

IN THE HIGH COURT OF JHARKHAND, RANCHI
M.A. No. 463 of 2018

Union of India through General Manager, Easter Railway, 17
Netajee Subhash Road, PO – GPO, PS – Fairly Place, District –
Koklata (W.B.) **.... Appellant**

-- Versus --

M/s Tata Iron and Steel Company Limited under the Indian
Companies Act, having its registered office at 24 Homi Mody Street,
Fort, Mumbai and its Works at Jamshedpur, PO and PS – Jamshedpur,
District – East Singhbhum, State – Jharkhand **.... Respondent**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant	:-	Ms. Leena Mukherjee, Advocate
For Respondent	:-	Mr. Manish Mishra, Advocate

08/24.04.2025 Heard learned counsel appearing for the appellant and learned
counsel appearing for the sole respondent.

2. This appeal has been preferred under Section 23(1) of Railway
Claim Tribunal Act, 1987 against the judgment dated 22.01.2018 passed
in Case No.TARG/RNC/1998/0012 passed by learned Railway Claims
Tribunal, Ranchi Bench whereby the claim of the sole respondent herein
has been allowed by the learned Tribunal to the tune of Rs.88,63,275/-
and direction has been made to make it within 90 days from the date of
judgment and the amount if not paid within 90 days interest will be paid
@ 7.5% per annum.

3. Learned counsel appearing for the appellant – Railway submits
that the respondent herein had booked the goods (Hard Coke) during the
period starting from December 1994 till August 1997 through railway
receipts. Se further submits that it was for transportation of goods from
Sindri on Eastern Railway to Adityapur on the South Eastern Railway. She

submits that the case of the sole respondent is that the distance between Sindri on Eastern Railway to Adityapur via Patherdih and Bhojodih is 144 K.M and the longer route is via Pradhankanta and Asansol and then Adityapur which comes to be 211 K.M. The shortest route was operational and the goods booked were transported through this route but the appellant railway had charged freight for a longer route of 211 K.M. She submits that the respondent filed the said case before the learned Claims Tribunal for over charge for the period from December 1994 to August 1997 where it was claimed that the appellant-railway had charged Rs.3,43,23,944/- in place of Rs.2,54,60,669/- in view of that the recovery of Rs.88,63,275/- was served. She submits that the learned Tribunal has allowed the said claim and according to her the claim was barred by time in spite of that it has been entertained. The second ground was taken that compliance of Section 106 of the Indian Railway Act, 1989 is not complied with. By way of drawing the attention of the Court to Section 192, she submits that the authority concerned therein disclosed in Section 192 have not been served notice and the documents and all these points the learned Tribunal has failed to consider the case of the railways and wrongly allowed the same and in view of that the appeal has been preferred and the impugned order may kindly be set aside. She relied in the judgment of Hon'ble Supreme Court in the case of ***Union of India vs. Indian Oil Corporation Limited reported in (2024) 9 SCC 241.***

4. Per contra, learned counsel appearing for the sole respondent submits the procedure has been described of making application before the Railway Claims Tribunal Act, 1987 in Section 16 and Section 17 deals

with the limitation where sub-section 2 provides the power to the Tribunal to condone the delay on cogent ground. He submits that the learned Tribunal by the order dated 27.07.2016 has been pleased to condone the delay and the same has not been challenged before any higher court and the delay has been condoned on the cogent reason. He further submits that so far Section 192 is concerned that has also been complied with and notice and the document has been served upon the concerned person disclosed in the said section. On this ground, he submits that the learned Tribunal has dealt with all aspects of the matter and thereafter has passed the said order and in view of that the same may kindly be affirmed and this appeal may kindly be dismissed.

5. In view of above submission of learned counsel appearing for the parties, the Court has gone through the materials on record including the trial court record as well as the impugned judgment, it transpires that the dispute is with regard to taking of a longer route in terms of the consignment booked by the respondent and for that overcharge has been made and in that background the respondent filed the claim case which has been allowed by the learned Court. The contention has been made herein by the learned counsel appearing for the appellant that the cause of action arose till 19.04.1995 and the claim application was filed on 08.07.1998 and in absence of any cogent reason the learned Court has allowed the claim application.

6. Looking into the trial court record, the Court finds that the limitation matter was taken up before the learned Tribunal on 12.02.2013 and the time was taken by the Railway to file the reply and in subsequent Division Bench was not available of the Tribunal and it was adjourned

from time to time and finally the condonation matter was decided by the learned Tribunal by order dated 27.07.2016 and that was on hearing of both the sides and that order has not been challenged by the Railway and thereafter the appeal has been decided, so far the ground taken by the learned counsel appearing for the appellant with regard to Section 106 of not issuing notice within the stipulated period of six months is concerned.

7. The Railway Claims Tribunal Act, 1987 described the procedure of application before the said claims Tribunal is under Section 16. Section 17 deals with the Limitation and Sub-section 2 of the said section provides power to the Tribunal to condone the delay and considering the cogent reason the learned Tribunal has been pleased to condone the delay by order dated 27.07.2016. Thus, on the ground of delay no cogent material has been placed before this Court by the appellant to interfere with that claim and that was also not challenged after the said order passed in the year 2016. Section 17(1)(c) of the Limitation Act, 1963 would apply only to a suit instituted or an application made in that behalf in the civil suit. The Tribunal is the creature of Statute.

8. So far compliance of Section 106 of the Railway Act, 1989 is concerned, it transpires from the judgment of the learned Tribunal that Exhibit A1 to Exhibit A14 are the claim notice.

9. It is an admitted position that on the different dates the consignment has been booked and for that different notice has been issued which clearly suggests that the notice was issued within time and in view of that Section 106 has been complied with and this aspect of the matter has been dealt by learned Tribunal considering the complaint also

made on 26.04.1995 itself.

10. So far Section 192 of the Railways Act, 1989 is concerned, it speaks of the service of notice to the particular authorities. Annexure A to Annexure A4 is a notice in terms of Section 78B of the Indian Railways Act, 1890 which is the pari materia of Section 192 of Indian Railways Act and the Exhibit A to A4 speaks that the notice has been served upon the competent authority of the railways and in view of that the point taken under Section 192 of the Railways Act by learned counsel appearing for the appellant is also not tenable.

11. An overcharge is any sum charged in excess or more than that was payable as per law, where as an illegal charge is any sum which is impermissible in law. It is pertinent to note that the term "payable by law" should not be conflated with the term permissible by law, this is because although something may be paid in excess than what was required by law, yet the same would by no means automatically become an overcharge. This is further fortified from the fact that charge as above stated is defined to mean something which is either required or demanded to be paid.

12. In the judgment relied by learned counsel appearing for the appellant in the case of ***Union of India vs. Indian Oil Corporation Limited (supra)***, the Hon'ble Supreme Court has come to the conclusion in paragraph No.94 of the said judgment to seek a refund, certain condition precedents need to be satisfied by the consignee before the right can be said to accrue, namely :

(a) An overcharge has been paid by the consignor to the Railway Administration ;

(b) A notice has been served by the consignor to the Railway Administration to which overcharge has been paid ;

(c) The consignor has served the said notice within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

In light of that once the aforesaid conditions are satisfied, the consignee's "right to get a refund" can be said to have as its jural correlative the "duty to grant refund" of the Railway Administration and all these three conditions have been fulfilled in the case in hand and in view of that the learned Tribunal has been pleased to allow the claim of the sole respondent.

13. In view of the above facts, reasons and analysis, the Court finds that the learned counsel appearing for the appellant has not been able to demolish the finding of the learned Tribunal on all these points which has been argued to allow this appeal. The learned Tribunal has rightly passed the said order and there is no illegality in the impugned order, as such this appeal is dismissed.

14. Let this trial court record be sent back to the learned court concerned fourth with.

(Sanjay Kumar Dwivedi, J.)

Sangam/

A.F.R.