

DEPT DEPARTMENT OF HEALTH 1207 2 02 11210000

MEDICAL TRIBUNAL OF NEW SOUTH WALES

**DEPUTY CHAIRMAN
MEMBERS**

**JUDGE H.H. BELL
DR. M. PASSFIELD
DR. J. GAMBRILL
N. WHALAN ESQUIRE**

25TH FEBRUARY, 1992

IN RE DR. S.R. RAHMAN

This is an application under s32V(1) of the Medical Practitioners Act, for review of the de-registration of the applicant. The application is in the form of a letter which sets out in a somewhat rambling style a series of criticisms of the Determination of the Medical Tribunal made on 19th July, 1991. Annexed to the letter are numerous documents, reports and declarations, almost all of which either came into being before the removal of his name from the Register or deal with events before that day.

The letter bears date 27th August, 1991 and was received by the Medical Tribunal on 9th October, 1991, having been forwarded to the Tribunal by the Medical Board to whom it was addressed.

The general tenour of the letter is that the name of the applicant should not have been removed from the Register and should for that reason be restored. This demonstrates a misconception of the purpose and function of a review. It is not an appeal nor is it a re-hearing. It is a review, not of the Determination, but of the removal of the applicant's name from the Register. It is perhaps unfortunate that the term "review" should have been used in the Medical Practitioners Act since it does suggest some kind of an "appeal".

As to the real nature of such an application, see the Application of J.R.M. Caplehorn 8th February, 1983 and see Kardell 12th June, 1984 which was followed in the Applications of Halidar:

"... it is for the applicant to prove to us that he no longer demonstrates those defects which were incompatible with membership of a self-respecting profession and in particular the defect which led to the conduct from which the decision to remove his name from the Register was made. The heavy onus which lies upon the applicant in this regard needs to be discharged by clear proof and not merely by the effluxion of time."

Dr. Halдар made two applications and the date of the second decision is not known to me but it was an application under the present section, made after 1987.

The Complaints Unit apparently appreciated that the applicant had misunderstood the nature of the remedy available to him and the Crown Solicitor wrote to him on 17th February, 1992 explaining the situation.

Upon the matter coming on for hearing on 24th February, 1992, the applicant appearing in person, the Deputy Chairman expressed the view that the application might be misconceived. Counsel for the Complaints Unit advised the applicant that Legal Aid might be available for the purpose of such a proceedings, whilst reiterating the views expressed by the Deputy Chairman.

The applicant then sought an adjournment in order that he might properly prepare his application. In view of the lapse of time since lodgment of the application and of the likely difficulty in remedying the situation within any reasonable period, this belated application was refused and the matter proceeded.

The order under review followed a Determination that the applicant

- 1] did not have sufficient mental capacity to practise medicine and
- 2] had been guilty of professional misconduct.

The two allegations were closely related, the same set of particulars being supplied in respect of both. These alleged assaults by the applicant on another doctor and on a nurse; the writing of offensive letters, a failure to satisfy an examiner as to his medical knowledge and three examples of lack of skill and knowledge, that is to say two instances of inappropriate case management and one of failure properly to interpret an electrocardiogram.

Some of these allegations were eventually admitted but the applicant offered explanations which he submitted rendered them excusable. All were found proved.

The Tribunal found that because of his mental condition he was, as at 19th July, 1991, unfit and incapable of practising medicine to an adequate standard. It found that he probably suffered from paranoid schizophrenia as suggested by Dr. Woodforde but if not, then from some other form of paranoia.

It found that the assaults constituted misconduct and demonstrated moral turpitude.

It found that the remaining particulars demonstrated lack of adequate knowledge skill and judgment in the practice of medicine.

When the adjournment was refused on 24th February, 1992, the applicant entered the witness box and in chief told the Tribunal that he was not suffering from mental illness because the offensive letters, which he said were the basis of the adverse psychiatric opinions, could be described in terms of section 11 of the Mental Health Act (he nominated specifically s11 paras g and l) and therefore did not of themselves constitute mental illness. Even if the correctness of the previous determination were now open to attack, the fallacy of this reasoning is obvious.

In cross-examination he agreed that he had sought no treatment for any medical condition though in 1992 he has seen two psychiatrists for assessment. Neither psychiatrist was called nor was any report produced. He explained this on the basis that they would have been unwilling witnesses, that he had not received any reports, and that he did not realise that their presence was necessary. The Tribunal suspects that the applicant's belief that these doctors would not have been able to help him may be the true explanation for their absence but it does not base its finding on that factor.

He proposed to call other witnesses all of whom would speak of his condition in or before July 1991 but in the light of the Tribunal's expression of opinion he did not call any of them. It should be added that, there being no legal debate on the question, the expressions of opinion did not strictly speaking constitute a ruling but it may well be that they were so understood by the applicant.

He did produce reports from a psychologist, Mr. Mattar, to the effect that tests done in June 1991, and (apparently) repeated in August 1991, combined with observations during consultation, disclosed no evidence of mental illness. We found these statements unhelpful and thought that they added little to the evidence that Mr Mattar had given to the Tribunal whose order is under review.

On the question of medical knowledge, in response to interrogation by the Tribunal, he stated that he had read a medical text book which he had bought shortly before the 1991 hearing and had recently attended a Refresher Course of one week's duration. Otherwise he had done nothing to further his

medical knowledge. In this context it is worth noting that the Tribunal had said in 1991:

"... his mental condition has not only affected his personality and capacity for proper judgment, it has precluded him from keeping his medical knowledge up to standards expected at the present time in this country. Evidence given to the Tribunal, which is accepted, is that even if the respondent submitted to treatment, accepting that he needed it, and it being successful, there will be an extended period of formal training at an intern level or even at under-graduate level necessary to fit him for practice in medicine."

In address he repeated that undue reliance had been placed by the psychiatrist on the letters (which we have not seen) and that Dr. Mayne had changed his mind about the applicant's condition after it was proved (contrary to his earlier denial) that he had in fact written them.

He stressed that he had never been arrested by the Police and added:

"If a doctor can withstand cross-examination by a barrister he should be declared mentally fit!"

He expressed the wish to be allowed to work in a hospital under supervision so that his performance could be evaluated properly.

The applicant has given no satisfactory evidence of any improvement in either his medical knowledge or his mental condition. He has not convinced us that his name should be restored to the Register and the application is refused.

A refusal cannot be accompanied by any conditions which might be regarded as a prelude to re-registration. The applicant must realise that review of de-registration calls for presentation of acceptable evidence that he has taken steps to remedy the problems which brought about the de-registration.

In particular he will need, if he makes another application, to produce evidence, preferably from one or more psychiatrists, that he is at the time of the application, mentally capable of practising medicine as well as evidence that his knowledge of medicine is adequate.

Psychiatric evidence, to be of any assistance, would need to take into account disclosure by the applicant of the background of the previous proceedings and the reasons for the Determination. If treatment is thought necessary, he will of course need to call evidence that it has been satisfactorily undergone and, if appropriate, that it continues.

Evidence of medical knowledge might take the form of proof that he has undergone a year of an undergraduate medical course and that he has demonstrated his improvement by satisfying the examiners at an appropriate test conducted by a properly accredited authority such as a medical school at a university, the College of General Practitioners, or the Australian Medical Examination Council.

Furthermore, he should be aware that applications for review rarely succeed if made within two or three years of determination even where the Tribunal has not stipulated a period after which application may be made.

We stress that we are not laying down conditions nor are we seeking to bind any Tribunal that may eventually deal with a subsequent application. We are merely suggesting to the applicant what seem to us to be likely minimum requirements of any such Tribunal.

In the light of his complete misconception of the application, contributed to by his misunderstanding and in the light also of the fact that he is not presently employed (though he states that he has some private means) we make no order as to costs.

JUDGE H.H. BELL
DEPUTY CHAIRMAN

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MEMBER

DR. J. GAMBRILL
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MEMBER