

Sri Chandra Mohan Sharma, Ifs Vs The Union of India and others

Court: Gauhati High Court

Date of Decision: June 4, 2012

Acts Referred: All India Services Act, 1951 " Section 2
Constitution of India, 1950 " Article 244(2), 244A
Right to Information Act, 2005 " Section 7(b)(vii)

Citation: (2012) 5 GLT 356

Hon'ble Judges: Anima Hazarika, J; Amitava Roy, J

Bench: Division Bench

Advocate: AK Bhattacharjee, Ms. M Dev, Ms. P Dev and Mr. KK Bhattacharjee, for the Appellant; C. Boruah, Central Government Counsel, Mr. PS. Deka, Govt. Advocate, Assam and Mr. T Chutia, SC, KAAC, for the Respondent

Judgement

Amitava Roy, J

1. The petitioner, a member of the All India Services and belonging to the Assam - Meghalaya Joint Cadre in the Indian Forest Service (for short

hereafter referred to as the IFS) seeks to invoke the writ jurisdiction of this Court to overturn the judgment and order dated 16.07.2010, rendered

by the Central Administrative Tribunal, Gauhati Bench, Guwahati (hereafter for short referred to as the Tribunal) in Original Application No.

157/2008. By the decision impugned, the learned Tribunal has negated the petitioner's assailment of the memorandum of charges dated

22.10.2007, issued by the Commissioner & Secretary to the Government of Assam, Environment and Forest Department, initiating a departmental

proceeding against him under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 (for short hereafter also referred to as the

Rules).

This Court, while issuing a returnable notice in the instant proceedings, in the interim, had stayed the progress of the impugned disciplinary

proceeding. We have heard Mr. AK Bhattacharjee, Senior Advocate assisted by Ms. M Dev, Advocate for the petitioner, Mr. C Boruah, learned

Central Government Counsel, for the respondent No. 1, Union of India and PS Deka, learned State Counsel, Assam, for the respondent Nos. 2,

3 & 4. Also heard Mr. J Chutia, learned Standing Counsel, Karbi Anglong Autonomous Council (for short hereafter referred to as the Council),

respondent No. 5.

2. The contentious arguments demand a brief sketch of the pleaded versions as the preface thereof for better appreciation. The services of the

petitioner, who is a IFS Officer of 1984 batch, lodged in the Assam segment of the Assam-Meghalaya Joint Cadre, were placed at the disposal of

the Council vide notification No. FRE-6/90/pt/180, dated 02.04.2003 of the Government of Assam in the Environment and Forest Department for

his posting as Conservator of Forest, Karbi Anglong Autonomous Council. In reciprocation, the Council by its order dated 07.04.2003 accepted

the services of the petitioner in the above capacity from the date of his taking over charge of the said office. The petitioner, accordingly, joined and

rendered his services as Conservator of Forest under the Council till 01.09.2007, whereafter, he handed over the charge of his office and on the

very same date, took up his new assignment as Conservator of Forest (Border), Government of Assam on repatriation. To facilitate this, he was,

pursuant to the State Government notification No. FRE/6/90/272, dated 17.07.2007, released by the Council and the petitioner joined his new

place of posting aforementioned on 07.09.2007.

3. It was, thereafter that he was placed under suspension by notification No. FRE.105/07/112, dated 11.10.2007, issued by the Commissioner

and Secretary to the Government of Assam, Environment and Forest Department under Rule 3 (1) (a) of the Rules in contemplation of a

disciplinary proceeding against him for misconduct, indiscipline and misappropriation of funds. The impugned memorandum of charges dated

22.10.2007 followed and the article of charges accompanying the same, inter alia, disclosed that imputations of gross misconduct of

insubordination, defalcation and misappropriation of government fund, unauthorized communication of information and connivance in illegalities had

been levelled against him for the alleged acts and omissions of his during the period from 10.04.2003 to 31.08.2007.

Being aggrieved, he filed an appeal under Rule 16 of the Rules before the Union of India and by order No.13011/6/2007-AVU, dated

16.06.2008. The Government of India, Ministry of Environment & Forests allowed the appeal and revoked the order of suspension. In the

aforesaid order, however, it was clarified that the decision of revocation was without prejudice to the disciplinary proceeding initiated against the

petitioner by the Government of Assam.

As the Government of Assam in the Department of Forest & Environment, thereafter, sought to proceed with the departmental proceedings, the

petitioner, eventually, approached the learned Tribunal questioning the maintainability thereof principally on the ground that having regard to the

period covering his alleged acts and omissions, he being then under the absolute administrative control of the Council then, the State Government,

in terms of Rule 7 of the Rules, was incompetent to initiate such exercise. The petitioner in reinforcement of this plea primarily relied on the office

memorandum No. HAD.57/95/316, dated 31.12.1996, issued by the Government of Assam, Hill Areas Department, Dispur. Reliance was placed

as well on Article 244(2) of the Constitution of India and the Sixth Schedule thereof to demonstrate the overriding autonomy of the Council in

administering its affairs vis-a-vis the departments/subjects, meanwhile, transferred to it, by notification No. HAD.57/95/63-64, dated 29.06.1995

in exercise of powers conferred by paragraph 6(2) of the Sixth Schedule of the Constitution of India. The petitioner's pleadings before the learned

Tribunal, though, also indicate his cavil qua non-release of subsistence allowance and reinstatement following the revocation of the order of his

suspension, the same not being within the contours of the debate in the instant proceedings, the same have not been dilated upon.

4. Whereas, the Union of India did not submit its response before the learned Tribunal, the State respondents in their written statement filed

through the Joint Secretary, Government of Assam, Department of Environment & Forests, pleaded that for the period during which the services

of the petitioner had been placed at the disposal of the Council, he discharged duties in connection with the affairs of the State of Assam and was,

thus, construed to be under the administrative control of the State Government, for which it, under Rule 7 (1) (b) of the Rules, had the power to

institute the departmental proceeding against him for his acts and omissions amounting to misconduct. While, admitting that the order of suspension

against him had been revoked in response to his appeal, the State respondents have insisted that as the decision to that effect had been without

prejudice to the validity of the departmental proceeding initiated by the memorandum of charges dated 22.10.2007, the same was wholly

inconsequential vis-a-vis the validity thereof (departmental proceedings). According to the State respondents, the allegations levelled against the

petitioner had been enquired into and a report to that effect had been submitted before the decision to initiate a disciplinary proceeding against him

was, eventually, taken.

5. In the proceedings in hand, as well, the Union of India has neither filed its counter nor in spite of several opportunities granted, laid before this

Court its decision under Rule 7 (1-B) of the Rules determining the authority in the attendant facts and circumstances, to institute the disciplinary

proceeding against the petitioner. The pleadings before this Court offered by the State respondents, however, tread on the lines outlined before the

learned Tribunal. Additional affidavits by the petitioner though, filed, do not project new and relevant facts, albeit, certain documents annexed

thereto have figured in course of the arguments and would be duly dealt with.

6. The learned Tribunal in the backdrop of the above adversarial orientations declined to interfere Qua the term ""serving in connection with the

affairs of the State"" appearing in Rule 7 (1) (b) (i) of the Rules, it observed that the same cannot be construed in a narrow and pedantic manner.

Referring to the order dated 02.04.2003, placing the services of the petitioner at the disposal of the Council, the learned Tribunal opined that the

arrangement contemplated therein did not amount to deputation and, thus, his mere placement with it (Council) did not permit the Council to usurp

the power of the State Government to institute the disciplinary proceeding. The learned Tribunal rejected the office memorandum dated

31.12.1996 as inconsequential and concluded that in any view of the matter, the Council could not be construed to be a local authority under

Article 244A of the Constitution of India. It, thus, determined that when a All India Services Officer is posted with an Autonomous District Council

constituted as per Article 244A of the Constitution of India, he continues to serve in connection with the affairs of the State and axiomatically the

State Government to which the officer belong has the authority, power and jurisdiction to take appropriate action against any misdeed committed

by him and for that purpose initiate a disciplinary proceeding under the Rules.

7. Mr. Bhattacharjee has strenuously urged that as the charges on which the disciplinary proceeding had been initiated against the petitioner relate

to a period during which he had been placed on deputation with the Council, under Rule 7 (1) (b), (i) the State Government had no authority to

take such action and on that count alone, the impugned memorandum dated 22.10.2007 ought to have been annulled by the learned Tribunal.

Referring to the notification dated 29.06.1995, transferring departments/subjects including that of Forest by the State Government to the Council

under paragraph 6(2) of the Sixth Schedule as well as Clause (G) of the office memorandum dated 31.12.1996 in particular, the learned Senior

Counsel maintained that it was the Council, which, as the Borrowing Authority, was, during that period, the disciplinary authority competent and

authorized to initiate the proceeding, if at all. Drawing the attention of this Court to the communications issued by the office of the Council in

response to the queries made by the petitioner under the Right to Information Act, 2005 and otherwise, Mr. Bhattacharjee has insisted that it

would be apparent therefrom that the Council, in the facts and circumstances of the case, is the only authority competent under the Rules to initiate

the departmental proceeding against the petitioner, if called for. That the Government of Assam, according to the Council, is not the disciplinary

authority for the officers of All India Services and Assam Civil Service serving it on deputation being apparent, amongst others, from the letter

dated 04.05.2011 issued. In reply to the queries made by the petitioner to that effect, the learned Tribunal had obviously erred in holding

otherwise, he urged. While contending that the merit of the accusation against the petitioner is, for the present, beyond the pale of scrutiny in the

instant proceeding, Mr. Bhattacharjee has argued in the alternative, that in any view of the matter, the State Government is not the competent

authority to initiate the impugned departmental proceeding against the petitioner and, thus, the memorandum of charges dated 22.10.2007 ought to

be adjudged a nullity. The learned Senior Counsel to buttress his contentions pressed into service the decision of the Apex Court in The state of

U.P. and Others Vs. Ram Naresh Lal, .

8. The learned Central Government Counsel, however, has urged that in that in terms of Rule 7 (1-B) of the Rules, the Ministry of Environment

and Forest, Union of India in consultation with the Department of Personnel and Training has determined the Government of Assam to be the

competent authority to initiate the disciplinary proceeding against the petitioner. He reiterated that as the revocation of the order of suspension qua

the petitioner in the appeal under Rule 16 was without prejudice to the impugned disciplinary proceeding, the same did not cast any invalidating

effect therein. Mr. Boruah, learned Central Government Counsel echoed the view of the learned Tribunal that during his tenure with the Council,

the petitioner continued to work in connection with the affairs of the State Government, for which the latter was competent to institute the

departmental proceeding against him. When queried by this Court, however, Mr. Boruah could not produce the decision of the Ministry of

Environment and Forest, Government of India under Rule 7 (1-B) of the Rules asserting the Government of Assam to be competent to initiate the

impugned disciplinary proceedings against the petitioner. According to him, the arguments advanced were founded on verbal instructions

communicated to him by the concerned authorities of the Central Government.

9. Mr. Chutia, in substance, adopted the assertions made on behalf of the petitioner with detailed reference to Article 244(2) and the relevant

provisions of the Sixth Schedule. Profusely relying on the notification dated 29.06.1995, transferring the departments/subjects including that of

Forest under paragraph 6(2) of the Sixth Schedule to the Constitution of India as well as the memorandum dated 31.12.1996, the learned Counsel

emphatically insisted that in terms thereof, the Council as the Borrowing Authority was alone competent to draw up the disciplinary proceeding

against the petitioner. With special reference to Clauses (G) & (H) of the office memorandum dated 31.12.1996, Mr. Chutia has urged that in

terms of the administrative arrangements made following the sequence of events enumerated in the recital thereof, this power of the Council was

available to it vis-a-vis the members of the All India Services as well. He relied, in order to brace up his pleas, the decision of the Apex Court in

Edwingson Bareh Vs. State of Assam and Others, and of this Court in WP(C) NO. 335/2007 (SAYED MD. BAKIR VS. THE STATE OF

ASSAM, rendered on 08.05.2008.

10. The pleadings on record together with the supporting documents as well as the competing arguments have received our anxious attention. As

aforestated, by orders, amongst others, dated 15.09.2011 and 04.04.2012, the Union of India was granted time to take a decision under Rule 7

(1-B) of the Rules to determine, in the face of the contrasting projections, the authority empowered to initiate the disciplinary proceeding against

the petitioner. Neither the Union of India filed its pleadings nor could it, till the date of hearing, apprise this Court of such determination, instead,

time was repeatedly prayed for. By order dated 04.04.2012, the prayer for time was acceded to as the last opportunity with the observation that

in case it (Union of India) failed, either to furnish necessary instructions, or file its pleadings, the petition would be heard on merit and disposed of in

absence thereof. The prayer for adjournment made on 21.05.2012 was thus rejected.

Though, in the written arguments submitted on behalf of the Union of India, it has been mentioned that the Department of Environment and Forest,

under Rule 7 (1-B) of the Rules, has determined the Government of Assam to be competent to institute a disciplinary proceeding against the

petitioner, Mr. Boruah candidly admitted that this has been incorporated only on verbal instructions. In absence of any basis for this conclusion, we

are not inclined to take note of this plea. As it is, the tenability or otherwise of the challenge to the competence of the State Government to initiate

the disciplinary proceeding against the petitioner is being examined in the exercise of the writ jurisdiction of this Court. Any decision of the Central

Government as referred to in the arguments of the learned Central Government Counsel, thus, in any view of the matter, does not preclude this

Court to adjudicate upon the same.

11. Before advertng to the rival arguments, it would be expedient to notice the relevant legal provisions having bearing on the issues seeking

adjudication.

12. Rule 2 (b), 2 (c), 2 (d) of the Rules define ""disciplinary authority, ""Government"" and ""member of the service"", respectively as hereunder:

(b) "disciplinary authority" means the authority competent under these rules to impose on a member of the service any of the penalties specified in

rule 6;

(c) "Government" means -

(i) in the case of a member of the Service serving in connection with the affairs of a State, or who is deputed for service in any company,

association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State,

or in a local authority set up by an Act of the Legislature of a State, the Government of that State;

(ii) in any other case, the Central Government;

(d) ""member of the service: means a member of an All-India Service as defined in Section 2 of the All India Services Act, 1951 (61 of 1951).

Rule 7, which identifies the authority to institute a disciplinary proceeding and impose penalty being of pivotal significance, relevant excerpts thereof

deserve to be extracted as hereunder:

7. Authority to institute proceedings and to impose penalty -

(1) Where a member of the Service has committed any act or omission which render him liable to any penalty specified in Rule 6 -

.....

(b) If such act or omission was committed after his appointment to the Service -

(i) while he was serving in connection with the affairs of State, or is deputed for Service under any company, association or body of individuals,

whether incorporated or nor, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an

Act of the Legislature of that State, the Government of that State; or.....

.....

(vii) the Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to provisions

of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company, association, body of individuals or

local authority, as the case may be, under whom he is serving at the time of institution of such proceedings shall be bound to render all reasonable

facilities to the Government instituting and conducting such proceedings.

Explanation - For the purpose of clause (b) of sub-rule (7), where the Government of a State is the authority competent to institute disciplinary

proceedings against the member of the Service, in the event of a re-organization of the State, the Government on whose cadre he is borne after

such re-organization shall be the authority competent to institute disciplinary proceedings and, subject to the provisions of sub-rule (2) to impose

on him any penalty specified in Rule 6.....

.....

(1-B) Notwithstanding anything contained in sub-rule (1), if, in any case, a question arises as to the Government competent to institute disciplinary

proceedings, it shall be decided by the Central Government so decided by the Central Government, as being competent to institute disciplinary

proceedings (which may include the Central Government also), shall alone be competent to institute disciplinary proceedings against him and,

subject to the provisions of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit and the Government, company

association, body of individuals, or the local authority, as the case may be, under whom he is serving at the time of the institution of such

proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.....

13. Part X of the Constitution of India, which dwells on the Scheduled and Tribal Areas as mentioned therein enjoins under Article 244(2) that the

provisions of the Sixth Schedule would apply to the administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram.

Article 244A postulates formation within the State of Assam an autonomous State by a law made by the Parliament comprising of or any of the

tribal areas specified in Part-I of the Table appended to paragraph 20 of the Sixth Schedule and provides for the matters as enumerated therein.

The Sixth Schedule to the Constitution of India in deference to the enjoinder of Article 244(2) deals with the provisions as to the administration of

these tribal areas. Whereas, paragraph 1 thereof mandates an autonomous district for the tribal areas in each of the items of Parts-I, II, IIA, III of

the Table appended to paragraph 20, paragraph 2 prescribes a District Council for each autonomous district and a Regional Council for each area

constituting an autonomous region contemplated in paragraph 1(2). Such District Councils and Regional Councils are to be body corporates having

perpetual succession and common seal liable to be sued and entitled to sue by that name. Paragraph 2(4) mandates that subject to the provisions

of the Schedule, the administration of an autonomous district shall in so far as it is not vested in any regional council within such district be vested in

the District Council and the administration of an autonomous region in the Regional Council. Rule 3 delineates the powers of the District Council

and Regional Councils to make laws in respect of all areas within the district/region, as the case may be, on the subjects as listed thereunder. This

provision underwent an amendment in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995,

adding paragraph 3A, whereby, the powers on the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council to make

laws were conferred. Paragraph 3(3), however, requires that all laws so made be submitted to the Governor and provides that unless assented by

him, would not have any effect. Paragraph 12 thereof enjoins that notwithstanding anything in the Constitution, no act of the Legislature of the State

of Assam in respect of any of the matters specified in paragraph 3 with respect to which a District Council or Regional Council may make laws and

no Act of the Legislature of the State of Assam prohibiting or restricting the consumption of any non-distilled alcoholic liquor would apply to any

autonomous district or autonomous region in the State unless in either case, the District Council for such district or having jurisdiction over such

region by public notification so directs, and that in doing so, it may direct that the Act in its application to such district or region or any part thereof

would have effect subject to such exceptions or modifications as thought fit. It provides as well that the Governor, may, by public notification direct

that any Act of Parliament or the Legislature of the State of Assam, as referred to therein, would not apply to such district or region or any part

thereof or would apply subject to such exceptions or modifications as he might specify in the notification.

14. The tribal areas enumerated in paragraph 20 of the Sixth Schedule within the State of Assam are contained in Part-I thereof as follows:

(i) The North Cachar Hills District

(ii) The Karbi Anglong District

15. The factual backdrop, in which the office memorandum dated 31.12.1996 came to be issued, as the available pleadings would attest has a vital

bearing. A Memorandum of Understanding was drawn up between the Chief Minister of the State of Assam and various representative bodies on

01.04.1995, in New Delhi, in the presence of the Union Home Minister for ensuring grant of greater autonomy to the Autonomous Councils of

Karbi Anglong and North Cachar Hills within the framework of the Sixth Schedule to the Constitution of India. This Memorandum of

Understanding was adopted and approved by the Assam Legislative Assembly vide its resolution dated 12.04.1995 and the House further

resolved that the jurisdiction of the Karbi Anglong Autonomous Council and North Cachar Hills Autonomous Council to exercise their executive

powers would extend to 30 subjects/departments listed in the annexure appended thereto (Memorandum of Understanding) and that to that extent

the executive powers of the State would stand entrusted and delegated to these Councils.

16. It was, thereafter, that vide notification No. HAD.57/95/63-61, dated 29.06.1995, the Governor of Assam in exercise of powers conferred

by sub-para 2 of paragraph 6 of the Sixth Schedule to the Constitution of India entrusted and delegated the functions in relation to the

subjects/departments enumerated therein to which executive powers of the State did extend to the Karbi Anglong Autonomous Council with its

consent on and from the date of the publication thereof. This notification, which was published in the issue dated 14.07.1995 of the Assam Gazette

(Extra Ordinary) included in the list of transferred subjects/departments ""Forest"". In other words, by this notification, in terms of the power

conferred by sub-para 2 of paragraph 6 of the Sixth Schedule of the Constitution of India, the executive powers of the State of Assam hitherto

extended to the transferred subjects/departments, stood entrusted and delegated to the Council.

17. The office memorandum dated 31.12.1996, in essence, embodies the administrative changes and modalities adopted for observance by the

State Government and the Karbi Anglong Autonomous Council for management of the subjects/departments mentioned in the memorandum dated

01.04.1995 and transferred/entrusted to the Council under para 6 (2) of the Sixth Schedule to the Constitution of India. These norms had been

envisaged to streamline the process of transition contemplated in consequence of the entrustment and delegation of the executive power of the

State to the Council vis-a-vis the subjects/departments involved and were intended to provide a functional framework based on mutual

concurrence to actualise the objective of enhancing the autonomy of the Council in the management of the affairs relatable thereto.

18. The modalities and the administrative changes embrace finance, implementation of the plan and schemes qua the transfer of

subjects/departments, re-appropriation of funds from one scheme to another, structuring of the bureaucratic hierarchy, administrative control of

officers and staff at the disposal of the Council including disciplinary actions, salary and allowances etc. Clause (G) & (H) thereof being of

formidable significance are extracted hereinbelow for ready reference: -

(G) The Chief Executive Member/Executive Member/Principal Secretary to the Executive Committee or the Council shall be competent to

initiate/review/accept the Annual Confidential Reports (ACRs) of all the officers and staff placed under the administrative control of the Council.

The administrative control of Council over the officers and staff at its disposal shall be complete in all matters of intra Council transfer and posting.

As regards disciplinary actions, against the officers and staff of the entrusted subjects/department, the Council shall exercise the powers as the

Borrowing Authority and the State Government shall exercise the powers as the lending Authority and both the State Govt. and the Council shall

follow the relevant rules, regulations etc. of the respective service Rules, (IAS/ACS, etc.).

(H) The State Government shall consult the Council, while posting and transferring the officers of the entrusted subjects/departments in or out of

the Council. Under no circumstances, the officers and staff not released by the Council shall be accepted by the State Government. Before

deputing any Officer or staff the Government shall provided a panel of names enabling the Council to select and accept the same. The State

Government shall take necessary action under the relevant rules and procedure against the officers and staff, found involved in any prima-facie case

of misconduct/derelection of duty during the period of deputation to the Council even after they are repatriated to the State Government.

It would transpire from the above quote that vis-a-vis the disciplinary action against the officers and staff of the entrusted subjects/departments, it

was agreed that the Council would exercise the powers as the Borrowing Authority and the State Government that of the Lending Authority and

that both the State Government as well as the Council would follow the relevant rules, regulations etc., of the respective service Rules including

those governing the members of the All India Services and Assam Civil Services. The primacy and the binding effect of the service rules governing

the officers and staff of the entrusted subjects/departments was, thus, unreservedly acknowledged. This assumes preeminence as thereby qua the

petitioner, the provisions of the Rules, continued to be applicable to him, the office memorandum dated 31.12.1996 notwithstanding.

19. This office memorandum, as the chain of events preceding it, would authenticate the marked culmination of the process of

delegation/entrustment of the executive powers of the State of Assam in favour of the Council qua the transferred subjects/departments pursuant to

the Memorandum of Understanding dated 01.04.1995 and adopted and ratified by the Legislative Assembly of the State. That prior to this office

memorandum the Governor of Assam had invoked his power under paragraph 6(2) of the Sixth Schedule to entrust and delegate to the Council

the functions relating to the transferred subjects/departments to which the executive power of the State did extend is of definitive significance.

These intervening developments are testified by contemporaneous records and reaffirmed by the State respondent in their affidavit filed in WP(C)

No. 335/2007 (Sayed Md. Bakir Vs. the State of Assam, since disposed of on 08.05.2008).

20. The notification dated 02.04.2003, whereby, the services of the petitioner were placed at the disposal of the Council for his posting as

Conservator of Forest, Karbi Anglong does not indicate in clear terms that his detailment had been on deputation. However, that he continued to

be governed by the Rules during the period of such placement is admitted. That he was in any case not deputed to any company, association or

body of individuals, whether incorporated or not, but wholly or substantially owned or controlled by the State Government or set up by an Act of

the Legislature of the State is not in dispute. It is, thus that the State of Assam has proclaimed it's authority/competence to institute the disciplinary

proceeding against him contending that during the placement of his services at the disposal of the Council he had been serving in connection with its

affairs as comprehended in Rule 7 (b) (i) of the Rules. In contradistinction, the Council has claimed this right on the basis of Clause (G), in

particular of the office memorandum dated 31.12.1996 as the Borrowing authority, subject, however to the applicability of the Rules. It is not the

case of any of the contending parties that any one or more of the other clauses of Rule 7 (b) is attracted in the present conspectus of the debate.

21. A plain reading of Rule 7 (b) (i) rules out the possibility of deputation of a member of the All India Services to any State. The notion of

deputation assuredly is vis-a-vis the other entities as referred to therein. Having regard to the constitutional scheme outlined for the administration

of the tribal areas for the State of Assam as enjoined by Article 244(2) read in conjunction with the Sixth Schedule and the acknowledged

independence of the Council's existence and supervening autonomy in the matter of administration of its affairs entrusted to it (Council), by no

means it can be comprehended within the purview of the institutions/entities enumerated in Rule 7 (b) (i) to which a member of the All India

Services could be sent on deputation. The Council, however, though, not either identifiable or comparable with any of these bodies/institutions,

deputation thereto otherwise is not barred under the Rules. The distinction underlined is only to propound that under Rule 7 (b) (i) deputation of a

member of All India Services to the Council for the purpose of identification of the disciplinary authority is not contemplated. Having regard to the

issues raised, the fact whether the services of the petitioner had been placed with the Council on deputation or otherwise is not of much

consequence.

22. The overwhelming and presiding presence of Article 244(2) and the Sixth Schedule unequivocally convey the constitutional edict qua the

administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram. That the Council has its territorial jurisdiction over the

tribal areas specified in Part-I of paragraph 20 of the Sixth Schedule is not in doubt. That the Karbi Anglong District is an autonomous district

within the meaning of paragraph 1 thereof also does not admit of any dispute.

23. As already adverted to hereinabove, paragraph 3 of the Sixth Schedule had been amended in its application to the State of Assam by the Sixth

Schedule to the Constitution (Amendment) Act, 1995, thereby conferring additional powers on the North Cachar Hills Autonomous Council and

the Karbi Anglong Autonomous Council to make laws on the subjects/departments as enumerated therein. The attention of this Court, however,

has not been drawn to any law made by the Council, amongst others, to vest it with the powers of a disciplinary authority vis-a-vis a member of

the All India Services placed at its disposal in connection with the administration of its affairs contemplated under the Sixth Schedule to the

Constitution of India.

Be that as it may, in the teeth of the autonomy, independence, dominion, prerogatives and the jurisdiction conferred on the Council by the Sixth

Schedule to the Constitution of India read with Article 244(2) and having regard, as well to the background of the office memorandum dated

31.12.1996, we are left unpersuaded to lend our concurrence to the plea that the petitioner during his placement to the Council had been serving in

connection with the affairs of the State of Assam as envisaged in Rule 7 (b) (i) of the Rules. The measures contained in the office memorandum

dated 31.12.1996 being based on conscious deliberations at the appropriate levels followed by adoption and ratification of the State Assembly in

full deference to the constitutional scheme of the Sixth Schedule, it would be paradoxical to determine that during the period of the placement of

the services of the petitioner with the Council, he had been rendering his services in connection with the affairs of the State of Assam. Such a

deduction, in our view, would be is obvious and utter disregard to the recorded march of events evincing to the contrary. The paradigm of the

succeeding events stemming from the office memorandum dated 01.04.1995, does not permit projection of the Council as an alter ego of the State

of Assam in view of the constitutionally conceived functional and existential independence and autonomy thereof. We are, therefore, constrained to

hold that the State of Assam lacked in authority and competence under the above legal provision to institute a disciplinary proceeding against him

on charges relatable to the period during which his services had been placed at the disposal of the Council. The memorandum of charges dated

22.10.2007 is, therefore, non est in law and is adjudged as such. On this count, we respectfully disagree with the reasons and conclusions

recorded by the learned Tribunal. The judgment and order assailed in the instant proceeding is, thus, set aside.

24. The above notwithstanding, in absence of any law made by the Council, the office memorandum dated 31.12.2006, more particularly, Clause

(G) thereof does not have any overriding effect on the Rules. This office memorandum, though, engrafts functional norms to facilitate transition of

the functions vis-a-vis the transferred subjects/departments to which the executive powers of the State of Assam did earlier extend, the same, per

se, cannot be elevated to a statutory status, so as to, either modify amend, alter or supplant an enactment made in exercise of powers conferred by

a Parliament enacted legislation. In that view of the matter, in the face of clear alternative provided by Section 7 (b) (vii), we are constrained to

hold that in face of the determination that in the facts and circumstances of the case, the State of Assam is incompetent to institute the disciplinary

proceedings against the petitioner, it would inevitably be the Central Government alone to initiate the same. Though the Council has, through

various communications, asserted its authority to institute the disciplinary proceeding tracing the source of it's power to Clause (G) of the office

memorandum dated 31.12.1996, in view of the state of Rule 7 of the Rules, as it obtains as on date, this plea cannot be sustained.

25. The decision of the Hon"ble Apex Court in STATE OF UTTAR PRADESH (Supra), introduced to emphasize that the word ""control"" is

comprehensive enough to include disciplinary jurisdiction is of no avail to the petitioner having regard to the constitutional and legal framework

involved herein.

26. The decision in EDWINGSON VS. STATE OF ASSAM (Supra) is also of no assistance vis-a-vis the issue under scrutiny. In the result, the

petition is partly allowed. The impugned office memorandum dated 22.10.2007 is set aside. The impugned judgment and order of the learned

Tribunal is also interfered with. The respondents would now proceed in accordance with Rule 7 of the Rules as decided. No costs.