

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 15.09.2026
Pronounced on: 21 .09.2026
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WP(C) No.3216/2025

Dr. Abdul Hamid Mir, Aged 78 years
S/o Sh. Shah Nawaz Mir,
R/o Taranwali Tehsil Mendhar, District Poonch,
A/P Ward No.3, Near D C Colony, Kheora, Rajouri

...Petitioners(s)

Versus

Through:- Mr. K.S.Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate

1. UT of Jammu and Kashmir through
Chief Secretary, Jammu & Kashmir Govt.,
Civil Secretariat, Jammu.
2. UT of Jammu and Kashmir through
Secretary to Government,
Health & Medical Education Department,
Civil Secretariat, Jammu.
3. Under Secretary to Government,
Health and Medical Education Department,
Civil Secretariat, Jammu
4. Director, Health Services,
Jammu.

...Respondent(s)

Through:- Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

Sanjeev Kumar J

1. This petition under Article 226 of the Constitution of India filed by the petitioner throws challenge to an order and judgment dated 9th October, 2025 passed by the Central Administrative Tribunal, Jammu Bench [“the Tribunal”] in TA No.4002/2021 titled *Abdul Hamid Mir v. State of J&K and others*, whereby the Tribunal has dismissed the TA of the petitioner being devoid of any merit.
2. Briefly stated, the facts leading to the filing of this petition are that the petitioner was appointed as Assistant Surgeon in Jammu & Kashmir Health Department on 29th November, 1973. The service book, which was prepared at the time of his recruitment along with some other record, reportedly got gutted in fire and a new service book was prepared. As per the new service book prepared, the date of birth of the petitioner was indicated on the first page of the service as 27th March, 1949.
3. The last posting of the petitioner before his superannuation was Medical Superintendent, District Hospital, Udhampur. It is during this tenure, a complaint was received by the respondents against the petitioner for tampering in his date of birth from 1947 to 1949. As a result of this complaint, Vigilance Organization registered FIR No.19/2006/PS/VOJ under Section

5(2) of the J&K Prevention of Corruption Act read with Section 420 RPC.

4. The Vigilance Organization vide its communication dated 01.02.2007 informed the respondents that, as per the actual date of birth borne out from the documentary evidence, the petitioner was liable to retire on superannuation w.e.f. 31.03.2005 but he continued to be in service on the basis of manipulated date of birth. The Vigilance Organization further intimated to the respondents that the date of birth of the petitioner is 27th March, 1947, which also stood confirmed/verified from the Board of School Education as well as Principal, Government Higher Secondary School, Poonch.
5. Acting upon the report of the Vigilance Organization, the respondents in terms of Government Order No.71-HME of 2007 dated 14.02.2007 directed that the petitioner would be deemed to have retired on superannuation w.e.f. 31.03.2005 on attaining the age of superannuation i.e. 58 years. As a consequence, respondent No.3 issued a communication dated 15.02.2007 calling upon respondent No.4 to serve a notice upon the petitioner to deposit the entire amount of salary, which he had received for period of overstay in service.
6. Feeling aggrieved, the petitioner filed SWP No.437/2007 before this Court, which after promulgation of the J&K Reorganization

Act, 2019 and constitution of the Central Administrative Tribunal Bench at Jammu, came to be transferred to the Tribunal. In the Tribunal, SWP No.437/2007 was re-numbered and registered as TA No.4002/2021. It is this TA, which has now been dismissed by the Tribunal in terms of the judgment impugned.

7. The impugned judgment has been assailed by the petitioner primarily on the ground that the order dated 14.02.2007 has been passed by the respondents in violation of the principles of natural justice, in that, neither the petitioner was served with any show cause notice nor was any enquiry worth the name conducted to prove that there was interpolation in the date of birth of the petitioner done by the petitioner himself.
8. It is argued by Mr. K.S.Johal, learned senior counsel appearing for the petitioner, that, although, criminal proceedings against the petitioner are pending adjudication before the competent Court of criminal jurisdiction, yet the petitioner has not been held guilty of any tampering or manipulation of date of birth nor has he been convicted. He would argue that the allegation that the petitioner has tampered the date of birth has not been established in any departmental proceedings. He would further argue that in the absence of there being any conclusive finding of fact recorded by any competent authority that the date of birth

was manipulated or fabricated by the petitioner, he cannot be visited with harsh consequences like refund of entire amount of salary which the petitioner has received while working after attaining the age of fifty eight (58) years, going by his actual date of birth i.e. 27th March, 1947.

9. *Per contra*, Mr. Raman Sharma, learned counsel appearing for the respondents, would argue that the manipulation/tampering of the date of birth from 27.03.1947 to 27.03.1949 was only for the benefit of the petitioner, therefore, there is strong presumption that it is the petitioner and petitioner alone, who has manipulated/tampered his date of birth either himself or in connivance with others. He submits that since the Challan against the petitioner is pending trial before the competent Court of criminal jurisdiction, as such, the petitioner cannot claim the reliefs prayed for till he is honorably acquitted of the criminal charge.

10. Having heard learned counsel for the parties and perused the material on record, we find that the facts in the instant case are not much in dispute.

11. Admittedly, the date of birth of the petitioner, as per the documentary evidence available on record, is 27th March, 1947. It is also a fact that the date of birth recorded by the Block Medical Officer, Surankote, reflected on the first page of the

service book of the petitioner, which is available on record of the respondents, is 27th March, 1949. There is no manipulation or fabrication or tampering visible to the naked eyes. As a matter of act, the mischief seems to have been committed at the time of preparing of the fresh/new service book after the original one got gutted in fire.

12. We are in agreement with Mr. Raman Sharma, learned counsel appearing for the respondents that there is a strong presumption that the date of birth was changed from 27.03.1947 to 27.03.1949 only for the benefit of the petitioner and, therefore, nobody other than the petitioner may have played the mischief, but it is trite law that presumption howsoever strong it may be is not a substitute for proof.
13. Undoubtedly, a mischief has been played by someone by changing the date of birth of the petitioner from 27.03.1947 to 27.03.1949, and there is every possibility that this was done either by the petitioner himself or by someone at his instance. Nevertheless, the matter is *sub judice* before the criminal Court, and the truth is yet to come out. If the petitioner is convicted and held guilty by the competent criminal Court of manipulation or tampering with his date of birth, the petitioner would definitely lose the salary that he has received on account of his overstay in service on the basis of manipulated date of birth. He could also

be made liable to some disciplinary action as may be permissible departmental under law. It is also not in dispute that the respondents have not conducted any departmental enquiry in this regard, in which the petitioner could have had an opportunity to put forth his point of view.

14. In these circumstances, we are left with no option but to accede to the argument of Mr. Johal that the orders impugned before the Tribunal were vitiated on account of non-compliance with the principle of *audi alteram partem*. The petitioner had worked on the post and had been paid the salary for the said period. He can, of course, be deprived of that salary if the respondents sufficiently establish that his overstay in service is attributable to any fraud, tampering, or manipulation on his part. The Tribunal, however, failed to appreciate all these aspects of the matter and dismissed the petition solely on the ground that the Vigilance Organization had found the petitioner guilty of manipulating his date of birth and that, being the beneficiary of the altered date of birth, he alone was responsible for such manipulation.
15. We are afraid the reasoning given by the Tribunal is not sustainable in law. The orders impugned before the Tribunal were in breach of principles of natural justice and were, thus, not sustainable.

16. For the foregoing reasons, we allow this petition and set aside and quash the impugned order passed by the Tribunal. The OA/TA is allowed and orders impugned before the Tribunal are also set aside. The petitioner is held entitled to provisional pension and retention of salary. The release of provisional pension in favour of the petitioner and the retention of salary for the period during which he has worked after his actual date of superannuation shall, however, be subject to the petitioner furnishing an undertaking before the respondent to the effect that, in the event he is convicted by the Criminal Court and held guilty of any manipulation or tampering with his date of birth, or is held guilty of the same in duly constituted departmental proceedings, he shall refund the entire amount of salary received for the period after his actual date of superannuation, i.e., 31.03.2005 along with interest @ 6% per annum.

(Shahzad Azeem)
Judge

(Sanjeev Kumar)
Judge

JAMMU
21.09.2026
Vinod, Secy

Whether the order is speaking : Yes
Whether the order is reportable: Yes