

GAHC010161832011



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

Case No. : MFA/124/2011

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI, DIST. KAMRUP, ASSAM.

VERSUS

M/S ARUHANT INTERNATIONAL LTD.
326 SHRIMANTA MARKET, A.T. ROAD, GUWAHATI-1, ASSAM.

Advocate for the Petitioner : MRS.U CHAKRABORTY, SC, NF RLY,MS.M CHATTERJEE,MS.I
DAS

Advocate for the Respondent : MR.A CHOUDHURY, MR.A GOYAL,MR.B MAHESHWARI,MR.K
P MAHESHWARI,MS.M SHARMA

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 02.05.2024

Date of Judgment : 21.08.2024

JUDGMENT & ORDER (CAV)

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

2. This application, filed under Section 23 of the Railway Claims Tribunal Act, 1987, is against the Judgment dated 13.09.2011 passed by the learned Railway Claims Tribunal at Guwahati Bench, Guwahati, in Claim Application No. OA.1216/2007. The Id. Tribunal had allowed the claim of the present respondent/applicant for compensation of Rs. 4,23,109/- (Rupees Four Lakhs Twenty-Three Thousand One Hundred and Nine) only, along with interest at 6% per annum from the date of filing the claim petition. The claim was for the refund of freight overcharges paid on an incorrect distance and punitive charges for overloading a wagon in violation of Sections 72, 73, and 78 of the Railway Act, 1989.

3. Being highly aggrieved and dissatisfied with the Judgment dated 13.09.2011 passed by the learned Railway Claims Tribunal (hereinafter referred to as 'Id. RCT') at the Guwahati Bench, Guwahati, in Claim Application No. OA.1216/2007, the appellant has filed the instant appeal, praying for setting aside of the aforementioned order.

4. It is stated that the impugned Judgment dated 13.09.2011, passed by the Id. RCT, is not in accordance with the law and facts, as it is not based on a proper appreciation of the evidence and records, or on the substantial questions of law involved in the case. The Id. RCT misconstrued and misinterpreted the law concerning the documents and evidence presented by the appellant/respondent, as well as the provisions of Sections 72, 73, and 78 of the Railway Act and other related provisions. The Id. RCT failed to consider the documents filed by the Railways in their written reply, which were exhibited as evidence in the claim application before passing the Judgment dated 13.09.2011. The documents were overlooked by the Id. RCT due to an oversight, and it appears from the record that the Id. RCT did not properly appreciate the documents relied upon by the appellant.

5. Mrs. Chakraborty, learned Special Senior Counsel, has submitted that the respondent, as the applicant, challenged in the claim petition the collection of freight based on a distance of 2478 KM from Vishnupuram to New Guwahati, instead of the correct distance of 2360 KM. The correct freight rate was Rs. 1693.40 per MT, but the competent authority had charged 1743.40 per MT at Vishnupuram (the forwarding/booking station under South Central Railway) and collected excess freight of Rs. 1,32,353/- on 18.11.2006 without proper jurisdiction. Additionally, the respondent/applicant contested the weighment conducted at the RKI/Adra weighbridge en-route on 20.11.2006 and the collection of penal/punitive charges under Sections 73 and 78 of the Railway Act, 1989, at the destination station, NGC. The amount collected was Rs. 2,90,756/- from the respondent/applicant/consignee at the time of delivery of the consignment due to overloading. They stated that no notice of the weighment was issued to them, making the weighment invalid, and that the

collection of penal/punitive charges at the destination station, NGC, was refundable by the Railway administration, as it violated the provisions of Sections 72, 73, 78 and 79 of the Railway Act, 1989.

6. The Id. RCT failed to consider that the respondent/applicant did not request a re-weighment of the consignment from the Railway administration, as provided under Section 79 of the Railway Act, 1989, at the time of paying the penal/punitive charges and taking delivery of the consignment on 23.11.2006 at the destination station, NGC. As a result, given the factual situation, the respondent/applicant/consignee accepted the levy of punitive charges and other charges without protest at the time of delivery and payment at the destination station.

7. The Id. RCT also failed to consider that the respondent/applicant had filed the claim application seeking a refund of Rs. 1,32,353/- paid in excess at Vishnupuram under South Central Railway (S.C. Railway) due to the incorrect distance from Vishnupuram to NGC. The cause of action in this case arose under S.C. Railway, Secunderabad, and not under N.F. Railway. Therefore, the claim application was not maintainable before the Id. RCT due to a lack of proper territorial jurisdiction.

8. The Id. RCT also failed to appreciate the provision in para 317.8(3) of the Conference Rules, Part-II, which states that the freight-collecting Railway is the only competent authority to handle refund cases. Moreover, the General Manager of S. C. Railway should be a necessary party, as the entire cause of action arose within the jurisdiction of the freight-collecting Railway, i.e., S.C. Railway, Secunderabad. However, the respondent/applicant filed the claim application while suppressing material facts, thereby violating the provisions of

Section 13(1)(b) of the Railway Claim Tribunal Act, 1987, and Rule 10 of the Railway Claims Tribunal (Procedure) Rules, 1989.

9. Mrs. Chakraborty, learned Special Senior Counsel, has submitted that the respondent/applicant, as the consignee, has no cause of action to claim a refund of freight overcharges under Section 106(3) of the Railway Act, 1989. Since the consignment was booked by the consignor, only the consignor is entitled to claim a refund of the freight overcharges from the collecting Railway, i.e., S. C. Railway and not from any other Railways. Thus, the respondent/applicant, being the consignee, has no right to claim a refund of the freight overcharges from either S.C. Railway or N.F. Railway before the Id. RCT Bench, unless a proper notice has been served to the Railway administration as provided under Sections 106(3) and 108 of the Railway Act, 1989.

10. She further submitted that the Id. RCT failed to consider that the Railway administration may, upon request by the consignee or endorsee, allow the weighment of the consignment subject to prescribed conditions and payment of any applicable charges and demurrage fees. However, the consignee did not request a re-weighment of the consignment, which was loaded in the wagon, as provided under Section 79 of the Railway Act. Accordingly, the consignee paid the punitive and other charges without any protest.

11. She also submitted that the Id. RCT was not justified in entertaining the claim application for two separate claims belonging to S.C. Railway and N.F. Railway, especially when these claims were contested by the appellant/respondent No. 1 through documentary evidence and provisions of the Railway Act, 1989. Consequently, there was no prima facie case for the respondent/applicant, as the consignee, to claim a refund of the freight

overcharges and punitive charges from the present appellant.

12. It is further submitted that the weighbridge was tested by the Legal Metrology Department under the Weights and Measures (Enforcement) Act, 1985, and a verification certificate/fitness certificate was issued for the period from 05.05.2006 to 05.05.2007 by the Inspector of the Legal Metrology Department, West Bengal. However, the weighbridge at Adra is an electronic in-motion weighbridge. In this context, the respondent/applicant neither requested a re-weighment of the wagon as per Section 79 of the Railway Act, 1989, nor paid the punitive and other charges under protest. Therefore, the allegations made by the respondent/applicant in the claim application are not applicable, and the claim for a refund of the said charges is not admissible, as the freight and other charges collected as per the subject invoice/RR were found to be justified.

13. The compensation awarded by the Id. RCT in the impugned Judgment dated 13.09.2011 was granted without considering the provisions of the Railway Act, 1989 and without appreciating the documentary evidence furnished by the Railway administration. The relief of compensation awarded was not based on any legal foundation, in violation of Section 108 of the Railway Act, 1989. Additionally, the interest on the amount of compensation, calculated at 6% per annum from the date of filing the claim application, is entirely unjustified. Therefore, the impugned Judgment dated 13.09.2011 in Claim Application No. OA.1216/2007 is highly arbitrary, capricious, improper, and are not tenable in the eye of the law.

14. She further submitted that the proper forum for addressing the refund of charges is S.C. Railway and not N.F. Railway, as N.F. Railway only collected the

penal charge based on the instructions from S.C. Railway, as provided under Section 108 of the Railway Act. The S.C. Railway falls under the jurisdiction of Secunderabad, but the refund application was made before the wrong forum. Additionally, if there was any dispute regarding the proper weighment, the appropriate course of action would have been to request a re-weighment of the consignment under Section 79 of the Railway Act. However, the respondent/applicant never made such a request for re-weighment and instead paid the punitive and other charges without protest.

15. The learned counsel for the appellant further relied on the decision of the Apex Court reported in ***AIR 1998 SC 1959 [Jagjit Cotton Textile Mills vs. Chief Commercial Superintendent, N.R. & Others]***.

16. She also relied on a decision passed by the learned Claims Tribunal, Guwahati Bench, in Claim Application No. OA-III/GHY/2008/0076 dated 17.07.2012. In this decision, the Id. RCT referred to earlier rulings of this Court, specifically in the cases of ***Nirmal Traders vs. Union of India & Others*** reported in ***AIR 2003 Gauhati 122*** and ***M/s Raghu Forwarding Agency & Anr. vs. Union of India & Others*** reported in ***AIR 2000 Gauhati 27***. In these cases, this Court expressed the view that if the applicant fails to avail themselves of the opportunity for re-weighment, it cannot be considered a violation of the principle of natural justice.

17. Mrs. Chakraborty, learned Senior Counsel, further relied on another decision of this Court reported in ***2003 (2) GLT 175 [Nirmal Traders vs. Union of India & Others]***, wherein, she emphasized particularly on paragraphs 26, 27, 28, 29, and 30 of the said judgment. In this case, the Court held that the Railway authorities have the power to re-weigh the consignment

without prior notice or in the absence of the consignee or endorsee. Paragraph 30 of the judgment reads as follows:

"30. To the extent, therefore, that Raghu forwarding Agency (Supra) upholds the power of the railways to reweigh consignment en-route without notice to, or in the absence of the consignor, consignee or endorsee, I respectfully agree. No clear authority could be cited by Mr. Sahewalla to show that in the absence of the consignee or endorsee or without any intimation or notice to the consignee or endorsee, no-reweighment can be done under Section 78."

18. She relied on the decision of this Court reported in **1997 (2) GLT 257 [M/s Murali Manahar Enterprises vs. Union of India & Ors.]**, particularly emphasizing paragraph 9 of the judgment, which reads as follows:

*"9. Under the law the responsibility is of the consignor to pay right fare to the carrier against the right weightment. If the weigh was not properly measured at the beginning and the same is subsequently discovered to be over weighed, no blame can be attached in finding the accurate measurement. The accuracy of the measurement on the basis of reweighment is not assailed. One can aptly recalled the maxim nullus COMMODOUM CAPERE POTES de INJURIA SUA PROPRIA (Co.Litt.148 b.). No man can take advantage of his own wrong. It is a basic principle of law. The whole object of this maxim is to uphold the equity and defeat the injustice. Under the Maxim no one is entitled to take advantage of its own wrong to gain favourable interpretation of the law. He who obstructs a thing from being done can not thereafter be allowed to avail himself of the non-performance has committed. A wrong doer is not to be allowed to make gain out of his own wrong. According to the learned single Judge the reweighment amounted to imposition of penalty. The word penalty is a classic term with different shades of meaning, in the instant case the punitive charge was recovered from over loading as per the contractual stipulation as well as statutory provisions of law. The whole object of the levy is to compel the performance of the act which the consignor contracted to perform the act. The levy is not of compensatory in character and can not be strictly termed as a penalty. A Division Bench of this Court in **Union of India Vs. Hasija Coal Traders**, reported in **Air (1995) Gauhati 113 (1995 iii) GLT 464**) held that the Railways authority is entitled to recover the punitive charge for over loading wagons."*

19. Accordingly, she prayed for the setting aside of the impugned Judgment dated 13.09.2011, passed by the learned Railway Claims Tribunal at Guwahati

Bench, Guwahati, in Claim Application No. OA.1216/2007, as it was issued in violation of the provisions of the law.

20. On the other hand, Ms. Sharma, learned counsel for the respondent, submitted that the Id. RCT had rightly passed the order after a proper assessment of the evidence on record and the documents relied upon by both parties. Accordingly, the order was issued with a correct view of the provisions of the Railway Act. She filed written arguments in this regard. She further submitted that this case involves the respondent/applicant's claim that the Railway authority/appellant had wrongfully charged excess freight due to an incorrect distance of 2478 KM and a wrong tariff rate of Rs. 1743.80 per MT from Vishnupuram to New Guwahati. The correct distance was 2358 KM, and the correct tariff rate was Rs. 1693.40 per MT. Additionally, she noted that the booking railway station was S.C. Railway, which was impleaded as respondent No. 2 before the Id. RCT, Guwahati. The S.C. Railway later admitted this in its letter bearing No. C510/Misc/BZA/2043-2062/07/05 dated 19.06.2007, which was marked as Exhibit A-25 and A-26, respectively.

21. She contends that the correct distance from Vishnupuram to New Guwahati is 2358 KM and that the present appellant has agreed to refund the excess freight of Rs. 1,32,353/- to the respondent/applicant, which was collected due to the incorrect distance. However, this refund is subject to the condition that the respondent/applicant must provide a letter from the consignor, i.e., M/s Penna Cement Industry, to the authority. Additionally, the respondent's counsel, in a letter dated 11.06.2007, clarified that the respondent/applicant is a consignee and possesses all the rights, title, and entitlement of the consignor under Section 74 of the Railway Act.

22. She further submitted that the present appellant, who was impleaded as respondent No. 1 before the Id. RCT, had also acknowledged the correct distance in its letter dated 21.07.2010. This letter, which was enclosed with the RTI reply dated 26.07.2010, confirmed that the distance from Vishnupuram to New Guwahati is 2358 KM. Thus, the Railway authority has already admitted the correct distance, and the respondent/applicant is therefore entitled to a refund of Rs. 1,32,353/- due to the incorrect distance.

23. She further submitted that the Railway had charged penal freight/punitive charges for overloading of goods, which was detected en-route at the Adra Railway weighbridge. On 20.11.2006, the goods were weighed, revealing an excess weight of 36.95 MT across 25 wagons, as detailed in the re-weighment sheet (Exhibit-R-2). A total of Rs. 2,90,756/- was demanded, which was paid via Money Receipt No. 096279 dated 23.11.2006 (Exhibit A-22). The respondent/applicant had served a notice under Section 106 of the Railway Act on 03.02.2007 (Exhibit-23), which was sent to both railway administrations, i.e., S.C. Railway and N.F. Railway, within the prescribed period of limitation.

24. Moreover, S.C. Railway, which is the booking railway, admitted the refund amount of Rs. 1,32,353/- in its letter dated 23/24.04.2007 (Exhibit-A 24) due to excess freight collected on account of the incorrect distance. The refund was granted subject to the condition that the respondent/applicant must provide a letter of authority from the consignor, M/s Penna Cement Industry. This letter should be attested by CGSR/SS/VNUP on bond paper, along with a valid power of attorney, as the claim for refund was initiated by the respondent/applicant.

25. The present appellant, N.F. Railway, who was impleaded as respondent No. 1, contested the claim by filing a written statement, raising the following points:

- i. The claim petition received was found to be without date and signature.
- ii. The Railway Claims Tribunal (RCT) has no jurisdiction to decide the case concerning penal charges.
- iii. The freight in question was paid at the booking station, Vishnupuram, under S.C. Railway, and hence, the learned RCT at Guwahati lacks territorial jurisdiction to adjudicate the case or refund the freight overcharges.
- iv. The applicant should be directed to appear in person before the tribunal to establish their identity, authority, and address.
- v. They do not admit the claim notice issued by K. P. Maheswari, the advocate on behalf of the applicant, due to the lack of a power of attorney.
- vi. Penal charges were paid by the applicant at the destination, but the freight was paid by the consignor at the booking station, Vishnupuram.
- vii. The payment of consideration and railway freight by the consignee to the consignor is an internal matter and is not relevant to this case.
- viii. The applicant, without any legal authority from the consignor, is not entitled to a refund of the freight overcharges.
- ix. Overloading of the wagon was detected at the time of weighment en-route at the Adra weighbridge, and accordingly, the destination station, NGC, imposed the penal charge based on the penal chart.
- x. The Railway administration had the right to weigh the consignment at any time before delivery.
- xi. The consignment was not weighed at the time of booking.
- xii. Railway receipts were issued based on the weight declared by the sender.

xiii. The weighbridge was found to be in working order at the time of the weighment; therefore, it is not possible to determine that there was no excess loading by merely counting the bags at the time of delivery.

xiv. The applicant did not raise any objection regarding the penal charges before the delivery of the consignment at the destination and accordingly prayed for the dismissal of the application.

26. She further submitted that both the N.F. Railway and the S.C. Railway admitted that the distance from Vishnupuram to New Guwahati is 2358 KM. Despite this, they charged freight based on an incorrect distance of 2478 KM with an incorrect tariff of Rs. 1743.80 per MT. Given this fact and the exhibited documents, i.e., A-26 and A-31, the Id. RCT correctly ordered the refund of the excess freight of Rs. 1,32,353/- collected due to the incorrect distance. She also noted that the Id. RCT granted a refund of the penal freight of Rs. 2,90,756/- for overloading of goods.

27. In addition to his submission, she relied on the Judgment reported in ***1995 (III) GLT 548 [The Union of India vs. M/S Salt Marketing Centre]***, wherein, it has been held that " the penalty can be levied only after issuing show cause notice to the person from whom the penalty is sought to be recovered and after affording him reasonable opportunity of placing his case before the competent authority, who is going to levy the penalty compliance with the principal of natural justice and not on the basis of any evidence which may have collected by the railway *ex-parte* at the back of the consignor/consignee/endorsee".

28. She further submitted that the appellant cannot collect undercharges from the respondent/applicant, as they did not load any excess goods; nor any excess

goods were delivered to them. Therefore, the Railway authority is liable to refund the overcharges collected from the respondent/applicant. In this regard, she relied on the judgment of this Court in **W.A. No. 333/2010 [Megha Technical & Engineers (Pvt.) Ltd. vs. The Union of India & Ors.]** decided on 10.08.2017, which was subsequently followed by MFA No. 59/2015, MFA No. 4/2016, and MFA No. 35/2016. Paragraphs 11, 14, and 15 of the said judgment express the view that "*the power to penalize should be invoked in appropriate cases and cannot be a matter of course, without providing any opportunity to the affected party.*" The relevant paragraphs read as follows:

11. The process to penalize a party for overloaded wagons must be construed as a quasi-criminal proceeding. The detection of excess weight could either be for deliberate defiance of the maximum carrying capacity or faulty re-weighment or even a bona fide mistake of the parties. Therefore in all situations when re- weighment shows excess loading, punitive levy may not be the only consequence. The power to penalize should be invoked in appropriate cases and cannot be a matter of course, without providing any opportunity to the affected party. Such imposition in our view, will be arbitrary and fail the test of justice.

14. When excess load is detected through re-weighment of the loaded commodities, the authority is empowered to penalize the errant consignor. But in order to fasten penal responsibility, the breach committed by the party must be verified with a modicum of opportunity to the party proposed to be penalized. Unless providing for due opportunity is read into the penalization power, the decision to impose penalty could be arbitrary. In circumstances when the cause for the excess weight is not traceable to the consignor, to penalize them simply because of excess weight, would not be justified since the power to penalize, has to be exercised on some rational basis. Therefore as held in State of Bihar and others vs. Industrial Corporation (P) Ltd. and Others reported in (2003) 11 SCC465, the principles of natural justice must be followed, before a party is penalized.

15. When re-weighment of the loaded commodities on a goods train is done during transportation without the representative from the consignor, the weight in the re-weighment, is taken as the basis for levying the penalty. But penalizing a consignor has not only civil consequences but also tarnishes reputation. In such situation, to require an opportunity to be provided, prior to penalization under [Section 73](#), should in

our opinion, be read into, for exercise of penalising power. Merely because provision is available for a representation of the consignor to travel in the goods train, the requirement of an opportunity to be afforded cannot get diluted since, one sided inference is drawn on excess load. There could be bonafide explanation for the higher load recorded in the re-weighment process. Therefore to rule out any such eventuality, an opportunity of rebuttal must in our understanding, be provided to the consignor.

29. She further submitted that the Id. RCT had rightly passed the Judgment dated 13.09.2011 after thoroughly considering all the facts and circumstances of the case, including the objections raised by the appellant/Railway authority. Therefore, any interference by this Court is unnecessary, and accordingly she submits that the appeal should be dismissed.

30. After hearing the submissions from the learned counsels for both sides, I have perused the case record and the judgment passed by the Trial Court. The appellant contends that the Id. RCT issued the order based on an incorrect interpretation of the Railway Act and failed to consider all relevant aspects of the case. The appellant submits that the claim for a refund due to the incorrect distance from Vishnupuram to New Guwahati, where the respondent/applicant sought a refund of Rs. 1,32,353/-, was filed before an improper forum. The cause of action, according to the appellant, arose under S.C. Railway, Secunderabad, and not under N.F. Railway. Consequently, the claim application for the refund of excess payment due to the incorrect distance should not have been adjudicated by the Id. RCT, Guwahati.

31. Furthermore, the appellant submits that the respondent/applicant did not request a re-weighment of the consignment under Section 79 of the Railway Act either at the time of paying the penal charges or at the time of delivery of the consignment at the destination station. Consequently, the respondent/applicant/consignee accepted the levy of such punitive and

undercharges at the time of delivery and payment without protest.

32. Further, the appellant contends that the freight-collecting Railway is the only competent authority to handle refund claims. The General Manager of the S.C. Railway is a necessary party as the entire cause of action arose within the jurisdiction of the freight-collecting Railway, i.e., S.C. Railway, Secunderabad. Moreover, since the consignment was booked by the consignor, only the consignor is entitled to claim a refund of the freight overcharges from the collecting Railway authority, i.e., the S.C. Railway, and not from any other Railway. Therefore, the respondent/applicant, being the consignee, has no right to claim a refund of the freight overcharges from either the S.C. Railway or the N.F. Railway.

33. Furthermore, the appellant contends that before claiming a refund for the punitive charges, undercharges, and overcharges due to the wrong distance, the respondent should have served notice upon the Railway administration as required under Sections 106(3) and 108 of the Railway Act. The appellant also submits that the weighment was conducted at Adra station using an electronic weighbridge, which was tested by the Legal Metrology Department under the Standards of Weights and Measures (Enforcement) Act. Verification and fitness certificates were issued by the inspector of the said department. In this regard, the applicant did not request a re-weighment.

34. Moreover, the N.F. Railway collected only the penal charges as instructed by the S.C. Railway, in accordance with Section 108 of the Railway Act. Since the S.C. Railway falls under the jurisdiction of Secunderabad, the refund application should have been directed to the appropriate forum. However, the refund claim was mistakenly filed before the N.F. Railway authority. The records,

as well as the judgment passed by the learned RCT, indicate that the respondent/applicant presented the necessary documents and RTI replies. These documents revealed that both the S.C. Railway and the N.F. Railway admitted that the charges were claimed for an incorrect distance. Although the actual distance from Vishnupuram to New Guwahati is 2358 KM, excess freight was charged based on a distance of 2478 KM and an incorrect tariff of ₹ 1743.80 per MT. Both Railway authorities acknowledged the overcharge and agreed to refund ₹ 1,32,353/- for the incorrect distance. These documents were exhibited as A-25 and A-26 by the respondent. However, the refund was contingent upon the respondent/applicant providing a letter from the consignor, M/s Penna Cement Industry. The counsel for the respondent clarified that the respondent/applicant, as the consignee, possesses all rights, title, and entitlement to the consignment under Section 74 of the Railway Act.

35. Further, it is evident that at the time of payment for the excess weight, as per the re-weighment sheet (Exhibit-R2), the respondent/applicant paid Rs. 2,90,756/-. The corresponding money receipts were exhibited as A-21, and the protest letter dated 23.11.2006 was exhibited as A-22. This demonstrates that the payment was made with a protest, contrary to the appellant's claim that it was made without protest. Exhibit-A-22 indicates that the respondent/applicant made the payment under protest. However, according to the appellant, there was no request for re-weighment made by the respondent/applicant either at the destination station or at the time of delivery of the goods.

36. Mrs. Chakraborty, learned Senior Counsel, has submitted that the Railway authorities possess the power to re-weigh the consignment without issuing any notice or in the absence of the consignee or endorsee. She cited the decision of this Court reported in ***AIR 2003 GLT 122***, which held that "if an applicant fails

to avail themselves of the opportunity for re-weighment, it does not necessarily violate the principle of natural justice”.

37. In the instant case, it is evident that the penal charges were paid by the respondent/applicant under protest, and it is an admitted fact that the respondent did not receive any notice or information regarding the re-weighment of the consignment. Further, the subsequent judgment passed in the case ***Megha Technical & Engineers (Pvt.) Ltd. (Supra)***, emphasized that *“the power to penalize should be invoked in appropriate cases and cannot be a matter of course, without providing any opportunity to the affected party”*. This underscores that a reasonable opportunity must be given to a party before levying a penalty, in compliance with the principles of natural justice.

38. Furthermore, it is noted that the S. C. Railway was included as respondent No. 2 in the claim petition filed by the respondent/applicant before the Id. RCT. Therefore, it is not the case that the S. C. Railway was unaware of the facts; being necessary, they were already included as respondent No. 2 in the application. They subsequently appeared and admitted the freight charges were calculated incorrectly due to the wrong distance. It is also an admitted fact that no notice was served at the time of re-weighment of the consignment or at the time of delivery.

39. From the discussion above, it is evident that both the S. C. Railway and the N. F. Railway have admitted to overcharging for incorrect distances and have agreed to refund Rs. 1,32,353/-, which was collected erroneously under the wrong distance and tariff. Additionally, as per exhibit A-22, payment for freight/punitive charges due to overloading was made under protest, with the money receipt and protest letter exhibited as A-21 and A-22 respectively.

40. Contrary to the applicant's claim, the payment was not made without protest; rather, it was made under protest, and the respondent/applicant has duly exhibited the money receipt accordingly. Furthermore, it is acknowledged that no show cause notice was issued to the respondent at the time of re-weighment or delivery of the consignment. Allegations of overloading were made without affording the respondent/applicant an opportunity to be heard before re-weighment, which violates the principles of natural justice.

41. It is also observed that the S. C. Railway was included as respondent No. 2 in the claim petition, and they appeared and agreed to refund the money charged incorrectly for the wrong distance. Therefore, it is incorrect to say that the S. C. Railway was not made a party in this case. It is a fact that the destination station was Secunderabad under the S. C. Railway, but, the punitive charge was imposed by the N. F. Railway, claiming that it was done at the instance or direction of the S. C. Railway. Both railway authorities were already included as parties in the claim application and appeared in this case. Hence, there was an opportunity for both railway authorities to contest the case.

42. So considering the entire discussions, it appears that the Id. RCT has thoroughly examined all the issues based on the evidence and documents presented by both the parties. In light of this discussion and considering the views expressed by the Apex Court and the Co-ordinate Bench of this Court, I find no reason to interfere with the impugned Judgment dated 13.09.2011 passed by the learned Railway Claims Tribunal at Guwahati Bench, Guwahati, in Claim Application No. OA.1216/2007 and accordingly, the same stands dismissed.

43. With above observation, this appeal stands disposed of.

44. In the meantime, the appellant is hereby directed to make the payment to the respondent/applicant as per the Judgment dated 13.09.2011 passed by the learned Railway Claims Tribunal at Guwahati Bench, Guwahati, in Claim Application No. OA.1216/2007, within 6(six) months from today.

JUDGE

Comparing Assistant