

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1273/2016

New Delhi, this the 3rd day of February, 2017.

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (A)**

Col. (Retd.) Dr. S.K.Ojha
S/o Sh. Parvesh Nath Ojha
R/o A-73, Krishna Residency,
Sec-18A, Plot No.17,
Dwarka, Delhi-110075.

-Applicant

(By Advocate: Shri Rajeev Sharma with Shri T.Rajat Krishna
& Shri A.K.Barua)

V E R S U S

1. Union of India through
Its Secretary,
Dept. of Health (Dental Education),
Ministry of Health & Family Welfare,
Nirman Bhavan, Maulana Azad Road,
New Delhi-110011.

2. Dental Council of India,
Through its Secretary,
Aiwan-E-Ghalib Marg,
Kotla Road, New Delhi,
New Delhi-110002

3. President,
Dental Council of India,
Aiwan-E-Ghalib Marg,
Kotla Road, New Delhi,
New Delhi-110002. ...Respondents.

(By Advocate: Shri A.K.Behera with Shri Dhawal Mohan,
Ms.Pooja Sarkar & Shri T.S.Singh for R-2 and R-3
and Sh C.Bheemanna for R-1)

ORDER (ORAL)**By Mr. Justice Permod Kohli**

While serving as Officiating Secretary/Joint Secretary with the Dental Council of India, the applicant was placed under suspension vide impugned Memo dated 16.07.2015 for contemplated disciplinary proceedings. The applicant was suspended with immediate effect till further orders. The suspension was thereafter extended. The applicant has filed the present OA challenging his suspension. One of the grounds is that the charge-sheet has not been issued even within a period of 90 days.

2. In the counter affidavit filed admittedly, a charge-sheet was issued vide Memo dated 04.03.2016, i.e. beyond the 90 days period of suspension. Without going to other question, this OA is liable to be allowed in view of the law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary vs. Union of India** reported as (2015) 7 SSC 291. Relevant paras of the said judgments read as under:

"21 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension.

(3)

As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

22. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review."

3. Mr. A.K.Behera, learned counsel for the respondents, submits that on conjoint reading of paras 21 and 22 of the judgment of the Apex Court, it appears that it is not mandate of the ratio of the judgment that if the charge-sheet is not filed within 90 days of the suspension, the suspension has to go. We

(4)

are unable to accept this contention. In view of clear directions issued by the Apex Court in Para 21 of the judgment in **Ajay Kumar Choudhary** (supra), the only conclusion which can be drawn is that suspension is rendered illegal in the event the charge-sheet is not issued within 90 days of the suspension. It is also noticed that the DoP&T has issued Office Memorandum dated 23.08.2016 pursuant to the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (supra). Mr. Behera further submits that the respondents may be allowed to pass a fresh suspension order. Suffice it to say that if the law permits, they are at liberty to do so.

4. This OA is accordingly allowed. The impugned order dated 16.07.2015 is hereby set aside along with all extensions thereafter. No order as to costs.

(K.N.Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/kdr/