



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1933 OF 2023

The State of Assam and others

... Appellants

Versus

Binod Kumar and others

... Respondents

J U D G M E N T

SANJAY KUMAR, J

1. By judgment dated 05.12.2017, the Gauhati High Court allowed W.P(C). No.4752 of 2015 and held Rule 63(iii) of the Assam Police Manual invalid on the ground that it is in direct conflict with Section 14(2) of the Assam Police Act, 2007. This judgment is called in question by the State of Assam and its officials in the Home Department.

2. While ordering notice on 07.01.2019, this Court directed that no coercive steps should be taken against the appellants on the basis of the impugned judgment. On 21.03.2023, this Court issued notice to the learned Attorney General for India, being of the opinion that his presence was necessary for effective adjudication of this appeal.

3. The core controversy in this case is as to who should be the 'Reporting Authority' to initiate Annual Confidential Reports (ACRs)/Annual Performance Appraisal Reports (APARs) of Indian Police Service (IPS) Officers working as District Superintendents of Police (SPs) in the State of Assam. More particularly, the issue is whether Rule 63(iii) of the Assam Police Manual (for brevity, 'the Manual'), which prescribes that such assessment should be initiated by the Deputy Commissioner concerned, as the 'Reporting Authority', is lawful. The specific ground successfully urged before the High Court by the respondents herein, viz., IPS Officers working as SPs in the State of Assam, is that this Rule is violative of Section 14(2) of the Assam Police Act, 2007, (for brevity, 'the Act of 2007').

4. It would be apposite at this stage to note the tone and tenor of the relevant statutory provisions. Rule 63(iii) of the Manual, in the context of initiation of the ACR/APAR of a SP of a district, reads as follows:

'(iii) Superintendent of Police - the report should be initiated by Deputy Commissioner, reviewed by the Deputy Inspector General of Police i/c Range and sent to the Commissioner of Division. The Commissioner of Division will send the same with his opinion to the Inspector General of Police for acceptance.

The Inspector General of Police shall refer the report to the Deputy Inspector General of Police, S.B., for recording his remarks regarding performance of the Superintendent of Police of the District in subjects pertaining to the S.B.'

Section 14 of the Act of 2007 reads thus:

'14. Relationship of Superintendent of Police with District Magistrates -

(1) The administration of the Police throughout the local jurisdiction of the Magistrate is vested in the Superintendent of Police under the general control and direction of the Deputy Commissioner as District Magistrate. The latter is responsible for keeping peace and maintenance of law and order in a district and may employ the police as he thinks best for the purpose.

(2) The Deputy Commissioner as District (*sic.*) Magistrate has however, no authority to interfere in the internal organization and discipline of the Police force, but it is his duty to bring to the notice of the Superintendent of Police, all cases in which the conduct of and qualification of Police Officer affect the general administration of a district.'

5. As IPS Officers belong to an 'All India Service', it would be pertinent to note the provisions of the All India Services (Confidential Rolls) Rules, 1970 (for brevity, 'the 1970 Rules'), which were thereafter replaced by the All India Services (Performance Appraisal Report) Rules, 2007 (for brevity, 'the 2007 Rules'), in the context of the mode and method of preparation of ACRs/APARs of IPS Officers in the rank of SPs. Rules 2(e), 2(f) and 2(a) of the 1970 Rules defined 'Reporting Authority', 'Reviewing Authority' and 'Accepting Authority' respectively, apropos preparation of ACRs/APARs. These Rules read as under: -

'2(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;

2(f) 'reviewing authority' means authority or authorities supervising the performance of the reporting authority as may be specifically empowered in this behalf by the Government;

2(a) 'accepting authority' means such authority or authorities supervising the performance of the reviewing authority as may be specifically empowered in this behalf by the Government.'

Rule 2(e) above was thereafter amended, *vide* Notification No. 22012/4/87-AIS-III dated 08.12.1987, and from that date it read thus: -

'2(e) 'reporting authority' means such authority or authorities supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government.'

6. The 1970 Rules continued to govern the field till the advent of the 2007 Rules. Rules 2(j), 2(k) and 2(a) of the 2007 Rules define 'Reporting Authority', 'Reviewing Authority' and 'Accepting Authority' respectively.

These Rules read as under: -

'2(j) 'reporting authority' means such authority or authorities supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government.

2(k) 'reviewing authority' means such authority or authorities supervising the performance of the reporting authority as may be specifically empowered in this behalf by the Government.

2(a) 'accepting authority' means the authority which supervises the performance of the reviewing authority as may be specifically empowered in this behalf by the Government.'

7. Hitherto, the Police Act, 1861, was applicable in the State of Assam and the Assam Police Manual originated from it. However, upon the Act of 2007 being brought into force, the Police Act, 1861, was repealed in so far as its application to the State of Assam was concerned. The question presently is whether Rule 63(iii) of the Manual, which dates back to a point of time when the Police Act, 1861, was in force, can be said to be still valid and lawful in the framework of the Act of 2007 and the 2007 Rules relating to preparation of ACRs/APARs of IPS Officers in the rank of SPs.

8. As per Rule 63(iii) of the Manual, the ACR/APAR of a SP should be initiated by the Deputy Commissioner concerned and the same would be reviewed by the Deputy Inspector General of Police in charge of the Range and then sent to the Commissioner of the Division. The Commissioner would then send the same with his opinion to the Inspector General of Police for acceptance who, in turn, would refer the report to the Deputy Inspector General of Police (Special Branch) for his remarks on the SP's performance in subjects pertaining to that Branch.

9. It is the contention of the appellants that a government servant has no right, much less a legal right, to insist that his/her ACR/APAR ought to

be initiated by a particular 'Reporting Authority'. It is argued that there is no inconsistency in Rule 63(iii) when compared with the scheme of the Act of 2007 and the 1970 Rules/2007 Rules. Reliance is placed upon the 2007 Rules and the 1987 amendment of Rule 2(e) of the 1970 Rules, to contend that it is not necessary that a 'Reporting Authority' should be the immediate superior of the member of the service whose ACR/APAR is being prepared and it is sufficient if the authority supervises his/her performance. It is contended that, as Section 14(1) of the Act of 2007 vests the Deputy Commissioner/District Magistrate (hereinafter referred to as, 'the Deputy Commissioner) with control over the functioning of the SP of that district, the Deputy Commissioner would be the most suitable person to report upon the performance of that SP. The appellants would point out that the SP works under the control and direction of the Deputy Commissioner, who has the overall responsibility of keeping peace and maintaining law and order in the district and who is empowered to employ the police force within the district as he/she thinks best for that purpose.

10. On the other hand, the respondents would point out that Section 14(2) of the Act of 2007 makes it clear that the Deputy Commissioner cannot interfere with the internal organization or discipline within the police force in the district and can only inform the SP if the conduct and/or

qualification of a police officer affects the general administration of the district. They contend that the archaic Rule 63(iii) of the Manual is not compatible with the scheme obtaining under the Act of 2007 and the 2007 Rules and that the Gauhati High Court was well justified in holding to that effect and invalidating it.

11. At the outset, we may note that the system of governance obtaining under the Police Act, 1861, was altogether different from what it is now. At that time, the Deputy Commissioner exercised far wider powers, being the head of the criminal and police administration in the district. In such circumstances, it was proper that he/she should be vested with the power of assessing the performance of the SP of that district. Rule 63 of the Manual also makes this clear as it speaks of the recording officers being fully conversant with the quality of the work of the 'officers working under them' and goes on to say that the intention is that the work of an officer should be known to all his 'superiors' along the line. The hierarchical superiority of the Deputy Commissioner over the SP in that setup is, therefore, clear.

12. However, after the separation of powers in terms of the regime now prevailing, the Deputy Commissioner is no longer the head of criminal and police administration in the district. Presently, Section 14(1) of the Act

of 2007 provides that the administration of the police within the district vests in the SP of that district and Section 14(2) of the Act of 2007 makes it clear that the Deputy Commissioner would not have the power to interfere with the internal organization of the police in the district or with discipline within the police force. Notably, Rule 25(c) of the Manual empowered the Deputy Commissioner to order an enquiry in case of misconduct by a police officer, in direct variance with Section 14(2) of the Act of 2007 which unequivocally divests the Deputy Commissioner of such disciplinary power. This distinction, which was brought about in the administration of the police, must necessarily be kept in mind while considering the validity of the procedure prescribed under Rule 63(iii) of the Manual. As pointed out by **Sir Rupert Cross** in his '**Statutory Interpretation (3rd Edition, 1995)**', a statutory provision has to be considered first and foremost as a norm of the current legal system whence it takes force, as it has a legal existence independent of the historical contingencies of its promulgation and should be interpreted in the light of its place within the system of legal norms currently in force. These observations were quoted with approval by this Court in **Dharani Sugars and Chemicals Limited vs. Union of India and others¹**.

¹ (2019) 5 SCC 480

13. That apart, one must also keep in mind that IPS Officers, being members of an All India Service, would be amenable to the 2007 Rules. Section 65 of the Act of 2007 makes it clear that police personnel in the State of Assam shall be governed by the existing Discipline and Appeal Rules and other Service Conduct Rules in force, as applicable to the Indian Police Service, State Police Service and others serving in the State Police Establishment. Therefore, merely because they are deployed/deputed to work in the State of Assam, IPS Officers cannot be denied the benefit of the 2007 Rules which would be applicable across the board to their ilk serving all over the country. It would, therefore, be incorrect to castigate such IPS Officers as insisting upon a 'Reporting Authority' of their choice. They are merely seeking parity with their kind working in other parts of the country. It is in this context that the extant 2007 Rules would have a direct impact on the issue under consideration.

14. The sheet anchor of the appellants' case is the that the definition of "Reporting Authority' in the 1970 Rules, post the 1987 amendment, and in the 2007 Rules does not require such authority to be 'immediately superior' to the officer being reported upon. Further, it is argued that, thereunder, the Government has been vested with the discretion of empowering any of the supervising authorities as the 'Reporting Authority'

and the same would fall in the realm of policy-making. Trite to state, such discretion must be exercised judiciously and the resultant policy must necessarily fall within the four corners of the statutory scheme. The further argument that, as the designated reviewing and accepting authorities are senior officers in the police hierarchy, it would not make a difference if the 'Reporting Authority' is not from that department, needs mention only to be rejected. Each cog in the assessment process has its own role to play and this is clearly spelt out by Rule 63 of the Manual itself, which stipulates that inability or failure to report properly and objectively would be construed as a failure of the recording/reviewing officer and commented upon as such by the next level. On the same lines, Instruction 5 of the Instructions appended to Form I in the 1970 Rules, titled 'Confidential Report for Indian Police Service Officers', stipulates that if the 'Reviewing Authority' finds that the 'Reporting Authority' made the report without due care and attention, he shall record a remark to that effect and the same shall be entered in his Confidential Roll.

15. Significantly, though a 'Reporting Authority', as defined, is required to be someone who supervises the performance of the officer reported upon and not necessarily his/her immediate superior, there was no change in the definition of 'Reviewing Authority'. Be it noted that the 1970 Rules

and the 2007 Rules both define 'Reviewing Authority' to mean the authority or authorities supervising the performance of the 'Reporting Authority', as may be specifically empowered in this behalf by the Government. It is in the backdrop of this definition of 'Reviewing Authority', that Rule 63(iii) of the Manual needs to be examined. Notably, a Deputy Commissioner, being the 'Reporting Authority' thereunder, would be altogether independent of the police department, being either an IAS Officer or a State Civil Service Officer. Needless to state, performance of a Deputy Commissioner would not be assessed by the Deputy Inspector General of Police, the designated 'Reviewing Authority' under Rule 63(iii), but by his/her own superior in the Administrative Service. There is, thus, a clear departure from the 1970 Rules/2007 Rules.

16. The definition of 'Reporting Authority' in the 1970 Rules, post 1987, and in the 2007 Rules, did away with the mandate of having the 'immediate superior' of the officer reported upon undertaking that exercise but it still requires the 'Reporting Authority' to be someone who supervises the performance of the said officer. Ordinarily, such supervision would be by an officer from within the same department, who is higher in rank than the officer reported upon. The Government was, no doubt, given discretion to empower any of the authorities who supervise the performance of the

officer reported upon to assume such role. This discretion, however, cannot be construed to mean that someone from outside the department can be given such power, in the light of the 'Reviewing Authority' being defined as someone who supervises the performance of such 'Reporting Authority'. This clearly implies that both authorities must belong to the same service or department. In effect, Rule 63(iii) of the Manual does not fit in with the scheme obtaining under the 1970 Rules and the 2007 Rules.

17. The learned Attorney General would suggest that this definition be given a restricted meaning to the effect that the 'Reviewing Authority', i.e., the Deputy Inspector General of Police, would supervise the performance of the 'Reporting Authority', viz., the Deputy Commissioner, only to the extent of how he/she assessed the performance of the SP and no more. However, we are of the opinion that such a construction does not flow from the plain language of the definition and would require something more to be read into it than was intended. Reference may be made to ***Kanai Lal Sur vs. Paramnidhi Sadhukhan***², wherein this Court observed that the words used in a statute must be interpreted in their plain grammatical meaning and it is only when they are capable of two constructions that the question of giving effect to the policy or object of the legislation can legitimately arise.

² AIR 1957 SC 907

18. Further, reading down the meaning of the definition would have unintended consequences, fully divorced from the unambiguous words used therein, whereby 'Reviewing Authority' is defined to mean that such an authority must be one who supervises the performance of the 'Reporting Authority' in all respects and not in relation to one function alone.

19. Pertinently, there is no discernible conflict or contradiction between the definitions of 'Reporting Authority' and 'Reviewing Authority' in the 1970 Rules, post 1987, and in the 2007 Rules. The clear import of these definitions is that such authorities must be from within the same service or department. Invocation of the doctrine of harmonious construction *vis-à-vis* these definitions, therefore, does not arise. Given the clear intent of the 1970 Rules/2007 Rules that the reporting, reviewing and accepting authorities should be from within the same service or department, the question is whether breach of such requirement can be permitted in the State of Assam under Rule 63(iii) of the Manual.

20. In this milieu, Section 14(2) of the Act of 2007 assumes relevance. Section 14(1) of the Act of 2007 states that administration of the police within the local jurisdiction of the Deputy Commissioner is vested in the SP, under the general control and direction of such Deputy Commissioner, but Section 14(2) makes it clear that the Deputy Commissioner has no

authority to interfere with the internal organization and discipline of the police force. This sub-section further states that it would be within the power and duty of the Deputy Commissioner to bring to the notice of the SP all such cases in which the conduct of and/or qualification of a police officer affects the general administration within the district and no more. On a plain reading, Section 14(1) and Section 14(2) of the Act of 2007 appear to be in derogation of each other, inasmuch as Section 14(1) vests the Deputy Commissioner with control over the SP but Section 14(2) makes it clear that such control would not extend to the Deputy Commissioner interfering with the internal organization or discipline within the police force in the district. These provisions must be harmoniously construed by restricting the power vesting in the Deputy Commissioner under Section 14(1), by duly carving out what has been excepted under Section 14(2). Such harmonious construction would be necessary to give effect to both provisions, so that they operate without conflict and a head-on collision (See *S. Gopal Reddy vs. State of A.P.*³ and *Sultana Begum vs. Prem Chand Jain*⁴).

21. We may note that even as per the Manual, a SP is not made subservient to a Deputy Commissioner. Rule 25 of the Manual

³ (1996) 4 SCC 596

⁴ (1997) 1 SCC 373

demonstrates this. It provides that though the SP is required to obey the instructions of the Deputy Commissioner in the first instance, the SP can thereafter request the Deputy Commissioner to refer any difference of opinion between them on any question relating to police administration to the Commissioner, who would decide such reference. Moreover, the SP is at liberty to submit his case to the Inspector General of Police if he is dissatisfied with the decision of the Commissioner. It is, thus, clear that a SP is required to work under the 'general control and direction' of a Deputy Commissioner and obey his/her instructions but that does not place the SP under the hierarchical supremacy of that Deputy Commissioner.

22. Further, when liberty has been given to the SP to disagree with the Deputy Commissioner on any point relating to police administration and seek resolution of such difference of opinion through the Commissioner and, thereafter, the Inspector General of Police, it would be a parody to subject the performance assessment of such a SP to the same Deputy Commissioner with whom he/she had disagreed. Such an ACR/APAR cannot be taken to be impartial and objective, once it is preceded by a difference of opinion between the SP and the Deputy Commissioner, leading to a reference being made to higher authorities. Such a situation must necessarily be avoided to maintain the sanctity of the assessment

process. This constitutes one more reason why the Deputy Commissioner should not be the 'Reporting Authority' of the SP of that district.

23. Significantly, Circular No. 11059/4/89-AIS.III, dated 28.12.1990, issued by the Government of India in exercise of power under Rules 3 and 10A of the 1970 Rules, stipulated that the 'Reporting Authority' should be in a higher grade of pay than the officer reported upon. The Government noted that there were instances where the ACRs of the members of All India Services were initiated by officers belonging to the same batch or drawing the same pay scale as the officer reported upon and instructed that the State Governments must ensure that a member of the service does not initiate the Confidential Report of another member of the service in the same grade of pay. It is, therefore, clear that the 'Reporting Authority' must necessarily be in a higher grade of pay than the officer who is being reported upon. It may be noticed that Rule 11 of the 2007 Rules empowers the Central Government to issue instructions with regard to the writing of the Performance Appraisal Report. However, no new instruction or circular has been issued in exercise of power thereunder, contrary to the earlier Circular dated 28.12.1990. However, instances have been cited by the respondents where ACRs/APARs of the SPs in the State of Assam were initiated by Deputy Commissioners who were not in a higher grade of pay.

24. In this regard, we may also note that, in ***State Bank of India and others vs. Kashinath Kher and others***⁵, this Court held that officers reporting upon performance must show objectivity, impartiality and fair assessment, without any prejudices whatsoever, and the highest sense of responsibility so as to inculcate devotion to duty, honesty and integrity. It was further observed that as officers may get demoralized by negative ACRs, which would be deleterious to the efficacy and efficiency of public service, such ACRs should be written by a superior officer of high rank. Earlier, in ***State of Haryana vs. P.C.Wadhwa, IPS, Inspector General of Police and another***⁶, this Court considered whether the State Government could empower any authority to be the 'Reporting Authority' of the Inspector General of Police under Rule 2(e) of the 1970 Rules. It was observed that, 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. No doubt, these observations were made in the context of the unamended Rule 2(e) of the 1970 Rules, but the principle culled out is sound and still holds good.

25. The appellants would argue that the Deputy Commissioner is the most suitable person to assess the performance of the SP, as he works

⁵ (1996) 8 SCC 762

⁶ (1987) 2 SCC 602

under his control and direction, but we are not impressed. Form I in Appendix II to the 2007 Rules pertains to performance appraisal of all IPS Officers upto the level of Inspector General of Police, which would include SPs. Clause 6 in Rule 3 thereof, relating to appraisal by the 'Reporting Authority', provides various domain assignments wherefrom the 'Reporting Authority' is required to select any four. 'Law and Order' is only one of the twenty named domains, which would come within the purview of the Deputy Commissioner and the remaining nineteen would not be within his/her purview and supervision. Seized of only one of the twenty domains, the Deputy Commissioner would not even be competent to assess the overall performance of the SP.

26. On the above analysis and given the fact that the 1970 Rules/2007 Rules define reporting, reviewing and accepting authorities to mean that they must all be from the same service or department, intervention by the Deputy Commissioner during the exercise of performance assessment of SPs of the districts in the State of Assam, by virtue of Rule 63(iii) of the Manual, cannot be countenanced, being in direct conflict therewith, and would tantamount to permitting the Deputy Commissioner to interfere with the internal organization of the police force, which would be contrary to the mandate of Section 14(2) of the Act of 2007.

27. We, therefore, find no grounds to disagree with the conclusion arrived at by the Gauhati High Court, holding to that effect.

The appeal is, therefore, devoid of merit and is accordingly dismissed.

Applications for permission to file additional documents are allowed. Other pending applications, if any, shall stand closed.

Before parting with the case, we place on record our appreciation and gratitude to Mr. R. Venkataramani, learned Attorney General, for his erudite and able assistance.

Parties shall bear their own costs.

.....,J
(ANIRUDDHA BOSE)

.....,J
(SANJAY KUMAR)

**January 18, 2024.
New Delhi.**