

(10) For the reasons stated above, the writ petitions are disposed of. The official respondents are directed to give effect to this judgment within six months.

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*J.S.T.*

Before Hon'ble A. L. Bahri & V. K. Bali, JJ.

MANGE RAM,—Petitioner.

*versus*

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 12237 of 1991.

13th December, 1991.

*Constitution of India 1950— Art. 226—Promotion—Petitioner denied promotional pay and scale on the basis of adverse entries last preceding ten years—Action of State set aside on basis of 1973 instructions which provide that censure or warning not to be considered to stop promotion.*

*A. L. Bahri, J.*

*Held, that Annexure R-1 are the instructions issued by the State Government on July 19, 1973 specifically providing that censure or warnings which were not major punishments would not be considered to stop promotion and these punishments are merely to be taken as part of the total record. In view of these instructions, thus the warnings which were administered in 1977 or in 1979 which were stale at the relevant time i.e. January 1, 1986 when the question of placing the petitioner in the higher promotional grade was to be considered, could not be taken into consideration. Otherwise, the latest record of the petitioner did not debar him for being placed in the higher grade.*

(Para 3)

*Dinesh Kumar, Advocate, for the Petitioner.*

*Rajan Gupta, DAG, Haryana, for the Respondents.*

#### JUDGMENT

(1) Mange Ram, Junior Engineer working in PWD (B&R) Panipat, in this writ petition seeks direction to be placed in higher pay scale of Rs. 1640—2900 with effect from January 1, 1986 the date when persons junior to him were placed therein,—*vide* order dated May 23, 1988 (Annexure P-3). Instructions on the subject are contained in Annexure P-1. 50 per cent of the posts of Junior Engineers were to be placed in the promotional pay scale of

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Rs. 1640—2900 and the remaining 50 per cent in the pay scale of Rs. 1400—2300.

(2) As per stand taken by the respondents in the written statement, the promotional grade was denied to the petitioner as there were adverse entries in the last preceding 10 years. His case was considered alongwith others and others were promoted. Reliance has been placed on the instructions of the State Government issued on May 21, 1973 (Annexure R-11).

(3) After hearing learned counsel for the parties, we find that action of the respondents to deny promotional pay scale to the petitioner is not supported by the rules or the instructions. It is not disputed that for the years 1977—79, warnings were administered to the petitioner and some recovery was also effected from him, on account of shortage as stated. Another punishment awarded to the petitioner was stoppage of one increment without future effect. Annexure R-1 are the instructions issued by the State Government on July 19, 1973 specifically providing that censure or warnings which were not major punishments would not be considered to stop promotion and these punishments are merely to be taken as part of the total record. In view of these instructions, thus the warnings which were administered in 1977 or in 1979 which were stale at the relevant time i.e. January 1, 1986 when the question of placing the petitioner in the higher promotional grade was to be considered, could not be taken into consideration. Likewise the other punishment awarded was not to be taken into consideration. Otherwise, the latest record of the petitioner did not debar him for being placed in the higher grade.

(4) When the service is divided into two parts, one higher pay scale and the other junior scale, the rule of seniority-cum-merit is to be taken into consideration meaning thereby that a senior person will automatically get higher pay scale if there is nothing bad in his official record. The consideration of the several persons comparing their records as has been done in the present case, was not called for.

(5) For the reasons recorded above, this petition is allowed. The petitioner would be placed in the promotional higher pay scale of Rs. 1640—2900 with effect from January, 1, 1986 the date when his juniors were promoted. There will be no order as to costs.

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*J.S.T.*