

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.2097/2015

Order Reserved On:28.09.2016

Pronounced on: 30.09.2016

Hon'ble Mr. P.K. Basu, Member (A)

V.S. Kajuria

Lt. Col (Retd.)

S/o Late Chet Ram Khajuria

OIC ECHS, aged 60 years

Presently posted at

36, Shanti Niketan,

Bulandshahar (UP).

.. Applicant

(By Advocate: Shri Mohan Kumar)

Versus

1. Union of India
through Secretary,
Ministry of Defence.
2. The Director
More Line Delhi Cantt.,
New Delhi-110010.
3. The Station Commander
Babugarh Cantt. (UP),
Through Adm Commandant and OIC ECHS
Babugarh Cantt. (UP). .. Respondents

(By Advocate: Shri Hanu Bhaskar)

ORDER

The applicant retired from the Indian Army as Lt. Col. on 30.06.2011, after serving the army for a period of 36 years. The Government runs an Ex-Servicemen Contributory Health Scheme (ECHS) for which retired army officials are appointed as Officer-In-Charge ECHS Polyclinic. The rules provide that this appointment will be contractual in nature and will be for a period of 12 months initially and

thereafter renewable for 12 months at a time upto and subject to attaining the maximum age prescribed by Government. The renewal of contract would be subject to continued good conduct and the performance of the engaged person during the preceding 12 months and existence of the requirement of services of the engaged persons at the ECHS Polyclinics. A fresh contract will be executed for each renewal.

2. The applicant states that initially he was appointed as Officer-In-Charge ECHS Polyclinic, Bulandshar, UP for a period of 11 months effective from 29.05.2012. The maximum age limit prescribed is 65 years. The applicant in this Original Application dated 28.05.2015 has mentioned that he is 60 years of age. His services were extended year after year and it was due to expire on 02.03.2015. Instead of extending the period for another 11-12 months, the period was extended for 3 months only, i.e. up to 04.06.2015. Aggrieved by this order, this OA has been filed with the following prayer:-

“Direct the respondent to grant 12 month extension to the applicant in the present employment and restrain them substituting the applicant by another contractual employee till he attains the age of 65 years”.

3. The applicant relied on the judgment of the Hon’ble Supreme Court in the case of ***Md. Abdul Kadir and Another Vs. Director General of Police, Assam Civil Appeal No.7922 of 2002*** and to following specific portion of the judgment:-

“In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is

termed as ad hoc appointments. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the scheme”.

It is asserted that in view of this finding of the Hon’ble Supreme Court, the respondents should not have taken the decision to replace the applicant with another temporary employee.

4. The learned counsel for applicant has also relied upon the judgment of the Hon’ble Punjab and Haryana High Court in **CWP No.25589/2014 (O&M) – Sushma Devi and Another Vs. U.O.I. & Others** decided on 08.10.2015 specifically to the following ratio declared by the Hon’ble High Court:-

“There is no complaint regarding their work and conduct. Existence of work is not in dispute. Terms and conditions of their agreement are similar to that of the petitioners in Dr. Sukhpreet Singh’s case (supra). Termination of their services only to replace them with another set of contractual employees is thus illegal and unjustified”.

5. The learned counsel for the applicant has also cited the judgment in the case of **Wing Commander Satbeer Singh Sandhu Vs. U.O.I. & Others OA No.060/00221/2015** decided on 09.09.2015 by the Chandigarh Bench of the Central Administrative Tribunal and the following relevant paras are quoted below:-

“4. In the grounds for relief, it has been stated that the applicant fulfills the criteria for renewal of contractual service for the post of OIC Polyclinic as his services are satisfactory and he has not violated any of the conditions mentioned in para no.11 of the agreement of service (Annexure A-2). Moreover, he has not attained the age of superannuation and as a policy matter the renewal clause has been kept for the benefit of the organization to save on

funds, effort, and to get better work from more experienced person who has manned the post for almost 4 years. Moreover, it has been observed by the Hon'ble Supreme Court in Hargurpartap versus State of Punjab that a contractual employee cannot be replaced by another contractual employee unless his performance or work is not satisfactory. In the present case, the applicant is aggrieved and dismayed by the approach adopted by the respondents by advertising for the post of OIC Polyclinic despite the applicant being most eligible serving candidate for the post and also not responding to his offer for renewal of contract which is evident from Annexure A-4, which shows that the acts of the respondents are against principles of natural justice and their own policy (Annexure A-5).

6.....It has further been stated that the period of contract as per (Annexure R-2) was one year but with reference to para 2 of the agreement which states "for a period of twelve months initially and thereafter renewal for 12 months at a time upto subject to attaining maximum age prescribed as indicated in Appendix A to Government of India, Ministry of Defence letter dated 22nd September, 2003 bearing No.24(6)/03/US(WE)/D(RES) is attached as Annexure A-6".....

7....the respondents should have issued a show cause notice to him under para 11 of the agreement between the contractually engaged persons but no such notice had been issued to the applicant.

9. We have given our careful consideration to the matter. From the content of the agreement between contractually engaged person and Area Officer Commanding / Station Commander for rendering service to ECHS Polyclinic Sirsa (Annexure R-1), it is evident that the duration of the contract is for a period of 12 months and renewal would depend upon good conduct and performance of the engaged person and fresh contract would be executed for each renewal. It is also seen that vide letter dated 15.09.2014 complaint was made against Medical officer and OIC ECHS Sirsa by a large number of ex-servicemen and this complaint was replied to by the OIC, Wing Commander Sandhu (Retd.), on 08.01.2015. If the competent authority was of the view, after receiving the response of Wing Commander, Sandhu (Retd.) on 08.01.2015, that his work and conduct was unsatisfactory, the appropriate course of action would have been to issue show cause notice as per para 11 of the agreement (Annexure R-1). No such action was taken nor was any warning or any other communication issued to Wing Commander, Sandhu (Retd.) regarding his performance

as OIC, ECHS. Hence, the applicant had legitimate expectation that his contract would be extended for further period of one year as per para 2 of the agreement. It appears that he submitted the fresh contract in this regard to the authorities. 6th and 7th March, 2015 were the days of mandatory break and thereafter the applicant attended duty on 09th and 10th March, 2015 as per entry in the Attendance Register (Annexure A-3).

10. In view of the above, we conclude that the applicant's request for renewal of his contract as OIC, Polyclinic, Sirsa for a further period of one year from March 09th, 2015 merited proper examination. The respondents are therefore directed to consider the matter regarding renewal of the contract of Wing Commander Sandhu (Retd.) as OIC, Polyclinic, Sirsa, for a further period of one year. Action in this regard may be completed within a period of four weeks from the date of receipt of a certified copy of this order being served upon the respondents. MA No.060/00842/2015 stands disposed of accordingly".

6. The learned counsel for the applicant also drew my attention to Annexure A-6, which is a letter from the applicant to Lt. Col. Admn. Comdt. & OIC ECHS wherein he has stated his achievements as follows:-

"1. When I joined expenditure of ECHS Polyclinic bill was about 15 crore per year which is now reduced to 5 crore as only emergency cases are referred to empanelled hospitals now.

2. My personal efforts resulted in acquirement of 1200 sq. yard land in Zila Sanik Board Bulandshahr for permanent building of ECHS Polyclinic Bulandshahr.

3. ECHS Polyclinic is running peacefully these days.

4. There is no complaint against me".

7. In their reply, the respondents have stated that they took administrative decision not to go for another renewal for the incumbent OIC ECHS Polyclinic Bulandshahr, i.e., the applicant and looked for a more "dynamic fresh alternative". An advertisement to this effect was made after obtaining approval of the competent authority. The applicant also applied for the post of OIC so advertised. Since delay was

anticipated in the selection of individuals for the advertised posts, the applicant, the incumbent OIC, was given a temporary 3 months' extension of tenure as provided in ECHS rules. A Board of Officers meeting for selection of ECHS staff for ECHS Polyclinic, Bulandshahr was held at Station HQ Babugarh on 10.04.2015. The selection was carried out by an independent board/panel of officers detailed for the said purpose by HQ PUPSA. Three applicants including the applicant appeared for the interview. Col. Rakesh Tripathi (Retd.) was shortlisted to be selected for the post of OIC, EICS Polyclinic Bulandshahr by the Board, based on merit. The applicant was last in the merit list. The selection was thereafter vetted and approved by the competent authority.

8. They have further submitted that the applicant was to complete extended temporary tenure on 04.06.2015, hence he was directed to hand over charge to Dr. Padmaja Donkari Dental Officer, ECHS, in tandem with existing practices and norms of ECHS rules. The same was complied with and the duties of OIC ECHS Polyclinic were handed and taken over as ordered on 04.06.2015. Col. Rakesh Tripathi (Rtd.), the selected candidate was issued appointment letter and has assumed appointment of OIC, ECHS Polyclinic Bulandshahr w.e.f. 21.06.2015.

9. The learned counsel for the respondents contends the following:-

- (i) The Tribunal cannot create contract between the parties. It is clear from his appointment letter that the applicant is on contract and not a temporary employee. It further provides that the contract can be terminated.

(ii) It is also argued that applicant participated in the process of selection and was last in the merit list, therefore, he could not be offered the job of OIC. Having participated in the process, he cannot now raise a claim with regard to process of selection [**Ramesh Chandra Shah and others vs. Anil Joshi and others, (2013) 11 SCC 309**].

(iii) It is also pointed out by the learned counsel that since a person has been appointed against the said post of OIC and who has also joined, he should necessarily be a party in this OA, but the applicant has failed to implead him as a party which renders this OA not maintainable for non-joinder of parties.

(iv) It is further argued that since mala fide is alleged, the applicant should not only name the person but also include him as a party. Since he has not done so, again the application suffers from the defect of non-joinder of parties.

10. Heard both the learned counsel and perused the judgments/pleadings.

11. The respondents have made it clear that they had advertised for fresh appointment of OIC, in which the applicant participated, but was last in the merit list, out of three applicants. The person who was selected has also joined. Therefore, the respondents have raised a valid ground that having participated in the process of selection and failed, he cannot now question the process of selection in accordance with the settled law. Moreover, not making the selected person as a party as well

as the fact that having alleged mala fide, he has neither named the person against whom mala fide is alleged nor included him as a party again results in this OA, not being maintainable for non-joinder of parties.

12. Though we accept the arguments of the applicant that the ratio of law laid down by the Hon'ble Supreme Court, High Court and Tribunal in the judgments quoted above, support his case because of the above valid arguments of the learned counsel for the respondents, this OA cannot succeed. The OA is, therefore, dismissed. No costs.

(P.K. BASU)
MEMBER (A)

Rakesh