

(1995) 09 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 12043 of 1985 and W.M.P. No's. 22398 of 1989 etc.

S. Sivagnanam

APPELLANT

Vs

The Asst. Security Officer, Railway Protection Force, Southern
Railway and Others

RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Railway Services (Conduct) Rules, 1966 — Rule 3

Citation : (1996) 2 LLJ 206

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Advocate : T.M. Vasudevan, for the Appellant; V.R. Gopalan, ACGSC, for the Respondent

Final Decision : Allowed

Judgement

Jayarama Chouta, J.—In this Writ Petition the petitioner has asked this Court to issue a writ of certiorarified mandamus calling for the

records relating to the proceedings dated June 9, 1983 in No. M/XP.227 / JTJ/2/83 of the first respondent, the Assistant Security Officer,

Jollarpettai which is confirmed by the respondents 2 and 3 by their orders dated July 4, 1983 and December 7, 1983 and quash the orders of the

first respondent and direct the respondent to re-instate the petitioner with all benefits of continuous service.

2. The brief facts, for the purpose of disposal of this writ petition were these; The petitioner was appointed in the Railway Protection Force as a

Rakshak by the first respondent on December 27, 1962 and he served as a probationer for six months after which he was confirmed. He had put

in 20 years of service.

3. He was removed from service for having consumed alcohol while on duty according to the charge sheet dated January 31, 1983. The petitioner has sworn to an affidavit that the alleged incident took place on December 10, 1982 and on that day he was deputed for a ticket checking duty at the Southern Railway Magistrate's Court, Egmore, Madras, Mr. Perumal and Mr. Gurunathan were two other persons who were assigned the same task. He reported for duty at 8 O'clock in the morning and his supervisor one Mr. Veerannan came to duty around 9:30 a.m. and the petitioner was assigned the duty of regulating the persons who were charged with travelling ticketless. Around 11:30 a.m. the petitioner's superior sent for him to his office and questioned him about the commotion that was taking place outside. He also abused the petitioner since he suspected that the petitioner was under the influence of alcohol. So saying he complained to the Deputy Chief Security Officer at Madras Beach through telephone and within a few minutes the Force came to Egmore and took some statement from his Supervisor and statements of some other persons were recorded and the petitioner was sent to Dr. Santhanam for examination. He was subjected to various tests after collecting urine and blood samples.

4. On December 16, 1982 the petitioner received a communication from the first respondent suspending him from service pending enquiry on a charge for having been found in drunken mood while on duty on December 10, 1982. On January 8, 1983 he submitted his reply denying the said charge and he pointed out that he was taking treatment from one Doctor Venkatesan for his stomach ailment and he was consuming medicines like winheper B-12, Aminovin and Nervitone. On January 31, 1983 the petitioner was given a charge sheet wherein the charge was framed into one of having consumed alcohol while on duty. On February 16, 1983 under Rule 44 of the R.P.F. Rules the enquiry officer was appointed and the enquiry was held and some witnesses were examined during the course of the enquiry. On May 16, 1983 the petitioner was issued with a show cause notice in which he was informed that the respondent was contemplating of removing him from service. The petitioner sent his explanation to the above said show cause notice on June 7, 1983. On June 9, 1983 the first respondent removed the petitioner from service.

5. Against the said order of removal the petitioner preferred an appeal and the second respondent by his communication dated July 4, 1983

ejected the said appeal and the said order of dismissal was further confirmed by the third respondent in his revisional jurisdiction. A petition sent to

the Director-General of the Force i.e., the 4th respondent was also rejected on May 30, 1985.

6. Against those orders the present writ petition has been filed by the petitioner.

7. On behalf of the respondent one Sam D. Thomas, the Divisional Security Commissioner has sworn to an affidavit wherein he was denied all the

allegations made in the petition. He pointed out that the petitioner has got a very bad report. On earlier two occasion he has been warned and

punished. In para 10 of the counter affidavit the respondent, it is stated, that the proper disciplinary action was conducted, the suspension order as

well as the removal from service are well within the power of the authorities and all these things have been done after giving him reasonable

opportunity and the Enquiry Officer placing reliance on the statements of P.W. 1 to 3 and Forensic analysis test which clearly establish that the

petitioner was found to have consumed alcohol while on duty he has been removed from service for contravening Rule 3(iii) of the Railway Service

Conduct Rules. He further pointed out that even though there are some minor discrepancies in the statements of witnesses that should not be given

importance as the discrepancies are bound to occur when the witnesses deposed before the Authorities after lapse of sometime. He also quoted

Rule 3(iii) and pointed out that the petitioner has violated Railway Rules and consumed alcohol while on duty and this charge has been established

beyond any reasonable doubt as per the evidence and documentary proof and there are no valid grounds for entertaining this writ petition and to

set aside the order of dismissal.

8. Heard learned counsel for the advocates on either side. The main ground taken by the learned counsel for the petitioner in writ petition is that the

entire enquiry is vitiated since the order on December 16, 1982 was that the delinquent was suspended for having been found in drunken mood

while on duty but whereas the charge sheet dated January 31, 1983 says that the delinquent was found to have consumed alcohol while on duty

and there is no material to prove this charges. He invited my attention to the

order of suspension and the charge. According to the order of suspension, he was suspended for having been found in a drunken mood while on duty at Madras on December 9, 1981, whereas the charge reads as follows:

While functioning as RK/at RPF/Post/AJJ he was deputed for ticket checking duty was at Southern Railway Magistrate Court/Madras Egmore duty 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. Sivagnanam 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 No. M/MD/43 dated December 31, 1982. Thereby he behaved in a manner most unbecoming of RPF Force. Hence the charge.

9. Further learned counsel has placed the following circumstances to show that the Department has failed to prove the said charge. The earliest version given by R.S. Veerannan is to the effect that on December 10, 1982 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 and the memo issued to the doctor is to the effect that Sri. S. Sivagnanam RK 1551/AJJ attached to TIE squad on duty is faced in intoxicating mood, creating nuisance. Kindly, examine and advise please.

10. Further, the medical report submitted by the doctor is to the effect that the appearance of the delinquent was normal and he was not drowsy and his speech was normal gait was normal and doctor has stated that it is not proved that the symptoms are found due to alcohol and the condition is not because of drunkenness. Otherwise the report says that the person was smelling of alcohol. The report of the blood and urine test is to the effect that he has consumed alcohol but he was not under the influence of alcohol but it does not say when he has consumed. Learned counsel also took me through the statements of witnesses particularly to the statement of P.W.3 one Veerannan wherein he has stated that he found he had come for duty with intoxication, and therefore, he reported the matter to IPF/MS to take necessary action against him. However, in

his cross examination he has stated that on December 10, 1982 at about 8"O clock the delinquent reported to duty and at 9:30 a.m. he noticed

that he was under the influence of intoxication presumably to say that during this period he might have consumed alcohol, but, there is no material

that the delinquent left the place and he had consumed alcohol. The statement of S. Perumal is to the effect that from his speech and behaviour it

was suspected that he was under the influence of intoxication. Dr. O.P. Santhanam has stated that after examining the person he has issued a

certificate in this regard to which reference has already been made earlier and he has admitted that there are alcoholic content in some of the tonics

but he has clarified saying that the quantity of alcoholic contents is less. To the question that a person has consumed alcohol six hours before going

for duty is there a chance of smelling alcohol the doctor has stated that if the consumption is more quantity there should be chance of smell.

11. Placing reliance on these circumstances learned counsel submitted that the Department has failed to prove that while on duty he has consumed

alcohol as per the charge. According to him new charge has been included just to bring him within the purview of Rule 3(iii) of the Railway

Servants Conduct Rules which makes consumption of alcohol while on duty punishable.

12. On the other hand, learned counsel appearing for the respondents took me through the detailed counter-affidavit by the Divisional Security

Commissioner and pointed out that the enquiry was conducted in a very fair and legal way by giving opportunity to the delinquent and this Court by

exercising jurisdiction under Article 226 of the Constitution of India should not appreciate the version given by the witnesses. The Enquiry officer

as well as the Appointing Authority have held that after holding the enquiry, examining witnesses and on the materials placed by the Department

they have come to the conclusion that the Petitioner has consumed alcohol while on duty and the said finding should not be interfered with.

13. After hearing learned counsel on both sides I am of the opinion that the findings of the Enquiry Officer that the petitioner consumed alcohol

while on duty cannot be sustained. There is no merit to say that the petitioner consumed liquor while on duty. The earliest version given by the

complainant is that he was found intoxicated and even the witnesses who have been examined during the enquiry have given evidence to that effect.

There is no material to show that while on duty he has consumed alcohol. Under these circumstances, when a serious punishment of dismissal is

imposed on the petitioner unless the charge levelled against him is proved beyond reasonable doubt, it cannot be proper to the Authorities to act

on the materials which are not sufficient to prove the charge. I am of opinion that the Department has failed to prove the charge which has been

levelled against the petitioner. Under these circumstances, I allow this writ petition, quash the impugned orders and direct the respondents to

reinstate the petitioner with all the benefits.

There will be no order as to costs. W.M.P. Nos. 22398/89 and 28998/93 are dismissed.