



**Central Administrative Tribunal  
Jammu Bench, Jammu**

T.A. No. 9298/2020  
(SWP No.2349/2013)

Tuesday, this the 2<sup>nd</sup> day of February, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd, Jamshed, Member (A)**

Dr. Zubair Rasool Bhat (aged 36 yrs), S/o Ghulam Rasool Bhat,  
R/o House No. 59, Tulsi Bagh, Solina Bala Near Amar Singh  
College, Srinagar.

..Applicant

(Mr. Altaf Hawani, Senior Advocate)

**Versus**

1. State of Jammu and Kashmir, through Commissioner/Secretary to Government, Health and Medical Education Department, Civil Secretariat, Srinagar/Jammu.
2. Director Health Services, Kashmir.
3. Block Medical Officer, Sub District Hospital, Sopore-Kashmir.

..Respondents

(Mr. Rajesh Thapa, Deputy Advocate General)

**ORDER (ORAL)**

**Mr. Justice L. Narasimha Reddy:**

The Directorate of Health Services, Kashmir appointed as many as 37 Assistant Surgeons, through order dated 06.02.2012 in the Pay Band of Rs.9300-34800, with Grade Pay of Rs.5400/-. The applicant was the one among them. They were required to report duty within three days. However, on finding that the applicant did not report duty by 15.02.2012, the Directorate of



Health Services, Kashmir passed order on that date, placing the applicant under suspension. They have also constituted a Committee to inquire into the lapses on the part of the applicant. The Committee is said to have reported that the applicant is not available in Kashmir and he, in fact, went to England. Taking the same into account, the said authority passed an order dated 03.07.2012 discharging the applicant. He filed SWP No.2349/2013 before the Hon'ble High Court of Jammu & Kashmir. He stated that he reported for duty on 05.03.2012 and the delay was on account of the fact that he had to come from England. He further stated that no notice was issued to him in the so-called inquiry and the impugned order dated 03.07.2012 is arbitrary and opposed to all canons of law.

2. The respondents filed a counter affidavit opposing the SWP. It is stated that the applicant did not join duty within the stipulated time and though it is not warranted in law, the order of termination of service was passed.

3. In view of re-organization of the State of Jammu, the SWP has since been transferred to this Tribunal and renumbered as T.A. No.9298/2020.

4. Today, we heard Mr. Altaf Haqani, learned senior counsel for applicant and Mr. Rajesh Thapa, learned Deputy Advocate General.

5. It is a matter of record that the applicant was appointed as Assistant Surgeon in the Directorate of Health Services, Kashmir,

through order dated 06.02.2012 along with 37 others. In the order of appointment, the following clause was incorporated:

“(II) That the appointees shall physically report for duties at their place of postings within a period of Three days from the date of issue of this order failing which action as warranted under rules shall be initiated.”



6. On finding that the applicant did not join duty even by 15.02.2012, the Directorate of Health Services, Kashmir passed an order dated 03.07.2012 suspending the applicant. As a matter of fact, such an order was totally uncalled for. The reason is that when the applicant was yet to join duty and become a public servant, question of placing him under suspension does not arise.

7. Equally superfluous, if not untenable, was the step of constituting the Committee to inquire. The Committee is said to have reported that the applicant was in England at the relevant point of time. Taking that into account, the Directorate of Health Services, Kashmir passed an order dated 31.07.2012 discharging the applicant from service. Here again, the order is totally unwarranted, inasmuch as the question of discharging the applicant does not arise, when he did not join post at all.

8. Once it emerges that the applicant did not report to duty within the stipulated time, nor did he seek extension, the relationship of employer and employee was yet to be established or commenced. Though the order of suspension and of discharge were totally unwarranted, the fact remains that the applicant was

yet to become an employee of the Government and there is nothing on record to disclose that he sought for extension.

9. We do not find any merit in this T.A. It is accordingly dismissed. There shall be no order as to costs.



**( Mohd. Jamshed )  
Member (A)**

**( Justice L. Narasimha Reddy )  
Chairman**

**February 2, 2020**

/sunil/ankit/shakhi