
(1994) 10 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 29801 of 1994

Manjunatha Gowda

APPELLANT

Vs

Director General of Central Reserve Police Force and Others

RESPONDENT

Date of Decision : 20-10-1994

Acts Referred:

Citation : (1995) 70 FLR 659 : (1995) 1 KarLJ 341 : (1995) 2 LLJ 985

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : S. Prakash Shetty, for the Appellant;

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—The petitioner, a member of the Central Reserve Police was served with orders asking him to join his unit at Srinagar. The petitioner did not join the unit and remained absent. The authorities attempted to serve several notices on him and ultimately he was taken into custody and produced before the authorities in Srinagar, Since his misconduct also constitute a criminal offence, he was prosecuted before the Chief Judicial Magistrate. The judgment of that court is on record and the petitioner was awarded 29 days imprisonment for the offence with which he was charged. It is necessary for me to record the fact that the petitioner pleaded guilty to the charges of unauthorised absence and further more, in his statement recorded before the court he has admitted that the documents produced by him in support of his so called illness are fabricated documents which were prepared at a later stage. The manner in which the petitioner had behaved was an issue of some seriousness which was why the authorities had to take this action. Pursuant to his conviction, departmental proceedings were instituted against him. As far as those proceedings are concerned, they culminated in an order of dismissal. The order indicates that the petitioner had admitted his misconduct in those proceedings also, apart from which fact, the conviction before the criminal court was also on record. In the light of this position and having regard to the fact that the petitioner had been

habitually indulging in conduct of this type, the authorities passed an order against him dismissing him from service. It is this order that is sought to be challenged through the present petition. The petitioner has also sought to impugn the order passed by the learned Magistrate.

2. The basic ground of challenge is that there has been a total violation of the principles of natural justice. The petitioner has relied on some of the decisions of the Supreme Court in cases where the facts were entirely different but where the principle has been reiterated that an effective application of the principles of natural justice will require that an accused person must be given a fair and real opportunity to defend himself. His counsel points out to me that the petitioner was taken into custody and straightaway produced before the Magistrate in Srinagar. He submits that the petitioner had no effective defence in that proceeding and that he was left with no option except to plead guilty. In any event, he submits that what had happened before the learned Magistrate is not relevant as far as the order of dismissal is concerned. As far as this last submission goes, unfortunately the law is otherwise. The conviction by a criminal court on charges of the present type is tantamount to an act of desertion. It would ipso facto result in an order of dismissal. One needs to take cognizance of the fact that the petitioner in this case was a member of the armed force and in that capacity, the regulations that are applicable to him are far more stringent than those which apply to a common citizen.

3. As regards the contention that no enquiry was held by the commandant before dismissing the petitioner, I need to record in this case that the unfortunate situation in which the present petitioner was placed was that the record of the criminal court which is a finding of a judicial authority convicting him was a matter on record which cannot be disputed even today. Secondly, the record indicates that even in the departmental proceedings, the petitioner has admitted his misconduct. Under these circumstances, to my mind there is no infringement whatsoever of the rules of natural justice because the basic tenet as far as those rules are concerned stems from the fact that a party who denies the correctness of the charges cannot be held guilty unless the charges are formally proved against him. The position is entirely different in a situation where the party pleads guilty.

4. On an overall view of the matter, to my mind no interference is called for from this Court. The petitioner's learned counsel advanced the last submission namely the fact that the punishment imposed on the petitioner is too harsh. He submitted that even assuming everything that is held against his client, that the order of dismissal was not warranted and that lesser punishment could have been awarded. I have already had occasion to observe that in an appropriate case this argument would be certainly held good but not here having regard to the special status of the petitioner and the fact that this was not the first occasion on which he has behaved in this manner. Under these circumstances even as far as the quantum of punishment is concerned, I am not inclined to

interfere. The petition accordingly fails and stands dismissed.