

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

Date of decision: 17.03.2016

CWP No.21378 of 2013 (O&M)

Moti Lal

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.K.Goklaney, Advocate, for the petitioner.

Mr. Nikhil K. Chopra, DAG, Punjab, for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

Admittedly persons senior to the petitioner have not been promoted to the higher posts. If 62 promotional posts are available being vacant as per the averment of the petitioner in the replication, then the same will be filled in accordance with law and prevailing rules as and when the necessity is felt by the Government to fill them in the exigencies of administration for the smooth functioning of the Department.

In the misc. application moved by the petitioner, it is averred that a fresh seniority list has been issued and his name stands at Sr. No.28 therein as against his original seniority position at point 121. Even if that was so, then all the same persons senior to the petitioner are also awaiting promotion. If the petitioner has any complaint against the fresh seniority list, then it is open to him to challenge the same in a court of law. However, no direction can be issued to the respondents to promote the petitioner against unfilled vacancies.

It is well settled that a fundamental right to promotion arises only when a person is ignored and passed over by a junior for the wrong reason. It is only then the jurisdiction of the writ court under Article 226 of the Constitution can be ignited to remedy the wrong. Mr. Nikhil Chopra appearing for the State assures the court that the petitioner will be promoted as per turn whenever the occasion arises. When the event happens there can be no doubt that the entire regular service of the petitioner will be kept in mind by the Departmental Promotion Committee when it is convened to consider cases for promotion. The appropriate time to seek legal remedy has not presented itself yet. No one has a vested right to future promotion. Though a right to consideration for promotion in accordance with rules is a constitutionally guaranteed fundamental right and a condition of service, mere chances are not. Neither is reduction in chances of promotion. A mandamus will ordinarily not issue to State to make promotions unless a person junior has been promoted. Neither will a writ issue to fill unfilled vacancies in the promotional cadre. This is a policy matter best left to the department and performance cannot be compelled.

Accordingly, the petition is dismissed as premature with the above observations. However, this order will not preclude the State to fill promotional vacancies in accordance with rules when workload requires.

17.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE