Subject:- Order dated 01.01.2015 of the Hon’ble High Court of J&K passed in SWP No.1458/2010 titled Abdul Gani Dar v. State and others.

Government order No. Home 228(P) of 2015
Dated 06.2015

Whereas, Shri Abdul Gani Dar along with 15 other Constables approached the Hon’ble High Court through the medium of writ petition No 519/87 titled Abdul Rashid and others v. State and others praying therein for similar treatment as was given to Shri Hamidullah Dar, who had been appointed as Sub-Inspector in the Police Department vide Government Order No.Home-202 (P) of 1987 dated 01.04.1987, in relaxation to the recruitment rules; and

Whereas, the Hon’ble High Court of J&K disposed of the above SWP vide its order dated 03.08.2009. Pursuant to the said order, the petitioner submitted a representation praying for his promotion as Sub-Inspector on the analogy of S/Shri Hamidullah Dar and Abdul Rashid Rather; and

Whereas, in compliance with the order dated 03-08-2009 of the Hon’ble High Court of J&K passed in SWP No. 519/87, the claim of the petitioner was considered and rejected vide Government order No 772 (P) of 2010 dated 25-06-2010, for not being covered under rules; and

Whereas, aggrieved of the above said Government order, Shri Abdul Gani Dar filed a revised petition on 17-092010 for revocation of the said Government and for consideration of his appointment as Sub Inspector with all consequential benefits on the analogy of his batch mates. The petitioner also submitted another representation received in the Home Department on 06-12-2013 for consideration of his case in light of Government Order No 402-P of 2013 dated 24-09-2013 whereunder two constables had been appointed as Sub Inspectors in relaxation of rules w.e.f. 01-04-1987; and
Whereas, the representation of the petitioner were examined in the department and it was found that no new facts have been brought out as would warrant re-consideration of his case. He was accordingly, informed about the decision vide letter No. Home/PB-IV/273/2009/1148 dated 10-02-2014 with further clarification that his claim for appointment as Sub-Inspector in relaxation of rules and on the analogy of several other cases has been considered in due deference to the order of the Hon'ble High Court dated 03-08-2009 and rejected vide Government Order No 772-P of 2010 dated 25-06-2010 for being devoid of any merit or justification; and

Whereas, the petitioner filed a fresh writ petition SWP No 1458/2010 seeking quashment of Government Order No 772-P of 2010 dated 25-06-2010 and for consideration of his representation; and

Whereas, the claim of the petitioner was again considered in the Home Department and rejected vide Government order No 133-Home of 2015 dated 08-04-2015 for being devoid of any merit; and

Whereas, the Hon'ble High Court vide its Order dated 01-01-2015 has disposed off SWP No 1458/2010 titled Ab. Gani Dar v. State and others with the following directions:-

"writ petition in hand is accordingly disposed of with a direction to the respondent to consider the claim of the petitioner under rules having regard to the judgment referred hereinabove provided the same is applicable to the case in hand and pass consideration order within a period of six weeks from the date copy of this order alongwith copy of the above referred judgement is served upon them.

Whereas, in compliance with the Order dated 01.01.2015 of the Hon’ble High Court of J&K passed in the writ petition, SWP No. 1458/2010, the claim of Shri Abdul Gani Dar for promotion as Sub-Inspector retrospectively has been examined afresh with reference to rules on the subject, and it has been found that:-

i) The promotion to the posts of Sub-Inspectors and Inspectors is to be made from Assistant Sub-Inspectors and Sub-Inspectors respectively. The promotions are made on the basis of eligibility, seniority, merit, suitability, integrity and availability of posts within the allotted quota. The post of Sub-Inspectors are filed from two sources i.e. by direct recruitment and from in-service Assistant Sub-Inspector.
ii) There is no rule or order which permits inter-change of the direct recruitment and promotion quota or diversion of quota from one source to other source and vice-versa.

iii) The appointment of Shri Abdul Hamid Dar, Shri Abdul Rahid Rather, Shri Mohammad Abass Najar, Shri Ahmadullah Shah or any other candidates to the posts of Sub-Inspectors in the past by diversion of the quota or in relaxation of rules cannot form the basis or precedence for repeating the same in other cases. The rules are relaxed in the rarest of the cases that too only where the operation of rules(s) causes severe hardship to the concerned officer/official. Relaxation cannot be given to the extent where the main rules become infructuous.

iv) The claim of the petitioner for appointment as Sub Inspector in relaxation of rules has been considered from time to time and rejected for the same being without any merit and substance in as much as his case has not found to be analogous or identical to the cases referred to by the petitioner as the benefit in such cases had been extended under court orders, which had attained finality or for being analogous to each other. The petitioner’s case does not bear analogy with those of other cases.

Now, therefore, the claim of Shri Abdul Gani Dar, No. 63/CID presently ASI No. 251/H having been examined/considered in due deference to the order dated 01-01-2015 passed by the Hon’ble High Court in SWP No 1458/2010 titled Ab Gani Dar v. State and others has been found to be without any merit or substance for reasons and is rejected accordingly.


Sd/-
(R.K Goyal) IAS
Principal Secretary to the Government
Home Department

No: - Home/PB-IV/273/2009/2512 Dated 29.06.2015
Copy to the:-

1. Principal Secretary to Hon’ble Chief Minister
2. Director General of Police J&K, Srinagar.
3. Shri B.A. Dar, Additional Advocate General, J&K High Court Srinagar.
4. Private Secretary to Principal Secretary to the Government, Home Department.
5. Shri Abdul Gani No.63/CID (Petitioners No.13) presently ASI No.251/H.
6. I/C Website, Home Department.

(Mohammad Yaqoob Malik)
Under Secretary to the Government
Home Department