shall, so far as may be, apply to searches under this section. Rule 18 of the Railway Protection Rules states:

Whenever a search of a person or his belongings is conducted u/s 13 of the Act, an inventory shall be prepared in the presence of two

respectable witnesses and a copy of the inventory shall be given to the person concerned and if any property suspected to be stolen is found on

such search it shall also be sent to the Police along with the person.

5. The learned Counsel appearing for the Railway urges that these provisions found in the Act and the Rules were intended to enable the Railway

Protection Force to discharge its policing and protective duties, and in the discharge of those duties, the Railway Protection Force functions as a

limb of the police force in the State. Thus, when the power to arrest a person conferred u/s 13 has been exercised under the Act, the person

making the arrest is required to make over the person arrested to a police Officer. A similar provision is found in Rule 17 of the Rules.

Rule 18 relating to the provision for search also provides that when any property is seized in the course of a search, it shall also be sent to the

police along with the person searched. It is, therefore, clear that these provisions are intended to enable the Railway Protection Force to discharge

their duties which are of a statutory nature wherein they function as an adjunct to the normal police force of the country. What we have in this case

is not a search followed by investigation into an offence to be dealt with later on by the police under the Criminal Law. The search was conducted

in the course of administrative duties, namely keeping a watch on the employees who leave the workshop gate. As part of the normal

administrative duties of those in charge of the workshop, will be to ensure that the employees leave the premises without concealing any of the

properties of the workshop on their person.

This kind of check on employees leaving the workshop, is conducted by every private employer in charge of workshops for safeguarding their own

property. It was in the course of a search conducted in that connection, that according to the charge framed against the petitioner, certain railway

property was found in his possession. It will be unnecessary to import to such searches which are made as part of the ordinary administrative

security of the Railway Workshop premises the principles laid down in the Railway Protection Force Act and the Rules framed thereunder which

are designed for an entirely different purpose, namely to enable the Railway Protection Force to perform their statutory duties, under the Act and

the Rule was (as?) an adjunct to the police force of the country. I am of the opinion that this attack on the procedure is without substance.

6. However, on the second point mentioned above, there appears to be a genuine case for re-opening the enquiry. Rule 1712 of the Conduct and

Discipline Rules for Railway Subordinates is the relevant rule which arises for consideration. It deals with the procedure for enquiry when a major

penalty is proposed to be Inflicted on a railway servant. Rule 1712, Sub-rule (2) states:

The accused railway servant may present his case with the assistance of any other railway servant employed on the same railway (including a railway servant on leave preparatory to retirement) on which he is working, subject to the approval of the Inquiring Authority.

7. The counter affidavit of the Railway in this case Rives an account of what happened at the time of the enquiry and with particular reference to

Rule 1712 relating to the facilities to be given to a railway servant for help by another railway servant when he is proceeded against for a major

misconduct. In the beginning on 15-8-1964, the petitioner wanted that one P.S. Dorairaj, Mechanic Fitter should be permitted to defend him.

Necessary permission was granted by the Enquiring Officer, and Dorairaj appeared at the earlier stages and took copies of the documents on

behalf of the petitioner. On 21-9-1964, the petitioner expressed his desire that some other defence helper should be permitted to assist him. The

Enquiring Officer did not turn down his request or insist that Dorairaj alone should continue to help the petitioner. He adjourned the enquiry so that

the petitioner could furnish the name, designation and the particulars of the new defence helper. The enquiry was adjourned to 6-10-1964, when

the petitioner asked for further time presumably to get the particulars about the new defence helper. The enquiry was adjourned from 6-10-1964

to 16th and 17th October 1964.

In the interval on 9-10-1964, the petitioner nominated one Kolandaivelu, another Railway employee and wanted the enquiry proposed to be held

on the 16th and 17th, to be adjourned to some other date after 20-10-1964 to enable the petitioner to arrange for the attendance of Kolandaivelu.

This should have been treated as a reasonable request, and the enquiry officer ought to have adjourned the enquiry in order to enable this new

defence helper to be present and assist the petitioner. But unfortunately, the enquiry was held on 16-10-1964 without the presence of the defence

helper and some witnesses were also examined for the Railway. On 17-10-1964, the enquiry was adjourned to 26-10-1964 and the petitioner

was told that on 28-10-1964 the enquiry would proceed ex parte if he failed to attend. What happened in the interval between 17-10-1964 and

28-10-1964 is made clear from the following circumstances mentioned by the petitioner's learned counsel.

On 17-10-1964 the petitioner was supplied with a copy of a letter from the Head of the Department where Kolandaivelu was employed stating

that it was regretted that it was not possible to spare the services of Kolandaivelu, Clerk of this Office tomorrow". There was another

communication dated 27-10-1964 from the same Head of the Department where Kolandaivelu was employed, stating it is regretted that the

services of Kolandaivelu could not be spared during this week." These communications would show that for some reason not disclosed,

Kolandaivelu was not in a position to assist the petitioner for the hearing on 17-10-1964 and also for the whole of the week before and after 28-

10-1964. The learned Counsel for the Railway urges that in such a situation, the Railway is not bound to give further time to enable the helper to

be relieved from his ordinary work to assist the delinquent officer at the enquiry, that the question of relieving the helper is entirely discretionary,

and subject to the exigencies of the service, and that the delinquent officer should take the risk of the helper's services not being made available for

some reason or other.

In other words, what the learned Counsel wants to represent is that the right to have the services of the helper is not an absolute right; but must be

subject to the discretion of the Enquiring Officer and also the availability of the services of the defence helper which again will depend upon several

other factors. The learned Counsel for the Railway urges in the above circumstances that is in the present case, even though the Head of the

Department where Kolandaivelu was employed was not in a position to relieve him on 17-10-1964 and in the week before and after 28-10-1964,

the enquiry conducted on the 16th, 17th and 28th October, 1964 would be a proper enquiry and that it was not open to the petitioner to contend

that that enquiry should be reopened to enable him to have the services of a helper. The counter-affidavit itself shows, that some witnesses were

examined on 28-10-1964 and at the conclusion of the enquiry, the petitioner made an endorsement as follows:--

I, the undersigned Dakshinamoorthy, Khalasi T. No. 37, beg to say that I had no defence helper to assist at the enquiry. On account of this, I was

not able to question the witnesses on the prosecution side and I feel that it will be possible to accuse me in this case. Without defence helper, I feel that my case has become weak.

8. It is not possible to say categorically that the right to have a defence helper's services to assist a delinquent officer under Rule 1712 is an

absolute right. Equally, it is not possible to assert that the right to afford the defence helper's services to a delinquent officer granted under Rule

1712 is wholly discretionary, and that the Enquiring Authority can give permission or refuse permission for a helper's services at his discretion. The

more proper way to interpret this rule, is to hold that the right to have another person's services to assist a delinquent Railway Subordinate at a

departmental enquiry is a valuable right and it is this valuable right that has been recognised in Rule 1712. If in any particular case that right has

been withheld, this Court would be entitled to examine at the instance of the aggrieved subordinate, whether that right has been withheld for valid

reasons or not.

In the present case, the Enquiring Officer was prepared to concede at the earlier stages the several requests of the petitioner made; in the first

place, for the services of the defence helper namely Dorairaj and then conceded to his request for giving up Dorairaj and obtain the services of

another defence helper. There is no question, therefore, of the Enquiring Authority deciding in this case to withhold the privilege under Rule 1712.

Having decided to grant the privilege, it was incumbent on the Enquiring Officer to afford to the delinquent officer reasonable facilities for access to

the defence helper's services. When the departmental head under whom Kolandaivelu was employed intimated to the petitioner and consequently

also to the Enquiring Officer that Kolandaivelu's services could not be spared "tomorrow" and further that his services could not be spared for the

succeeding week, it is clear that the incapacity which prevented Kolandaivelu from attending, was purely temporary and was not due to

unwillingness on the part of Kolandaivelu to help the petitioner as defence helper at the enquiry.

The Enquiring Officer had therefore, a clear duty in such a case to give a reasonable opportunity for Kolandaivelu's services being made available

to the petitioner for his defence, without proceeding summarily with the enquiry

on the 16th, 17th & 28th October, 1964 and without giving a reasonable time for Kolandaivelu to appear and take up the petitioner's defence, especially in view of the specific reply of the Held of the Department where Kolandaivelu was employed that some temporary reason prevented Kolandaivelu's appearance on the dates in question. I have, therefore, come to the conclusion that in the present case, the enquiry held on the 16th, 17th, and 28th October suffers from the material defect that the protection afforded to the delinquent officer under Rule 1712 of the services of a departmental helper has been withheld from him for inadequate reasons.

9. Therefore, I allow the Writ Petition and set aside the order removing the petitioner from the service. It will be open to the Railway Authorities to proceed with the part of the enquiry from 16th October onwards after affording a reasonable chance to the petitioner to have the services of a departmental helper, whether it be Kolandaivelu or in view of the passage of time, some other subordinate of the Railway, as the petitioner may elect.

10. The Writ Petition is allowed as above. No order as to costs.