

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3088 of 1996 (O&M)
Date of decision : July 19, 2016

Punjab State Civil Supplies Corporation Limited Appellant

Versus

Union of India Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Deepali Puri, Advocate for the appellant.

Mr. Sanyam Malhotra, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J.

Appellant-Punjab State Civil Supplies Corporation Limited booked a consignment of gunny bales from ex-Muktapur to Makhu, vide RR No.B-254934, dated 16.04.1993. During the transit, the consignment of gunny bales was transshipped from wagon No.WRBC61631 in two wagons, viz. SRC30969 and ERC18522, having 42 bales each. Out of these, only wagon No. SRC30969 reached Makhu Railway Station, containing only 41 bales. The other wagon No.ERC18522 had not arrived even at the time of making the claim. A formal claim of ₹2,09,496/- lodged by the appellant with the Chief Claims Officer (Claims), Northern Railway, followed up with reminders of 02.07.1994 and 08.02.1995. A deemed notice dated 09.05.1993 was served upon the Railway Administration under Section 78-B of the Indian Railways Act, 1890. Since, the compensation was not paid,

therefore, an application was filed before the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal').

The respondent-Railway took the plea that the statutory notice under Section 106 of the Railways Act, 1989 (in short 'the Railways Act') was not served within the stipulated period of six months. The application was not signed by the competent authority. On merits, the booking particulars were admitted. It was stated that the consignor got booked 210 bales of gunny bags as per forwarding note and the number of the bales were not counted by the railway staff at the forwarding station. The railway staff took all reasonable care and foresight while handing the consignment and transshipping the same. The following issues were framed:

- 1. Whether the claim application has been filed through a competent & authorized person on behalf of the applicant? OPA*
- 2. Whether the applicant served the statutory notice u/s 106 of the Railways Act within the statutory period? OPA*
- 3. Whether the applicant is entitled to recover the amount on the grounds mentioned in the claim application? OPA*
- 4. Relief.”*

Issues Nos.1 and 3 were determined in favour of the applicant-appellant. However, while deciding issue No.2, it was held that the notice under Section 106 of the Railways Act was not served within the period of six months from the date of booking. Hence, the application for compensation was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The findings on merits are in favour of the applicant-appellant. Before this Court, the short point arising for consideration is as to whether a notice under Section 106 of the Railways Act was served within the stipulated period?

Section 106 of the Railways Act provides as under:

106. Notice of claim for compensation and refund of overcharge. - (1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration of; non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf,—

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.”

A perusal of Section 106 of the Railways Act shows that under sub Section (1), the notice has to be served within a period of six months **from the date of entrustment of goods**. Sub Section (2) explains as to what communications are treated as deemed notice?

However, Section insists on written communication and lays down that any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-Section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this Section, be deemed to be a notice of claim for compensation.

Learned counsel for the appellant has relied upon the authority of Hon'ble the Supreme Court delivered in case of ***“Jetmull Bhojraj vs Darjeeling Himalayan Railway Co. Ltd. and others”***, AIR 1962 Supreme Court 1879, wherein it was held that in case of notice, liberal construction is favoured.

Further reliance has been placed of the Allahabad High Court in case of ***“Union Northern Railway and another vs Firm Anis Khan and others”***, 1981 AIR (Allahabad) 18, wherein the claim addressed for compensation to the Divisional Traffic Superintendent was treated to sufficient compliance of Section 78-B of the Indian Railways Act, 1890.

On the other hand, learned counsel for the respondent has argued that Section 106 of the Railways Act itself makes it clear that notice has to be in writing within six months from the date of entrustment of goods and not from the date of short delivery of the goods.

Learned counsel for the respondent relies upon the following authorities:

1. *“Governor-General-in-Council vs Mussadi Lal”*, AIR 1961 SC 725.
2. *“Union of India vs Mahadeolal”*, AIR 1965 SC 1755.
3. *“Union of India vs M/s. K.T. Rizvi and Brothers”*, 1985 AIR (Bombay) 84.
4. *“Suraj Mal Tewari vs Union of India”*, AIR 1991, Guwahati 35.
5. *“Union of India vs Firm Ramdas Amritlal Pali”*, AIR 1965 Rajasthan 127.
6. *“M/s Jaiprakash Associates Ltd. vs Union of India & Ors.”*, 2014(2) ACC 2.”

After going through the provisions, I am of the view that the language of Section itself is clear that notice is to be served within six months 'from the date of entrustment of goods'. In the present case, the entrustment of goods was made on 16.04.1993. Therefore, notice in writing should have been served on or before 15.10.1993.

In the present case, it comes out that when the goods arrived on 09.05.1993, the appellant claimed that a written enquiry was made from the Station Supervisor on 09.05.1993. However, this plea was not believed by Tribunal as respondent denied that no written complaint was ever received. Even Pakhar Singh, appearing for the applicant-appellant, in his cross-examination had admitted that he did not remember the name of the Station Supervisor to whom the abovesaid written enquiry/complaint was made by him. He had also admitted that he did not keep any record regarding the said written enquiry/complaint, having been handed over by him to the Station Supervisor. He further admitted that he did not send any information or

intimation regarding making the said inquiry/complaint to the Station Supervisor, to his head office. Therefore, the mere assertion of Pakhar Singh on behalf of the applicant-appellant that a written inquiry was made, was rightly disbelieved by the Tribunal. The written notice was served much later on 03/04.11.1993, which is beyond the period of six months of the entrustment of the goods.

Hence, the findings of the Tribunal on issue No.2 are affirmed. Consequently, the present appeal fails and is, accordingly, dismissed.

(KULDIP SINGH)
JUDGE

July 19, 2016
sarita