Government of Jammu and Kashmir
Home Department

Subject: - Order dated 08.01.2014 of the Hon’ble High Court of J&K at Jammu passed in SWP No 21/2014 titled Jai Krishan Pandita Vs State & ors.

Government Order No.26 - Home of 2016

Whereas, vide PHQ order No.3641 of 1998 dated 28.10.1998, the then DGP, J&K had posted Inspector Jai Krishan Pandita No.2048/NGO against the post of DySP (Photography Cell) in his own pay and grade; and

Whereas, Inspector Jai Krishan Pandita represented for his promotion as DySP to the DGP, J&K on 25.01.1999. DGP referred his case to the Home Department for consideration in relaxation of rules; and

Whereas, upon examination of the case in the Home Department, it was observed that Inspector Jai Krishan Pandita had not completed five years of service as Inspector (Photography), which is a pre-requisite for promotion as DySP. The Police Headquarters was accordingly informed vide communication No. Home/PB-I/105/99 dated 24.04.2001 that the official has not completed 5 years service in the cadre of Inspector (Photography) which is a pre-requisite for promotion as DySP. The Police Headquarters vide communication No. P-Case/J-22/2001/PHQ dated 11.07.2001 accordingly conveyed the decision of the Home Department to the Crime Headquarters for further information of the officer; and

Whereas, Shri Jai Krishan Pandita filed SWP No.21/2014 titled Jai Krishan Pandita Vs State & others before the Hon’ble High Court at Jammu praying therein for reconsideration of his case on the analogy of S/Shri S.K. Nanda and Bodh Raj, (Deputy Directors Prosecution), S/Shri Pritam Singh, Hira Lal Adalti, Mohammad Shafi Shah and S. Harbachan Singh (Chief Prosecuting Officers) and for release of all consequent benefits retrospectively and also for release of all retiral benefits in the shape of revised gratuity, leave encashment, pension etc; and
Whereas, the Hon’ble High Court of J&K, Jammu vide its Order dated 08.01.2014 has disposed of SWP No.21/2014 titled Jai Krishan Pandita Vs State of J&K and others with the direction to accord consideration to the writ petition as a representation for promotion of petitioner as Dy.SP (Photography) on substantive basis at par with the cases of officers, who were accorded promotion on substantive basis by relaxation of experience; and

Whereas, the claim of the petitioner for promotion as DySP (Photography) has been examined in due deference to the above orders of the Hon’ble High Court and it has been found that:

(i) DGP, J&K vide his order No.364 of 1998 dated 28.10.1998 had posted Inspector Jai Krishan Pandita as DySP (Photography) in his own pay and grade with immediate effect. The post of DySP is a gazetted post which has to be filled up by the Government. In terms of Rule 25 (1) of Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, all promotions shall be made by the appointing authority. Article 85 of J&K CSRs regulates stop-gap arrangements against posts in anticipation of convening DPC for filling them in accordance with the rules. In Article 86 (1) of J&K CSRs, the Competent Authority for assigning a Government servant the additional charge of a post or appointing a Government servant in-charge of a higher post has been mentioned as the Appointing Authority. Thus the arrangement made by DGP by posting an ineligible Inspector (photography) as Dy.SP Photography was without competence and dehors the rules.

(ii) The grant of relaxation to officers of the Prosecution cadre of the Police Department in prior consultation with the General Administration Department, which is a separate cadre cannot form the basis for grant of such relaxation in the instant case. Relaxation is applicable in such cases where rules apply harshly. The petitioner who belongs to Photography cadre cannot claim the relief granted to officers of other cadres in relaxation.

Now, therefore, the claim of Shri Jai Krishan Pandita having been considered in due deference to the order dated 08.01.2014 of the Hon’ble High Court of J&K passed in SWP No.21/2014 titled Jai Krishan Pandita Vs State & ors has been found to be devoid of merit for the aforementioned reasons and is accordingly rejected.

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

No. Home/Gaz/ SWP/ 2014
Copy to:-
1. Principal Secretary to Hon’ble Chief Minister, J&K, Jammu.
2. Director General of Police, J&K Jammu.
3. Mr. Wasim Sadiq Nargal, Addl. Advocate General, Hon’ble High Court, J&K Jammu.
5. Private Secretary to Principal Secretary to the Government, Home Department.
6. Incharge, Website Home Department.

(Syed Yassar Parooq)
Under Secretary to Government
Home Department