

Government of Jammu and Kashmir
Home Department
Civil Secretariat

Subject: Order dated 26.09.2019, passed by the Hon'ble High Court, Jammu, in SWP No. 182/2010, titled Tejinder Singh and Ors Vs State and Ors.


Government Order No. 61- Home of 2020
Dated: 25.02.2020

Whereas, the petitioners (S/Sh. Tejinder Singh, Kulwant Singh, Varinder Singh and Shiv Kumar), initially appointed as Sub-Inspectors, were promoted as Inspectors in the year 1995, on out of turn basis by the DGP, for their outstanding performance while being posted in Special Operation Groups; and

02. Whereas, these petitioners were also placed as I/c Dy.SsP, by the Director General of Police. However, in terms of the J&K CSR, 1956, the Director General of Police is not the competent authority to order such placements; and

03. Whereas, the petitioners filed writ petitions bearing SWP No.s 1085/2004 titled Tejinder Singh vs. State, 1126/2003 titled Shiv Kumar vs. State, 1124/2003 titled Kulwant Singh vs. State, 1693/2005 titled Kulwant Singh Jasrotia, 1694/2005 titled Tejinder Singh vs. State & Ors, 1698/2005 titled Shiv Kumar Chouhan vs. State and others, 1689/2007 titled Tejinder Singh and others vs. State and others, praying therein to grant them out of turn promotion; and

04. Whereas, these petitions were contested in the court(s) of law and in compliance of the directions issued by the Hon'ble Courts, following orders were issued whereupon their claim came to be rejected:-

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- (i) Home-325 (P) of 2005 dated 11.08.2005
 - (ii) Home-326 (P) of 2005 dated 11.08.2005
 - (iii) Home-328 (P) of 2005 dated 11.08.2005
 - (iv) Home-424 (P) of 2006 dated 08.11.2006
 - (v) Home-896 (P) of 2009 dated 30.10.2009

05. Whereas, in the fresh round of litigation, the petitioners filed writ petition No. SWP No.182/2010, titled Tejinder Singh and others v/s State and others, praying for:

- i. *quashing the impugned order bearing No.Home-896(P) of 2009 dated 30.10.2009.*
- ii. *issuance of directions to the respondents to give the benefit of retrospective promotion/regularization w.e.f. 1997, to the petitioners;*

06. Whereas, the aforesaid writ petition was disposed of by the Hon'ble Court, vide order dated 26.09.2019, which reads as under:

"... 3.. this writ petition is disposed of with the observation that the directions passed in SWP No.508/2013 shall also apply to the present petitioners, of course and only subject to the condition that the present controversy as also the facts of this case are purely identical/similar to the one as decided in SWP No.508/2013. Connected IA (s), accordingly, stands disposed of.


07. Whereas, the petitioners claim has been examined in light of the court orders. It is noted that the order of their postings as I/c Dy.SP in 1997 have been issued by an Authority which is not competent to issue such orders. Also, they were placed as I/c Dy. SP, by the Competent Authority, vide Government Order No.Home-530 of 2000 dated 11.12.2000, in their own pay and grade. Besides, their case, among others, was considered by the DPC/PSC and based on the recommendations of the J&K PSC, these officers were regularized as Dy.SP, vide Government Order No.Home-367 (P) of 2007 dated 01.08.2007 with effect from 16.04.2003. Further, in the recent review in the date(s) of promotion ordered by the Home Department, the promotion of these officers as Dy.SP, has been pre-dated to 12.07.2002 from 16.04.2003, strictly on the basis of seniority in the rank of Inspector, the date of their eligibility, date of vacancy in the promotion quota; with utilization of reserves and also on the basis of the principles laid down in Suraj Prakash matter by the Supreme Court; and

08. Whereas, it is well settled principle that each case has to be considered on its own merits. In any case, their case is not at all similar to that of quoted cases. Moreover, the order dated 21.07.2016, passed by the Hon'ble High Court in SWP No. 508 of 2013 titled Mukesh Kumar vs. State and others, referred to in the order dated 21.12.2017 quoted above has neither been

implemented nor attained finality, as the department has filed LPA bearing No. 652/2020 against the said judgment. Therefore, the order cannot be made basis for conferring any benefit to any of the petitioners in SWP Nos. 2575/2016 c/w SWP No. 2745/2016, titled Virender Kumar Bhat and others Vs State and others & Tilak Raj Rana Vs State and another; and

09. Whereas, circular instructions stand issued by the GAD vide Circular No. 14 –GR of 1990 dated 06.03.1990, inter-alia, laying down the principles to be followed for considering out of turn promotions. The procedure has been elucidated further in terms of Govt. Order No. Home-3(P) of 2000 dated 06.01.2000 and Home-559(P) of 2007 dated 29.11.2007. It is unambiguously mentioned in these instructions that Out of turn promotion is to be given to the deserving officers and contemplates that such promotion be given only once in the entire service career of an employee. Since this benefit has been availed of by the petitioners, while holding the posts of S.Is, when they came to be promoted as Inspectors, on out of turn basis, they cannot be considered for grant of this relaxation for second time. The Police Act, 1983 and the rules framed thereunder, viz. the Jammu and Kashmir Police Rules, 1960, the J&K Police (G) Service Recruitment Rules, 1977 (repealed and replaced by the J&K Police (G) Service Recruitment Rules, 2002), also do not contain any provision relating to grant of accelerated or out of turn promotion to Police Personnel, which can be made only in accordance with the laid down norms and eligibility. Moreover, determination of eligibility of an employee for considering an employee for promotion has reference to the recruitment rules applicable at the relevant point of time. On the crucial date the Jammu and Kashmir Police (Gazetted) Service Rules, 1977 held the field, which prescribe the eligibility conditions including five years of service as one of the conditions for promotion/placement as Dy.SP (Executive) and do not contain any provision for out of turn promotions; and

10. Whereas, the Hon'ble Supreme Court in S.I Paras Kumar and others vs. S.I Ram Charan and others (2004), 6 SCC 88, has dealt with the question of out of turn promotions in great length and among other things, observed that:



“ The right to be considered for promotion and procedure to be followed for effecting promotion is a condition of service. Promotions could be made only under Section 2 of the Police Act, the promotions could be made only by following the procedure established under the relevant Rules. No promotions could be made by any procedure outside the scope of Section 2 of the Police Act”; and

11. Whereas, it is a well settled law that the bad precedents cannot become the beacons of inspiration for future. The Hon'ble Supreme Court of India in the matter of *Chandigarh Administration vs. Jagjit Singh* (1995), 1 SCC 745, vide its judgment dated 10.01.1995, has emphasized that:

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be

prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

12. Whereas, it is relevant to note that the J&K Police (Gazetted) Service has remained under prolonged litigation mostly arising out of retrospective promotions granted from time to time, without working out the vacancies in the promotion quota, grant of accelerated promotions at the level of Dy.SP and in many cases, the authority not competent to issue placement orders has ordered the placements on officiating basis which are bad in law and have set wrong precedents. The so called out of turn promotions from non-Gazetted to Gazetted cadre has caused lot of heart burn amongst the police ranks, as because of issuance of such orders, the juniors have stolen march over their

seniors. Because of this and other factors resorted to the seniority at various levels could not be finalized affecting the proper cadre management and consequently the governance; and

13. Whereas, the petitioners in the instant petition having failed on many occasions to have their way have filed multiple writ petitions claiming similar benefits and praying for the same relief. Due consideration in compliance of the court orders has been accorded to their claims and on all occasions found devoid of merit and therefore rejected. But the petitioners have remained undeterred.

14. Now, therefore, keeping in view the above circumstances and upon consideration of the case of the petitioners for their regularization as Dy.SP retrospectively, in compliance of the order dated 26.09.2019 passed by the Hon'ble High Court in SWP No. 182/2010, titled Tejinder Singh and Ors Vs State and Ors, the claim for their regularization from an anterior date is found to be devoid of merit and hence rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

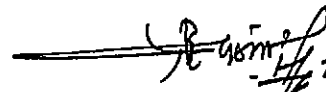
(Shaleen Kabra) IAS

Principal Secretary to Government

Dated.25.02.2020

No. Home//PB-I/97/2000-III

1. Director General of Police, J&K, Jammu.
2. Principal Secretary to the Hon'ble Lieutenant Governor.
3. OSD to the Hon'ble Advisor (B).
4. Director Archives, Archaeology & Museums, J&K.
5. Shri Raman Sharma, Ld. Additional Advocate General, Hon'ble High Court, Jammu.
6. Private Secretary to Principal Secretary to Government, Home Department.
7. Concerned Officers.
8. I/C website, Home Department.
9. Government order file/Stock file.

 25.02.20.

(Rashid Raina) KAS

Under Secretary to the Government