

Government of Jammu and Kashmir  
Home Department  
Civil Secretariat

Subject: Order dated 21.12.2017, passed by the Hon'ble High Court, J&K, Jammu, in SWP No. 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.

**Government Order No. 60 - Home of 2020**  
**Dated: 25.02.2020**

Whereas, the petitioners (S/Sh. Virender Kumar Bhat, Farooq Ahmad Zargar, Rakesh Kumar Parihar, Prem Raj Shan, Sh. Pushkar Nath Tikoo, Sh. Davinder Singh, Tilak Raj Rana and Smt. Rano Devi Kundal, initially appointed as Sub-Inspectors, were promoted as Inspectors by the DGP, on out of turn basis, for their outstanding performance while being posted in Special Operation Groups; and

02. Whereas, these petitioners were placed as I/c Dy.SsP during the years 1999 to 2001, on temporary basis, 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 2575/2016 titled Virender Kumar Bhat and others vs. State and Ors. and 2745/2016 titled Tilak Raj Rana vs. State and another, praying therein for issuance of directions to the government. The Hon'ble Court, vide its common order dated 21.12.2017, was pleased to dispose of the aforementioned writ petitions in the following terms:

*09. In this view of the matter, the court is inclined to dispose of both the writ petitions with a direction to the respondents-Home Department to accord consideration to the claim of these petitioners in relation to their claim for regularization as Dy.S.Ps and for consequential service benefits thereupon with effect from the date, they are performing the duties as Incharge Dy.S.Ps. The claim has to be considered on their individual merit, ability and the rule position if there is no other impediment in law."*

04. Whereas, the petitioners filed a contempt petition No. 761/2018 alleging therein non compliance of the order dated 21.12.2017 passed by the

Hon'ble Court in SWP No. 2575/2016 titled Virinder Kumar Bhat vs. State of J&K and Ors.

05. Whereas, in the course of finalizing tentative seniority list, they filed representations and have been given personal hearing on 03.01.2020; and

06. Whereas, the matter has been examined in the Department, in light of the contents of the writ petitions ibid and it has been observed that the petitioners have based their claim on the grounds that:-

- i. *they are eligible to be regularized w.e.f. the dates they were posted as Dy.SsP against the available posts;*
- ii. *they be given the same benefit given to 04 officers whose details are indicated in Government Order No. Home/553(P) of 2000 dated 12.12.2000; and*
- iii. *their case is covered by the judgements passed in the cases Mukesh Kumar and Brij Mohan Sharma.*

07. Whereas, in context of the previous para, it is pertinent to note that:-


- i. *the petitioners were placed as I/C Dy.SsP by Director General of Police, who is not the competent authority to order such placements, more so, in view of the fact that the details regarding availability of vacancies in the J&K Police (G) Service Category-wise, is maintained by the Government in the Home Department and not by the Director General of Police.*
- ii. *the grant of benefits on the grounds of being similarly circumstanced with the officers promoted vide Government Order No. 533(P) of 2000 dated 12.12.2000, it is observed that their cases were decided altogether on a different footing. The cases of martyred officer(s) deserved special consideration, keeping in view the nature of duties performed and exemplary courage exhibited by them, also keeping in view their supreme sacrifice for the cause of the Nation.*
- iii. *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.*

08. 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

09. 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*

 10. Whereas, it is a well settled Principle of Law that 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."*

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

12. 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 21.12.2017 passed by the Hon'ble High Court in SWP No. 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, 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

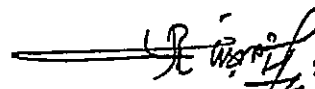
Principal Secretary to Government.

Dated.25.02.2020

No. Home/Gaz/PB-I/WP/22/2018

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.

 15.08.20.

(Rashid Raina) KAS

Under Secretary to the Government