रेल दावा अधिकरण
गुवाहाटी न्यायपीठ

RAILWAY CLAIMS TRIBUNAL

GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

LeenaSarma, Member (Technical)
Mahtab Ahmad, Member (Judicial)

Date of Judgement: 19.02.2024

Sl. No.	O.A. No.	Name of Applicant	Name of Respondent
1	III-77/2014 [OA(III)/GHY/2014/0077]	M/s. Rathi Salt & Grains Pvt. Ltd. Shree Sadan, Plot no.207, Ward No.12/B, Police Station Road, Gandhidham (Gujarat)	GM, N. F. Railway GM, Western Railway
2	III-51/2023 [OA(III)/GHY/51/2023]	M/s. JiwanTradings Co. Near Prakash Cinema, North Bongaigaon P.O. & Dist. Bongaigaon, Assam.	GM, N. F. Railway GM, Western Railway
3	III-52/2023 [OA(III)/GHY/52/2023]	M/s. JiwanTradings Co. Near Prakash Cinema, North Bongaigaon P.O. & Dist. Bongaigaon, Assam.	GM, N. F. Railway GM, Western Railway

Present: ShriK. P. Maheshwari, Learned counsel for the applicants
Shri C. M. Pradhan, Learned Counsel for the respondent.

Mahtab Ahmad, Member (Judicial)

COMMON JUDGEMENT

Since in all the above claim cases identical issues of law and facts are involved therefore, all the above cases were heard together and are being decided by a common judgment.

2. Details of Inv./RR/dates of booking, consignment details etc. are as follow –

O.A. No.	Inv./RR No./date	Consignments details	From	To	Claim
III-77/2014 [OA(III)/GHY/2014/0077]	02/212000240 20.01.2013	51474 Packets I/Salt Booked in T/L	ADESAR	JIRINIA	TC/Calculation mistake of Rs.92288/-
III-51/2023 [OA(III)/GHY/51/2023]	02/212000637 13.02.2019	50146 Packet Salt Booked in T/L	ADESAR	NEW BONGAIGAON	TC/Refund on account of NTR Rs.96794/- PUC Rs.9400/-
III-52/2023 [OA(III)/GHY/52/2023]	03/212000647 13.02.2019	49782 Packets Salt Booked in T/L	ADESAR	NEW BONGAIGAON	TC/Refund on account of NTR Rs.94969/-

3. In all the above cases the applicants seek refund of overcharge realized by the respondent railway as terminal charge for OTS and DTS, overcharge due to calculation mistake of NTR in admitting the simultaneous concessions and in OAIII-51/2023 claim for refund of PUC collected at originating station on the allegation of the consignment found over loaded up to 2.4 tone. The basis of claim and challenge to the above charges contained in the claim applications are as under:

3.1 **PUC in OAIII-51/2023**, the applicant seeks refund of punitive charge Rs.9400/- levied and collected on the allegation of 2.4 tone overloading to the consignment. The applicant has challenge the above collection alleging that the above charge has been levied and collected without issuing any show-cause notice and weighment chart to the applicant or the consignor. As such, the above collection is arbitory and illegal. The consignment was not overloaded, booking was done at originating station under supervision of the railway personnel in sound, fit and secured condition and there was no question of the consignment found over loaded on weighment. It is for the railway to prove the justification of collection of the above over-charge.

3.2 **Terminal Charge:** For refund of terminal charge in all the above cases the applicants assertion are that although the originating goods sheds and the destination goods sheds are owned and controlled by the railway but they are not railway goods sheds either having facilities as per Railway Board Circular No. 2007/PL/25/1 dated 05.06.2007 read Freight Marketing Circular no.20/2020 dated 14.10.2020 and Rate Circular No.24.2018 (No.TCR/1078/2018/17) dated 27.12.2018 or they were notified as Railway Terminal under the above Railway Board Circular. They are also not goods sheds of Green Field or Brown Field category. They are also not covered with Freight Marketing Circular No.20/2020 dated 14.10.2020 and do also not fall under the policy of LTCC (Long Term Tariff Contracts) and PFTs (Private Freight Terminals). As such, the collection of Terminal Charge regarding the subject terminal goods sheds are beyond jurisdiction and illegal. It was further asserted that Rate Circular by which terminal charge were levied from Rates Circular No. 58/2007 dated 29.05.2007 up to the latest Rate Circular No. 24 of 2018 dated 27.12.2018 do not applicable to the subject consignments having been the same as bagged consignment. Thus, levy and collection of the terminal charge on the subject consignments are unauthorized and not leviable. Moreover, the Rate Circular which govern the levy and collection of the terminal charge have not been laid down before the parliament for its assent as per section 199 of the Railways Act therefore, they are not remained effective. As such, collection of terminal charge regarding the subject terminal are unauthorized, illegal and bad and the applicant is entitled to get refund of the same.

3.3 **Error in calculation method of NTR and concessions.** The applicant's first challenge to the calculation contained in Railway Receipt of the subject consignment that the calculation of concession/rebate has not been carried out as per determination of the Hon'ble Gauhati High in MFA No.67/2014 which requires calculation of concession on freight rate as per Box No.39 of the RR. Moreover, rebate of 6% for N. E. Region was not given on NTR rather, it is calculated after deducting graded concession on iodize salt for human consumption from the NTR which is not in accordance with relevant Rate Circulars.

3.4. On the above account in OAIII-77/2014 refund of total Rs.416887 in OAIII-51/2023 Rs. 3,12,408/- and in OAIII-52/2023 Rs.3,00,541/- along with interest @ of 12% per annum from the date of application and cost of the proceedings have been sought for refund.

4. In all the above cases the respondent railway has contested the claims by filing separate written statement, however, the defence of the respondent are almost common which are stated as under:-

4.1. **Punitive charge for over loading** – Since this charge has been levied and collected at originating station with the railway receipt of the subject consignment, the respondent no.1 in OAIII-51/2023 has contended that in view of provision of 106 (3) of the Railways Act, 1989 and the direction contained in Circular No.RCT/DLI/Judl. Policy/2021 dated 26.08.2021 Principal Bench of the Railway Claims Tribunal, New Delhi the respondent is unnecessarily impleaded in this case and it has no liability to refund the impugned punitive charge. The respondent no.2 Western Railway stated that the CGS has passed remark that rake weighed at SN LR and RR was generated after weighment. Since, there was an overloading of 2.4 tones, the impugned punitive charge has been charged with freight and other charges in the railway receipt as per law and rules. There is nothing in the written statement of respondent no.2 regarding pleading of the applicant's that the above charge has been levied and collected without giving any show-cause notice and without supplying the weighment chart, as such, it is illegal, unfair, unjust and arbitrary.

4.2. **Terminal charge**–In all the above cases against the applicant's claim for refund of terminal charges (OTS & DTS) the respondent contended that the same were levied and collected as per relevant Rate Circulars.Terminal charge was levied first time by Rate Circular no.58/2007 No.TCR/1078/2007/06 dated 29.05.2007 supercessioned and amended time to time up to the Rate Circular no. No. 24 of 2018 dated 16 of 2019 which are referred in claim application of the applicant. Railway Board Circular No. 2007/PL/25/1 dated 05.06.2007 Freight Marketing Circular No.20/2020 dated 14.10.2020 is not related to levy and collection of the terminal charge rather, it is meant for development of certain railway goods sheds with certain terminal facilities contained in the above Railway Board Circular dated 05.06.2007, 09.11.2016, Circular No.20/2020 dated 14.10.2020 etc. In view of the latest Rate Circular No. No.24.2018 (No.TCR/1078/2018/17) dated 27.12.2018 terminal charge is applicable to the all railway own goods sheds on inward or outward traffic for all commodities except container traffic. Earlier by Rate Circular No. 58/2007 No.TCR/1078/2007/06 dated 29.05.2007 only bulk and loose goods were brought under liability of payment of terminal charge from railway own goods sheds. Railway has also issued a clarificatory Circular No.TCR/1078/2007/06 dated 17.07.2007 specifying that the terminal charge is applicable only to bulk and loose consignment and not to the consignment consisting of commodities packed in bag, tin, carton and drum etc. By Rate Circular No.74 of 2007 No.TCR/1078/2007/6 dated 19.07.2007 a separate category of Iron Ore which is bulk and loose commodity was brought under the terminal charge @Rs.40/- per ton while, for other loose and bulk goods rate was remained Rs.10/- per ton. By Rates Circular no.92 of 2007 No.TCR/1078/2007/6 dated 18.09.2007, the above two Rate Circular were superseded and new category of goods with new rate was specified under which Iron

Ore was kept separate @ of Rs. 40/- per ton while, all other traffic was kept under rate of Rs.10/- per ton and container traffic was exempted from the levy of terminal charge. The above circular was amended time to time regarding the rate and other description and finally Rate Circular No.24 of 2018 dated 27.12.2018 with the sanction of the Union Government is issue thereby levy of terminal charge @ Rs.20/- Per MT on both inward and outward traffic for all commodities (excluding container traffic) being handled at Railway goods sheds and Private Freight Terminals (PFTs) both in Greenfield and Brown Field handling point has been imposed. Accordingly, in all the above cases terminal charges have been levied and collected lawfully. It is further asserted that those Rate Circulars which provides for levy and collection of the terminal charge are not framed under rule making power of the government in section 198 or other such sections contained in the Act in respect of a particular matter. Therefore, no parliamentary sanction or assent is required for them necessitating them to be tabled before the parliament under section 199 of the Railways Act. Those Rate Circulars are issued under section 30 of the Railways Act which empowers the Railway Board with the prior consent of the government of India to levy freight and other charges regarding carriage of goods and passengers. Though the consignment are bagged consignment but the Rates Circulars effective on the date of subject consignment as to the levy and collection of the terminal charge, no such distinction are there which exempts bagged consignment from the levy of terminal charge. Initially the bagged consignment was not brought under levy of terminal charge and in this respect the Railway Board has issued a clarificatory Circular No.TCR/1078/2007/06 dated 17.07.2007 in respect of Rate Circular No.58 of 2007 No.TCR/1078/2007/6 dated 29.05.2007. But by Rates Circular no.92 of 2007 No.TCR/1078/2007/6 dated 18.09.2007 the previous Rate Circular had been superseded and rescinded afterwards, no differences between bulk and loose goods and bagged consignment is remained in existence for the purpose of levy of terminal charge and the same situation is coming up to now. Therefore, the applicant's contention that being a bagged consignment it was exempted from the levy of terminal charge has no force. In the above context specific annulment of the Railway Board Circular No.TCR/1078/2007/06 dated 17.07.2007 was also not necessitated and the same being annulled specifically being not cannot make the consignment contained in bags exempted from levy of terminal charge.

4.3. **Over charge due to mistakes in calculation of NTR and graded concession: -** in this regard the respondent defence in OAIII-51/2023 that the RR is generated on the basis of terminal management system without any human intervention which is update and includes the freight and charges applicable to the consignment. Therefore, there is no mistake in calculation either in NTR or graded concession. In fact, as per Railway Board Circulars no. 25 of 2008 graded concession along with any concession is calculated after deducting first the graded concessions from the NTR and afterwards admitting any farther concessions on the reduced NTR . There is no wrong in calculation of NTR as well as admitting graded concession salt and N. E. Region concession, simultaneously. On the above averments all the three cases of the applicant's claim have been contested with the prayer to dismiss the claims.

5. **In OAIII-51/2023 and OAIII-52/2023,** the following issues were framed:

1. Whether legal and valid notice under 106 of the Railway Act, 1989 has been served?
2. Whether the applicant hold legal title?
3. Whether the applicant is entitled for compensation as claimed in the claim application and to what extent?
4. Relief and costs?

In both the above cases applicant's case is not for compensation rather, they sought relief of refund of certain alleged overcharges. Therefore, it is apparent that issue no.3 in OAIII-51/2023 and OAIII-52/2023 are framed wrongly. So the above issue no.3 framed in the above two cases are struck off and recast as under:

3. Whether the applicant is entitle for refund of alleged overcharges?

6. **In OAIII-77/2014,** the following issues were framed:

1. Whether the claim application is properly signed, verified and filed?
2. Whether legal and valid notice under 106 of the Railway Act, 1989 has been served?
3. Whether the applicant is entitled for claim amount?
4. Relief and costs?

7. In the above cases the parties have led no ocular evidence but have filed documentary evidences which are on record and shall be referred in the course of discussion as per necessity and relevancy.

8. We heard Ld. Counsels for the parties and perused the record.

Discussions and finding on the above issues

9. Issue No. 1 of OAIII-51/2023 and OAIII-52/2023 and Issue No.2 of OAIII-77/2014

1. **Whether legal and valid notice under 106 of the Railway Act, 1989 has been served?**

9.1 In all the above cases the applicant has filed copy of the notice under section 106 of the Railways Act, 1989 dated 27.05.2014, 31.05.2021 and 01.04.2019 respectively. Notices are address to the respondent railway administration. Those notices bear receiving and registered postal receipt to the respondent railway administration. The receivings are dated 30.05.2014, 28.05.2014, 11.06.2021, 03.04.2019 respectively while registered postal receipts are dated 03.04.2019, 29.04.2019 and 27.04.2019. In OAIII-77/2014 acknowledge of the notice by N.F Railway dated 14.05.2014 and Western Railway dated 21.03.2013 following notice dated 13.03.2013 with receiving of N.F Railway and registered postal receipt dated 16.03.2013 are available on record. The consignment was book through invoice no.02 RR No.212000240 dated 20.01.2013. Thus, in this case notice under section 106 of the Railways Act has been sent and served within stipulated time of six months as per section 106 of the Railways Act. In OAIII-51/2023 notice dated 01.04.2019 is followed by acknowledgement of the Western Railway dated 26.04.2019. The consignment was booked through invoice no.02 and RR No.212000637 dated 13.02.2019 and in OAIII-52/2023 there is no specific denial of service of notice and its effectiveness within time by the respondent no.2 Western Railway in respect of RR No.212000647 dated 22.03.2019. As such, in these cases notice under section 106 of the Railways Act, 1989 got served to the respondent within stipulated time. On perusal of the notice we found that they contain all the necessary facts in respect of instant claims. As such, in all the three cases notice under section 106 of the Railways Act, 1989 were sent and got served upon the respondent within stipulated time and the notices are legal and valid. Accordingly, the above issues are decided affirmatively in favour of the applicant and against the respondent railway.

10. Issue No. 2 of OAIII-51/2023 and Issue No.2 of OAIII-52/2023

2. Whether the applicant hold legal title?

10.1 In the above cases the above issue are framed on the respondents plea to the effect that the applicant does not hold title to file the claim as to the subject consignment in view of the provision of section 74 of the Railways Act. But, the above contention is found meritless as in both the cases, applicants assertions is that they are endorsed consignees of the subject consignment. RR available on the record shows that in both the cases the applicants are endorsed consignee. Moreover, there is no specific denial on the parts of the respondent railway about the above stated status or capacity of the applicant.Section 74 of the Railways Act provides in clear terms that 'The property in the consignment covered by a railway receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the consignor' It is not in dispute that the applicant asendorsed consignee has taken delivery of the subject consignment on production of RRs to the railway authority at destination station. Thus, it is satisfactorily proved that the applicant hold title for the present claim in respect of the subject consignment. Accordingly, the above issuesin both the cases are decided affirmatively in favour of the applicant and against the respondent railway.

11. Issue No. 1 of OAIII-77/2014

1. Whether the claim application is properly signed, verified and filed?

On perusal of record of the above claim petition we find that as per RR of the subject consignment, applicant M/s Rathi Salt & Grains Pvt. Ltd. is consignee of the subject consignment. The claim application is in the name of M/s Rathi Salt & Grains Pvt. Ltd as applicant. The claim application is filed by one Raghubir Rathi as director of the applicant company. There is PAN Card of the applicant company in which date of incorporation is shown as 05.01.2009 with cancel cheque in the name of applicant company. The applicant again produced extract of Resolution of Board of Directors dated 02.01.2010 in which Mr. Raghubir Rathi the director of the company has been authorized to file claims etc. before a legal forum. In view of the above evidences there is no doubt that Mr. Raghubir Rathi as director of the applicant company is entitle to verify, signed and filed the present claim application before this Tribunal. Accordingly, issue no.1 of 77/2014 is decided in favor of the applicant and against the respondent railway.

12. <u>Issue No. 3 of all the above cases</u>

3. Whether the applicant is entitle for refund of alleged overcharges ? (OAIII-51/2023 and OAIII-52/2023)?

3. Whether the applicant is entitle for claim amount? (OAIII-77/2014)

12.1 In all the above three cases, the above issue are related to applicant's respective claim. In the above claims their claim are in respect of punitive charge, terminal charge (OTC and DTC) and erroneous calculation of graded concession.

We are dealing the applicants above claims under following captions:

12.2 **Punitive charge (PUC) for alleged overloading of the consignment** – In OAIII-51/2023 the applicant seeks refund of Punitive charge of Rs.9400/- levied and collected at originating station Adesar under the jurisdiction of Western Railway with the RR. Applicant's challenge to the punitive charge is based on the ground that no excess goods was loaded nor received at destination and the consignment loaded into wagons under supervision of railway personnel in safe sound and secured condition, but admittedly railway receipt shows that the consignment was loaded under the 'said to contain' endorsement, loading not supervised by the railway staff and forwarding notes, weight and quantity accepted. The applicant has not filed any proof like bijak or statement of the account to show that the actual weight of the consignment was the same as shown in the forwarding note. Moreover, admittedly, the consignment in the same condition and quantity was reached and received at destination station and delivered to the applicant. The consignment may be found overloaded in certain wagons after loading as per

Forwarding Notein an enrute weighment at railway weighbridge viz. which is shown in forwarding note and may reached in the same condition as loaded at destination station. In such a situation there was no possibility too that the excess goods which may not belong to any other entity may be delivered under the RR to the consignee. In such a situation, therefore, no question of taking indemnity bond under IRCM Rule 1879 isarisen. There is no case of both the party that there was any unloading or load adjustment of the consignment found overloaded enroute. So, record of the same could also not be available. Therefore, on account of the above challenge of the applicant to the impugned punitive charge has no substance and hereby discarded.

12.3 The applicant has also expressed doubt about the fitness of the concerned Malda Weighbridge and therefore questioned the correctness of the weighment of the subject consignment taken thereon. It is also asserted that when there is a challenge to the justification of levy and collection of punitive charge due to overloading of consignment under Section 73 of the Railways Act, 1989, the railway is duty bound to satisfy the court by producing cogent evidence about the fitness of the concerned weighbridge and correctness of the weighment of the consignment in question thereon. In this regard, it is also stated that under Rule 1431 and 1435 of IRCM Vol-II of 1991, there are certain provisions and guidelines regarding maintenance and up-keep of weighbridge on day to day basis. As such, records/documents kept and maintained under the above IRCM are vital documents to show the fitness of the concerned weighbridge on a particular date and time when the subject weighment was undertaken on it. If the respondents fail to produce such records, an adverse inference is required to be taken against the railway. To buttress his above argument, the learned counsel for the applicant has referred case law in ***WP(C) No.6021 of 1999 Nirmal Traders vs. Union of India & Ors. decided on 08.04.2023 by Hon'ble Gauhati High Court [(2003) 2 GLR 429]***. On the other hand, the respondents submitted that the Malda Weighbridge on the date and time of subject weighment was quite fit and in sound condition, having its fitness certificate issued by the Legal Metrology Department, Malda, West Bengal. As such, the subject weighment cannot be questioned.

12.4 In view of the above argument of the parties, we have gone through the case law cited by the learned counsel for the applicant in ***WP(C) No.6021 of 1999 Nirmal Traders***

vs. Union of India & Ors. decided on 08.04.2023 (supra), in which the Hon'ble Gauhati High Court has held that railway must satisfy the Court that weighment taken is correct. Penalty can be imposed only when overloading is proved. Mere fact that weighment has been taken at Railway weighbridge cannot be a reason for imposing penalty without giving opportunity for showing cause to the person concerned.

12.5 In ***MFA 32/2013 Union of India through General Manager, N. F. Railway versus M/s. Unique Coal Traders decided on 07.06.2018***, the Hon'ble Gauhati High Court had occasion to consider the non-compliance of the above rules of IRCM and has held in para 10, as under:

> "Regarding fitness of the weighbridge, the Railway ought to have produced the inspection register along with the report of the station master with respect to the status of the said weighbridge. Non-production of the said materials even after seeking the said documents to be produced, a presumption arose against the Railway/appellant with respect to the correctness of the weighbridge. In fact the R-2 is a certificate issued by the Inspector of Legal Metrology Department, but not by a personnel from the Mechanical Department as required under the Rule 1435 of IRCM, Vol-II, Rule 1 of 1991....."

12.6 Reference of the above Rule 1431 and 1435 of IRCM Vol-II of 1991 appears relevant, which are as under:

> "**1431. Testing of weighbridges by Weighbridge Inspector** – All weighbridge will be tested half yearly by an Inspector of Mechanical Department. After test, he should furnish a certificate for each weighbridge showing that it has been adjusted and tested. This certificate must be displayed in the weighbridge house until, the next inspection and the issue of a fresh certificate. The data of each testing should also be painted on the weighbridge.
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> **1435. Testing of weighbridge and weighing machine** – The Station Master should test daily the weighbridge or weighing machines on coming to duty and make a note of the test in the weighbridge register and tally book, respectively. If, as a result of the test, it transpires that the weighbridge or weighing machine is out of order, its repair should be arranged for immediately".

12.7 In view of the above provisions of IRCM and case laws, it is clear that in a case of challenge to the punitive charge based on alleged overloading of consignment on the basis of enroute weighment at Railway weighbridge, the respondent Railway has to prove the fitness of the concerned weighbridge, by producing relevant documents, kept and maintained by the railway under the above IRCM rules and only production of fitness certificate of Legal Metrology Department is not sufficient. In fact, in view of the provisions of above IRCM, the certificate of Inspector of Mechanical Department on the basis of six monthly checking under Rule 1431 of IRCM and weighbridge register and tally book, kept and maintained by the Station Master on a daily basis while coming on duty and after checking the weighbridge, are very vital documents to look into the fitness of the weighbridge on a particular date and time when the subject weighment was undertaken thereon.

12.8 On perusal of record of OAIII-51/2023 no record in respect of fitness of the concerned weighbridge and to show the correctness of the subject consignment thereon is produced by the respondent railway. Therefore, in view of the above case law and provision contained in Rule 1431 and 1435 IRCM Vol-II of 1991 we are of the opinion that the railway has failed to prove about justification of levy and collection of impugned punitive overcharge on the basis of alleged overloading.

12.9 The applicant further asserted that no show-cause notice and opportunity of hearing was given before imposition of punitive charge, which is violative of principles of natural justice and therefore renders the impugned punitive charge unjust, unfair and bad in the eye of law in view of law laid down in ***WA 333/2010 Megha Technical & Engineers (Pvt) Ltd. vs. Union of Indiadecided on 10.08.2017***. On the other hand, the learned counsel for the respondents vehemently urged that Section 73 of the Railways Act, 1989 does not provide for giving show-cause notice before levy and collection of punitive charge for overloading. Moreover, the nature of punitive charge under Section 73 is not penal, rather it is compensatory in respect of damages, which may be caused to the wagon, axle, railway track, engine, bridges, etc. due to overloading of the consignment, as held in ***Jagjit Cotton Textile Mills versus Chief Commercial Superintendent and Others decided on 21.04.1998***. Moreover, demand notice for the punitive charge indicating overloading, was provided to the applicant with supportive papers, which fulfills the requirement of giving show-cause notice.

12.10 On perusal of record, we found that delivery of the consignment and removal of the goods took place on 12/13.04.2011. As exhibit R5, demand notice dated 12.04.2011 is also on record, which has also been got received on 12.04.2011, and which reveals that demand of the impugned punitive charge has been made before delivery of the consignment. But the content of the demand notice shows that it is not a show-cause notice, rather by this notice, it was informed that for overloading found in the subject consignment at Malda Weighbridge, the applicant was asked to pay punitive charge of Rs.13,070/-. It certainly does not comply with the principles of natural justice of giving show-cause notice and opportunity of hearing to the party concerned before penalizing it.

Rather, by this demand notice, the applicant was asked to pay the punitive charge, that has already been fixed.

12.11 In ***WA 333/2010 Megha Technical & Engineers (Pvt) Ltd. vs. Union of Indiadecided on 10.08.2017***, the Full Bench of Hon'ble Gauhati High Court has held in paras 11 and 19 as under:

> "11: The process to penalize a party for overloaded wagons must be construed as a quasi-criminal proceedings. The detection of excess weight could either be for deliberate defiance of the maximum carrying capacity or faulty re-weighment or even a bonafide mistake of the parties. Therefore in all situations, when re-weighment shows excess loading, punitive levy may not be the only consequence. The power to penalize should be invoked in appropriate cases and can not be a matter of course, without providing any opportunity to the affected party. such imposition in our view will be arbitrary and fail the test of justice.
>
> 19. The Railway authorities are empowered under Section 73 to recover penalty when a consignment is found to be heavier than the declared weight. But the section requires the issue to be resolved, before delivery of consignment. But the figure in the re-weighment should not in our understanding be the cause for penalizing and an opportunity must be provided to the consignor to establish that they should not be fastened with punitive charge. To insist on adherence to the principles of audi alteram partem before anyone is penalized, would prevent arbitrary penalization and further the cause of justice".

12.12 In this case, the Full Bench of Hon'ble Gauhati High Court has also emphasized that the word 'may' used in Section 73 of the Railways Act, 1989 shows that in case of overloading, the Railway authority may or may not impose punitive charge. Thus, it is a discretionary power, which requires a conscious and judicious decision, which is possible only when the person concerned is asked to show-cause why he should not be penalized and what he has to say in that respect.

12.13 In view of the above case law, no doubt, show-cause notice is imperative principal condition before charging and realization of punitive charge for overloading under Section 73 of the Railways Act, 1989 and in this case, the respondents did not serve such show-cause notice with opportunity of hearing to the applicant, which renders the punitive charge unfair, unjust and bad in view of the above Full Bench decision of the Hon'ble Gauhati High Court.

12.14 No doubt, in ***Jagjit Cotton Textile Mills versus Chief Commercial Superintendent and Others decided on 21.04.1998***, the Hon'ble Apex Court has held that the nature of punitive charge under Section 73 of the Railways Act, 1989 as compensatory and not a penal, but before the Hon'ble Apex Court, the issue was not that whether observation of principles of natural justice before imposition of penal charge for overloading is necessary or not; rather the Hon'ble Apex Court was considering the constitutionality to the provision of Section 73 of the Railways Act, which makes liable, the consignee or the endorsee to pay the punitive charge before taking delivery of the consignment. In that case, the consignee was appellant, whose assertion was that he did not commit overloading and it is an act of the consignor and to punish him for the wrong committed by the consignor is violative of Article 14 of the Constitution of India. In this context, the Hon'ble Apex Court had gone into the nature of punitive charge under Section 73 of the Railways Act for overloading from the consignee. The Full Bench of the Hon'ble High Court has also dealt with such argument in its judgement and observed that provision of Section 73 of the Railways Act is also to some extent penal as levy of punitive charge damages the reputation of the person concerned, who is adjudged guilty of overloading. This Tribunal is subordinate to Hon'ble High Court. The law laid down by Full Bench of Hon'ble Gauhati High Court is directly on requirement of giving show-cause notice for penalizing the person concerned for overloading of consignment under Section 73 of the Railways Act, therefore, we are bound to follow the above direct case law on the subject. Further, the above law of the Hon'ble High Court still stands today. Of course, an SLP of Railways is pending before the Hon'ble Apex Court against the Full Bench judgement of the Hon'ble Gauhati High Court, but there is no stay order and in view of such situation, the Hon'ble Gauhati High Court proceeded to decide many appeals, following Full Bench decision on this aspect. Therefore, we are not in agreement with the argument of the learned counsel for the respondents and the applicant's challenge is acceptable to the impugned punitive charge for not giving show-cause notice before levy and collection of the impugned punitive charge also.

12.15 On the above discussion and reasons stated herein above, it is clear that at first the impugned punitive charge is unfair and unjust due to reasoned doubts and unreliablity of fitness of the concerned weighbridge and correctness of the weighment of the subject consignment due to adverse inference drawn against the fitness of the Malda Weighbridge; and secondly, in the eye of law, on account of not giving show-cause notice to the applicant and non-observation of principles of natural justice before imposition of punitive charge. Therefore, in our considered opinion, in conclusion, the applicant is held entitled to get refund of punitive charge of Rs.9400/- from the respondent railways.

13. Refund of Terminal Charges:

13.1 Regarding refund of terminal charges, the applicant's contention is that the originating goods shed Dhulianganga (Goods) as well as destination goods sheds New Guwahati, though are railway owned goods sheds, but these were not notified as freight terminals having facilities of terminal as prescribed in Railway Board's Circular no.2007/PL/25/1 dated 05.06.2007.

13.2 The second limb of argument is that the consignment was bagged consignment, which does not attract terminal charge in terms of Railway Board's Rates Circular 58 of 2007 No.TCR/1078/2007/6 dated 29.05.2007, read with Railway Board's Circular of the same number dated 17.07.2007, which provides that terminal charge is leviable only on bulk and loose commodities and not on commodities packed in bag, tin, carton, drum, etc.Thereafter, by Rates Circular no.74 of 2007 no.TCR/1078/6 dated 19.07.2007, Iron Ore traffic was segregated from all bulk and loose goods and terminal charge was fixed @ Rs.40/- per tonne per terminal.

13.3 It is true that the above circulars exempted bagged consignment from the liability of terminal charge, but by subsequent Rates Circular no.92 of 2007 No.TCR/ 1078/2007/6 dated 18.09.2007, the above circulars have been superseded, prescribing new category of commodity, which attracts levy of terminal charge as under:

S. No.	Commodities	Rate Per Tonne Per Terminal
(i)	Iron Ore Traffic	Rs.40
(ii)	All Other Traffic	Rs.10
(iii)	Container Traffic	NIL

13.4 By above circular, container traffic has been exempted from terminal charge and iron ore traffic attracts terminal charge @ Rs.40/- per tonne, while all other traffic, which certainly includes both bulk and loose commodities as well as bagged commodity, attracts terminal charge @ Rs.10/- per tonne. Thus it is clear that after supersession of Rates Circular 58 of 2007 No.TCR/1078/2007/6 dated 29.05.2007 along with Rates Circular no.74 of 2007 no.TCR/1078/6 dated 19.07.2007, the clarificatory circular no.TCR/1078/2007/6 dated 17.07.2007, shelter of which the applicant is seeking, becomes non est and terminal charge is leviable under Rates Circular no.92 of 2007 No.TCR/ 1078/2007/6 dated 18.09.2007, which makes no difference between both loose and bagged consignments.

13.5 Both the above contentions raised by the applicant came up before the Hon’ble Gauhati High Court in ***MFA No.100 of 2011 Union of India versus M/s. Meghalaya Cement Limited decided on 25.06.2015 (reported at MANU/CG/0280/2015)***, in which the Hon’ble High Court has held in explicit term at para 12 and 13, as under:

> “12. After careful perusal of the said letter dated 05.06.2007, it does not transpire that before imposing the Terminal Charges, it is mandatory to have such facilities as desired as per the letter dated 05.06.2007. The facilities mentioned in the letter dated 05.06.2007 is desirable and not mandatory to hold that for Terminal Charges, such facilities are required to be complied with. Be it mentioned that prior to issuance of the said letter vide Rates Circular no.58 of 2007 dated 29.05.2007 the Central Government had accorded sanction for levying of Development Surcharge and Terminal Charges.
>
> 13. Further, it is not in dispute that ‘Changsari’ Terminal/Shed is owned by the Railway and as in Rates Circular no.92 of 2007 dated 18.09.2007 the term ‘all other traffic’ is included and the Terminal Charges levied on all traffic except container traffic, as such it has right levied the Terminal Charges”.

13.6 In view of the above discussion and the above case law, the applicant’s claim for refund of terminal charges appears boneless and bound to fall flat.

13.7 As per as applicability of Rate Circular Freight Marketing Circular No.20 of 2020 dated 14.10.2020 and Rate Circular No.24/2018 (No.TCR/1078/17) dated 27.12.2018 is concerned position does not appear to be change though at the relevant time the applicable Rate Circular regarding levy of terminal charge is Circular No.28 of 2018 dated 27.12.2018 which also brings carriage of all the goods traffic under single head and rake accept the container traffic. In view of the above discussions and the case law and provision of relevant circular the applicants claim for refund of terminal charge.

14. The applicants in all the three cases have raised challenge to the calculation method of NTR as well as calculation of graded concession available on none Iodize Salt for human consumption and rebate available to the booking of consignment to N.E state @ of 6%. In all the three cases in claim application the applicant have given their calculation of NTR but it appears that in all the cases NTR has been calculated adding 5% development charge also apart from basic fright and busy season charge and alike which is not correct. The same has been admitted by the applicant itself by giving fresh calculation chart in their written submissions and admitted at the point of oral submission that calculation of NTR given in the claim application is wrong. Their only assertion is that in all the three cases 6% concession available for booking of consignment to the N.E region were not calculated on NTR but calculated the same after deducting the graded

concessions for salt @ of 20% and 25% respectively from the NTR which is wrong. While the respondent railway has contended that in view of the extant Railway Board CarcularNo.TCR/1078/2022/Salt/3396153 dated 25.01.2023 issued to CCM/FM, Western Railway the method applied by the respondent railway are correct. Now before us issue is calculation method of granting freight concessions on N.E Region bound traffic and on Non-iodized salt for human consumption simultaneously.

14.1 No doubt No.TCR/1078/2022/Salt/3396153 dated 25.01.2023 is issued to CCM/FM, Western Railway in connection with reference made to the Board supposedly on the issue of Methodology for granting concessions for non-refined salt with other concessions as reveals from the above Railway Board Circular. On this issue Railway Board Clarification is based on RC 25 of 2007. It is very clearly stated that 'with regard to admissibility of concurrent concession, the same is given as per RC 25 of 2007 which states that in case two or more concessions be permissible, subsequent concessions will be given on reduced rates derived after giving concession.' It is found that in Para 2.0 (26) of the circular RC 25 of 2007 stated that freight concession (discount/rebate) will also be levied on NTR. Para 6.0 (d) of the same circular explained that 'in case of two or more concessions are permissible, subsequent concessions will be given on reduced rates derived after giving concessions.' The above circular was for freight incentive scheme and transportation product. The above Rate Circular 25 of 2007 has been superseded by RC 25 of 2008. Here also the subject matter is 'Freight Incentive Scheme and Transportation Products; Here the procedure for granting concurrent concession is not mentioned. The above RC 25 of 2008 was superseded by RC 62 of 2009. The current circular valid for the case or cases under consideration in this Tribunal is the Rates Master Circular FIS/2014/0 Dated 13.06.2014 based on RC 62 of 2009. Here, as per Para 2.0, Sub Para 3(iii), concurrent concession will be given one after the other on the reduced NTR. However, all these aforesaid circulars are meant for specific freight incentive schemes where the eligibility of the customer to avoid the scheme has been defined and procedure spelt out. It is very clearly specified that 6% concession to N.E region will be given on NTR and then the rest of the concessions covered under the scheme as mentioned in this circular will be given on reduced NTR one after another if concession are to given concurrently. In terms of RC 7 of 2008, 6% N.E region rebate has to be given on NTR. The issue here should have been the concessions given independently outside the purview of the Freight Incentive Schemes as covered by the Rates Master Circular dated 13.06.2014. In this Tribunal, the issue that has come up is how to calculate simultaneous concessions given to traffic booked to NE Region and graded concession given for ordinary non-refined salt meant for human consumptions. These two issues are dealt independently by two independent circulars: one by RC 7 of 2008 and the other by Rates Instruction No.16 of 2003. The terminology used is slightly different, in RC 7 of 2008. It is mentioned that 6% NF Region concession will be on Normal Tariff Rate and in Rates Instruction 13 of 2003, it is mentioned that graded concession on non-refined salt for human consumption will be given on Normal Freight Rate. The term Freight is used in the Railways Act, 1989 whereas the term Tariff is not used anywhere in the said Act. However, it is understood that tariff as used in the Rates Circular is meant to denote freight. The decision of this Court on the issue is that Freight and Tariff can be used interchangeably in the context of the Rates Circulars issued by the Railways for transportation of goods. Further, NE Region concession and Graded Concession on salt traffic would be calculated separately and independently on NTR, since these two issues are dealt by two independent circulars and not covered by the Freight Incentive Circulars of RC 25 of 2007, RC 25 of 2008 & RC 62 of 2009. The views as elucidated in the Railway Board's letter No.TCR/1078/2022/Salt/3396153 dated 25.01.2023 is not acceptable to this Court in view of the fact that this is not a circular and has no statutory value and moreover, it has relied on a circular (RC 25 of 2007) which has long been superseded by subsequent circulars. The relied upon circular has dealt with a completely different issue of Freight Incentive Scheme and therefore, any subsequent circulars on the same issue of freight incentive scheme will also not be applicable on the issue under consideration in this Court. Had any decision been arrived at or any interpretation been made based on Dynamic Pricing Circulars, this Court would have been inclined to accept that opinion or interpretation.

14.2 We found that the calculation given in the applicant in the written submission to the admitted concession and overcharge is correct in view of the relevant circular and also regarding calculation of graded concession on Iodize Salt for human consumption and N.E Region bounded traffic @ of 6% which are referred here in below.

1. In case No. OAIII-51/2023

Total weight 2573 MT X Rs.1958/30 per MT = Rs.5038706/-
+ 15% Busy Season charges comes to Rs. 755806/-
NTR Rs.5794512/-
(-) 20% Spl rebate on NTR Rs.5794512/- comes to – Rs.1158902/-
Rs.4635610/-
06% on Rebate NTR Rs.5794512/- Rs. 347671/-
Rs.4287939
(+) 5% Dev charges on NTR Rs.5794512/- Rs.289726/-
Both Terminal Charges (OTC + DTC)---------------- Rs. 102929/-
Freight should be Rs.4680585/-
Freight Paid ----------------- Rs.4786779/-
Freight should be Rs.4680585/-
Over charges Rs.106194/- including PUC Rs.9400/ - thus, NTR Rs.96794/-

2. In case No. OAIII-52/2023

Total weight 2565 MT X Rs.1958/30 per MT = Rs.5023040/-
+ 15% Busy Season charges comes to Rs. 753456/-
NTR Rs.5776495/-
(-) 20% Spl rebate on NTR Rs.5776495/- comes to – Rs.1155299/-
Rs.4621196/-
06% on Rebate NTR Rs.5776495/- Rs. 346590/-
Rs.4274606/-
(+) 5% Dev charges on NTR Rs.5776495/- Rs.288825/-
Both Terminal Charges (OTC + DTC)---------------- Rs. 102600/-
Freight should be Rs.4666031/-
Freight Paid ----------------- Rs.4761000/-
Freight should be Rs.4666031/-
Over charges Rs.94969/-

3. In case No. OAIII-77/2014

2581.00 MT X Rs.2128/60 per MT = Rs.5493917/-
+ 12% Busy Season charges comes to Rs. 569270/-
NTR Rs.6153187/-
(-) 25% Spl rebate on NTR Rs.6153187/- comes to – Rs.1538297/-
Rs.4614890/-
06% on Rebate NTR Rs.6153187/- comes Rs. 369191/-

Rs.4245699/-
(+) 5% Dev charges on NTR Rs.6153187/- Rs.307659/-
(+) terminal Charges as per RR Rs. 206480/-
Freight should be Rs.4759838/-
Freight Paid ----------------- Rs.4852126/-
Freight should be Rs.4759838/-
Over charges Rs.92288/-

14.3 In view of the above the applicant is also entitled to get refund of overcharges which were realized by the wrong calculation of simultaneously 6% N.E Region concession simultaneously on the reduced NTR instead of NTR. In view of above captions wise discussion and the reasons the applicant are entitled to get refund of punitive charge and over charge in respect of mistakes in calculating the simultaneous concession on Iodize Salt for human consumption and N.E Regions concession on reduced NTR after deducting the first concession instead of NTR while claim in respect of Terminal charges in all the cases is liable to be dismissed. Accordingly, issue no.3 in both the cases are decided partially in favour of the applicant and partially in favour of the respondent.

15. Issue no.4 of all the above cases

4. Reliefs and cost?

In the light of the findings arrived herein above at issue no.3 of the instant cases, the applicants entitlement case wise are as under:

In OAIII-51/2023 (OAIII/GHY/51/2023) the applicant is entitled to get refund of Rs.9400/- (Rupees Ninety Thousand Four Hundred only) on account of punitive charge and Rs.96,794/-(Rupees Ninety Six Thousand Seven Hundred Ninety Four Only) as over charge due to erroneous calculation of concession namely on non-Iodized Salt for human consumption and North East concession simultaneously i.e, Total Rs.106194/- (One Lakh Six Thousand One Hundred Ninety Four only). Applicants claim for refund of Terminal Charge is liable to be dismissed. In OAIII-52/2023 (OAIII/GHY/52/2023) applicant is entitled to get refund of Rs.94,969/- (Rupees Ninety Four Thousand Nine Hundred Sixty Nine only) on account of erroneous calculation of graded concession on non-Iodized Salt for human consumption and North East Concession. In OAIII-77/2014 (OAIII/GHY/2014/0077) the applicant is entitled to get refund of Rs.92,288/- (Rupees Ninety Two Thousand Two Hundred Eighty Eight only) over charge due to erroneous calculation of graded concession on non-Iodized Salt for human consumption and North East Concession. In all the above cases applicants are not entitled to get refund of Terminal Charge.

Since, applicants in claim in all the above cases are partially accepted and partially denied. Therefore, they are not entitled for the cost of the proceeding.

Accordingly issue no.4 of the above cases is decided, but the applicant shall be entitled to get interest on the above amount @ of 6% per annum from the date of claim application upto payment. The respondents shall pay the above amount within 90 days from the date of receiving of copy of this award, failing which, from 91st day they shall be under liability to make payment of the above decretal amount with simple interest @ of 9% per annum after the above 90 days.

Conclusion

On the above discussions and findings arrived at on issues framed in the above cases applicant's claim applications in OAIII-51/2023 (OAIII/GHY/51/2023) the applicant is entitled to get refund of Rs.9400/- (Rupees Ninety Thousand Four Hundred only) on account of punitive charge and Rs.96,794/-(Rupees Ninety Six Thousand Seven Hundred Ninety Four Only) as over charge due to erroneous calculation of concession namely on non-Iodized Salt for human consumption and North East concession simultaneously i.e, Total Rs.106194/- (One Lakh Six Thousand One Hundred Ninety Four only). Applicants claim for refund of Terminal Charge is liable to be dismissed. In OAIII-52/2023 (OAIII/GHY/52/2023) applicant is entitled to get refund of Rs.94,969/- (Rupees Ninety Four Thousand Nine Hundred Sixty Nine only) on account of erroneous calculation of graded concession on non-Iodized Salt for human consumption and North East Concession. In OAIII-77/2014 (OAIII/GHY/2014/0077) the applicant is entitled to get refund of Rs.92,288/- (Rupees Ninety Two Thousand Two Hundred Eighty Eight only) over charge due to erroneous calculation of graded concession on non-Iodize Salt for human consumption and North East Concession along with simple interest @ of 6% per annum from the date of claim applications upto payment.

ORDER

I. In OAIII-51/2023 (OAIII/GHY/51/2023) the applicant is entitled to get refund of Rs.9400/- (Rupees Ninety Thousand Four Hundred only) on account of punitive charge and Rs.96,794/-(Rupees Ninety Six Thousand Seven Hundred Ninety Four Only) as over charge due to erroneous calculation of concession namely on non-Iodize Salt for human consumption and North East concession simultaneously i.e, Total Rs.106194/- (One Lakh Six Thousand One Hundred Ninety Four only). The respondent is directed to make the payment of the above amount the applicant along with simple interest @ of 6 % from the date of filing of the above claim application upto the payment. The respondent shall make payment of the above decretal amount within 90 days from the date of receiving the copy of the award, failing which, the respondent shall pay simple interest @ of 9% per annum after the above 90 days.

II. In OAIII-52/2023 (OAIII/GHY/52/2023) applicant is entitled to get refund of Rs.94,969/- (Rupees Ninety Four Thousand Nine Hundred Sixty Nine only) on account of erroneous calculation of graded concession on non-Iodized Salt for human consumption and North East Concession along with simple interest @ of 6 % from the date of filing of the above claim application upto the payment. The respondent shall make payment of the above decretal amount within 90 days from the date of receiving the copy of the award, failing which, the respondent shall pay simple interest @ of 9% per annum after the above 90 days.

III. In OAIII-77/2014 (OAIII/GHY/2014/0077) the applicant is entitled to get refund of Rs.92,288/- (Rupees Ninety Two Thousand Two Hundred Eighty Eight only) over charge due to erroneous calculation of graded concession on non-Iodized Salt for human consumption and North East Concession along with simple interest @ of 6 % from the date of filing of the above claim application upto the payment. The respondent shall make payment of the above decretal amount within 90 days from the date of receiving the copy of the award, failing which, the respondent shall pay simple interest @ of 9% per annum after the above 90 days.

IV. Applicant’s claim in above cases for refund of terminal charges are dismissed.

V. Applicant is directed to furnish his full details of bank account particulars, PAN Card or any other identification document issued by any government authority, to the Registry of this Tribunal and also to the respondent within ten days from receiving copy of this award for effecting payment through ECS.

VI. With this observations and directions, this original application stands disposed of accordingly.

VII. Let the case file be consigned to the record room after due compliance.

(Mahtab Ahmad)
Member (Judicial)

(Leena Sarma)
Member (Technical)

Date: 19.02.2024