

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.18145 of 2015

Date of decision: 31.8.2015

Tajinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Kiran Kumar, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The petitioner has approached this Court under Article 226 of the Constitution of India praying for a writ of mandamus to the State to adhere to the seniority list of Taxation Inspectors [P-9] and to accord promotion to the petitioner who has been ignored in preference of 3 of his juniors in the cadre i.e. Chand Rani at seniority position 150, Harinder Singh Rawat at seniority position 153 and Upkar Singh at seniority position 160.

Though the petitioner sits at seniority position 146 but yet in the promotion orders dated 15.5.2015, his case has been ignored for promotion to the post of Excise & Taxation Officer and three persons junior to him as Taxation Inspectors have been promoted to the higher rank in a

lot of 26 Taxation Inspectors. The principle of promotion in the rules of service is seniority-cum-merit and, therefore, there is no question of a junior superseding a senior to a non-selection post. In these circumstances, it appears rather certain that the petitioner has not been dealt with fairly and has been discriminated against in the matter of promotion. He is due to retire on 31st December, 2015 and the stage is critical inasmuch as if he does not earn promotion, he will superannuate only to be given an award in case consideration is delayed posthumously as everyday matters in the short span of time left for retirement. Therefore, it is not in the interest of justice that in this case this Court should issue notice of motion which will delay the matter only to receive a response on a point of fact which if proved to be true, would lead to relief. However, in order to abridged the proceedings, on the asking of the Court, Mr.Harkesh Manuja, Additional Advocate General, Punjab will bring this order to the notice of the Government so that the balance of justice is restored without delay.

Resultantly, a mandamus is issued to the State to act strictly as per the seniority and to examine the service record of the petitioner including his ACRs which he has asserted in this petition are without blemish and no disciplinary proceedings are pending against him nor are contemplated. The case of the petitioner be considered within 10 days of receipt of this order and an appropriate order be passed rectifying the order dated 15.5.2015 to accommodate the genuine claim of the petitioner by placing him above Chand Rani and below Piara Singh who are both, like the petitioner, general category candidates. Since it appears that a wrong has been committed either by oversight, mistake or for whatever reason and deserves to be cured, then the promotion of the petitioner as Excise and

Taxation Officer will not result displacing the last candidate out of 26 only on account of the fact that 26 vacancies were available. This is the last way possible to avoid multiplicity of litigation. The Government may resort to all lawful means to keep the list intact in order to implement the directions of this Court when the petitioner is found fit for promotion.

The petition stands disposed of with the above directions.

Learned counsel for the petitioner would supply two sets of the paperbook to Mr.Manuja during the course of the day.

In case any difficulty arises in the implementation of this order or the claim is found unjustified, the Government would be at liberty to make an application seeking further orders, if any required.

A copy of this order be given to the learned State counsel under the signatures of the Bench Secretary of this Court.

(RAJIV NARAIN RAINA)
JUDGE

August 31, 2015

Paritosh Kumar