HIGH COURT OF TRIPURA
AGARTALA

WP(C) 900 of 2019

Sri Aniruddha Datta,
son of late Paritosh Datta,
proprietor of M/s SDC Freight Movers,
resident of village: Krishnanagar,
Dutta Kutir By Lane, PO: Agartala,
PS: West Agartala, District: West Tripura,
PIN: 799001

----Petitioner(s)

Versus

1. The Union of India,
   represented by the Secretary, Ministry of Railways,
   Rail Bhavan, Raisina Road, New Delhi -110001
2. The Secretary,
   Ministry of Railways,
   having his office at Rail Bhavan,
   Raisina Road, New Delhi 110001
3. The General Manager,
   Ministry of Railways,
   having his office at Rail Bhavan,
   Raisina Road, New Delhi –110001
4. Senior Divisional Commercial Manager,
   North Frontier Railway, Lumding, Assam
5. Divisional Railway Manager, (Commercial),
   North Frontier Railway, Lumding, Assam
6. Chief commercial Manager,
   North Frontier Railway,
   Maligaon, Assam
7. General Manager,
   North Frontier Railway,
   Maligaon, Assam
8. Assistant Commercial Manager,
   North Frontier Railway,
   Maligaon, Assam
9. The State of Tripura,
   represented by the Secretary & Commissioner to the Rural Development Department,
   Government of Tripura,

New Secretariat Complex,
Gurkhabasti, Agartala, PO: Kunjaban,
PS: New Capital Complex, Sub-Division- Sadar,
District-West Tripura

10. The Chief Engineer,
Rural Development Department,
Government of Tripura,
New Secretariat Complex, Gurkhabasti,
Agartala, PO: Kunjaban, PS: New Capital Complex,
Sub-Division- Sadar, District-West Tripura

11. The Executive Engineer,
Rural Development Store Division,
Rural Development Department,
Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala, PO: Kunjaban,
PS: New Capital Complex,
Sub-Division- Sadar, District-West Tripura

---- Respondent(s)

For Petitioner(s)	: Mr. Somik Deb, Adv. Mr. Anujit Dey, Adv.
For Respondent(s)	: Mr. B. Majumder, CGC Mr. H. Sarkar, Adv. Ms. A. Banik, Adv.
Date of hearing, date of delivery of judgment and order	: 07.12.2020
Whether fit for reporting	: YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order (Oral)

Heard Mr. Somik Deb and Mr. Anujit Dey, learned counsel appearing for the petitioner, Mr. B. Majumder, learned CGC appearing for the respondents No. 1,2 and 3, Ms. A. Banik, learned counsel appearing for the respondents No.4 to 8 and Mr. H. Sarkar, learned counsel appearing for the respondents No. 9 to 11.

[2] Briefly stated the case of the petitioner is that by the letter dated 18.10.2016, the petitioner as the transporter was authorized to take release of consignment of National Steel & Agro Industries Limited

from Jirania Rail station. The consignment weighing about 2743 Metric Tones (MT) of iron steel slab was expected to reach the said railway station on 19.10.2016 at about 12.16 pm, but the said consignment admittedly reached Jirania Rail Station one day before it was expected to reach i.e. 18.10.2016 at 12.30pm. The whole consignment arrived Jirania Rail Station in 43 wagons, out of which 30 wagons were placed at L5 lane and the remainder 13 wagons were placed at L4 lane. As a result of unexpected early arrival and for placing the consignment in two different lanes, according to the petitioner, he failed to clear the wagons on the day of its arrival. These facts are not in dispute. The petitioner was supposed to hire four cranes for unloading the consignment from of 19.10.2016, but he had to arrange those cranes from 18.10.2016 on enhanced rental rate which has been stated to be more by 50% above the normal rate. On 24.10.2016 the petitioner could unload the whole consignment from the wagon. As the petitioner had 'delayed' unloading and shifting of the said consignment, North Frontier Railways Authority (NFRA) represented by the respondents No. 4, 5, 6, 7 and 8 [the NFRA has not been made party in the writ petition] imposed demurrage charges for an amount of Rs.4,71,818/. In addition thereto, NFRA imposed wharfage charges for an amount of Rs.1,03,925/- on account of delayed clearance of the consignment. It is the admitted position that according to Rates Master Circular/Demurrage /Warfage/Wafer/2014 the aggrieved person after imposition of demurrage and wharfage charges, can appeal to the

superior authority. To have remedy of his grievance, the petitioner made representations vide the letters dated 26.10.2016 and 30.10.2016 (Annexure-3 collectively) to the Senior Divisional Commercial Manager NFRA, Lumding, Assam highlighting his grievance viz. there was deficiency of apparatus and infrastructure to have the mechanical load released and unload the consignment which was comprised of iron steel slabs. Sufficient cranes were not available in the sector. Even the railway station was not having the suitable infrastructure for unloading or loading of the mechanical consignment. Even where the wagons were placed, there was huge gap and that obstructed the free movement of trucks and cranes.

[3] Having stated thus, the petitioner urged for 100% waiver of demurrage and wharfage charges as imposed on the petitioner. The petitioner has referred a letter of CS(G), Jirania Rail station issued on 27.10.2016 and 30.10.2016 (Annexure-4 collectively) addressed to the Senior Divisional Commercial Manager, NFRA, Lumding affirming the contentions of the petitioner as advanced by the letters dated 26.10.2016 and 30.10.2016. It has been asserted in the writ petition even the Executive Engineer, Rural Development Store Division, RD Department, Government of Tripura wrote a letter on 26.12.2016 (Annexure-5) to the Senior Divisional Commercial Manager, NFRA stating that those consignments were for various developmental works and as such, he had requested the said authority to consider 100% waiver and wharfage charges imposed on the petitioner. The Divisional

Manager (Commercial), NFRA the respondent No.5 herein, by his letter dated 13.01.2017 (Annexure-6 to the writ petition) communicated waiver of 20% of demurrage charges and directed the petitioner to deposit the unwaived demurrage charges. The petitioner, in terms of the said direction as contained in the letter dated 13.01.2017, paid the unwaived amount amounting to Rs.3,77,454/- on account of demurrage charges. But the prayer of the petitioner for waiver of the wharfage charges was not entertained by the competent authority and as a result the petitioner had paid the whole wharfage charge amounting to Rs. 1,03,925/-. The payment receipts (Annexure-7) have been annexed with the writ petition.

[4] Being aggrieved by the letter dated 13.01.2017 granting waiver of 20% of the imposed demurrage charges, the petitioner preferred an statutory appeal before the Chief Commercial Manager, NFRA, Maligaon, Assam for interfering with the said decision as communicated by the letter dated 13.01.2017 and for granting 100% waiver of the demurrage and wharfage charges.

[5] Having considered the said appeal (Annexure-8 to the writ petition) the Divisional Railway Manager, (Commercial) NFRA communicated the decision on the appeal by a letter dated 01.11.2017 (Annexure-9 to the writ petition) waiving 50% of the demurrage charges, however, without waiving the wharfage charges imposed on the petitioner.

[6] The petitioner being aggrieved again by the said decision as communicated by the letter dated 01.11.2017 preferred the second appeal on 17.04.2018 (see the memorandum of appeal dated 17.04.2018 at Annexure 10 to the writ petition) before the second appellate authority i.e. the General Manager, NFRA, Maligaon. By the letter dated 31.05.2018 (Annexure-11), the Assistant Commercial Manager, NFRA, Lumding communicated the petitioner that there had been delay in filing the appeal inasmuch as the appeal ought to have been filed within 30 days from the date of issuance of the order by the first appellate authority as per the prescription of Rates Master Circular/Demurrage /Wharfage/Waiver/2014/0 (Annexure-2 to the writ petition) but that was filed much thereafter.

[7] In response to the said communicated dated 31.05.2018, the petitioner addressed a letter dated 31.08.2018 *inter alia* explaining the delay in filing the second appeal (Annexure-10 to the writ petition). The said prayer contained in the letter dated 31.08.2018 (Annexure-12 to the writ petition) appears to have been considered by the second appellate authority and by the letter dated 08.05.2018 (Annexure 13 to the writ petition), the petitioner was apprised that there is no merit in his appeal and hence his appeal has been dismissed.

[8] By means of this writ petition, the petitioner has challenged the decision contained in the letters dated 31.01.2017 (Annexure-6), 01.11.2017 (Annexure-9) and 08.05.2019 (Annexure-13) rejecting the prayer for full waiver of demurrage and wharfage charges as imposed

on the petitioner. The petitioner has restated the grounds of objection which were taken before the NFRA authorities in different levels viz; the early arrival of the train, non availability of the apparatus and the infrastructure and also for placement of the wagons in L4 and L5 as stated before. It was considered difficult by the petitioner as "there was insufficient gap which obstructed the free movement of the trucks and the cranes." That apart, no reason has been provided for non-waiver of the whole demurrage and wharfage charges imposed on the petitioner and hence, the impugned decision of contained in the letters dated 13.01.2017, 01.11.2017 and 08.05.2018 are totally unsustainable. The petitioner has urged this court to set aside the decisions referred above and to issue the writ of mandamus directing NFRA respondents to waive the whole demurrage and wharfage charges imposed on the petitioner. The facts are not controverted by the NFRA respondents. The respondents No. 9, 10 and 11 do not have any role in waiving the demurrage and wharfage charges, but they have questioned the *locus standi* of the petitioner in filing the writ petition in their reply. Those respondents have denied their knowledge that there was inadequacy of apparatus like crane for unloading the consignment. That apart, they have asserted as follows:

> **"No supply/work order was issued to the petitoern by the RD Department nor any agreement had been executed between the petitioner and executive engineer RD Store Division.**

[9] It thus surfaces that impleadment of the respondents No. 9 to 11 is wholly unwarranted. They have further asserted that the supply order for the steel slabs was issued to M/s National Steel Agro

Industries Ltd., Indore (the Consigner) by the Executive Engineer, RD Department for supply of PPFI Sheet for the Airport godown of RD Department. Therefore, in unloading the steel slabs or sheets the respondents No. 9 to 11 had no obligation whatsoever. The petitioner's contention of getting involved in pursuing the NFRA authorities to allow the full demurrage and wharfage charges by the letter dated 26.12.2016 (Annexure 5 to the writ petition) is an outcome of misreading of the said letter or for purpose of misleading this court. It had been stated that the Executive Engineer, RD Store Division had requested the NFRA authority for 100% waive for demurrage and wharfage charges. The Executive Engineer RD Store Division had simply forwarded the representations of the petitioner dated 16.10.2016 and 30.10.2016 observing as follows:

> **"In this regard, representation dt-26/10/2016 and 30/10/2016 of S.D.C Freight Movers regarding 100% waival of W/C and demurrage charge enclosed herewith which will speak for itself."**

[10] It may be noted that the respondents No. 1-3, for obvious reasons did not file any reply as those respondents are mere formal parties having nothing to do with waiving of wharfage and demurrage charges as imposed on the petitioner. The respondent No. 2 to 8 have filed the summary of guidelines regarding waiver of demurrage and wharfage charges mentioned in Railway Board Rate Master Circular/Demurrage /Wharfage/Waiver/2016/0 (Annexure-A to the said summary), affirmed by an affidavit. Those respondents have categorically stated that demurrage charge is levied by the railways for

detention of rolling stock after the expiry of the free time for loading/unloading of wagon/rake (Para 1.0, Chapter I of the said Rate Master Circular). Wharfage charge is levied on the goods consignment, not removed from the railway premises after expiry of the free time (Para 1.0 Chapter II of Rate Master Circular). The allowed free time for unloading and loading of 45 BRL wagon is 8 hours (Para 2.2, Chapter I of Rate Master Circular). The demurrage charges are levied by the Railways at Rs. 150 per wagon per hour after expiry of free time for loading or unloading of the wagons. In the Jirania Rail Station, the free time of removal of wagons is 20 hours. Thereafter, Rs.50 per wagon per hour is levied as wharfage charge from the person who was responsible for removal of the consignment within the free time on the Railway premises. Those respondents have admitted that the aggrieved person can represent and file an appeal seeking waiver of demurrage charge through the Station Superintendent/Commercial Goods Supervisor within 10 days from the day of charges imposed. If they feel they are not responsible for detention railway rolling stock, but that remedy would be available to the aggrieved person after removing the consignment from the railway premises and depositing the amount of wharfage charges/demurrage charges. Even the delay in filing the representation seeking waver may be condoned by the competent authority after ascertaining the reason for delay. The circumstances which are material for such consideration of waiver have been laid down

in Para 2.8, Chapter III of the said Rate Master Circular. Those circumstances are as follows:

i. **Reasons within the control of the consignor/consignee.**

ii. **Reasons beyond the control of consignor/consignee like labour strike, transportation strike, general bandhs, agitation, riots, curfew, fire explosion, heavy rains or other abnormal circumstances.**

iii. **Act of God, Act of war & act of public enemies.**

(Copy enclosed of Para 2.8, Chapter III of the said Rate Master Circular)

- **In case of category (i), waiver should normally be not done. However, if at all waiver is to be granted on justified and meritorious facts, speaking order should be recorded in all such cases.**

  (Copy enclosed of Para 2.9, Chapter III of the said Rate Master Circular)

- **The powers for waiver should be exercised judicially keeping in view the merit of the case. Whenever, the waive exceeds 50% of the powers conferred of officers, reasons for such waiver should be recorded in writing.**

  (Copy enclosed of Para 2.10, & 2.11 Chapter III of the said Rate Master Circular)

- **A consignor/consignee can prefer an appeal to a higher authority in case he is not satisfied with the decision of the lower authority. The station manager/chief Goods superintendent should forward the appeal to the Divisional authority within 3 (three0 days of the receipt of the appeal.**

(Copy enclosed of Para 3.1, Chapter III of the said Rate Master Circular)

- **The maximum of only two appeals can be made against the decision of the lower authority.**

(Para 3.48, Chapter III of the said Rate Master Circular)

[11] The respondents No. 2 to 6, in addition to filing the summary, have also filed their reply but there are lot of blank spaces in the reply. This is really surprising how such blank spaces can be left while filing the reply in the court. The crux of the said reply is that nothing is admitted beyond the records. With their reply, they have

filed the guidelines regarding demurrage and the relevant parts of which have already been reproduced. Para 2.3 provides for time for loading and unloading of wagons and allowance applicable in the case of 7 old steel plants. The element of allowance is not material for the present controversy. From the table below the said para 2.3, it appears that in case of 36 and above wagons the loading free time is 24 hours and unloading free time is 14 hours. So far the waiver is concerned, it has been provided in the said guidelines as follows:

> **2.7 the delay beyond 10 days/next month period as mentioned above can be condoned only with the personal approval of the Divisional Railway Manager/Chief Commercial Manager (Coordinating HOD) depending upon whether the powers to deal with the case lies tat Divisional or Zonal level and after having ascertained that the reasons for the delay given in the application are satisfactory. Application for condonation of delay in preferring an appeal for waive of Demurrage, however, shall be entertained only after the Demurrage Charges have been paid in full and the application is supported with proof of such payment. An application for condonation of delay once regretted either by DRM or by CCM (coordinating HOD) will not be reconsidered at any level.**
>
> **(refer board's letter No.TC-I/2004/201/9 dt. 16.05.2008**
>
> **2.8 The circumstances, which lead to accrual of Demurrage/Wharfage charges can be broadly grouped in three categories as under:**
>
> **i. Reasons within the control of the consignor /consignee.**
>
> **ii. Reason beyond the4 control of consignor/consignee like labour strike, transportation strike, general bands, agitations, riots, curfew, fire, explosion, heavy rains or other abnormal /unforeseen circumstances.**
>
> **iii. Act of God, act of wear and act of public enemies.**
>
> **2.9 In case of Category (i), waiver should normally be not done. However, if at all waiver is to be granted on justified and meritorious facts. Speaking orders should be recorded in all such cases. As regards case pertaining to Category (ii) or Category (iii) waiver can be considered on merits of individual case.**

2.10 The powers for waiver as mentioned above should be exercised judiciously keeping in view the merits of each case as per instructions contained in this letter. The waiver should not be granted in a routine manner.

2.11 Whenever the waiver exceeds 50% of the powers conferred on an officer, reasons for such waiver should be recorded in writing.

2.12 In the case of large sidings, like those of power-houses. Where demurrage is not waived on wagon to wagon or daily basis, speaking orders need not be recorded for each consignment/wagon. It would be sufficient if broad reasons are given in support of such periodical waiver after analyzing the broad causes of such detentions.

2.13 The causes for accrual of frequent demurrage/wharfage charges from a particular Goods Shed or a siding or a consignor/consignee should be analyzed periodically. Remedial steps including provisions of infrastructural facilities should be taken to reduce the detention to rolling stock and prompt removal of goods from the Railway premises."

[12] Para 3.4 of the Rate master circular deals with the provision relating to appeal. It is apparent from those provisions that a consignor/consignee can prefer a appeal to the higher authority in case if he is not satisfied with the decision of the "lower authority". Any appeal should be routed though the Station Manager/Chief Goods Superintendent. Those authorities shall forward the appeal to the Divisional Authorities within the stipulated time. For preferring an appeal against the denial of waiver of demurrage charges. The amount of demurrage charges, not waived, has to be deposited and proof of such payment be made part of the appeal. There can be maximum two appeals from a decision of the lower authorities. An appeal against the decision of the lower authority be preferred within 30 days. For us, the provisions as provided under Paras 3.1, 3.2, 3.3 and 3.5 are not that

material in the present context. But Para 3.5 which reads as follows is relevant:

> **"3.5 In all cases where a change is made by the appellate authority against the decision taken earlier, speaking orders should be recorded by the appellate authority."**

It has been clearly provided in the Rate Master Circular in Para 4.0 that the waiver of demurrage/wharfage charges should be dealt as per the instructions contained in the Rate Master Circular.

[13] Mr. Deb, learned counsel appearing for the petitioner has submitted in the perspective fact that the respondents ought to have provided 100% waiver of demurrage and wharfage charges considering that in the Jirania Railway Station, there is no infrastructure to unload the consigned materials in the free time. The grounds, as raised in the representation or in the appeal in this regard, has been discarded without any reason. The impugned orders as contained in communication dated 13.01.2017 (Annexure-6), 01.11.2017 (Annexure-9) and 08.05.2019 (Annexure-13) therefore suffer from arbitrariness. No quasi-judicial authority can pass any order which is without reasons while rejecting the grounds raised in the appeal or statutory representation.

[14] In response to the said submission, Ms. A. Banik, learned counsel has submitted that the prayer of the petitioner has been positively considered and 50% waiver of demurrage charges has been allowed as would be apparent from communication dated 01.11.2017 (Annexure-9 to the writ petition). That apart, Ms. Banik has contended that there was no merit in the case of the petitioner for further

consideration. That apart, Ms. Banik, learned counsel has submitted that the date and time of arrival is tentative and it was the responsibility of the petitioner to make arrangement of tools, equipment and labourers to unload the consignment from wagons within free time. The petitioner has admitted that the wagons were cleared on 24.10.2016 which is beyond the free time. Even if the notified day of arrival is considered as the basis of counting the hours of demurrage, there is no allegation in the writ petition that the computation of wharfage charge (with service tax) and the demurrage (charge with service tax) suffers from any infirmity. Those were strictly carried out in accordance with the Rate Master Circular for demurrage and wharfage.

[15] The Railway-respondents have categorically submitted that the Jirania goodsyard lacks in the basic infrastructure like platform, lighting arrangement, labourshed etc. But the arrangement of truck labourers, equipments or tools for loading/unloading is the responsibility of the consignor or the consignee. The petitioner has been authorised to unload and transport out the consigned materials. The respondents have calculated the demurrage and wharfage charges in the following manner:

Demurrage charges

As per norms, the Railways charged Demurrage Charges of Rs.10,500/- per wagon x 43 wagons= Total Rs.4,51,500/- + Service Tax Rs.20,318/- i.e. Total Rs.4,71,818/- for 70 hours extra detention of the rake.

Wharfage charges

Wharfage Charge and Service Tax of Rs.1,03,925/- was accrued for 36 Wagons for non-removal of the consignment within free time from the Railway premises.

[16] Having appreciated the submission of the counsel for the parties as well as scrutinized the records so produced along with the writ petition in particular and the reply filed by the railway-respondents, this court is of the view, it cannot extend its jurisdiction by questioning the merit of the decision, unless it is established that the inference as drawn on the basis of the adverted reasons is absolutely perverse. The court, however, in the judicial review can examine the process of reasoning for purpose of coming to a decision whether the reasoning as given is in accordance with the law governing the field or whether the reasonings are fit to survive the test of Article 14 of the Constitution of India, meaning those reasons are not capricious or arbitrary. For this purpose or to lay down the reasons in the order, is essential concomitant. From the communication dated 08.05.2019 (Annexure-13 to the writ petition), it appears that the decision that has been communicated contains only the following line to dismiss the second appeal filed by the petitioner for 100% waiver of wharfage charges and demurrage charges as accrued against Inv.RR NO.212000246 dated 08.10.2016 Ex-MGN to JRNA containing 43 BRN Iron Steel Slabs:

"There is no merit for any further consideration."

[17] It does affirm the first appellate order passed by the Divisional Railway Manager (C) Lumding) on 01.11.2017. On the face of

affirmation, it is apposite to extract the entire communication dated 01.11.2017 (Annexure 9 to the writ petition)

N.F. Railway

Office of the
Divl. Railway
Manager (C)
Lumding

No.C/104/484/LM/WD/JRN/OCT-2017 Date:01.11.2017

To
S.D.C. Freight Movers
Head Office: Laxmi Narayan Bari Lane
Agartala, Tripura (West)
Pin: 799001

Through: SS/JRNA

Sub:- Re-appeal for Waival of D/C accrued against loading/unloading of Iron Steel at JRNA.
Ref: Your letter No. NIL Dtd. 24.25.2017 addressed to this office.
With reference to the above, it is to inform you that the C accrued on the consignment mentioned in your letter have been waived per wagon by the competent authority are mentioned below:

Sl No.	Inv/RR	Date	FROM	TO	CMDT	PL-DATE	RL-DATE	DC Amount	Waived (%)	Authority	Party Name
02	212000246	08.10.16	MGN	JRNA	Iron Steel	18.10.16	21.10.16	4,51,500/-	50%	CCM	SDC Freight Mover

Hence, your are requested to visit DRM(C)/LMG's office with all relevant documents for further course of action.

DRM(C)/LMG

Copy to:-

1.SS/JRNA for information and necessary action.

DRM(C)/LMG

[18] As already noted, to appreciate the merit of the decision like an appellate court is beyond the prerogative of the writ court. Power has been conferred to the various authorities to waive the demurrage

and wharfage charges (see Para 2.0 of the Rate Master Circular). Even the premises of consideration have been provided in the Para 2.8 of the Rate Master Circular. It has been also observed that waiver should normally be not done. What is more important or relevant for the present controversy is how to exercise the power of waiver. It has been provided that in the cases where the reasons are within the control of the consignor/consignee, waiver should normally be not done. However, if at all waiver is to be granted on justified and meritorious fact, speaking order should be passed. The case of the petitioner falls within the category (i) as provided under Para 2.8 of the Rate Master Circular. But the first appellate order dated 01.11.2017 does not reflect any reason and hence it cannot be stated to be a speaking order. In para 2.12, it has been further provided that the speaking orders need not be recorded for each consignment/wagon but there must be some broad reasons for waiver. In appropriate cases, there may be waiver exceeding 15% or it might be full waiver. The petitioner has urged for full waiver but on scrutiny of the records, this court does not find any reason at all why the said prayer has been rejected. True it is that the law has evolved in this regard. The reasons are provided in an order to have the confidence of the people in the legal or quasi-legal process. There was a great amount of debate in UK whether the administrative authority is bound to give reasons for its decisions. The decisions in the Liquor Licence Cases are regarded as somewhat anomalous and the

considered view has always been that a quasi-judicial authority is not subject to any duty to give reasons for its decision.

[19] The decision in **Robinson v. Minister of Town and Country Planning : (1947) KB 702** clearly seems to suggest that even if the Minister exercises quasi-judicial functions, there is no obligation on him to give reasons for his decision. This view is also implicit in the decision of the Court of Appeal in **Rex v. Northumberland Compensation Appeal Tribunal : (1952) 1 K.B., 338**. In that case, the Court held that a quasi-judicial decision of an administrative tribunal could be quashed by certiorari for error of law where it "spoke" its error on its face. But where the decision was not contained in a "speaking order", the court would not intervene. It is implicit in this decision, recognition of the possibility that a quasi-judicial authority may not make a speaking order.

[20] But in the United States, it has been insisted that the quasi-judicial decisions must show reasons on their face. It has been noted in the celebrated commentary titled **American Administrative Law** [page 166]:

> **"In the United States, perhaps the most prominent reasons advanced for the requirements of reasoned decisions is the role of such decisions in facilitating review by the courts. If the bases of administrative decisions are not articulated, it is most difficult for a reviewing court to determine whether the decision is a proper one. 'We must know what a decision means before the duty becomes ours to say whether it is right or wrong', reads an oft-cited statement of Cardozo J., ... for judicial control to be of practical value, the administrative tribunal or agency, 'in making its order, should not make it an unspeaking or unintelligible order, but should in some way, state upon the face of the order the element which had led to the decision'. The words quoted are from a noted judgment of Lord Cairns, L.C., in which he laid down the distinction between 'speaking' and 'unspeaking' orders, which has become of basic importance in present-**

> **day English Administrative law. When Lord Cairns speaks of an 'unspeaking or unintelligible order', he obviously means an order which gives no reasons. If the administrator does not give reasons, he, in effect, disarms the exercise of the High Court's supervisory jurisdiction. In such a case, the Court cannot examine further than the face of the challenged decision, which, in Lord Sumner's famous phrase, 'speaks' only with 'inscrutable face of a sphinx'."**

[21] Even in India, the administrative law has clearly been evolved in the above line. It is necessary for giving full meaning and content to the power of judicial review conferred on high courts and the apex court by the Constitution that every administrative officer exercising quasi-judicial functions must make a speaking order i.e. give reasons in support of their orders. If the order speaks only with the "inscrutable face of a sphinx", it would be impossible for high courts and the apex court in effectively exercising their power of the judicial review by means of certiorari. But in the case in hand, the obligation or duty to pass a speaking order has been provided in the Rate Master Circular. Even though the railway respondents have filed their reply, but they did not produce any record before this court from which this court can find out the speaking order based on which the communication dated 01.11.2017 (Annexure-9) has been passed or the order has been affirmed by the Second appellate authority (Annexure-13) is speaking on its face. As such, this court on that short premises would interfere the order of the first appellate authority as reflected in the communication dated 01.11.2017 (Annexure-9 to the writ petition) and the order of the second appellate authority dated 08.05.2019. Purpose of passing the speaking order is to apprise the aggrieved person the

reasons based on which the decision has been taken. From the records, reasons for the said decision are not available. Hence, the orders passed by the first appellate authority and the second appellate authority as reflected in the communication dated 01.11.2017 and 08.05.2019 are set aside.

[22] The matter is remitted to the first appellate authority to pass a speaking order on re-appraisal of the grounds as placed by the petitioner and to communicate such order or the reasons to the petitioner within a period of thirty days from the day of receiving a copy of this order from the petitioner.

The writ petition is therefore, allowed partly to the extent as indicated above.

There shall be no order as to costs.

JUDGE

HIGH COURT OF TRIPURA



Dipak