

# C. A. T. Bench, JAIPUR

Date of Order

Orders

28/1

CASE NOT REACHED  
PUTUP FOR HEARING  
ON 2/2.1993

B.M.  
COURT MASTER

2/2

CASE NOT REACHED  
PUTUP FOR HEARING  
ON 4/2.1993

B.M.  
COURT MASTER

4/2

CASE NOT REACHED  
PUTUP FOR HEARING  
ON 16/2.1993

B.M.  
COURT MASTER

16/2

CASE NOT REACHED  
PUTUP FOR HEARING  
ON 11/3.1993

B.M.  
COURT MASTER

11/3.93

Mr. S.P. Gang - Counsel for the respondent  
that has been disposed of in a separate  
order which has been pronounced in the  
open Court.

(P.W. DATTENDRAYER)  
P.W.D. - M.P.W.D.

(D.L. 1767/76)  
V.P.D. - P.W.D.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R .

T.A. No. 99/92

Date of Decision: 11.3.93

SURAJ MAL

: Applicant.

Mr. D.P. Garg

: Counsel for the applicant.

VERSUS,

UNION OF INDIA & ORS

: Respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Plaintiff/appellant had filed the appeal being aggrieved against the judgment and decree passed by the learned Munsif in civil suit on 21.3.77.

2. Plaintiff filed a suit in the court of learned Munsif, Ajmer and submitted therein that he is senior to Hazari, Prabhu and Kailash. He has further submitted that Hazari, Prabhu and Kailash were juniors to him and they have been promoted against the rules. He has also prayed that the salary and the arrears of the salary should be paid to him considering him as promoted on the date on which his juniors were promoted. Respondents submitted the reply and on the basis of the pleadings of the parties, following six issues were framed:

- (1) Whether M/S Hazari, Prabhu and Kailash were promoted illegally and wrongfully?
- (2) Whether the plaintiff refused promotion in the years 1961 and 1963 as alleged in para 2 of the written statement?
- (3) Whether no suitable candidate was available for promotion as Assistant Operator when Shri Ram Charan was promoted as alleged in para 3 of the written statement?
- (4) Whether further promotions of Shri Hazari, Shri Prabhu, Shri Kailash and Shri Ram Charan were without selection by D.P.C.? If so, to what effect?
- (5) Whether the suit is barred by limitation?
- (6) Whether the relief of salary cannot be claimed without declaratory relief?

3. The learned Munsif decided the Issue No. 1,3 and 4 in favour of the plaintiff. Issue No. 2 was decided partly

in favour of the plaintiff to this extent that the promotion was given at a belated stage and the plaintiff declined to accept the promotion so given at a belated stage.

4. We have heard the learned counsel for the appellant. A query was made by the Court to the learned Counsel for the applicant about issue No. 1 - whether the court can hold the promotions of Hazari, Prabhu and Kailash as illegal, particularly, when they have not been impleaded as a party in the plaint. Mr. Garg appearing on behalf of the appellant submitted that no such plea was raised in the written statement and now it cannot be considered. A person cannot be condemned without being heard. To declare the promotions Hazari, Prabhu and Kailash illegal without giving them an opportunity of hearing is against the principles of natural justice and violative of the law.

5. Once the court comes to the conclusion that the promotions cannot be declared illegal on account of the non-joinder by the parties, no relief can be granted to the plaintiff. Apart from this, the plaintiff filed the suit in the court of learned Munsif in the year 1973 and he submitted therein that he was due for promotion in 1961 and 1963 when his junior has been promoted. Even if it is assumed that illegality was committed, the subsequent promotion given to the plaintiff should have been accepted by the plaintiff and he should have claimed for the relief of that period but his declining to accept the promotion also goes against the cause of the plaintiff.

6. We have gone through the judgment of the learned Munsif and we do not find any force in the appeal and the same is dismissed.

7. No orders as to costs.

B.N. DHOUDIYAL  
( B.N. DHOUDIYAL )  
Administrative Member

D.L. MEHTA  
( D.L. MEHTA )  
Vice-Chairman