

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

CWPOA No. 7220 of 2020

Reserved on: 29th May, 2025.

Date of decision: 17th June, 2025

Dr. Subhash Thakur

...Petitioner

Versus

State of HP & others

...Respondents.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? Yes

For the Petitioner: Mr. H.K.S. Thakur, Advocate.

For the Respondent: Mr. Balwinder Singh Thakur, Deputy
Advocate General for respondents No. 1 to
3.
Respondent No.4 stands deleted vide order
dated 8.5.2024.

Vivek Singh Thakur, Judge

Petitioner approached the Erstwhile H.P. State Administrative Tribunal by filing Original Application No. 2881 of 2019 for quashing and setting aside the Preliminary Enquiry Report dated 1.2.2016 (Annexure A-4) conducted by the Deputy Director Health Services,, Departmental Inquiry Report dated 12.2.2018 (Annexure A-3), Office Order dated 8.5.2018 (Annexure A-2), passed by the Principal Secretary (Health) to the Government of Himachal Pradesh

and order dated 27.8.2018 (Annexure A-1), passed by the Additional Chief Secretary (Health) to the Government of Himachal Pradesh, whereby penalty has been imposed upon the petitioner reducing him to lower stage in the pay scale by one stage for a period of three year with the directions that during the period of reduction, he will not earn increments of pay, but on expiry of period of penalty of reduction, it will not have the effect of postponing the further increments of pay.

2 On abolition of the Erstwhile Himachal Pradesh State Administrative Tribunal, the Original Application has been transferred to this High Court and registered as the present CWPOA No. 7220 of 2020.

3 For alleged involvement of petitioner, while serving as Medical Officer (Anesthetist) in Civil Hospital Khaneri Rampur Bushehr District Shimla, in assisting one Dr. Rajeshwar Thakur Medical Officer in conducting surgery of a 60 years old patient Narinder Singh in a private clinic namely Shrikhand Hospital Rampur Bushehr Shimla resulting into death of said patient on 29th January, 2016, in an illegal manner despite receiving non-practicing allowance (NPA) from Government of Himachal Pradesh, a Departmental Enquiry was initiated against petitioner under Rule 14 of CCS and CCA Rules, 1965 by appointing Dr. B.M. Gupta, Joint Director Health Service as the Inquiry Officer vide communications dated 18.2.2017 and 18.7.2017.

4 Another in-house preliminary inquiry regarding this incident was also conducted through Dr. T.C. Mahant, Deputy Director Health Services, who had submitted his report on 1st February, 2016 by concluding that Dr. Rajeshwar Thakur and Dr. Subhash Thakur, unauthorizedly and beyond the limits of Government Service Rules, gave their services in private hospital on the night of 29.1.2016 and thus were liable for action as per Government Rules.

5 Departmental Inquiry Officer Dr. B.M. Gupta submitted the Departmental Inquiry Report on 12.2.2018 with findings that possibility of charges on Dr.Subhash Thakur, of being assisted Dr. Rajeshwar Thakur, Medical Officer in conducting the surgery of a 60 years old patient Narinder Singh in private clinic Shrikhand Hospital, Rampur Bushehr District Shimla on 29.1.2016, cannot be ruled out. This Inquiry Report was submitted for perusal of Disciplinary Authority along with record.

6 Considering the Inquiry Report, the Disciplinary Authority observed that charge of private practice by Dr. Subhash thakur was proved against him on the basis of statement of prosecution witness ASI Bhagat Ram, statements of Kumari Deepika and Kumari Manju Thakur Staff Nurses of Shrikhand Hospital, Rampur Bushehr recorded before the Magistrate, tendered by ASI Bhagat Ram.

7 Accepting the findings of Inquiry Officer in terms of Rule 15(1) of CCS and CCA Rules, 1965, the penalty referred supra was

imposed upon the petitioner vide order dated 8.5.2018 passed by the Principal Secretary (Health) to the Government of Himachal Pradesh.

8 Appeal, preferred by Dr. Subhash Thakur, was rejected vide order dated 27.8.2018 by the Additional Chief Secretary (Health) to the Government of Himachal Pradesh affirming the order dated 8.5.2018 passed by the Principal Secretary (Health) to the Government of Himachal Pradesh.

9 In aforesaid circumstances, the petitioner has approached the Court.

10 Apart from the other documents, including the impugned orders and inquiry reports, petitioner has also placed on record the photocopy of Operation Theater Register dated 29.1.2016 of MGMSC Khaneri Rampur, District Shimla, Annexure A-11, to suggest that at 5.30 PM onwards petitioner was giving treatment in the said Government Hospital. He has also placed on record photocopy of Consent Form (Annexure A-12) filled before operation of Narinder Singh in private Shrikhand Hospital wherein name of surgeon who conducted the operation of Narinder Singh in Shrikhand Hospital, has been mentioned as Dr. Brij Thakur and column of Anesthetist is blank. Stand of petitioner is that he neither helped Dr. Rajeshwar Thakur in conducting the operation in private hospital nor the said charge has been duly proved in the Inquiry Report as evident from findings returned by the Inquiry Officer.

11 Stand of respondent/State in reply is that charge against petitioner stands duly proved on the basis of statement of ASI Bhagat Ram and statements of Kumari Deepika and Kumari Manju Thakur Staff Nurses of Shrikhand Hospital which were tendered in evidence by ASI Bhagat Ram. There is no specific denial or counter to the documents placed on record by petitioner as Annexures A-11 and A-12.

12 Along with reply, Memorandum dated 22.9.2016 has been placed on record along with statement of Article of Charge, Statement of Imputations, List of documents and List of witnesses contained Annexure A-I to Annexure A-IV appended with Memorandum.

13 As per List of Witnesses, Incharge of Police Station Rampur, SMO/Incharge MGMSC Khaneri, District Shimla and DA dealing the seat of Medical Officers in the Directorate of Health Services HP have been cited as witnesses. No other witness has been cited.

14 DA (Dealing Assistant) had produced on record the preliminary inquiry conducted by the Deputy Director, Health Services. SMO/Incharge had produced the record of MGMSC Khaneri, District Shimla and ASI Bhagat Ram had appeared as Incharge of Police Station Rampur. No other witness was examined. Statements of Kumari Deepika and Kumari Manju Thakur recorded before the

Magistrate under Section 164 of Cr.P.C. were tendered by ASI Bhagat Ram.

15 Annexure A-11, which is not disputed by respondent/State, indicates that at the relevant time, possibility of presence of petitioner in MHGMSC Khaneri, Rampur Bushehr. Consent Form (Annexure A-12) nowhere suggests that petitioner had performed the role of Anesthetist in private Shrikhand Hospital Rampur. Rather it indicates that consent at Serial No.1 of Consent Form, for performing the anesthesia operation, was given by and on behalf of patient to Dr. Brij Thakur, whose name has also been mentioned as surgeon in the Consent Form.

16 Statements of Kumari Deepika Thakur and Kumari Manju Thakur were never recorded by Investigating Officer or Inquiry Officer. ASI Bhagat Ram had not recorded those statements. The same are claimed to have been recorded by the Judicial Magistrate under Section 164 Cr.P.C. In absence of assertion of fact by Deepika Thakur and Manju Thakur, about recording their statements under Section 164 Cr.P.C. by the Magistrate, these statements tendered by ASI Bhagat Ram may not be of nature of proof required to be established on record to make those statements a part of inquiry, much less to consider the photocopies of those statements as substantial piece of evidence to hold the petitioner guilty in departmental inquiry.

17 Leaving aside the admissibility of photocopies of statements of Deepika Thakur and Manju Thakur, it is also apt to record that after taking into consideration entire material on record, the Inquiry Officer did not conclude that charges against the petitioner were proved. Rather, he has stated that possibility of presence of petitioner at the relevant point of time in private Shrikhand Hospital to assist Dr. Rajeshwar Thakur in conducting surgery of a patient cannot be ruled out. This finding does not envisage that Inquiry Officer had arrived at a conclusion that charge against petitioner was proved. The Inquiry Report neither establishes that charge was not proved nor it indicates that according to Inquiry Officer, charge was proved.

18 The competent Authority to whom the report was submitted having option to accept the Inquiry Report or to remit the case to the Inquiring Authority for further inquiry by recording reasons in writing for doing so. But Disciplinary Authority instead of remitting the matter for further inquiry had accepted the Inquiry Report.

19 As noticed supra, Inquiry Report does not say that charge stands proved against petitioner. Therefore, when an inquiry report is accepted which does not conclude that charge against petitioner had been proved, it could not have been made basis for imposing penalty. The nature of finding in Inquiry Report especially conclusion suggests

that there are two possibilities i.e. petitioner may have assisted Dr. Rajeshwar Thakur in private hospital or may not have done so. Such vague finding cannot be treated as an inquiry establishing the proof of guilt of petitioner with respect to charges levelled against him even on testing the same, degree of proof required to prove charge in Departmental Inquiry/service jurisprudence. The conclusion of Inquiry takes nowhere.

20 As there is no conclusive finding in the Inquiry Report regarding the alleged misconduct of petitioner, regarding the involvement in private practice despite receiving non-practicing allowance, the petitioner could not have been punished by imposing the penalty in reference and, thus, order dated 8.5.2018 imposing the penalty by Disciplinary Authority and order dated 27.8.2018 dismissing the appeal of petitioner, are not sustainable.

21 Inquiry Officer must be clear about the outcome of inquiry and should indicate in its conclusion that whether charge(s) stand proved or not proved. He cannot choose middle path, leading to confusion or indecisiveness regarding the status of charge of misconduct communicated to the employee in Article of Charge.

22 In view of nature of conclusion in Inquiry Report, we are setting aside the impugned order and penalty. Therefore, we do not consider it necessary to comment upon admissibility, relevancy and evidentiary value of photocopies of statements of two staff nurses,

who were not even cited as witnesses and also non-examination of Investigating Officer in criminal case or the Magistrate who recorded statements under Section 164 Cr.P.C.

23 It is true that this Court is not sitting in appeal to reassess the evidence for re-appreciating the case, but when perversity is writ large on the face of the record especially in Inquiry Report and document rebutting the possibility have not been rebutted, we are of the opinion that it is a fit case for interference.

24 The matter pertains to the year 2016. We are in 2025. Therefore, we do not deem it fit to refer the matter for fresh/denovo inquiry as petitioner has already suffered trauma and stigma for about 9 years.

25 In view of above discussion, orders dated 8.5.2018 and 27.8.2018 are quashed and set aside for want of proving the charge against the petitioner in accordance with law. Consequences shall follow.

26 Petition is allowed and disposed of in aforesaid terms. Pending miscellaneous application(s), if any, also stand disposed of.

(Vivek Singh Thakur),
Judge.

17th June, 2025(ms)

(Ranjan Sharma),
Judge.