

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI. 6

O.A. 845/88

Date of decision 20/1/1989

Shri Vijayinder SuriPetitioner

vs.

Union of IndiaRespondents.

For the petitionerShri D.G. Vohra,
Counsel

For the respondentsShri N.S. Mehta,
Counsel

CORAM:

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN(A)

(The judgment of the Bench delivered by Hon'ble
Mr. S. P. Mukerji, Vice Chairman(A))

In this application dated 15.4.1988, the applicant who is a Grade III Stenographer in the Ministry of External Affairs has prayed that the impugned order dated 9.3.88 requiring the applicant to pay the excess expenditure incurred on packing and unaccompanied baggage over and above his entitlement by air should be quashed and the respondents be directed to settle the transferring allowance claim without recovery of the excess expenditure.

2. The brief facts of the case are as follows. The applicant who is a bachelor, was promoted as Grade III Stenographer on 24.7.85. On 2.12.85 he was transferred to Mexico City to work in the Indian Embassy there. On 4.2.86

he arrived there with his old and ailing mother. As the climate did not suit his mother, his representation to be transferred back was accepted and on 19.1.1987 he was permitted to return to India. He started packing his luggage and applied ^{for} under the Mexican Law Export Permit for taking back his luggage by air. The despatch of the luggage was arranged through a local firm known as SCHENKERS, who also happened to be the authorised packers of the Embassy. The Export Permit was received by the applicant on 11.2.87 on which date itself he and his mother were to depart by air for India. Accordingly, the baggage had to be left behind with the SCHENKERS. According to the applicant, the baggage was packed in 21 cartons and weighed 450 Kg. The Air India was to allow 160 kg of free transportation of the baggage on the basis of 2 tickets on each one of which a free allowance of 80 kg was allowed. The applicant arrived in Delhi on 14.2.87 and went on leave for one month as permissible. Nothing was heard about his baggage, till the Ministry of External Affairs received on 27th of February, 1987 a telegraph message from Indian Embassy at Mexico indicating that the applicant's baggage was still lying at the New York AirPort. It may be remembered that the baggage by air from Mexico City had to be sent to India through New York. Still another message was received by the Embassy on 17th March ¹⁹⁸⁷ indicating that the unaccompanied baggage of the applicant had been sent by air, even though it was far in excess of his entitlement. It was indicated that the

expenditure incurred by the Embassy will be reflected in his Last Pay Certificate and that the applicant be informed. The unaccompanied baggage of the applicant arrived in ^{the} latter half of March, 1987 and the Air India's Bills of 6th March, 1987 (page 73) indicated that the gross weight of the baggage was 830 kg. The applicant took the delivery of the baggage in Delhi through the handling agents Ashoka International who gave the breakdown of the baggage as 450 kg in 21 cartons and 380 kg as the weight of the liftvan i.e. outer crating etc. In the Last Pay Certificate, the Embassy indicated that the applicant was entitled to carry 375 kg of unaccompanied baggage excluding that free allowance of 80 kg. He had carried unaccompanied baggage weighing 750 kg excluding the free allowance of 80 kg and that transportation charges paid on his behalf on excess baggage of 375 kg are recoverable from him. The applicant was made to understand that he will have to pay a sum of over Rs.20,000/- to the Government. His representation dated 22.6.87 was rejected by the respondents on 9.3.88 by a non speaking order. The applicant's plea is that the rejection of his representation/being non-speaking and non-ed, reason violates the principle of natural justice as he was not given an opportunity to be heard. He has argued that it was due to the negligence on the part of the Embassy authorities at Mexico City that his baggage far in excess of the

the permissible limit of 375 kg was sent by air when the wooden crating itself weighed 380 kg. He also indicated that crating was not at all essential for the luggage being sent by air. His main contention is that in accordance with the instructions of 29.1.81, his option for the baggage being sent by air had to be obtained before sending the baggage by air. The respondents have indicated that the applicant had not left any instructions about the transporation of his baggage by a mode other than that of air. The Embassy are not responsible for sending baggage of individual employees that in accordance with instructions of 29.1.81, he was required to opt for transportation of his personal effects by surface route implying thereby that if such an option was not exercised the transportation of baggage was to be by air. They have further clarified that the applicant had himself obtained the Export Permit authorities from the Mexican for transportation of his personal effects by air only. They have also enclosed the letter which they have received from M/s SCHANKERS, the forwarding agents of Shri Suri (Annexure R-4) which indicates beyond doubt that the applicant himself approached for packing, handling and transporation of his personal effects. They had packed the personal effects of the applicant at his residence and that the applicant had instructed them that the cartons should be put into the sturdy wooden box as they contained fragile electronic/electric items and the gross weight of the

consignment was 830 kg and the luggage had been weighed in the presence of the applicant himself. The Embassy clarified that the applicant kept the Embassy in the dark in arranging the transporation of his personal effects through the aforesaid forwarding agents. The Embassy came to know about the transporation only after the agents had transported the baggage from Mexico to New York. They also got the clarifications from M/s Ashoka International at Delhi, the clearing agents who, in their letter dated 10.6.88 (Annexure R-7) have indicated that the break-up of the weight as 450 kg for the cartons and 380 kg for the liftvan was recorded as desired by the applicant as they were not equipped to weigh the baggage. The respondents have stated that the decision about rejecting his representtation was taken after due inquiry and after hearing the applicant in person.

3. I have heard the arguments of the learned counsel for both the parties and have gone through the documents carefully. For the following reasons, I find that the application has no force and that the applicant has not been stating true facts in his representation:-

(i) The letter of 11th August, 1987 from the forwarding agents M/s SCHENKERS, makes clear that the weight of the consignment came to 830kgs excluding the wooden box in which 21 cartons boxes were put and that the weighment was done in the presence of the applicant. The following extracts from their letter of 11th August, 1987 make the position

very clear:-

" The gross weight of the consignment was 830 kgs (the weight of the wooden box of 200 x 18x 154 cbm in which the 21 carton boxes were put into, did not weigh more than 225 kgs.) and this was weighed in his presence, before he left for India on the 11th of February, 1987. Mr. Suri had also left behind with us his franchise with ¹ instructions to send by air consignment from Mexico City, via New York, to final destination in New Delhi, India."

It was, therefore, wrong on the part of the applicant to state in his representation dated 22.6.87 that he was informed by the forwarding agents that the total weight of the baggage was 450 kgs and after crating the weight will not exceed 550 kgs.

(ii) The clearing agents in Delhi, the Ashoka International in their certificate dated 10th June, 1988 (Exhibit R-7 page 109) indicated as follows:-

" This is to certify that all documents relating to the clearance and transporation etc, of the baggage of Shri Vijayinder Suri of the Ministry of External Affairs, New Delhi, in March 1987, were retained by him and the break-up of the weight of the baggage was indicated on the bill as desired by Shri Suri since we are not equipped to weigh the baggage at the time of taking/giving delivery."

From the above it is clear that the break-up of the luggage as 450 kgs of baggage and 380 kgs of liftvan was not correct but was recorded by the clearing agents under the direction of the applicant. The letter of the forwarding agents at Mexico City as quoted above indicate that the weight of the wooden box would be not more than 225 Kgs. It was, therefore, wrong on the part of the applicant to state in his representation dated 22.6.87 that "the weight of the wooden liftvan when checked in Delhi was found 380 Kgs." It appears that the applicant tried to conceal that the weight

of his personal effects in the cartons excluding the weight of the crating exceeded the permissible limit of 375 Kgs. On the other hand according to the forwarding agents, excluding the weight of 225 Kgs. of the wooden box from the total weight of 830 Kgs., the net weight of the personal effects enclosed in the cartons came to 605 Kgs., whereas the permissible limit was 375 Kgs. By making the agents in Delhi to record the weights of the cartons as 450 Kgs., the applicant wanted to show that no excess baggage was enclosed in the carton beyond 450 Kgs. for which he would not have had to pay any excess cost because 375 Kgs. is the permissible limit including the free allowance on his own and ticket, the Air India has allowed 80 Kgs. further against the air- ticket of his mother.

(iii) The applicant has not been able to produce any evidence, documentary or otherwise to say that he had left any instructions with the Embassy to send luggage by ship, when he knew that the luggage including the crating, was 830 Kgs. whereas the permissible limit by air was only 375 Kgs. plus 80 Kgms. on his mother's ticket.

(iv) The applicant himself had obtained the Export Permit from the Mexican authorities for his personal effects to be sent by air. He cannot now claim that he never intended to send his personal effects by air.

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(v) The applicant has virtually given himself away in the matter of the mode of transportation of his personal effects, in the third para of his representation of 22.6.87. In this para he indicated that "on the same evening when I had a talk with Mr. Schmidt of SCHENKERS, I was assured that my baggage would reach Delhi before my arrival there". Since the applicant and his mother were to travel by air to India, the assurance that the luggage will arrive at New Delhi before his arrival indicated that he knew fully well that the baggage will be sent by air.

(vi) It is wrong to say that the principle of natural justice has been violated in rejecting his representation because the respondents had made enquiries from the forwarding and clearing agents, from the Embassy and even heard the applicant in person.

(vii) Para 4 of the instructions dated 21.1.87 reads as follows:-

" Officers will have the option to transport their personal effects by surface route as per their existing entitlement if they do not intend to avail of benefits under this Office Order."

I am not prepared to accept the plea of the applicant that it was the responsibility of the respondents to solicit his option for transportation of his personal effects by surface route. The fact that he had applied for Export Premit by air is sufficient indication that he had not

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opted to transport his personal effects by surface route. even otherwise
The mode of transportation of personal effects is the
business of the officer and not of the Embassy and the
Embassy in the circumstances of the case cannot be held
to be negligent or remiss in sending the personal effects
by air.

(viii) In view of the false statements made by him in his
representation dated 22.6.87, he cannot be relied on to
had any
deduce that he left instruction with the Embassy for the
transporation of his baggage. The respondents' repeated
averment that the Embassy were kept totally in the dark
arranging
by the applicant while he was packing and transporation
of his baggage by air through M/s SCHENKERS has to be
accepted.

4. In the facts and circumstances mentioned above, I
find no force in the application and reject the same.
However, in view of the huge amount of recovery to be made
from the applicant, it is commended that the recovery be
made in easy instalments and the respondents may consider
any relaxation of the rules under Rule 41 of the Indian
Foreign Service (Pay, Leave, Compensatory Allowances and
Other conditions of Service) Rules, 1961 in order to soften
the financial blow which the applicant has inflicted upon
himself and for which he alone is responsible. In the
circumstances, there will be no order as to costs.

S.P. Mukerji
20.1.89
(S.P. MUKERJI)
VICE CHAIRMAN(A)