

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
DR. (SMT.) SUDHA SALHAN

DATE OF JUDGMENT: 07/01/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAİK

ACT:

HEADNOTE:

JUDGMENT:

THE 7TH DAY OF JANUARY, 1998

Present:

Hon'ble Mr. Justice S.Saghir Ahmad

Hon'ble Mr. Justice Pattanaik

Harish Chandra, Adv., (C.V.Subba Rao) Adv. (NP) for the appellants

Surya Kant, Adv. for the Respondent

O R D E R

The following Order of the Court was delivered:

SAGHIR AHMAD.J.

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

On 18th of April 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 (D.P.C.) which met on 8.3.1989;

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

(c) to direct the respondents to

give her all consequential benefits like seniority, fixation of pay etc;

The Tribunal by its impugned judgment allowed the Original Application and directed as under:

"In the result, therefore, we allow the O.A and direct the respondents 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 of 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 dated of receipt of a copy of this order".

The Union of India is in appeal before us.

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 nay charge sheet issued to her. The Tribunal, consequently, replying upon its own Full Bench decision as also a decision of this Court in New Ban of India vs. N.P.Seghal & Anr. (JT. 1991(1) SC 498) allowed the Original Application and issued the direction s noted above.

The question, however, stands concluded by a Three Judge decision of this Court in Union of India and Ors. Vs. K.B.Jankiraman & Ors. (1991 (4) SCC 109 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 the 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 onm its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officers, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would b e opened, and the recommendation would be given effect to.

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