2026:DHC:7466

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

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CNR No: DLHC010217722003

\+ W.P.(C) 200/2003

WORKMEN OF M/S HOTEL SOFITEL S .....Petitioner

Through: Mr. Shankar Raju & Mr. Nilansh Gaur, Advs.

versus

M/S HOTEL SOFITEL SURYA & ANR. .....Respondents

Through: Mr. Ravi Kant Chadha, Sr. Adv., Mrs. Mansi Chadha & Ms. Misika Chaudhary, Advs.

CNR No: DLHC010236972003

\+ W.P.(C) 3734/2003 & CM APPL. 12875/2017

HOTEL CROWNE PLAZA SURYA .....Petitioner

Through: Mr. Ravi Kant Chadha, Sr. Adv., Mrs. Mansi Chadha & Ms. Misika Chaudhary, Advs.

versus

WORKMAN OF M/S HOTEL CROWN PLAZA SURYA .....Respondent

Through: Mr. Shankar Raju & Mr. Nilansh Gaur, Advs.

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J.

1. These two connected Writ Petitions, filed under Articles 226 and 227

of the Constitution of India, namely, W.P.(C) No. 200/2003, *Workmen of M/s Hotel Sofitel Surya v. M/s Hotel Sofitel Surya & Anr.*, and W.P.(C) No. 3734/2003, *M/s Hotel Sofitel Surya v. Workmen of M/s Hotel Sofitel Surya & Anr.*, arise out of the common Award dated **01.08.2002** passed by the learned Presiding Officer, Industrial Tribunal-III, Delhi (hereinafter, "the Tribunal") in Industrial Dispute No. 8/1993. Since both petitions arise from the same industrial dispute, proceed on the same evidentiary record and assail the said Award from the respective standpoints of the workmen and the Management, they have been heard together and are being disposed of by this common judgment.

FACTUAL MATRIX

2. The petitioner/workmen in W.P.(C) No. 200/2003 are employed at Hotel Sofitel Surya, New Friends Colony, New Delhi, a Five-Star hotel establishment operating in the National Capital Territory of Delhi. The establishment has, at different points in time, also been referred to as Best Western Surya and Crowne Plaza Surya. The workmen are represented by the Hotel Mazdoor Union (Regd.), a registered trade union representing employees in the hotel industry in Delhi.

3. On 19.02.1992, the Union intimated the Management that the workmen of the establishment had become members of the Union. Thereafter, on 26.03.1992, the Union served upon the Management a Charter of Demands seeking revision of pay scales and various allowances and service benefits, including dearness allowance, house rent allowance, city compensatory allowance, food allowance, enhancement of leave, night duty allowance, conveyance allowance, uniforms and leave travel assistance.

The claim was founded, inter alia, on the assertion that the workmen were receiving wages and benefits substantially lower than those prevailing in comparable Five-Star hotels in Delhi.

4. The dispute was taken up in conciliation proceedings before the Labour Commissioner. Upon failure of conciliation, the appropriate Government, by order dated 08.01.1993, referred the dispute for adjudication to the Industrial Tribunal, which was registered as I.D. No. 8/1993. The reference required the Tribunal to determine whether the workmen were entitled to revision of the pay scales, allowances and service benefits specified therein and, if so, what directions were necessary in that regard.

5. Before the Tribunal, the Union filed its Statement of Claim, while the Management contested the reference. The principal objections of the Management were that no subsisting industrial dispute survived, that the Union had no locus to espouse the dispute, that the financial position of the establishment did not permit the revision claimed, and that the hotel, having regard to its location and other operational circumstances, could not appropriately be compared with centrally situated Five-Star hotels. On the pleadings, the Tribunal framed, inter alia, issues concerning the validity of the espousal, the effect of any prior settlement, and the entitlement of the workmen on the terms of the reference.

6. Evidence was thereafter led by both sides. The workmen examined WW-1 to WW-5, while the Management examined MW-1 to MW-3. The documentary evidence included, on behalf of the workmen, the Memoranda of Settlement dated 24.01.1990 and 08.09.1993 entered into between the Hotel Mazdoor Union and various hotel establishments in Delhi, including

Hotel Claridges, Hotel Imperial, Hotel Vikram, Hotel Diplomat and Hotel Alka. These documents were relied upon in support of the workmen's contention that the wage and service conditions prevailing in comparable establishments furnished an appropriate basis for adjudication of their claim.WW-5, M.M. Gop, tendered his affidavit and proved Ex. WW-5/1 and Ex. WW-5/2. In cross-examination, he accepted that Hotel Surya was not a party to those settlements The Management, on the other hand, placed reliance upon its audited balance sheets, financial statements, wage-revision material and other documents bearing upon its financial position and the benefits already extended to its workmen. The Financial Controller of the Management also entered the witness-box and deposed with reference to the audited financial statements of the establishment for various years.

7. By Award dated 01.08.2002, the learned Tribunal found the dispute to have been validly espoused and proceeded to adjudicate the substantive claims of the workmen. The Tribunal ultimately held the workmen entitled to revision of wages and various allowances and facilities, and directed, inter alia, payment of salary and allowances with reference to those prevailing in the nearest Five-Star hotel in Delhi. The operative portion of the Award, however, directed that the revised salary and allowances would be payable **with effect from 01.01.2003**. The workmen contend that, having found their claims justified, the Tribunal ought to have granted the benefit from the date of the Charter of Demands, i.e. 26.03.1992, or at least from the date of reference, i.e. 08.01.1993. The record of the Award, as reproduced in the proceedings, does not disclose any specific reasoning for the selection of 01.01.2003 as the effective date.

8. Aggrieved by the Award, the workmen instituted W.P.(C) No.

200/2003, principally questioning the date from which the benefits awarded by the Tribunal were directed to operate and seeking retrospective implementation. The Management, in turn, instituted W.P.(C) No. 3734/2003 challenging the Award on merits, including the entitlement of the workmen and the manner in which the Tribunal had directed implementation with reference to the "nearest Five-Star hotel". The Management also approached the appropriate authority under Section 36A of the Industrial Disputes Act, 1947, seeking clarification of the Award. On 28.05.2003, this Court granted an ex parte ad-interim stay of the operation of the Award in W.P.(C) No. 3734/2003. The said interim order has remained operative during the pendency of the proceedings.

SUBMISSIONS ON BEHALF OF THE WORKMEN

9. Learned counsel appearing for the petitioner-workmen submitted that, having upheld the workmen's claim for revision of pay scales and various allowances and service benefits, the Tribunal ought to have made the relief operative from the date of the Charter of Demands dated 26.03.1992 or, at least, from the date of reference dated 08.01.1993, instead of 01.01.2003.

10. It was contended that the Tribunal assigned no reasons for selecting 01.01.2003 as the effective date, particularly when the dispute had remained pending since 1992-93 and the Management had not sought prospective operation of the relief. According to the workmen, there was no justification for denying them the benefit of the revised wage structure for the intervening period.

11. Learned counsel further submitted that the increases granted by the Management from time to time did not constitute the revision sought under

the Charter of Demands and that the workmen continued to receive inferior wages and service conditions as compared with comparable Five-Star hotels. Reliance was placed upon the settlements relating to comparable establishments, including Hotel Ashok, New Delhi.

12. It was further submitted that the Management had the financial capacity to bear the burden of wage revision. Reliance was placed upon its Annual Reports to contend that the Management had witnessed substantial growth in turnover and profits and that its financial position did not justify denial of the wage revision claimed by the workmen.

13. Learned counsel accordingly prayed that the operative portion of the Award be modified so as to make the revised pay scales and allowances effective from 26.03.1992 or, in the alternative, 08.01.1993, with consequential payment of arrears to the workmen.

SUBMISSIONS ON BEHALF OF THE MANAGEMENT

14. Learned counsel appearing for the Management submitted that the Tribunal erred in granting a further revision of wages and service conditions without first determining an appropriate comparator or establishing any continuing disparity after taking into account the successive revisions already granted by the Management. It was contended that the workmen had accepted the revisions made in 1992, 1994 and 1995 and had failed to establish that their existing wages and benefits remained inferior to those prevailing in any properly comparable establishment.

15. It was further submitted that the settlements relied upon by the workmen in respect of other hotels could not, by themselves, establish entitlement at Sofitel Surya. The workmen had not placed before the

Tribunal the corresponding particulars of wages, D.A., H.R.A. and other benefits applicable to comparable categories in those establishments, nor had the Tribunal identified any particular establishment as the appropriate comparator.

16. Learned counsel further submitted that the Tribunal's conclusion regarding financial capacity was based upon a selective consideration of the evidence. The Management relied upon its audited financial statements and the evidence regarding losses and other financial circumstances of the establishment. It was contended that the Tribunal had not assessed the actual additional burden which the relief granted by it would impose upon the Management.

17. It was also submitted that the operative direction requiring payment of salary and allowances as prevailing in the "nearest Five Star Hotel" was incapable of precise implementation. The Award did not identify the establishment intended, the categories of employees to be compared, or the particular wage and service conditions to be adopted. Implementation would consequently require a fresh adjudicatory exercise.

18. Learned counsel accordingly submitted that the substantive portion of the Award was unsustainable and liable to be set aside.

ISSUE FOR CONSIDERATION

19. Having considered the pleadings, the evidence on record, the impugned Award dated 01.08.2002 passed by the Industrial Tribunal in I.D. No. 8/1993 and the rival submissions advanced by learned counsel for the parties, the broad question that arises for consideration is whether the impugned Award, including the Tribunal's findings on espousal, the

substantive entitlement to further revision of wages and conditions of service, the relief granted and the effective dates prescribed therefor, calls for interference in exercise of the supervisory jurisdiction of this Court.

ANALYSIS

20. The Court has heard the learned Counsel for the respective parties and perused the record. Accordingly, this Court proceeds to determine the issues arising for consideration on the basis of the material available on record, the submissions advanced on behalf of the parties, the precedents relied upon, and the settled principles of law laid down in a catena of decisions of the High Courts and the Hon'ble Supreme Court.

21. The rival challenges to the impugned Award have to be examined within the settled parameters governing the exercise of supervisory jurisdiction by this Court under Articles 226 and 227 of the Constitution. Such jurisdiction is **supervisory and not appellate**. This Court does not ordinarily re-appreciate the evidence or substitute its own conclusion for that of the Industrial Tribunal merely because another view may be possible on the same material. The Tribunal, being the primary forum for appreciation of evidence and determination of questions of fact, is ordinarily entitled to have its findings respected. This restraint, however, does not place an Award beyond judicial scrutiny. The Court may examine whether the Tribunal has acted within the bounds of its jurisdiction, addressed the questions arising from the reference, applied the governing principles of law, considered the material evidence bearing upon those questions, and arrived at findings having a rational and demonstrable nexus with the material on record. Where material evidence is ignored, the enquiry required by the reference is

not undertaken, an erroneous legal principle is applied, or relief is granted without the evidentiary foundation necessary to sustain it, the resulting infirmity is not one of mere appreciation of evidence but is amenable to correction in exercise of the supervisory jurisdiction of this Court. The question is, therefore, not whether this Court would, upon a fresh appreciation of the evidence, have reached a different conclusion, but whether the Tribunal undertook the adjudicatory exercise required by the reference and recorded findings sufficient in law and on the evidence to sustain the relief granted.

22. The contours of the jurisdiction to issue a writ of certiorari were explained by the Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan***, AIR 1964 SC 477, wherein it was held:

> *"....... The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3)."*

23. The same principle has been reiterated in the context of industrial adjudication in ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245. The present challenges must, therefore, be examined on that limited footing. This Court is not called upon to undertake a fresh exercise of wage fixation or to determine which of the rival versions on the evidence it would itself prefer. The enquiry is whether the Tribunal,

while adjudicating the dispute referred to it, addressed the questions arising from the reference, applied the governing legal principles, considered the material evidence and recorded findings sufficient to sustain the relief ultimately granted. **The nature of the dispute referred to the Tribunal, the issues framed by it and the findings recorded in the impugned Award may, therefore, first be noticed.**

24. The impugned Award dated 01.08.2002 arises out of the industrial dispute referred by the appropriate Government *vide* its order No. F.24 (4524)/92-Lab./1003-8 dated 08.01.1993 between the Management of M/s Hotel Sofitel Surya and its workmen. The dispute was referred for adjudication to the Presiding Officer of Industrial Tribunal No. III on the following terms of reference:

> *"Whether the workmen are entitled to the revision in their pay scales, D.A., City Compensatory Allowance, H.R.A., Food Allowance, Free Meal Facility, Enhancement of leave, Night Duty Allowance, Conveyance Allowance, Uniforms, Leave Travel Allowance and if so what directions are necessary in this regard?"*

25. On 17.09.1994, on the basis of the pleadings of the parties, the Tribunal framed the following issues:

1. *Whether there is espousal?*
2. *Whether claim is not maintainable due to settlement?*
3. *As per the terms of reference.*

26. The Tribunal thereafter proceeded to adjudicate the issues on the basis of the evidence led by the parties. The first issue concerned the validity of the espousal. After considering the evidence on the issue, the Tribunal decided it in favour of the workmen. Although the Management has

challenged the said finding before this Court, no substantial ground has been made out warranting interference with the Tribunal's conclusion. The Tribunal considered the evidence led on the issue, and its finding is supported by the material on record. **The finding of valid espousal, therefore, does not call for interference in exercise of the supervisory jurisdiction of this Court.**

27. The Tribunal had also framed **Issue No. 2** as to whether the claim was not maintainable on account of any settlement. The Tribunal found the issue to be redundant, observing that no such settlement had been pleaded either in the Statement of Claim or in the written statement of the Management. As no factual foundation for adjudication of the issue was found in the pleadings, and no independent challenge to this finding has been raised before this Court, **no interference with the Tribunal's disposal of Issue No. 2 is warranted.**

28. The Tribunal thereafter proceeded to adjudicate the substantive claim in terms of the reference. Upon consideration of the evidence, it held the workmen entitled to revision in respect of the various heads specified in the reference. The operative portion of the Award accordingly directed the grant of further monetary and service-condition benefits, while providing that the benefits and facilities already being extended by the Management would continue. Among the directions so issued, the Tribunal directed that certain wages and allowances be provided by reference to the rates and benefits prevailing in the "*nearest Five Star Hotel*". The relevant portion of the operative directions reads as under:

> *"It is held that the workmen are entitled to the revision in pay scales, D.A., City Compensatory Allowance, H.R.A.,*

Food Allowance, Free Meal Facility, Enhancement of leave, Night Duty Allowance, Conveyance Allowance, Uniforms, Leave Travel Allowance. Therefore, the management is directed to pay the workmen salary i.e. pay plus house rent allowance plus dearness allowance as revised by the management of its own of different categories vide Annexure 'A' reproduced hereinabove in para no. 17 of this award from the date the management has already started/provided the sum total of pay, HRA and DA shall be above minimum wages. The management shall pay in addition an amount every month equal to the sum of City Compensatory Allowance, Food Allowance, Night Duty Allowance, Conveyance Allowance paid by other nearest Five Star Hotels in Delhi besides absolutely free meal when on duty from the date of award. The management will also provide 30 days privilege leave, uniforms and leave travel allowance to the extent as provided by the other nearest five star hotel in Delhi from the date of this award. The management is further directed to pay the salary and allowances as paid by nearest five star hotel w.e.f. 1.1.2003 onwards. The benefits and facilities already given shall continue."

29. The nature of the directions issued by the Tribunal is material to the examination of the relief granted. The Award does not merely preserve the wage structure and benefits already available to the workmen; it directs additional monetary and service-condition benefits by reference to those prevailing in other Five Star Hotels. The workmen's case before the Tribunal was not that their wages had remained static or that the Management had failed to grant revisions. Their case was that, notwithstanding the revisions and benefits already extended, the wages and conditions of service at Sofitel Surya continued to remain inferior to those prevailing in comparable Five-Star hotels in Delhi and that a further revision was consequently warranted.

The question before the Tribunal was, therefore, whether, after taking into account the revisions already granted, the material on record established a continuing disparity between the conditions prevailing at Sofitel Surya and those obtaining in a properly comparable establishment and, if so, the extent of the further entitlement.

30. That question necessarily had to be examined against the wage structure actually prevailing at the relevant stage. The evidence shows that, after the Charter of Demands, the wage structure underwent successive revisions. Following the revision in August 1992, further revisions were effected on five or six occasions, including increases in pay, D.A. and H.R.A. The Award itself records, on the evidence of the workmen, that the revised pay scales and increases in H.R.A. and D.A. were accepted and that the benefits granted from time to time were neither refused nor objected to by the Union. WW-2 stated in cross-examination that he had accepted the increased wages in 1992, 1994 and 1995 without protest and that the other employees had likewise accepted them. WW-3 similarly stated that she had accepted the increased emoluments granted by the Management without protest. More significantly, WW-4 admitted that, by the time of his cross-examination, the scale demanded in the Statement of Claim was lower than the scale actually being received by the workmen from the Management.

31. These admissions do not, by themselves, amount to a waiver of the claim for further revision. Their significance lies in the fact that the wage structure against which the original demand had been made had materially changed by the time the claim was adjudicated. The successive revisions thus became part of the factual position against which any continuing disparity had to be assessed. The earlier wage structure, having been

superseded by those revisions, could not by itself furnish the basis for determining a further entitlement. The inquiry consequently had to proceed from the wages, benefits and conditions of service actually prevailing at Sofitel Surya and determine whether, notwithstanding the revisions already granted, a material disparity continued to exist in comparison with workmen of a properly comparable establishment.

32. It was in that context that the comparative claim had to be tested against the evidence relied upon by the workmen. The onus of proving the disparity was on the workmen/claimants. They were required to prove that there existed some disparity or deficiency in the wages, benefits or conditions of service of the workmen of Sofitel Surya as compared to the workmen of other hotels. The mere existence of a higher wage or a more favourable benefit in another establishment could not, by itself, establish a corresponding entitlement at Sofitel Surya. The workmen were first required to establish that the establishment relied upon furnished a proper basis of comparison and, on that basis, to establish the disparity relied upon.

33. It is against that requirement that the comparative material relied upon by the workmen has to be examined. Their claim for further revision was founded principally upon the wage and service conditions prevailing in other hotel establishments. The material relied upon included settlements entered into by the Hotel Mazdoor Union with Hotel Claridges, Hotel Imperial, Hotel Vikram, Hotel Diplomat and Hotel Alka. Hotel Ashok was also referred to in the submissions, but does not form part of the settlement material proved through WW-5. The settlements were tendered through WW-5, M.M. Gop, who proved Ex. WW-5/1 and Ex. WW-5/2. In cross-examination, he accepted that Hotel Surya was not a party to those

settlements. The settlements establish the terms agreed upon in the respective establishments during the periods to which they relate; they do not, however, by themselves establish a corresponding entitlement for the workmen of Sofitel Surya. Their relevance to the present claim depended upon the establishments concerned being shown to furnish a proper basis of comparison with Sofitel Surya.

34. The requirement of such comparability assumes significance in the light of the principle governing comparative wage fixation. In ***Kamani Metals & Alloys Ltd. v. Their Workmen*,** (1967) 2 SCR 463, the Supreme Court, while considering the industry-cum-region principle, held that, in fixing or revising wages, the wages of the workers concerned are to be compared with those paid to workers of similar grade and skill by other employers in similar or other industries in the region, along with the capacity of the establishment or industry to pay. The Court further emphasised that, in applying the industry-cum-region principle, comparable units may be compared, but units which are dissimilar cannot be treated as guides without making adequate allowance for the differences between them. Each case is required to be considered on its own facts and only relevant circumstances are to enter into the determination of the wage structure.

35. When the material relied upon by the workmen is examined against that standard, the necessary comparison is not established. The settlements placed on record were not uniform and reflected different classifications, wage structures and revisions in the establishments concerned. The establishments could not, therefore, be treated as interchangeable merely because they were hotels operating in Delhi or belonged to the Five-Star

category. The workmen named Vikram, Claridges and Imperial as establishments with which Sofitel Surya could be compared, but the evidence did not establish any of them as an appropriate comparator. WW-1 stated that he could not give the details of the benefits being provided by those hotels, while WW-2 similarly stated that he could not furnish the particulars of D.A., H.R.A. and other benefits being paid by those establishments to their staff. The evidence further does not furnish the particulars necessary to compare the wages, D.A., H.R.A., other allowances and facilities applicable to corresponding categories of workmen during the relevant period. The material on record, therefore, does not furnish a sufficient basis for determining whether the conditions of service at Sofitel Surya were materially inferior to those prevailing in any particular establishment relied upon by the workmen.

36. The consequence follows from that evidentiary failure. The onus having rested upon the workmen, the failure of the evidence to establish the requisite disparity means that the burden has not been discharged. **The workmen have not proved that there existed any disparity or deficiency in the wages, benefits or conditions of service at Sofitel Surya as compared to those prevailing for workmen of a properly comparable establishment.** In the absence of such proof, the Tribunal could not sustain a further entitlement merely by adopting the wage structure or benefits prevailing in another hotel.

37. That finding also bears upon the individual heads under which the Tribunal granted further benefits. The Management had already effected successive revisions and extended benefits under several of those heads. The Award itself records that, under certain heads, the benefits already extended

by the Management were equal to or more favourable than those claimed by the workmen, including the birthday gift of Rs. 501/- with ½ kg. cake, interest-free loan and commendation certificate. The Tribunal was, therefore, required to determine whether, notwithstanding those revisions and existing benefits, any residual disparity remained under the respective heads and, if so, the extent to which the evidence established such disparity so as to justify the particular benefit granted. Such determination necessarily required comparison with the corresponding terms prevailing in a properly comparable establishment. In the absence of the necessary comparative evidence, that head-wise determination could not be made. The Award contains no such determination, as the workmen failed to discharge the burden of proving any deficiency in the wage structure, allowances or facilities applicable to them as compared to those prevailing for workmen in any other comparable hotel. The workmen have also not been able to lead any evidence to establish any particular hotel with which the wages and facilities of the workmen of Sofitel Surya could be compared. This has resulted in an Award which has decided the dispute without sufficient evidentiary foundation.

38. The **deficiency and ambiguity in the Award are also apparent from its operative portion**, which directs the Management to provide benefits with reference to the "nearest Five Star Hotel" and, in relation to salary and allowances, to pay them "as paid by nearest five star hotel". The Award does not identify the establishment which is to constitute that benchmark. Nor does it record a finding that any particular establishment was comparable with Sofitel Surya or disclose the evidence on the basis of which such comparability was determined. The expression "nearest Five

Star Hotel" therefore does not identify a proven comparator. Geographical proximity by itself could not establish comparability for the purpose of wage fixation. The Tribunal was required to identify the particular establishment which, on the evidence, constituted an appropriate comparator and to determine the relevant wages and conditions of service prevailing there.

39. That identification could not be left to the stage of implementation. The identity of the comparative hotel, the terms prevailing there and their application to the workmen of Sofitel Surya formed part of the substantive comparative exercise necessary to determine the entitlement itself. Before directing the Management to extend wages, allowances or other benefits by reference to another establishment, the Tribunal was required to identify the establishment as a proper comparator, ascertain the corresponding wages and conditions of service prevailing there, and test those terms against the revised wages and benefits already prevailing at Sofitel Surya. Only upon completion of that exercise could it determine whether any residual disparity remained and, if so, what further benefit was warranted under the respective heads. These were not merely ministerial matters of implementation; they went to the determination of the entitlement itself. The Award does not disclose that this essential comparative exercise was completed or that the findings necessary to sustain the further entitlement were recorded.

40. The consequence is not merely uncertainty in implementation. Since the Award does not identify the establishment whose wages and benefits are to constitute the benchmark, its operative directions cannot be given effect to without first determining the very comparative facts upon which the entitlement depends. **The Award is, therefore, incapable of effective implementation in its present form and leaves the parties to a further**

dispute over the identity and terms of the establishment to be treated as the "nearest Five Star Hotel".

41. There is, in addition, a fundamental disconnect between the reasons recorded in the Award and the relief ultimately granted. While the Tribunal's discussion addresses certain heads of claim, namely pay scales, D.A., H.R.A., C.C.A., Food Allowance, Free Meal Facility and L.T.A., the operative portion grants relief under several further heads, including enhancement of leave, Night Duty Allowance, Conveyance Allowance and Uniforms, without recording the corresponding factual findings necessary to establish the workmen's entitlement to such relief. There is no identification of the establishment sought to be treated as the comparator, no determination of the benefit prevailing in that establishment, no finding of the difference between that benefit and the benefit already available at Sofitel Surya, and no reasoning explaining the particular extent of the benefit directed to be granted.

42. The financial capacity of the Management also required consideration with reference to the financial position of the establishment during the period relevant to the dispute. MW-1, the Financial Controller, deposed that when the Charter of Demands was received, the financial position of the Hotel was poor, payment of the existing wages was difficult and the Hotel was running in losses, with low occupancy and turnover. This position was also borne out by the evidence of WW-4, examined on behalf of the workmen, who admitted in cross-examination that the balance sheets disclosed losses for the years 1991-92, 1992-93 and 1993-94. Although WW-4 stated that the losses were reducing year after year and that the business was thereafter increasing, the subsequent improvement in the

financial position could not, by itself, determine the capacity of the establishment to bear the additional burden at the time when the dispute and the demand for further revision arose. The Tribunal, however, concluded that the Hotel had sufficient surplus and the capacity to bear higher wages without disclosing a reasoned reconciliation of that conclusion with the admitted losses during the relevant period, or determining the additional financial burden which the benefits granted by the Award would impose upon the Management. The finding on financial capacity, therefore, **does not disclose a sufficient and reasoned assessment of the financial material relevant to the dispute.**

43. The cumulative consequence of the foregoing is that the infirmity in the Award goes to the very foundation of the entitlement granted by the Tribunal. This is not a case where an otherwise established entitlement was merely quantified incorrectly. Before directing a further revision of wages and additional service benefits, the Tribunal was required to determine, on the basis of the evidence, whether the workmen of Sofitel Surya were in fact subject to any continuing disparity in comparison with a properly comparable establishment, after taking into account the successive revisions and benefits already extended by the Management, and, if so, the nature and extent of that disparity and the particular relief warranted under each head. That exercise was not undertaken. No particular establishment was established on the evidence as a proper comparator; the corresponding wages and conditions of service were not determined; no residual disparity was demonstrated after accounting for the revised conditions at Sofitel Surya; and no reasoned determination connected any such disparity with the several heads and extent of relief ultimately granted. The Tribunal's

conclusion regarding the financial capacity of the Management also does not disclose a reasoned reconciliation of the relevant financial material or the additional burden arising from the relief granted. In these circumstances, it clearly follows that the **learned Tribunal has travelled beyond the scope of the reference** in granting relief without first determining the factual foundation necessary to sustain such entitlement. The substantive relief, therefore, rests not upon a determination of an established entitlement, but upon factual matters which the Tribunal itself was required to determine and which remain undetermined. The Award consequently lacks the evidentiary and analytical foundation necessary to sustain the substantive relief granted.

44. The same deficiency renders the operative directions incapable of implementation without a further adjudicatory exercise. An adjudicatory award must determine the rights and obligations of the parties with sufficient precision to enable the relief granted to be implemented without requiring the parties to re-adjudicate the very matters upon which entitlement depends. In the present case, the directions do not furnish the benchmark, applicable wage structure, corresponding categories or components of remuneration necessary for implementation. Giving effect to them would consequently require a fresh exercise of comparison, selection and determination. **The Award, therefore, cannot be sustained in its present form.**

45. It is important, however, to define the scope of the conclusion reached. The finding of valid espousal is affirmed and, consequently, the reference cannot be said to have lacked the character of an industrial dispute. Nor is the Court holding that the workmen were, as a matter of principle, precluded from seeking further revision of wages or conditions of service. The conclusion is confined to the Award under challenge: the further wage

revision and package of benefits granted by the Tribunal were not preceded by the necessary determination of the factual and evidentiary basis required to sustain the relief granted, as the claimants/workmen failed to lead the necessary evidence to prove that there was certain disparity in wages and allowances between them and other hotels of the same category. The workmen had also not been able to lead proper evidence to identify any "hotel" with which their services could be compared. **Hence, the Award passed by the Tribunal was without any evidential basis.**

CONCLUSION

46. The Award dated 01.08.2002 passed by the Industrial Tribunal-III, Delhi in I.D. No. 8/1993 is accordingly **set aside**.

47. Accordingly, **W.P.(C) No. 3734/2003 filed by the Management is allowed.**

48. In view of the setting aside of the substantive relief granted by the Award, the question as to the date from which such relief was to operate does not survive for independent consideration. **W.P.(C) No. 200/2003** filed by the workmen, seeking modification of the effective date of the benefits awarded, is accordingly **disposed of**.

49. Nothing contained in this judgment shall affect any wage revision, benefit or condition of service independently introduced or extended by the Management and otherwise applicable to the workmen, insofar as such entitlement does not derive from the Award dated 01.08.2002.

50. The interim order dated 28.05.2003 shall stand disposed of in view of the final disposal of the writ petitions.

51. There shall be no order as to costs. Pending application(s), if any, also stand disposed of.

SHAIL JAIN
JUDGE

SEPTEMBER 03, 2026
RM