

L. Balakrishnan Vs. the Inspector-general of Police

L. Balakrishnan Vs. the Inspector-general of Police

SooperKanoon Citation : sooperkanoon.com/802009

Court : Chennai

Decided On : Dec-17-1976

Reported in : (1977)2MLJ50

Appellant : L. Balakrishnan

Respondent : The Inspector-general of Police

Judgement :

ORDER

A.D. Koshal, J.

1. The petitioner was employed as a Police Constable in the Union Territory of Pondicherry when he absented himself from duty without leave with effect from 13th September, 1971. His continued absence resulted in an order of the Inspector-General of Police, Pondicherry, dated the 10th February, 1972 striking off his name as a deserter with effect from the date above mentioned under Sub-rule (1) of Rule 17 of the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the Rules), and advising him to initiate action in pursuance of Sub-rule (2) of that Rule. No further proceedings were taken against him till the 24th of April, 1972 when the Inspector-General of Police passed another order confirming the previous order and dismissing him from service with effect from the 13th of September, 1971. It is the order last mentioned by which the petitioner feels aggrieved and which he seeks to have

quashed through a writ of certiorari on the ground that it was passed in contravention of Sub-rule (2) abovementioned.

2. Rule 17 of the Rules may be reproduced here with advantage. It states:

17(1). Absence without leave of any member of the force governed by this Rule for 21 days will be considered to complete the offence of desertion, after which the officer's name shall invariably be struck off from the duty roll of the officers. (2) An application for reinstatement from an officer who has been struck off as a deserter shall not be entertained unless it reaches the Inspector-General of Police within two months of the date of the commencement of the absence without leave. The Inspector-General of Police shall not reinstate a deserter: (a) until the deserter has attended in person which he should do, not later than the date prescribed by the officer dealing with the case and has given his explanation for his absence without leave; and (b) unless the Inspector-General of Police is satisfied after such enquiry as may be necessary that case deserves reconsideration. At the end of the two months, if no application for reinstatement is received and if the whereabouts of the deserter are not known, the officer dealing with the case will record in writing the reasons for his being satisfied that it is not reasonably practicable to give the deserter an opportunity of showing cause against his dismissal and then confirm the dismissal. In other cases, a charge should be framed and the procedure prescribed in Rule 3 complied with before confirming the dismissal or reinstating the deserter with or without punishment.

The provisions of Sub-rule (1) of Rule 17 were, no doubt, complied with by the Inspector-General of Police, but the most important requirement of Sub-rule (2) thereof, which is contained in its last sentence, remains unfulfilled. After the petitioner had failed to put in a representation within the prescribed period of two months it was the duty of the punishing authority to frame a charge and follow the procedure prescribed in Rule 3 of the Rules before confirming the order passed under Sub-rule (1) of Rule 17. That the petitioner was available and could be reached at his house is not disputed in view of the fact stated in paragraph 9 of the counter-affidavit of the Inspector-General of Police, that a notice sent to the petitioner by registered post on the 23rd of September, 1971, was acknowledged

by him a day later. The failure of the Inspector-General of Police to comply with the mandatory requirement of Sub-rule (2) of Rule 17 vitiates the impugned order.

3. In the result, the petition succeeds and is accepted and the impugned order is quashed. It will, of course be open to the Inspector-General of Police to take further proceedings in the matter in the light of the observations made above and in accordance with law. The petitioner will have his Costs of these proceedings. Counsel's fee Rs. 100.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com