A STATE OF HARYANA

v.

SHRI P.C. WADHWA, IPS INSPECTOR GENERAL OF POLICE & ANR.

APRIL 16, 1987

B [O. CHINNAPPA REDDY AND MURARI MOHON DUTT, JJ.]

All India Services (Confidential Rolls) Rules 1970—Rules 1(3), 2(a), (e), (f), 5, 6, 6A and 7—Inspector General of Police—Confidential Reports—Reporting and Reviewing Authority—Minister-in-Charge of Police Department and not Home Secretary—Chief Minister—
C *Communication of adverse remarks within seven months.*

Police Act, 1861—Sections 3 and 4—Punjab Police Rules, 1934—Rule 1.2—Inspector General of Police—Head of Police Department—Immediate superior to Inspector General of Police—Minister-in-Charge of Police Department.

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Business of Haryana Government (Allocation) Rules, 1974—Rules 1-4, 6B-Home Secretary not head of Police Department—Minister-in-Charge of Police Department Head of Department—Confidential Report of Inspector General of Police—Chief Minister reviewing authority and accepting authority—Whether Business Rules
E *can override the provisions of Police Act, 1861 or any other statutory rules.*

Civil Service—Confidential Reports—'reporting' and 'reviewing' authority—Who is—Inspector General of Police—Minister-in-Charge of Police Department—Chief Minister—'Reporting', 'reviewing' and
F *'accepting' authority—Adverse remarks—Object-to serve as advice for improvement and not as punishment—Lost by inordinate delay in communication—Necessity for communication—At the earliest.*

The respondent, a member of the Indian Police Service was the Inspector General of Police, Haryana from June 30, 1979 to July 25,
G **1980. The Home Secretary to the Government of Haryana made certain adverse remarks against the respondent which after acceptance were communicated to the respondent on May 4, 1982, about two years and three months after the close of the relevant period on March 31, 1980.**

The respondent filed a writ petition challenging the authority of
H **the Home Secretary to write a confidential report assessing the per-**

formance, character, conduct and qualities of the respondent as Inspector General of Police and for the quashing of such report or adverse remarks, which was dismissed by a Single Judge of the High Court. The respondent filed an appeal and the Division Bench set aside the judgment of the Single Judge and allowed the writ petition holding that the Home Secretary had no authority to submit any report against the performance of the respondent for the aforesaid period during which he was the Inspector General of Police, Haryana.

In the appeal by special leave by the State of Haryana it was submitted that as the Police Department has been placed under the Home Department and the Home Secretary being the head of the Department, the Home Secretary must necessarily be the Head of the Police Department under the Business of the Haryana Government (Allocation) Rules, 1974. It was also stated that the provisions of Rules 5, 6, 6A and 7 of the All India Services (Confidential Rolls) Rules 1970 are directory and not mandatory.

It was urged by the respondent that the Business Rules framed under Article 166 cannot be relied upon for the purpose of interpreting the provisions of clause (e) of Rule 2 of the Rules, and in view of the delay in communication, the adverse remarks lost all importance and should be struck down on that ground.

Dismissing the appeal,

HELD: 1. A reporting authority must be a person to whom the member of the Service is answerable for his performances. Such an authority must be one superior in rank to the member of the Service concerned. The State Government can specifically empower only such authority as the reporting authority as is superior in rank to the Inspector General of Police. [1036H; 1037A-B]

2.1 The Business Rules have been framed under clauses (2) and (3) of Article 166 of the Constitution for the more convenient transaction of the business of the Government of Haryana and for the allocation of business among the Ministers. [1038E-F]

2.2 Under Rule 4 of the Business Rules, the Secretary of each Department of the Secretariat is the head of the Department. Thus, the Secretary of the Home Department is the head of the Home Department being a Department of the Secretariat, but merely because he has to conduct the business, on behalf of the Government, of the Police

A Department, he does not thereby become the Head of the Police Department. [1038F-G]

2.3 The Rules of Business that have been framed under Article 166 cannot override the provisions of the Act, or any statutory rules.

B 3. In view of Section 3 and 4 of the Police Act read with Rule 1.2 to the Punjab Police Rules, the Inspector General of Police, Haryana is the Head of the Police Department. The immediate authority superior to Inspector General of Police is the Minister-in-Charge of the Police Department. The only authority who could be specifically empowered as the reporting authority in regard to the Inspector General of Police C under clause (e) of Rule 2 of the All India Services (Confidential Rolls) Rules is the Minister-in-Charge and the Chief Minister being superior to the Minister-in-Charge may be the reviewing authority under clause (f) of Rule 2. [1039D-E]

4.1 Rules 5, 6, 6A and 7 of the All India Services (Confidential D Rolls) Rules require that the whole process from the writing of the confidential reports assessing the performance, character conduct and qualities of every member of the service, to the communication of the adverse remarks should be completed within a period of seven months. In the instant case, the adverse remarks were communicated after 27 months. [1040F-G]

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4.2 The whole subject of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct or character, as the case may be, and this object would be lost if they are communicated to the officer concerned after an inordinate delay. Adverse remarks should not be F understood in terms of punishment, but really should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. [1041A-B]

4.3 Rules 5, 6, 6A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied G with even substantially. But, where compliance after an inordinate delay would be against the spirit and object of the directory provision, such compliance would not be sustantial compliance. [1041C-D]

4.4 While the provisions of Rules 5, 6, 6A and 7 require that everything including the communication of the adverse remarks should H be completed within a period of seven months, this period cannot be

stretched to twenty seven months, simply because these rules are directory, without serving any purpose consistent with the spirit and objective of these Rules. [1041D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4395 of 1986.

From the Judgment and Order dated 10.8.1984 of the Punjab and Haryana High Court in L.P.A. No. 748 of 1983.

F.S. Nariman, S.S. Shroff and Mrs. P.S. Shroff for the Appellant.

Respondent in person.

R.K. Garg, and A. Saran for the Intervener.

The Judgment of the Court was delivered by

DUTT, J. This appeal by special leave has been preferred by the State of Haryana against the judgment of the Division Bench of the High Court of Punjab & Haryana whereby the Division Bench has set aside the judgment of a learned Single Judge of the High Court dismissing the writ petition of the respondent Shri P.C. Wadhwa, a member of the Indian Police Service, who was the Inspector General of Police, Haryana, from June 30, 1979 to July 25, 1980.

It appears that certain adverse remarks were made by the Home Secretary to the Government of Haryana against Shri Wadhwa, the Inspector General of Police for the said period. The adverse remarks were duly accepted by the competent authority under the All-India Services (Confidential Rolls) Rules, 1970, hereinafter referred to as 'the Rules'. After such acceptance, the adverse remarks were communicated to Shri Wadhwa by the Home Secretary by his letter dated May 4, 1982, about two years three months after the close of the relevant period of March 31, 1980. The respondent did not make any representation against the adverse remarks to the reviewing authority under the Rules. Instead, he chose to file a writ petition before the Punjab & Haryana High Court challenging the authority of the Home Secretary to write a confidential report assessing the performances, character, conduct and qualities of the respondent as the Inspector General of Police and prayed for the quashing of such report or adverse remarks.

A learned Single Judge of the High Court took the view that as the Home Secretary was specifically empowered by the State Government as the reporting authority under Rule 2(e) of the Rules, he had the authority to write the report or to make adverse remarks against the performances of the Inspector General of Police, Haryana. In that view of the matter, the learned Single Judge dismissed the writ petition. Being aggrieved by the judgment of the learned Single Judge, the respondent filed an appeal against the same to the Division Bench of the High Court and, as stated already, the Division Bench set aside the judgment of the learned Single Judge and allowed the writ petition holding *inter alia,* that the Home Secretary had no authority to submit any report against the performance of the respondent for the aforesaid period during which he was the Inspector General of Police, Haryana. Hence this appeal by special leave by the State of Haryana.

The only point that is involved in this appeal is whether the State Government was justified in specifically empowering the Home Secretary as the reporting authority for the purpose of writing a confidential report in respect of the Inspector General of Police. Section 3 of the All-India Services Act, 1951 empowers the Central Government to make rules for the regulation of recruitment, and the conditions of services of persons appointed to an All-India Service. By virtue of section 3, the Central Government framed the Rules. Under Rule 1(3), the Rules shall apply to the writing and the maintenance of the confidential reports on the members of the Service. Clauses (e), (f) and (a) of Rule 2 of the Rules are as follows:-

"2. Definitions—In these rules, unless the context otherwise requires:-

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(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

(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;" B

In this connection, it may be pointed out that it is not disputed that the conjunction 'and' occurring in clauses (e), (f) and (a) should be read as 'or'. Under clause (e), the 'reporting authority' may be either immediately superior to the member of the Service or such other authority as may be specifically empowered in this behalf by the Government. The expression 'immediately superior' obviously indicates that the reporting authority should be the immediate superior officer in the same Service to which the member of the Service belongs. The position is the same as in the cases of 'reviewing authority' and 'accepting authority'. So, under the first part of clause (e), the reporting authority of the respondent could be a person who is immediately superior to him in the Police Service. At this stage, it is necessary to refer to sections 3 and 4 of the Police Act, 1861. Sections 3 and 4 are as follows:- C D E

"Section 3. 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; and except as authorized under the provisions of this Act, no person, officer, or Court shall be empowered by the State Government to supersede, or control any police functionary.". F

"Section 4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the State Government shall seem fit. G

The administration of the Police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested H

A in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary."

It is clear from sections 3 and 4 that the administration of the police throughout a general police-district shall be vested in the Inspector General of Police. The position and status of the Inspector General of Police have been described in Rule 1.2 of the Punjab Police Rules, 1934, Volume I. Rule 1.2 provides as follows:-

"Rule 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.

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

Under Rule 1.2, the Inspector General of Police is the 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. Thus, the Inspector General of Police being the head of the Police Department, there is no immediately superior officer to him in the Police Service. Consequently, the first part of clause (e) will not have any application to the respondent.

Now the question is whether the State Government can specifically empower any authority to be the reporting authority of the Inspector General of Police under the second part of clause (e). Apart from any legal provision, it is just and proper that a reporting authority

must be a person to whom the member of the Service is answerable for his performances. In other words, the reporting authority should be a person higher in rank than the member of the Service. Indeed, that is apparent from the first part of clause (e). It is true that under the second part of clause (e), there is no indication as to the status and position of the authority who may be specifically empowered by the Government as the reporting authority, but from the point of view of propriety and reasonableness and having regard to the intention behind the rule which is manifest, such an authority must be one superior in rank to the member of the Service concerned. If that be not so, there will be an apparent conflict between the first part and second part of clause (e). We are, therefore of the view that the State Government can specifically empower only such authority as the reporting authority as is superior in rank to the Inspector General of Police.

It is, however, submitted by Mr. Nariman, learned Counsel appearing on behalf of the State of Haryana, that the Home Secretary is the head of the Police Department under the Business of the Haryana Government (Allocation) Rules, 1974, hereinafter referred to as the Business Rules. The Business Rules have been framed by the Haryana Government in exercise of the power conferred by clauses (2) and (3) of Article 166 of the Constitution of India. Rules 1 to 4 of the Business Rules are as follows:-

"1. These rules may be called the Business of the Haryana Government (Allocation) Rules, 1974.

2. The Business of the Government of the State of Haryana shall be transacted in the Departments specified in the Schedule annexed to these rules and shall be classified and distributed among those Departments as laid down therein.

3. The Governor shall, on the advice of the Chief Minister, allot among the Ministers the business of the Government by assigning one or more Departments to the Charge of a Minister.

Provided that nothing in this rule shall prevent the assigning of one Department to the charge of more than one Minister.

4. Each Department of the Secretariat shall consist of the

A Secretary to the Government, who shall be the official head of that Department, and of such other officers and servants subordinate to him as the State Government may determine:

Provided that:-

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(a) more than one Department may be placed in charge of the same Secretary; and

(b) the work of a Department may be divided between two or more Secretaries."

C Rule 2 provides *inter alia* that the Business of the Government of the State of Haryana shall be transacted in the Departments specified in the Schedule. Under rule 4 each Department of the Secretariat shall consist of the Secretary to the Government, who shall be official head of that Department. In the Schedule to the Business Rules, Item No. D 17 under the Home Department *inter alia* relates to "Police, Railway Police and P.A.P." Much reliance has been placed by the learned Counsel for the State of Haryana on Rule 4 read with Item No. 17. It is submitted by him that the Home Secretary being the head of the Home Department and as the Police Department has been placed under the Home Department, the Home Secretary must necessarily be the head E of the Police Department. We are unable to accept this contention. The Business Rules have been framed under clauses (2) and (3) of Article 166 of the Constitution for the more convenient transaction of the business of the Government of Haryana and for the allocation of business among the Ministers. Under Rule 4, the Secretary of each Department of the Secretariat is the head of that Department. Thus, F the Secretary of the Home Department is the head of the Home Department being a Department of the Secretariat, but merely because he has to conduct the business, on behalf of the Government, of the Police Department, he does not thereby become the head of the Police Department. Item No. 37 under the General Administration Department in the Schedule relates to Judges of the High Court and G officers of the Superior Judicial Service. The Chief Secretary of the Government of Haryana is the head of the General Administration Department by virtue of Rule 4 of the Business Rules. But that does not mean that the Chief Secretary is also the head of the Administration relating to the Judges of the High Court and officers of the Superior Judicial Service. Similarly, Item No. 21 of the General H Administration Department relates to Council of Ministers and its

Committees. Surely, the Chief Secretary has no authority whatsoever on the Council of Ministers and its Committees. There is, therefore, no substance in the contention made on behalf of the appellant that as Police, Railway Police and P.A.P. have been placed under the Home Department, the Secretary of the Home Department is the head of the Police Department by virtue of Rule 4 of the Business Rules. The Rules of Business that have been framed under Article 166 cannot override the provisions of the Act or any statutory rules. Indeed, the Business Rules also do not attempt to override Rule 1.2 of the Punjab Police Rules, for it cannot. There is much substance in the contention made by the respondent appearing in person and Mr. Garg, learned Counsel appearing on behalf of the intervener, the IPS Officers' Association, that the Business Rules framed under Article 166 cannot be relied upon for the purpose of interpretating the provision of clause (e) of Rule 2 of the Rules.

In view of sections 3 and 4 of the Police Act read with Rule 1.2 of the Punjab Police Rules, the Inspector General of Police, Haryana, is the head of the Police Department. The immediate authority superior to the Inspector General of Police is the Minister-in-Charge of the Police Department. The only authority who could be specifically empowered as the reporting authority in regard to the Inspector General of Police under clause (e) of Rule 2 of the Rules is the Minister-in-Charge and the Chief Minister, being superior to the Minister-in-Charge, may be the reviewing authority under clause (f) of Rule 2. In acting as the reporting authority the Minister-in-Charge may be assisted by the Home Secretary, but the confidential report relating to the performance of the Inspector General of Police has to be written by the Minister-in-Charge. The Minister-in-Charge of the Police Department is supposed to be aware of the performance of the Inspector General of Police. As the Chief Minister is the reviewing authority, he will also act as the accepting authority on the basis of the principle as laid down under Rule 6B of the Rules providing that where the accepting authority writes or reviews the confidential report of any member of the Service, it shall not be further necessary to review or accept any such report. In other words, the Chief Minister will act both as the reviewing authority and the accepting authority.

In this connection, we may notice the statements made in the writ petition filed by the respondent in the High court of Punjab & Haryana. It has been stated in paragraph 14 that reports of the work and conduct of the various Secretaries to the Government are written and recorded by the Minister-in-Charge of the Departments concerned

A and not even by the Chief Secretary so that the Minister-in Charge of the Departments concerned are the 'immediate superior' authorities to the Secretaries concerned within the meaning of Rule 2(e) of the Rules. Further, it has been stated that before independence the report on the work and conduct of the Inspector General of Police, Punjab, was being recorded by the Minister-in-Charge of the Department and such a position continued even after the independence till 1974 when the Haryana State Government passed the order dated May 3, 1974 under clause (e) of Rule 2 of the Rules, *inter alia*, specifically empowering the Home Secretary as the reporting authority for writing out the confidential reports in regard to the Inspector General of Police, Haryana. The statements made in paragraph 14 have not been denied by the State of Haryana in its counter-affidavit filed in the High Court. The Division Bench of the High Court was, therefore, perfectly justified in quashing the confidential report written by the then Home Secretary on the work and conduct of the respondent Shri Wadhwa.

Before we part with this appeal, we may dispose of another contention of the respondent about the delay in communicating to him the impugned adverse remarks. Under Rule 5 of the Rules, a confidential report assessing the performances, character, conduct and qualities of every member of the service shall be written for each financial year, or calendar year, as may be specified by the Government, ordinarily within two months of the close of the said year. Rule 6 provides that the confidential report shall be reviewed by the reviewing authority ordinarily within one month of its being written. Under Rule 6A, the confidential report, after review, shall be accepted with such modifications as may be considered necessary, and countersigned by the accepting authority, ordinarily within one month of its review. Thus, the whole process from the writing of the confidential report to the acceptance thereof has to be completed ordinarily within a maximum period of four months. Further, under Rule 7 the adverse remarks, if any, in a confidential report shall be communicated to the officer concerned within three months of the receipt of the confidential report. Thus, a total period of seven months has been laid down as the maximum period within which adverse remarks, if any, has to be communicated to the officer concerned. It has been already noticed that the adverse remarks were sent to the respondent after two years three months, that is, after twenty seven months of the close of the year. It is submitted by the respondent that in view of the delayed communication, the adverse remarks lost all importance and should be struk down on that ground.

The whole object of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct or character, as the case may. The adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. The whole object of the making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay. In the instant case, it was communicated to the respondent after twenty seven months. It is true that the provisions of Rules 5, 6, 6A and 7 are directory and not mandatory, but that does not mean that the directory provisions need not be complied with even substantially. Such provisions may not be complied with strictly, and substantial compliance will be sufficient. But, where compliance after an inordinate delay would be against the spirit and object of the directory provision, such compliance would not be substantial compliance. In the instant case, while the provisions of Rules 5, 6, 6A and 7 require that everything including the communication of the adverse remarks should be completed within a period of seven months, this period cannot be stretched to twenty seven months, simply because these Rules are directory, without *serving* any purpose consistent with the spirit and objectives of these Rules. We need not, however, dilate upon the question any more and consider whether on the ground of inordinate and unreasonable delay, the adverse remarks against the respondent should be struck down or not, and suffice it to say that we do not approve of the inordinate delay made in communicating the adverse remarks to the respondent.

A B C D E

For the reasons aforesaid, this appeal is dismissed. There will, however, be no order as to costs.

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N.P.V. Appeal dismissed.