

(2010) 12 MAD CK 0051
In the Madras High Court
Case No : Writ Petition No. 30654 of 2003

R. Babu

APPELLANT

Vs

Director General/Railway Protection Force Railway Board,
Chief Security Commissioner and Chief Security Both of
Commission Railway Protection Force

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 159, 212(2), 217, 219, 219(1)

Citation : (2010) 12 MAD CK 0051

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S. Ilamvaludhi, for the Appellant; M. Vellaisamy, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the first Respondent, the Director General, Railway Protection Force,

dated 15.11.2002, by which the first Respondent has rejected the revision filed by the Petitioner against the order of removal from service and also

for direction to reinstate him.

2. The writ Petitioner has entered into service as a Constable in the Railway Protection Force on 11.12.1980. He was placed under suspension on

24.06.1994 by the Assistant Security Commissioner, Trichy, contemplating enquiry in disciplinary proceedings. A charge sheet was issued by the

Assistant Security Commissioner, Railway Protection Force, Trichy on 18.07.1994, which is as follows:

Sri R. Babu Con.335/PDY (under suspension) is hereby charged for his misconduct, failure to maintain absolute integrity, devotion to duty and

acting in a manner quite unbecoming of a member of Railway Protection Force in that on 22.6.1994 while he was performing 08.00 to 16.0 hrs.

Duty shift deserted his duty area and entered inside the PDY Retiring Room No. 1 and consumed alcohol. Later he instigated Con.257 Ugrakumar

against the Con.555 S. Sivaramakrishnan which lead to a quarrel and as a result of which Con. Sivaramakrishnan sustained bleeding head injury.

The action of the said Constable tantamount to gross indiscipline and has brought discredit to the force. Hence the charge.

3. The Inspector, Railway Protection Force, Mr. S. Manickavasagam, was appointed as an Enquiry Officer. The Petitioner objected to his

appointment and made a representation to him. However, without considering the same, he proceeded with the enquiry. The enquiry officer's

report was communicated to the Petitioner on 31.10.1994 by the Assistant Security Commissioner, for which the Petitioner submitted his

representation on 19.11.1994. However, the Divisional Security Commissioner, Trichy, accepting the findings of the enquiry officer, removed

the Petitioner from service by order dated 09.12.1994. It was, against the said order, the Petitioner filed an appeal before the Chief Security

Commissioner, Railway Protection Force, Chennai, viz., and the second Respondent on 15.02.1995, who in his proceedings dated Nil has

rejected the appeal. Against that, the Petitioner filed a writ petition in W.P. No. 796 of 1996 and this Court by an order dated 03.10.2001,

directed the Petitioner to file a revision before the first Respondent as per Rule 219.1 of the Railway Protection Force Rules, 1987. Accordingly,

an application was filed, which was rejected by the first Respondent under the impugned order dated 15.11.2002.

4. The said order of the first Respondent is challenged by the Petitioner on various grounds including that none of the witnesses before the enquiry

officer have deposed that the Petitioner has consumed alcohol and instigated Ugrakumar against Sivaramakrishnan; that the Petitioner has only

participated in a party arranged by one Iyappan and therefore, it is the case of no evidence against the Petitioner; that the Petitioner has put in

14 years of service with unblemished record and therefore, the punishment of dismissal is disproportionate; that even the victim Sivaramakrishnan,

who is stated to have been assaulted by the Petitioner has not made any complaint and he has not been examined as witness; that the other

constable Nagarajan and the Assistant Sub Inspector of Police Vadivel, who had admittedly participated in the party were only examined as

witnesses and no charges were framed against them and that the host Iyyappan himself as PW.4 has deposed that the Petitioner had taken only soft drinks.

5. In the counter affidavit filed by the Respondents it is stated that the charge memo issued against the Petitioner on 18.07.1994 is as per Rule 153

of the Railway Protection Force Rules, 1987 for misconduct and failure to maintain absolute integrity and devotion to duty and acting in a manner

unbecoming a member of the Railway Protection Force. It is stated that on 22.06.1994, while performing duty at 08.00 - 16.00 hours, he

deserted the duty and entered into the retiring room, consumed alcohol and instigated the Constable Ukrakumar against Sivaramakrishnan, as a

result of which Sivaramakrishnan sustained bleeding injury. It is also stated that the Enquiry Officer submitted a report, which was sent to the

Petitioner by giving 15 days time for submitting his explanation and in the meantime orders were passed removing the Petitioner from service and

an appeal filed by the Petitioner against the said removal order was rejected. against which the Petitioner preferred a writ petition, in which this

Court has directed the Petitioner to file an application before the first Respondent, and as per the orders of this Court in the writ petition, the Petitioner

filed an application under Rule 219.1 of the Railway Protection Force, 1987 and after considering the same the impugned order came to be passed by

the first Respondent.

6. It is also stated that the enquiry officer was not motivated. It is stated that after revision was filed, the entire records were perused regarding the

material irregularity and having found that there was no miscarriage of justice, the revision came to be dismissed. The Petitioner was not a police

constable, but he was in Railway Protection Force as a constable. The charges were not only for the purpose of consuming alcohol, but also for

instigating the other constable Ukrakumar against Sivaramakrishnan. It is also the case of the first Respondent that the Petitioner has in fact

admitted that he deserted the duty and participated in the party conducted by Iyyappan. It is also stated that Shri Nagaram Vadivelu, Assistant Sub

Inspector, who had given permission was also dealt with for a major charge for

his negligence, and as per the statement of the said N.M. Nagaram

Vadivelu, the Petitioner deserted the job and went to the retiring room and in the preliminary enquiry the Petitioner has admitted that he has

consumed liquor in the party along with others. It is stated that the Railway Protection Force is an armed force of the Union and taking liquor and

assaulting the other RPF person (constable) cannot be tolerated. It is also stated that Iyyappan, who has arranged the party has also given a

statement that he has arranged the liquor party with chicken.

7. Mr. Elamvazhudhi, learned Counsel appearing for the Petitioner would submit that on evidence it is clear that the Petitioner has only taken soft

drinks and he has taken chicken in the retiring room and therefore, it is false to state that he has consumed liquor and therefore, according to him, it

is a case of no evidence. As far as the assault on a constable is concerned, it is his submission that there is no evidence. He has also stated that if

really the Petitioner has consumed alcohol, he should have been sent for alcohol test, and there is no evidence to speak about the incident,

especially when the constable Sivaramakrishnan himself has not made any complaint.

8. On the other hand, it is the case of Mr. Vellaisamy, learned Counsel appearing for the Respondents that it is not as if the charge is only that the

Petitioner has consumed liquor, but it is a case of desertion. Inasmuch as the desertion has been proved, there is no question of interference by this

Court from the punishment. Armed Force being a disciplinary force, desertion is taken seriously. He would also refer to various Rules under the

Railway Protection Force Rules to substantiate his contention that the procedures contemplated in the Rules have been followed.

9. On a reference to the charges, it is clear that the charge is not only relating to consumption of alcohol by the Petitioner and quarelling with some

other constables, but it also relates to desertion from duty as it has been elicited in the charge itself. It is one Iyyappan who is a third party is stated

to have hosted the party in the retiring room and at the first instance, as it is stated by Nagaram Vadivel in his evidence, the Petitioner was available

in the retiring room instead of the place allotted to him and since the party was not ready, the said Nagaram Vadivel left the place and returned after

some time and even at that time, the Petitioner was found available in the

retiring room.

10. It is no doubt true that the said Nagaram Vadivel has stated that the host Iyyappan offered him liquor but he refused and took only chicken and

bread apart from soft drink. But, the evidence of Nagaram Vadivel shows that he instructed them not to take liquor and went away and in spite of

it, three staff were still in the retiring room. Therefore, it is clear from the evidence that the aspect of desertion by the Petitioner has been proved.

The statement of Johnson Raja Singh as P.W.2 shows that as per the instructions, he went to enquire about the incident, viz., the assault against the

constable Sivaramakrishnan and the Petitioner admitted that he attended the party in uniform and consumed liquor along with Nagaram Vadivelu

and Sivaramakrishnan. Another witness R. Duraisamy, examined as P.W.3, who was also the Assistant Sub Inspector, has also stated that he

offered liquor which was not accepted by the Petitioner, but he took chicken and bread and he was in the retiring room up to 14.00 hours from

12.00 hours. It is also seen that P.W.1 Nagaram Vadivelu, who has originally given evidence against the Petitioner, has gone back only because he

was also charged for having participated in the liquor party. It is also found that even the said Iyyappan, the host, has gone back in order to

save the Petitioner and others who happened to be his friends.

11. On the basis of the above said factual aspects which had been arrived at during the course of enquiry by the Enquiry Officer, the impugned

order came to be passed and therefore, on the factual matrix, I do not accept the contention of the learned Counsel for the Petitioner that it is a

case of no evidence for the authority to come to a conclusion.

12. The revision filed before the first Respondent which is challenged before this Court is as per Rule 219 of the Railway Protection Force Rules,

1987 which is as follows:

219. Revision:

219.1 an enrolled member of the Force whose appeal has been rejected by a competent authority may prefer an application for revision to the

next superior authority. The powers of revision may be exercised only when,-

a) in consequence of some irregularity, there has been injustice or miscarriage of justice;

or

b) fresh evidence is disclosed which could not be produced or was not available at the time of passing of the impugned order.

219.2 the procedure prescribed for consideration of appeals under Rule 217 shall, so far as may be, apply to application for revision.

219.3 The superior authority while passing orders on the application for revision may at its discretion enhance punishments :

Provided that before enhancing the punishment, the aggrieved member shall be given an opportunity to show cause why his punishment should not

be enhanced :

Provided further that subject to the provisions of Sub-rule (2) of Rule 212, an order enhancing the punishment shall be treated as an original order

for the purpose of appeal, except when such an order has been passed by the Central Government in which case no further appeal shall lie. Where

such order has been passed by the Chief Security Commissioner, appeal shall lie to the Director-General and in the case of such order by the

Director General, the appeal shall lie to the Central Government.

219.4 Any authority superior to the authority making the original order may, on its own motion, or otherwise, call for the records of any inquiry and

revise any order made under these rules and may:

a) confirm, modify or set aside the order; or

b) confirm, enhance, reduce or set aside the punishment imposed by the order, or impose any punishment where no punishment has been imposed;

or

c) remit the case to the authority which made the order to any other authority directing such authority to make such further inquiry as it may

consider proper in the circumstances of the case;

or

d) pass such other order as it may deem fit:

Provided that non action under this sub-rule shall be initiated after the expiry of one year from the date of the order aforesaid :

provided further that no proceeding for revision shall be commenced until after-

(i) the expiry of the period for making an appeal specified in Sub-section (2) of Section 9; or (ii) the disposal of the appeal, where any such appeal

has been preferred:

Provided further that in a case in which it is proposed to enhance punishment further, the aggrieved member shall be given an opportunity to show

cause either orally or in writing as to why his punishment should not be enhanced.

13. In the order passed by the first Respondent in the revision, the first Respondent has applied his mind and found that there was no ground to

interfere and there is no material irregularity committed. The operative portion of the order of the first Respondent in the revision is as follows:

The extant provisions of RPF Rules, 1987 provide that the power of revision can be exercised only when in consequence of some material

irregularity, there has been miscarriage of justice of some new fact has been brought which could not be considered during the departmental

proceedings. Neither of the two situations exists in this case.

In view of the foregoing facts, I do not find any ground to interfere with the punishment imposed. Therefore, the Revision Petition is rejected being

devoid of any merit.

14. By referring to the said portion of the order passed in the revision by the first Respondent which is challenged in this writ petition, there is no

defiance of Rule 219 of the Railway Protection Force Rules, 1987. In such view of the matter, looking into any angle, I am of the considered view

that the Petitioner is not entitled for any relief claimed in this writ petition and there is nothing to interfere with the impugned order of the first

Respondent. Accordingly, the writ petition fails and the same is dismissed. No costs.