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

+ **W.P.(C) 9690/2016**

DELHI TRANSPORT CORPORATION Petitioner
Through: **Mr. Purvesh Buttan, Advocate**

versus

RAJO DEVI Respondent
Through: **Mr. G.D. Bhandari and Mr. Sanjeev Bhandari, Adv.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
19.05.2017

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C.M. No. 19124/2017

1. Issue notice. Learned counsel for the respondent accepts notice. During the course of hearing of this application, we have heard the writ petition itself and proceed to dispose of the same.
2. The petitioner has preferred the present writ petition to assail the order dated 04.05.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 868/2015. The tribunal has allowed the said application, wherein the respondent/ applicant had sought family pension after demise of her husband. The husband of the respondent was proceeded against in a departmental inquiry for his unauthorised absence and removed from service under clause 15(2)(iv) of

the DRTA Conditions of Appointment and Service Regulations, 1952. The husband of the respondent expired on 13.08.2012 soon after his removal from service allegedly due to the shock he received on account of his removal from the service.

3. The respondent/ applicant assailed the removal order dated 21.06.2012 on the ground that the penalty was disproportionate to the gravity of the offence. The misconduct alleged against the late husband of the respondent was that he had remained unauthorisedly absent from 09.08.2010 to 10.03.2010 (201 days) and from 10.04.2010 to March 2011 (365 days), thereby aggregating to 566 days.

4. During the course of departmental inquiry held against the late husband of the respondent, he was found guilty as he could not sufficiently explain his absence. The respondent admitted his guilt. Consequently, he was visited with the punishment of removal from service.

5. The tribunal in the impugned order has set aside the removal of the respondent from service on the ground that the punishment was disproportionate to the misconduct. The tribunal has, accordingly, quashed the order dated 21.06.2012 by which the respondent's husband was removed from service and he has been deemed to be reinstated in service from the date of the order, though no arrears of service were directed to be paid to him. The petitioner was directed to grant family pension to the respondent/ applicant with interest on delayed payment at the rates being paid on GPF.

6. Counsel for the appellant has placed reliance on the judgment of the Supreme Court in *Delhi Transport Corporation v. Sardar Singh*, 2004 (7) SCC 574 to submit that unauthorised absence for long duration tantamounts

to serious misconduct and the punishment of removal from service would be justified. In para 9 of the said decision, the Supreme Court observed as follows:

“When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings”.

7. On a query by the court, it is informed that the misconduct of the respondent's husband for which he was punished was a one-off misconduct inasmuch, as, during his service of nearly 30 years, there was no other major penalty imposed upon him. The explanation furnished by the late husband of the respondent was that the respondent herself was possessed by some spirits. Obviously, the said explanation was not accepted. However, that does not rule out the fact that the respondent may actually have been suffering from some other disease or mental disorder. In any event, since

the absence – though for a long duration, was as good as a single act, it cannot be described as “habitual”. The respondent is also suffering from cancer.

8. In these circumstances, we are not inclined to set aside the impugned order. However, we are inclined to modify the same considering the fact that the respondent’s husband remained absent for 566 days and thereafter he was removed from service. We, therefore, direct that the respondent’s husband be treated as reinstated in service. However, the period during which he remained absent, and the period from the date of his termination till the date of his superannuation, shall be treated as *dies non* for all purposes including for payment of salary and allowances, as well as for counting the length of service. The petitioner shall compute the arrears of the amounts due to the respondent towards family pension and other benefits etc. admissible in law and pay the same within three months. The payment of family pension for the current period shall also be commenced within three months. In view of the aforesaid, the tribunal shall not proceed with the contempt petition.

9. In case the arrears are not paid within three months, and the family pension is also not started within the said period, the arrears shall become payable with interest at the rates admissible on the GPF.

10. The petition and the application stands disposed of in the aforesaid terms. Dasti.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 19, 2017 sr