

CONSUMER DISPUTES REDRESSAL COMMISSION – X
GOVERNMENT OF N.C.T. OF DELHI
Udyog Sadan, C – 22 & 23, Institutional Area
(Behind Qutub Hotel)
New Delhi – 110016

Case No.23/2019

INDER NATH JHA,
S/O Sh. SARYUG JHA (LATE),
R/O H.NO. 58, NAWADA COLONY,
POST PALI, DISTT. N.I.T. FARIDABAD,
HARYANA

.....COMPLAINANT

Vs.

1. THE UNION OF INDIA,
THROUGH ITS SECRETARY,
MINISTRY OF RAILWAYS,
RAIL BHAWAN, NEW DELHI.
NEW DELHI-110019

.....RESPONDENT NO.1/OP

2. THE GENERAL MANAGER,
NORTHERN RAILWAY,
BARODA HOUSE,
NEW DELHI.

.....RESPONDENT NO.2/OP

3. THE GENERAL MANAGER,
EAST CENTRAL RAILWAY,
HAJIPUR (BIHAR).

.....RESPONDENT NO.3/OP

SOUTH II

Date of Institution-05/02/2019.

Date of Order-16/03/2022.

ORDER

RASHMI BANSAL– Member

1. The complaint is filed by the complainant under section 12 of Consumer Protection Act, 1986 against the OPs, the railway authorities alleging OPs are

deficient and negligent in their service and failed to provide him berth which he got reserved a month prior to the journey. OP1 is the UOI, through secretary, OP2 is Northern Railway and OP3 is East Central Railways, Bihar.

2. The facts, as alleged in the complaint are, that on 03.01.2008, the complainant booked a confirmed ticket for 19.02.2008 to travel from Darbhanga to Delhi by Swatantra Senani Express from Hazarat Nizammudin Railway Station with scheduled departure time 15:30 hrs and he was allotted coach NO.S-4, Berth 69. It is alleged that when he boarded the train and reached to his berth, it was found that his berth was sold to someone else by OP officials. He has put allegation of dishonest intention of railway staff. The complainant stated that he was also sick at that time. He tried to get his seat and also confronted with TTE. After confrontation, he was given another seat at sleeper coach B-1 Seat No.33, which according to OP3 was upgraded under the Railway up gradation Scheme. This is the grievance of complainant that even the upgraded berth at Coach B-1 was not given to him and he had travelled whole journey from Darbhanga to New Delhi by standing. It was alleged that when he reached to coach B-1, TTE asked him to come at 9.35 p.m. and again at 9.35 p.m. berth was not given to him. This is further alleged, that upon enquiry from TTE, he was threatened and humiliated by him and 3 police officials were also called by TTE. When the complainant said that he will complaint against this, he was further humiliated by the TTE and staff and despite all his efforts, he was not given his reserved seat. As a result, the complainant reached Delhi in standing position. This was also submitted that the complainant was already suffering from fever that day and due to this hardship he fell ill on reaching Delhi. Upon reaching New Delhi railway station on next morning, i.e. 20.2.2008, the complainant immediately lodged a complaint to Railway Authorities followed by various complaints to other higher railway authorities. The complainant has also filed a RTI to OP authorities seeking some important information including the copy of the reservation chart. This information he got after long gap of time on 11.06.2010, that reservation chart is destroyed as per railway procedure. Complainant alleges that that no action has been taken by the OP authorities for the Redressal of his grievances and that the act of the OP in not providing reserved berth to him amounts to deficiency in services on their part, hence this complaint.

Complainant has filed following documents in support of his case:

1. Reservation ticket, Ex.CW1/1.
 2. Complaint dated 20.02.2008, Ex.CW1/2.
 3. RTI application Ex.CW1/3 (colly)
 4. Reply dated 23/06/2009, Ex.CW1/4.
 5. Application dated 24/07/2009, Ex.CW1/5.
 6. Various applications to higher authorities and their replies received from authorities Ex. CW1/6 to CW1/33.
3. Complaint has been contested by OP-2 & OP3. OP1 not represented by anyone. OP2, Northern Railway, has filed written statement and evidence by way of affidavit denying any deficiency in services on its part while taking preliminary objection as to the territorial jurisdiction and of mis joinder of parties by stating that the alleged incident pertains to Darbhanga Bihar which lies in the jurisdiction of East Central Railways, Bihar (who is OP3) and accordingly OP2 is not the appropriate party and prayed for dismissal of the complaint as against OP2 alleging falsehood and greed on the part of complainant. It was also stated that that the complainant did not board the train at the boarding point and turned up 5 Hours late at *Chappra* around 21:35 hrs and that there is no deficiency on the part of railway.
4. OP3 has filed its written statement but failed to file its evidence and this opportunity was closed vide order dated 03/12/2021 by this Commission. In its written statement, OP3 has stated that nothing has been done against the rules and TTE has acted in accordance with the Rule 603(d) of the Indian Railway Commercial Manual Volume 1. This was further submitted that complainant had not boarded the train from the designated station Darbhanga at 15:30 hrs and boarded it after 5 hrs of departure from another station *Chappra* and the TTE rightly presumed that the passenger had not turned up and following the Railway Manual gave the berth to other passenger in waiting. This is however, mentioned that the berth of the complainant was upgraded to berth No. 33 Coach B1 (AC Coach) as his sleeper coach was under the Railway Up-gradation Scheme. This is also stated that in case the complainant had approached TTE for his sleeper berth, he would have been informed that his berth was upgraded, but the complainant never chose to do so. This is admitted by OP3 that the reservation chart was destroyed as per railway provisions which permits its preservation only for one year, however, the Data Ware House Report indicated that complainant berth was

upgraded. OP3 denied that any cause of action ever arose or existed in favour of complainant and that there is any deficiency of service on their part as well as that matter pertains to East Central railway falls under the jurisdiction of CPG/ DBG State of Bihar. OP3 prayed for dismissal of the complaint stating complaint is full of falsehood and greed and it is lacking of cause of action, truth and merits. In support of its contention, OP3 has filed copy of the Rule 603 (D) of the National Railway Commercial Manual Volume 1, reproduced herein below:

603(d): Any further accommodation becoming available on the platform, due to passengers holding reserved tickets not turning up, etc. should be allotted to the remaining passengers on the waiting list, if any, in the order of priority, 10 minutes before the departure of the train. If, however, the waiting list is already exhausted, accommodation may be allotted on the basis of 'first come, first served' amongst those who turn up on the platform without having registered themselves in the waiting list earlier.

5. The records of the case revealed that complainant had also filed an earlier complaint titled "Indernath Jha v/s Union of India & Ors.", CC No. 693/2012 against the OPs under Section 12 of Consumer Protection Act, 1986 before CDRF VI (District New Delhi M-Block 1st Floor Vikas Bhawan IP Estate New Delhi). The said complaint was returned by the CDRF VI, vide its order dated 05.10.2018 on the ground that the said District Forum has no territorial jurisdiction to entertain and adjudicate the complaint in the light of judgment of Hon. National Commission titled as "Prem Joshi v/s Jurassic Park Inn." in Revision Petition No. 575/18, and directed that the complaint be returned to the complainant along with the documents with liberty to file before the concerned District Forum in accordance with law. Thereafter, the complainant had filed the present complaint before this Commission along with an application for adding Chief Commercial Manager, Railway Reservation, PRS as OP4 and amended memo of parties. The above said application has not been taken up nor allowed by this commission.

6. OP2 and OP3 have also filed their written arguments. All the parties are heard and documents perused. following issues are before this court:

1. Whether this commission has territorial jurisdiction to entertain the present complaint?

2. Whether the complainant is consumer under Consumer protection Act, 1986?
 3. Whether there is any deficiency of service on the part of OP? If any, then what is the relief.
7. The preliminary issue for consideration before the complaint could be taken on merits is whether this Commission has the territorial jurisdiction to entertain present complaint. The territorial jurisdiction of this Commission is invoked solely on the ground that part of the cause of action has arisen on 03.01.2008 within the jurisdiction of this Commission when the complainant has got his ticket booked from Nizamuddin Railway Station for 19.02.2008 to travel from Darbhanga to Delhi by Swatantra Senani Express from Hazrat Nizamuddin Railway station.

Sec. 17 (c) of the Consumer Protection Act, 1986 provides that a complaint may be instituted in a District forum, within the local limits of whose jurisdiction-

- (a) ...
- (b) ...
- (c) the cause of action, wholly or in part, arises.

Section 20 of the Code of Civil Procedure is common law provisions provides the rights to the plaintiff to institute suit proceedings to put forth his grievance against the defendant at a place where the defendant(s) are actually and voluntarily residing or carry on the business for gain or within whose local jurisdiction, the cause of action has arisen either wholly, or in part.

SOUTH II

In the present case admittedly a part of the cause of action has arisen on 03.01.2008 when the complainant has booked his ticket from Darbhanga to Delhi from Hazrat Nizamuddin Railway station, which falls within the territorial limits of this Commission. Therefore, we are of the view that this commission has got the jurisdiction to decide the complaint on merit.

8. Another point for consideration is whether the complainant is a consumer within the meaning of CPA, 1986. There is no dispute as to the fact that complainant has purchased a ticked reservation ticket bearing number 1342 4398 with PNR number 611-1141677, Train number 2561 dated 19.02.2008 showing S4/ berth number 69. Sec. 2(1) (d) of CPA 1986 defines who is consumer, which reads as follows:-

“consumer” means any person who,-

- (i)
- (ii) “[hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who ¹[hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person ²[but does not include a person who avails of such services for any commercial purpose];

Therefore, by purchasing the ticket, complainant has hired the services of OP and thus become a consumer within the meaning of Sec. 2(d) of the CPA, 1986.

9. The next point for consideration is whether there is any deficiency in services on the part of OP and if any, what is the relief. Deficiency in service on the part of the service provider has to be tested on the anvil of Sec. 2(1) (g) of the Consumer Protection Act, 1986, which means:

“any fault, imperfection, shortcoming or inadequacy in the quantity, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.”

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10. The documents available on record shows that berth number 69, coach S4 was reserved on 03.01.2008 by the complainant for consideration one month prior for the journey scheduled for 19.02.2008. His berth was upgraded under the Railway upgradation Scheme as submitted by OP2 and OP3. This upgradation must have been done before the stipulated time of the commencement of the journey of complainant from Darbhanga. OP2 and OP3 did not submit any document to show that such information of upgradation was provided to the complainant in advance through any means available with railway. In such situation, any prudent passenger is supposed to go to the berth that would be given to him at the time of reservation and same was

done by the complainant. The submission to this effect, as made by the complainant, has not been denied or contested by OP2 or OP3 in their written statement.

11. The complainant in his complaint dated 20.02.2008, exhibit CW1/2, has mentioned that he has occupied his berth no. 69 at S4 at the scheduled time and head T.T.E. came at Samastipur and written on his ticket B1, berth no. 33 and directed him to go there by 9:35pm. This fact also has not been denied by OP2 or OP3, neither in their reply to the complaint dated 20.02.2008 nor in their written statement. Therefore, this cannot be denied that complainant has not boarded the train at Darbhanga. The complaint dated 20.02.2008 has been acknowledged by Mandal Rail Prabhandhak (Ex CW1/6), letter dated 29/08/2008.

12. Exhibit C-26 is the order dated 09.02.2011 of the Information Commissioner, of Central Information Commission, New Delhi, (File no. CIC/AD/A/2010/001821), wherein it was admitted by OP3 that complainant berth at AC coach was given to someone else by charging him extra fare as the complainant had not reached to AC coach by 9 pm as planned / agreed. The relevant portion of para 4 of the above said order is reproduced herein below:

“ the respondent explained that the TT was asked to give his explanation in response to the complaint and the TT had stated that the appellant had not reached the AC Coach at 9 p.m. as planned / agreed to but had come much later. In fact after the train reached Chhapra which is many stations further away from the station where the appellant was supposed to present himself. Hence that TT assuming that the appellant was not going to turn up had then allotted the berth to some other passenger after charging him the extra fare of the AC berth.”

From the above it is observed that two contradictory statements have been given by OP3 in Ex C-26. At one place it is submitted by OP3 that it is 'planned/agreed to reach at 9:00 pm at AC coach' which implies that there is consensus of mind between complainant and T.T.E. of B1 and T.T.E. got knowledge that complainant had boarded the train and will report by 9 pm as per his own admission otherwise there would have been no occasion for TTE of B1 coach to wait for complainant. At other place T.T.E. stated that complainant has not turned up at the station where he was supposed to present himself and berth was given to someone else by charging fare from him. Under such circumstances the Rule 603 (d) of the Railway Manual, as

relied by OP2 and OP3, has lost its relevance. Admittedly, the berth of complainant has been given to someone at B1 coach, even before the complainant reached to T.T.E. of coach B1 and complainant has not been given any berth despite upgradation and was deprived from a comfortable journey.

13. OP3 has further failed to show that complainant has been informed about upgradation of his berth before start of his journey. In the absence of any source of information from OP3 about the upgradation of the berth, it cannot be imagined that complainant would go to coach B1 to occupy his upgraded berth. OP3 itself admit that complainant was not having information about the upgradation of the berth, which is clear from the written statement of OP3 wherein it is stated by OP3 that had the complainant approached the T.T.E. for his sleeper berth, he would have been informed that his berth was upgraded. That means complainant was not even aware that his berth has been upgraded and he has to occupy his berth at B1. He has occupied berth at S4 which was initially reserved and remain seated there till T.T.E. reached to him at Samstipur and asked him to go to B1. Thereafter, complainant went to B1 to occupy his berth 33 which was admittedly already been given to someone else on extra charge, despite having knowledge / information that the complainant had boarded and intended to perform his journey. There is also no submission made by OP3 to the effect whether any efforts were made to accommodate the complainant elsewhere by providing other berth, which shows that complainant purpose of having comfortable journey after reservation has been defeated.

14. Complainant despite having reservation in his name could not get any berth and travelled without berth or any seat. Even otherwise, a passenger has right to occupy his reserved berth without any further formalities and here, when the berth has been upgraded by the OP3, complainant should have been given the same. There is negligence on the part of OP3 in not informing complainant about his upgradation of berth because of which he did not get any of the berths despite reservation a month prior to his travelling date. The Railway Upgradation scheme proved to disadvantage of the complainant instead providing him more conformable journey.

15. The only point of dispute now is whether the complainant has boarded the train at Darbhanga or at Chhapra. Both the parties have no proof to establish the same except Exhibit C26, from where it is reflected that complainant has boarded from

Darbhanga. The reservation chart was the important piece of evidence, which ought to have been retained by OP3, especially when it was in their knowledge and information that the complainant had filed his grievances / complaints to senior officials of all OPs including OP3 on the very next day of incident i.e. 20.02.2008. However, for the reasons best known to OP3, the same was admittedly destroyed by them. There is no evidence to show that complainant did not board train at Darbhanga. In the absence of any evidence, we do not find any reason to disbelieve complainant that he has boarded at Darbhanga. Therefore, this commission accepts complainant's plea that he has boarded the train at Darbhanga at the scheduled time, especially in view of no denial from OP2 or OP3 and above mentioned reasons.

16. People do take reservation in advance in the expectation of comfortable and easy journey. But complainant, despite taking reservation a month prior to the scheduled date of journey, had terrible journey and faced hardship, suffered humiliation, trauma and anguish. Complainant had acted in the responsible manner right from the day of getting reservation in the year 2008 till approaching the authorities for doing justice in lawful manner. At the same time, no prudent person would believe that a passenger, more so, a senior citizen would take so much trouble, including fighting pricey legal battle, for the sake of making a quick buck, as alleged by OP2 and op3. That apart, the admission on the part of OP3 that the ticket of the complainant was upgraded but he did not contact TTE and that his berth at both the coaches have been given to some one else, also corroborates the claim of the complainant that he has completed his journey without getting a seat or berth despite having valid reserved ticket. Considering the facts, it is clear that OP authority, rendering service, had not taken any action for providing berth to complainant for which he was a rightful occupier. It was certainly a gross deficiency in service to OP3.

17. Hon'ble Supreme Court of India in a recent Judgment reported as Indigo Airlines v. Kalpana Rani Debbarma & Ors. (2020) 9 SCC 424, held "*the initial onus to substantiate the factum of deficiency in service committed by the opposite party was primarily on the complaint. In law, the burden of proof would shift on the appellants only after the respondents/complainants had discharged their initial burden in establishing the factum of deficiency in service.*"

Complainant has discharged his onus to substantiate factum of negligence and deficiency in services the part of OP3, by showing that he is consumer and was having a valid legal documents i.e. his reservation ticket and was denied the reserved berth.

However, OP is failed to discharge his burden of proof that that there is no negligence on their part. The OP has not produced best evidence, which they were expected to produce to show that efforts were made to provide the berth to complainant, even the initially reserved berth could be given to him. There is deficiency of service as OP3 is failed to prove that any such efforts were made to provide berth to complainant.

18. The Hon'ble Supreme Court in many cases has observed that Consumer protection Act provides remedy for compensating the consumer for mental agony, harassment, emotional suffering, physical discomfort etc. While expanding the word compensation the Hon'ble Supreme Court in *Ghaziabad Development Authority v. Balbir Singh*, Appeal (civil) 7173 of 2002, has categorically held that each and every element of suffering, while availing service as a consumer, has to be taken into consideration while compensating him for the loss or injury or otherwise suffered by him due to the negligence or deficiency in service of the service provider.

19. Under the circumstances as discussed above, the evidence on record, and the documents filed by all the parties clearly shows that fault was not at the end of complainant and there is clear deficiency in service on the part of OP3 and complainant is entitled for compensation for the same that effected his journey of the late hours.

20. In view of the above, this commission is of considered view that OP3 is guilty of deficiency in service and gross negligence on its part in not providing berth to complainant. Accordingly OP3 is directed to pay complainant a sum of Rs. 50,000/- for negligence and deficiency in service on its part, Rs. 25,000/- for causing physical discomfort, mental agony, trauma, harassment and humiliation and 25,000/- for litigation cost along with an interest @6% p.a. from the date of institution of the case before this commission. OP3 is directed to comply with above said directions within three months from date of order, failing which the above-mentioned amounts shall carry an interest @9% p.a. for any further delay till its realization. The copy of the

order may be given to the parties free of cost within a period of 15 days from the date of pronouncement and file thereafter may be consigned to record room.

21. The consumer complaint could not be decided within the statutory period due to heavy pendency of Court cases. The order be uploaded on the website www.confonet.nic.in


(Dr. RAJENDER DHAR)
MEMBER


(RASHMI BANSAL)
MEMBER


(MONIKA SRIVASTAVA)
PRESIDENT

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION



SOUTH II