

Union of India and Others

Vs

Dr. Sudha Salhan (Smt)

Civil Appeal No. 4266 of 1991

(S. Saghir Ahmed, G. B. Pattanaik JJ)

07.01.1998

JUDGMENT

SAGHIR AHMAD, J. -

1. The respondent was appointed to the post of Obstetrician and Gynaecologist on 30-7-1979. She was considered by the Departmental Promotion Committee for promotion to the post of Specialist Grade II, (Senior Scale) in non-teaching Specialist Sub-Cadre on 8-3-1989, but the proceedings of the Selection Committee were placed in a sealed cover On 16-4-1991, the respondent was placed under suspension which was followed by a charge-sheet issued to her on 8-5-1991.

2. On 18-4-1991, the respondent filed an original application before the Central Administrative Tribunal, Principal Bench, New Delhi, praying for the following reliefs :

"(a) to direct the respondents open the sealed cover pertaining to the promotion of the applicant to Specialist Grade II (Senior Scale Officers in non-teaching Specialist Sub-Cadre) in pursuance of the recommendations of the Departmental Promotion Committee (DPC) which met on 8-3-1989;

(b) to direct the respondents that the applicant be promoted retrospectively from the date her immediate junior has been promoted and to pay arrears of salary and allowances, if the DPC has recommended in her favour;

(c) to direct the respondents to give her all consequential benefits like seniority, fixation of pay etc.;"

3. The Tribunal by its impugned judgment allowed the original application and directed as under :

"In the result, therefore, we allow the OA and direct the respondents a to open the sealed cover pertaining to promotion of the applicant to Specialist Grade II (Senior Scale Officers in non-teaching Specialist Sub-Cadre) in pursuance of the recommendations of the DPC which met on 8-3-1989. Further in case the recommendation of the DPC is in her favour, we direct the respondents that the appellant be promoted retrospectively from the date her immediate junior had been promoted and pay the salary and allowances to her. We further direct that she is entitled to consequential benefits, like seniority and fixation of pay. This may be done within a period of two months from the date of receipt of a copy of this order."

4. The Union of India is in appeal before us.

5. The Tribunal has found it as a fact that on the date on which the Departmental Promotion Committee met to assess the case of the petitioner, she was neither under suspension nor was any charge-sheet issued to her. The Tribunal, consequently, replying upon its own Full Bench decision as also a decision of this Court in *New Bank of India v. N. P. Sehgal* ((1991) 2 SCC 220 : 1991 SCC (L&S) 525 : (1991) 16 ATC 487 : JT (1991) 1 SC 498) allowed the original application and issued the directions noted above.

6. The question, however, stands concluded by a three-Judge decision of this Court in *Union of India v. K. V. Jankiraman* ((1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322) in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental would be given effect to.

7. The appeal, therefore, has no merits and is dismissed without any order as to costs.