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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4476/2016, CM APPL. 18678-18679/2016

UNION OF INDIA AND ANR

..... Petitioner

Through: Mr. Ashok Singh, Adv. for UOI

versus

RAJ DEV RAI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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18.05.2016

CM 18678/2016 (Exemption)

Exemption allowed, subject to all just exceptions.

W.P.(C) 4476/2016 & CM APPL.18679/2016 (stay)

The impugned order passed by the Tribunal dated 24th November, 2015 pertinently refers to the decision of the Delhi High Court in writ petition No. 7992 of 2012, dated 14th May, 2014 in ***Union of India & Ors. vs. J.R. Dhiman***. Copy of the said judgment has been produced before us.

2. Raj Dev Raj had joined Northern Railway as Gunman on 15.07.1983. He retired on 31.03.2013 from the post of Running Room Bearer in Northern Railway, Delhi Division.

3. The petitioners herein have misplaced and do not have leave account of the respondent for the period 15.07.1983 to 30.06.2001. In

the absence of the said record, relying upon RBE No. 5 of 1993, the petitioners had computed the leave account of the respondent by making reference to the leave records for the period 01.07.2001 to 31.03.2013. They came to the conclusion that during this period from 01.07.2001 to 31.07.2013, the petitioner had availed of Leave on Average Pay in the period of 5 years of 117 days and had earned Leave on Average Pay in the period of 5 years of 150 days. Thus the net leave was merely 33 days. On this computation, amount of Rs.83,333/- for 33 days of Leave on Average Pay and 167 days of leave on Average Half Pay stands paid.

4. We have also examined the computation or recasting of leave. As per the calculations made therein, the respondent was entitled to leave account of 118 days, but this was denied on ground that from 01.07.2001 till 31.03.2013, the respondent was on Leave Without Pay for four days. We are surprised to read the said reasoning and then deny benefit of even 118 days as per the calculations made. There is no material to suggest that the respondent was unauthorisedly absent or taken leave without pay from 15.07.1983 to 30.06.2001. Even otherwise, the method adopted was rejected in **J.R. Dhiman** (supra). The Division Bench of this High Court had adversely commented on RBE No. 5 of 1993. It is impermissible and wrong for the Railways to punish the railway employee for no fault attributable to him. It was the duty of the Railways to maintain the record. The Railways being custodian of the leave record were responsible for maintaining the record. This decision points out and highlights the irrationality of the recourse adopted by the Railways by referring several examples. If

the Railways have failed to maintain its records, the respondent cannot be penalised and made to suffer.

5. Looking into the facts and circumstances of the case, we do not find any reason to interfere with the impugned order passed by the Tribunal. The writ petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 18, 2016/acm