

S. No. 36
Suppl. list

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 353/2024

- 1. Union Territory (then State) of Jammu and Kashmir, through Comm./Secy. to Government, Health and Medical Education Department, Civil Secretariat, Srinagar.**
- 2. Director, Health Services, Kashmir.**
- 3. Enquiry Committee Constituted under and in terms of Order no. Est/Complaint/1079-88 dated L7-08-200G through Deputy Director, Health Services, Schemes, Srinagar.** ...Petitioner(s)

Through: Mr. Waseem Gul, GA.

Vs.

**Dr. Bilal Ahmad,
S/o; Bashir Ahmad Shah
R/o: Gulshan Abad, Anantnag**

....Respondent

Through: Mr. G. N. Sofi, Advocate.

CORAM:

**HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE**

ORDER
29.07.2025

(Oral):

- 1. Impugned in this petition filed by the Union Territory of J&K and others is the order and judgment dated 07.02.2023, passed by the Central Administrative Tribunal, Srinagar ('the Tribunal') in TA No. 1019/2021, titled "Dr. Bilal Ahmed v. State of J&K and others".**

2. Briefly stated, the facts leading to the filing of this petition are that the respondent, who was serving as B-Grade Specialist in Surgery at District Hospital, Anantnag, conducted a gallbladder surgery on a lady patient on 16th August 2006. The said lady, however, died on the same day in the evening between 8:30 p.m. and 9:00 p.m.
3. On the allegation that the death of the patient had occurred due to his negligence, the respondent-doctor was placed under suspension vide Order No. EST/DHA1399-1402 dated 19th August 2006. With a view to investigate the matter, the petitioners constituted a team of doctors on 17th August 2006 with the condition that the team shall co-opt a Senior Specialist Surgeon from a district other than District of Anantnag.
4. The Enquiry Committee conducted an enquiry, though without associating the Senior Surgeon Specialist, and concluded that the death of the lady patient had occurred due to the overconfidence of the respondent-doctor, who had operated upon her despite her being a high-risk case. The Enquiry Committee also concluded that there was a lack of post-operative care by the doctors on duty.
5. Upon obtaining the copy of the Enquiry Committee's report, a show-cause notice dated 13th June 2008 was served upon the respondent-doctor by the competent authority to show cause as to why his services should not be terminated. Simultaneously, a notice was also published in the newspaper on the same date requiring the respondent-doctor to show cause as to why his two increments should not be withheld.
6. The respondent submitted a detailed reply to both the notices. The competent authority, after considering the reply, passed an order

imposing the penalty of “censure” on the respondent-doctor and directed that the period of suspension would be dealt with by a separate order. Subsequently, by a separate order, the period of suspension was treated as on leave.

7. The respondent-doctor challenged both, the order imposing the penalty and the order treating the suspension period as leave, by filing a writ petition before this Court, which was transferred to the Tribunal and registered as TA No. 1019/2021. The said TA was contested by the petitioners herein on the ground that the Enquiry Committee had found the respondent-doctor negligent in conducting the surgery which resulted in the patient’s death and that the penalty of ‘censure’ is imposed for the dereliction of duties.
8. It was contended that the competent authority after considering the entire material on record and the standard of conduct expected from the respondent doctor, rightly imposed the penalty.
9. The Tribunal, after considering rival contentions and material on record, came to the conclusion that the petitioners had not provided a fair opportunity to the respondent-doctor to defend himself, as the enquiry report was never handed over to him for filing an effective reply/representation.
10. It was further held that the issuance of two notices proposing two different penalties also put the respondent-doctor in confusion and subjected him to serious prejudice. The Tribunal also found fault with the constitution of the Enquiry Committee, which was constituted

without associating a Senior Surgeon Specialist as was mandated by the terms of reference.

11. For these reasons, the Tribunal accepted the TA and quashed the impugned orders imposing the punishment of censure and treating the period of suspension as on leave.
12. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the view taken by the Tribunal is correct and unexceptionable.
13. Undisputedly, the Enquiry Committee did not include a Senior Surgeon Specialist as required by the Director, Health Services vide Order dated 17th August 2006. It is also not in dispute that the enquiry report in its entirety was not provided to the respondent-doctor so as to enable him to file an effective reply. Moreso, when the respondent-doctor in his reply to the show cause notice had clearly intimated to the petitioners that in the absence of the complete copy of the enquiry report, he was not in a position to effectively respond to the show-cause notice. We have gone through the record and we find that only the extract containing conclusions of the Enquiry Committee were given to the respondent-doctor.
14. We are aware that in the case of a minor penalty, the only requirement of law is to provide the delinquent an adequate opportunity of hearing, and no detailed enquiry and serving of charge sheet etc is required. Rule 35 of the Civil Services (Classification, Control and Appeal) Rules, 1956, makes the legal position abundantly clear.
15. For the sake of brevity, Rule 35 is reproduced as under:

35. Adequate opportunity of making any representation be penalty given to the officer concerned before issuing order imposing penalty

Without prejudice to the provisions of rule 33, no order imposing the penalty [specified in clauses (i), (ii), (iii) and (v) of rule 30 (other than an order based on facts which have led to his convictions in a criminal court or by a court-martial, or an order superseding him for promotion to a higher post on the ground of his unfitness for that post) on any Government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make, any such representation if any, has been taken into consideration before the order is passed:

Provided that the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

16. It is crystal clear that if an order imposing a penalty specified in clauses (i), (ii), (iii), and (v) of Rule 30 is required to be passed against the delinquent, the requirement of law is that before passing any such order, an adequate opportunity of making a representation must be provided to the delinquent. The requirement to comply with this Rule can only be waived if there are sufficient reasons to be recorded in writing indicating that there is difficulty in observing the provisions of the Rule.
17. Be that as it may, the fact remains that Rule 35 envisages the providing of an adequate opportunity of making representation to the delinquent. The adequate opportunity of making representation would be defeated if the entire material relied upon by the disciplinary authority for proposing a penalty is not provided to the delinquent.

18. The enquiry report in the instant case is an elaborate one and contains the fact-finding exercise undertaken by the committee, however, for the reasons best known to the petitioners, only the concluding portion of the report was provided to the delinquent which necessarily impacted his right of making an effective representation. It is astonishing to note that despite the respondent-doctor having specifically communicated his inability to respond effectively to the show cause notice in the absence of complete copy of enquiry report, the petitioners did not think it proper to serve upon him the entire enquiry report.
19. For these reasons, we are one with the Tribunal that the impugned order of imposition of censure, though a minor penalty, was in violation of the principles of natural justice. We are however, of the view that the order of the petitioners to treat the period of suspension of the respondent-doctor as on leave was correctly made and was sustainable independently of quashing the order of penalty. We are saying so for the reason that the respondent, being a B-grade Surgeon Specialist, could not be expected to remain idle during the period of suspension. There is also material on record indicating that during the period of suspension, the respondent was gainfully employed by way of private practice. Otherwise also, it is unreasonable to expect a doctor, who is a specialist in surgery, to remain idle for the entire period of suspension. Treating the period of suspension as duty and granting him full salary would be tantamount to unjust enrichment of the respondent. Otherwise also, by treating the period of suspension as on leave wouldn't put the respondent to any substantial financial loss.

20. For the foregoing reasons, this petition is partially allowed only to the extent that Order No. 621-HME of 2010 dated 27th December 2010, treating the period of suspension of the respondent as leave, is held to be valid and in consonance with law. However, the judgment of the Tribunal quashing Order No. 309-HME of 2009 dated 27th July 2009, whereby the punishment of censure was imposed upon the respondent, is upheld.
21. The order No Est/HAD/1399-1402 dated 19th August 2006 had otherwise been rendered infructuous upon the passing of Order No. 621-HME of 2010 dated 27th December 2010 and, as such, was not required to be quashed.
22. With the aforesaid modifications in the impugned judgment, the petition stands disposed of.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
29.07.2025
“Hilal”

Whether the order is speaking/reportable?

Yes