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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 784 OF 2005
CUTTACK, THIS THE 19th DAY OF January, 2010

Abasar Beuria.....Applicant

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Union of India & OrsRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

(C.R.MOHAPATRA)
MEMBER (ADMN.)

(K.THANKAPPAN)
MEMBER (JUDL.)

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ORIGINAL APPLICATION NO. 784 OF 2005
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CORAM :

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....
Abasar Beuria, aged about 63 years, Son of Late Hrushikesh Beuria,
Formerly Ambassador to Madagascar, A/165, Saheed Nagar,
P.O./P.S. Saheed Nagar, Bhubaneswar, District -Khurda.

... Applicants

By the Advocates – M/s. Samreswar Mohanty, H. Parida.

-Versus-

1. Union of India represented by the Secretary, Ministry of External Affairs, South Block, New Delhi.
2. Y.P.Kumar, I.F.S.(Retd.), C/o. Pension Cell, Ministry of External Affairs, New Delhi.

... Respondents

By the Advocates - Mr. U.B.Mohapatra



ORDER

Shri Justice K. Thankappan, Member (J):-

Applicant is a formerly Indian Ambassador to Madagascar, who has retired from Indian Foreign Service on 30.11.2001. He has filed this O.A. with the following prayers:

"to direct that the sum of U.S. \$ 5909 illegally collected from the applicant towards excess baggage be refunded to him together with interest as indicated about from the date the applicant has paid the amount till the date of refund and also compensation amounting to Indian Rupees Five Lakhs for damage to his reputation, dignity and honour be paid to him".

2. It is discernible from the records of the O.A. that though this O.A. had been filed on 14.09.2005, the same has been seen admitted and notice ordered by this Tribunal only on 26.09.2006. In pursuance of the notice ordered, Respondent No.1 has filed a counter reply. It is not clear as to why the 2nd Respondent has been made as a party to the proceedings. However, as per the counter affidavit filed on behalf of the 1st Respondent, namely, Union of India, represented through Secretary, Ministry of External Affairs, the O.A. is not maintainable on the ground of delay and laches. It is also stated in the counter that as per some rules (what rule is not



explained), the permissible limit of un-accompanying baggage is supposed to be 2600 Kgs by Sea/Surface route and since the applicant carried 5200 Kgs of baggage through Sea, he is liable to pay the amount of freight charge in excess of the permissible limit. It is also stated in the counter that the Indian Embassy through Ministry of External Affairs, New Delhi, the first Respondent, advised the applicant to deposit an amount of 5909 US \$ in the Embassy account towards the cost of packing and forwarding of excess baggage over and above the permissible limit so that the payment could be made to the packers. It is stated that though the packer had suggested to get the consignment weighed on its arrival in India before taking delivery from the customs authorities, yet the applicant did not do so. It has been submitted that since the applicant was aware of the excess baggage more than his entitlement he chose to pay the excess amount claimed in that behalf. It has been further submitted that if there was any dispute regarding the weight, the applicant could have sorted out the matter with the packer/consigner which had raised the bill for 5200 Kgs. and that the Ministry has nothing to do with the matter whether excess load carried or payment made. Further, it is stated in the

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counter that whereas the original bill weighing 5200 Kgs is signed and stamped at each place of correction, the bill produced by the applicant is a copy of the bill weighing 2700Kgs bearing no signature of the authority of the packer/loader/consigner or the authority of the Shipping Company. It is further stated in the counter that since the applicant is liable to make payment towards baggage, which is more than his entitlement, his claim of refunding the excess amount so paid at the time of delivery of the baggage has been rightly rejected by the first Respondent as per Annexure-A/8 letter. It has been submitted that the O.A. being devoid of merit is liable to be dismissed.

3. We heard Mr. S.Mohanty, Ld. Counsel appearing for the applicant and Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel appearing on behalf of the first Respondent. We have also perused the documents produced along with the O.A.

4. The main argument of the Ld. Counsel for the applicant is that all the goods were put in a 40' container for the safety of delicate and fragile items/belongings even though the Packer's representative assured that all the items could be accommodated in a 20' container. Therefore, the applicant was

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not expected to verify the size of the container as the weight was within the permissible limit. The applicant's goods were put into the container which weighed only 2700 Kgs. The bill of lading also was sealed by the local custom officers on 03.12.2001, which would show that the weight was 2700 Kgs and the said bill of lading was received by the Diplomatic Mission at Madagascar for processing the applicant's financial entitlement on the transport of his personal belongings and to release the goods in India. It is also the case of the applicant that the copy of the said bill of lading was faxed to the applicant on 24.12.2001 by the First Secretary (Pr. Private Secretary) attached to the Diplomatic Mission in Madagascar, which would show that what the applicant has stated above is correct. The consignment were carried over by M/s M.V.Laboheme, which left Toamasina Post in Madagascar on or around 20.12.2001 and it is clear from Annexure-A/1 bill of lading that the goods were within the permissible limit of the applicant. However, the applicant received Annexure-A/2 message dated 27.12.2001 from the Diplomatic Mission at Madagascar showing that the total weight of the personal effects was actually 5200 Kgs, which was exactly double his entitlement,

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and hence, Annexure-A/3 revised Faxed copy of bill of lading was received by the applicant on 18.01.2002. However, since the applicant was ready to take delivery of the goods from Kolkata Port, he paid a sum of 5909 US \$ (about 3 lakh Indian currency) to the Embassy of India in Madagascar by the Bank of Baroda in Mauritius in 3rd week of January, 2002. Hence, the difference in weight of his belongings was due to a cheat made by the Carrier or the Shipping Company. According to him, it was the duty of the first Respondent to pay off the excess amount, which he had paid in excess while taking delivery of the goods. In the above backdrop, he filed a representation before the first Respondent for refund of the amount which he had paid, but unfortunately, without considering the status and dignity of the applicant, the first Respondent rejected the claim without any reason. Hence, the applicant filed this O.A. for a direction to return/refund of the amount, which he had paid and also for a compensation of Rs. 5 lakh for causing damages to his reputation, dignity and honour. According to the applicant, the first Respondent being his employer is responsible for payment of his entitlement for the damages or the personal belongings when he returned from



Madagascar to India. The first Respondent is under the bounden duty to pay the excess amount to the applicant so paid. Since the first Respondent is not taking any step either by making an inquiry regarding the fraud or the cheat committed by the Shipping Company, it is a laches on the part of the first Respondent. Hence, this Tribunal may interfere in the matter.

5. To the above arguments, the Ld. Sr. Standing Counsel, Mr. U.B.Mohapatra, reiterating the stand taken in the counter affidavit stated that the O.A. itself is not maintainable under Section 19 of the Administrative Tribunal Act, as the matter is not related to infringement of any of the conditions of services of the applicant by the Respondent No.1. Further, the Ld. Counsel submits that as per the entitlement rules for T.A. and baggage expenses, the applicant is entitled to carry only 2600 Kgs of baggage, but the bill of lading and Annexures-A/2 and A/3 would show that the applicant carried 5200 Kgs, which is double the permissible limit. In the above circumstances, the applicant is liable to make payment of the excess amount, which the Transporting Company or the Shipping Company claimed through the Embassy of Madagascar by preferring the

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revised bill of lading. If so, Annexure-A/8 reply given by the Respondent is justifiable.

6. The case set up in the O.A. centers around four documents, namely, Annexure-A/1 copy of bill of lading faxed to the applicant on 24.12.2001, Annexure-A/2 message from the Diplomatic Commission at Madagascar to the effect that total weight of the applicant's personal effects was 5200 Kgs, i.e., exactly double the applicant's entitlement, Annexure-A/3 a faxed copy of revised bill of lading received by the applicant on 18.1.2002 and Annexure-A/4 copy of excess baggage claimed.

7. Before we consider these documents in the light of the submissions put forward by the applicant, it is advantageous to see the rules regarding the entitlement of the applicant under the provisions of T.A. and other allowances applicable to an Ambassador or of such diplomat. It is stated in paragraph-6 and 7 of the rules, namely, Indian Foreign Service Rules (D & F.C.), 1985 that an Officer coming under Batch 'A', which is applicable to the applicant at the time of journey from destination state to India, the permissible limit for the personal belongings is fixed as 2500 Kgs, for which the first Respondents is liable to pay to the Shipping Company or the

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transporting company or the carrier. The fact that the applicant is entitled only to transportation of 2500 Kgs is not denied by him but, at the same time, the applicant submits that during booking or rather entrusting the baggage to the carrier, viz., the Shipping Company of Mediterranean Shipping Company, S.A., GENEVA, he had verified the weight of his baggage to be of 2700 Kgs and when it was carried by the Shipping Company from Toamasina Port to India, a revised bill of lading had been supplied by the Shipping Company claiming a sum of 5909 US\$ equivalent to about 3 lakh Indian currency, by which he has been defrauded or cheated by the Shipping Company and, therefore, he was compelled to make payment of the amount as per Annexures-A/1 and A/2, which is on the basis of revised bill of lading issued by the Mediterranean Shipping Company, S.A., GENEVA whereas Annexure-A/3 would show the original bill of lading in which the weight of his belongings is correctly recorded. If so, the revised bill of lading now sent by the Shipping Company is a total violation of the trust given to him by the Diplomatic Mission in Madagascar. It is on the above background, we have to analyze each document and to see whether the claim of the applicant is correct or not.

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8. Annexures-A/1 and A/2 would show that the weight of the baggage is not tallying with that of the original bill of lading, Annexure-A/3. Hence, the applicant submits that it was to be enquired into by first Respondent. However, by Annexure-A/4, he was compelled by the first Respondent to pay the excess amount to the Shipping Company for taking delivery of the consignment at Kolkata Port. When we considered the case of the applicant, a question cropped up as to whether there is any point to be considered on the above factual backdrop under Section 19 of the CAT Act. The nature of the claim now put forward by the applicant would show that he had sustained a loss of an amount of Rs. 3 lakh, equivalent to that of 5909 US \$ while taking delivery of his baggage and that apart he has sustained mental agony and damages to his reputation as an Ambassador of India for which he has claimed damages of Rs. 5 lakh. As we have already narrated in the preceding paragraphs, the applicant is entitled for carrying a baggage of 2500 Kgs whereas Annexures-A/1 and A/2 would show that he had carried double his entitlement. In the above circumstances, it is only a question of analyzing the factual position as that of a contract entered between the applicant and the Shipping

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Company and that apart a bill of lading can be considered only as a loading permit for which freight or the charge for carrying goods to be charged by the carrier and if there is any fraud or any cheat made by such carrier, it is not related to any of the conditions of service of the applicant as a Govt. officer within the meaning of Administrative Tribunal Act and Rules. But, it is only relating to a contract between the carrier and the applicant through the Indian Embassy of Madagascar. If so, the O.A. should not have been entertained by this Tribunal at all on this aspect as the claim of the applicant does not come under the purview of AT Act and Rules. However, as this Tribunal had already admitted the same, we have to deal with the O.A. on merit.

9. The main claim of the applicant, as we have already stated, is that he had paid an excess amount about Rs. 3 lakh to take delivery of his consignment at Kolkata Port when his consignment reached there. Though the applicant had got a case that he had paid the amount on demurrage on protest, that by itself will not absolve him of his liability of carrying the excess baggage as per the revised bill of lading given by the carrier. If there was any fraud committed by the carrier, it was



the duty of the said carrier to justify such revised bill of lading or demand made from the applicant. If so, for any violation or any fraud or any cheat made against any of the parties to the contract, it should be questioned only in a Court of Law, which has got jurisdiction over such claim. In this context, we found that there is a case put forward by the Respondents that the applicant himself signed the documents at the Toamasina Port regarding the consignment or the baggage, which he had agreed to be carried through the Indian Embassy in Madagascar with that of a Shipping Company, namely, Mediterranean Shipping Company, S.A., GENEVA.

10. It is also an admitted case of the applicant that the consignments were delivered at Kolkata Port on payment of charge for the excess baggage claimed as per the revised bill of lading. If so, for any fraud committed, the claim should have been made against the said carrier and not the Govt. of India. On this ground alone, the O.A. has to fail.

11. Further, the applicant himself admits that he is entitled for carrying only 2500 Kgs whereas as per the consignment which he had taken delivery of, though on protest, shows 5200 Kgs and to that effect he had not given any account



to the Govt. of India to show whether his baggage were within the permissible limit or not. Without taking such a step, the applicant claims the excess amount paid by him to the Shipping Company. Even if any fraud has been committed by the Shipping Company, this Court is not intended to take care of the claim of the applicant in that behalf. Apart from that, even as per the provisions of the Indian Contract Act and as per the provisions of Indian Bills of Lading Act, 1856, as amended from time to time, any claim against the carrier can be taken up before the appropriate Court and this Tribunal is not expected to consider such claim. It is also to be noted that although the applicant was advised by the carrier to weigh the belongings before taking delivery of the same at Kolkata for the purpose of verifying the veracity of revised bill of lading, but for the reasons best known, he did not choose to do so and also nothing comes out on record as to what prevented him from so doing.

12. On considering all these aspects of the case, we are of the view that this O.A. is devoid of any merit and is liable to be dismissed. Accordingly, the O.A. is dismissed.

13. Before we part with this order, we are of the view that since the applicant knowing fully well the law behind his



claim and the damages, which he has claimed cannot be adjudicated by this Tribunal under Section 19 of the Central Administrative Tribunals Act, has filed this O.A. and the Govt. of India has been dragged to this forum for the last four years, in the fitness of things, an exemplary costs should be awarded on the applicant. Accordingly, we impose costs of Rs. 5000/- on the applicant, which shall be recoverable from him by Respondent No.1 as per law. Ordered accordingly.

Chapatis
(C.R.MOHAPATRA)
MEMBER (ADMN.)

Thankappan
(K.THANKAPPAN)
MEMBER (JUDL.)

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