

**Central Administrative Tribunal
Principal Bench**

OA No.1623/2017

New Delhi, this the 26th day of May, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Anshu Sethi Bajaj, Aged 44 years,
W/o Dr. B.K. Bajaj,
Working as Deputy Secretary (Under Suspension),
Medical Council of India, New Delhi
R/o H.No.184, Shakti Khand-3,
Indirapuram,
Ghaziabad(UP)-201014.

...Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Medical Council of India,
Through its Secretary,
Pocket-14, Sector-8, Dwarka,
Phase-I,
New Delhi-77.
2. The Executive Committee of Medical Council of India,
Through the Deputy Secretary (Admn.),
Pocket-14, Sector-8, Dwarka,
Phase-I,
New Delhi-77.

...Respondents

(Nemo for respondents)

ORDER (ORAL)

Mr. Justice Permod Kohli, Chairman :-

Despite service respondents are not appearing. Set ex-parte.

2. Heard the learned counsel for applicant.

3. The applicant was placed under suspension vide order dated 01.10.2014 on account of registration of FIR as also pending investigation and initiation of departmental proceedings against him on 22.09.2014 invoking Section 10(1) (a) of CCS (CCA) Rules, 1965 read with Clause 58(1) of the Medical Council of India Regulations, 2000. The said suspension has been extended vide order dated 30.12.2014 for a further period of 90 days. The suspension has further been extended vide order dated 20.03.2015 for a further period of 90 days. Similar extensions have been granted vide orders dated 26.06.2015, 22.09.2015, 08.12.2015, 07.03.2016, 17.06.2016 and 16.03.2017 extending the suspension of the applicant for a further period of 90 days every time. It is relevant to note that all these extensions were granted consequent upon recommendations of the Review Committee constituted from time to time.

4. The charge sheet was issued on 19.06.2015 for initiating departmental proceedings under Rule 14 of the CCS (CCA) Rules, 1965. The said charge sheet, however, has been withdrawn vide order dated 05.12.2016 without prejudice to further departmental action. Thereafter, no charge sheet has been issued. In the FIR registered against him, the investigating agency has filed closure report on 16.12.2015 before the competent Court (Annexure-A/5). The Magistrate is yet to take a decision.

5. Admittedly, applicant was never arrested in the criminal case and the charge sheet was also issued beyond the 90 days period of his initial suspension. In any case, the said charge sheet has also been withdrawn and no charge sheet has been filed thereafter. In the circumstances, continuation of the suspension is totally illegal and unwarranted, particularly, in view of the dictum of the judgment of Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another** (2015) 7 SCC 291, in which following observations have been made :-

“13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period

especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. 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. 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.”

6. In view of the above, the OA is allowed. The impugned order dated 01.10.2014 is quashed. Consequent upon quashment of impugned order, respondents are directed to reinstate the applicant within a period of one week from the date of receipt of a certified

copy of this order. The respondents are further directed to treat the period of suspension as on duty in absence of any departmental or criminal proceedings and pay the differential amount between the subsistence allowance already paid and the admissible salary payable to the applicant, within a period of three months from the date of receipt of certified copy of this order. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘rk’