



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5667 of 2023

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UNION OF INDIA & ORS.

Versus

BHANUBEN W/O MANOJBHAI DHIRUBHAI RATHOD

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Appearance:

MR SHUSHIL R SHUKLA(5603) for the Petitioner(s) No. 1,2,3

SUNITA S CHATURVEDI(2572) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA
and
HONOURABLE MR.JUSTICE J. L. ODEDRA

Date : 23/04/2026

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. On 19.5.2008, by issuing a charge sheet in respect of an unauthorised absence, the Railways initiated departmental proceedings against the husband of the respondent.
2. Even before this charge sheet had been issued, on 16.04.2008, which fact is not in dispute, that the husband of the respondent had submitted a request for being permitted to retire voluntarily. In other words, he had sought for Voluntary Retirement Scheme (VRS) on about a month prior to issuance of chargesheet.
3. The Railways, basically, ignored this request for VRS and proceeded to conduct the Departmental Inquiry, which was in relation to the employee's unauthorised absence. The



Railways have, also thereafter, proceeded to impose the punishment of removal from service on 23.08.2013. It is contended that the notice of imposition of penalty was never served on the husband of the respondent, which the Tribunal has found to be true, and as consequence, the deceased employee had lost an opportunity to plead his case before the Disciplinary Authority.

4. The employee, who had suffered the penalty, passed away on 20.06.2015.
5. The respondent, being the widow, sought for disbursal of terminal benefits soon thereafter and also sought for compassionate appointment, since this was not paid to her, ostensibly on the ground that a penalty of removal was passed against her deceased husband.
6. Consequently, the respondent approached the Central Administrative Tribunal ("the Tribunal" for short) and sought for a declaration that her husband be treated as having been exonerated of all the charges and for setting aside of the penalty and for payment of consequential benefits.
7. The Tribunal, on consideration of the entire matter, has come to the conclusion that the imposition of penalty was



not sustainable on the ground that the penalty of removal from service could not have been passed without hearing the deceased employee and without serving the notice of imposition of penalty (NIP). The Tribunal has held that the NIP was never served on the deceased employee and it was not even sent by registered post. The Tribunal has held that the employee had furnished reasons for his absence and attributed them to his ill health and the Inquiry Officer had not found the absence to be willful.

8. The Tribunal, accordingly, proceeded to allow the said application and quashed the penalty imposed on the decreed employee. The Tribunal has directed the Railways to supply the copy of the order of imposition of penalty within a period of one month and has, thereafter, permitted the respondent to file a representation within a period one month. The Railways have thereafter been directed to consider the representation and take into consideration the reasons given by the respondent and also the fact that her husband had sought for VRS before the issuance of the charge sheet.
9. Being aggrieved by this order, the Railways, are before this Court.



10. It may be pertinent to state here that the notice of the imposition of penalty was admittedly not served on the employee during his life time and, as a consequence, the deceased employee had lost his valuable right to represent against the imposition of any major penalty and also bring it to the notice of the Disciplinary authority with proof of his ill health. The Inquiry Officer has also, admittedly, not held that the absence was wilful.
11. In that view of the matter, the Tribunal was justified in allowing the application of the respondent and quashing the order passed against her deceased husband. The argument that the wife i.e., the respondent could not have challenged the imposition of penalty is wholly untenable. If in a given situation, the employee, who had suffered a penalty and had passed away, his widow and family members would obviously be the real aggrieved persons and, therefore, they would have the legal right to remove the stigma attached to their breadwinner.
12. Though the Tribunal has passed an order quashing the penalty and directed the Railways to reconsider the matter, there is one glaring factor which will have to be taken into consideration and passing further orders in the matter.



13. Admittedly, the request of the deceased employee for being permitted to retire voluntarily, though submitted before the issuance of the charge sheet, wherein he had stated that he was seeking for retirement due to his ill health was fundamentally ignored by the Railways. If the employee had sought for retirement voluntarily citing his poor health, it was improper on the part of the Railways to have even proceeded against its employee without considering the request of the employee. In the background of the fact that the charge was of unauthorised absence and the reason cited for retiring voluntarily due to ill-health was made and the employee had ultimately passed away, by itself, would be proof of the fact that his unauthorised absence could be attributable to his ill-health.
14. In our view, in the light of this extenuating factor, the Railways ought to have considered the VRS, especially since it had been made before the chargesheet had been issued. It was only after consideration of the VRS should the Railways have decided on the Departmental Inquiry. That process having not been followed, severe prejudice has been caused to the deceased Railway employee and consequently on his widow. We are, therefore, of the view,



that the order of the Tribunal requires to be modified suitable in the larger interests of justice.

15. We are of the view that given the fact that the deceased Railway employee had sought for VRS before the chargesheet was served on him and he has ultimately passed away, it would be appropriate to direct the Railways to accept the VRS submitted by him and extend all consequential benefits to his widow, i.e the respondent. This exercise shall be undertaken and completed within the period of three months from the date of receipt of the copy of this order.
16. The petition stands disposed of accordingly.

(N.S.SANJAY GOWDA,J)

(J. L. ODEDRA, J)

SUDHIR