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रेल दावा अधिकरण
गुवाहाटी न्यायपीठ
RAILWAY CLAIMS TRIBUNAL
GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Mrs. Leena Sarma, Member (Technical)

Mr. Mahtab Ahmad, Member (Judicial)

Date of Judgment: **26.03.2024**

SL No	Case No.	Name of the Applicant (s)	Respondent Railway (s)	Name of the Applicant Counsel	Name of the Respondent Counsel
1.	OAIII-98/2018 OAIII/GHY/21/2018 (ONLINE)	M/s CTA Logistics Ltd	N.F. Railway	K.P. Maheswari	P.S. Deka
2.	OAIII-04/2020	M/s Bajaj Steel.	N.F. Railway	K.P. Maheswari	P.S. Deka

Mrs. Leena Sarma, Member (Technical)

COMMON JUDGEMENT

1. The common issue in all these two cases is refund of demurrage charge. The cases are clubbed together for the purpose of adjudication, cases are analyzed individually and a common order is passed.

2. **Case No. OAIII-98/2018**

   i) The Claim pertains to a mixed goods rake booked from LCH (Lalgarh) to NGC (New Guwahati) on 16.10.2017.

ii) The rake was placed for unloading on 25/10/2017 at 17.45 Hrs and unloading was completed on 27.10,2017 at 14.35 Hrs.

iii) Penal Demurrage of Rs. 1,76,400/- accrued and it was paid by the applicant on 02.11.2017 along with 5% GST.

iv) Divisional Railway Manager/Lumding had waived 05% of the accrued Demurrage when a prayer was made for waiver by a letter Dated 07.11.2017.

v) Then the applicant made an appeal to the GM/NFR, CCM/FM/NFR and DRM/Lumding through a letter Dated 31.05.2018 to review the Railway decision of 05% waiver and to allow full waiver.

vi) All facts as enumerated in the Claim application and as adduced from different documents have been gone through and the prayer for full waiver/refund is dismissed on the following grounds:

a) The applicant is a regular customer of the Railways and as such is presumed to be aware about different rules/statutes pertaining to accrual and waiver of Demurrage Charges. The appeal made by the applicant to the General Manager or to the Chief Commercial Manager of the concerned zonal Railways should have been made within 30 days of the receipt of the order of 5% waiver as provided in the Para 3.3 of the Rates Master Circular for waiver of DC & WC, 2016. The letter of 05% waiver was issued on 21.02.2018. When it was received is not known from the available records. But there has been no fact to support that the letter was received very late and the appeal to the higher authority was made within one month of receipt of that waiver letter.

b) The issue of not getting any notice on the issue of imposition of penal demurrage was first raised in the letter addressed to the General Manager as late as on 01.09.2018 and it was never raised before. Had it been raised in the first waiver letter, this could have been examined by the Railways at that time. However, when a new issue is raised after more than one year, the records cannot be retrieved and grievance addressed.

c) It is understood that the 5% waiver was granted after examining all the relevant issues and from the documents as placed, there is no reason to believe that it was an unjust executive decision. A court can only intervene when there is inaction on the part of the executive or there has been unfair decision. Here in this case, this is not so as it appears from the records as placed.

d) Therefore, refund for the waived portion, Rs. 9450/- is to be made immediately from the date of filing to the date of this order. This is to be refunded within 90 days of the receipt of the order failing which 9% rate of interest is to be levied from the 91st day to the date of actual payment.

e) The prayer for waiver and refund of the rest 95% of the Demurrage Charge is not allowed.

3. Case No. OAIII-04/2020:

i) The Claim pertains to a cement rake booked from PMLR to HMY (Harmati) on 21.09.2017

ii) The rake was placed on 28.09.2017 for unloading at 8-15 Hrs in the morning and released on 29.09.2017 at 11-15 Hrs and Demurrage accrued Rs. 390600/-.

iii) Railway granted 20% waival vide order Dated 30.10.2018 and balance amount paid.

iv) Then appeals were made to the higher authorities at different times to reconsider and waive and refund the rest amount.

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v) The ground furnished for consideration of waiver was that there was Durga Puja during that period and consequent traffic restrictions. There was a letter also not to place the rake in view of the ongoing Durga Puja festival when labour and trucks were not available.

vi) During Claim Application stage, a new issue of not getting informed about Penal Demurrage was raised.

The claim for refund of the 80% of the accrued Demurrage, Rs 3,16,200/- is not allowed on the following account:

a) Railway system is a dynamic system with scarce rolling stock resources. Therefore, it is not possible to stop placement of a rake for any festival. A festival is not an unforeseen situation. It could be foreseen at the time of loading itself. Therefore, the letter written to stop placement of the rake has got no relevance as far as this case is concerned.

b) It is understood that the 20% waiver was granted after examining all the relevant issues and from the documents as placed, there is no reason to believe that it was an unjust executive decision. A court can only intervene when there is inaction on the part of the executive or there has been unfair decision. Here in this case, this is not so as it appears from the records as placed.

c) The issue of not getting any notice on the issue of imposition of penal demurrage was first raised in the Claim Application filed in the RCT as late as on 01.05.2020 and it was never raised before. Had it been raised in the first waiver letter, this could have been examined by the Railways at that time. However, when a new issue is raised after more than two years, the records cannot be retrieved and grievance addressed.

d) Therefore, refund for the 20% waived portion, Rs. 78120/-, is to be made immediately if not done earlier. This is to be refunded from the date of filing to the date of this order. This is to be refunded within 90 days of the receipt of the order failing which 9% rate of interest is to be levied from the 91st day of the receipt of the order to the date of actual payment.

e) The prayer for waiver and refund of the rest 80% of the Demurrage Charge, Rs. 3,16,200/- is not allowed.

ORDER

1. For Case No.**OAIII-98/2018,** refund of waived amount of **Rs. 9,450/-** (Rupees Nine Thousand Four Hundred and Fifty Only) is allowed to the applicant the claim for demurrage. Hence, partially allowed. Respondent is directed to pay with 6% rate of interest from the date of filing of the claim to the date of order. This has to be paid within 90 days of the receipt of the order by the respondent failing which 9% rate of interest has to be paid from the 91st day of the receipt to the date of actual payment.

2. For Case No.**OAIII-04/2020,** waived amount of **Rs. 78,120/-** is to be refunded immediately if not done earlier with 6% rate of interest from the date of filing. This is to be refunded within 90 days of the receipt of the order failing which 9% rate of interest is to be levied from the 91st day of the receipt of the order to the date of actual payment.

3. With these observations and directions, the above two cases are hereby stands disposed of accordingly.

4. Let the case files be consigned to the record room after due compliance.

26.03.2024

(Mahtab Ahmad)
Member (Judicial)

(Leena Sarma)
Member (Technical)