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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of hearing and order: 15th April, 2015.

+ W.P.(C) 3641/2015 & C.M. Appl. No. 6487/2015 (Stay)

UNION OF INDIA & ORS Petitioners

Through: Mr. Ashok Singh, Advocate

versus

GOPAL DUTT PANDEY & ORS Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

By this petition filed under Article 226 of the Constitution of India, the petitioners seek to challenge the impugned order dated 31.10.2013 passed in 2896/2012 and order dated 05.12.2014 passed in R.A. No.34/2014, by learned Central Administrative Tribunal, Principal Bench, New Delhi.

Assailing the tenability of the aforesaid orders, Mr. Ashok Singh, the learned counsel for the petitioners submits that the learned Tribunal has not appreciated the fact that the respondents were given arrears in lump sum in terms of Rule 5 of the Railway Services (Revised Pay) Rules, 2008 vide RBE No.103/2008 and this fact by itself was sufficient to prove that the

respondents were not fully aware of the said Circular with regard to the revised pay modified in the year 2008. Another contention raised by the learned counsel for the petitioner is that the respondents had also not challenged the Rule 6(3) of the said Railway Services (Revised Pay) Rules, 2008 and in the absence of any challenge raised by them and also being aware of the benefit of the said rules, the learned Tribunal could not have granted the relief claimed by the respondents.

In support of the aforesaid submissions, the learned counsel for the petitioner relied upon the judgment in the case of *Union of India and other vs. M.K. Sarkar, (2010) 2 SCC 59*.

We have heard the submissions made by the learned counsel for the petitioner and also perused the impugned orders passed by learned Central Administrative Tribunal.

The respondents had preferred the O.A.No. 2896/2012 claiming the following reliefs:-

“(i) that the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 24.7.2012 and order dated 12.7.2012 as mentioned in order dated 24.7.2012 declaring to the effect that the same is illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to extend the benefits of option as stated in rule 5 and 6 of the Railway Service (Revised Pay) Rules, 2008 with all the consequential benefits including the arrears of difference of pay and allowances.

(ii) That the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondents to relax the provision of Rule 6 of Railway Service (Revised Pay) Rules, 2008, if necessary in the facts and circumstances of the case to extend the benefits of option to the applicants for fixation of their pay while fixing their pay as per Railway Services (Revised Pay) Rules, 2008."

The main grievance raised by the respondents was that the petitioner had failed to notify the said Railway Services (Revised Pay) Rules, 2008 although in terms of instructions issued under RBE No. 103/2008 it was incumbent upon them to have duly notified the said rules to the Railway Servants. It is also the case of the respondents that they came to know about the requirement of exercising option in terms of instructions issued under RBE No. 103/2008 only when some of their juniors started getting more pay in spite of the fact that they were promoted as Assistant Loco Pilots and as Shunters much later in time. The learned Tribunal on the factual matrix of the case reached to the conclusion that these petitioners failed to place any material on record in compliance of the said Railway Services (Revised Pay) Rules, 2008 that had taken requisite steps to give publicity amongst the staff working under them so that they could exercise their option. Since the petitioner had failed to establish the said fact before the learned Tribunal, therefore, in exercise of writ jurisdiction, we are not inclined to interfere with

the findings of fact arrived at by the Ld. Tribunal to hold that the petitioners failed to take requisite steps to give due publicity to the said Railway Services (Revised Pay) Rules, 2008 , thus, depriving the respondents to exercise their option.

Finding no merit in the present petition filed by the petitioner, the same is hereby dismissed with no orders as to costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

APRIL 15, 2015

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