

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1074/88
T.A. No.

199

DATE OF DECISION 30.9.1993

| | |
|--------------------------------|---------------------------------------|
| Mrs. Sheela Nigam | Petitioner |
| None | Advocate for the Petitioner(s) |
| Versus | |
| E. S. I. C. through Dir. Genl. | Respondent |
| None | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. S.R. Adige, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(ORAL) JUDGEMENT

(By Hon'ble Mr. J.P. Sharma, Member)

The grievance of the applicant is that the respondents advertised the post of Specialist in Obst. & Gynaecology. The applicant fulfilled all the qualifications and was eligible for the post, having already the working experience in the said discipline at Ashok Nursing Home, Shahdara, for a number of years. She was also sent an offer of appointment by letter dated 20.8.1987 (Annex. 'C').

.....2...

In pursuance thereof, the applicant sent her consent accepting the offer by the communication dated 27.8.1987 and thereafter, she was asked to get herself medically examined before the Medical Board, which she cleared. However, the applicant was not given the appointment letter and instead, she was told by the letter dated September 25, 1987 that due to certain changed circumstances, they are not filling up the post and the services of the applicant were not required. In the above circumstances, the applicant has prayed for a direction to the respondents to allow her to join in pursuance of the offer of appointment by issuing a letter of appointment on the terms and conditions laid down in the said offer of appointment. She has also prayed for a direction for payment of pay and allowances as are paid to the regular incumbents appointed as Specialists in the Hospital.


2. The respondents contested this application and stated that it is not maintainable at all. The offer of appointment was not, by itself, an assurance for giving an appointment, but due to the changed conditions, the post of Specialist in Obsts. & Gynaecology is not likely to be filled up. So, the appointment of the applicant was not issued. In fact, the respondents in the counter stated that they desired to fill the post

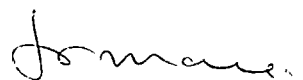
on contract basis for a short period of six months, but in the meantime, the names of regular candidates were received from the U.P.S.C. on 18.9.1987 and further, there was a delay in commissioning the Obsts. & Gynaecology Departments in the new E.S.I. Hospital for circumstances beyond the control of the respondents. However, the services of Specialists in Obsts. and Gynaecology are not still required because indoor Hospital beds in the department has not yet been commissioned and the work pertaining to outdoor patients is being managed within the existing strength of Medical Officers.

3. We have gone through the pleadings of the parties. Since it was an old case of 1988, and the nature of the case was that of securing an appointment, we did not like to adjourn it and considered the respective averments made in the pleadings. On the basis of the pleadings of the parties, it is evident that the applicant was offered the post of Specialist only on contract basis for a period of six months. A right was reserved in the said offer of appointment in para.3 to dispense with the services at any time. In any case, the respondents have shown their inability and one of them appears to be beyond the control of the respondents regarding the non-commissioning of adequate strength of beds in the indoor wards, as a result of

which, the said department of Obsts. and Gynaecology could not function as an indoor ward. It is not the case where any person other than the applicant has been considered and appointed. An offer of appointment cannot by itself give a vested right for issue of a mandamus to the respondents unless the circumstances justify. This is not a case where there is any arbitrariness on the part of the respondents. Even though the selected candidate was available from the U.P.S.C., yet no appointment had been given for want of proper functioning of indoor ward of Obsts. and Gynaecology department.

4. In view of the above facts and circumstances, we do not find any ground to interfere with the impugned order dated 25.9.1987 and the O.A. is dismissed. No costs.


(S.R. Adige)
Member (A)


(J.P. Sharma)
Member (J)