
(2015) 06 GAU CK 0053

Gauhati High Court

Case No: Miscellaneous First Appeal No. 100 of 2011

Union of India

APPELLANT

Vs

Meghalaya Cement Ltd.
and Others

RESPONDENT

Date of Decision: June 25, 2015

Acts Referred:

- Railway Claims Tribunal Act, 1987 - Section 23

Citation: (2015) 06 GAU CK 0053

Hon'ble Judges: Rumi Kumari Phukan, J

Bench: Single Bench

Advocate: A. Goyal, Advocates for the Respondent

Final Decision: Allowed

Judgement

Rumi Kumari Phukan, J

Heard learned Standing Counsel, Railways appearing for the appellant. Also heard Mr. A. Goyal, learned counsel for the Respondents.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and order dated 01.07.2011 passed by the learned Railway Claims Tribunal, Guwahati Bench, Guwahati in Application No. 106 of 2008.

3. The brief facts of the case, is that the respondent No. 1 as applicant filed the Original Application No. 106 of 2008 before the learned Railway Claims Tribunal, Guwahati claiming refund of Rs. 29,168/- for freight overcharges with cost and interest due to imposition of terminal charge at an enhanced rate. The Respondent No. 1/applicant booked a train load of 73640 bags of dry fly ash on 19.12.2007 under Invoice No. 1/RR No. 147980 from NTKS/CLG under Eastern Railways, Kolkata to CGS (Changsari) under North Eastern Frontier Railways. The case of the Respondent No. 1 was that at the Booking Station Terminal Charges were collected by the Railways/appellant herein

despite the fact that as per Railway Board's circular, terminal charge are not leviable on loose commodities packed in bag, tin, cartoon, bale or crate. The Respondent No. 1 filed claim petition before the Railway Claims Tribunal, Guwahati Bench stating therein that the appellant is fully liable to refund freight overcharge of Rs. 29,168/- with costs and interest. The offer of Rs. 1,413/- made by the appellant to the Respondent No. 1 was turned down as the amount offered was insufficient.

4. The appellant herein as Respondent contested the claim by filing written statement wherein they have stated that the claim application is not maintainable in law, that there is no cause of action to file the claim application, that the Tribunal has no jurisdiction to try the suit in respect of terminal charges. They admit that the terminal charges was initially levied only on bulk and loose commodities, but this restriction was withdrawn later on vide Railway Board's Circular dated 18.09.2007. The term "all other traffic" covers all other traffic, whether it may be loose and bulk, or bagged or others, hence, the destination station correctly collected the terminal charges and nothing is refundable. The freight collecting railway i.e. Eastern Railway recalculated the freight and other charges and found that there was a minor overcharge of Rs. 1,413/- in calculation of freight and other charges and it was offered to the respondent No. 1, who refused to accept the same.

5. On examining the pleadings of both the parties, the following issues were framed by the learned Tribunal:

1. Whether the Respondents proves that destination station Changsari is a terminal station and that they have realized terminal charges as per extant rules?

2. Whether the consignment, which was booked in bags, is also subjected to terminal charges as claimed by the Respondent?

3. Relief and Order?

6. The learned Tribunal after hearing the parties, directed the appellant to make payment of Rs. 29,168/- (Rupees twenty nine thousand one hundred and sixty eight) only along with interest @ 6% per annum from the date of filing of the application. It was further directed that the Respondent-Appellant shall make the payment within 90(ninety) days from the date of the order, failing which the amount shall carry interest @ 9% per annum till realization. The respondent was directed to pay proportionate cost of Application Fee of Rs. 1,432/- and Legal Practitioner's Fee of Rs. 1,292/-.

7. Aggrieved by the said order, the Respondent No. 1 therein as appellant has preferred this appeal on the ground that the learned Railway Claim Tribunal, Guwahati Bench failed to take into consideration the correct factual and legal aspect of the matter in deciding the matter; it failed to take into consideration the correct legal position in holding that there has been violation of the provisions of Rules as well as guidelines by the Railway Administration; that the learned Tribunal while passing the impugned Judgment and order dated 01.07.2011 has failed to appreciate the contentions raised by the Appellant that in

terms of Paragraph 317-8(3) of IRCA Conference Rules Part-II, the freight collecting Railway is only the competent authority to deal with the refund case, if any. It was also contended that while allowing the claim application the Tribunal has failed to take into consideration the objection raised by the Appellant that there is no provision in the Railway Claims Tribunal Act, 1987 for deciding the case of terminal charges. It is stated that though terminal charges was initially levied only on bulk and loose commodities in terms of Rate Circular No. 58 of 2007 dated 29.05.2007 of Railway Board, the said restriction was withdrawn later on. It is referred in the rate Circular No. 92 of 2007 dated 18.09.2007 that the same has been issued in supersession of rules referred to earlier rate Circular dated 29.05.2007 and 19.07.2007 and the terminal charges would be levied on all traffic, except container traffic. It has further been contended that the learned Tribunal has failed to appreciate the fact that after coming into force of the Rate Circular No. 92 of 2007 dated 18.09.2007, the Rate Circular No. 58 of 2007 dated 29.05.2007 has been superseded and, as such, the Railway administration was not liable to refund the amount as claimed by the applicant/Respondent No. 1.

8. After careful perusal of the record it reveals that the respondent booked 73,640 bags of dry fly ash on 19.12.2007. Raising objection against levying the Terminal charges, the respondent preferred an application before the Railway Claims Tribunal, Guwahati and the Railway Claims Tribunal vide judgment and order dated 01.07.2011 observed that the Railway Board in circular dated 18.09.2007 mentioned about only the supersession of circular dated 29.05.2007 and 19.07.2007 and thereby not superseded Railway Board's letter dated 17.07.2009. Further held that in the latest circular dated 18.09.2007 commodities have been categorized into three heads i.e. (1) Iron ore traffic (2) All other traffic and (3) Container traffic, but there is no mention about commodities which are packed in bags, tin, cartoon, bale or crate. Applicant had booked fly ash in bags as mentioned in the Railway Receipts and also in the application filed by the Applicant. As such, it should not fall under the category on which Terminal Charges levied and accordingly allowed the application and directed the appellant to pay Rs. 29,168/- along with interest @ 6% PA from the date of filing of the application and to make the payment within 90 days from the date of the order failing which the amount shall carry interest @ 9% PA till realisation also passed order for cost.

9. The Appellant along with their appeal memo annexed numbers of documents including the copies of circular dated 29.05.2007, 17.07.2007, 19.07.2007 and 18.09.2007 as Annexure A/1, A/2, A/3 and A/4 respectively. As per the Annexure A/1 i.e. the Rates Circular No. 58 of 2007 dated 29.05.2007 the Railway Board levied the terminal charge for bulk and loose traffic on Railways owned terminals and sidings @ Rs. 10/- per ton. Thereafter vide the circular No. 74 of 2007 dated 19.07.2007 modified the levy of terminal charge @ Rs. 40/- per ton per terminal in respect of all iron ore traffic keeping all other condition of circular No. 58 remain unchanged. Thereafter, in supersession of Rates Circular No. 58 dated 29.05.2005 and Rates Circular No. 74 of 2007 dated 19.07.2007 the Railway Board had issued the Rates Circular No. 92 of 2007 which shows that though

in earlier circular mentioned about levying of terminal charges in respect of bulk and loose traffic but in Rates Circular No. 92 of 2007 dated 18.09.2007 the term "all other traffic" is included and the terminal charge levied on all traffic except container traffic.

10. Now, from the annexure A/2 i.e. the letter No. TCR/1078/2007/6 dated 17.07.2007 of the Director, Traffic Commercial (Rates) Railway Board has reveals that this is nothing but a clarification in respect of Rates Circular No. 58 of 2007 dated 29.05.2007. As soon as the Rates Circular No. 92 of 2007 was issued in supersession of earlier Rates Circular No. 58 of 2007 dated 29.05. 2007 the effect of letter dated 17.07.2007 also extinguished as the same was only a clarification in respect of Rates Circular No. 58 of 2007. As such the letter dated 17.07.2007 is not a Rates Circular. In view of which, the findings of the Member Technical of Railway Claims Tribunal, Guwahati that "in the circular dated 18.09.2007 the Railway Board mentioned about the supersession of Circulars dated 29.05.2007 and 19.07.2007 and not about the letter 17.07.2007 as such same was not superseded and still holds good", is not sustainable in law.

11. On the other hand the learned Member Technical has also observed as below-

"Changsari station as per Annexure -1 of Railway Board"s letter dated 5.06.2007, is one of the identified goods shed amongst 50 goods shed for upgradation. The desirable facilities of these goods sheds have also been listed in para-3(a) to 3(j) of this letter. As per information obtained by the Applicant through RTI, which was communicated to the Applicant by the Sr. Divisional Commercial Manager cum Public Information Officer, Rangia, N.F. Railway vide letter dated 27.08.2010, the facilities from 3(b) to 3(h) have not been provided at Changsari Station. As such, due to non-provision of these facilities, Changsari Station does not qualify as a terminal station. Hence, Terminal Charges levied by the Respondent against the bagged consignment and the standard facilities as laid down by the Railway Board not being available, Terminal Charges are not justified to be levied."

12. After careful perusal of the aforesaid letter dated 05.06.2007 it does not transpires that before imposing the Terminal Charges it is mandatory to have the such facilities as desired as per the letter dated 05.06.2007. The facilities mentioned in the letter is desirable and not mandatory to hold that for imposing Terminal Charges, such facility is required to be complied with. Be it mentioned that Prior to issuance of the said letter vide Rates Circular No. 58 of 2007 dated 29.05.2007 the Central Government had accorded sanction for levying of Development Surcharge and Terminal Charges.

13. Further, it is not disputed that Changsari Terminal/Shed is owned by the Railways and as in Rates Circular No. 92 of 2007 dated 18.09.2007 the term "all other traffic" is included and the terminal charge levied on all traffic except container traffic, as such the Railway Department has rightly levied the Terminal Charges and the judgment and order dated 01.07.2011 passed by the Member Technical in Claim Application No. III-106/2008(Old) and Claim Application No. OA-III/GHY/2008/0106 (New) is liable to be

set aside.

14. The learned Railway Claims Tribunal has based upon the letter dated 17.07.2007 which is non-est as soon as the original Rates Circular 58 of 2007 was superseded. Similarly, the simple assertion of the Respondent that the Terminal Charge cannot be levied for having no such facilities in terms of NF Railways letter dated 27.08.2010(reply in RTI) cannot be a ground to hold that to declare a station as a Terminal Station, having of such provision is the precondition or mandatory. The Respondent failed to produce any such Government Circular etc. to prove his assertion. As such there is no substance in the submission of the learned counsel for the Respondent on the above aspect.

15. Consequent upon the findings arrived at by the learned Railway Claims Tribunal while discussing the issues are perverse and contrary to the prevailing Government Circulars and other matters on record.

16. In the result, the appeal is allowed. The judgment and order dated 01.07.2011 passed by the Member Technical, Railway Claims Tribunal, Guwahati Bench in Claim Application No. III-106/2008(Old) and Claim Application No. OA-III/GHY/2008/0106 (New) is set aside and the appeal is allowed without any order as to costs.

17. The Respondent may withdraw the amount of Rs. 1,413/- so deposited by the Appellant by way of cheque.