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

+ LPA 881/2015

DELHI TRANSPORT CORPORATION Appellant
Through: Ms.Manisha Tyagi, Advocate

versus

ROOP CHAND Respondent
Through: Mr.G.S.Charya, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **16.03.2016**

C.M.29879/2015 (delay in filing) and C.M.29881/2015 (delay in refiling)

For the reasons mentioned in the applications, the delay in filing and refiling the appeal is condoned.

Both the applications stand disposed of.

LPA 881/2015 & C.M.No.29878/2015 (for stay)

1. On the ground on which the appellant – Delhi Transport Corporation (DTC) has approached this Court challenging the order of the learned Single Judge is that the grant of 50% back wages and consequential benefits was unwarranted. The respondent-workman was employed as a driver. On the allegation that he had absented himself unauthorisedly for 79 days, an enquiry was conducted which culminated in his dismissal by an order dated 11.03.1998. The workman questioned the dismissal through a reference. The Labour

Court by awarded dated 09.09.2005 held that the enquiry conducted could not be faulted and that since the misconduct was proved, the dismissal was justified. The workman therefore approached this court by filing W.P.(C) 6311/2007. The learned Single Judge was of the opinion that having regard to the record, the workman was not afforded proper opportunity and the learned Single Judge chose to grant 50% back wages and consequential benefits.

2. It is urged by the counsel for the DTC that the direction to pay back wages was unjustified given that the workman had contradicted himself. It was submitted that the workman had not made any application for at least 33 days' absence from duty, and that his explanation during the course of enquiry was contradictory. Counsel for the workman on the other hand submitted that the learned Single Judge accepted the circumstance that the workman's wife was ill – eventually, she died. He had applied for leave which was rejected and having regard to the totality of the circumstances the direction for 50% back wages with consequential retirement benefits on account of the fact that during the pendency of the enquiry, the respondent had attained age of superannuation was justified.

3. This Court has considered the materials on the record. The Labour Court did not indicate any infirmity with the order of dismissal. The Single Judge, however, after an elaborate examination of the materials on record concluded that fair opportunity to defend himself was not given to the workman. The Single Judge also noticed that the workman had in fact lost his wife and apparently had applied for leave. Given these circumstances, the direction to grant

consequential benefits including continuity of service cannot be faulted. However, the fact remains that the fairness of the enquiry was otherwise not interfered with. In the circumstances, the direction to pay 50% back wages was not appropriate. It is accordingly modified to one of payment of 25% back wages. The other direction with respect to continuity of service and consequential benefits for the purposes of pension and other terminal benefits is however maintained.

4. The appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 16, 2016

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