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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2668 OF 2008

The Union of India, through
General Manager, Central Railway,
Mumbai CST & Another ... **Petitioners**

Vs.

Amar Singh Tomar & Others ... **Respondents**

**WITH
CIVIL APPLICATION NO.2762 OF 2009
IN
WRIT PETITION NO.2668 OF 2008**

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**Indian Railway Catering and
Tourism Corporation Limited** ... **Applicant**

In the matter between

The Union of India, through
General Manager, Central Railway,
Mumbai CST & Another ... **Petitioners**

Vs.

Amar Singh Tomar & Others ... **Respondents**

Mr. T.J. Pandian with Mr. Gautam Modanwad & Mr.
Prasad Sawant for the petitioner.

Mr. Nitin A. Kulkarni for respondent Nos.1 to 25

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 24, 2026.

PRONOUNCED ON : APRIL 30, 2026

**JUDGMENT:**

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioners call in question the legality and correctness of the Award dated 30 September 2006 rendered by the Industrial Tribunal at Pune in Reference (IT) No. 22 of 2002, which came to be published by the Central Government on 1 August 2007.

2. The factual matrix giving rise to the filing of the present writ petition, as set out by the petitioners, are delineated herein below. It is the case of the petitioners that until the period 2000–2001, catering services of the Railways were being operated by the Catering Department through its departmental staff as well as through bearers engaged on contract or commission basis. It is further stated that, pursuant to a policy decision of the Ministry of Railways to entrust the management of catering services to the Indian Railway Catering and Tourism Corporation for the purpose of improving passenger services, a decision was taken to absorb eligible and suitable commission vendors or bearers into Group “D” posts in other departments. In furtherance thereof, by an order dated 9 March 2001, as many as 46 commission vendors or bearers, who were engaged in selling edible items at Pune Railway Station on commission basis, were subjected to a process of screening and thereafter absorbed as permanent employees in Group “D” posts across various departments. It is further the case that, consequent upon such absorption, no unauthorised persons were permitted to operate or work at the stalls at Pune Railway Station with effect from 16 March 2001. The petitioners contend



that the respondents, acting through the Madhya Railway Sthaniya Lokadhikar Samiti, Central Railway, Pune, raised an industrial dispute by initiating conciliation proceedings on 30 March 2001. The respondents alleged therein that they had been working since the year 1984 as Assistant Vendors or Helpers on commission basis and were, therefore, entitled to absorption as permanent employees in parity with the aforesaid 46 commission bearers. It was further alleged that despite such entitlement, their cases were not considered, and they were arbitrarily prevented from continuing their work with effect from 16 March 2001. It is further stated that upon failure of the conciliation proceedings, the appropriate Government made a reference for adjudication to the Industrial Tribunal, Pune, which was registered as Reference No. IT/22/2002. The terms of reference required adjudication on the issue as to whether Shri Narendra Singh and 24 others were in employment of the Railway Catering Department, Pune as commission vendors or helper vendors from the respective dates of their engagement, and if so, whether the demand raised by the Union, namely Madhya Railway Sthaniya Lokadhikar Samiti, seeking reinstatement and absorption of the concerned persons, whose services were alleged to have been terminated with effect from 16 March 2001 without notice or compensation, was legal and justified, and further as to the reliefs to which such persons would be entitled.

3. The respondents filed their statement of claim on 23 July 2002 asserting, inter alia, that they had been working as Assistant Vendors or Helpers in shifts extending round the clock for sale of



eatables under the supervision and control of the Catering Inspectors and Supervisors of the Railways. It was further contended that they were remunerated by way of commission calculated on total sales, and that they were subjected to medical examination and issued identity cards, badges, and authorization enabling access to railway platforms and compartments for sale of eatables. It was also contended that, out of a total of approximately 80 commission vendors, 46 had been absorbed in regular service, and those persons were similarly situated to the respondents. On such basis, the respondents asserted that they too were entitled to be screened and absorbed in regular railway service. It was further alleged that they were arbitrarily discontinued from work with effect from 16 March 2001. On these premises, the respondents sought directions for regularisation of their services on parity with the said 46 persons, reinstatement as Assistant Vendors or Helpers with effect from 16 March 2001, and continuation in service during pendency of the reference.

4. The petitioners filed their written statement on 20 August 2002, wherein it was, inter alia, specifically contended that no relationship of employer and employee existed between the Railways and the respondents. It was asserted that the respondents were never appointed by the Railways in any capacity whatsoever, nor had they worked on commission basis under the Railways or received any commission from the Railways. It was further contended that the 46 commission vendors who came to be absorbed were initially appointed by following due procedure pursuant to a Railway Board circular issued in the year 1981,



which prescribed conditions including payment of a security deposit of Rs.250/- and a nominal annual licence fee, along with entitlement to commission at specified rates on sales. It was further stated that such commission vendors had sought permission to engage helpers at their own risk and responsibility, which was granted by the Railways, and that the present respondents were engaged as such helpers by those commission vendors and were remunerated by them. The petitioners further contended that medical examination and issuance of identity cards to such helpers was undertaken only as a matter of safety, hygiene, and identification to permit access to railway premises, failing which entry would be restricted by railway authorities. It was emphatically denied that the respondents had any obligation to submit sales accounts to railway authorities or that they were paid commission by the Railways, and it was thus asserted that no employer–employee relationship existed between the parties.

5. By the Award dated 30 September 2006, the Industrial Tribunal, Pune allowed Reference (IT) No. 22 of 2002. Being aggrieved thereby, the petitioners have preferred the present writ petition.

6. Mr. Pandian, learned Advocate appearing on behalf of the petitioners, submits that the Industrial Tribunal, while recording a finding that the 25 concerned employees were not in possession of any documentary evidence to establish receipt of monthly commission for sale of food articles over a considerable period, has nevertheless proceeded to make an erroneous observation that the said employees had established that all documentary material



pertaining to sales and commission payable to vendors was maintained and retained by the Central Railway. It is contended that such an observation is fundamentally flawed, inasmuch as the respondents were never engaged by the Railways either as vendors or in any other capacity. It is further urged that, on the basis of this erroneous premise, the Tribunal has fallen into further error in concluding that the said employees could not be expected to produce documentary evidence to demonstrate payment of commission.

7. Learned counsel for the petitioners further submits that, despite the petitioners having clearly and unequivocally demonstrated that the respondents did not form part of the alleged group of 80 vendors, the Tribunal has proceeded on an incorrect footing by observing that the existence of 80 vendors at Pune Railway Station could not be disregarded, and that out of them, 46 had been absorbed and regularised. It is submitted that the Tribunal has erroneously held that there was no material on record to explain as to why the present 25 employees were excluded from such absorption and regularisation, thereby drawing an adverse inference against the petitioners without proper basis.

8. It is further contended that the Tribunal has relied upon extraneous considerations and has consequently arrived at an erroneous conclusion that the act of the Central Railway in issuing badges and identity cards and subjecting the said 25 employees to medical examination establishes a nexus between the said employees and the Central Railway in relation to the work of sale of food articles. According to the petitioners, such inference is



contrary to the material available on record and the explanation furnished by the petitioners, and therefore, the impugned finding is liable to be set aside.

9. Learned counsel further submits that the Tribunal has failed to properly appreciate that the management of the catering department of the Central Railway had, by virtue of a policy decision, been transferred to the Indian Railway Catering and Tourism Corporation Ltd., which is a distinct and separate corporate entity. It is submitted that the respondents were permitted to continue at Pune Railway Station only by virtue of an interim order dated 30 October 2002 passed by the Tribunal, notwithstanding the fact that sufficient work was not available for them. In such circumstances, it is urged that the Tribunal ought not to have issued directions in the impugned Award mandating that, irrespective of the change in policy and management, the Central Railway should permit the said 25 employees to continue in the work of sale of food items and further direct their absorption and regularisation either in the catering department or in other departments. It is submitted that such directions are unsustainable in law and are contrary to the factual position as well as the legal principles laid down by the Supreme Court.

10. Per contra, Mr. Kulkarni, learned Advocate appearing on behalf of the respondents, submits that it is an admitted position that 46 similarly placed vendors were absorbed and regularised in the employment of the Central Railway in Group "D" posts as Khalasi, and were accepted as employees of the Railways. It is contended that the present 25 employees were performing



identical duties at Pune Railway Station as those performed by the said 46 vendors, and therefore stand on the same footing. It is further submitted that the evidence of the witnesses examined on behalf of the Central Railway clearly indicates that there were no complaints whatsoever regarding the work performed by the said 25 employees in relation to sale of food articles. It is thus contended that the respondents are entitled to parity of treatment. It is further urged that the contention of the Central Railway that the respondents were engaged by private vendors and not by the catering department is not substantiated by any cogent evidence. It is pointed out that the Central Railway has failed to examine any vendor or commission agent to establish that the respondents were merely assisting such vendors and had no connection with the catering department.

11. It is further submitted on behalf of the respondents that the petitioners have failed to establish, by any reliable evidence, that the respondents were working under any particular vendor, and in absence of such proof, the case sought to be set up by the petitioners cannot be accepted.

REASONS AND ANALYSIS:

12. I have heard the learned Advocates for the petitioners and the respondents at length. I have also carefully gone through the material placed on record, including the oral evidence, documentary evidence and the reasoning as recorded by the Industrial Tribunal in the impugned Award.



13. At the outset, it is required to be noted that the case of the respondents is built on assertion that they have been working since long time at Pune Railway Station in relation to sale of food articles of catering department and therefore, according to them, such long and continuous working gives them status of employees of Railways. The consistent case of the petitioners is that these respondents were never appointed by Railways in any manner whatsoever. It is specifically stated that they were only assisting commission vendors, who were independently engaged and who alone had legal connection with Railways. This stand, if accepted, changes entire nature of claim because then respondents become persons engaged by private individuals and not by Railways. Therefore, the question is whether there existed legal relationship of employer and employee between Railways and respondents. Unless this requirement is proved, all other claims such as absorption or reinstatement cannot stand. The Tribunal, in my view, was required first to determine this issue before proceeding further.

14. The Tribunal has placed considerable reliance on the fact that 25 persons have filed affidavits, and they were subjected to cross examination. It has also noted that two witnesses were examined on behalf of Railways. However, merely because evidence is led on both sides, it does not follow that the case is proved. Evidence has to be appreciated in proper legal manner. The Tribunal appears to have accepted the case of the respondents on surrounding circumstances, without establishing how and under what authority the respondents came to be engaged. There



is absence of finding on initial appointment, terms of engagement and source of payment. These are elements in determining employment relationship. Without recording findings on these aspects, acceptance of claim only on basis of affidavits and oral statements becomes unsafe.

15. The Tribunal has further observed that both witnesses of Railways have admitted that the respondents were selling food items at Pune Railway Station for several years. Even if this statement is taken as correct, it establishes that the respondents were physically carrying out certain work at the railway premises. It does not establish that they were employed by Railways. It is common that various activities inside railway premises are carried out through different modes such as contractors or license holders. Therefore, the fact of working at a particular place is not sufficient. What is required to be examined is under whose control the work was performed, who had authority to appoint or remove them, and who was responsible for payment of salary. These factors determine nature of relationship. The Tribunal has failed to draw this distinction between performance of work and existence of legal employment.

16. The Tribunal has also given weight to the fact that identity cards and badges were issued and that medical examination of respondents was conducted. On that basis, it has inferred that there exists a nexus between respondents and Railways. This reasoning does not appear to be sufficient. The explanation given by the petitioners is that such identity cards and medical checks were required only for regulating entry into railway premises,



ensuring cleanliness and maintaining safety standards. In places like railway stations where public movement is large, such measures are commonly applied even to persons who are not employees, but who are allowed to enter premises for limited purposes. The Tribunal has not given reasons for rejecting this explanation. It has treated these circumstances as proof of employment. These factors may show permission, but they do not establish contract of employment. Therefore, reliance placed on these aspects without such analysis renders the finding incomplete.

17. The Tribunal has further proceeded on a footing that since the documentary record relating to sale of food articles and payment of commission was in custody of the Railways, the concerned employees cannot be expected to produce such material before the Court. This reasoning appears to rest more on presumption than on proof. There is no material pointed out to show that such records were in fact maintained by the Railways in respect of these respondents. On the contrary, the specific case of the petitioners is that no commission whatsoever was paid by the Railways to these respondents. If that position is accepted even prima facie, then the question of maintaining any record of commission in their favour does not arise. In such situation, the Tribunal was required to examine whether such records existed and whether they pertained to these respondents. Without such finding, the Tribunal has proceeded to shift the burden on the petitioners by assuming existence of records. It must follow proof of foundational facts. In absence of such proof, the reasoning of the Tribunal on this aspect becomes unsustainable.



18. Another circumstance which appears to have weighed with the Tribunal is that 46 persons, stated to be similarly placed, were absorbed and regularised in Group D posts. Proceeding on that basis, the Tribunal has held that the present 25 persons are also entitled to same benefit. The petitioners have placed material to show that those 46 persons were recognised commission vendors, selected through a prescribed procedure pursuant to a policy decision. Their engagement had a legal basis. The Tribunal has not undertaken exercise to examine whether the present respondents belonged to the same class. Without such comparison, the conclusion of parity cannot be sustained. In absence of such parity, extension of benefit on ground of equality becomes misplaced. The Tribunal has, therefore, applied the principle of parity without examining its necessary preconditions.

19. The Tribunal has also drawn an adverse inference against the Railways on the ground that they have not examined the commission vendors to establish that the respondents were working under them. The initial burden to establish existence of employer and employee relationship lies upon the person who asserts such relationship. In the present case, it was for the respondents to show that they were engaged by the Railways. The non examination of vendors by the Railways may create a gap in their defence, but it does not prove the case of the respondents. Adverse inference cannot be used to fill up complete absence of primary proof. The Tribunal appears to have used this circumstance as a substitute for proof, which is not legally permissible. The nature of relationship must be determined on



evidence.

20. The finding of the Tribunal that the action of the Railways in discontinuing the respondents in March 2001 was arbitrary is also not supported by reasoning. The material on record indicates that around the same period, a policy decision was taken to restructure the catering services and to transfer management functions, along with absorption of identified persons. This background has bearing on the action taken. The Tribunal has proceeded to presume that discontinuation of these respondents was with an intention to avoid their absorption. There is no material brought on record to show that the action was motivated. In absence of such material, a finding of arbitrariness cannot be recorded. The Tribunal was required to examine the policy decision and its implications. Failure to do so renders the finding on this aspect unsatisfactory.

21. It is also necessary to take note of one circumstance which has come on record, namely that during the pendency of the proceedings before the Tribunal, the respondents were permitted to continue their work by virtue of interim orders passed from time to time. This aspect, in my view, has not been properly appreciated by the Tribunal in its correct perspective. Continuation of work under protection of interim orders is always of a temporary nature. It is only for the purpose of maintaining status quo till final adjudication. Such continuation does not confer any legal status or permanent right upon the person so continuing. The Tribunal, however, appears to have treated this continuation as if it confirms the claim of the respondents of being employees of the Railways. This approach is not legally sustainable. Interim protection cannot



be converted into substantive right. If such approach is accepted, then every interim arrangement would result in creation of legal entitlement. Therefore, the reliance placed by the Tribunal on such continuation to support the claim of employment is misplaced.

22. The Tribunal has recorded a finding that the respondents have proved their case on the basis of oral and documentary evidence and are therefore entitled to reinstatement and absorption. However, when the entire material is seen, it becomes clear that the conclusions are not based on proof, but rather on assumptions. The Tribunal has drawn several inferences without establishing basic facts. The existence of employer and employee relationship, which is the foundation of the entire claim, has not been proved by evidence. Instead, the Tribunal has relied on surrounding circumstances and has given weight to factors which are not conclusive. Such approach does not satisfy legal standards. Findings must be based on clear evidence, especially when directions of reinstatement and absorption in public employment are concerned.

23. At the same time, this Court cannot remain unmindful of the fact that the respondents have been associated with the catering activities at Pune Railway Station for a considerable length of time. It appears that they have been engaged in selling food articles for many years and their livelihood may have depended upon such work. This long association does indicate that they were part of the functioning system in some manner. However, this aspect, howsoever relevant from a sympathetic point of view, cannot override the legal principles governing public employment.



Absorption and regularisation in a public authority must follow established procedure and must be supported by a legal relationship. Therefore, the same cannot be a ground to grant relief contrary to law.

24. In view of the above discussion, it becomes evident that though certain factual observations made by the Tribunal may not be incorrect, the ultimate conclusion directing reinstatement and absorption of the respondents cannot be sustained. The Tribunal has not correctly applied the principles relating to burden of proof. It has also failed to properly determine the nature of relationship between the parties and has exceeded its jurisdiction in granting directions of regularisation without legal basis. The reasoning suffers from infirmities and therefore the impugned Award cannot be upheld.

25. In view of the above discussion, the impugned Award cannot be allowed to stand. The writ petition, therefore, deserves to be allowed by setting aside the Award.

26. In the result, the writ petition succeeds and is allowed.

(i) The Award dated 30 September 2006 passed by the Industrial Tribunal, Pune in Reference (IT) No. 22 of 2002, published on 1 August 2007, is hereby quashed and set aside;

(ii) The Reference (IT) No. 22 of 2002 stands answered in the negative. The claims made by the respondents for reinstatement, absorption, and regularisation are rejected;



(iii) Rule is made absolute in the above terms. There shall be no order as to costs.

(iv) All pending interlocutory application(s) stand disposed of as infructuous.

(AMIT BORKAR, J.)