Government of Jammu and Kashmir
Home Department

Subject: - Order dated 22.07.2015 of the Hon'ble High Court of J&K passed in SWP No.2118/2015, MP No.01/2015, titled Mohan Lal Kaith Vs State of Jammu and Kashmir and another.

Government Order No.566-Home of 2016

Whereas, in terms of order dated 13.03.2006 of the Division Bench of the Hon'ble High Court of J&K passed in LPA (SW) No.148/05 titled State of J&K Vs Mohan Lal Kaith and on the recommendations dated 24.04.2006 of the Selection Committee of the Home Department, Mr. Mohan Lal Kaith, was granted one rank out-of-turn promotion as DySP in the pay scale of Rs.7500-12000 (pre-revised) notionally w.e.f. 22.09.2003 and regularly from a prospective date, vide Government Order No.Home-159 (P) of 2006 dated 11.05.2006; and

2. Whereas, Mr. Mohan Lal Kaith, has been representing, thereafter, for granting him, out-of-turn promotion w.e.f 04.08.2000; and

3. Whereas, on the persistent representations of Mr. M.L Kaith, the Selection Committee, in its meeting held on 24.09.2012 again considered the case of Mr. M.L. Kaith for his out-of-turn promotion as DySP from 04.08.2000 i.e the date when his case had been initially recommended by SP (Ops) Srinagar. The Committee recommended as under:-

".....The Committee felt that the decision taken by the Selection Committee in its meeting held on 24.4.2006 was appropriate, rational, uninfluenced by any consideration and the decision had been taken after taking into account all the circumstances and the facts of his case. In light of this the Committee decided that there was absolutely no
4. Whereas, Mr. Kaith, again approached the Hon’ble High Court of J&K, Jammu through the medium of SWP No.2118/2015, MP No.01/2015 titled Mohan Lal Kaith Vs State and another praying therein for his promotion as DySP from 04.08.2000 i.e. from the date recommendation for his out-of-turn promotion has been made, on the analogy of one Mr. Haq Nawaz and the Hon’ble High Court of J&K disposed of the said writ petition vide its order dated 22.07.2015, the operative portion of which reads as under:-

"...Accordingly, this petition is disposed of with a direction to the respondents to consider the claim of the petitioner for promotion to the post of Dy.SP with effect from 04.08.2000, in terms of the averments made in the writ petition, annexures appended thereto, recommendations made by the respondents in his favour from time to time and having regard to the benefits extended to the similarly circumstanced person(s), i.e. Haq Nawaz, of course, under rules governing the field. Let a decision in the matter be taken within a period of four weeks from the date copy of this order is served upon the respondents by the petitioner.....".

5. Whereas, Mr. Kaith (the petitioner) also filed a Contempt Petition, No.50/2016 in SWP No.2118/2015 which was considered by the Hon’ble High Court, J&K, Jammu on 18.04.2016, 19.07.2016 and 07.09.2016; and

6. Whereas, the Selection Committee of the Home Department considered the case of Mr. M.L Kaith for his out of turn promotion w.e.f 04.08.2000 i.e the date his case had been recommended for promotion on out of turn basis, and noted that the officer was seeking a benefit on the analogy of Mr. Haq Nawaz; and

7. Whereas, the details of the case of Mr. Haq Nawaz revealed that the claim for out of turn promotion of Mr. Haq Nawaz as Dy.S.P was rejected initially by PHQ vide Order No.1842 of 2005 dated 20.06.2005 pursuant to the Order dated 23.12.2004 passed in clubbed writ petitions
SWP No.1018/2000 titled Tilak Raj Vs State and others, and thereafter, in pursuance to the order dated 24.03.2009 of the Hon’ble High Court of J&K passed in SWP No.1144/2005, PHQ again rejected the claim of Mr. Haq Nawaz vide Order No.2079 of 2009 dated 11.06.2009; and

8. Whereas, aggrieved of the order dated 11.06.2009 of the PHQ, Mr. Haq Nawaz filed a fresh writ petition (SWP No.1628/2009) before the Hon’ble High Court of J&K, Jammu seeking quashment of the said order and for considering him for out-of-turn promotion, on the analogy of similarly situated cases; and

9. Whereas, the Hon’ble High Court of J&K, Jammu passed an order on 25.11.2011 in SWP No.1628/2009 titled Haq Nawaz Vs State of J&K and others, the operative portion of which reads as under:

"...So viewed, the writ petition is allowed and the respondents are directed to grant out of turn promotion to the petitioner from the rank of Inspector to Deputy Superintendent of Police w.e.f 1998 having regard to the recommendations made by SP, Rajouri and accordingly DIG, Rajouri-Poonch Range, with all the consequential benefits, on the lines such promotion has been given to Inspector M.L. Kaith as DySP vide Government Order No.Home-159 (P) of 2008 dated 11.05.2006 and other similarly situated Police Officers. The respondents shall comply with the order within four weeks from the date copy of this order is served upon the respondents."

10. Whereas, Mr. Haq Nawaz also filed contempt petition No.239/2012 alleging non-implementation of order dated 25.11.2011 of the Hon’ble High Court passed in SWP No.1628/2009, which the Hon’ble High Court considered on 26.7.2013, 06.09.2013 and 18.11.2013; and

11. Whereas, pursuant to the orders of the Hon’ble High Court dated 26.07.2013 passed in contempt petition No.239/2012 read with the order dated 25.11.2011 passed
in SWP No.1628/2009 and the advice of the Department of Law, Justice and Parliamentary Affairs, the matter was considered by the Selection Committee of the Home Department in its meeting held on 19.08.2013, which recommended that Mr. Haq Nawaz may be promoted as DySP out-of-turn w.e.f 08.06.2000 i.e. from the date he completed five years’ service as Inspector. Orders to this effect were issued vide Govt. Order No.404-Home of 2013 dated 25.09.2013 and based on the said order, the Home Department also filed a compliance report before the Hon’ble High Court; and

12. Whereas, pursuant to the orders dated 06.09.2013 & 18.11.2013 of the Hon’ble High Court passed in the Contempt Petition CMA No.135/2013 in SWP No.239/2012 and CMA No.75/2013 in SWP No.1628/2009, the Selection Committee of the Home Department again considered the case of Mr. Haq Nawaz in its meeting held on 28.11.2013 and concluded that there was no scope or merit for considering him for out-of-turn promotion from an earlier date and that such a move would lead to opening of all settled cases and set a wrong precedence in the Police Department; and

13. Whereas, the Hon’ble High Court vide its order dated 03.12.2013 passed in the Contempt Petition CMA No.239/2012 and CMA No.75/2013 in SWP No.1628/2009, inter-alia, directed appearance of Principal Secretary to the Government, Home Department, before the Court to explain his position vis-à-vis non-compliance of the judgement so that the contempt petition, is brought to its logical end at the earliest; and

14. Whereas, keeping in view the orders of the Hon’ble High Court and notwithstanding the observations of the Selection Committee dated 28.11.2013, the Home Department was constrained to grant one rank out-of-turn promotion as DySP to Mr. Haq Nawaz w.e.f 08.06.1998 instead of 08.06.2000, vide Government Order No.Home-548 of 2013 dated 19.12.2013, with the stipulation that his out-of-turn promotion as DySP shall not form basis or
precedence for any other similarly situated case(s), if any; and

15. Whereas, on the other hand, Mr. Mohan Lal Kaith, Sub-Inspector No.3609/NGO was promoted as Inspector on 22.09.1998 and figured at S.No.380 in the seniority list of Inspectors. Consequent to his out-of-turn promotion as DySP w.e.f 22.09.2003, he superseded around 270 officers and in the event of his promotion as DySP on out-of-turn basis w.e.f 04.08.2000, he will supersede another 70 officers who are otherwise senior to him. Further, the Sub-Inspectors appointed alongwith Mr. M.L. Kaith have earned two promotions and they are working as DySPs in a stop-gap arrangement; and

16. Whereas, the Selection Committee of the Home Department again considered the matter on 15th September, 2016 in pursuance of court orders and made the following observations and recommendations: -

"Committee observed that there is no provision in the existing Out-of-Turn Promotion Policy to consider an officer for grant of out-of-turn promotion from a retrospective date or from the date of recommendation made by his Controlling Officer and as a matter of principle, the out-of-turn promotions are to be granted from a prospective date and not from a retrospective date. The out-of-turn promotion issue of Mr. M.L Kaith has since been settled by the earlier Selection Committees and that there was no scope for review of the decision taken in his case, after lapse of around a decade. The Committee emphasized that grant of out-of-turn promotion to Mr. Haq Nawaz from the date of recommendation has been done by the Home Department under compulsive/coercive orders of the Hon’ble Court, as a one-time exception, and that the Committee did not endorse or recommend him for out-of-turn promotion from the date of recommendation made by SP concerned. Further, the case of Mr. Haq Nawaz did not adversely impact any in-service officer, for having already retired on 30.09.2012 and also that he is entitled to notional benefits in the matter of
placement in the Selection Grade of DySP and promotion as SP. Contrary to this, the out-of-turn promotion of Mr. M.L Kaith from 04.08.2000 would have serious implications in that it would result in supersession of around 70 officers including 42 direct recruit DySPs of 2001-02 batch, thereby leading to difficulties in the cadre management and avoidable litigations. Further, there is no similarity between his case and that of Mr. Haq Nawaz in that the latter has been granted out-of-turn promotion merely on the strength of coercive orders of the Hon’ble Court and not on merit. The Committee, accordingly, felt that there were no cogent grounds as would justify his out-of-turn promotion as DySP w.e.f. 04.08.2000 and that the benefit already taken by him was commensurate to his contribution in the Police Department, based on which he has risen to the post of Superintendent of Police in in-charge capacity. While reiterating the decision taken by it in its earlier meeting held on 24.09.2012, the Committee held that the petitioner having already been given his due in the matter of out-of-turn promotion as DySP, there was no scope or merit warranting review of such a decision. The Committee, accordingly, advised the Home Department to accord consideration to the claim of the petitioner in light of the court orders and reject it through a speaking order, with the prior approval of the Competent Authority, after elaborately spelling out the background/circumstances in which one rank out-of-turn promotion was granted to Mr. Haq Nawaz. The department was further advised to file the statement of facts before the Hon’ble High Court urgently to avoid any adverse orders from the Hon’ble High Court."

17. Whereas, the recommendations of the Selection Committee of the Home Department were placed before the Competent Authority, who approved the recommendations, made by the Selection Committee.
18. Now, therefore, in compliance to the Order dated 22.07.2015 of the Hon'ble High Court of J&K passed in SWP No. 2118/2015, MP No. 01/2015, titled Mohan Lal Kaith Vs State and another, the claim of Mr. Mohan Lal Kaith for out-of-turn promotion as DySP, retrospectively from 04.08.2000, having been considered was found devoid of merit and hence rejected.


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


Copy to the: -
1. Principal Secretary to Hon'ble Chief Minister, J&K.
2. Director General of Police, J&K.
3. Addl. Advocate General, Hon'ble High Court, J&K, Jammu.
4. Concerned Officer.
5. Private Secretary to the Chief Secretary.
6. Private Secretary to the Principal Secretary to the Government, Home Department.
7. Incharge, Website Home Department.

(Syed Yasar Farooq)
Under Secretary to the Government Home Department