

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 293 of 2008

*Tuesday*, this the *18<sup>th</sup>* August, 2009

**C O R A M :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER  
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.G. Sukumaran,  
S/o. Gopalan,  
Chief Commercial Clerk, Grade-I,  
Southern Railway, Thiruvalla,  
Residing at Koovakada House,  
Vakathanam P.O., Kottayam ... Applicant.

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by  
General Manager,  
Southern Railway,  
Chennai : 600 003
2. Divisional Railway Manager,  
Southern Railway,  
Trivandrum : 695 014.
3. Senior Divisional Commercial Manager,  
Southern Railway,  
Trivandrum : 695 014. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 12.08.09, this Tribunal on ~~18.08.09~~ delivered the following:

**O R D E R**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant while working at Kottayam Railway Station as Chief Commercial Clerk, had, on 07-12-2000 effected delivery of 30 wagon loads of goods received from from Abohar Station (Northern Railways). Delivery of the said goods was on the basis of prepaid railway receipt at Abohar

Station. The Prepaid Railway receipt inter alia contained the following particulars:-

**"Train Load Condition Complied with**

**Party indented 30 BCX rake for T/L vide R/A 11 of 1997, Case No. 50. T/J Rate (TGT). Railway supplied 30BCNat their own convenient. Train Load Condition complied with."**

2. While the former was the Rubber Stamp endorsement, the latter was handwritten.
3. The applicant had effected delivery on finding the Railway Receipt in tact without any error relating to commodity, distance, rate, freight etc., No wharfage or demurrage accrued at Kottayam for the consignment.
4. Later on, the applicant was transferred to Thiruvalla, where he is at present serving as Chief Commercial Clerk. He had come to know that the Traffic Accounts Office at Chennai had raised a debit of Rs. 1,04,225/- in respect of the above deliver of goods, on the ground of undercharge since the indenting was only for 30 wagons instead of 35. As per Annexure I to order dated 31-08-98, issued by the HQ, Chennai to all the Divisions, the Standard rake size is 35, while minimum number of wagons to be loaded for Train Load Rate is 30. In fact the respondents had got an inquiry conducted and in the inquiry report dated 07-10-2004, the responsibility for non collection of the undercharges at the time of delivery, which was obligatory vide Indian Railway Commercial Manual Vol. II para 1820 was formally fixed against the applicant. The Commercial Branch of the Divisional office has, thus, vide Annexure A-2 communication dated 26.10.2004 directed the applicant to clear the outstanding amount of Rs. 1,04,225/- immediately.

5. The applicant filed his reply to the above communication, vide Annexure A-3, wherein he has intimated that he was not either given a copy of the report or heard on the findings and thus, there is a violation of principles of natural justice. He has also stated that para 1820 of IRCM does not apply to this case. He was guided by the R/R issued by the CGS/Abohar which contained the endorsement that the train load conditions have been complied with. The applicant was thereafter, issued with a charge memo under Rule 11 of the Railway Servants (Disciplinary and Appeal) Rules 1968, which contained the following statement of charges:

#### " STATEMENT OF CHARGES

Shri K.G. Sukumaran, CCC/1/TRVC while working as CCC/II/KTYM (Goods) had effected delivery on a consignment of 30 BCN wagon loads of wheat booked under Inv. No. 1, RR No. 025136 of 30/11/00 Ex-Abohar to KTYM on 7/12/00 without collecting the undercharges of Rs. 1,04,225/- due to Railways. The Railway Receipt had carried the remark that the party had intended for 30 BCX wagons only, while as per extant instructions to avail TLC rates, it is pre-requisite that party should intent for a standard of 35 BCX type wagons.

As per Indian Railway Commercial Manual Vo.II para 1820, it is the responsibility of the destination Station to recover undercharges as a result of check of invoices from consignee/endorse before delivery of goods. Thus, Shri K.G. Sukumaran failed to show absolute devotion to duty and acted in a manner quite unbecoming of a Railway servant violating Rule No. 3.1(ii) & (iii) of Railway Service Conduct Rules, 1966."

6. The applicant has furnished his reply therefor, vide Annexure A-5, wherein, he had annexed a communication dated 30<sup>th</sup> November 2000 from Chief Goods Supervisor N.R. Abohar to the Chief Goods Supervisor, Kottayam, which reads as under:-

Sub: Train load facility on consignment booked under invoice RA 025136 dt. 30.11.2000 Ex-ABOHAR to KOTTAYAM.

The subject consignment has been booked vide Northern Railway Rates Advice No. 11 of 1997 para17 Case No. 50T/J.Rake(TGT). The party placed indent for 30 BCXT as Kottayam Station is opened for handling 30 BCX/CRT rakes as per the Rates Advice in question (a photostat copy is enclosed). Southern Railway supplied 30 BCN against the demand of 30 BCXT at its own convenience hence, the train load facility is given.

This is for your information and further action."

7. The reply also contained another annexure which states, "Divisions continue to load 40 BCN rakes to Kottayam (KTYM) which is not capable to handle more than 30 BCN/BCX rakes. Advise to all concerned not to load more than 30 BCN/BCX rakes to Kottayam (KTYM) situated on Southern Railway."

8. The Senior Divisional Commercial Manager, Trivandrum had imposed a minor penalty of recovery of Rs 1,04,225/- being the amount of undercharge which the applicant had failed to recover from the consignee. The amount was to be recovered in 69 instalments of Rs 1500/- plus Rs 725/- Impugned order dated 31<sup>st</sup> May, 2007 at Annexure A-6 refers.

9. The applicant preferred an appeal against the said order vide Annexure A-7 on 17<sup>th</sup> July 2007. As no action was taken on the appeal, the applicant had moved this Tribunal vide OA No. 516/2007 which was disposed of with permission to make supplemental appeal and with a direction to the appellate authority to dispose of the appeal within a month from the date of receipt of supplemental representation. Annexure A-8 refers. Accordingly, the applicant had made his supplemental appeal, vide Annexure A-9 and the appellate authority after considering the appeal and supplemental appeal, passed the impugned Annexure A-10 order dated 9<sup>th</sup> October 2007 upholding the penalty order passed by the Senior Divisional Commercial Manager.

10. Aggrieved by the above order of penalty and the appellate order, the applicant has approached this Tribunal in this O.A praying for quashing of the said impugned orders.

11. Respondents have contested the O.A. They have referred to the conditions which are to be followed in cases where train load rate, a concessional rate is charged and the same are as under:-

(i) The customer should register his demand for a 'standard rake' of wagons. 'Standard rake size' is prescribed for different types of wagons based on operational requirements – i.e. 35 wagons for BCX type wagons, 40 wagons for BCN type wagons etc. When such a 'standard rake' is made available, the customer has to load all wagons.

(ii) If "standard rake" of wagons could not be supplied by Railway, the customer has to load at least the 'minimum number of wagons required for train-load rate'. For this purpose, 'minimum number of wagons' is notified such as 30 wagons for BCX type of wagons, 38 wagons for BCN type etc.

(iii) In situations where even the "minimum number of wagons required for train-load rate" as at (ii) above, could not be supplied by the Administration, "Train-load rate" will be granted to a customer, provided that he had registered his demand for 'standard rake' of wagons. In such cases, reason(s) for non-provision of requisite number of wagons has to be recorded by a 'Gazetted Officer'.

(iv) Train-load rate will not apply in cases where 'standard rake' cannot be run due to 'operational constraints', i.e. Situations such as 'tracks' in certain 'sections' not equipped to carry train-load, or destination stations not having facility to handle 'train-load' etc. In all such cases, the consignments will be booked and charged at "wagon-load rates" only.

12. It has also been contended that under the Railways' system of working, responsibility is vested with the destination station to ensure correctness of transactions prior to granting delivery of goods. As such, destination station has to verify the correctness of wagon-type, tonnage

loaded, class rate (train or wagon load) route, distance of carriage etc., for any errors. The destination station is also empowered to conduct the re-weighment of goods, check for misdeclaration of goods etc., The responsibility so vested with the destination station is a cardinal rule provision enshrined in Paras 1820, 1812, 1811, 1809 and 1808 of the Indian Railway Commercial Manual Vol II. Reference has also been made to Annexure R-2 order dated 31-08-1998 relating to instructions on the subject "Conditions for application of Train Load Class" Para 2.1 (c) of Annexure R-2 specifies that cases where Standard rakes cannot be run due to capacity constraints are not covered for grant of Train-load class.

13. The applicant has filed his rejoinder in which he has contended that Annexure R-2 is confined to loading within Southern Railway, whereas, the goods loaded in the instant case were by the Northern Railway which has its own orders. Each Railway grants concessions according to local conditions.

14. Respondents have filed their additional reply in which they have reiterated that the remarks on Annexure A-1 invoice that "Party had indented for 30 BCX" by itself was sufficient to arrive at the fact that the party had not indented for availing the train-load rate.

15. Counsel for the applicant argued that in so far as the responsibility of the applicant, he has to ensure as to the distance, class, Rate of the consignment and freight. In the instant case, the railway receipt reflected that the charges have been already paid and the rubber stamp endorsement clearly reflected **"Train Load Condition complied with"**

This itself is sufficient, for, the authority in the Northern Railway, as per their rules, had granted the concession of Train Load Rate though the

indentment was for 30 wagons instead of 35 wagons. Once this endorsement has been found, there is absolutely no need to ascertain whether there has been under-charge so far as rates are concerned. Further, prior to delivery, there had been correspondence, vide Annexure A-5(b) from the Chief Commercial Supervisor Northern Railway, Abohar to the Chief Commercial Supervisor, Kottayam. The said communication clearly is a pointer to the fact that consciously the Northern Railway had extended the concession. Thus, a concession granted by the Northern Railway cannot be upset by the applicant on the ground that the consignor indented only 30 wagons instead of 35 wagons. The counsel further argued that in so far as Kottayam is concerned, it cannot accommodate more than 30 wagons and this constraint had been taken due notice of by the Abohar Station, as is evident from Annexure 5(c).

16. Counsel for the applicant had also filed the following additional documents under M.A. No. 601/2009, which were entertained by allowing the said M.A :-

(a) Letter No. V/C 419/G/OS/KTYM dated 11th October, 2001 of the Commercial Branch of Trivandrum Division addressed to SCM/R/MAS As per this letter Both the CGS/ABS and the Divisional Officers at UMB were of the unanimous opinion that since the N. Railway rate advice No. 9 of 1996 restricted the booking of BCX wagons by a maximum of 30 Nos. to KTYM, the granting of TLC for 30 BCX wagons to KTYM is in order. Nothing was committed in writing by UMB division traffic department in this regard. The said letter contained two alternatives, one as to the methodology to be undertaken to realise the undercharge from the consignor itself, and the other "the whole undercharges knowingly brought about by UMB Division's erroneous interpretation of TLC rules, may be transferred to N. Railway."

17. Counsel for the respondents has argued that the applicant has a onerous responsibility of ensuring that the correct fare has been charged for the goods which were delivered and the Railway Receipt clearly

reflecting that only 30 BCX have been indented, he ought to have ensured that the concessional charges for Train Load are not applicable to the case. Again, being in Kottayam, where there is a constraint of loading/unloading beyond 30 wagons, there is no question of any T.L. Rate applicable.

18. Arguments were heard and documents perused. The following paras of Indian Railway Commercial Manual Vol. II are the provisions applicable to this case:-

**1442. Preparation of invoices.**— (a) After the goods have been carefully checked, counted, weighed and examined as to compliance of the packing condition, etc. and freight and other charges have been calculated and entered in the forwarding note, invoices should be prepared.

(b) The invoice form contains separate columns boxes for most of the information required to be entered therein, viz., chargeable distance, handled by, wagon owner and number, type of wagon, carrying capacity area, tare, total number of the wagons loaded, forwarding note number, risk rate, invoice number, date, station from with (numerical code) and to, charged via, carried via, name and address of the sender and consigned, number, description, marks, measurement, actual weight and charged weight of packages, class of rate chargeable, rate per quintal, freight charges, other charges total To-pay/Paid and remarks regarding defective condition of packing consignment. Columns for recoding undercharges and overcharges detected at destination station have also been provided in the form. Any further particulars, required to be recorded on the invoice, affecting the rate or condition of carriage, viz., particulars of permit, pass or license under which the consignment is booked, the remarks recorded by the render on the forwarding note regarding election of route, election of railway risk, when an alternative owner's risk rate exists, or for dispatch of the consignment in an open wagon instead of a covered wagon, etc., should be entered in the space available on the invoice. The particulars of credit note, if any, tendered In lieu of freight charges, should also be recorded on the invoice.

(c) Under the provisions of Section 65 of the Railways Act 1989 : (1) A railway administration shall—

(a) In a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loadings; or

(b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

(2) A railway receipt shall be prima facie evidence of the weight and the number of packages entered therein :

Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall be on the consignor, the consignee or the endorsee."

**1808. Examination of contents of consignment.—**

(a) The object of misdeclaration of goods by consignors and the preventive measures to be taken by forwarding stations are explained in Para 1416. The destination station, should also, in cases in which there is reason to believe that a consignment had been misdeclared, take steps to have the contents of the consignments examined, in the presence of the consignee, if possible. If, as a result of the examination, it is found that the goods had been misdeclared by the consignor, suitable action should be taken as per the instructions in force.

(b) The record of cases of misdeclaration of goods detected should be maintained at all stations and cases of frequent misdeclaration by a particular party, or from a particular station, or of a particular commodity, should be brought to the notice of the Divisional Commercial Superintendent in the same way as in the case of parcels traffic, vide Para 953.

**1809. Check of inward invoices.—**(a) The freight and other charges shown on the invoices should be carefully checked at the destination station immediately on receipt of the invoices. All undercharges, noticed during the course of this check, should be entered in the undercharge column provided for the purpose on the invoices and in the goods delivery book. Form Com./G-14 Rev. Similarly, overcharges due to error in classification, computation of freight or rate, not affected by description, should be entered in the overcharge column.

(b) All serious errors in invoicing, both in local and through booking, should be brought to the notice of the booking station and continued discrepancies reported to the Divisional Commercial Superintendent of the booking station for taking up with the staff at fault.

**1811. Responsibility of stations for undercharges.**

— (a) Receiving stations are held responsible for recovery of undercharges on goods traffic, both local and through, whether Paid or To-pay except in the following cases, which are debatable to the forwarding stations :—

- (i) in all cases where prepayment of freight is compulsory;
- (ii) undercharges of and under, one rupee in freight paid by credit note; and
- (iii) percentage charge due on animals, birds and goods containing valuable articles.

(b) The above exceptions, however, do not relieve the receiving station of the responsibility for checking the invoices. Undercharges in the excepted items detected at receiving stations should be reported to the Traffic Accounts Office and to the forwarding station. In the event of no such report having been made by the receiving station, it will be held responsible for such undercharges if, when debited by the Traffic Accounts Office to the forwarding stations, they are declared to be irrecoverable.

(c) Under the provisions of Section 78 of the Railways Act, 1989 notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to-Co re-measure, re-weight or re-classify any consignment;

- (ii) re-calculate the freight and other charges; and
- (iii) correct any other error or collect any amount that may have been omitted to be charged

**1820. Recovery of railway dues before delivery of goods.**

—Before delivery of goods, it should be seen that all railway dues and other charges have been paid. Wharfage and demurrage charges should be levied under tariff rules and recovered, from the consignees endorsee before the removal of goods from railway premises. Similarly, all undercharges noticed as a result of check of invoices, weighment of goods, etc, should be recovered from consignees/endorsee before delivery of goods. As regards overcharges claimed at the time of delivery, the procedure indicated in Chapter XXI should be followed

**1821. Delivery of goods on production of railway receipt.**

— (a) The persons claiming the delivery should be required to produce the receipt granted to the sender at the forwarding station and the same should be taken back from him before delivery of goods-Goods are not to be delivered to any person other than the invoiced or endorsed consignee. The delivering Goods Clerk should carefully observe the instructions given in Para 956 to guard against the use of fraudulent railway receipts and be careful to see that the receipt presented to him is in every way genuine

and correctly prepared. If it has been endorsed, he should see that each endorsement is made by the previous holder of the receipt.

(b) Under the provision of sections 76 and 77 of the Railways Act, 1989 :—The railway administration shall deliver the consignment under a railway receipt on the surrender of such railway receipt ;

Provided that in case the railway receipts is not forthcoming, the consignment may be delivered to the person, entitled in the opinion of the railway administration to receive the goods, in such manner as may be prescribed "

(c) "Section 77" :—Where no railway receipt is forthcoming and any consignment or the sale proceeds of any consignment are claimed by two or more persons, the railway administration may withheld delivery of such consignment or sale proceeds, as the case may cedes in such manner as may be prescribed. "

20. The entire issue revolves round the extent of indenting and the number of wagons made available. Even if 30 BCX wagons alone are available, for availing of the concession, there must be an indenting of 35 BCX wagons. The inability to provide the requisite number of wagons as indented should result in less number of wagons used. In that event, notwithstanding the fact that only 30 wagons were made available, though there was a requisition for 35 wagons, the Train Load rate would apply, as for such a non availability of wagons, the consignor should not be penalized. In the instant case, correspondence exchanged between the Chief Commercial Supervisor, Abohar and his counterpart at Kottayam goes to show that by 30<sup>th</sup> November 2000 itself, it was made known to the Chief Commercial Supervisor that the Train Load rate alone had been charged for the 30 wagons and it was clearly informed to the Chief Commercial Supervisor, Kottayam that the indenting was also for 30 wagons. This decision of the Northern Railway and their satisfaction as to the Train load condition being satisfied has been reflected in the Railway Receipt as well both as an endorsement of a rubber stamp, as also in hand. The applicant having found such an endorsement, had acted

bonafide and effected delivery. Any one in his place would have acted in the same way. Had there been no such endorsement with the rubber stamp, the applicant could be fastened with the liability. Again, when the extent of indenting is the deciding factor in such cases, there appears no specific column in the printed format in this regard. If only there is clear printed entry as to the number of wagons requisitioned, number of wagons made available, and whether Train Load Rate is allowed by competent authority, that would have been an effective check in such cases. Again, the reasons recorded by the Senior Divisional Commercial Manager/TVC in his letter dated 11-10-2001 (Annexure MA-1 to MA No. 601/2009) that there is erroneous interpretation by the Ambala division and hence, the debit has to be transferred to them, is more logical, reasonable and acceptable. It is not merely the rubber stamp, but a separate letter dated 30<sup>th</sup> November 2000 (Annexure A-5-b) in this regard had been addressed by Chief Commercial Supervisor Abohar Station (Northern Railway). The same implies that there has been a proper consideration and the rate charged was as per rules.

21. One more aspect to be seen here is that the applicant had been proceeded against, under the provisions of Rule 11 of the Railway service (Disciplinary and Appeal) Rules 1968. The said Rule reads as under:-

**11. Procedure for imposing minor penalties.-**

(1) Subject to the provisions of sub-clause (iv) of clause (a) of sub rule (9) of rule 9 and of sub-rule (4) of rule 10, no order imposing on a Railway servant any of the penalties specified in clauses (i) to (iv) of Rule 6 shall be made except after-

(a) informing the Railway servant in writing of the proposal to take action against him and of the imputation of misconduct or misbehaviour on which it is proposed to taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

- (b) holding an inquiry in the manner laid down in sub-rules (6) to (25) of rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Railway servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case, it is proposed, after considering the representation, if any, made by the railway servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rule 9, before making any order imposing on the Railway servant any such penalty.

(3) *Deleted.*

(4) The record of the proceedings in cases specified in sub-rule (1) and (2) shall include-

- (i) a copy of the intimation to the railway servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any,
- (iv) the evidence produced during the inquiry, if any;
- (v) the advice of the commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor. "

22. The applicant, in his representation dated 23<sup>rd</sup> June 2006, sought for an inquiry and the same had not been considered. In ground (b) also, he had raised this issue but there has been no rebuttal for the same. The rules stipulate that the representation has to be considered before imposing the penalty. There is no indication that the disciplinary authority has considered the same and recorded his finding. Thus Annexure A6

order is not comprehensive and cannot stand judicial scrutiny.


23. In view of the above, we are of the concrete view that the penalty order issued vide Annexure A-6 and appellate order at Annexure A-10 are liable to be set aside. We order so. The O.A. is **allowed**. Any amount recovered in pursuance of the above orders should be refunded to the applicant within two months.

24. No costs.

(Dated, the 18<sup>th</sup> August, 2009)



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



**(Dr. K B S RAJAN)**  
**JUDICIAL MEMBER**

cvr.