

(2011) 05 NCDRC CK 0046

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

DIVISIONAL PERSONNEL

OFFICER

APPELLANT

Vs

D.J.Manuel

RESPONDENT

Date of Decision: May 19, 2011

Citation: 2011 0 NCDRC 337 : 2011 3 CPJ 22

Hon'ble Judges: V.B.Gupta , Suresh Chandra J.

Final Decision: Revision petition stands dismissed

Judgement

1. FOR the reasons given in the application for condonation of delay and the submissions made at bar, the delay of 106 days in filing this revision petition is condoned.

2. COUNSEL for the petitioner and respondent in person are present and we have heard them at length.

Briefly stated, the facts of this case are that the complainant, respondent herein, is a retired employee of the South Western Railway and consequent to his retirement, he was entitled to certain benefits and one such benefit was to have two sets of Post Retirement Complimentary Passes in a year. Admittedly, this benefit is to be provided in accordance with the provisions of Railway Servants (Pass) Rules, 1986 (for short the Rules). Under the Rules, passes to retired employees are issued subject to same conditions as are applicable to serving railway employees. The case of the complainant/respondent is that he was enjoying such benefit till his request for traveling double journey en-route over the portion Tiruchirapalli Thanjavur - Tiruchirapalli was rejected. As per clause (vii) and sub-rule (b) of General Rule 3

under Schedule-II of the Rules, privilege pass shall be issued for journey from the starting station to the destination station as desired by the concerned employee via shortest route provided that a longer route may be permitted on the privilege pass even if a double journey over a small portion is involved. In the present case, the request of complainant/respondent for the double journey from Tiruchirapalli Thanjavur - Tiruchirapalli was rejected by the OP/complainant and hence a consumer complaint was lodged before the District Forum by the complainant. On being noticed, the OP Authority resisted the complaint on two grounds. Firstly, it was pleaded that the complainant is not a consumer with reference to the issuance of privilege passes given by the OP Railway to him as a retired employee. Besides this, it was also pleaded that there was no deficiency in service in regard to the pass in question. On appraisal of the issues, the District Forum vide its order dated 15.07.2004 held that since the complimentary passes were issued after taking into consideration the services rendered by an employee on his retirement, the complainant is a consumer and the dispute is a consumer dispute and as such, the complaint was maintainable. However, the District Forum did not find any deficiency in service on the part of OP Authority and as such dismissed the complaint. Aggrieved by the decision of the District Forum, the complainant/respondent challenged the same in appeal before the Karnataka State Consumer Disputes Redressal Commission, Bangalore (State Commission for short) which came to be allowed in terms of the following order dated 03.04.2006 passed by the State Commission:-

(1) The Appeal is allowed. The impugned order is set aside. (2) The Complaint filed by the Complainant before the District Forum is allowed with a direction to the OP to allow the benefit of Double Journey to the Complainant as sought for by him in future. (3) The OP is also directed to pay Rs.10,000/- as compensation to the Complainant for its Deficiency in Service. (4) The OP is also directed to pay Rs.1,000/- to the Complainant towards the costs of these proceedings.

Challenge in this revision petition is to this order of the State Commission.

3. COUNSEL for the petitioner has contended that first and foremost, the fora below have gravely erred in entertaining the complaint since it is free pass provided by the Railways to its retired employees on the same lines as per rules as are applicable to the serving employee and as such the complainant/respondent who is a retired employee of the Railways cannot be treated as a consumer qua the free passes provided by the OP Authority and hence the question of deficiency in service as envisaged under the Consumer Protection act cannot arise. He has further

submitted that even if, for the sake of argument, the respondent is treated as a consumer, there is no deficiency in service because in the instant case, the free pass in question could not have been issued and the request was rightly rejected keeping in view the rule position in question. In this context, learned counsel referred to clause (vii) of Rule 3 which regulates the journey in question. The concerned sub-rule is reproduced below:-

Referring to the above Rule, learned Counsel argued that even if the extra distance proposed to be covered by the complainant did not exceed 15% of the direct/shortest route, he was not entitled to claim that benefit of traveling/double journey under a complimentary pass when there is no terminal facility in the small portion concerned. In view of this, he pleaded that finding of the State Commission in its impugned order was erroneous and in clear contravention of the specific provision of the aforesaid Rule contained in sub-clause (b). The impugned order, therefore, cannot be sustained in the eye of law and hence liable to be set aside.

4. REVERTING to the issue raised by the petitioner in this revision petition, so far as the question of the present dispute being covered by the Consumer Protection Act 1986 is concerned, it is well-settled by now that service in question even though freely provided by the OP Authority to its employees including retired employees would be service within the definition of section 2(1)(o) of the C.P. Act, 1986. Following its earlier decision in the case of Indian Medical Association Vs. V.P. Shantha [(1995) 6 SCC 651], the Honble Supreme Court has reiterated same in the case of Laxman Thamappa Kotgiri Vs. G.M. Central Railway [(2007) 4 SCC 596] and held as under:-

B. Consumer Protection Services Service rendered free of charge Meaning of Held, any service which is rendered as part of the terms of service of an employee and the employer bears the expenses, is not a service rendered free of charge and falls within definition of service in S.2(1)(o) Thus medical services provided by a hospital run and funded by the employer as a part of the terms of service of employees, are not rendered free of charge and fall within the definition of service in S. 2(1)(o) Consumer Protection Act, 1986, S. 2(1)(o).

Applying the aforesaid ratio to the present case, we have no doubt in our mind that the fora below were absolutely right in categorizing the present dispute between the complainant and the OP Authority as a consumer dispute and hence falling within the ambit of definition of service as envisaged under the Consumer Protection Act. As regards the second contention of the petitioner, we do not find any infirmity in the impugned order of the State Commission since the same is in

line with the Rule position. It is not in dispute that the extra distance involved is within the parameter of 15% of the direct route. Learned Counsel has now tried to argue that since Tanjavur is not a terminal station because the route from Tanjavur is further extended towards Tambaram, Villupuram and Nagore etc., the benefit of traveling double journey under a complimentary pass under sub-clause (b) will not be available to the complainant/respondent. We do not agree with the contention of learned counsel. As submitted by the respondent in his arguments before us, it is to be noted that the words used in the sub-clause are terminal facilities and not terminus facilities. The word terminal as understood in the common parlance is a place where journeys by train, bus or boat begin or end such as a railway terminal, a bus terminal, a ferry terminal etc. Respondent/complainant submits that Tanjavur is a terminal station from where trains from Mysore, Chennai and other places terminate journey and it also has terminal facilities such as retiring rooms, restaurant, cloak room, reservation centre and waiting room etc. etc. On a subsequent query from us, learned counsel for the petitioner could not refer to any other definition of the word terminal in the Rules but reiterated that terminal should be taken to mean where a particular train ends its journey and does not go further and hence Tanjavur cannot be called a terminal station. In the absence of any specific definition or clarification to the contrary in the rules, we cannot attribute the same meaning to the word terminal as we do to the word terminus. As regards the example given in the sub-clause, the State Commission has observed that the example given in the sub-clause is only to understand the meaning of the said rule. In any case, the names of stations are only illustrative and not exhaustive and as long as the extra distance is within 15% limit and the purpose is to take advantage of the terminal facilities, the benefit of the said clause cannot be denied. We, therefore, agree with the submissions made by the respondent and confirm the finding of the State Commission in this regard. In the circumstances, we do not find any infirmity or irregularity or illegality or jurisdictional error in the impugned order, which would call for our interference with it. The revision petition, therefore, stands dismissed with no order as to costs.