



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2627/2019

Page | 1

Reserved on: 27/01/2020

Pronounced on: 04.03.2020

**Hon'ble Mr. S. N. Terdal, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sandeep Kumar, age 37 years,
Designation:- LDC (Group -C),
Medical Council of India,
RZ G-56 Sitapuri Part-2,
New Delhi – 110045.

...Applicant

(By Advocate: Mr. Sajan Shankar Prasad)

Versus

1. Medical Council of India,
Through its,
Secretary General,
Board of Governors in Supersession of
Medical Council of India,
Pocket – 14, Sector – 8, Dwarka, Phase –I,
New Delhi – 110077.

2. Central Bureau of Investigation,
Through its Director,
CGO Complex, Lodhi Road,
New Delhi – 110003.

3. Ministry of Health and Family Welfare,
Through its Secretary,
Department of Health and Family Welfare,
Nirman Bhawan, New Delhi – 110001.

...Respondents

(By Advocate: Mr. Tarun Verma and Mr. R. S. Rana)



O R D E R

Mohd. Jamshed, Member (A):-

The applicant has been working as Lower Page | 2

Division Clerk (LDC) with the respondents. On 07.05.2018 an FIR under section 7, 12, 13 (2) r/w 13(1) (d) of PC Act, 1988 and section 120B of IPC vide FIR bearing No. 6(A)/2018-AC.III had been lodged by CBI against the applicant and two others. The applicant was never detained or arrested and has been cooperating with the investigation by the CBI. The respondents vide order No. MCI-154(3)/2018-Estt./107340 dated 10.05.2018 placed the applicant under suspension w.e.f. 10.05.2018. The suspension period has been specifically extended from time to time. However, it has been indicated that the suspension period extended from time to time has not been extended by the appropriate authority i.e. the Review Committee and, therefore, the same is invalid. The applicant has been making representation against this. It is also indicated that no charge sheet has been filed despite a lapse of more than a year. It is contended that these suspension orders are bad in



law and the extension have not been approved by the Review Committee which should have been done after 90 days. Aggrieved by this action on the part of the respondents, the applicant has filed the present OA, seeking the following relief(s):-

Page | 3

“a) to quash and set aside the impugned orders dated 01.08.2019, 07.08.2018 and 01.02.2019 as totally illegal and void ab-initio.

b) to quash and set aside the impugned order dated 01.08.2019 being passed illegally after the elapsed of prescribed 90 days period.

(c) to quash and set aside any such order which is being passed by putting reliance on the orders dated 01.08.2019, 07.08.2018 and 01.02.2019.

(d) to reinstate applicant services with the immediate effect along with the back wages as applicable.”

2. The applicant has contested that the suspension should not be continued beyond a period of three months in terms of various instructions issued by DOP&T O.Ms dated 18.11.2014, 03.07.2015, 21.07.2016 and 23.08.2016. It has also been submitted that no departmental proceedings have yet been started against the applicant.



3. Respondents in their counter affidavit have opposed the OA, submitting that the applicant has approached the Tribunal seeking quashing of various suspension orders and extension of suspension orders. In this connection, it is stated that CBI had registered FIR dated 07.05.2018 against the applicant for demanding and obtaining bribe. The applicant is accused in FIR and the investigations are at an advanced stage. It is also submitted that the representation of the applicant dated 14.08.2019 has been replied by the respondents and it is also a fact that the Review Committee on 01.08.2019 had undertaken review of the suspension and decided to extend the same for further 90 days w.e.f. 03.08.2019. Respondents have also opposed the contention of the applicant that he should be reinstated. It is submitted that the respondents do not have any other office or department in the country where the applicant could have been transferred and thus there was no other means by which the respondents could prevent the applicant from obstructing the investigation, tampering with the official record or influencing the witnesses in case his suspension is



revoked. It is submitted that the applicant while working as Lower Division Clerk in the Monitoring Section of the office of MCI along with others was involved in corrupt and illegal activities by abusing his official position including taking bribes. It is submitted that the CBI conducted a preliminary enquiry against the applicant and registered an FIR dated 07.05.2018. In view of the FIR registered under PoC Act against the applicant, after due deliberations it was decided to place the applicant under suspension. This was also communicated to the applicant vide letter dated 10.05.2018. Subsequent extensions have been made in accordance with law and extended by the Review Committee. It is also stated that the applicant made representation seeking reinstatement in service vide his letter dated 14.08.2019 stating that the period of suspension has expired on 02.08.2019 and, therefore, he should be reinstated w.e.f. 03.08.2019. The respondents submit that vide order dated 01.08.2019 the Review Committee's order for extension of the suspension period for a period of 90 days w.e.f. 30.08.2019 had already been extended. Thereafter also, vide order



dated 24.10.2019, the Review Committee further decided to extend the suspension of the applicant for a period of 90 days w.e.f. 01.11.2019. The

Page | 6

respondents have relied upon the judgment of

Hon'ble Delhi High Court in W.P. (C) No. 8134/2017 (Govt. Of NCT of Delhi Vs. Dr. Rishi Anand) wherein it has been upheld that suspension can continue based on administrative requirements. The relevant paras of the judgment read as under:-

“23.Thus, there is no force in the submission of the respondent that the suspension of the respondent automatically lapsed since the charge sheet was not issued within the initial period of 90 days. Pertinently, the respondents suspension was reviewed and extended by the government within the initial period of 90 days on 27.09.2016. Thus, the suspension of the respondent did not lapse under sub rule (7) of Rule 10 CCS (CCA) Rules.

24.We are of the considered view that in the facts of the present case, the impugned order was certainly not called for, revoking the suspension of the respondent. When the O.A. was preferred, the charge sheet had already been issued to the respondent on 01.03.2017. At the highest, the tribunal could have called upon the petitioner to justify its extension by passing a reasoned order. It was not for the tribunal to step into the shoes of the administration, and to take a decision –which only the administration can take, on the issue whether the suspension of the charged officer should continue, or not. The jurisdiction of the tribunal is confined to examining the administrative action of the government on the well established objective principles of judicial review and, where it considers necessary, to require the government to perform its statutory obligation to take a



decision. In view of the aforesaid, the impugned order cannot be sustained and is, accordingly, set aside.

25. Learned counsel for the respondent submits that the petitioner is not paying any subsistence allowance to the respondent. This position cannot be allowed to continue. The petitioner is directed to pay the subsistence allowance to the respondent under the rules as admissible to him along with arrears. The arrears shall be paid within four weeks from today and the payment of subsistence allowance shall be commenced forthwith.

Page | 7

26. In case the suspension of the respondent is further extended, it shall be in conformity with Rule 10(6) of the CCS (CCA) Rules and reasons therefor shall be communicated to the respondent, and it shall be open to the respondent to assail the same on all available grounds.”

4. The respondents also relied upon the judgment of this Tribunal in OA No. 3505/2018 (Vikash Kumar Vs. UOI & Ors.). The relevant paras of which reads as under:-

“ 26. The endeavor of Hon’ble Supreme Court, for decades together was to ensure transparency in Government services and public life, and even new statutory agencies, like CVC, have been brought into existence in compliance of the directions of the Supreme Court. Radical changes were brought as regards the functioning of CBI is to ensure that no laxity is exhibited in the context of dealing with the cases where allegations of corruption or misconduct of serious nature exist. The applicant is facing serious allegations. Whatever be the reasons for default in issuing charge sheet, that should not become an advantage for the applicant to get reinstated into service.

27. We, therefore, dismiss the OA. However, we direct that the respondents shall make endeavor to file the charge memo within a period of three months from the date of receipt of copy of this order and when the Suspension Review Committee meets next, it shall specifically address the question as to whether it is desirable at all to continue the suspension, and whether the interests of the State and of the applicant



would be served in case he is transferred to any other place by reinstating him. There shall be no order as to costs.

5. Learned counsel for the applicant has placed reliance upon the judgment of Calcutta High Court in **Goutam Goswami, Detenu vs. The District Magistrate, Birbhum and others**, 1972 SCC Online Cal 155 and the judgment of High Court Judicature at Bombay in **W.P. No. 2815/2011** (The State of Maharashtra & Ors. Vs. Dr. V.N. Shinde) decided on 07.09.2011 and the judgment of Maharashtra Administrative Tribunal in **OA No. 936/2018** (Smt. Vandana Karansing Valvi Vs. The State of Maharashtra) decided on 12.02.2019.

6. We heard Mr. Sajan Shankar Prasad, learned counsel for the applicant and Mr. Tarun Verma and Mr. R. S. Rana, learned counsel for the respondents.

7. In this case, the applicant was working as LDC and the CBI filed an FIR against him and others dated 07.05.2018. In a detailed note dated 07.05.2018 Superintendent of Police CBI/AC.III/New Delhi provided the details of the allegations and information against the applicant



and others on the basis of which the FIR has been lodged also that these facts and circumstances prima facie disclose commission of cognizable offences punishable u/s 120-B of IPC and Section 7,12 and 13 (2) r/w 13(1) (d) of PC ACT by the applicant and two others. A regular case has been registered for investigation. Based on this information and the seriousness of the offences under which the FIR was registered, the respondents vide their letter dated 10.05.2018 placed the applicant under suspension with immediate effect. In their letter dated 07.08.2018, this period was further extended for a period of 90 days w.e.f. 08.08.2018. This was subsequently extended vide letter dated 05.11.2018 for a period of 90 days by the Review Committee and subsequently vide office order dated 01.02.2019 and 03.05.2019, 01.08.2019 and 24.10.2019. It is also a fact that no charge sheet has not yet been issued against the applicant for disciplinary proceedings. The respondents have also been seeking updated information from CBI regarding investigations. It is also stated that there is no other office of the respondents outside Delhi,



where the applicant could have been posted and that the revocation of suspension would hinder the ongoing investigations. The point argued by the applicant is on the question whether the respondents can continue to extend the suspension period for an indefinite period. The law in this regard is clearly laid down in the above quoted judgment of Hon'ble High Court and Tribunal wherein it was held that the Tribunal and Courts cannot assume the role of Administrative Authorities and decide on such disciplinary proceedings including suspension.

Page | 10

8. However, the very fact that the charge sheet has not been issued is a point which needs consideration. In view of the judgment of Hon'ble Supreme Court and Tribunal in similar cases, we do not find any illegality and infirmity in the decision of the respondents to continue with the suspension of the applicant. However, at the same time it is felt that as there is no bar for undertaking disciplinary proceedings alongside criminal case, it would be appropriate if a decision is taken by the Competent Authority for issuing of charge sheet and also whether the suspension



needs to be extended further. The applicant is facing serious allegations and as ruled in the above mentioned judgments this should not become an advantage for the applicant to get reinstated into service.

Page | 11

9. Therefore, the OA is, accordingly, dismissed. The respondents are directed to consider issuing charge memorandum within a period of three months. The Review Committee for extension of suspension shall also specifically look into whether it is desirable to continue the suspension in view of the above mentioned. Pending MAs, if any, shall stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(S.N. Terdal)
Member (J)

/Ankit/