

**(1933) 08 AHC CK 0050**  
**In the Allahabad High Court**

Ch. Dalip Singh Pandit Kundan Lal

APPELLANT

Vs

Secy. of State

RESPONDENT

---

**Date of Decision :** 07-08-1933

**Acts Referred:**

**Citation :** (1933) 08 AHC CK 0050

**Hon'ble Judges :** Rachhpal Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

### **Judgement**

Rachhpal Singh, J.—This is a plaintiff's appeal arising out of a suit instituted by him against the defendant railway. The circumstances which led to the litigation between the parties are as follows: In June 1929 the plaintiff consigned from Chahra Gugor railway station to Agra Fort some sleepers which were carried by the defendant in 56 waggons. The plaintiff's case was that the goods sent were "third class unserviceable wood, scrap sleepers fit for firewood only" and that the weight of the goods sent was 700 tons equal to 19,055 maunds and 22 seers. The plaintiff contended that the freight for 19,055 maunds and 22 seers according to schedule rate was Rs. 94 per 16 ton waggon plus Rs. 5 for terminal charge and at this rate the total charge worked out at Rupees 4,331-4-0 while the total freight collected by the railway was Rupees 7,984 for 25,525 maunds at the rate of Annas 4 and 11 pies per maund. According to the plaintiff there was an over charge to the extent of Rupees 3,652-12 0 and he sued to recover the same together with interest and some other incidental charges. The defence of the defendant was that as a matter of fact the goods weighed 25,525 maunds and not 19,055 and 22 seers as alleged by the plaintiff. It was denied that the goods were "third class unserviceable wood-scrap sleepers fit for firewood only." The defendant pleaded that there was a special agreement between the parties under which the plaintiff had agreed to pay freight at the rate of Re. 0-4-11 per maund and so the question as to whether the goods were timber or wood-scrap fit for firewood only did not arise. The defendant admitted that there was an over-

charge of Rupees 1-14-0 only and to that extent the claim of the plaintiff was admitted. Both the Courts below held that the goods consigned by the plaintiff to Agra, from Chabra Gugor railway station were third class unserviceable wood-scrap sleepers fit for firewood only and that their weight was 700 tons(19,055 maunds and 22 seers) as alleged by the plaintiff.

2. The learned Munsif found that there was an agreement between the parties under which the defendant had agreed to charge freight from the plaintiff at the rate of Re. 0-4-11 per maund. He was however of opinion that the defendant's railway was incompetent to make an agreement of this kind with the plaintiff. He found that the schedule rate for the goods of the above mentioned description was Rs. 99 per waggon of 16 tons and he therefore allowed the defendant freight at that rate and held that there was an overcharge of Rs. 2,440 and for that sum together with interest and some other charges the suit was decreed.

3. The defendant railway appealed to the Court of the District Judge. The chief complaint of the defendant in appeal was that the learned Munsif was wrong in allowing freight at a uniform rate of Rs. 99 per waggon of 16 tons which should have been calculated according to the carrying capacity of the waggons used. This plea found favour with the lower appellate Court which remanded the case to the trial Court to determine the freight with reference to the carrying capacity of the waggons used. It is against this order of remand that the plaintiff has preferred the present appeal to this Court.

4. We are of opinion that the order of the learned Subordinate Judge remanding the case to the trial Court is wrong and cannot be upheld. The lower appellate Court found that the defendant company had agreed to carry the goods in question for the plaintiff at the rate of Re. 0-4-11 per maund and that it was not a special rate but a rate sanctioned by the authorities by the local rate advice No. 10 of 1929 for the general public. This was the rate fixed for the carriage of firewood for all. The view taken by the learned Subordinate Judge that in spite of the rate agreed upon between the parties the defendant could insist on charging freight with reference to the capacity of waggons used is opposed to the view expressed in several rulings by this Court and other High Courts. It appears to us that where the railway receipt is given as in the case before us, charging the goods (accepted as firewood) according to maund rates, the railway is not entitled to charge subsequently at waggon rates, even though larger waggons may have been used for the purpose. Here, we have a case in which the defendant railway entered into a contract to charge freight on certain goods at maund rate at the despatching station. The defendant has no justification later on to ask for freight at waggon rates. This point came up for consideration in a Pull Bench ruling of this Court reported in *Chunni Lal v. Nizam's Guaranteed State Ry. Co. Ltd.* (1907) 29 All. 228. It was held that where there was a contract to charge freight at waggon rate at the despatching station, it could not be altered by the railway company and it could not charge freight at the destination at maund rate. In another case, *Bombay, Baroda and Central Indian*

Railway Company Vs. Firm Budh Sen Pusp Chand, Sulaiman, J., held that where a railway had agreed to carry goods at maund rate, the fact that under the note of consignment the company had reserved a right of re-weighment, remeasurement and recalculation of freight, etc., did not entitle it to alter the maund rate into waggon rate. In another case, B.B. and C.I. Railway Vs. Gulabbhai Bhagwandas, , it was held that the railway company was not entitled to alter the basis of the calculation at maund rates on a consignment on which the railway receipt was granted to waggon rate or vice versa. In another case of this Court, Gulab Dei Vs. G.I.P. Railway, , a learned Judge of this Court held that a railway company was not entitled, when it had made a contract with the plaintiff to convey his goods at a particular rate, to subsequently alter the basis of calculation merely because it had used for the conveyance of the goods a much larger waggon than was actually necessary to suit their own convenience. The Madras High Court has taken a similar view in a case A.S. Venugopala Aiyangar v. S.I. Ry. Co. AIR 1921 Mad. 621.

5. We are clearly of opinion that the learned Subordinate Judge was wrong in thinking that in spite of the contract between the parties under which the railway company agreed to convey goods in question at maund rate, it was open to the defendant company to insist on freight at waggon rate because goods carried were of the description for which freight could be charged at waggon rate. As a matter of fact the defendant railway charged freight from the plaintiff at the rate agreed upon between the parties which was Re. 0-4-11 per maund for 25,525 maunds and insisted in the written statement on the agreement being adhered to. It was the plaintiff who ignoring the terms of the contract pleaded in para. 12 of the plaint that the freight should have been charged not with reference to the rate agreed upon but according to waggon rate which is Rs. 99 per 16 ton waggon. Now, the plaintiff had agreed to pay freight at the rate of Re. 0-4-11 per maund and he could not back out of this contract. Firewood is generally carried by the railway at waggon rate but there is nothing in law to prevent a railway company from entering into agreement that they would charge freight with reference to maund rate. As already pointed out, the learned Subordinate Judge has said in his judgment that evidence on record shows that the rate of Rupee 0-4-11 per maund was not a special concession rate to the plaintiff and that as a matter of fact it is the rate which was sanctioned by the railway authorities by the local rate advice No. 10 of 1929 for the general public (and not specially the plaintiff) from 24th April 1929 for condemned railway sleepers. Thus it would appear that at the time the plaintiff's goods were conveyed to Agra the defendant railway's rate for carrying firewood was 4 annas, 11 pies. When at the loading railway station the plaintiff's goods were taken for carriage there was an agreement that the rate would be 4 annas 11 pies per maund. This was the rate entered in the railway receipt. None of the two parties can back out of that agreement. The plaintiff had agreed to pay freight at the rate of 4 annas 11 pies and he is liable to pay at the maund rate. The defendant had agreed to charge freight at this rate and cannot demand freight according to the carrying capacity

of each waggon. Our view is that the learned Subordinate Judge was wrong in acceding to this argument.

6. Both the Courts below have held that the goods carried weighed 700 tons equal to 19,055 maunds and 22 seers. The defendant is entitled to recover the freight on this amount which comes to Rs. 5,855-9-6. The plaintiff had to pay to the defendant in all Rs. 7,984. Thus there has been an over-charge to the extent of Rs. 2,128.6.6. The plaintiff is entitled to recover this sum with interest at the rate of Rs. 12 per cent per mensem till the date of the suit. For the reasons given above, we allow this appeal, set aside the orders passed by both the Courts below and grant the plaintiff a decree for the sum of Rs. 2,128-6-6 with interest at 12 annas per cent per mensem from the date on which the over-charge was realized till the date of the suit. Future interest at Rs. 6 per cent per annum. The plaintiff will get his proportionate costs from the defendant in all the Courts. The defendant to pay up the decree money to the plaintiff within a period of four months from today.