

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1728 OF 2022**

(Against the Order dated 09/06/2022 in Appeal No. 58/2022 of the State Commission  
Chandigarh)

1. DIVISIONAL RAILWAY MANAGER, DIVISIONAL  
OFFICE, NORTHERN RAILWAY & 2 ORS.

.....Petitioner(s)

Versus

1. BIRENDERA KUMAR PASWAN

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. DINESH SINGH, PRESIDING MEMBER**

**HON'BLE MR. BINOY KUMAR, MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONERS : MR. SHOUMENDU MUKHERJI,  
ADVOCATE

WITH MS. MEGHA SHARMA, ADVOCATE

MR. AKANKSHA, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT : IN PERSON

**Dated : 02 June 2023**

**ORDER**

1. This revision under section 58(1)(b) of the Act 2019 is in challenge to the Order dated 09.06.2022 of the State Commission in appeal no. 58 of 2022 arising out of the Order dated 04.04.2022 of the District Commission in complaint no. 904 of 2019.

2. We have heard the learned counsel for the revisionists (the 'railways') and the respondent in person (the 'complainant') and have perused the record including *inter alia* the Order dated 04.04.2022 of the District Commission, the impugned Order dated 09.06.2022 of the State Commission and the petition.

3. The revision has been filed with self-admitted delay of 72 days.

However, in the interest of justice, *inter alia* considering the reasons mentioned in the application for condonation of delay, in order to decide the matter on merit rather than to dismiss it on the threshold of limitation, the delay in filing the petition is condoned.

The complainant has no objection.

4. Briefly, as evinces from the material on record including the appraisal(s) made by the two fora below, the complainant booked tickets for himself and for his mother to travel on 25.08.2019 by Rajdhani Express from Katihar Jn. to New Delhi for which he paid an amount of Rs.4820/- prior to the date of commencement of the journey. They completed the journey without any incident. But when they reached New Delhi Railway Station the chief ticket examiner stopped them and asked them to show the tickets in "original". The complainant told the chief ticket examiner that the tickets were booked in advance for reserved berths and

showed him the tickets along with all relevant documents and proof. The chief ticket examiner however took the view that they were not carrying “original” tickets and made them pay penalty of Rs. 5150/- before letting them exit. Aggrieved, the complainant filed a complaint with the District Commission.

5. The District Commission held that as the “original” tickets could not be produced before the chief ticket examiner the penalty was in order but charging twice for the same tickets was tantamount to ‘deficiency in service’ and ‘unfair trade practice’. It ordered for refund of the amount of Rs. 4820/- which was charged a second time for the tickets with interest at the rate of 9% per annum from the date of the journey i.e. 25.08.2019 till realisation along with Rs. 1000/- as compensation for mental agony and harassment and Rs. 1000/- as cost of litigation.

The gist of the appraisal made by the District Commission as contained in paras 7 and 8 of its Order is being reproduced below for reference:

7. After going through the documents on record, it is evident that as per Annexure C-1 the complainant paid Rs. 4,829/- to the OPs for booking train tickets for travelling from Katihar Jn. to New Delhi on 25.8.2019 for two persons. Annexure C-2 on the same page reveals that the same two persons again paid Rs. 5,150/- for the same journey with the same train on the same date as they failed to produce original ticket at the time of travel. There is no dispute that the OPs / railway authorities rightly recovered penalty charges from the complainant because he did not have the ticket while travelling, but, it is also a fact that the amount of Rs. 4,820/- paid vide Annexure C-1 is also in possession of the OPs. Hence, we are of the opinion that the act of the OPs for charging twice for the same travel to the same consumer (i.e. complainant) proves deficiency in service and unfair trade practice on their part.

8. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly partly allowed. Ops are directed as under:-

- i) to refund the amount of Rs. 4,820/- to the complainant along with interest @ 9% per annum w.e.f. the date of journey i.e. 25.08.2019 till realization.
- ii) to pay an amount of Rs. 1,000/- to the complainant as compensation for causing mental agony and harassment to him;
- iii) to pay Rs. 1,000/- to the complainant as costs of litigation.

6. The State Commission agreed with the District Commission and dismissed the appeal preferred by the railways.

The gist of its appraisal as contained in paras 7 and 8 of its Order is being reproduced below for reference:

7. The sole point for consideration before us is as to whether the District Commission rightly passed the impugned order. The answer, to this question, is in the affirmative. It is not in dispute that on 25.08.2019 the complainant booked two train tickets in his name and also in the name of his mother by paying the amount of

Rs.4820/-, as is evident from Annexure C-1. The respondent /complainant also annexed Annexure C-2 along with the complaint, which shows that the complainant failed to produce the original tickets, due to which, penalty of Rs. 5,150/- was imposed. The plea taken by the complainant in his complaint that during travel he showed all the relevant documents / proof to the officials of the Opposite Parties to confirm that he had purchased the ticket. The plea taken by the appellants that as per railway rules, the passenger has to produce / show the original ticket as and when directed by the official concerned but the respondent / complainant failed to do so, as such, penalty was rightly imposed upon him. Even perusal of the impugned order clearly shows that there is no dispute that the appellants/Opposite Parties rightly recovered penalty from the complainant because he did not have original ticket while travelling. Moreover, it is the admitted fact that the complainant paid the amount of Rs.4,820/- for purchase of two train tickets, which was received by the Opposite Parties. Even after receipt of the amount of Rs. 4,820/- for tickets and thereafter by charging of fine of Rs. 5,150/- from the same person i.e. complainant and that too of the 100% of the cost of ticket, is nothing but an unfair trade practice, especially when the passenger was genuine as he was allowed to board the train when he was not having original tickets. So, we are of the view that the District Commission rightly held that the act of the Opposite Parties for charging twice for the same travel from the same consumer i.e. complainant, proves deficiency in service and indulgence into unfair trade practice.

8. For the reasons recorded above, we are of the opinion that the order passed by the District Commission, being based on the correct appreciation of evidence and law, the point, does not suffer from any illegality. Hence, the appeal filed by the Opposite Parties, being devoid of merit, must fail, and the same stands dismissed, with no order as to costs. The order of the District Commission is upheld.

7. Learned counsel for the railways submits that the complainant could not produce the “original” tickets when asked for by the chief ticket examiner and the chief ticket examiner followed the rules in such cases and imposed the applicable penalty. He draws attention to the judgment of Hon’ble Supreme Court in **Branch Manager, Indigo Airlines, Kolkata and Another vs. Kalpana Rani Debbarma and Others (2020) 9 Supreme Court Cases 424** and submits that there can be no ‘deficiency in service’ or ‘unfair trade practice’ when the functionaries of an organization are following the laid-down rules. Submission is that because the complainant could not produce the “original” tickets when asked for, the chief ticket examiner rightly charged the due penalty and he was only following the rules in this respect.

8. On the other hand, the complainant submits that he was carrying the tickets as had been made available to him by the railways’ ticketing dispensation and had shown the same to the chief ticket examiner along with the relevant documents and proof but the chief ticket examiner for reasons best known to him charged penalty before allowing them to exit. Submission is that imposing the penalty was wrong and the same requires to be refunded *in toto* with reasonable interest.

9. We note that the complainant along with his mother travelled on reserved berths in AC III from Katihar Jn. in Bihar to New Delhi in NCT of Delhi, which was a fairly long journey.

It is reasonable to suppose that their tickets would have been checked by the railways' servants at the time of boarding the train as well as during the course of the journey as is the normal wont. There is nothing on record that there was any dispute or incident at the time of boarding or during the course of the journey in respect of either the complainant and his mother travelling without tickets or on fake tickets or that there were any other claimants for the concerned reserved berths. It was only at the termination of the journey at New Delhi that the chief ticket examiner stopped them and holding that "original" tickets were not shown to him charged the penalty.

We are at a loss to understand the connotation implied by the term "original" tickets. The copy of the tickets on record is a computer generated print-out and it clearly mentions the PNR number, the ticket number, the train number, the date, etc. as is normally printed on a normal valid ticket. The challan made at New Delhi states that "Passenger Failed to Produce original PRS illegible signal charges as per ID Proof". Taking it to mean, as is the railways' case, that the "original" tickets were not produced, we fail to understand that if the tickets which were a computerized print-out were shown and contained the salient details and if the same in the opinion of the chief ticket examiner were not the "original" he could have checked their genuineness through the system and ascertained for himself whether or not the complainant and his mother had in fact reserved their berths and paid for the tickets in advance and whether or not they were travelling without tickets or on fake tickets. Also, there were ways and means to make adequate satisfaction regarding identity. It bears emphasis that it is not even the railways' case that the complainant and his mother were travelling on tickets purchased in the names of some other persons.

On a query from the bench, learned counsel for the railways admits that there is nothing on record to show that any fact-finding inquiry was ever conducted by the railways. He submits that the statement of the chief ticket examiner was taken. But here the situation was that even by the railways' own record the tickets in question had been duly purchased in advance and paid for. There is no insinuation re the complainant and his mother impersonating other persons or travelling on tickets purchased by other persons. It is not even the chief ticket examiner's case that the passengers were carrying no tickets or supportive documents and proof at all. His case is that the "original" tickets (whatever "original" means by his lexicon) were not shown on demand. The complainant on the other hand has submitted that he showed the computer generated printed tickets as had been made available to him by the dispensations. The fact also remains that the chief ticket examiner did not make any attempt to try to ascertain whether the tickets which were for reserved berths were in fact purchased in advance or not. It is not as if the complainant and his mother were travelling in a general compartment without reservation, they were travelling on reserved berths with reservations made in advance. This could easily have been checked from the system. Pertinently a reservation chart is also available which gives details of the ticket numbers, names of the passengers, etc. The questionable conduct of the chief ticket examiner required and called for a fact-finding inquiry. However the railways has rather banked its whole case on the statement of the said very chief ticket examiner. In the absence of a fact-finding exercise and in the admitted facts that the tickets had in fact been purchased and paid for in advance and no functionary of the railways had questioned the complainant and his mother at the time of boarding or during the course of the journey, and perusing the copy of the computer generated ticket print-out which has been placed on the record before us by the railways

itself with its petition, it is difficult to readily agree that “original” tickets were not produced when demanded by the chief ticket examiner. However, even if, for the sake of discussion, the “original” tickets (whatever be the connotation) were not produced it is clear that the chief ticket examiner did not check from the system whether or not the tickets had in fact been duly purchased and paid for. There is no explanation and in fact there is complete opacity on how the railways authorities allowed the passengers to board the train and to make the journey when it is the required practice to check the tickets at the time of boarding as well as *enroute*. Also, if the chief ticket examiner was right, then the natural corollary was that the functionaries charged with checking the tickets at the time of boarding and during the journey were not diligent enough. But there is nothing on record whether any action was ever taken against them for their remissness.

We further fail to understand that even after the unsavoury incident, when the complainant made his complaint before the District Commission, when it was crystal clear to the railways that in fact the complainant had purchased and paid for the tickets in advance, when no fact-finding inquiry was conducted, by which administrative or financial logic the railways continued to press that it can impose the penalty. When the railways was well aware that the passengers were in fact not travelling without tickets or on fake tickets, why a rational logical decision could not be taken is beyond us. Even after the railways had come to know that there was no fault on the part of the complainant, it still deemed it appropriate to agitate before the District Commission and then appeal before the State Commission and now prefer revision before this Commission.

Ordinarily there would have been no reason for the complainant to not produce the tickets were dispensed to him when asked for by the chief ticket examiner. Even if it is presumed that the complainant was not in a position to show the “original” tickets (whatever is meant by “original”) due to oversight or any other reason, the fact remained that the complainant had paid for the tickets in advance and the same could have been readily checked from the system. After the complainant made a complaint and the railways had checked its own their record, it was well aware that the tickets had been issued to the complainant for reserved berths and also that this was not a case of impersonation etc. The natural administrative and financial decision ought to have been to refund the amount of the penalty wrongly charged. But, without any inquiry into the facts of the incident between the passengers and the chief ticket examiner at the termination of the journey, and ignoring its own record, the railways thought it apt to agitate the matter right upto this Commission.

**10.** Ingredients of ‘deficiency’ as well as ‘unfair trade practice’ are well and truly manifest in the matter. Both the terms, ‘deficiency’ and ‘unfair trade practice’, are plainly defined in the Act itself (section 2(1)(g) and section 2(1)(r) of the Act 1986). In respect of ‘unfair trade practice’ we may elaborate that the list provided under section 2(1)(r) is illustrative and not comprehensive or exhaustive. As such, an unfair method or unfair or deceptive practice, as may be judiciously determined on facts and reason after fair and objective appraisal of the evidence and material on record, would qualify as ‘unfair trade practice’ within the meaning of section 2(1)(r) .

**11.** The fora below have ordered for refund of the amount of the tickets charged for the second time i. e. Rs. 4820/- with interest along with compensation and cost of litigation.



But, as is borne out from the facts, the penalty at New Delhi was most obviously wrongly levied. As such the entire amount charged at New Delhi i.e. Rs. 5150/- requires to be refunded with interest, anything less will be less than justice.

12. Learned counsel for the railways finally makes a faint argument that the claim ought to have been made before the railway claims tribunal established under The Railways Claims Tribunal Act, 1987 (the 'Act 1987') and could not have been made before the consumer protection forum.

13. We may observe that this has been settled repeatedly by this Commission and lately this Commission in revision petition no. 1955 of 2015 decided on 15.07.2022 has again reiterated that establishment of claims tribunals under the Act 1987 does not in any way infringe upon or fetter the additional alternative remedy available to consumer to seek remedy by instituting a complaint apropos 'deficiency' or 'unfair trade practice' before the consumer protection fora established under the Act 1986. Para 9 of the said Order is being reproduced below for reference:

9. The issue of maintainability of 'complaint' in respect of 'deficiency' within the meaning of section 2(1)(g) of The Consumer Protection Act, 1986 or 'unfair trade practice' within the meaning of section 2(1)(r) (or for that matter 'restrictive trade practice' within the meaning of section 2(1)(nnn)) despite other specific legislative enactments relating to different operational areas of service or trade is now no longer *res integra* and it is not required to unnecessarily dilate on this aspect all over again. It is well-settled that the additional alternative remedy provided to the 'consumer' vide section 3 of The Consumer Protection Act, 1986 in order to seek remedy for the loss and injury suffered due to 'deficiency' or 'unfair trade practice' as defined under the Act is in addition to and not in derogation of the provisions of any other law for the time being in force. It is relevant that the provision aiming to redress the scourge of 'unfair trade practice' i.e. a trade practice for the promotion of any service wherein any unfair method or unfair & deceptive practice is adopted is unique to The Consumer Protection Act, 1986, and that section 14(1)(f) of the said Act even confers the power to make 'direction' to discontinue the 'unfair trade practice' or not to repeat it. The wide-reaching ambit and scope of the provisions relating to the malady of 'deficiency' and 'unfair trade practice' and the enabling provisions which provide for their remedy are distinctively within the exclusive domain of The Consumer Protection Act, 1986. The provisions are especial and unique. Establishment of claims tribunals under The Railway Claims Tribunal Act, 1987 does not in any way infringe upon or fetter the additional alternative remedy available to 'consumer' to seek remedy by instituting a 'complaint' apropos 'deficiency' or 'unfair trade practice' before the consumer protection fora established under The Consumer Protection Act, 1986. No doubt the 'doctrine of election' or in simpler words the right of the 'consumer' to elect the forum to seek remedy against the wrong done is of material significance. It concomitantly goes without saying that the general principle obtains that the same remedy for the same wrong cannot be sought all over again in parallels or subsequently in another forum of concurrent jurisdiction. Also, as far as the provision of section 106 of The Railways Act, 1989 and the aspect of adherence thereto is concerned, it could only be a relevant and material facet to be considered while adjudging 'deficiency' or 'unfair trade practice' but the same can by no stretch

of imagination be construed to imply that the jurisdiction of the consumer protection fora itself stands ousted. It may be one of the moot points before the consumer protection fora to see whether there has been any unjustified infringement of the provisions of section 106 on the part of the complainant and if so what shall be its consequential effect on the merits in his complaint or the evidentiary value of the same, but some alleged breach of this section can in no way be taken to imply that the jurisdiction of the consumer protection fora stands ousted.

Learned counsel for the railways submits that he is unaware of the Commission's said Order of 15.07.2022 or whether it was ever agitated or set aside by a superior court.

**14.** Sequel to the discussion above, we have no hesitation in holding that the penalty of Rs. 5150/- charged at New Delhi was entirely unjustifiable and unwarranted, unfair and deceptive. The award made by the two fora below needs to be modified and the entire amount charged at New Delhi ought to be refunded with reasonable interest along with fair compensation for the mental agony and physical harassment and even-handed cost of litigation, commensurate with the loss and injury suffered by the complainant and his mother. As such the award is modified as below:

The railways shall refund the amount of Rs. 5150/- charged at New Delhi with interest at the rate of 9% per annum from the date of the journey i.e. 25.08.2019 along with Rs. 5000/- as compensation for mental agony and physical harassment and Rs. 25000/- as cost of litigation before the three consumer protection fora.

The awarded amount shall be made good within six weeks of the date of this Order, failing which the District Commission shall undertake execution, for 'enforcement' and for 'penalty', as per the law.

The chief executive of the railways shall be better advised to look into this matter and to inculcate accountability and systemic improvements so that consumers at large are not put to such loss and injury in future. Needless to add, it will be open for the railways to fix responsibility and recover the amount of the award from the functionary(ies) responsible.

**15.** The Registry is requested to send a copy each of this Order to the parties in the revision and to their learned counsel as well as to the District Commission immediately. The stenographer is requested to upload this Order on the website of this Commission immediately.

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**DINESH SINGH**  
**PRESIDING MEMBER**

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**BINOY KUMAR**  
**MEMBER**