

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 31ST DAY OF MARCH, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy,
& Vice-Chairman
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO.1588/1986

Shri D. Kamaraj,
major, occ: nil,
R/o Belgaum.

... Applicant

(Shri Shantharam Sawant)

v.

The Union of India,
by its Secretary
Govt. of India (Defence),
New Delhi.

... Respondent.

(Shri M. Vasudeva Rao, ACGSC)

This application having come up for hearing
to-day, Shri P. Srinivasan, Hon'ble Member (A)
made the following.

O R D E R

In this application which originated as
O.S. No.230 of 1983 before the Munsiff, Belgaum,
the applicant, a civilian employee working as
Fatigue man in the Junior Leader Wing, Infantry
School, Belgaum is aggrieved with his dismissal
passed
by order dated 11.9.1982/by the Commander of the
School.

2. Disciplinary proceedings were initiated
against the applicant under Rule 14 of the Central

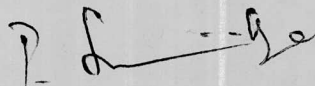
P. Srinivasan

Civil Services (Classification, Control and Appeal) Rules, 1965 by memorandum dated 30.6.1982 issued by the Commander of the School; the article of charge being 'absence from duty without proper authority from 01.6.1982 to 22.6.1982 - 22 days'. An Inquiry Officer and a Presenting Officer were duly appointed thereafter. The Inquiry Officer conducted the inquiry on 28.8.1982 when the statement of the applicant and of one prosecution witness was recorded. The applicant admitted that he had remained absent from duty on a few occasions in the past also whereupon the Inquiry Officer obtained details of such absence from the office records. The prosecution witness deposed that he had information that the applicant had been in a lock up in the Central Jail, Belgaum during the period of absence which was the subject of inquiry. Thereupon the Inquiry Officer re-examined the applicant who confirmed that during the said period of absence he was imprisoned for 8 days in the Central Jail, Belgaum. The presenting officer produced before the Inquiry Officer a letter in original dated 23.6.1982 received from the Sub-Inspector of Police, Belgaum stating that the applicant was arrested as he was found in a drunken state and ^{behaving} ~~behaved~~ indecently on a public

P. S. [Signature]

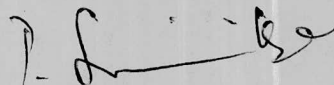
road on 3.6.1982 and that on 4.6.1982 the Chief Judicial Magistrate, Belgaum convicted and sentenced him to simple imprisonment for 8 days. The Inquiry officer closed the inquiry and recorded a finding that the charge levelled against the applicant had been proved beyond doubt and that the applicant had been found guilty of grave misconduct and had failed to maintain discipline and devotion to duty. While recording this finding the Inquiry Officer noticed (1) that the applicant had been absent from duty from 1.6.1982 to 22.6.1982 without informing the authorities; (2) that on similar occasions in the past he was guilty of such unauthorised absence; (3) that the applicant had been arrested and convicted for drunken and unruly behaviour on the road. The Inquiry Officer also recorded that the applicant had been given several chances to improve himself but he had failed to do so. Accepting the findings the Inquiry Officer, the Commander of the School imposed the penalty of dismissal from service with effect from 11.9.1982 by an order of the same date and it is this order which is impugned in this application.

3. Sri Shantharam Savanth, learned counsel appearing on behalf of the applicant pleaded that



the punishment of dismissal had been imposed on the applicant only as a result of his conviction in a criminal Court and this was unjust because in the charge sheet this conviction had not been referred to and the applicant had not been given an opportunity of explaining himself in the matter. If this conviction was not taken into account, the alleged offence committed by the applicant viz., absence from duty for 22 days without prior intimation was not such as to deserve the ultimate punishment of dismissal from service. He contended therefore, that the punishment was grossly disproportionate to the offence with which the applicant was charged.

4. Sri M. Vasudeva Rao, learned Additional Central Government Standing Counsel supported the order of the disciplinary authority. He also drew out attention to the proviso to Article 311(2) of the Constitution under which if a person is convicted in a criminal Court he could be dismissed from service without being given any opportunity of being heard which otherwise would have to be given to him. Therefore, even apart from the charge levelled against the applicant in the inquiry the dismissal of the applicant would have to be upheld.



5. We have examined the records of the inquiry and have heard the rival contentions of the parties. Considering the punishment imposed in the light of the facts placed before the Inquiry Officer we are convinced that it was not disproportionate to the offence with which the applicant was charged. The Inquiry Officer found that the applicant had been convicted in a criminal Court and sentenced to 8 days imprisonment; what otherwise may not have been a serious offence viz., absence from duty without leave, immediately assumed serious proportions when it was found that during that period of absence itself, the applicant had misbehaved on a public road and had been arrested in a drunken state using abusive language. The applicant had admitted having committed the offence before the criminal Court and he had been sentenced to 8 days imprisonment. The Inquiry Officer fairly asked the applicant about this conviction and the latter confirmed it. Therefore, on the facts that were found in the inquiry we have to hold that the penalty of dismissal from service was rightly imposed on the applicant and was certainly not disproportionate to the offence with which he was charged. We need not go into the other contentions of Sri Vasudeva Rao

P. S. Rao

that the applicant could have been dismissed even without an inquiry as he had been convicted in a criminal Court because here a full pledged inquiry was conducted and all facts were brought on record and the punishment has been awarded after taking into account these facts.

6. In the result, the application is dismissed. Parties to bear their own costs.

Ms. *D. M. S. S.*
Vice-Chairman 31/3/87

P. S.
Member (A) 31/3/87

Gr/Mrv.