

(2005) 01 GUJ CK 0015
In the Gujarat High Court

Case No : Special Civil Application No. 6461 of 1997

Jayaben Chhagan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Citation : (2005) 01 GUJ CK 0015

Hon'ble Judges : Bhawani Singh, C.J.; H.K. Rathod, J

Bench : Division Bench

Advocate : M.D. Rana, for the Appellant; J.C. Sheth, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This petition is directed against the order of Central Administrative Tribunal (CAT) dated 10.2.1997 O.A. No. 232 of 1996 and order in Review Application (St) No. 36 of 1997 dated 9.6.97.

2. Briefly, it is stated that Shri Chhagan Natha, a railway employee, was removed from service on 31.5.1986 for having remained absent unauthorisedly from 2.9.1981 to 31.5.1992. He appealed against the order of removal which was rejected by DME(L) on 26.6.1986. This appeal had been filed by the widow of Shri Chhagan Natha since the later had died in the meantime. In fact, widow had also preferred review petition which was not linked up Whether reporters of Local Papers may be allowed to see the Judgment?

with the appeal and the matter remained pending with the Department for number of years. Ultimately, taking into consideration the sufferings of the family of the deceased employee who died having suffered mental sickness during the period of absence, the order of removal from service was converted into the order of compulsory retirement by order dated 14.5.1993.

3. The petitioner was paid family pension and retirement dues. However, from out of it, penal rent was ordered to be deducted, deceased and widow having

occupied the quarter beyond normal period permissible under the Rules, by order dated 28.4.1995, which mentions that Rs. 25, 150/= be recovered from the pension of the petitioner at the rate of Rs. 400/= per month. This order was subject matter of challenge before the CAT which rejected the original as well as review application.

Consequently, the order of CAT and direction for recovery have been assailed through this petition.

4. Learned counsel for the Union of India contends that recovery is made for unauthorized occupation of the quarter, therefore, order dated 28.4.1995 is legally justified while learned counsel for the petitioner submits that recovery could not have been realized being against law and equity.

5. Giving careful consideration to the whole matter, we find that the respondents did not decide the appeal/ review preferred by petitioner for a long time, a fact admitted by Divisional Railway Manager in order dated 14.5.1993. Appeal/ review was ultimately decided on 14.5.1993. From 1.6.1986 to 30.11.1986, Shri Chhagan Natha / petitioner could stay in quarter as per Rules. However, question pertains to period 1.12.1986 to 22.6.1993 for which, penal rent has been realized. It is found that the petitioner remained in occupation of quarter since her appeal / review had not been decided by the competent authority. She had preferred the same within time, however, the respondents did not decide the same for approximately seven years. Ultimately, it was decided on 14.5.1993. Therefore, the petitioner could legally and legitimately remain in occupation of the quarter and no penal rent from pension or retirement dues could have been realized from her. Similar view has been taken by the Apex Court in Smt Violet Issaac and Others Vs. Union of India (UOI) and Others, and Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others,

6. Consequently, this petition is allowed, order dated 28.4.1995 is set aside. Respondents are directed to refund the amount recovered from the petitioner pursuant to the order dated 28.4.1995 within a period of one month. Rule made absolute. Cost on parties.