

(1968) 01 MAD CK 0024
In the Madras High Court

K. Dakshinamoorthy

APPELLANT

Vs

The District Signal Tele-Communication Engineer (Works) and
Another

RESPONDENT

Date of Decision : 31-01-1968

Acts Referred:

Citation : (1968) 2 MLJ 191

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Judgement

P. Ramakrishnan, J.—The petitioner, K. Dakshinamoorthy was employed as a Khalas in the Signal and Tele-Communication 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 17th December, 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 Officer counter at about 11-38 hours on 14th July, 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 you 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 Tele-

communication 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 10th September, 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 of his belonging 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 Rules 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 reopening 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 gives 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 15th August, 1964, the petitioner wanted that one P.S. Dorairaj, Machanic 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 21st September, 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 6th

October, 1964, when the petitioner asked for further time presumably to get the particulars about the new defence helper. The enquiry was

adjourned from 6th October, 1964 to 16th and 17th October, 1964. In the interval on 9th October, 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 20th October, 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 the new defence helper to be present and assist the

petitioner. But unfortunately, the enquiry was held on 16th October, 1964 without the presence, of the defence helper and some witnesses were

also examined for the Railway. On 17th October, 1964, the enquiry was adjourned to 28th October, 1964 and the petitioner was told that on

28th October, 1964 the enquiry would proceed ex-parte if he failed to attend. What happened in the interval between 17th October, 1964 and

28th October, 1964 is made clear from the following circumstances mentioned by the petitioner's learned Counsel. On 17th October, 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 27th

October, 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 17th October, 1964 and also for the whole of the week before and after 28th October,

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, that the learned Counsel wants to represent is that the light to have the services of a 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 is that in the present case, even though

the Head of the Department where Kolandaivelu was employed, was not in a position to relieve him on 17th October, 1964 and in the week

before and after 28th October, 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 28th October, 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 obtaining 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, and 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 Head of the Department where Kalandaivelu 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 way, as the petitioner

may elect.

10. The writ petition is allowed as above. No order as to costs.