
(1991) 03 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

M. MEENAKSHISUNDARAM

APPELLANT

Vs

GENERAL MANAGER, SUTHERN RLY

RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:

Citation : 1991 0 CPC 450 : 1991 1 CPR 656 : 1991 2 CPJ 137

Hon'ble Judges : S.K.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision : Claimant awarded

Judgement

1. THIS is a complaint under Sec. 17 read with Sec. 12 of the Consumer Protection Act.

2. THE complainant who is a senior member of Tiruchirapalli Bar, purchased at Tiruchirapalli on 4.4.90 a railway ticket for his return journey from Madras on 14.4.90 by A.C. Chair Car in Vaigai Express. After confirmation from Madras, he was informed that he was No. 3 in the waiting list. On the morning of 14.4.90, the Complainant went to the Railway station at Egmore and checked his placement in the waiting list and found it in the same old position as No. 3. He was directed to meet the T.T.E. in the train. THE T.T.E. came minute before the departure of the Vaigai Express and he asked the complainant to wait till he finished the checking. THE Complainant was standing and then sitting in one of the eight seats in Non A.C. sector intended for A.C. wait listed passengers. THE T.T.E. then allotted on A.C. car seat to the 2nd respondent who had no reservation and whom the complainant come to know later was the Deputy Speaker of the Tamilnadu Legislative Assembly. THE Complainant protected in vain. THE Complainant also learnt that a Member of Parliament (Mr. T.S. Raju) had also been allotted a seat in A.C. Car without any reservation. THE Complainant travelled in the non A.C. sector till Virudachalam where he was allotted a seat in the A.C. Car. Hence this complaint claiming damaged in the sum of Rs. 1,10,000/- for the mental and physical sufferings undergone by him. It is admitted by the Railways Opposite Party No. 1, that the Complainant purchased at Trichy on 4.4.90 an A.C. Chair Car ticket for his return journey from

Madras on 14.4.90 and was waitlisted as No. 3. As there was no cancellation of reservation, the Complainant's position remained the same till the preparation of the reservation chart. The emergency quota of 8. A.C. Chair Car seats were also filled up. Thereafter Mr. T.S. Raju, M.P. and the 2nd Opposite Party (Tamilnadu Deputy Speaker) applied for A.C. Chair Car seats in the same train and were issued only II class tickets. As they were V.I.Ps, under instructions from Egmore reservation office, the T.T.E. allotted two seats to them in A.C. Chair Car, the unutilised accommodation out of the return journey quota operated from Madurai. As the Complainant was only a waitlisted passenger he cannot claim a reserved seat as a matter of right. Even otherwise he is not entitled to any compensation. He has been allotted a non A.C. Chair ticket and later A.C. Chair seat from Virudachalam. The Complainant has not suffered any injury whatever. The compensation claimed is excessive.

The Opposite Party No. 2 has also filed a counter but he remained absent.

3. THE Complainant has examined himself as P.W.I, and he has spoken to the averments in his complaint. THE Opposite Party No. 1 has not let in any oral evidence and has been content with filing the copies of the reservation and waiting and non A.C. Chair for the Vaigai Express leaving Egmore on 14.4.90. The Complainant had purchased on 4.4.90 an A.C. Chair Car ticket for his journey from Egmore to Trichy on 14.4.90 and he was wait listed as No. 3. His position did not improve and continued to be in the waiting list as No. 3, till the preparation of the reservation chart on 14.4.90. Hoping that he would be allotted a seat as his waiting list was No. 3, he decided to travel and met the T.T.E. just before the departure of the train. It is his evidence and it is not rebutted, that the T.T.E. wanted to varify joining of confirmed passengers and asked the Complainant, to wait in the non A.C. sector of the A.C. coach. After verification the T.T.E. informed the Complainant that no seat was vacant. But he allotted one seat in the A.C. Chair Car to the 2nd Opposite Party who was holding only a non A.C. Chair ticket and when protested he was informed by the T.T.E. that the gentleman was a V.I.P. being the Deputy Speaker of the Tamilnadu Legislative Assembly. The Complainant learnt that another seat in the A.C. coach has similarly been allotted to Mr. T.S. Raju, M.P. who was also a holder of non A.C. Chair permit. It is admitted in the counter filed by the Railways that these two gentlemen were holders of non A.C. Chair tickets but they were allotted seats in the A.C. Chair Car as they were V.I.Ps as per instructions from the Reservation Office. The short point for consideration is whether such an allotment of seats in the A.C. Chair Car in preference to holders of A.C. Chair tickets in the waiting list is in order.

4. IT may be pointed out here and now that the Railways have produced into Court the copies of the Reservation charts, but not the T.T.E's Chart which alone can give details of the seats that were vacant at the time of the departure of the train and how they were filled up. The concerned T.T.E. has not also been examined. The inference is irresistible that the T.T.E's chart, is produced and

T.T.E. if examined, would go against the case of the Railway. But this need not detail us. The very admission made in the counter would show that Mr. T.S. Raju, M.P. and the 2nd Opposite Party had applied for A.C. Car tickets only on the morning of 14.4.90 after all the regular and 8 emergency quota seats were filled up and they were issued only on A.C. Chair Car permit and ticket, but they have been allotted two seats in the A.C. Car in preference to the Complainant who had purchased an A.C. Car ticket on 4.4.90 and was waitlisted as No. 3. No doubt these two gentlemen are V.I.Ps and are entitled to preference to a certain extent and the extent is limited to allotment of seats in the E.Q. They cannot claim any right beyond that and seek allotment of seats falling vacant in preference to those in the A.C. Chair Car waiting list. The rule of law is the corner stone of our democratic policy and law is no respecter of persons. The doctrine of equality before the law and the equal protection of the laws enshrined in A. 14 of the Constitution cannot be allowed to be violated or tampered with. Hence the allotment of the seats in A.C. Chair Car for these two V.I.Ps who were holding only non A.C. tickets, overlooking the claim of the holder of an A.C. Chair Car ticket in the waiting list is a case of arbitrariness. It is urged that the T.T.E. allotted two seats in the A.C. Car to these gentlemen under instructions from the Reservation Officer. The issue of such instructions, if true, is another case of abuse of power. According to the learned Counsel appearing for the Railways, the Deputy Director, Traffic Commercial has issued instructions for such out of turn allotments and a copy of the communication dated 9.11.90 is produced for our perusal. It reads thus: "It has come to Board notice that whenever there is heavy demand for allotment of berths out of "Emergency Quota", Railways are resorting to utilisation of other quotas earmarked for Defence, State Governments, Foreign Tourists, Parliament House Booking Office, etc., Board desire that the utilisation of other quotas for allotment of out of turn accommodation should be resorted to only in rare cases to cater to urgent demands of M.Ps, V.I.Ps or Parliament Committees, who cannot otherwise be accommodated within the Emergency Quota. This should however be done with the prior personal permission of the CCS/DRM. This communication is dated 9.11.90 long after this incident which happened on 14.4.90 and then is no piece of evidence to show that there was any instruction prior thereto. Further a reading of the above communication would show the previous practice of allotment from other quotas earmarked for Defence, State Government, etc. was unauthorised and this practice was now limited and restricted to very rare cases, and that too with the previous permission of C.C.S./D.R.M. Again this communication does not touch and regular seats available to the general public, and speak nothing about the allotment of seats falling vacant after confirmation, to persons in the waiting list *seriatim*. The impugned allotment made in this case is totally outside the pale of law.

5. THE copy of the reservation chart placed before us shows that seat Nos. 1 & 2 in the A.C. Chair Car are reserved for passengers boarding at Villupuram, while seats 3 & 4 are reserved for those boarding at Virudachalam. Tickets can be

issued at Madras for passengers going upto Villupuram for seats 1 & 2 and for passengers going upto Virudachalam for seats 3 & 4. As per this reservation Chart, seats 1 & 2 were lying vacant and no ticket has been issued at Egmore for Villupuram, while tickets have been issued for seats 3 & 4 for two passengers from Egmore to Virudachalam. It is in one of these two seats which fell vacant at Virudachalam, the Complainant has been subsequently accommodated. It is not known why the T.T.E. has not allotted to the Complainant seat No. 1 or 2 both of which were lying vacant from Madras to Villupuram, so that the Complainant could have travelled in the A.C. Car upto Villupuram and continued upto his destination, Trichy, if the Villupuram quota was utilised. There is also nothing to show that this quota was really utilised at Villupuram. The T.T.E. has thus been guilty not only of gross negligence but also of wilful dereliction of duty, for which its employer is vicariously responsible. The deficiency of service on the part of the Southern Railways is well established.

6. NOW to the question of compensation. The Complainant has purchased A.C. Chair Car ticket from Egmore to Trichy but has travelled in a non A.C. Car from Egmore to Virudachalam and in the A.C. Car from Virudachalam to Trichy. He is therefore entitled to the refund of the A.C. Car fare from Egmore to Virudachalam less non A.C. fare from Egmore to Virudachalam. As regards the claim for damages for mental agony and physical pain, it is urged on behalf of the Railways that in view of the provisions of Sec. 67 of the Railways Act and Rule 306 of the Railway Tariff Rules which run as follows: the claim is unsustainable "Sec. 67(1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the conditions of there being room available in the train for which the tickets are issued. (2) A person to whom a ticket has been issued and for whom there is no room available in the train for which the ticket was issued shall on returning the ticket within three hours after the departure of the train be entitled to have his fare at once refunded. (3) A person for whom there is no room available in the class of carriage for which he has purchased a ticket and who is obliged to travel in a carriage of a lower class shall be entitled on delivering up his ticket to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled. Rule 306 Reserved accommodation not guaranteed Railway Administration do not guarantee reserved accommodation whether seats, berths, compartments, coaches or carriages by any particular train and will admit no claim for compensation for inconvenience, loss or extra expenses due to such accommodation not being provided or attached to trains by which asked for"

These provisions relate to cases of want of accommodation for reasons beyond control. This is not the case here. In the instant case seats were vacant in the A.C. Chair Car but they were wrongly allotted by the T.T.E. to two gentlemen who were holding non A.C. tickets in preference to the Complainant who was holding an A.C. ticket in the waiting list. The Railways are responsible for the irresponsible conduct of their employee and the complainant is entitled to claim damages.

The Complainant's claim of Rs. 1,10,000/- is excessive and exorbitant. The Complainant would however urge that he would be content with reasonable damages. The Complainant as a Senior member of the bar and is accustomed to travel in A.C. coaches. He has installed air conditioners in his Office and bedroom and it is his evidence that he would not have undertaken his journey on 14.4.90, but for the fact that he was in No. 3 in the waiting list and there was every possibility of confirmation. Taking all these factors into consideration, we felt that a sum of Rs. 1,000 will be a reasonable amount of compensation.

7. THE Second Opposite Party is not liable on any account for he is not rendering any service to the Complainant. In the result, it is ordered that the Opposite Party No. 1, (a) Shall refund to the complainant the difference between the fare by A.C. Chair Car from Egmore to Tiruchirapalli and the fare for the same distance by non A.C. Chair Car. (b) shall pay a sum of Rs. 1,000/- to the complainant as compensation, and (c) shall pay to the complainant Rs. 300 towards costs.

Towards the costs this proceedings, all within 30 days of the receipt of the copy of this Judgment."

8. IT is further ordered that the Complain shall stand dismissed as against the second Opposite Party but without costs. Claimant awarded.