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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.237/2013

Jodhpur this the 18th day of July, 2013

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Dr. D.S. Mertia S/o Late Shri Nahar Singh, R/o Bahadur Bhawan,
Rasala Road, Jodhpur, at present employed on the post of Medical
Officer in ECHS Polyclinic, Jodhpur, Opposite MH, Jodhpur.

.....Applicant

Mr.J.K.Mishra, counsel for applicant.

Versus

1. Union of India through Secretary to the Government of India,
Ministry of Defence, Raksha Bhawan, New Delhi.
2. Director, ECHS Regional Centre, Ahmedabad
(Gandhinagar), GB-1, Sector -09, Gandhinagar, Gujrat, PIN-
382009.
3. The Brigadier, HQ Jodhpur SUB Area, Multan Lines, Army
Area, Jodhpur.
4. Officer i/c ECHS Cell, Station Cell, HQ Jodhpur SU Area,
Multan Lines, Army Area, Jodhpur.

.....Respondents

Smt. K. Praveen, counsel for respondents.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

By way of this OA, the applicant has challenged the action
of the respondents by which the respondent department has selected
another person in place of the applicant, and further has not
extended the services of the applicant on contractual appointment
of Medical Officer.

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2. The short facts of the case as averred by the applicant are that the applicant applied for appointment to the post of Medical Officer in pursuance with an advertisement in the year 2009 in ECHS at Jodhpur. He was duly selected and appointed on fixed remuneration basis for a period of three year extendable upto five years and he joined his services on 17.06.2009. The period of his engagement has been extended from time to time and the last extension was granted vide agreement dated 21.06.2012. The respondent No.4 invited application from the eligible persons to various posts including the post of Medical Officer for Pali and Shergarh in ECHS and the last date of submission of application was fixed as 28.03.2013. No suitable person was available for the post of Medical Officer and the post of Medical Officer were advertised again with last date as 04.05.2013 and one post at Jodhpur was added. The applicant immediately contacted the concerned authority as to the reasons for advertising one post of Medical Officer at Jodhpur despite the fact that the applicant is very much available and against another post one incumbent had recently been appointed and there being only two posts of Medical Officer. The applicant was told that he need not worry and the new person will be given appointment only after the applicant completes the age of 65 years on 09.12.2013. Hence, the fresh selection was conducted for the post of Medical Officer due to furnishing wrong details to the 2nd respondent i.e. selection organizing authority, in respect of the applicant in assessment sheet as on 15.12.2013. It has been shown in the assessment sheet as if the applicant has

completed 5 years tenure of contractual service whereas he completed only four years. The 3rd and 4th year columns contain the same dates. The applicant immediately submitted a representation on dated 02.05.2013 and sent through office registry to the 3rd respondent. The applicant has come to know from the concerned authority i.e. 4th respondent that the 3rd respondent has not agreed for his extension and expressed his inability to do anything in the matter since wrong or right a new person has been selected and he has to be appointed. The respondents have not rectified their mistake and they going to appoint the new candidate in place of the applicant, therefore, the applicant has filed the present OA for the following reliefs:-

- “(i) That respondents may be directed to consider grant of extension/review of appointment for the period from 21.06.2013 to 09.12.2013 as per the policy of engagement/appointment of Medical Officers (A/1) and to continue him in service according and allow all consequential benefits.
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded.”

3. In support of his OA, the applicant has annexed the documents from Annexure-A/1 to A/6.

4. Respondents by way of counter have denied the right of the applicant for his extension of the contractual engagement and it has been averred in the reply that the appointment of the applicant was purely contractual and for a certain period. It has been further averred in the reply that the extension of the applicant was not granted since residual period left because of age factor of the applicant as stipulated in Appendix “A” to Government of India,

Ministry of Defence letter No.26 (6) 03/US (WE)/D (Res) dated 22nd September, 2003 and letter No.24(06)03/US(WE)D/(Res) Pt.III, dated 15.06.2006. It has been further averred that after the 20.06.2013, when the earlier agreement expired due to afflux of time the applicant was no more a contractual engaged persons in the Ex-servicemen Contributory Health Scheme (ECHS). It has also been averred in the reply that the applicant does not hold a civil post under the Government of India and is not a civil servant, and the applicant was appointed purely on contractual basis, therefore no right accrue in favour of the applicant and by way of non-extension of time, no civil right of the applicant is infringed/violated by the respondent and no cause of action accrues in favour of the applicant. It has been further averred that there is no stipulation for compulsory continuation of contractual engagement upto 65 years of age in any of the policy instructions and since the applicant was not left with residual 12 months for further renewal of contract, his contract was not renewed, in view of the letter dated 15.06.2006 (Annexure-R/2) issued by the Under Secretary to the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi to the Chief of Army Staff, the Chief of Naval Staff and to the Chief of Air Staff together with the agreement proforma issued by the Government of India. It has been further averred in the reply that the renewal of contract after 20 Jun3, 2013 as 12 clear months for entering into contract as stipulated vide Government of India letter, mentioned above, were not available to him and therefore, by the non-renewal

of the contract, the respondents have not committed any wrong or any illegality.

5. In support of their reply, the respondents have annexed documents as Annexures-R/1 to R/4.

6. By way of rejoinder while reiterating the same facts, the applicant averred that the post, on which he worked, comes within the purview of public servant within the meaning of Article 311 of the Constitution of India, in view of the judgment of the Hon'ble Supreme Court passed in Civil Appeal No.8772/2012 (Special Leave Petition (Civil) NO.30324/2008, decided on 05.12.2012 in the case of **Union of India and Ors. Vs. Gobinda Prasad Mula**. He further averred that a similarly situated person namely Dr.Bharat Kumar Gupta's contractual appointment was extended by the respondents for further six months, therefore, a hostile and discriminatory treatment has been given in his case. It has been further averred in the rejoinder that reply has not been verified as per Rule 2 of Rule 12 of the CAT Procedure Rules, which requires to be verified as per provisions of order 6 Rule 15 of the Civil Procedure Code and since the entire procedure has not been complied with by the respondent department, therefore the reply cannot be taken on record or cannot be considered.

7. Heard both the parties. Counsel for the applicant contended that applicant is entitled to have the extension of 6 months more of his service engagement because in the similarly situated person Shri

Bharat Kumar Gupta's case the extension was granted by the respondent department.

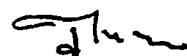
8. Per contra, counsel for the respondents contended that it is the contractual appointment and it is purely discretion of the respondent department to extend or not, therefore, no right accrued in favour of the applicant.

9. We have considered the arguments advanced by both the parties and perused the documents. The applicant in para No.1 of his OA pleaded that he applied for appointment to the post of Medical Officer in pursuance of the advertisement in the year 2009 in ECHS at Jodhpur, and the terms and condition of appointment to the post of Medical Officer are mentioned in the letter dated 02.06.2011 issued by the Regional Centre ECHS Pune, and the copy of the same has been annexed as Annexure-A/1 of the OA. It is clear that the applicant's appointment was purely contractual at ECHS Polyclinics, Jodhpur. As per clause (a) of para 5 of the Annexure-A/1, the normal tenure of the contractual period of shall be three years, extendable upto a maximum of five years, and the applicant in pursuance of his selection, executed an Agreement at Annexure-A/2 with the respondent department, and prima facie it is clear from the documents at Annexures-A/1 & A/2 that the applicant's appointment was purely contractual one and it is the settled position of law that for the contractual employment no such right accrues in favour of the applicant because it is always a bilateral agreement and in bilateral agreement, if any party fails to

comply with the contract the normal remedy available for the applicant is to file a suit for damages and not to file the petition to direct the respondents to extend the period of engagement by executing a fresh contract. So far as the contention of the applicant that the reply filed by the respondent department is not verified as per the provisions of Order 6 Rule 15 of the Civil Procedure Code, without expressing any opinion on this argument, simply on the averment of the applicant, no case for directing the respondents to extend his engagement services by way of contractual employment is made out. Therefore, OA lacks merit and the same is dismissed with no order as to costs.



(Meenakshi Hooja)
Administrative Member



(Justice K.C. Joshi)
Judicial Member