

Before P. C. Jain, A.C.J. & D. S. Tewatia, J.

P. C. WADHWA,—Petitioner.

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents.

Letters Patent Appeal No. 748 of 1983

August 10, 1984

All India Services (Confidential Rolls) Rules, 1970—Rule 2(a)(e) and (f)—Punjab Police Rules, 1934, Volume I—Rule 1.2—Rules of Business of the Government of Haryana, 1977—Rules 18 and 19—Home Secretary to Government recording confidential report of Inspector-General of Police—Home Secretary—Whether can be held to be the ‘reporting authority’ under Rule 2(e)—Meaning of the words ‘immediately superior’ authority—Explained—Confidential report of the Inspector-General of Police—By whom to be recorded—Principles for specifically empowering some authority to write confidential report—Stated—Rules of Business of Government—Whether envisage Home Secretary as senior in rank to Inspector-General of Police.

Held, that a reading of Rule 2(e) of the All India Services (Confidential Rolls) Rules, 1970 shows that under these clauses two distinct authorities are envisaged. Under the first part, the reporting authority has to be one which is immediately superior to the officer whose confidential report has to be written while under the second part the authority has to be one which is specifically empowered by the Government to write the confidential report. Similar is the position under clauses (f) and (a) of Rule 2. The words ‘immediately superior’ authority as envisaged by Rule 2(e) has to be essentially a senior officer of the same line of service and not from another line or service. By using the word ‘immediately superior’ a clear cut indication has been given that the authority has to be from the same service and the word ‘immediate’ in the context would mean being next in line or relation while the word ‘superior’ would mean an officer who is above another in rank, status or office. An officer from a different service cannot be an immediately superior officer of a person belonging to different service whose report he has to write. It is beyond comprehension that under the first part of rule 2(e) an Officer of the Indian Administrative Service, howsoever senior he may be, would become

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immediately superior officer of a Police Officer, especially when the two services are entirely different. The Inspector-General of Police in the Police force holds the highest office and is the head of the Department under Rule 1.2 of the Punjab Police Rules, 1934, Volume I. The police force in the State is under the complete control of the Inspector-General and thereafter the power of superintendence has been given to the State Government. Under the Police Act and the Rules the Home Secretary nowhere figures. In this view of the matter, the Home Secretary is not the immediately superior authority of the appellant, which may warrant his writing of confidential report in exercise of his power under the first part of clause 2(e) and as such cannot be the reporting authority of the Inspector-General of Police.

(Paras 8, 11 and 13).

Held, that there is no authority immediately superior to the Inspector-General of Police in the hierarchy. That being so, strictly speaking, there is no authority which can write the confidential report of the said officer under the first part of clause (e). But the superintendence and control being of the Government, a fair and just inference can be drawn that the Home Minister, who is incharge of the Home Department of which the Police Department is also a branch, would be the immediately superior authority and can write the confidential report under the first part of clause 2(e) of the Rules.

(Para 13).

Held, that the confidential report is always written by an authority superior in rank and status to that of the officer whose report has to be written. It is beyond comprehension that the Deputy Inspector-General of Police or a Superintendent of Police or any other authority inferior in rank and status can be specifically authorised to write the confidential report of the Inspector-General of Police. The authority which is required to write the confidential report must have the advantage of knowing and watching the work of the officer. The second part of clause (e) cannot be read in isolation or independent of first part. When under the first part the authority has to be superior in status, then certainly the superiority of status has to be taken care of by the Government while specifying the authority. In this view of the matter, it has to be concluded that the authority to be specified under the second part of clause 2(e) has to be superior in status and rank to the officer whose confidential report has to be written.

(Para 14).

Held, that according to the Rules of Business of the Government of Haryana, 1977, 'State Government' means the Council of

Ministers/Minister-incharge of the various departments. The Secretaries act and function on behalf of the Government only to the extent of powers given to them by the Ministers-incharge of the department concerned in the Standing Orders issued by them under Rules 18 and 19 of the Rules. The Secretary is the administrative head of the department and has no Governmental powers and functions of his own and if any business is supposed and required to be disposed of by the Secretary of the department such secretary acts and functions on behalf of the Government only to the extent of the power given to him in the Standing Orders by the Minister incharge. The standing orders issued by the State show the type of cases to be submitted to the Home Minister, the type of cases to be disposed of by Home Secretary, the type of cases to be dealt with by the Deputy Secretary, Home and the type of cases to be disposed of by section officer, Home. It is correct that the Police Department for the purpose of administration has been shown as a part of the Home Department and that certain routine files pertaining to the Police Department are dealt with by the Home Secretary but all this does not lead to the conclusion that the Home Secretary is, in any way, superior in status to that of the Inspector-General of Police who holds complete independent charge of the Police Department. It is pertinent to observe that under the Business Rules, the Home Secretary has no power to deal with any disciplinary matter regarding gazetted officers of the Police. As such it has to be held that the status of Home Secretary is not higher in rank than the Inspector-General of Police.

(Para 17).

Appeal, under clause 10 of the Letters Patent Appeal against the judgment, dated 13th July, 1983 delivered by Hon'ble Mr. Justice I. S. Tiwana.

P. C. Wadhwa, Appellant in person.

Harbhagwan Singh A.G. (H) with P. S. Duhan, D.A.G. (H).

JUDGMENT

Prem Chand Jain, A.C.J. :

(1) P. C. Wadhwa has filed this appeal under clause X of the Letters Patent against the judgment of a learned Single Judge of this Court, dated July 13, 1983 by which his writ petition No. 4691 of 1982 was dismissed.

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(2) In order to appreciate and decide the question raised, which in our view is of some complexity, it is necessary to notice certain salient features of the case which read as under :—

(3) The appellant, a member of the Indian Police Service, served as Inspector-General of Police, Haryana, from 30th June, 1979 to 25th July, 1980,—*vide* D.O. letter No. FCH/88, dated 4th May, 1982, certain adverse remarks from his confidential roll, pertaining to the period 30th June, 1979 to 31st March, 1980, were conveyed to him by the Secretary to Government, Haryana, Home Department. The said confidential report had been duly accepted by the competent authority under the All-India Services (Confidention Rolls) Rules, 1970 (hereinafter referred to as 'the Rules'). The appellant though expressed a desire to make a representation to the Government against this adverse report, yet failed to do so and instead,—*vide* his letter, dated 15th June, 1982 sought information with regard to the identity of the reporting, reviewing and accepting authorities, which the Government declined to disclose in the light of the Government of India letter No. 34/5/71-AIS-III, dated 9th August, 1972. The appellant did not file any representation as envisaged under rule 9 of the Rules and chose to file C.W.P. No. 4691 of 1982 with the primary challenge that the Home Secretary to the State Government was not an authority immediately superior to him and was rather junior to him and was, thus, not competent to comment or report on his work and conduct as Inspector-General of Police.

(4) The petition was contested on behalf of the respondents.

(5) On the points raised the learned Single Judge, on consideration of the relevant rules, found that according to rule 2(e) of the Rules it was entirely for the State Government to specifically empower an authority to be the reporting authority of the appellant. The Home Secretary to the Government having been so authorised or empowered under these rules and there being no challenge to the legality or validity of the rules, the appellant could not plausibly argue that the Home Secretary was not entitled to act as his reporting authority. Some other points were also raised, to which we may not make reference specifically, as the same were not pressed before us by the appellant, who had argued his case in person.

(6) The only point that needs determination by us is as to under rule 2(e) who could be specifically empowered by the

Government to be the reporting authority of the Inspector-General of Police. In order to decide the controversy, it is necessary to notice the provisions of clauses (e), (f) and (a) of rule 2 which define 'reporting', 'reviewing' and 'accepting' authorities for the purposes of these rules :—

- “(e) 'reporting authority' means the authority who was, during the period for which the confidential report is written, immediately superior to the member of the Service and such other authority as may be specifically empowered in this behalf by the Government;
- (f) 'reviewing authority' means the authority who was, during the period for which the confidential report is written, immediately superior to the reporting authority and such other authority as may be specifically empowered in this behalf by the Government; ,
- (a) 'accepting authority' means the authority who was, during the period for which the confidential report is written, immediately superior to the reviewing authority and such other authority as may be specifically empowered in this behalf by the Government.”

At the outset it may be observed that there is no challenge to the *vires*, validity or legality of the rules or the provisions reproduced above. The main contention of the appellant was based on the latter part of the definition of 'reporting authority' in clause (e). Under this clause there are two reporting authorities, i.e., (i) which is immediately superior to the member of the Services, and (ii) such other authority as may be specifically empowered in this behalf by the Government. The entire case of the appellant before us was that the Home Secretary could not specifically be empowered by the Government in exercise of its powers under the latter part of clause (e), as the 'reporting authority'. What was sought to be argued by the appellant was that in the first part the confidential report could be written by an authority immediately superior to the member of the Service; that the Home Secretary was not an immediately superior authority of the appellant; that under the second part the Government could specifically empower that authority to write confidential report of the Inspector-General of Police, which was either equivalent in rank or status to the

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immediately superior authority referred to in part one, or higher than that authority and that the second part of clause (e) did not envisage that any authority could be empowered by the Government to write the confidential report of the Inspector-General of Police.

(7) On the other hand, Shri Harbhagwan Singh, learned Advocate-General, submitted that under the second part of the relevant rule the State Government could empower any authority, may be even junior in rank or status, to be reporting authority, that in the instant case the Home Secretary being a superior authority had rightly been specified the appointing authority; that the appellant has not challenged the *vires*, validity or legality of the relevant rule and that the Home Secretary having been specified as the 'reporting authority' in exercise of the power given by a valid rule, could legally write the confidential report of the appellant.

(8) In order to find out as to which argument is more sound, appealing and plausible, it is necessary to analyse the provisions of the clauses reproduced above. A bare perusal of these provisions shows that under these clauses two distinct authorities are envisaged. In clause (e) under the first part the Reporting Authority has to be one which is immediately superior to the officer whose confidential report has to be written while under the second part, the authority has to be one which is specifically empowered by the Government to write the confidential report. Similar is the position under clauses (f) and (a) of rule 2. It is thus patent that it is not only the immediately superior authority which is entitled to comment and report on the work and conduct of a member of Service, but there can be another authority also which may be specifically empowered by the Government to do so. The question as to why two authorities are envisaged is easily answerable inasmuch as there may be officers in whose cases there may not be an immediately superior authority or that the immediately superior authority may be biased and it may not be just and proper to ask him to write the confidential report or that the Government may wish to have opinion of some other independent authority on the work and conduct of a particular officer.

(9) The stand of the appellant before the learned Single Judge was that the Home Secretary could not act as his reporting authority and this plea of his was negated by the learned Single

Judge on the ground that it was under the latter part of rule 2(e) that the Home Secretary had written the confidential report of the appellant and that this Court is not concerned with the wisdom or expediency of rule framed by the Government or the appointment or specification of a particular authority as the reporting authority in exercise of its power under the said rule. Once the competency of the State Government to empower or appoint a reporting authority is not in doubt or is referable to a valid rule, then the exercise of that power obviously cannot be successfully impugned except on the ground that it is violative or contrary to the rule or rules under which it is exercised. According to rule 2(e) it was entirely for the State Government to specifically empower an authority to be the reporting authority of the appellant. The Home Secretary having been so authorised or empowered under this rule and there being no challenge to the legality or validity of the rule, the appellant cannot plausibly argue that the Home Secretary was not entitled to act as his reporting authority.

(10) Shri Wadhwa appellant while challenging the correctness of the aforesaid conclusion had submitted that the learned Single Judge had fallen in error in negating his contention on the ground that the appointment of Home Secretary as reporting authority was referable to latter part of rule 2(e). the *vires*, validity or legality of which had not been challenged. As is evident from the contention of the appellant, the main or the only point sought to be made out was that the Home Secretary could not write the confidential report of the appellant under first part as he was not his immediately superior authority and if under the second part of clause (e) only that authority could write the confidential report which was of equivalent or higher status to the authority referred to in first part, then the Home Secretary could not specifically be empowered to write the confidential report of the appellant.

(11) On giving my thoughtful consideration to the entire matter, I find considerable merit in the contention of the appellant. As is evident from the judgment of the learned Single Judge, the question as to who could write the confidential report of the appellant or, in other words, who is the immediately superior authority of the appellant under first part of clause (e) was not gone into as it was not necessary to do so. But, in my view, to arrive at a correct conclusion, it is absolutely essential to first determine as to who is the immediately superior authority of the

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appellant. As I look at the language of clause (e) of rule 2, I find that under the first part the reporting authority envisaged has to be the immediately superior authority. In my view, that authority has to be essentially a senior officer of the same line of service and not from another line or service. By using the words 'immediately superior' a clear cut indication has been given that the authority has to be from the same service. The word 'immediate' in the context would mean being next in line or relation while the word 'superior' would mean an officer who is above another in rank, status or office. In case the intention had been to allow an officer from some other service to write the confidential report, then the word 'immediately' would not have been used. An officer from a different service cannot be an immediately superior officer of a person belonging to different service whose report he has to write. Further, under the first part, the immediately superior officer automatically by virtue of his superior status and rank becomes the reporting authority. In his case the Government is not required to specify anything. The superiority of rank and status is always referable to the statute which governs the service. It is beyond my comprehension that under the first part an Indian Administrative Service Officer, howsoever senior he may be, would become immediately superior officer of a police officer, especially when the two services are entirely different. The Inspector-General of Police in the police force holds the highest office. His status has been described in rule 12 of the Punjab Police Rules, 1934, Volume I, which reads as under :—

"1.2. The responsibility for the command of the police force, its recruitment, discipline, internal economy and administration throughout the general police district vests in the Inspector-General of Police. He is head of the Police Department, and is responsible for its direction and control and for advising the Provincial Government in all matters connected with it. In the discharge of his duties as Inspector-General and in the execution of order of Government he is bound to act in conformity with the system and regulations regarding the functions, discipline and administration of the force contained in the Police Act (V of 1861) and in these rules. Orders of the Provincial Government affecting the police force, in whole or in part, will be issued through him.

The Inspector-General is assisted in the control and administration of the police force by such number of Deputy Inspectors-General and Assistant Inspector-General as the Provincial Government may from time to time appoint."

(12) A bare perusal of the above rule shows that the Inspector-General is the head of the Department. The orders of the Provincial Government affecting the police force in whole or in part are issued through him. There is also an Act called the Police Act, 1961, which regulates the functioning of the Police. Section 3 of the Act provides that the superintendence of the police throughout a general police-district shall vest in and shall be exercised by the State Government to which such district is subordinate. Under Section 4, the administration of the Police throughout a general police -district is vested in the Inspector-General of Police and in such Deputy Inspectors-General and Assistant Inspectors-General as the State Government shall deem fit. Section 7 confers powers on the Inspector-General and other officers below him to impose in suitable cases the penalty of dismissal, suspension and reduction, subject, of course, to the provisions of Article 311 of the Constitution and the rules made under the Act. Further, against the order passed under Section 7 by the Inspector-General an appeal lies before the Government.

(13) The idea of my having referred to certain provisions of the Act and the Rules is to bring out that the police force in the State is under the complete control of the Inspector-General and thereafter power of superintendence has been given to the State Government. Under the Police Act and the Rules the Home Secretary nowhere figures. It is the State Government only which would mean the Home Minister under whose charge and control the Police Department comes. In this view of the matter, I find that the Home Secretary is not the immediately superior authority of the appellant, which may warrant his writing of confidential report in exercise of his power under the first part of clause (e). Having arrived at the aforesaid conclusion, the next question that needs determination is as to who would be the immediately superior authority of the appellant, under the first part of clause (e). In the light of the discussion in the earlier part of the judgment, it is quite clear that there is no authority immediately superior to the appellant in the hierarchy. That being so, strictly speaking there is no authority which can write the confidential report of the Inspector-General fo Police under the first part of clause (e). But

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the superintendence and control being of the Government, a fair and just inference can be drawn that the Home Minister, who is in-charge of the Home Department of which the Police Department is also a branch would be the immediately superior authority and can write his confidential report under the first part of clause (e) of rule (2). This conclusion of mine finds full support from this fact that it has been specifically urged in the petition in para 14 and not denied in the written statement, that reports on the work and conduct of the various Secretaries to the Government are written and recorded by the Ministers in-charge of the department concerned and not even by the Chief Secretary. If in case of Secretaries the confidential report is written by the Ministers in-charge, then certainly in the case of Inspector General of Police, who is in-charge of the Police Department, it would be no one else than the Minister in-charge who can write his confidential report.

(14) The next question that arises for determination is as to which authority can specifically be empowered by the Department to write the confidential report. It may be observed at the outset that the argument of the learned Advocate-General that any person, even inferior in status to the officer whose confidential report is to be written, may be specified to be the reporting authority, on the face of it appears to be fallacious and is unacceptable to us. The confidential report is always written by an authority superior in status and rank to that of the officer whose report it has to write. It is beyond my comprehension that a Deputy Inspector General of Police or a Superintendent of Police or any other authority inferior in rank and status can be asked to write the confidential report of the Inspector General of Police who in all respects is superior to him. The authority which is required to write the confidential report must have the advantage of knowing and watching the work of the officer. How can a junior officer judge the work of his superior is un-understandable. The second part of clause (e) cannot be read in isolation or independent of first part. When under the first part the authority has to be superior in status, then certainly the superiority of status has to be taken care of by the Government while specifying the authority. In this view of the matter, I hardly find any difficulty in concluding that the authority to be specified under the second part of clause (e) has to be superior in status and rank to the officer whose confidential report has to be written.

(15) In the view I have taken above that it is the Minister-in-charge who can write confidential report of the Inspector General of

Police under the first part of clause (e) and that under the latter part of clause (e) it is that authority which is equal to or higher in status than the authority referred to in the first part of clause (e), which can be specified to write the confidential report, the discussion to determine the status of the Home Secretary *vis-a-vis* the Inspector General of Police becomes unnecessary. Yet to avoid any handicap to the higher Court in the absence of any discussion on this aspect of the matter, I deem it proper to deal with the same also.

(16) According to the Rules of Business of the Government of Haryana, 1977, 'State Government' means the Council of Ministers/Minister in-charge of the various departments. The Secretaries act and function on behalf of the Government only to the extent of powers given to them by the Ministers in-charge of the departments concerned in the Standing Orders issued by them under rules 18 and 19 of the Rules of Business. A Secretary of the department is its administrative head. He has no governmental powers and functions of his own. If any business is supposed and required to be disposed of by the Secretary of the department, he essentially acts and functions on behalf of the Government only to the extent of the power given to him in the Standing Orders by the Minister in-charge. The State with its return has attached a copy of the Standing Orders of Home Minister, Haryana, Annexure R-2, which shows the type of cases to be submitted to Home Minister, the types of cases to be disposed of by Home Secretary, the type of cases to be dealt with by the Deputy Secretary Home, and the type of cases to be disposed of by Section Officer-Home. It is correct that the Police Department for the purpose of administration has been shown as a part of the Home Department and that certain routine files pertaining to Police Department are dealt with by the Home Secretary but all this does not lead to the conclusion that the Home Secretary, is, in any way, superior in status to that of the Inspector General of Police who, again, holds complete independent charge of Police Department. It may be pertinent to observe that under the Business Rules, Home Secretary has no power to deal with any disciplinary matter regarding gazetted officers of the Police. Our attention was drawn to Item No. 27 in the warrant of precedence which reads as under:—

"27. Chairman, Income-tax Tribunal. Commissioner of Divisions. Commissioner Secretaries. Inspector-General of Police. Members Public Service Commission. Secretaries to Government."

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What was sought to be projected by the learned Advocate-General was that the Inspector-General of Police has been shown after the Commissioner Secretaries which would mean that he is junior in rank and status to the Commissioner Secretaries. I am afraid, that on the basis of the aforesaid entry in the warrant of precedence it cannot be held that the Inspector General of Police is junior in status to the Home Secretary. Under the aforesaid entry seven categories have been enumerated for the purpose of ceremonial occasions. This precedence has no applicability to day-to-day business of the State Government as is evident from Note (1) in the warrant of precedence. Further, this entry loses all the importance in the wake of the letter, copy of which is attached with the petition as Annexure P-3, wherein it is stated thus :—

“Having regard to the importance of the Inspector-General of Police, it has been decided that on State and ceremonial occasions he should have precedence above all State officers of the rank of Commissioner. He will in any case take precedence below the Chief Secretary, the Senior/First Member of the Board of Revenue and such other officers as are higher in status than Joint Secretaries to the Government of India except Commissioner of territorial divisions within their own divisions.”

The learned Advocate General could not point out any other relevant document on the basis of which a finding could be recorded that the Home Secretary is higher in status than the Inspector General of Police. In this view of the matter, I am constrained to hold that the status of the Home Secretary is not higher than that of the Inspector General of Police.

(17) No other point was raised on either side.

(18) For the reasons recorded above, we allow this appeal, set aside the judgment of the learned Single Judge and quash the confidential report written by Shri L. D. Kataria, the then Home Secretary, on the work and conduct of the appellant. In the circumstances of the case, we make no order as to costs.

D. S. Tewatia,—I agree.

H.S.B.