

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20267 of 2012

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M/S Sri Salasar Trading Company, a proprietorship firm having its place of business at and Post Office Teghra, Police Station- Teghra, Town and District Begusarai through its Proprietors, Shri Arun Kumar Kalothia S/o Shri Murlidhar Kalothia, resident of Post Office & Police Station- Teghra, District- Begusarai.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway, Government of India, New Delhi.
2. The General Manager, East Central Railway, Hajipur.
3. The Chief Commercial Manager, East Central Railway, Hajipur.
4. The Divisional Railway Manager, Commercial, East Central Railway, Sonapur.
5. The Senior Divisional Commercial Manager, East Central Railway Danapur.
6. The Goods, Superintendent, East Central Railway, Barauni Junction.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.

For the Respondent/s : Mr. D.K. Sinha, Sr. Adv.

Mr. Satyeshwar Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-01-2017

In the present case, the petitioner is challenging the order dated 2nd April 2012 passed by the General Manager, East Central Railway, Hajipur (Respondent No. 2), which has been served upon the petitioner, vide letter dated 12th April 2012 bearing Ref. No. ECR/CRM/FM/DC/BJU/2010, whereby the claim of the petitioner for waiver-cum-refund of demurrage charges illegally recovered from the petitioner, has been rejected on non-est ground and without appreciating the facts and circumstances of the case.

The petitioner is a Proprietorship firm, running his business within the territorial jurisdiction of this Court.



The petitioner had approached the respondents for booking of a consignment of maize from Barauni Junction Railway Siding to Kakinada (Andhra Pradesh) in the first week of July, 2009. In pursuance thereto, wagon was placed at Barauni Goods Shed at 13.30 hours on 07.07.2009 and loading was completed by the petitioner at 11.30 hours on 12.07.2009 and in such manner, the Railway wagon was kept in detention for 101 hours and demurrage charge was imposed on Rs. 17,22,000/- (Seventeen lacs and twenty two thousand). Out of 41 wagons, only 32 wagons could finally be loaded and 09 wagons were dispatched empty. As the petitioner has kept the wagon in detention for about 101 hours, apart from the free time, the Railway has demanded the demurrage charges as aforesaid. On receipt of the same, the petitioner felt aggrieved, after depositing the said amount, has filed an application dated 20.07.2009 and the said letter was forwarded along with the recommendation giving the reasons for detention of the Railway wagon. In the application, the cause for detention has been mentioned such as, torrential rainfall in the area covering the Railway Siding as well as the wharf over Barauni Junction, heavy rain fall followed by extremely hot and humid weather, permitting no labour inputs possible for the purposes of loading, inadequate and almost no facility of light at the Railway Siding rendering it impossible for the petitioner to effect the loading



of work from 6 PM to 10 PM in the evening, the Railways crossing remaining most often closed caused the hindrance in movement of the truck, road construction going on over and around the Railway crossing, the pot holes over platform no. 2 causing undue hardships to the heavy goods truck to reach the wagons.

The Divisional Railway Manager (Commercial), Sonepur, without considering the grounds and situation which the petitioner has faced, rejected the claim of the petitioner and affirmed the order of depositing the aforesaid amount of demurrage charges.

The petitioner again filed an application dated 27.06.2010, making a prayer for waiver of demurrage charges illegally realized by the respondents before the General Manager (Commercial), East Central Railway, Hajipur mentioning the grounds which were factors for delay in loading of the Railway wagon. The matter remained pending before him which compelled the petitioner to approach this Court in C.W.J.C. No. 17400 of 2011 and this Court, vide order dated 03.01.2012, has disposed of the same with a direction to pass a reasoned order in accordance with law within a period of two months from the date of receipt/production of a copy of this order. The petitioner along with the order of this Court, approached the General Manager, East Central Railway, Hajipur for the needful. In pursuance of the order, the General Manager, East Central Railway,



Hajipur passed the impugned order, thereby rejected the claim of the petitioner for granting the relief of remission of demurrage charges. The basic ground for the rejection has been mentioned that the cause of delay in loading as cited in the application was well known to the party while placing the indent, therefore, the party should have planned accordingly. Nowhere the General Manger, East Central Railway, Hajipur has considered his grounds for the purposes of remission of demurrage charges though the General Manager has mentioned the plea that has been taken by the petitioner but nowhere the ground of the petitioner has been considered rather only it has been mentioned that it was well known to the party while placing the indent.

In the identical matter, in C.W.J.C. No. 20910 of 2012, the Railway authorities themselves granted 15% remission of demurrage charge, in that case also, the grounds taken were/are the identical, Respondents exercised their jurisdiction, granted 15% remission, but in the present case, the respondent authority, without considering the ground properly what has been taken in his appeal, rejected the same. In the case of C.W.J.C. No. 20910 of 2012, it is the petitioner, who has booked the wagon, there also there was a detention of the Railway wagon, beyond the free time, considering same identical ground, Railway granted the benefit of 15% remission.



This Court is of the view that if the present matter is identical, in that circumstance, the Railways should also consider the case of the petitioner in the similar terms as has been considered in identical manner.

In such view of the matter, the order dated 02.04.2012 passed by the General Manger, East Central Railway, Hajipur is set aside and the matter is remanded back for fresh consideration in the light of observation mentioned in above.

Accordingly, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18/01/2017
Transmission Date	

