

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

CWP-20844-2015 (O&M)
Date of decision: 28.01.2022

ARUN KUMAR	V/S	...Petitioner
STATE OF HARYANA AND ORS		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Varunveer Chauhan, Advocate
for the petitioner.

Mr. Rohit Arya, DAG, Haryana.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

Grievance of the petitioner herein is that respondents No.3 and 4, allegedly junior to him have been given the benefit of promotion and appointed on the post of clerk vide order dated 09.08.2012, whereas the petitioner has been given the same benefit with effect from 18.06.2014 instead of 09.08.2012.

2. Learned counsel for the petitioner submits that petitioner was appointed as Peon on 13.11.2003 in the office of Excise and Taxation Commissioner, Haryana. He submits that when his juniors were promoted to the post of Clerk, he raised his grievance and he was also promoted but with effect from 18.06.2014. Thereafter, he got served legal notice dated 05.01.2015 (Annexure P6) with a request to promote him with effect from 09.08.2012 with all consequential benefits. He submits that respondent Department though sought legal opinion from Law and Legislative Department, who opined that the Draft Rules, 2006 were neither notified nor enforced and as such the Draft Rules have no sanctity, even then petitioner has been discriminated. Hence, the instant petition.

3. I have heard learned counsel for the parties and gone through the case file.

4. The position that emerges from the pleadings as well as after hearing rival contentions of learned counsels is that merely on the ground of Draft Rules, which were framed for governing the promotions on the post of Clerk from amongst Class-IV employees, it was made mandatory that unless the person to be accorded promotion qualifies the typing test, he would not be accorded the benefit thereof. However, on the contrary, record also reveals that certain other candidates, who were similarly situated have been given promotion regardless of clearing the typing test merely on the basis of their seniority and on the ground of sheer long experience in service on the Class-IV posts and in order to avoid any heart burn amongst them at least be promoted once in their entire career as they were about to attain the age of superannuation. The case of the petitioner is no different than those candidates. Yet he has not been given the promotion with effect from date of promotion of his juniors on the post of Clerk though he has been given the benefit of promotion from later date.

5. The Legal Remembrancer-cum-Secretary to Government, Department of Law and Legislative as well as the learned Advocate General, Haryana had also given their opinion in favour of the petitioner stating that the benefit claimed by him on parity with his juniors cannot be denied on the ground of the Draft Rules, which were yet to be notified as Rules to see the light of the day. Notwithstanding, needful was not done.

6. In view of the aforesaid reasons, the writ petition is allowed. Respondents are directed to accord the benefit of promotion to the petitioner with effect from the same date as his juniors were promoted with consequences and benefits to follow.

7. Needless to say, if petitioner is to be accorded any further benefit on the basis of change of date of his promotion, his case will be considered, in accordance with law.

(ARUN MONGA)
JUDGE

January 28, 2022
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No