



**202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-2783-2003 (O&M)

Date of decision : 28.02.2025

Union of India through The General Manager
Northern Railway

..... Appellant

Versus

Sanjay Kumar & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Anil Chawla, Sr. Panel Counsel for the appellant.

None for the respondents.

PANKAJ JAIN, J. (ORAL)

1 Railway is in appeal against order dated 10.04.2003 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh whereby claim filed by the respondents for non-delivery of consignment stands allowed.

2 Respondent No.1-claimant approached Tribunal by filing claim application under Section 16 of the Railway Claims Tribunal Act, 1987 (for short 'the 1987 Act') claiming that on 18.11.1999 applicant entrusted consignment comprised of 15 bags of *reethas* weighing 10.25 quintals to the railway administration at Shimla against RR No.213712. As per the booking the consignment was to be carried and delivered at Kalyan Railway Station. After the applicant found that the consignment failed to reach, he enquired from the Railway Administration but received no satisfactory answer. The applicant thereafter issued telegram dated 28.12.1999 to the Incharge, Goods Booking Office, Shimla Railway Station asking him regarding non-delivery of the consignment at the destination station. After railways failed



to respond, applicant served legal notice dated 16.05.2000 to the Central Railway, Mumbai. The Railway Administration still remained inert, the applicant again wrote a letter dated 28.06.2000 to the CCO, Central Railway, Mumbai. The applicant was thereafter informed that the consignment reached destination in the first week of February, 2000. The bags were torn out enroute. The applicant sought issuance of damage certificate which was also declined. It is thereafter that the present application was filed seeking claim from the Railway Administration.

3 The claim was resisted by the Railways claiming that the notice under Section 106 of the Railways Act, 1989 (for short 'the 1989 Act') was not served within the stipulated time period and thus Railways has no liability under Section 99 of the 1989 Act as the consignment in question was booked at owner's risk and the applicant failed to take delivery of the consignment after termination of transit on 03.02.2000. It was further claimed that after waiting for a sufficient period, notice under Sections 83 & 84 of the 1989 Act for disposal of consignment being unclaimed was issued. The consignment being of perishable nature was found unfit for human consumption and was thereafter destroyed.

4 On the basis of the pleadings following issues were framed :-

- "1. whether any valid notice u/s 106 of Railways Act was served within the stipulated period ?*
- 2. Whether liability of the railway administration is restricted u/s 99 of the Railways Act ?*
- 3. To what amount of compensation the applicant is entitled?*
- 4. Relief."*



5 While answering issue No.1 Tribunal held that even though notice dated 16.05.2000 was not within the period as stipulated under law but telegram dated 28.12.1999 falls within the ambit of notice as contemplated under Section 106 of the 1989 Act. Thus Railways cannot take refuge under non-service of notice within stipulated time period. On issue No.2, Tribunal held that Railways was under legal obligation to explain how the goods were dealt with. In the written statement it has been claimed that the applicant failed to take delivery of the consignment after termination of transit on 03.02.2000 and it is thereafter that the consignment was disposed off after issuing notices under Sections 83 & 84 of the 1989 Act. However, Railway failed to prove notices issued under Section 83 & 84 of the 1989 Act prior to disposal of the consignment as claimed and allowed the claim of the respondent.

6 Pure findings of fact have been recorded by the Tribunal. The precise issue that falls for consideration before this Court is whether Tribunal erred in treating telegram dated 28.12.1999 to be a notice under Section 106 of the 1989 Act. Section 106 of the 1989 Act reads 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 or 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 therefore 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.”

7 In terms of provisions as contained under Section 106(2) of the 1989 Act, any information demanded or enquiry made in the writing form, or any complaint made in writing to, any of the Railway Administrations mentioned in Sub-Section 1 is deemed to be a notice of claim for compensation. In the considered opinion of this Court as per the telegram issued by the applicant enquiring about the consignment partakes the character of notice under Section 106 of the 1989 Act. Thus Tribunal rightly rejected the defense raised by appellant.

8 The Tribunal has recorded well reasoned findings based upon proper appreciation of evidence and law. In view of above, this Court does not find any reason to interfere in the present appeal.

9 Finding no merits in the appeal, the same is dismissed.

28.02.2025

Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No