Subject: Review of suspension of Mr. Alok Kumar, IPS (JK:97).

Government Order No. Home-257 of 2014
Dated 02.06.2014

Whereas, on the basis of a fact finding enquiry in a case related to alleged extortion and corruption, the Government of Bihar vide Notification No.796 of 2013 dated 05.02.2013, placed Mr. Alok Kumar, IPS (JK:97), on inter-cadre deputation to the Government of Bihar, under suspension, on the allegations of misuse of official position, misconduct and dereliction of duty, in terms of Rule 3(1) of the All India Services (Discipline and Appeal Rules), 1969. The officer was charge-sheeted vide memo No.2302 dated 21.02.2013 and sanction to his prosecution was also issued by the Government of Bihar under IPC vide order dated 9.5.2013; and

Whereas, the Review Committee in the Government of Bihar, in its meeting held on 26.04.2013, reviewed the suspension of Mr. Alok Kumar and recommended continuation of his suspension upon which the Government of Bihar vide Notification No.3437 dated 07.05.2013 extended his suspension; and

Whereas, the Government of Bihar vide Notification No.1/D1-10-07/2009 H.P 5133 dated 8th July, 2013 repatriated Mr. Alok Kumar, IPS to his parent cadre and also relieved him to join his service under the Government of Jammu and Kashmir. The departmental proceedings against the officer were also initiated by the Government of Bihar. The officer joined the Police Headquarters in the State of Jammu and Kashmir on 16.07.2013; and

Whereas, Mr. Alok Kumar, IPS filed a writ petition before the Hon’ble High Court of J&K praying therein for recalling the departmental proceedings from the Government of Bihar and transfer to the State Home Department, their conclusion and closure after giving chance of being heard to the petitioner as per rules. The Hon’ble High Court in its interim order dated 24.09.2013 passed in SWP No. 1516/2013, CMP No.2431/2013
titled Alok Kumar Vs Union of India and others, stayed the enquiry proceedings initiated by the respondents against the petitioner; and

Whereas, the case of the officer was referred to the Government of India, Ministry of Home Affairs vide State Government’s letter dated 9.9.2013 for advice as to whether the suspension of the officer has been confirmed by the Government of India, Ministry of Home Affairs as reported by the Government of Bihar and whether the Government of Jammu and Kashmir can review the suspension of the officer and consider him for reinstatement pending disciplinary proceedings before the Government of Bihar; and

Whereas, the Government of India, Ministry of Home Affairs vide communication No.26011/7/2013-IPS.II dated 5th November, 2013 informed that the issues raised by the State Government have been examined and that the Ministry was of the view that the Government of J&K may like to consult with the Government of Bihar whether Mr. Alok Kumar, IPS (JK:97) should be allowed to join or whether Government of J&K needs to pass an order invoking suspension afresh upon Mr. Alok Kumar, IPS, in view of the gravity of the case. The Government of India, Ministry of Home Affairs vide their communication No.26011/7/2013-IPS.II dated 04.03.2014 again requested the State Government to intimate the action taken in light of their communication dated 5th November, 2013.; and

Whereas, the State Government sought comments of the Government of Bihar in the context of the communication No.26011/7/2013-IPS.II dated 5th November, 2013 of the Ministry of Home Affairs, Government of India. The Government of Bihar vide communication No.1/M2-60-04/2013 HP 2496 dated 21.03.2014 while furnishing the details of the case also informed that on the recommendations of the Review Committee, the Government of Bihar has issued an order to the extension of suspension of Mr. Alok Kumar till further orders vide Notification No.8249 dated 04.11.2013. The Government of Bihar also recommended continuation of Mr. Alok Kumar under suspension; and

Whereas, the case of Mr. Alok Kumar, IPS was placed before the Review Committee constituted vide Government Order No.02-GAD (Vig) of 2014 dated 22.01.2014 by the General Administration Department, in terms of sub-rule 8(c) of the All India Services (Discipline and Appeal) Rules, 1969 for review of his suspension; and
Whereas, the Review Committee in the Government of Jammu and Kashmir in its meeting held under the chairmanship of Chief Secretary on 22.04.2014 considered the case of Mr. Alok Kumar, IPS and made the following observations/recommendations: -

"The case was placed before the Review Committee constituted vide Government Order No.02-GAD(Vig) of 2014 dated 22.01.2014 with this background for consideration of revocation of suspension. The Committee, after threadbare discussions, observed that the suspension order issued by the Government of Bihar, does not subsist abinitio, on the following grounds: -

i. The Bihar Government's notification No.3437 dated 07.05.2013, extending the suspension of Mr. Alok Kumar, was issued after a lapse of 90 days, is in violation of Rule 3(1)(b) of AIS (D&A) Rules, 1969. The said rule requires the suspension to be reviewed within ninety days. The relevant rule position is given as under:

3. "Suspension ----
(1) If, having regard to the circumstances in any case
................................. Govt. shall prevail:

Provided also that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government".

Further, a judgement passed by Central Administrative Tribunal, Principal Bench in OA No.32628/2012 dated
27.02.2013, titled “Dr. Hari Prasad VS Union of India and Ors” envisages that the review in any case of suspension, involving All India Services Officers, must take place before the expiry of 90 days from the date of the order of suspension. The order of review of suspension in this case was issued on 07.05.2013, which is definitely beyond the prescribed period of 90 days. So, the order confirming suspension of review dated 07.05.2013 is to be treated as invalid.

ii. The suspension of the officer has not been confirmed by the Central Government so far.

iii. The Government of Bihar, vide notification dated 08.07.2013, repatriated Mr. Alok Kumar, to his parent cadre. The second review of the suspension by the Bihar Government was made on 04.11.2013. On the said date, the officer was not serving in the State of Bihar. Hence, the said State was not the disciplinary authority of the officer at relevant point of time. The Government of Bihar, this way, has acted beyond its jurisdiction.

Regarding the issuance of a fresh suspension order against the officer by the Government of J&K, the Committee observed that the officer will no longer be in a position to influence the disciplinary proceedings/investigation pending against him in Bihar. Moreover, the officer has not committed any offence in this State. Hence, there is no reason as to why the State Government needs to issue any fresh suspension order.

The Committee, in view of the circumstances of the case given here-in-above, recommended that the officer be posted on a non-sensitive post.”

Whereas, the recommendations of the Review Committee have been accepted by the Competent Authority and keeping in view these recommendations and rule position on the subject, it has been decided to take Mr. Alok Kumar, IPS (JK:97) in active service w.e.f 09.07.2013 i.e the date he joined in the Police Headquarters, J&K.
Now, it is hereby ordered that Mr. Alok Kumar, IPS (JK:97) shall be deemed to have been taken in active service w.e.f. 09.07.2013 i.e the date he joined in the Police Headquarters, J&K after his repatriation by the Government of Bihar. The officer shall await orders of adjustment in the Police Headquarters till he is given a non-sensitive posting by the State Government.


Sd/-
(Suresh Kumar) IAS
Principal Secretary to the Government
Home Department

Dated.02.06.2014

No: Home/PB-I/113/2007

Copy to:
1. Secretary to the Government of India, Ministry of Home Affairs (Kind attention: Mr. M. Gopal Reddy, Joint Secretary, Police-I).
2. Principal Secretary to Hon’ble Chief Minister.
3. Director General of Police, J&K.
4. Mr. Rajiva Ranjan Sinha, Additional Secretary, Home (Police) Bihar.
5. Secretary to the Government, General Administration Department.
6. Concerned officer.
7. OSD to MoS, Home.
8. Private Secretary to Principal Secretary to the Government, Home Department.
9. Government order file (w.3.s.c.)
10. Stock file.

(Arshad Ayub)
Special Secretary to the Government
Home Department