
(2018) 03 GAU CK 0008
In the Gauhati High Court
Case No : MFA 72 of 2003

THE UNION OF INDIA and ORS

APPELLANT

Vs

M/S P.P.ENTERPRISE

RESPONDENT

Date of Decision : 08-03-2018

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 13
Railway Claims Tribunal (Procedure) Rules, 1989 — Rule 10

Citation : (2018) 03 GAU CK 0008

Hon'ble Judges : SUMAN SHYAM

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. G. Goswami, learned counsel for the appellants. I have also heard Ms. M.Sarma, learned counsel appearing for the sole respondent.

2. In this appeal filed by the Railway Department, the judgment and order dated 31-10-2002 passed by the Railway Claims Tribunal, Guwahati Bench, Guwahati, in Application No. 47/1999 has been put under challenge.

3. The facts of the case, briefly stated, is that the respondent had booked consignments of goods by the railway train wagon from Wadi Bunder to

New Guwahati between 27-05-1998 to 29-05-1998 pertaining to Railway Receipts Nos. 968890 to 968933 issued by the Central Railways in respect of

which, freight was charged @ Rs. 123.40/- per Qtls. for the distance of 2714 k.m. The claim of the respondent is that the correct distance between

Wadi Bunder to New Guwahati was only 2653 k.m. and therefore, the freight charged by the railways for 2714 k.m. was illegal. The respondent had

accordingly approached the Railway Claims Tribunal, Guwahati Bench by filing a claim petition seeking refund of the excess amount charged by the

Railways to the tune of Rs. 24,900/- together with interest.

4. By the impugned judgment and order dated 31-10-2002, the learned Railway Claims Tribunal, Guwahati Bench has allowed the application filed by

the respondent and directed the appellants to refund an amount of Rs. 24,990/- together with interest @ 9% per annum to be calculated from the date

of filing of the claim petition till the date of the judgment. It was further provided that if the refund is not made within a period of 60 days from the date

of the order, the amount would carry an interest @ Rs. 9% per annum until realization.

5. Although the judgment and order of the learned Tribunal has been assailed on several grounds, yet, at the time of hearing, Mr. Goswami has

confined his arguments mainly to two grounds. Firstly, that the consignment having been booked at Wadi Bunder station, Mumbai, it is only the Claims

Tribunal at Mumbai which would have territorial jurisdiction to entertain the application. Secondly, the distance shown in the Railway Receipt (RR) as

2714 k.m. Would have to be treated as conclusive proof of the distance. Therefore, the learned Tribunal ought not to have ignored the RR of the

respondent for the purpose of calculating the distance and the freight charges.

6. According to Mr. Goswami, the consignment having been booked at Mumbai, the Bench at Guwahati did not have the territorial jurisdiction to

decide the claim of the respondent/ applicant and hence, the impugned order is bad for want of jurisdiction.

7. Mr. Goswami further submits that in this case, the RR produced by the applicant clearly showed that the distance between Wadi Bunder to New

Guwahati was 2714 k.m. And therefore, the learned Tribunal ought not to have relied upon the another RR pertaining to a different consignment

showing the distance between the two stations as 2652 k.m. He submits that although there was a shorter route, yet, at the relevant point of time, the

shorter route was not in operation for goods trains and therefore, the learned Tribunal has committed manifest illegality by allowing the claim of the

respondent. It is also the submission of Mr. Goswami that the learned Tribunal has given no justification for rejecting the entries made in the RR

produced by the applicant, which clearly showed that the distance was 2714 k.m. and to that extent, the impugned judgment and order is perverse in

the eye of law.

8. Ms. M. Sarma, learned counsel for the respondent, on the other hand, has invited the attention of this Court to the findings of fact recorded by the

learned Tribunal and contends that there were sufficient materials available on record for the Tribunal to arrive at a conclusion that not only was the

shorter route in operation on the date on which the consignments of the respondent was transported but the distance was also 2651 k.m. Such being

the position submits Ms. Sarma, the conclusion drawn by the learned Tribunal does not suffer from any illegality warranting interference by this Court.

9. I have considered the submission made by the learned counsel for the parties and have also gone through the materials available on record.

10. Rule 10 of the Railway Claims Tribunal (Procedure) Rules, 1989 provides that an application in respect of a claim for refund of fare or freight can

be filed before the Bench having territorial jurisdiction over the place at which such fare or freight was paid or the place where the destination station

lies. Section 13 of the Railway Claims Tribunal Act, 1987 confers jurisdiction upon the Railway Claims Tribunal to entertain claims for refund of fare

or part thereof or for refund of any freight in respect of animals or goods entrusted to a railway administration for carriage by railway.

11. Since the destination station in this case was New Guwahati station, hence, in view of the provision of Section 13 of the Act of 1987 read with

Rule 10 of the Rules of 1989, it is apparent that the Guwahati Bench of the Railway Claims Tribunal would have the jurisdiction to entertain the

application filed by the respondent. As such, the objection raised by the appellants on the ground of want of territorial jurisdiction of the learned

Tribunal is found to be devoid of any merit and hence, stands rejected.

12. Coming to the next issue regarding correctness of the findings of fact recorded by the Tribunal in respect of the distance between the two points

being 2651 k.m. what is significant to note herein is that the learned Tribunal has categorically recorded finding at paragraph 20 that the BG alignment

between Hazipur to Bachhwara section of N.E. Railway (shorter route) was completed and opened for goods traffic w.e.f. 07-10-1997 i.e. much

before the date on which the consignment was booked by the respondent. It appears that the appellant No. 1 herein i.e. the N.F. Railway had also

submitted documents before the learned Tribunal indicating that not only was the shorter route in operation at the relevant point of time but the

distance between the Wadi Bunder station and New Guwahati through that route station was 2651 k.m. The learned Tribunal has also referred to RR

No. C-733655 dated 02-11-2001 issued by the appellant No. 2 wherein the freight charge between the Wadi Bunder to New Guwahati has been charged for a distance of 2651 k.m.

13. The fact that the shortest distance between Wadi Bunder and New Guwahati is 2651 k.m. is not in dispute. The basic contention of the appellants

is that the said route was unavailable for goods train during the relevant period of time. Since it is the case of the appellants that the shorter route

between Wadi Bunder to New Guwahati was not in operation for the goods train during the period from 27-05-1998 till the time the consignments of

the respondent had arrived at Guwahati, it was incumbent upon them to produce evidence in support of the said plea. But the appellants have failed to

produce any material to substantiate the said claim. Not only that, there is also no pleadings in the writ petition to the effect that the shorter route was

not available for operation of goods train during the relevant period of time as a result of which the respondent's consignment had to travel through

the longer route. The finding of fact, recorded by the learned Tribunal appears to be based on cogent materials brought on record. As such, I am

unable to agree with the submission of Mr. Goswami that the finding recorded by the learned Tribunal were perverse. The judgment of the learned

Tribunal is backed by sufficient reasoning. As such, I do not find any justifiable ground to disturb the finding recorded by the learned Tribunal. For the

reasons stated hereinbefore, it is held that there is no merit in this appeal and the same is accordingly dismissed. Parties to bear their own cost.