Subject:- Order dated 22.01.2013 of the Hon’ble High Court of J&K passed in SWP No. 3191-J/2001 titled T. Gyalpo Vs State and others.

Government Order No. 38- Home of 2014
Dated. 03.07.2014

Whereas, Shri T. Gyalpo, DySP approached the Hon’ble High Court of J&K through the medium of SWP No. 3191-J/2001 titled T. Gyalpo Vs State and others, inter-alia, praying for grant of seniority as DySP w.e.f 30.05.1997 on the analogy of Shri Abdul Rashid Baba and Shri Seva Singh, with all consequential benefits including promotions to the next higher grade; and

Whereas, the Hon’ble High Court of J&K vide its order dated 22.01.2013 passed in SWP No.3191-J/2001 titled T. Gyalpo Vs State and others, while allowing the writ petition, has held the petitioner entitled to the same treatment which has been given to the persons whose details are given in paragraph 7(a) of the writ petition and 12 of the rejoinder of the affidavit and for which the petitioner has sought relief in the writ petition; and

Whereas, in compliance to the order dated 22.01.2013 of the Hon’ble High Court of J&K passed in the aforementioned SWP, the claim of the petitioner for his out-of-turn promotion as Dy.SP w.e.f 30.05.1997 and fixation of his seniority from the said date, has been examined in consultation with the Police Headquarters and it has been found that:-

i. Shri T. Gyalpo figured at S.No.235 of the seniority list of Inspectors as on 30.01.1989. As per the eligibility list maintained by the PHQ, there were six ST candidates senior to Shri T. Gyalpo who were promoted as Inspectors between 1992 and early 1993. Even two ST candidates (promotees of 1995) were senior to Shri T. Gyalpo. As per rules, an Inspector with five years of service is eligible for promotion to the rank of Dy.SP. He was thus not eligible for promotion as Dy.SP even under ST category prior to his senior ST category Inspectors or in the normal course from or before 1997. He was promoted as DySP w.e.f 01.05.2003.
ii. Vide Government Order No.187-Home Department of 1997 dated 30.05.1997, Shri Zakir Hussain, No.63/NGO and Shri T. Gyalpo, No.246/NGO, were among others given adhoc out-of-turn promotion as Dy.SP in relaxation of rules subject to the following conditions that:

a). these promotions, shall not entitle them to claim seniority over other employees who were senior to them in the respective cadre.

b). the period of their adhoc promotion, shall not be counted for determination of their eligibility for promotion to the next ranks.

iii. In the year 1997, promotion to the posts of DySPs was considered. Since the case of Shri Zakir Hussain (ST), Inspector of Police, for his out-of-turn promotion was separately under examination in the Home Department, he was not considered for promotion as DySP against the available ST slot. Consequently, the ST Inspector junior to him in the seniority, namely, Shri Ab. Gani was considered for promotion against the ST slot on reservation basis. Vide Government Order NO.Home-45 of 1997 dated 06.02.1997, among others, Shri Ab. Gani was also promoted as Dy.SP against ST slot. Subsequently, vide Government Order No. Home-187 of 1997 dated 30.05.1997, Shri Zakir Hussain was promoted as DySP on out-of-turn basis. Since the Inspector junior to Shri Zakir Hussain was promoted as DySP w.e.f 06.02.1997, Shri Zakir Hussain was promoted as DYSP on the recommendations of the Selection Committee of the Home Department vide Government Order No.Home-45 (P) of 2000 dated 01.02.2000 w.e.f 06.02.1997 on notional basis for purposes of seniority. The case of Shri Zakir Hussain thus rested on a different footing and there is no similarity or analogy between his case and that of Shri Gyalpo in so far as it relate to the issuance of Government Order No.45-(P) of 2000 dated 01.02.2000. Had he not been promoted as DySP on out-of-turn basis, he would have otherwise been promoted as DySP from 06.02.1997 under ST category on reservation basis. Shri T. Gyalpo (petitioner) thus does not have any right to claim a benefit on the analogy of Shri Zakir Hussain.
iv. The scheme for encouraging excellent performances was enunciated by the General Administration Department vide Circular No.40-GR of 1990 dated 06.03.1990. Subsequently, the Home Department vide Government Order No.Home-3(P) of 2000 dated 06.01.2000 and Government Order No.Home-559 (P) of 2007 dated 07.11.2007 laid down a policy for out-of-turn promotion in the Police Department. In terms of the policy, the cases of out-of-turn promotion from Inspector to DySP level have to be duly recommended by Director General of Police, J&K. Out-of-turn promotion cannot be claimed as a matter of right and that the same is to be given only after careful scrutiny of service record of police personnel. Further, the out-of-turn promotions are sanctioned from a prospective date and not from a retrospective date, as a matter of policy. No two cases can be absolutely identical in terms of the rank, nature of duties, responsibilities and operations.

v. S/Shri Seva Singh Mankotia, Abdul Rashid Baba, N.P. Singh, Sheikh Mehmood and Sunil Dutt were granted out-of-turn promotion as DySP on the recommendation of the Selection Committee. The second out-of-turn promotion in respect of Shri Abdul Rashid Baba and Shri N.P. Singh was granted in relaxation of rules in recognition of their having shown exemplary courage in the performance of their duties.

vi. No citation or dossier recommending out-of-turn promotion of Shri T. Gyalpo was sent by Zonal IGP to the Police Headquarters. The Police Headquarters also did not make any recommendations to the Home Department for out-of-turn promotion of the petitioner as DySP from 1997. The Police Headquarters vide their communication No.P-Case/P-10/2000/PHQ dated 21.05.2014 have again not recommended regularization of the petitioner as DySP form 1997. Having been promoted as Inspector in the year 1996 and keeping in view the eligibility criteria for promotion as DySP and the fact that there has been no recommendation from PHQ at any point of time about his out-of-turn promotion and that he has not made any consistent or outstanding contribution on anti-militancy front or in counter-insurgency operations, his claim for regularization or fixation of seniority as DySP from 1997 would be dehors the rules, will create aberrations in the cadre
management and generate avoidable litigations. This will also unsettle the settled issues.

Now, therefore, in compliance to the order dated 22-01-2013 of the Hon’ble High Court of J&K passed in SWP No.3191-J/2001 titled T. Gyalpo Vs State and others, the claim of Shri T. Gyalpo for his regularization as DySP with effect from 1997 having been considered has been found to be devoid of any merit or justification for the reasons mentioned herein above and is accordingly disposed of.


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

No. Home/PB-I/11/98

Copy to: -
1. Principal Secretary to Hon’ble Chief Minister.
2. Director General of Police, J&K, Srinagar.
3. Shri R. A. Khan Addl. Advocate General, J&K with the request to file a reply before the Hon’ble High Court, Srinagar.
4. Private Secretary to the Principal Secretary to Government, Home Department.
5. Concerned Officer.
6. Incharge Website, Home Department.

(Mohit Raina) 07.07.2014
Under Secretary to the Government
Home Department
Email. us.jkhome@gmail.com