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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 78/2016, CAV.107/2016 & C.M. APPL.4129-4131/2016
DELHI TRANSPORT CORPORATION Appellant
Through : Sh. U.N. Tiwari and Sh. Sunil Ojha,
Advocates.

versus

GULAB SINGH Respondent
Through: Sh. M. Husain, Advocate, for
respondent.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
% **05.02.2016**
CAV.107/2016

Learned counsel for the caveator has put in appearance. Cav.
107/2016 accordingly stands discharged.

LPA 78/2016 & C.M. APPL.4129-4131/2016

Issue notice. Sh. M. Husain, Advocate accepts notice.

1. The lone ground on which the present appeal is premised is that the award of back wages – upheld by the learned Single Judge (to the tune of 50%) is unwarranted.
2. The facts briefly are that the respondent workman was employed as a driver with the appellant Delhi Transport Corporation [hereafter “Corporation”] since 02.09.1988. He availed of excessive leaves on various dates for different periods between 1989 and 1992. Ultimately, he was even cautioned for being absent from duty for 40

days and punishment of reduction in increment was awarded. On 19.03.1993, on allegations of his unauthorised absence for about two weeks, he was issued a Show Cause Notice which was followed by an enquiry. By an order dated 23.08.1993 he was removed from service. He raised an industrial dispute which was referred by the Appropriate Government by Order dated 10.08.1998. Apparently, an Award was made against the management in 2001 which was carried in writ proceedings. The Award was set-aside and the matter remitted for fresh consideration. In the fresh round, availing of the opportunity to lead evidence to justify fairness of enquiry, the management produced materials. This time, the Labour Court concluded that the enquiry was fair and just and that the misconduct was proved. However, exercising its powers under Section 11A of the Industrial Disputes Act, 1947, the punishment was set aside as the Labour Court felt that it was disproportionate. As a measure of balancing, the Labour Court directed reinstatement but with reduced back wages @ 50%. This order has not been interfered with by the learned Single Judge.

3. Learned counsel highlights that the workman was in employment for hardly five years during which his record was ridden with unauthorised absence for long periods. In these circumstances, submitted learned counsel, the direction to pay back wages itself was iniquitous. Learned counsel for the workman argued, on the other hand, that the past misconduct could not have been looked into since penalty had been imposed in those instances.

4. It is evident from the discussion that even before the allegation of misconduct was levelled in 1993, the workman had remained

absent on several occasions. In 1990, he was absent for 63 days. In 1991, he was absent for 81 days and in 1992 for 129 days. He had been earlier cautioned and even the penalty of withholding of increment was imposed.

5. Given these materials on record and having regard to all these circumstances, the Corporation could well have been justified in contending that reinstatement itself was inappropriate. However, that argument has been foreclosed. At the same time, this Court is of the opinion that this constraint should not have limited the learned Single Judge from considering whether the award of 50% back wages was appropriate in the circumstances. Considering the past dismal history of the workman, the Court is of the opinion that the direction to pay 50% back wages is excessive. Instead, the direction is modified to payment of 25% back wages. The said amount shall be paid in satisfaction of the Award to the respondent workman. The appeal partly succeeds and is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 05, 2016

‘ajk’