

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO(s). 27982/2013

STATE OF GUJARAT

Petitioner(s)

VERSUS

NATVARLAL MOTILAL CHAVDA

Respondent(s)

J U D G M E N T

A.K. SIKRI, J.

The present special leave petition is filed against the final judgment and order dated 18.12.2012 delivered by the Division Bench of High Court of Gujarat in Special Civil Application No. 2210 of 2005. Vide the impugned judgment, the Court has partly allowed the writ petition and has granted certain consequential benefits to respondent no. 1 interpreting the provisions of Indian Administrative Service (Appointment by Promotion) Regulations, 1955. At the same time some strings, in the nature of certain conditions, are attached as well.

Respondent no. 1 was directly recruited as Mamlatdar in 1977 and then promoted as Deputy Collector in 1983 in Class-I cadre of Gujarat Administrative Service(GAS). Thereafter, he was promoted as Additional Collector in 1995 and transferred and posted as Secretary, Slums Clearance Board on 20.02.2003. On 22.09.2003, the State Government sent a proposal to the Union Public Service

Commission(UPSC) and the Department of Personnel and Training, Government of India along with the list of prospective candidates for selection and appointment in IAS cadre and that list included at serial no. 6 the name of respondent no. 1. By notification dated 15.06.2004 of the Government of India, through Department of Personnel and Training, 10 members of the State Civil Service of Gujarat were appointed in the Indian Administrative service against the vacancies of the year 2003, on probation with immediate effect, until further orders, under Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with Sub-Regulation (1) of Regulation 9 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 3 of the Indian Administrative Service(Probation) Rules, 1954. And that list omitted the name of the respondent no. 1, even though by notification of the same date, i.e. 15.06.2004, the select list of 11 State Civil Service Officers, including respondent no. 1, was notified. That select list was approved by the UPSC and prepared by the Selection Committee in its meeting held on 18.11.2003.

The position which emerges from the aforesaid is that the name of respondent no. 1 herein was duly forwarded by the State Government for induction in IAS cadre. The UPSC considered the names and selected 11 persons from the State Civil Service Officers. In this list, issued vide notification dated 15.06.2004, name of respondent no. 1 was included meaning thereby UPSC found him fit for appointment in IAS cadre. However, in another

notification of the even date, name of the respondent was excluded from appointment. The reason given was that the State Government had informed the UPSC vide its letter dated 18.12.2003 that it had decided to withdraw the integrity certificate in respect of the respondent by another letter dated 27.05.2004, the state Government had also informed the UPSC that a charge-sheet was issued to the respondent. On that basis, UPSC had sent letter dated 11.6.2004 to the Central Government pointing out that it had approved the recommendations of the Selection Committee Meeting held on 18.11.2003, with the modification that inclusion of the name of respondent no. 1 in the select list would be provisional and subject to clearance of the disciplinary proceedings pending against him and grant of integrity certificate by the State Government.

Respondent no. 1 challenged his exclusion by approaching the Central Administrative Tribunal in the form of OA filed under Section 19 of the Administrative Tribunal Act. Taking note of the aforesaid developments, the Tribunal did not interfere with the decision of the Government and the only direction given was to expeditiously bring to an end two inquiry proceedings against him.

Feeling dissatisfied with the aforesaid outcome, respondent no. 1 challenged the order of the Tribunal by means of writ petitions filed in the High Court of Gujarat under Articles 226 and 227 of the Constitution of

India. His primary submission was that on 18.11.2003 when his candidature was considered, there was nothing against him and no charge-sheet was issued either. Therefore, his name should not have been withheld merely because some charge-sheet was issued much after the said date. He relied upon the judgment of this Court in Union of India Vs. K.V. Jankiraman 1991(4) SCC 109. His further submission was that once he was found fit for promotion by the Departmental Promotion Committee constituted by the UPSC and the recommendations of the Selection Committee were accepted by the UPSC and no inquiry was pending as on that date, he was entitled for promotion. And for this proposition, he relied on the judgment of this Court in Union of India Vs. Sangram Keshari Nayak 2007(6) SCC 704. He also referred to another judgment of this Court in Vijay Singh vs. State of UP 2012(5) SCC 242 in support of his submission that even the disciplinary authority cannot legally impose punishment of withholding integrity certificate unless such punishment is provided in the relevant rules.

The case of the petitioner herein, before the High Court, was that since respondent no. 1 had come under the zone of consideration for promotion to higher grade in the year 2003, his name was included in the proposal and sent to the UPSC. However, after the meeting of the Selection Committee which was held on 18.11.2003, its recommendation was received by the State Government from the UPSC. It had come to the notice of the State Government that certain preliminary inquiries were going

on/pending against respondent no. 1 in the Tribal Development Department and on careful perusal of the files and papers from that Department, the Government had taken a conscious decision to withhold the integrity certificate and initiated detailed inquiry into the allegations. An IAS officer was entrusted with the task and on the basis of preliminary inquiry conducted by him, the State Government had decided to hold the regular departmental inquiry for which charge-sheet dated 25.5.2004 was served upon the respondent. It was thus pleaded that the respondent was not entitled to promotion at that stage in view of the pendency of the inquiry.

After considering the aforesaid arguments and dealing with them exhaustively, the High Court has allowed the petition of respondent no. 1 in part directing his promotion. The High Court has taken into consideration the relevant Rules & Regulations, namely, Indian Administrative Service (Recruitment) Rules, 1954 into consideration and Indian Administrative Service (Appointment by Promotion) Regulations, 1955 into consideration and in particular, Regulations (3), (5), (6), (7), (9) & (10) of Regulations, 1955. After careful analysis thereof, in juxtaposition with some of the Government of India's decisions on these regulations, it is pointed out that appointment by promotion from State Civil Service to Indian Administrative Service is by selection by a Committee consisting of the Chairman of the UPSC, the Chief Secretary of the State Government, the senior-most officer of the IAS cadre other than the

Chief Secretary, the Head of the General Administration/Personnel/Revenue Department of the State Government not below the rank of Secretary to the State Government and two nominees of GOI not below the rank of Joint Secretary. The date and venue of the meeting of the Committee to make the selection is to be determined by the UPSC. According to Government of India's decision under Regulation 3, the Chief Secretary to the State Government, who is the sponsoring authority in respect of all eligible officers whose cases are placed before the Selection Committee for consideration, is required to record an integrity certificate, with reference to the entries in annual confidential reports of the officer concerned. Even after such certificate being recorded, the Selection Committee is required to consider the question of suitability of the officers for selection with reference to their integrity and specifically record in their proceedings that they were satisfied from the remarks in the confidential reports of the officers, selected by them for inclusion in the select list, that there was nothing against their integrity. Thereafter, a list of such members of the State Civil Service as are held by the Selection Committee to be suitable for promotion has to be prepared. The Selection Committee has to classify the eligible officers as "outstanding", "very good", "good" and "unfit", as the case may be, on an overall relative assessment of their service records, maintaining *inter se* seniority of the officers in each class. The name of any officer included in such list has to be treated as provisional, if the State Government

withholds the integrity certificate in respect of such officer, or any proceedings, departmental or criminal, are pending against him, or anything adverse, which renders him unsuitable for appointment to the service, has come to the notice of the State Government. That provision for making or treating any name as provisional is subject to Explanations-I and II of Regulation 5(5), according to which the proceedings can be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a court; and the adverse thing which came to the notice of the State Government rendering him unsuitable can be treated to have come to the notice of the State Government only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential. After the list is so prepared, it has to be forwarded to the UPSC by the State Government alongwith the records of all members of the State Civil Service included in the list, the records of all members of the State Civil Service who are proposed to be superseded by virtue of the list and the observations of the State Government on the recommendations of the Committee. A copy of the select list is also required to be forwarded to the Central Government and the Central Government is required to send their observations on the recommendations of the Committee to the UPSC. Thereafter, under Regulation 7, the UPSC has to consider the select list alongwith the documents received from the

State Government and the observations of the Central Government and, unless it considers any changes necessary, approve the list. If the Commission considers it necessary to make any changes in the list, it has to inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government and the Central Government, the UPSC may approve the list finally with such modifications, if any, as may, in its opinion, be just and proper. The list so finally approved by the Commission would be the "Select List" of the members of the State Civil Service. If an officer whose name is included in the select list is, after such inclusion, issued a charge-sheet or a charge-sheet is filed against him in a court of law, his name in the select list shall be deemed to be provisional. Thereafter, under Regulation 9(1), appointment of a member of the State Civil Service has to be made by the Central Government in the order in which the names of the members of the State Civil Service appeared in the select list. In case of an officer whose name has been included or deemed to be included in the select list provisionally, under the proviso to sub-regulation (5) of Regulation 5 or under the proviso to sub-regulation (3) of Regulation 7, as the case may be, his appointment has to be made within 60 days after the name is made forwarded by the Commission in terms of the first proviso to sub-regulation (4) of Regulation 7. Thus, there are two stages at which inclusion of name in the list of the recommended officers could be made provisional; the first stage is before the list is forwarded to the UPSC by the

State Government, subject to fulfillment of the conditions contained in the Explanations to Regulation 5(5). And the second stage for making a name provisional under Regulation 7(3) is when the Commission finally approves the list after consideration of the list prepared by the Selection Committee, the documents received from the State Government and the observations of the Central Government. Such latter provisionalisation of the name included in the Select List is subject to the condition that the officer concerned is issued with the charge-sheet or a charge-sheet is filed against him in a court after his name being included in the Select List finally approved by the UPSC.

Even after inclusion of an officer in the final Select List, the Central Government may not appoint an officer if it is of the opinion that it is necessary or expedient so to do in the public interest. However, such plenary powers conferred upon the Central Government by Regulation 10, with an opening non-obstante clause, are subject to the proviso that no such decision shall be taken by the Central Government without consulting the UPSC. It is clear from the language in which Regulation 10 is couched that the special power of the Central Government to deny appointment to any person, whose name appears in the select list is conditional and could be exercised only if an opinion is formed that it is necessary or expedient so to do in public interest and even after forming such opinion, the final decision could

be taken only after consulting the UPSC.

Having regard to the aforesaid legal position emerging from the reading of the relevant Regulations, the High Court was of the opinion that promotion of respondent no. 1 should not be withheld merely because of the reason that much after the meeting of the Selection Committee, a charge-sheet was served upon him. Position in this respect is summed up by the Court in the following manner:-

"As seen above, admittedly, the integrity certificate in respect of the petitioner was not "withheld", but it was sought to be withdrawn after one month of the meeting of the Selection Committee on 18.11.2003, and the charge-sheet having been issued to the petitioner as late as on 25.5.2004, inclusion of the petitioner in the list prepared by the Committee could not legally be treated as provisional under the proviso to Regulation 5(5). Thus, the intimation by the State Government for withdrawing the integrity certificate could not legally result, at the first stage, into treatment or inclusion of the petitioner's name in the list as provisional. The second stage for deeming inclusion of the petitioner's name to be provisional came under

Regulation 7(3) only after 11.6.2004 when the UPSC approved recommendation of the Selection Committee with the modification that inclusion of the petitioner in the select list shall be provisional. Assuming that all the formalities and procedure prescribed under Regulations 6, 6-A and 7(2) were duly complied with by the UPSC, the name of the petitioner in the select list could be deemed to be provisional only if, after inclusion of his name in the select list, a charge-sheet were issued. That being not the case and charge-sheet having already been issued on 25.5.2004 prior to approval and finalization of the select list on 11.6.2004, the provisions of Regulation 7(3) could not be pressed into service to deny to the petitioner appointment on the promotional post under the mandatory provisions of Regulation 9(1). It is not the case of the respondent that the Central Government had exercised its powers under Regulation 10 and the mandatory provisions for consulting the UPSC were complied with. In that view of the matter, it would clearly appear that the State Government had made an imperfect and preemptive attempt at provisionalising the name of the petitioner, after his

selection by the Selection Committee consisting, *inter alia*, of three of very senior civil servants, including the Chief Secretary, and examination by the Committee in particular of the aspect of integrity of the petitioner as required by GOI's decision under Regulation 3. The notifications dated 15.6.2004 notifying the select list and making appointments and the subsequent corrigendum dated 16/19.7.2004 also strengthen the inference that initial withdrawal of the integrity certificate, issuance of charge-sheet dated 25.5.2004 and intimation thereof on 27.5.2004 were aimed at excluding the petitioner from the list of appointees, even as it is not established that the charges leveled against the petitioner had a bearing on the suitability of the petitioner for promotion and the Central Government was satisfied that investigation into the charges was essential. In fact, the State Government has sought to prop up its objections to promotion of the petitioner by confusing "withholding" of the integrity certificate with its "withdrawal", on the basis of something adverse against him coming to notice of the Government after recommendation of his name by the

Selection Committee; and compliance with Explanation-II to proviso to Regulation 5(5) is not even pleaded. In any case, the notification dated 15.6.2004 under Regulation 7(3) notifying that the petitioner was included in the final select list approved by the UPSC could not have legally been made provisional under Regulation 7(3) as discussed hereinabove and the conditions contained in Regulation 7(4) could not legally be imposed as was sought to be done by the corrigendum dated 16/19.7.2004. Therefore, the conclusion arrived at in the impugned order of CAT that *"...the latter developments could have been taken into consideration for making his name provisional and there was an administrative error in including the name of the applicant in the select list without showing the word provisional"* was superficial, erroneous and illegal and hence required to be set aside."

It is in the aforesaid circumstances that the High Court took the view that the decision of the petitioner herein withdrawing the integrity certificate and that of the UPSC which was accepted by the Union of India in making the promotion of respondent no. 1 herein provisional was bad in law and not permissible under the

extant regulations.

Even while setting aside the decision of the Central Administrative Tribunal, in the writ petition which is filed by respondent no. 1 against the penalty imposed pursuant to the departmental proceedings held against him, the High Court has clearly stated that respondent no. 1 herein would claim such benefits as consequential relief only in case he is exonerated fully in the departmental inquiry.

Thus, the effect of the aforesaid direction giving him the relief only in case he is exonerated under the departmental inquiry would be that respondent no. 1 would be entitled to promotion, and the consequential benefit in case the penalty imposed against him stands. In view of that, it may not be necessary to entertain this petition in exercise of our jurisdiction under Article 136 of the Constitution of India. We may record at this stage that respondent no. 1 had filed special leave petition against the aforesaid judgment apportioning the relief portion. Respondent no. 1 wanted to get the benefit of promotion irrespective of the outcome of the writ petition pursuant to the departmental proceedings against him. That SLP has been dismissed by this Court.

However, learned counsel for the petitioner has two apprehensions in mind. In the first instance, it is argued that in the writ petition which is filed by respondent no. 1 challenging the imposition of penalty, the observations made by the High Court in the impugned judgment may not come in the way of the petitioner. It is further argued that, according to the petitioner, the High Court has not dealt with the regulations appropriately and the interpretation given by the regulations is incorrect and the impugned judgment may not be cited in future.

Insofar as first submission is concerned, Mr. Sanjoy Ghose, learned counsel for respondent no. 1 fairly submits (there cannot be any exception thereto even otherwise) that the writ petition which is filed by respondent no. 1 against the departmental proceedings, has to be dealt with by the High Court on its own merits uninfluenced by the observations made in the impugned judgment as the subject matter of the impugned judgment was entirely different.

Insofar as second aspect is concerned, Mr. Sanjoy Ghose, learned counsel again stated that he has no objection if the question of law, that is, the question relating to the interpretation of the regulations, is kept open. It is ordered accordingly.

As respondent no. 1 has already retired from service, we request the High Court to decide the writ petition filed by respondent no. 1 as expeditiously as possible preferably within six months.

The special leave petition is disposed of accordingly.

.....J.
(J. CHELAMESWAR)

.....J.
(A.K. SIKRI)

NEW DELHI
AUGUST 12, 2014.



JUDGMENT