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

+ **W.P.(C) 3648/2017 and CM APPL. 3914/2018**

UNION OF INDIA & ANR Petitioner
Through: Ms. Geetanjali Mohan, Advocate.

versus

PAPPU V. KASHYAP Respondent
Through: Mr. A.K. Trivedi with Mr. Naveen
Kumar, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **11.12.2019**

1. The Union of India through the West Central Railway, has in this petition challenged an order dated 20th December, 2016 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi in OA No. 4290/2014 filed by the Respondent to the extent that it directs the Petitioners to fix the pay of the Respondent with effect from 1st December, 1983 and grant him all consequential benefits.

2. The Respondent was appointed as a Commission Vendor in the Railways on 26th April, 1983. In terms of the order dated 29th April, 1985 of the Supreme Court in W.P. (C) No.892-975 of 1984 (*Ram Swarup v. Union of India*), Commission Vendors were directed to be regularised. The said order is a short one of one paragraph and reads as under:

“Having regard to averments made in para 3 of the counter affidavit filed by Mr. Suganchand Bhatia, Additional Chief Personnel Officer, Western Railway, Headquarters, Church Gate, Bombay, it may be made clear that the process of regularization of the registered commission vendors into regular cadre in the employment of Railway is in progress. Substantial work has been done, and the counter affidavit shows that the process will be completed in a reasonable time. Therefore, nothing survives in these petitions which accordingly stand disposed of.”

3. The Western Railway issued a letter dated 23rd April, 1987 for implementation of the above order and directed that the Petitioners in the aforesaid writ petition would be entitled for payment at the minimum scale of Rs.196-232 from 1st December, 1983 to 31st December, 1985, and thereafter, at Rs.750 per month from 1st January, 1986.

4. It appears that in the meanwhile certain miscellaneous applications were filed in the Supreme Court seeking clarification of an order dated 13th December, 1983 passed by the Supreme Court in W.P. (C) No. 6804-05/1982 (*Shital Singh v. Union of India*), which again concerned regularisation of the Commission Bearers and Vendors on various Railway platforms belonging to the Central Railway and the South Central Railway. In disposing of the said application, the Supreme Court on 8th September, 1987 in *T.I Madhvan v. Union of India 1988 Supp (1) SCC 437* modified the Court’s earlier order dated 10th March, 1986 as regards the payment of salaries to such Commission Bearers/Vendors by the following order:

“Mr. G. Ramaswamy, learned Additional Solicitor General appearing for the respondents draws our attention to the order passed by this Court in *Saital Singh and Anr. v. Union of India*

and Ors. (W.P. Nos. 6804-05/82 dated December 13, 1983) and states that the Union of India is prepared to abide by the terms of the order. He also submits that the direction contained in the order of this Court dated March 10, 1986 in this case while issuing a rule nisi for payment of salary to the employees covered by the writ petition at the same rate as salaried bearers of the Railway Catering Establishment w.e.f. December 1, 1983 needs modification with regard to the date from which the salary and other emoluments are payable to them upon absorption.

2. We accordingly direct that all persons working as commission bearers and vendors on various railway platforms belonging to the Central Railway and the South Central Railway would be absorbed progressively as members of the permanent Railway Catering Service as per the terms of paragraph 3 of the Memorandum No. 76 TG III/639/11 dated December 13, 1976 issued by the Joint Director, Traffic Commercial (C) II, Railway Board, New Delhi, as and when vacancies to the posts of bearers in the Railway Catering Service occur. As directed by this Court in *Saital Singh's* case, the concerned Railway Administrations would first absorb all the bearers who are registered in accordance with the aforesaid memorandum, thereafter the vendors who are so registered and until all the bearers and vendors are accordingly absorbed, the Railway Administrations shall not recruit or appoint any person either as a bearer or vendor on permanent basis in Railway Catering Service from any other sources.

3. In view of this, we must necessarily modify the direction contained in this Court's order dated March 10, 1986 as to payment of salary. In modification of the earlier direction, we direct that the vendors and bearers so absorbed in the Railway Catering Service shall be entitled to salary as from the date of their absorption and not from December 1, 1983.”

5. It appears that in the impugned order, the CAT has overlooked the above

fact and has gone only by the order in ***Ram Swarup*** (*supra*). After noting that the Respondents had pursuant to the judgment in ***Ram Swarup*** issued the above letter dated 23rd April, 1987, the CAT proceeded to observe as under:

“As regards the second prayer of the applicant that he should be granted pay fixation w.e.f. 01.12.1983, we find that this plea is worthy of consideration. The intent of the respondents expressed in terms of Annexure A-3 order dated 23.04.1987 is quite clear, the relevant portion of which is extracted at para-5 above. We, therefore, hold that the applicant's pay should be re-fixed w.e.f. 01.12.1983.”

6. It is clear from the order of the Supreme Court in ***T.I. Madhavan*** (*supra*), particularly paragraph 3 thereof, that the direction issued by the CAT in the impugned order that the Respondent's pay should be re-fixed with effect from 1st December, 1983 cannot be sustained. It is clarified that the Respondent's pay would be fixed from the date of his actual regularisation and not earlier. To that extent, the impugned order of the CAT is hereby set aside.

7. The petition is disposed of in the above terms. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 11, 2019

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