

REPORTABLE

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

CIVIL APPEAL NO. 7706 OF 2013
(Arising out of SLP(C) No.30361/2012)

BHAJAN SINGH**Appellant(s)****:VERSUS:****STATE OF UTTARAKHAND & ORS.****Respondent(s)**

J U D G M E N T

H.L. Gokhale, J.**Leave granted.**

2. This appeal by special leave seeks to challenge the judgment and order dated 9.8.2012 rendered by a Division Bench of the Uttarakhand High Court dismissing Writ Petition (S/B) No.153 of 2012. That writ petition was filed by the appellant herein seeking to challenge the appointment of respondent No.4 herein to the post of Managing Director of the Uttarakhand Peyjal Sanshadhan Vikas Avam Nirman Nigam ("Nigam" for short). There were various prayers in the writ petition. Prayer (A) was to call

for the record of the selection proceedings and recommendations of the Selection Committee constituted on 2.5.2012 by the Government of Uttarakhand for selection to the post of Managing Director and after examining the legality and validity of selection process, recommendations to quash these recommendations. Prayer (B) challenged repatriation of the appellant to the post of Chief Engineer which was his substantive post from his officiating position of Managing Director. Prayer (C) essentially sought consideration of the appellant for the post of Managing Director, if found fit for the said post.

3. The facts leading to this appeal are this wise - The appellant as well as respondent No.4 both joined as Assistant Engineers in the Respondent No.2 Nigam. The appellant joined sometimes in 1984 whereas respondent No.4 joined in 1977. Over the years, they have risen in rank and the appellant, who belongs to a Scheduled Caste, became Superintending Engineer on 4.7.2002 whereas respondent No.4 came to that position on 2.7.2008. Subsequently the appellant became Chief Engineer on

8.2.2005 which post he is presently continuing to occupy. As far as respondent No.4 is concerned, he came in that position on 20.1.2011. He could become Managing Director on 3.5.2012 pursuant to the Departmental Promotion Committee's decision. The appellant was officiating as the Managing Director at the relevant time, he was amongst the officers who were considered for promotion and it is his case that he deserved to be selected and not the respondent No.4.

4. The challenge to the appointment of respondent No.4 is two-fold. Firstly that under the relevant rules regarding the consideration for promotion to the post of Managing Director, minimum 8 years of service as Chief Engineer is required, which respondent No.4 did not have. It is also pointed out that respondent No.4 came in the position of Superintending Engineer much after the appellant became Chief Engineer. This being the position, the submission is that respondent No.4 was not eligible for being considered for the post of Managing Director.

5. Be that as it may, the second challenge to the appointment of respondent No.4 was to the manner and merits of the selection of respondent No.4 for the post of Managing Director and in our view, this is a much more basic objection which we must look into. There are rules framed for the appointment to the post of Managing Director known as the Uttarakhand Peyjal Sanshadhan Vikas Avam Nirman Nigam (The Post of the Managing Director) Rules, 2011. They are framed under Section 96 read with sub-section (2-A) of Section 4 of the Uttar Pradesh Water Supply and Sewerage Act as applicable to the State of Uttarakhand. Rule 3 of these rules provides that the selection to the post of Managing Director shall be made through a Selection Committee which will comprise of 5 persons, namely:

- (a) Chief Secretary to the State Government
- (b) Principal Secretary/Secretary to the State Government in the Water Supply Department
- (c) Principal Secretary to the State Government in the Public Enterprises Department
- (d) Principal Secretary/Secretary to the State Government in the Personnel Department
- (e) An expert nominated by the Chief Secretary to

the State Government.

6. These Rules also provide for an officer belonging to the Scheduled Castes or other backward classes of citizens, nominated by the Chief Secretary to be on the Committee if the officers referred to in clauses (a) to (e) do not belong to any Scheduled Caste or other backward classes. Rule 4 of these Rules provides that only those Engineers of the Nigam shall be eligible for selection to the post of Managing Director who, amongst others, as per sub-clause (3) are holding the post of Chief Engineer Level-II in the Nigam and have completed at least 25 years of continuous service as Assistant Engineer, Executive Engineer, Superintending Engineer and Chief Engineer Level-II in the Nigam.

7. It is Rule 5 of these rules which is more relevant as far as this case is concerned. This Rule reads as follows:

"5(1) Selection for appointment to the post of the Managing Director of the Nigam shall be made on the basis of merit.

(2) The 'Merit' shall be assessed mainly on the basis of integrity of the officer,

leadership qualities and capability to take quick decision, technical knowledge of the subject, special achievements/contribution and capacity to execute the work easily like qualities. Entries in the Annual Character Roll special entries, other records available in the personal file and other facts brought to the notice of the Departmental Promotion Committee shall be considered for the purpose.

(3) The Principal Secretary/Secretary to the State Government in the Drinking Water Department shall prepare a list of eligible person and place it before the selection committee referred to in Rule 3, along with their character rolls and other records pertaining to them.

(4) The Selection Committee shall consider the cases of eligible persons on the basis of the character rolls for ten years immediately preceding the year in which the selection is made and other records, referred to in sub-rule (2).

(5) Annual entries of at least 08 years out of the last ten years entries during the period of service on the post just below the promotional post must be available.

(6) For the purpose of assessment of the annual entries of the character rolls, the entries of the entire service period of the officers shall be taken into consideration, however, the entries of the last 10 years shall be given special consideration. The entries shall be categorized as 'Outstanding', 'Very Good', 'Good', Fair/Satisfactory and 'Adverse'. For entries of 12 months 10 marks for 'Outstanding', 08 marks for 'Very Good', 5 marks for 'Good', zero marks for 'satisfactory/fair' and 05 negative marks for 'adverse' entry shall be awarded. The marks obtained for the period less than 12 months shall be deducted from the total marks of months for which the entries are assessed, in

the ratio of 12. The average monthly marks shall obtained by total number of months (the entries of which are assessed) and by multiplying the same by 12 average annual marks shall be obtained. The Officer securing more than 08 average annual marks shall be considered fit for selection on the basis of merit. Senior most in the cadre amongst the persons who are considered fit for selection shall be recommended for appointment against the post.

(7) The name of the candidate, whose even one out of he two entries immediately before the year of selection is adverse or whose integrity during the last five years preceding the year of selection is doubtful in the annual confidential entry or by special adverse entry, shall not be considered.

(8) If in selection on merit, any candidate has been pushed down, he/she shall be informed that he/she has been recommended on account of non-availability of post or being classified under 'Unfit' category for promotion, as the case may be."

8. It was submitted on behalf of the appellant before the High Court that three charge-sheets were pending against respondent No.4, and the pendency of the charge-sheets was certainly a factor which had to be considered while deciding the merit of respondent No.4. This was an aspect which was required to be placed before the concerned Selection Committee which was to decide the promotion to the post of Managing Director.

9. It was pointed out that the first charge-sheet was framed on 5.12.2011 which contained three serious charges with respect to the irregularities committed by the respondent No.4 as the Member Secretary of the Zonal Tender Committee when he was the Executive Engineer in the Construction Division, Pauri, during 1.6.1995 to 19.7.2007. Charge No.1 thereof alleged of not complying with the departmental procedure for deciding the tenders concerning the work of laying and jointing of pipelines and appurtenant works from Nanghat source to Molthaghat under Nanghat Potable Water Supply Scheme, resulting into avoidable delay in reaching the benefits of the scheme to the general public. Charge No.2 was regarding the procedure for inviting, opening and acceptance of the tenders and non-compliance thereof requiring re-tendering, concerning the same Nanghat Potable Water Supply Scheme, resulting into cost over-run and time over-run. Charge No.3 was regarding the manner in which the technical bids were decided concerning the said Scheme, ultimately resulting into loss of Rs.49.17 lacs to the Nigam and benefiting the contractors.

These objections were raised in the Audit Report of 2008-2009 and accepted by the Accountant General. This charge-sheet called upon the respondent No.4 to inform the undersigning Inquiry Officer in writing whether he wanted to examine or cross-examine any witness. Evidences in support of the charges were mentioned along with the charges. The charge-sheet also required the respondent No.4 to submit written statement. The charge-sheet was signed by the Inquiry Officer for and on behalf of the Nigam, and was approved by the Chairman of the said Nigam, whose approval and signatures are also to be seen by the side of the signatures of the Inquiry Officer.

10. It is material to note that no reply was filed to this charge-sheet by respondent No.4. The Selection Committee met on 2.5.2012 and respondent No.4 was recommended for being appointed by its recommendation dated 3.5.2012. It was specifically mentioned in paragraph 4 of the writ petition that the second charge-sheet was dated 3.3.2012 concerning the working of respondent No.4 during the period 18.9.2000 to 19.7.2007 in respect of Birokhal Group of Villages Pumping Water Supply Scheme and

the third charge-sheet dated 9.4.2012 was concerning the scheme of utilization of sewage for irrigation purpose for the Veer Chander Singh Garhwali Audyogik University during 18.11.2000 to 30.6.2007. The submission on behalf of the appellant was that this material, namely, that the charge-sheets were pending against respondent No.4, was not placed before the Selection Committee at all. There is no dispute, whatsoever, that respondent No.4 had not replied to the charge-sheets nor with respect to the fact that pendency of the charge-sheets against respondent No.4, was not brought to the notice of the Selection Committee. The Division Bench of the High Court has given importance only to the aspect of seniority of the engineers concerned, and although the issue with respect to the integrity of the officer, to be appointed to the high position of Managing Director, was raised in this writ petition the same has been decided against all canons of settled laws.

11. (i) Various affidavits were filed on behalf of the respondents in the High Court. One Shri S. Raju, S/o Shri S. Subbiah affirmed two affidavits on

26.6.2012. One affidavit he affirmed in his capacity as Principal Secretary, Department of Pw, on behalf of Respondent No. 1 Government of Uttarakhand.

In paragraph 17 thereof he stated as follows:-

"17. That perusal of the letter dated 5.12.2011, 3.3.2012 and 9.4.2012 do not mention that these letters have been issued, or the alleged charge sheets with these letters have been issued, under any disciplinary proceedings. These letters do not also mention that prior to issuance of these letters at any point of time an explanation from respondent No. 4 was called for or any order of initiating disciplinary proceeding was issued, as such the Principal Secretary or the Government on receiving the proposal came to the conclusion that the said letters/alleged charge sheets cannot be deemed to have initiated any disciplinary proceeding against respondent No. 4 and accordingly the same was not mentioned in the note before the Selection Committee."

The officer has sought to contend that these charge sheets do not mention that they have been issued under any disciplinary proceedings. By stating so he has betrayed his ignorance of the legal position that the disciplinary proceedings begin with the issuance of the charge-sheet. He has further stated that prior to issuance of the charge sheets no explanation was called from respondent No. 4, nor any order of initiating disciplinary proceedings was issued. Now, this is a matter of the procedure to

be followed by the concerned authority while initiating the disciplinary proceeding. In a given case a show cause notice may be issued, prior to the issuance of the charge sheets, but that is not the rule. In any case, it is the Principal Secretary of the Department who in his capacity as the Chairman of the Nigam was the Disciplinary Authority. He has counter signed on the charge sheet. The affidavit is a miserable attempt to explain as to why the charge sheets were not mentioned in the note placed before the Selection Committee by the then Secretary of the Department.

(ii) In another affidavit affirmed by him on the same day in his capacity as the Chairman of the Nigam, he stated in paragraph 4 thereof that he had joined the duties on the present post on 1.5.2012, and his predecessor in office at the relevant point of time, was one Mr. Utpal Kumar Singh, IAS. In paragraph 5 of this affidavit he stated that he had gone through the concerned file and upon perusal of the files it appeared to him that the three draft charge sheets were prepared. He has further stated that the three draft charge sheets were sent to the

then Chairman for approval by the petitioner, and the then Chairman had approved the same and sent it with his covering letter to respondent No. 4 for calling his explanation before initiation of any disciplinary proceeding in the matter. In paragraph 9 he specifically stated amongst others as follows:-

"9.The said charge sheets appear to have been approved and sent by the then Chairman to the respondent No. 4 for calling his explanation before commencing any disciplinary proceedings in the matters. No Enquiry Officer has been appointed in the matter till now.

Thus, in so many words, while explaining his own position, he has contradicted the previous Secretary through this affidavit. On reading these two affidavits one thing is very clear that charge-sheets were approved by the then Chairman and thereafter sent to the respondent No. 4 calling for his explanation, though for the reasons best known to the Nigam the disciplinary proceedings have not proceeded thereafter.

(iii) As far as respondent No. 4 is concerned he affirmed an affidavit in reply and amongst others gave an explanation on the allegations contained in

three charge sheets. He has however not denied having received these charge sheets. He has also not stated that he has filed any reply to these charge-sheets.

12. In paragraph 2 of the impugned judgment the High Court noted the contention that under Rule 5 of the Rules concerning appointment to the post of Managing Director, the Selection Committee has to look into the merit of the candidate concerned. It also noted the contention on behalf of the appellant that the Selection Committee was not in the know of the three charge sheets, and it did not have the appropriate opportunity to determine the integrity of the selected candidate. In paragraph 3 of its judgment however the Court observed that it is true that if the selectors had looked into those charge sheets, they may have reacted in some other manner. At the same time the Court held that mere issuance of a charge sheet does not affect integrity of an employee of a statutory authority. Thereafter, the court observed in paragraph 3:-

"3... Law requires selectors to ignore

altogether a charge-sheet issued against a Government employee in as much as, the same bears only an accusation against him and integrity of a person cannot be questioned only on the basis of an allegation or insinuation against him. The Rules, it was not contended, debarred consideration of a candidate for promotion against whom a disciplinary proceeding is pending."

And then in paragraph 4 and 5 as follows:-

"4. We think that integrity of the officer, to be looked at by the selectors, is such integrity, which is reflected in the records of the candidate appearing before the selectors. Issuance of a charge sheet may be reflected in the record, but the substance of the charge-sheet cannot be treated as part of the record. As aforesaid, mere issuance of a charge-sheet does not prevent the selectors from selecting a candidate against whom the charge-sheet has been issued."

"5. We, accordingly, find no scope of interference with the selection under challenge merely on the basis that the charge-sheets, thus issued, were not placed before the selectors."

13. Mr. Subba Rao, learned counsel for the appellant submitted that these observations of the High court were totally contrary to the law laid down by this Court. If an employee is facing a

charge-sheet, and is called upon to give an explanation, surely such an employee cannot be considered for promotion at that stage. His claim for promotion will have to be kept in sealed cover as held by a bench of three Judges of this Court in Union of India Vs. K.V. Jankiraman & Ors., reported in (1991) 4 SCC 109. The present case is clearly one of suppression of the relevant material and not bringing it before the Selection Committee. This made the selection of the respondent No. 4 still more venerable. The view taken by the High Court is totally untenable and the judgment had to be set aside.

14. On the other hand, it was submitted by Mr. Ranjit Kumar, learned senior counsel appearing for respondent No.4 that the submissions advanced in the High Court were mainly with respect to the issue of seniority. He contended that, in any case, the charge-sheet dated 5.12.2011 was not issued by the Disciplinary Authority and may not be taken cognizance of. Now, as can be seen, it is the Chairman who is the Disciplinary Authority, and the charge-sheet bears the signatures of the Chairman

approving the charge-sheet. His signature is appended side by side with the signature of the Inquiry Officer, and therefore the submission has to be rejected. It was further submitted that the charge-sheet was a motivated document and it was an attempt by the appellant herein to see to it that respondent No.4's career is damaged. It was pointed out that the appellant himself was officiating as Managing Director at the relevant time and, therefore, he had chosen to rake up these controversies at that very time.

15. It is not possible to accept this submission. The charges in the charge-sheet are concerning the period starting from 2006 onwards. Whatever was the defence of respondent No.4, he ought to have replied to the charge-sheet, and he could not have decided it for himself that since according to him, the charge-sheet was not issued by the Disciplinary Authority, he was going to ignore the same. Nothing prevented him from placing on record his view point that the charge-sheets were motivated. That apart, as is seen from the record, the Chairman of the Nigam had signed on the charge-sheet approving the

same and it is, therefore, that the Inquiry Officer had issued the charge-sheet. The Chairman of the Nigam is the Secretary of the Water Supply Department. He had taken some three months' time after the note was put up to him, to approve the charge-sheet. He was also a Member of the Selection Committee which consisted of 5 senior officers of the State. It was surely expected of him to bring it to the notice of the Selection Committee that charge-sheets were pending against respondent No.4. Respondent No.4 may have his defence on the merits of the charges. All that we can say is that the fact of pending charge-sheets ought to have been placed before the Selection Committee. In the absence of such a very vital material being placed before the Selection Committee, the Committee went into the aspect of determining the merit without having the benefit of this vital material which was against respondent No.4. If these charge-sheets were made available to the Committee, it would have taken its decision after considering the same, and the principles laid down by this Court in Union of India & Ors. Vs. K.V. Jankiraman & Ors., (supra) would have squarely applied to respondent No.4's case. His

claim for promotion would have been kept in a sealed cover and he would have been asked to wait until the enquiry was complete.

16. (i) As held in paragraph 29 in Jankiraman's case (supra):

"An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest."

(ii) On the sealed cover procedure this Court observed in paragraph 16 of the said judgment as follows:-

"16. On the first question, viz. as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that

stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point...."

In the present case the respondent No. 4 was served with three charge sheets. As per the above dicta, the departmental proceedings will therefore have to be deemed to have been initiated against him. The Nigam cannot sit over the charge sheets or keep them in a wrapper, and not disclose to the selection committee until the charge sheets are either dropped or proceeded further. Once a departmental proceeding is pending, the claim of the employee concerned for promotion will have to be kept in a sealed cover.

17. It was also submitted that the charge-sheet dated 5.12.2011 was in fact a show cause notice. We are not impressed at all by this submission which is in fact negated the second affidavit of Shri S. Raju. In any case, whether it was a charge-sheet or a show cause notice, it was a document imputing allegations against respondent No.4. When any high officer is to be appointed to the position of Managing Director, obviously his integrity has to be gone into and the material whichever is there,

either in his favour or against him, has to be placed before the Selection Committee. The Chairman of the Nigam has certainly not conducted himself appropriately in not placing these charge-sheets before the Selection Committee. In absence thereof, the merit (including absence of it) which was required to be assessed could not be assessed correctly.

18. Rule 5(2) of the Rules noted above speaks of merit being assessed mainly on the basis of -

- (i) integrity of the officer;
- (ii) leadership qualities
- (iii) capability to take quick decision
- (iv) technical knowledge of the subject;
- (v) special achievements/contribution and capacity to execute the work easily and like qualities.

Thereafter, it states in terms that the entries in the Annual Character Roll, special entries, other records available in the personal file, and other facts brought to the notice of the Departmental Promotion Committee shall be considered for the purpose of assessing the merit. The rule is sufficiently wide and requires that everything which

is relevant for assessing the merit, has to be placed before the Selection Committee. The rule clearly states that all these facts are to be brought to the notice of the Departmental Promotion Committee and the Committee has to consider all the material before deciding whether the officer was suitable for promotion.

19. The Principal Secretary to the Water Supply Department is the Chairman of the Nigam. He was respondent No. 3 to the Writ Petition and is respondent No. 3 in this Civil Appeal. He was fully aware of the charge sheets pending against the respondent No. 4. In fact he had signed the same. It was his duty and responsibility to place these charge sheets before the Selection Committee of which he was a member. If the Secretary of the department suppresses the relevant material, obviously the selection will not be on merit. This in fact raises a serious doubt about the integrity of the then Chairman of the Nigam. In the circumstances we expect the respondent No. 1 State of Uttarakhand to hold appropriate inquiry as to why the Chairman of the Nigam did not place the relevant

material before the Selection Committee and take necessary corrective measure.

20. We are equally or more appalled at the manner in which the concerned division bench of the High Court has handled the matter. The High Court has totally ignored the law on this aspect. The relevant rule No. 5 was brought to the notice of the High Court. Submissions were made thereon, and yet the High Court held that the law permitted the selectors to ignore altogether the charges in as much as according to the Division Bench, the same bears only an accusation against him and that the integrity of a person cannot be questioned only on the basis of an allegation against him. As stated earlier we are not concerned with the merits of the allegations. The Selection Committee was not apprised of the three charge sheets at all. This was clearly in breach of Rule 5, and the High Court has erred in ignoring this aspect.

21. In view of these facts, the selection of respondent No.4 was clearly faulted. The selection was in breach of the requirements of Rule 5 and,

therefore, it will have to be set aside. The High Court has also seriously erred in not allowing the writ petition of the appellant herein. In the circumstances, we allow this appeal, set aside the judgment rendered by the Division Bench of the Uttarakhand High Court. Prayer (A) made in the writ petition will stand granted, namely, that the selection and appointment of respondent No.4 will stand set aside. Inasmuch as respondent No.4 has worked all this time as Managing Director, whatever salary and emoluments he has received, though on the basis of a faulty selection, will not be recovered from him. However, as a consequence of this order, he will now be immediately placed in the position which he was occupying prior to his selection as Managing Director of the Nigam. It will be for the Nigam to call for another Selection Committee and consider whosoever are the eligible officers. Their full record will be placed before the Selection Committee, and thereafter it will be decided as to who should be selected as the Managing Director of the Nigam. The appeal is allowed in these terms, with costs. Respondent No.4 will pay cost of Rs.50,000/- and Respondent No.2 Nigam will pay cost

of Rs.50,000/- to the appellant. Respondent No.2 will be at liberty to recover this amount of cost from the then Chairman of the Nigam.

22. Before we conclude, we must accord our distress and shock at the manner in which the facts have unfolded in this matter. The public corporations like the Water Supply and Sewerage Board enter into the contracts of hundreds of crores of rupees. The persons occupying high positions therein such as that of Managing Director have a great responsibility to see to it that these schemes are implemented honestly and expeditiously. After 67 years of independence, Indian cities and villages continue to have a serious problem of getting good potable water to drink. There is also a serious problem of having a proper sewerage system. The officers at the high level have a good salary and perquisites. They have got to be above board. To qualify for promotion to such posts, the minimum that is expected is to have an unblemished record. The law and procedure of selection to such posts when there are allegations against the candidates, was laid down in Jankiraman's case (supra), way back

in the year 1991. If the high ranking officers come out with a devise to circumvent the law by suppressing the pending charge-sheets against favoured candidate, it is a serious matter. The Chairman is supposed to be an IAS Officer. These officers are given a protection under the Constitution itself. If such officers are to act in breach of the law laid down by this Court, it would result into officers of doubtful integrity getting into higher positions. Luckily, in this present matter, the petitioner who is an interested candidate contested the appointment of respondent No.4 and which is how the suppression of the material came into light.

23. Having decried the role of the then Chairman of the Nigam, we cannot remain oblivious of the fact that a division bench presided over by the Chief Justice of the High Court has condoned such serious breaches in approving the suppression of the relevant material from the selection committee, which is most unfortunate and deplorable to say the least. Such judgments would lead to the approval of the appointment of persons of doubtful integrity in

higher administrative positions. Apart from that, it will lead the people to doubt the integrity of the judges as well. Citizens have a faith in the judiciary because it is expected to render justice even-handedly. The members of higher judiciary are granted a constitutional protection so that they function without fear and favour and not mis-apply the law. It is such orders which bring the judiciary into disrepute. We rather refrain from saying anything more.

.....J
(H.L. GOKHALE)

.....J
(J. CHELAMESWAR)

New Delhi;
August 27, 2013.

JUDGMENT