

(1961) 09 AHC CK 0007
In the Allahabad High Court
Case No : C.R. No. 1035 of 1955

Narain Ram Chandra Kelkar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-09-1961

Acts Referred:

Railways Act, 1890 — Section 77

Citation : (1961) 31 AWR 763

Hon'ble Judges : Desai, C.J.; Ramabhadran, J

Bench : Division Bench

Advocate : B.R. Avasthi, for the Appellant; P.N. Bakshi for Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Desai, C.J.—The short question that arises in this revision and which has been referred by Justice Vishnu Datta to a Bench is whether the claim for compensation for the loss or destruction of goods delivered to be carried must be posted, sent or despatched within six months from the date of the delivery of the goods for carriage or must be received by the railway administration within this period. The facts are that the goods were delivered to be carried on 4-8-53. When the applicant, who was the endorsee of the railway receipt, went to the Kanauj railway station to take delivery he found that the tins were empty and the contents had disappeared. On 4-2-54 he sent by post a notice of his claim for compensation for the loss of the goods, addressed to the railway administration at Gorakhpur. It is admitted that 4-2-54 was the last date of the period of six months within which the claim must be preferred in writing to the railway administration u/s 77 of the Railway Act. It is also not in dispute that the claim sent by post must have taken at least two days to reach the railway administration at Gorakhpur and that consequently the Railway administration received the claim after the expiry of six months from the date of the delivery of the goods for carriage.

2. We have no doubt that "preferred in writing ... to the railway administration" means that the written claim has reached the railway administration. "Prefer" means "to lay (a matter) before any one formally for consideration, approval, or sanction; to bring forward, present, submit (a statement, bill, indictment, information, prayer, etc.) To put, place, or set (something) before any one for acceptance"-Murray's Dictionary. So there can be no preferment unless the matter reaches the person to whom it is to be preferred. By simply writing out a claim addressed to the railway administration, one cannot be said to have preferred a claim to it. If it is not posted and has not reached the railway administration it has certainly not been preferred to it. Preferring a claim to a particular person involves the element that the claim has been brought to his notice; otherwise the requirement that the claim must be preferred to a particular person loses its importance. The law is not that the claim must be preferred; it is that it must be preferred to a particular person and it cannot be said to be preferred to a particular person unless he receives it. Walsh Acting C.J., and Banerji, J., in *Chaturbhuj - Ram Lal Vs. Secretary of State for India*, . observed:

3. To prefer a claim in writing to a person within the meaning of Section 77 clearly means that it must reach him."

4. In *Secretary of State Vs. Firm Imperial Metal Works*, Daniels, J., took the same view. It is also consistent with the provisions of S. 140 of the railways Act which requires that:

any notice or other document required to be served on a railway administration may be served.

* * *

(c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at (sic)is offence" and S. 142, which lays down that:

where a notice, or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post

5. If we had been dealing with the provision that the claim must be served upon the railway administration within six months there is no doubt that the claim in the present case was not served upon the railway administration within six months; though it was posted within six months it would be deemed to be served upon the railway administration after six months. S. 77 of the Railways Act, however, used the word "preferred" and not "served". But we do not think that it makes any difference. We are unable to say that the Legislature by using the word "preferred" meant "sent,"" dispatched "or "posted" as opposed to "served." Presumably the Legislature chose the word "preferred" because it was associated with the word "claim" and not with the word "notice." A notice is served, whereas a claim is preferred. Therefore, by using the word "preferred" the Legislature did

not mean anything different from service. We respectfully agree with the observations made by Walsh, Acting C.J., and Banerji, J. in the case of Chaturbhuj - Ram Lal Vs. Secretary of State for India, .

6. We were referred to Ram Gopal Marwari and Others Vs. Bengal and North-Western Railway Co., and Union of India (UOI) Vs. Asharfi Devi and Others, in which the contrary view was taken. The learned Judges in the two cases accepted the argument that if a claim was required to be served within six months it will shorten the period available for the claimant. The argument, if we may say so, is fallacious and assumes the very proposition that requires to be established. There is no provision but this which lays down any period of limitation and the sole question before the learned Judges was what exactly was the meaning of the limitation prescribed—was the claim required to reach the railway administration within six months or was it required to be sent, despatched or posted within six months? It would be illogical to say that the meaning of the limitation was that the claim should be sent, posted or despatched within six months because otherwise it would have to be sent, posted or despatched within less than six months and thereby the period of limitation would be shortened. The Legislature never fixed any period of limitation which would be shortened by the interpretation that we propose to give. There is no provision at all in the Railways Act laying down that a claimant has the right of waiting for six months before preferring a claim and in the absence of such a provision it cannot be said that requiring him to see that the claim reaches the railway administration within six months is to curtail the period at his disposal. When there was no period placed at his disposal by any other provision, it would be fallacious to argue that the very provision which places a period at his disposal curtails it. A question of curtailment of a period of limitation can arise only if it is prescribed by one provision and another provision is interpreted so as to curtail it. The real question before the learned Judges was what was the meaning of the words "preferred to the railway administration" We read S. 77 as a restriction upon a claimant's right to get compensation. Without it he would be entitled to compensation by instituting a suit at any time before the expiry of the period of limitation prescribed therefore; but now he is not entitled to compensation unless he has preferred the claim within six months. The provision in S. 77 is, therefore, a restriction on his right and imposes an obligation upon him to prefer the claim within six months. We cannot treat this obligation as a right to wait for full six months before preferring a claim. He has got to take some step before the expiry of six months, if the first step taken by him towards the preferment of the claim is after the expiry of six months, it will undoubtedly disentitle him to the compensation. If some step must be taken by him before the expiry of six months, it also amounts to curtailment of the period of six months and if he must take some step even though it curtails the period of six months there is no justification for saying that he cannot be called upon to see that the claim reaches the railway administration within six months. There is nothing in S. 77 or in any other provision of the Railways Act to indicate that the

Legislature intended to give a claimant six clear months before taking any step in the matters; on the other hand we are of the opinion that if this were the intention of the Legislature it would have used the word "sent," "dispatched" or "posted" instead of the word "preferred." The provision that a claim should be preferred is for the benefit of the Railway administration; it must know within six months that such a claim is contemplated. Clearly the Legislature intended that unless it becomes aware of the claim within six months it should not be made liable to pay the compensation. The utility of a claim lies in its being received by the railway administration and not in its being merely posted by the claimant.

7. We, therefore, agree with the view taken by the court below and dismissed this revision application with costs.