

(1999) 07 PAT CK 0061
In the Patna High Court
Case No : Misc. Appeal No's. 278-290 of 1998

Union of India (UOI)

APPELLANT

Vs

Ruby International

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Railways Act, 1989 — Section 106

Citation : (1999) 3 BLJR 1905

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—M/s. Rubi International, Birat Nagar (Nepal) claiming to be owner of the goods filed Application Nos. OR 9800001 to OR 9800006 and OR 9800008 to. OR 9800014 before Railway Claims Tribunal, Patna Bench u/s 106 of the Railways Act, 1989 (hereinafter referred to as "the Act") for refund of freight over-charged.

2. The Associated Cement Companies Ltd. booked cement consignment from Jhinkpani Railway Station to Katihar Railway Station on 4/5-8-1996, vide RR Nos. n899999997681 to 897687 and on 15/16-8-1996 from Katihar to Jogbani, vide RR Nos. 843540 to 843547. Booking station was broad-gauge station, whereas destination was metre gauge station and as such movement of goods were subjected to transshipment at Katihar Railway Station. The Railway charged separately for broad-gauge and metre gauge movement on normal rate of freight, which was available at that time fixed by the Railway administration for booking of consignment of cement.

3. According to the claimant only telescopic rate of freight from Katihar to Jogbani was to be charged. It was claimed that claim notices were sent to N.F. Railway on 1-8-1997.

4. Separate written reply was filed on behalf of Union of India for self and on

behalf of N.F. Railway Administration, Maligaon in each application denying validity and sufficiency of notice u/s 106 of the Act. Consignments were rebooked on 15/ 16-8-1996, hut aforesaid notice was served on 13-8-1997 i.e. after expiry of six months. Re-booking was on the normal rate of freight, which was invogue at the relevant time covered under the provision of train load consignment. Telescopic rate of freight came into effect on or from 10-6-1997 i.e. after booking of consignments in question and as such benefit of telescopic rate was not applicable in the present case.

5. By the impugned judgment dated 13-4-1998, passed separately in 13 applications referred to above, the Tribunal allowed claim for refund of excess freight with litigation cost and interest. Union of India, through General Manager, N.F. Railway has preferred present Misc. Appeal Nos. 278 to 290 of 1998.

6. Since common questions of fact and law are involved, these appeals have been heard together and with consent of parties are being disposed of under Order XLI, Rule 11 of the CPC by a common order.

7. Perusal of records of Tribunal revealed that the, claimant produced a letter dated 20-12-1996 addressed to Goods Clerk, N.F. Railway, Jogbani/ Katihar regarding excess charges of freight rate. A request was made in the said letter to take care that freight are correctly charged and if it was found that freights were over-charged then the same may be adjusted in future booking or be refunded. In paragraph 6 of claim application, it was specifically mentioned that notice u/s 106 of the Act was served , on the Indian Railway Administration on 13-8-1997. In such circumstances, the Tribunal committed an error of record in holding that claimant sent notice on 20-12-1996, which was received on 21-12-1996 and as such service of notice was not time-barred. It was served within prescribed period of six months and, therefore, was valid and legal.

8. In aforesaid circumstance, I have no option, but to hold that in the present cases service of notice u/s 106 of the Act was time-barred and, therefore, invalid.

9. Railway Board by letter dated 7-7-1994, Ext. 1 informed General Managers (Commercial) of all Indian Railways that proposals from Railway for introduction of special arrangement for movement of traffic from stations on one gauge to destination to another gauge through dump operated at the break-off gauge point were sent to Railway Board for approval. The matter was reviewed and it was decided that such cases need not be referred to Railway Board and Zonal Railway may introduce such special arrangements after obtaining FA and D.A.O's concurrence and General Manager's approval, General Manager, N.F. Railway accorded approval to the special arrangement for dispatch of cement in train loads for export to Nepal and it was decided to grant benefit of Telescopic freight rate of continuous distance. Basic for cement consignment booked from broad-gauge stations of South-Eastern and Eastern Railway for Jogbani station (Metre gauge) / N.F., Railway through the break off gauge point at Katihar, where it was to be re-booked to Jogbani with reflect from 10-6-1997.

10. In such circumstance, in August 1996, when the consignments in question were booked, the claimant was not entitled to benefit of telescopic rate of freight. Hence, normal rate of freight for the booking of consignment of cement, which was invouge in August. 1996 was correctly charged by the Railway Administration and there was no question of any refund on the basis of telescopic rate as claimed.

11. I, therefore, set aside the impugned judgments dated i3-4-1998, passed by the Tribunal in Application Nos. "OR 9800001 to OR 9800006 and OR 9800008 to OR 9800014.

12. In the result, these appeals are allowed.