Subject:- Enquiry against Shri Bachan Lal, Senior Prosecuting Officer, DPO, Samba.

Government Order No: 813-Home of 2017
Dated: 05.07.2017

1. Whereas, a complaint was received by Police Headquarters from one Ms. Champa Bhagat D/O Shri Babu Ram R/o Makhan Pur, Gujran, Simbal More, Miran Sahib, Jammu, against Shri Bachan Lal, Prosecuting Officer. The complainant alleged that her husband deserted her alongwith a female baby and contracted second marriage; and

2. Whereas, the contents of the complaint were verified through ADGP, CID, J&K and it was established that Shri Bachan Lal, SPO had contracted second marriage with one Smt. Rani Devi D/o Shri Khazan Chand, R/o Village Rakh, Fatepur Jarh, near Agra Chak, R.S Pura, Jammu; and


4. Whereas, a Memorandum, accompanied by Articles of charge and the Statement of Imputations was served upon Shri Bachan Lal, PO, vide O.M No:Home/PB- I/33/2005 dated 16.12.2005. The officer was asked to
submit a written statement in his defence within 21 days from the date of receipt of the memorandum; and

5. Whereas, Shri Bachan Lal, Prosecuting Officer submitted his reply on 14.01.2006, denying the charges levelled against him; and

6. Whereas, the reply of the officer was examined and found un-satisfactory, and vide Government Order No. Home-64 (P) of 2006 dated 24.2.2006, Shri Niaz Mehmood, IPS, the then DIG Jammu was appointed as Inquiry officer to enquire into the charges leveled against the officer; and

7. Whereas, the Inquiry Officer vide his communication No. 4258-59/c dated 04.09.2006 submitted his findings. In his enquiry report, the Inquiry Officer had inter-alia stated as under:—

"....Whereas in absence of any solid evidence, no charges could be made out against non-complainant Sh. Bachan Lal, SPO due to which charge sheet could not be framed. I am of the view that in absence of any direct/solid evidence, the non-complainant Shri Bachan Lal should not be held responsible for any such act of commission or omission which has neither been proved against him during the course of enquiry nor has the complainant been able to produce evidence and prove her charges leveled by her against Shri Bachan Lal, SPO. Hence keeping in consideration the fact that no charges surfaced against the non-complainant Sh. Bachan Lal SPO, he should be exonerated and the enquiry consigned to records. However, enquiry papers (Statements in original) are submitted for favour of further necessary action, please."
8. Whereas, Smt. Champa Bhagat D/O Shri Babu Ram R/o Makhan Pur, Gujjran, Simbal More, Miran Sahib, Jammu submitted a representation in Home Department on 23.03.2007 requesting therein to institute a de novo enquiry into the matter; and

9. Whereas, vide communication No. Home/PB-1/33/2005 dated 23.03.2007, the comments of Director General of Police were sought on the findings of the Inquiry officer and the above referred application of Smt. Champa Bhagat; and

10. Whereas, the Director General of Police, vide reference dated 04.08.2007, intimated that the Inquiry officer had not examined the Numberdar and two brothers of Smt. Rani Devi, whose statements have relevance to the enquiry and in absence of which, the enquiry is to be considered incomplete. The DGP further stated that in order to complete the enquiry, the Government Order No. 64-Home (P) of 2006 dated 24.02.2006 needs to be modified; and

11. Whereas, vide Government order No. Home-457 (P) of 2007 dated 24.9.2007, Shri Lalatendu Mohanti, IPS, the then DIG, Jammu Range was appointed as Inquiry Officer to enquire into the charges leveled against Shri Bachan Lal, SPO; and

12. Whereas, Shir Lalatendu Mohanti, IPS, the then DIG, Jammu Range submitted his enquiry report to Home Department on 10.06.2008 which was examined in the Home Department and subsequently, the case was referred to the Department of Law, Justice and Parliamentary Affairs, for advice; and
13. Whereas, the Department of Law, Justice and Parliamentary Affairs vide U.O. No. LD (Ser) 2008/78-Home dated 16.09.2008 advised to take action against the officer, in terms of Rule 3 of Government Employees (Conduct) Rules in case the second marriage with Smt. Rani Devi is not established. The Law Department further advised that the female government employee is also liable to action, in terms of rule 22 (2) in case it is established that she has married any person who has a wife living without obtaining permission of the Government; and

14. Whereas, the case was further examined in the Home department in light of the advice of the Department of Law, Justice & Parliamentary Affairs, and it was observed that act of the officer is unbecoming of a Government Servant for which he deserves to be dealt with severely; and

15. Whereas, in view of the serious allegations against Shri Bachan Lal, it was decided to initiate a fresh enquiry against him. Accordingly, vide O.M dated 06.04.2011, Memorandum alongwith Articles of charge and Statement of imputations was served upon Shri Bachan Lal, Senior Prosecuting Officer; and

16. Whereas, aggrieved with initiation of fresh enquiry, the officer filed a writ petition [SWP No.896/2011] titled Bachan Lal v/s State and others before the Hon’ble High Court praying therein for (i) quashment of Memorandum dated 6.4.2011 to hold yet another enquiry, and (ii) to treat the findings so handed down by respondent No. 4 in the departmental enquiry ordered by Government vide order No. 64 (P) of 2006 dated 24.02.2006, into the allegations of alleged bigamy leveled against the petitioner, as final and conclusive; and
17. Whereas, the Hon'ble High Court, vide its interim order dated 28.04.2011 passed in SWP No.896/2011 titled Bachan Lal v/s State and others, ordered as under:-

"Issue notice. Mr. Gagan Basotra, AAG accepts notice on behalf of respondents. Learned Counsel for the petitioner shall supply copy of the writ petition to Mr. Basotra. It is contended that departmental enquiry was conducted against the petitioner and he come to be exonerated of the charges levelled against him. It is further contended that a fresh enquiry is being conducted against him on the same charges. Notice in CMP also as above. In the meanwhile, enquiry against the petitioner shall remain stayed till next date of hearing. List on 23.5.2011".

18. Whereas, the Hon'ble High Court vide judgment dated 12.07.2016 disposed of SWP No. 896/2011 MP No.1301/2011 titled Bachan Lal Vs State of J&K & Others. The operative part of the judgment reads as under:-

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24. In the present case, however, once material evidence was available on record regarding the illicit connection of the petitioner, the competent authority would be competent to even remit the matter to the enquiry officer, to frame an additional charge based upon the material evidence available on record during the enquiry and confront the delinquent with the same. The enquiry officer could then record his findings thereupon based on which a final decision could be taken by the competent authority.

25. Be that as it may, this petition is allow. The memorandum impugned dated 06.04.2011 alongwith article of charge is quashed. However, it would be open to the respondent to take recourse to the procedure as discussed above (in para 24 above)."
26. Disposed of accordingly alongwith connected applications(s).

19. Whereas, DGP vide communication dated 06.10.2016 forwarded a copy of the application of Smt. Champa Bhagat D/o Sh. Babu Ram R/o Makhan Pur, Gujran, Simbal More, Miran Sahib, Jammu, wherein Smt. Champa requested to treat her complaint against Shri Bachan Lal, Senior Prosecuting Officer as withdrawn in view of the facts that they have amicably dissolved their marriage by way of decree of divorce before the Hon'ble Court of Additional District Judge, Matrimonial Cases, Jammu on 01.07.2013. She further requested that her complaint against Shri Bachan Lal may be treated as withdrawn because after her divorce she has no legal standing to follow the complaint; and

20. Whereas, vide U.O. No: Home/PB-1/33/2005 dated 22.02.2017, the case was again referred to Department of Law, Justice and Parliamentary Affairs for its advice. The Department of Law, Justice and Parliamentary Affairs vide U.O. dated 21.04.2017 returned the departmental file with the following advice:-

"Returned. Department is advised to comply with the directions and proceed in terms of para (24) of the judgment dated 12.07.2016 passed by the Hon'ble High Court in SWP No. 896/2011. The Department may also expedite and complete the process as expeditiously as possible and take appropriate decision in the matter in accordance with law as the matter has been pending since long which adversely affects the rights of the petitioner."

21. Whereas, para (24) of the judgment dated 12.07.2016 passed by the Hon'ble High Court in SWP No. 896/2011 titled Bachan Lal Vs State of J&K & Others reads as under:-

24. In the present case, however, once
material evidence was available on record regarding the illicit connection of the petitioner, the competent authority would be competent to even remit the matter to the enquiry officer, to frame an additional charge based upon the material evidence available on record during the enquiry and confront the delinquent with the same. The enquiry officer could then record his findings thereupon based on which a final decision could be taken by the competent authority.


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

No: Home/PB-I/33/2005
Dated: 05.07.2017

Copy to the: -
1. Principal Secretary to the Hon’ble Chief Minister.
2. Director General of Police, J&K, Srinagar.
3. Shri Lalatendu Mohanti, IPS, Additional Director General of Police, Armed, J&K, Srinagar
4. Private Secretary to Principal Secretary to Government, Home Department.
5. Incharge website, Home Department.

(Syed Yash Farooq)
Under Secretary to Government, Home Department

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