

GAHC010168952016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Linked Case : **MFA/35/2016**

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI-11

VERSUS

M/S DRUK SATAIR CORPORATION LIMITED
HQ SAMDRUP JONKHAR
POST BOX NO. 129
BHUTAN

Advocate for : MSB DEVI
Advocate for : MS.M SHARMA appearing for M/S DRUK SATAIR CORPORATION
LIMITED

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

17-08-2023

Heard Ms. U. Chakraborty, learned Special Senior Standing Counsel, Railways appearing for the appellant. Also heard Ms. M. Sharma, learned counsel for the respondent.

2. The instant appeal has been preferred under Section 23 of the Railways Claims Tribunal Act, 1987 (hereinafter the Act) against a judgment and order dated 14.10.2015 passed by the Railways Claims Tribunal, Guwahati Bench in OA No. III-200/2012. By the aforesaid judgment, the application filed by the respondent as claimant under Section 16 of the Act was allowed, granting an award of Rs.55,51,861/- (Rupees Fifty Five Lakh Fifty One Thousand Eight Hundred Sixty One) alongwith simple interest @ 6% per annum has been granted from the date of filing of the original application.

3. The principal ground and reason assigned by the learned Tribunal justifying the claim of the applicant is that the panel charges were levied without following the principles of natural justice.

4. Ms. Chakraborty, the learned Special Senior Counsel for the Railways has however submitted that there is no requirement for following the principles of natural justice in the facts and circumstances of the case. It is submitted that the overloading was detected at New Bongaigaon whereafter the matter was remanded to Rangia with a direction for recovery in absence of which, Railway Receipt (RR) was not to be issued. It is submitted that the said process would not require any notice to be given as the overloading was detected at Bongaigaon since the Rangia station did not have the device for such weighment. It is also submitted that on payment of the penalty, RR has been issued to the claimants and therefore there is no cause to be aggrieved with.

5. On the other hand, Ms. M. Sarma, learned counsel for the respondent/claimant has submitted that the legality and validity of the penalty imposed was the subject matter before the Tribunal and the Tribunal had rightly accepted the submission that before imposing such penalty, an opportunity was required to be given to the claimant which was admittedly not done and primarily on the said ground of violation of the

principles of natural justice, the judgment has been passed by the Tribunal whereby the award was granted.

6. This Court has also been apprised that the issue involved regarding the adherence of the principles of natural justice was the matter of consideration before an Hon'ble Full Bench of this Court in WA No. 333/2010 in which, it was held that principles of natural justice is a necessary concomitant before imposing a penalty. This Court however has also been apprised that against the said judgment, an SLP has been preferred which is pending disposal.

7. Ms. Chakraborty, the learned Special Senior Counsel, Railways has submitted that till the matter is disposed of by the Hon'ble Supreme Court, the decision in this case may be kept in abeyance. The said submission is however objected to by Ms. Sarma, learned counsel who refers to two orders of this Court in this proceedings passed on 25.02.2020 and 16.05.2023. It is submitted that the same submission was considered by this Court and had directed to proceed in this matter and vide the last order dated 16.05.2023, a last opportunity was granted to apprise whether any decision has been rendered by the Hon'ble Supreme Court. This Court in the earlier order dated 25.02.2020 has also taken into consideration that there was no order of prohibition by the Hon'ble Supreme Court restraining proceeding with this matter and rather there was an administrative order for listing this matter for hearing.

8. For ready reference, the orders dated 25.02.2020 and 16.05.2023 are extracted herein below:-

“Order dated : 25.02.2020

Mr. N. Baruah, learned counsel appearing on behalf of Dr. B.N. Gogoi, learned standing counsel for the Railway prays for adjournment.

In this regard, he has placed on record a copy of letter dated 17.02.2020 by the Senior Commercial Manager/CT N.F. Railways to the standing counsel for the appellant that the issue of punitive charges is pending before the Supreme Court of India and therefore, the present appeal be disposed of only after the

disposal of SLP (Diary number) 4973/2018. It is submitted that in a similar matter in MFA 59/2016, this Court by order dated 02.08.2018 had indicated the said matter to be listed on disposal of the said SLP.

The learned counsel for the respondent has brought to the notice of the Court that on a letter received from the appellant before the Registry of this Court, Hon'ble The Chief Justice (Acting) had given instruction for listing the matter. She has also submitted that the Court on an earlier occasion on 08.11.2018 had recorded that the matter was listed for out of turn hearing and accordingly, the matter was previously heard on 15.11.2018 which remains inconclusive and since then the matter has been adjourned at the instance of the appellant on many occasions.

As no prohibitory orders from the Supreme Court of India has been produced restraining the Court to proceed with the present subject matter of appeal, the prayer for adjournment on the said ground is refused as there are specific orders of hearing the matter out of turn and there is also order in the administrative side by the Hon'ble The Chief Justice (Acting) bearing endorsement dated 11.09.2019 for listing the matter.

Accordingly, it is made clear that today for ends of justice the matter is still being adjourned, making it clear that if the appellant is not inclined to do the hearing on the next date of listing, the matter would be heard and decided on the basis of materials on record.

List on 27.02.2020.

Order Date : 16.05.2023

Ms. M. Chatterjee, learned counsel for the appellant in both the cases and Ms. M. Sharma, learned counsel for the respondent are present.

This Court on 20.03.2023 adjourned the matter on the submission of the learned counsel for the appellant, as the issues involved in this matter is pending before the Hon'ble Supreme Court. Accordingly, it was adjourned for four (4) weeks and allowed the parties to apprise the status of the matter before this Court.

Today Ms. M. Chatterjee, learned counsel for the appellant submits that the matter is still pending for Admission before the Hon'ble Supreme Court. She has placed the downloaded case status of the Hon'ble Supreme Court before this Court, which will be kept on record. By placing the status of the matter pending before the Hon'ble Supreme Court she prays that the matter may be adjourned for another six (6) weeks.

On the other hand, Ms. M. Sharma, learned counsel for the respondent vehemently opposed the prayer for adjournment on the ground that in the

similar matter that is pending before the Hon'ble Apex Court, there is no prohibitory order or stay order by the Hon'ble Supreme Court.

On consideration of the submissions of the learned counsels for the parties this Court is of the view that judicial propriety demands that the matter may be adjourned for another six (6) weeks. However, on the next date if the status remains the same this Court may proceed to hear the matter on its own mind. Accordingly, list the matter after six (6) weeks."

9. Under the aforesaid facts and circumstances, this Court does not have any other option but to concur with the judgment of the Hon'ble Full Bench dated 10.08.2017 passed in WA No. 333/2010 whereby such imposition of penalty without affording an opportunity has been held in violation of the principles of natural justice and accordingly, the present appeal is dismissed by upholding the judgment and award dated 14.10.2015 passed by the learned Railways Claims Tribunal.

10. Appeal accordingly stands disposed of.

JUDGE

Comparing Assistant