

PUBLIC RECORD

Dates: 30/10/2023 - 31/10/2023
01/12/2023

Medical Practitioner's name: Dr Rinku SENGUPTA

GMC reference number: 4620783

Primary medical qualification: MB BS 1988 Calcutta

Type of case: Restoration

Summary of outcome

Right to make further applications suspended indefinitely

Tribunal:

Legally Qualified Chair	Mr Julian Weinberg
Medical Tribunal Member:	Dr Sarah Jeffery
Medical Tribunal Member:	Dr Amir Zafar

Tribunal Clerk:	Mr Michael Murphy 30/10/2023 – 31/10/2023 Mr Matt O'Reilly 01/12/2023
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Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Jade Bucklow, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination under s41(9) Medical Act 1983 - 01/12/2023

1. The background of this hearing is that Dr Sengupta was erased from the medical register in 2010 due to performance issues and misconduct which included dishonesty. Following this, Dr Sengupta made three applications for restoration in 2015, 2018 and 2022 which were all refused. The 2022 Tribunal also determined to indefinitely suspend Dr Sengupta's right to re-apply for restoration due to finding that she had not developed full insight into her dishonest conduct and had not remediated her clinical performance issues.

2. At the outset of the hearing, the Tribunal had regard to the High Court Order, dated 31 May 2023. This stated that the High Court had allowed Dr Sengupta's appeal against the indefinite suspension decision under S41(9) of the Medical Act 1983 (the Act), and as such, the indefinite suspension on Dr Sengupta's right to re-apply for restoration was quashed.

3. The High Court determined that the Tribunal hearing her restoration application in 2022 had not complied with Rule 24 of the Rules in relation to Dr Sengupta's right to make representations and adduce evidence in relation whether or not her right to re-apply for restoration should be indefinitely suspended. The High Court nevertheless noted that *"The breach of rule 24 of the Fitness to Practise Rules, to which I have referred, affected the decision on the section 41(9) application but it did not affect the restoration decision."*

4. The High Court also determined that the MPT's findings in the restoration decision should stand, save for the finding of dishonesty in relation to the Dr's emails to Dr A in 2017/2018 and the conclusions about her honesty which are based on those findings. The High court ordered that:

- "a. The MPT'S findings in the Restoration decision shall stand, save for the of dishonesty in relation to the Appellant's emails to Dr [A] in 2017/2018 and the conclusions about her honesty which are based on those findings.*
- b. The MPT shall proceed on the basis of the findings of the 2018 MPT in relation to these emails."*

5. So far as the emails between Dr Sengupta and Dr A were concerned, the High Court stated: *"Even if that conduct was not dishonest, it was concerning, as the 2018 MPT found, and it was relevant to her fitness to practise."*

6. The High Court further stated: *“The MPT’s findings that Dr Sengupta remained unfit to practise by reason of the issues with her competence are undisturbed by my decision on the appeal and they are more than sufficient to support the MPT’s conclusion that Dr Sengupta should not be restored to the register.”*

7. The Tribunal went on to consider, in accordance with section 41(9) of the Act, whether to direct that Dr Sengupta’s right to make further applications for restoration should be suspended indefinitely. The Tribunal was not reconvened to consider whether Dr Sengupta’s name should be restored to the register.

8. The Tribunal had regard to the additional documentary evidence presented for this hearing, which included, but was not limited to:

- Dr Sengupta’s reflection essay, dated September 2023;
- Dr Sengupta’s personal development plan, dated September 2023;
- Evidence of continuing professional development;
- Testimonials and feedback from colleagues.

Submissions

On behalf of the GMC

9. Ms Bucklow submitted that the Tribunal should consider the public interest in its deliberations on whether Dr Sengupta’s right to make further applications for restoration should be suspended indefinitely. She submitted that Dr Sengupta has not demonstrated sufficient insight into her misconduct nor has she remediated her deficient professional performance sufficiently to indicate that she should be able to re-apply for restoration.

10. Ms Bucklow referred the Tribunal to paragraph E4 of the *‘Guidance for medical practitioners’ tribunals on restoration following disciplinary erasure’* which states:

‘The doctor may apply to the Registrar for the decision to indefinitely suspend their right to re-apply for restoration to be reviewed by a tribunal after three years from the date of the decision.’

11. Ms Bucklow submitted that even if Dr Sengupta showed that she has remediated her misconduct and had developed sufficient insight, this did not mean that her licence to practise should be restored. She stated that after such a lengthy period of time of around 14 years, it would undermine public confidence in the medical profession to allow her to apply for restoration to the medical register again.

12. Ms Bucklow stated that Dr Sengupta put her own interests above the interests of patients and demonstrated a serious departure from Good Medical Practice. She submitted that despite the passage of time, Dr Sengupta has not yet fully remediated her misconduct and that it would not be in the public interest for her to be permitted to repeatedly apply for

restoration to the register in those circumstances, as this would undermine public confidence in the medical profession.

13. Ms Bucklow submitted that Dr Sengupta's drive to return to practice is for her own interests and that there would be a patient safety issue if she was restored to the medical register with no restrictions on her practice which would be the only option available to a restoration tribunal. She submitted that Dr Sengupta's right to re-apply for restoration should be suspended indefinitely as she has been found not fit to practise for over a decade with little prospect of her misconduct being remedied. Ms Bucklow further submitted that due to the clinical concerns raised in relation to Dr Sengupta's performance, it would not be in the public interest for her to be able to continually apply for restoration when previous Tribunals have consistently found that she is not fit to practise.

Dr Sengupta's submissions

14. Dr Sengupta, who was unrepresented, declined to give evidence on oath, but nevertheless made submissions to the Tribunal. She submitted that the High Court's analysis revealed that the previous indefinite restoration suspension decision was flawed and emphasised the unclear basis for a 2021 dishonesty finding in relation to her communications with Dr A. She stated this outlined that the MPT restoration guidelines and legal precedents challenge the assumption of inevitable suspension after three unsuccessful restoration attempts and that procedural fairness was compromised with the introduction of a new dishonesty allegation in 2021 by the MPT Chair. She reminded the Tribunal that the High Court analysis indicated that inadequate representation by her Counsel in 2021 led to an unjust 2022 indefinite suspension decision that depended heavily on the 2021 restoration refusal decision.

15. She also reminded the Tribunal that the High Court's analysis found the 2021 MPT's refusal to consider further evidence in relation to her application in relation to indefinite suspension was a serious concern, and that the dishonesty episodes were now 13 years stale and the exact episodes have been remediated.

16. Dr Sengupta submitted that *'Indefinite suspension to further restoration applications is fundamentally inconsistent with human rights principles...Repeating the same 2021 decision, disrespects recent High Court rulings...'*

17. Dr Sengupta submitted that the indefinite suspension decision, made by the 2022 Tribunal, was unjust and called for a more pragmatic and just approach for restoration applications and also that it strongly emphasised that another restoration application should be allowed for consideration. She stated that the High Court's findings support this approach and recited these findings for the Tribunal. Dr Sengupta stated that she will be able to remediate all of the concerns raised in order return to practice and that she has served her punishment.

18. Dr Sengupta reminded the Tribunal of the positive feedback she has received from her colleagues and that she has the full support of her colleagues in returning to practise. She stated that she has engaged in ongoing remediation and development of her insight. She also stated that her unprofessional behaviour arose from stressors outside of the workplace and that now, she has measures in place to better deal with times of stress, for example, mindfulness. Dr Sengupta informed the Tribunal that there has been no repetition of her dishonesty and that there is a negligible risk of her repeating this. She submitted that there should be a balance in safeguarding the public and limiting her practice and that she should be afforded the opportunity to be reinstated to the medical register. She also submitted that she does not wish for restoration for her own interests, but to serve the public.

The Tribunal's decision

19. At the conclusion of the hearing on 31 October 2023, it became apparent that it was not going to be possible to conclude this hearing due to a lack of time. It was agreed that this case would resume for 1 day on 1 December 2023 by which time a determination could be made and the drafting of it concluded. Dr Sengupta unequivocally stated that she would not attend the resuming hearing on 1 December despite being encouraged to do so by the Tribunal. The Tribunal has also had regard to the contents of an email sent from Dr Sengupta to the MPTS dated 30 November 2023 in which she stated: *“Please can you let all parties concerned know, that I am not attending your reconvened hearing, and please not to send me emails for test calls”*. In the circumstances the Tribunal determined there was no unfairness or injustice in the resumed hearing taking place in her absence.

20. The Tribunal exercised its own judgement when determining whether to make a direction under section 41(9) of the Act, or not. Section 41(9) states:

‘(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Medical Practitioners Tribunal may direct that his right to make any further such applications shall be suspended indefinitely.’

21. In reaching its decision, the Tribunal has taken account of all the evidence before it, both oral and documentary. The Tribunal has also considered this matter specifically taking into account the High Court ruling on 31 May 2023. In doing so, it was mindful of the need to consider whether the overreaching objective as set out in the Act would met if Dr Sengupta were permitted to make a further application for restoration.

22. It bore in mind that a significant part of Dr Sengupta's submissions related to remediation and insight issues. The Tribunal however restricted its discussions to whether Dr Sengupta should be given a further opportunity to apply for restoration, given that she has had 3 failed attempts. The Tribunal was mindful that it was not its role to determine at this hearing whether Dr Sengupta should be readmitted to the profession, but merely to consider whether an order under section 41(9) of the Act was appropriate. The Tribunal therefore took her and the GMC's submissions into account to the extent that they impacted on that

discrete issue, noting the relevance of much of her submissions to a substantive restoration application.

23. The Tribunal noted that, based on the evidence before it, Dr Sengupta has had performance issues throughout her career. It had regard to the fact that in her submissions, she has attempted to minimise her clinical deficiencies, blaming others (for example by providing poor training) for her clinical shortcomings. The Tribunal concluded that Dr Sengupta has not fully taken responsibility for her own actions.

24. The Tribunal bore in mind that Dr Sengupta has not provided meaningful evidence to demonstrate that her clinical skills have improved since the 2022 Tribunal found she had not remediated her deficient clinical performance. It therefore concluded that Dr Sengupta is not in any better position now, with regard to her practical, as opposed to theoretical, clinical skills, than she was at the time of the previous hearing in 2022. Dr Sengupta accepted in her oral submissions that she would require supervision if and when she returned to practice.

25. Notwithstanding this, the Tribunal concluded that Dr Sengupta lacked sufficient insight into her deficient clinical skills. It noted her submission that she had '*served her punishment*' and found this was demonstrative of the fact that she does not fully understand the wider impact of the concerns raised with regard to patient safety and public confidence in the medical profession. The Tribunal recognised that Dr Sengupta has had the benefit of three previous restoration hearings in order to be able to formulate her submissions and that her level of insight has increased over time as found by previous reviewing tribunals. However, it took the view that her written submissions, purportedly reflecting meaningful insight into her failings were inconsistent with her oral submissions made to the Tribunal during the course of this hearing. As such, the Tribunal concluded that there remained ongoing concerns regarding her insight into her dishonest behaviour. In those circumstances, it concluded that there remained an ongoing risk of her misconduct being repeated if put in a similar stressful situations, which a medical practitioner would undoubtedly routinely face.

26. The Tribunal rejected Dr Sengupta's submission that indefinite suspension to further restoration applications would be fundamentally inconsistent with human rights principles and that repeating the same 2021 decision would disrespect the High Court's ruling. The Tribunal was mindful that section 49 of the Medical Act and the supporting MPT Rules specifically permitted such an order in appropriate circumstances

27. The Tribunal considered if the overarching objective would be met if it allowed Dr Sengupta to further re-apply for restoration. It bore in mind the passage of time since the concerns were raised regarding Dr Sengupta's clinical skills and that these have still not been remediated. It has also borne in mind that there remains a risk of repetition of her misconduct due to the incomplete insight Dr Sengupta continues to demonstrate, some 13 years after her initial erasure from the medical register. In those circumstances, the Tribunal concluded that none of the three limbs of the overarching objective would be met by allowing Dr Sengupta to make another, and fourth, application for restoration where there was little prospect of success.

28. Accordingly the Tribunal decided to indefinitely suspend Dr Sengupta's right to re-apply for restoration pursuant to section 41(9) of the Act. The Tribunal noted that Dr Sengupta is entitled to apply to the Registrar to lift this suspension after three years.

ANNEX A – 30/10/2023

Application to adduce evidence

1. At the outset of proceedings, the GMC made an application for emails sent between Dr Sengupta and Dr A in 2017/2018, along with subsequent emails between Dr Sengupta and the GMC in 2023, to be admitted into evidence.

Submissions

2. On behalf of the GMC, Ms Bucklow submitted that Dr Sengupta's objection that the inclusion of the emails raises issues regarding legal permission and/or copyright law is misguided as Dr A's email of 13 November 2017 was sent directly to the GMC raising concerns about an email he had received from Dr Sengupta on 10 November 2017. She stated that Dr A forwarded Dr Sengupta's email within his email to the GMC and that the remainder of the emails were provided on behalf of Dr Sengupta for the 2018 restoration hearing.

3. Ms Bucklow reminded the Tribunal that by way of the High Court Order, dated 31 May 2023, the current Tribunal has been ordered to proceed on the basis of the findings of the 2018 MPT in respect of the emails. As such, she stated that the 2022 Tribunal's findings of dishonesty in respect of these emails and the conclusions about Dr Sengupta's honesty based on those findings should not stand. She submitted that the Tribunal must have sight of these emails to properly understand the findings of the 2018 Tribunal which it has been ordered to adopt.

4. Ms Bucklow submitted that there would be no prejudice caused to Dr Sengupta by the inclusion of the emails and that it could assist Dr Sengupta for the Tribunal to have sight of them so that it can correctly apply the directions arising from her successful appeal. Ms Bucklow stated that the findings that arose from those emails have already been made by the 2018 Tribunal, that it is not new material and that no new allegations arose from it.

5. Ms Bucklow submitted that there was nothing within the appeal judgement of HHJ Linden on 31 May 2023, or within the subsequent High Court Order that indicates the emails should not be put before this Tribunal. She stated it is arguable that there is an expectation that the Tribunal will have sight of the emails to comply with the order as the exclusion of them would have been explicitly directed by the High Court Order.

6. In addition, Ms Bucklow informed the Tribunal that on 17 October 2023, Dr Sengupta emailed the GMC to apologise for inaccuracies in her 2020 application form. She submitted that this email is highly relevant to the Tribunal's determination and proposed that this should be admitted into evidence as it may reflect Dr Sengupta's level of insight. She informed the Tribunal that the email was sent in response to the GMC sharing the final hearing bundle with Dr Sengupta, which included her own 2020 application form and the 2021/2022 MPT hearing bundle. As such, there was no unfairness to Dr Sengupta in the emails being admitted into evidence.

7. Ms Bucklow submitted that there was no unfairness to Dr Sengupta in this further evidence being admitted.

8. Dr Sengupta submitted that the Tribunal should not view any documents submitted by the GMC at the last minute and that she objected to the Tribunal seeing these emails. She submitted that the emails were private and would require explicit permission from her and/or Dr A, as per copyright law, since the correspondence is owned by the sender. She stated that it was imperative to respect the legal requirements regarding the use of such materials and that Rule 24(i) indicated that she can produce further evidence, but that the GMC can not.

9. Dr Sengupta submitted that the 2018 Tribunal had the opportunity to review and deliberate on these private emails, resulting in a definitive decision and that revisiting these would be unnecessary. She stated that the crux of the matter revolves around a specific wrong email attachment in November 2017 and the possible reasons behind the email was her health. She also stated that the only relevant email for context, should be the complainant's email to the GMC from 2017 and that the private emails did not contribute to the core issues at hand.

10. Dr Sengupta went on to submit that there is no compelling public interest nor was there any regulatory investigation regarding this matter over five years ago and that the GMC's purpose in 2018, was solely to establish a lack of insight into her performance concerns in the West Midlands, based on that one email. As such, she submitted that due to the High Courts decision, the emails should not be admitted into evidence as this would waste time and not be in the interests of this hearing.

The Tribunal's decision

11. In its deliberations, the Tribunal had regard to the emails and considered if they were relevant to these proceedings and if it was in the interests of fairness to admit them into evidence. It also had regard to Rule 24(i) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), which states:

'(i) before deciding whether or not to make a direction to suspend indefinitely the applicant's right to make further applications for restoration under section 41(9) of the Act, the Medical Practitioners Tribunal shall-

- (i) consider any representations made and evidence received, and*
- (ii) where the applicant is present, invite further representations and evidence from him specifically upon this issue'*

12. The Tribunal noted Dr Sengupta's submission that Rule 24(i) indicates that she can produce further evidence but that the GMC can not. The Tribunal rejected this submission as

the Rule does not prohibit the GMC from adducing further evidence. As such it was open to the GMC to do so, subject to fairness to both parties.

13. The Tribunal first considered if the emails sent between Dr Sengupta and Dr A in 2017/2018 should be admitted into evidence. It noted that these emails have already been considered by previous Tribunals and that they do not contain any new information. The Tribunal also noted that the content of these emails are known to all parties and that the High Court decision was for a Tribunal not to rely on any determination of dishonesty arising from consideration of those emails. It did not direct that the emails were inadmissible. In all the circumstances, the Tribunal concluded that the content of the emails were relevant to the matter being currently considered, and can be admitted into evidence without injustice to any party.

14. The Tribunal therefore determined to admit the emails sent between Dr Sengupta and Dr A in 2017/2018.

15. The Tribunal then considered if the emails between Dr Sengupta and the GMC in 2023 should be admitted into evidence. It noted that these emails are more recent, have not been considered by any previous Tribunal and were only served late upon Dr Sengupta. It also noted Ms Bucklow's submission that these emails would be relevant to the Tribunal's determination as they may reflect Dr Sengupta's level of insight. The Tribunal agreed with Ms Bucklow's submission and concluded that the content of the emails were relevant to the application under consideration. Given that the emails were written by Dr Sengupta and she was therefore aware of the content of them, the Tribunal concluded that there was no unfairness in admitting the emails in evidence. However, the Tribunal concluded that whilst these emails could be admitted, it would be a matter for the Tribunal when considering the substantive application to attach such weight to them as it considered appropriate.

16. The Tribunal therefore determined to admit the emails between Dr Sengupta and the GMC in 2023.