

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 416/89

~~Transfer Application No:~~

DATE OF DECISION 23.2.1993

Shri P.B.Pandit & Ors. Petitioner

Shri K.R.Jadhav Advocate for the Petitioners

Versus

The General Manager, C.Rly.Bombay VI Respondent

Shri V.G.Rege Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K.Dhaon, Vice Chairman

The Hon'ble Shri Ms. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

S.K.Dhaon
(S.K.Dhaon)
Vice Chairman

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(13)

OA.NO. 416/89

Shri Padmakar Baburao Pandit & Ors. ... Applicant
v/s.

The General Manager,
Central Railway, Bombay V.T. & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri K.R.Jadhav
Advocate
for the Applicant

Shri V.G.Rege
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 23.2.1993

(PER: S.K.Dhaon, Vice Chairman)

Between 1.4.1982 to 18.4.1982 the applicants were posted as Booking/Coaching Clerks at Central Railway Station, Igatpuri, Dist. Nasik. They booked during the said period perishable articles on passenger/express/~~mail~~ trains. According to the department they fail^{ed} to realize a supplementary charge at the rate of 20% and thus caused a loss to the tune of Rs.34134/- to the Railway Administration. Orders were passed for recovering the said amount from their respective salaries. Their representation was of no avail. They have, therefore, approached this Tribunal by means of this application.

2. A reply has been filed on behalf of the respondents.

Learned counsel for the parties have been heard.

3. Admittedly, on 1.4.1982 a Special Through Rate Circular 3 of 1982 (Coaching) was issued by the Chief Commercial Superintendent. According to this Circular, a ~~levy~~ of surcharge at the rate of 20% was to be imposed on those carrying perishable items either by Express or Mail or Passenger Trains. Thus, the applicants were under an obligation to realise the supplementary charge in accordance with the said ~~circular~~. The stand taken by them is that they

acquired knowledge of the said Circular for the first time on 18.4.1982 when the copy of the same was received at the Igatpuri station. In the reply filed it is just denied that the applicants had not acquired knowledge of the said Circular when it was issued. No attempt has been made to bring any material on record or to produce any material to indicate as to when was the Circular posted to Igatpuri station or was sent to Igatpuri station, and who received the same. On the contrary, the applicants in their representation/appeal dated 25.1.1987 took a categorical plea that said Circular was received by the Station Superintendent, Igatpuri on 18.4.1982 and Coaching Clerks started levying 20% after the receipt of the said Circular. It appears that the said representation/appeal was disposed of by the Divisional Railway Manager (C) on 2.6.1987, a true copy of order is filed as Annexure - 'E' to the application. From a perusal of the same, it has transpired that the said officer has not made any effort whatsoever to meet the case set up by the applicants. On the material on record, we see no justification for disbelieving the assertion of the applicants that they acquired knowledge of the Circular only on 18.4.1982.

4. In the reply filed it is also asserted that even under the earlier Circular No. 11 A of 1981 the aforesaid surcharge was levyable and the applicants were not justified in not levying the surcharge on the basis of the last Circular. The applicants have produced before us a copy of the Notification for Spt.T.R.C.No. 3-A of 1982 (Cog.) which, it appears, was issued on 23.3.1982 under the signature of one Shri R.S.Bhatnagar for Chief Commercial Superintendent. This document shows that there was a specific note : "No supplementary Charge should be levied on these rates except where otherwise notified." The applicants' case is that this note coupled with the absence of the recital, as to be found in the Circular of 1981, that no perishable traffic should be carried by Mail/Express trains except on payment of a surcharge of 20% for all distances led them to bonafide believe that w.e.f.

1.4.1982 the levy of the said surcharge have been done away with. To rebut this argument, Shri Rego, the learned counsel for the respondents, relies upon paragraph 2.4 of the said Circular dated 23.3.1982 which reads : "There is no change in any other charges such as price of platform ticket, Monthly/Quarterly season ticket, Produce Vendor/Market Vendor tickets, monthly tickets for carriage of tiffin baskets and reservation fee etc." Learned counsel is right that the list of the items mentioned in paragraph 2.4. is not exhaustive. However, the argument of the learned counsel will not carry the case of the respondents too far. The question to be determined is whether a reasonable person after perusing the afore-quoted recital and the recitals in paragraph 2.4, could have taken the view that w.e.f. 1.4.1982 it was not necessary to realise the aforesaid supplementary charge of 20%. After giving a thoughtful consideration to the matter, we are of the opinion that even a trained legal mind could have taken the view that contents of paragraph 2.4 did not modify or run counter to the specific circular aforequoted.

4) The liability ~~of~~ the applicants, for the loss caused to the Railways, can be fastened if we come to the conclusion that they (applicants) failed to perform their duty. As already indicated, the applicants acted bonafide in understanding that by the Circular dated 23.3.1982 the levy of supplementary charge had been done away with.

5. Our attention is drawn to paragraph 2732 of the Indian Railway Commercial Manual Vol.II. We have read this paragraph carefully. In substance, it provides for imposing penalty of recovery from the pay of the staff concerned for the pecuniary loss caused to the administration by his negligence or breach of orders. We have already dealt with the aspect of the breach of orders. The question of observing an order and any breach of it arises only ~~when it is he been passed~~ ^{when it is he been passed} and its contents are clear ~~and~~ and unambiguous. While committing a breach of an order, one must be aware of the contents of the order. If two reasonable interpretations are possible ~~of~~ to an order and one of them is adopted, there can be

6. no question of a breach of ^{such an} order. Negligence is a term of art. It has to be understood in the contents of the ^{Law} of Torts. In substance, it means that there must be a legal duty and there should be a breach of such a duty. We again come back to the contents of the Circular. If the applicants did not commit any breach of any order, ^{they} ~~this~~ certainly ~~failed~~ failed to perform their duty.

7. 6. We, therefore, come to the conclusion that ~~the~~ recovery from the applicants will not be justified.

7. This application succeeds and is allowed. The respondents shall not ~~recover~~ from the applicants a sum of Rs.34134/-.

8. There shall be no order as to costs.

U. Savara
23.2.93
(MS. USHA SAVARA)
MEMBER (A)

S.K.D
(S.K.DHAON)
VICE CHAIRMAN

mrj.