

Railways Act 1989

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Chapter I

Railway Administration

- 1. **Short title and Commencement** – (1) This Act may be called the Railway Act, 1989.

(2) Shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint :

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement on this Act shall be constructed as a reference to the coming into force of that provision.

Note : - The act came into force w.e.f. July 1, 1990 vide Noti. No. S.O. 475(E) dated 12th June 1990.

- 2. **Definition** – In this Act, unless the context otherwise requires,-

- (1) “authorized” means authorized by a railway administration;
- (2) “Carriage” means the carriage of passengers or goods by a railway administration;
- (3) “Claims Tribunal” means the Railway Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987 (54 of 1987);
- (4) “Classification” means the classification of commodities made under section 31 for the purpose of determining the rates to be charged for carriage of such commodities;
- (5) “Class rates” means the rate fixed for a class of commodity in the classification;
- (6) “Commissioner” means the Chief Security Commissioner of Railway Safety or the Commissioner of Railway Safety appointed under section 5;
- (7) “Commodity” means a specific items of goods;

- (8) "Consignee" means the person named as consignee in a railway receipt;
- (9) "Consignment" means goods entrusted to a railway administration for carriage:
- (10) "Consignor" means the person, named in a railway receipt as consignor, by whom or on whose behalf goods covered by the railway receipt are entrusted to a railway administration for carriage.
- (11) "demurrage" means the charge levied for the detention of any rolling stock after the expiry of free time, if any, allowed for such detention.
- (12) "endorsee" means the person in whose favour an endorsement is made, and in the case of successive endorsement, the person in whose favour the last endorsements, the person in whose favour the last endorsement is made;
- (13) "endorsement" means the signing by the consignee or the endorsee after adding a direction on a railway receipt to pass the property in the goods mentioned in such receipt to a specific person;
- (14) "fare" means the charge levied for the carriage of passengers;
- (15) "ferry" includes a bridge of boats, platoons or rafts, a swing bridge, a fly-bridge and a temporary bridge and the approaches to, and landing places of, a ferry;
- (16) "forwarding note" means the document executed under section 64;
- (17) "freight" means the charge levied for the carriage of goods including transshipment charges, if any;
- (18) "General Manager" means the General Manager of a Zonal Railway appointed under Section 4;
- (19) "goods" includes –
- (i) Containers, pallets or similar articles of transport used to consolidate goods; and
 - (ii) Animals;

- (20) "Government railway" means a railway owned by the Central Government;
- (21) "in transit", in relation to the carriage of goods by railway, means the period between the commencement and the termination of transit of such goods, and unless otherwise previously determined-
- (a) transit commences as soon as the railway receipt is issued or the consignment is loaded, whichever is earlier;
 - (b) transit terminates on the expiry of the free time allowed for unloading of consignment from any rolling stock and where such unloading has been completed within such free time, transit terminates on the expiry of the free time allowed, for the removal of the goods from the railway premises;
- (22) "level crossing" means an inter-section of a road with lines of rails at the same level;
- (23) "luggage" means the goods of a passenger either carried by him in his charge or entrusted to a railway administration for carriage;
- (24) "lump sum rate" means the rate mutually agreed upon between a railway administration and a consignor for the carriage of goods and for any service in relation to such carriage;
- (25) "non-Government railway" means a railway other than a Government railway;
- (26) "notification" means a notification published in the official Gazette;
- (26-A) "Officer Authorised" means an officer authorised by the Central Government under sub-section(2) of Section 179.
- (27) "parcel" means goods entrusted to a railway administration for carriage by a passenger or a parcel train;
- (28) "pass" means an authority given by the Central Government or a railway administration to a person allowing him to travel as a passenger, but does not include a ticket;
- (29) "passenger" means a person traveling with a valid pass or ticket;

- (30) “prescribed” means prescribed by rules made under this Act;
- (31) “railway” means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes –

- (a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
- (b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;
- (c) all electric traction equipments, power supply and distribution installation used for the purposes of, or in connection with, a railway;
- (d) all rolling stock, stations, offices, ware houses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with railway;
- (e) all vehicles which are used any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and
- (f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired, or worked by a railway administration,

but does not include –

- i) a tramway wholly within a municipal area; and
- ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;

- (32) “railway administration”, in relation to-

- (a) a Government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement;

(33) “railway receipt” means

(34) “Railway Servant “ means any person employed by the Central Government or by a railway administration in connection with the service of a railway (including member of the Railway Protection Force appointed under clause © of sub-section (1) of section 2 of the Railway Protection Force Act, 1957 (23 of 1957)

Chapter II

Railway Administration

3. Zonal Railways. - (1) The Central Government may, for the purpose of the efficient administration of the Government railways, by notification, constitute such railways into as many Zonal Railways as it may deem fit and specify in such notification the names and headquarters of such Zonal Railways and the area in respect of which they shall exercise jurisdiction.

(2) The Zonal Railway existing immediately before the commencement of this Act shall be deemed to be Zonal Railway constituted under sub-section (1).

(3) The Central Government may, by notification, declare any unit of the railways engaged in research, development, designing, construction or production of rolling stock, its parts or other equipment used on a railway, to be a Zonal Railway.

(4) The Central Government may, by notification, abolish any Zonal Railway or constitute any New Zonal Railway out of nay existing Zonal Railway or Zonal Railways, change the name or headquarters of any Zonal Railway or determine the areas in respect of which a Zonal Railway shall exercise jurisdiction.

4. Appointment of General Manager - (1) The Central Government shall, by notification, appoint a person to be the General Manager of a Zonal Railway.

(2) The general superintendence and control of a Zonal Railway shall vest in the General Manager.

Chapter III

COMMISSIONERS OF RAILWAY SAFETY.

5. Appointment of Chief Commissioner of Railway Safety and Commissioners of Railway Safety. - The Central Government may appoint a person to be the Chief Commissioner of Railway Safety and such other persons as it may consider necessary to be the Commissioner of Railway Safety.

6. Duties of Commissioner - The Commissioner shall -

a) inspect any railway with a view to determine whether it is fit to be opened for the public carriage of passengers and report thereon to the Central Government as required by or under Railway Act;

b) make such periodical or other inspections of any railway or of any rolling stock used thereon as the Central Government may direct;

(c) make an enquiry under this Act into the cause of any accident on a railway; and

(d) discharge such other duties as are conferred on him by or under this Act.

7. Powers of Commissioner - Subject to the control of the Central Government, the Commissioner, whenever it is necessary so to do for any of the purposes of this Act, may-

(a) enter upon and inspect any railway or any rolling stock used thereon;

(b) by order in writing addressed to a railway administration, require the attendance before him of any railway servant and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration; and

(c) require the production of any book, document or material object belonging to or in the possession or control of any railway administration which appears to him to be necessary to inspect.

8. Commissioner to be Public Servant - The Commissioner shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (45 of 1860).

9. Facilities to be afforded to Commissioner - A railway administration shall afford to the Commissioner all reasonable facilities for the discharge of the duties or for the exercise of the powers imposed or conferred on him by or under this Act.

10. Annual report of Commissioners - The Chief Commissioner of Railway Safety shall prepare in each financial year an annual report giving a full

account of the activities of the Commissioner during the financial year immediately preceding the financial year in which such report is prepared and forward, before such date as may be specified by the Central Government, copies thereof to the Central Government, and that Government shall cause that report to be laid, as soon as may be, after its receipt before each house of parliament.

CHAPTER IV

CONSTRUCTION AND MAINTENANCE OF WORKS

11. Power of railway administration to execute all necessary works -

Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for the companies, and subject also, in the case of a non-government railway, to the provisions of any contract between the Non-Government railway and the Central Government, a railway administration may, for the purpose of constructing or maintaining a railway -

(a) make a construct in or upon, across, under or over any lands, or any street, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water pipes, gas pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined - planes, bridges, tunnels, culverts, embankments, aqueducts, roads, lines of railways, passages, conduits, drains, piers, cutting and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;

(b) alter the course of any river, brooks, streams or other water courses, for the purpose of constructing and maintenance tunnels, bridges, passages, or other works over or under them and divert or alter either temporarily or permanently, the course of any river, brooks, streams, or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, ware houses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and the conveniences as the railway administration thinks proper;

(e) alter, repair or discontinue such buildings, works and convenience as aforesaid or any of them and substitute other in their stead;

(f) erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;(g) erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and

(h) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

12. Power to later the position of pipe, electric supply line, drain or sewer, etc. - (1) A railway administration may, for the purpose of exercising the powers conferred on it by this Act, alter the position of any pipe for the supply of gas, water, oil or compressed air, or the position of any electric supply line, drain or sewer.

Provided that before altering the position of any such pipe, electric supply line, drain or sewer, the railway administration shall give a notice indicating the time at which the work of such alteration shall commence, to the local authority or other person having control over the pipe, electric supply line, drain or sewer.

(2) The railway administration shall execute the work referred to in sub-section (1) to the reasonable satisfaction of the local authority or the person receiving the notice under the provision to the sub-section (1).

13. Protection for Government Property. - Nothing in section 11 and 12 shall authorise -

(a) a railway administration of the government railway to do anything on or to any works, lands or buildings vested in, or in the possession of, a State Government without the consent of that Government; and

(b) a railway administration of a non-Government railway to do anything on or to any works, lands or buildings vested in, or in the possession of, the Central Government or a State Government, without the consent of the Government concerned.

14. Temporary entry upon land to remove obstruction, to repair or to prevent accident - (1) Where in the opinion of a Railway administration - (a) there is imminent danger that any tree, post or structure may fall on the railway so as to obstruct the movement of the rolling stock; or

(b) any tree, post, structure or light obstructs the view of any signal provided for movement of rolling stock; or

(c) any tree, post or structure obstructs any telephone or telegraph line maintained on it,

it may take such steps as may be necessary to avert such danger or remove such obstruction and submit a report thereof to the Central Government in such manner and within such time as may be prescribed.

(2) Where in the opinion of a railway administration -

(a) a slip or accident has occurred; or

(b) there is apprehension of any slip or accident to any cutting embankment or other work on a railway,

it may enter upon any lands adjoining the railway and do all such works as may be necessary for the purpose of repairing or preventing such slip or accident and submit a report thereof to the Central Government in such manner and within such time as may be prescribed.

(3) The Central Government may, after considering the report under sub-section (1) or sub-section (2), in the interest of public safety, by order, direct the railway administration that further action under sub-section (1) or Sub-section(2) shall be stopped or the same shall be subject to such condition as may be specified in that order.

15. Payment of amount for damage or loss - (1) No suit shall lie against a railway administration to recover any amount for any damage or loss caused in the exercise of the powers conferred by any of the foreign provisions of this chapter.

(2) A railway administration shall pay or tender payment for any damage or loss caused in the exercise of the powers conferred by any of the foregoing provisions of this chapter, and in case of a dispute as to the sufficiency of any amount so paid or tender or as to the persons entitled to receive the amount, it shall immediately refer the dispute for the decision of the District judge of the district and his decision thereon shall be final;

Provide that where the railway administration fails to make a reference within sixty days from the date of commencement of the dispute, the District Judge may, on an application made to him by the person concerned, direct the railway administration to refer the dispute for his decision.

(3) The reference under sub-section (2) shall be treated as an appeal under Sec.96 of the Code of Civil Procedure, 1908 (5 of 1908), and shall be disposed of accordingly.

(4) Where any amount has been paid as required by sub-section (2), the railway administration shall, notwithstanding anything in any other law for the

time being in force, he discharged from all liabilities to any person whatsoever in respect of any amount so paid.

Comments

Section 15, sub-clause (1) provides that no suit shall lie against the railway administration to recover any amount for any damage or loss caused in exercise of the powers conferred by any of the foregoing provisions of this Chapter.

Sub-clause (2) provides that the amount of damage or loss shall be paid or tendered to the persons and if any dispute arises as to the sufficiency of the amount or as to the persons entitled to receive such amount, the same shall be referred to the District Judge who shall decide it as an appeal under Sec. 96 of the Code of Civil Procedure, 1908.

16. Accommodation Works – (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely :

- (a) such crossings, bridges, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the State Government, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made ; and
- (b) all necessary bridges, tunnels, culverts, drains, water sources or other passages, over, under or by the sides of the railway, of such dimensions as will, in the opinion of the state government, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as it was before the making of the railway or as nearly as possible.

(2) Subject to the other provisions of this Act, the works specified in subsection(1) shall be made at the cost of the railway administration during or immediately after the laying out or formation of the railway over the lands traversed and in such a manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works :

Provided that –

- (a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners or occupiers of the lands have been paid compensation in

consideration of their not requiring the said works to be made :

- (b) save as hereinafter, in this chapter, provided, no railway administration shall be liable to execute any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic ;
- (c) where a railway administration has provided suitable accommodation work for the crossing of a road or stream and the road or stream is afterwards diverted by the actor neglect of the person having the control thereof, the railway administration shall not be compelled to provide any other accommodation work for the crossing of such road or stream.

- (3) The State Government may specify a date for the commencement of any work to be executed under sub-section (1) and, if within three months next after that date, the railway administration fails to commence the work or having commenced it, fails to proceed diligently to execute it, the Central Government shall, on such failure being brought to its notice by the State Government, issue such directions to the railway administration as it thinks fit.

Explanation : For the purposes of this section, the expression “lands” shall include public roads.

Comments

Section 16 provides for the nature of accommodation works and the circumstances in which such accommodation works may be carried out by a railway administration.

Proviso. – it is a well settled principle of construction that unless clearly indicated, a proviso would not take away substantive rights given by the section or sub-section.

17. Power of owner, occupier, State Government or local authority to cause additional accommodation works to be made – (1) if an owner or occupier of any land affected by a railway considers the works made under sec.16 to be insufficient for the use of the land, or if the State Government or a local authority desires to construct a public road or other work across, under or over a railway, such owner or occupier, or, as the case may be, the State Government or the local authority may, at the time, require the railway

administration to make at the expense of the owner or occupier or of the state Government or the local authority, as the case may be, such further accommodation works as are considered necessary and are to be made by the railway administration.

(2) The accommodation works made under sub-section (1) shall be maintained at the cost of the owner or occupier of the land, the State Government or the local authority, at whose request the works were made.

(3) In the case of any difference of opinion between the railway administration and the owner or occupier, the State Government or the local authority, as the case may be, in relation to -

- i) the necessity of such further accommodation works
- ; or
- ii) the expenses to be incurred on the construction of such further accommodation works ; or
- iii) the quantum of expenses on the maintenance of such further accommodation works,

it shall be referred to the Central Government whose decision thereon shall be final.

Comments

Section 17, sub-section (1) provides that an owner or occupier of any land or the State Government or a local authority desiring any additional accommodation work may require the railway administration to carry out such work at the cost of such owner, occupier, the state Government or the local authority.

Sub-section (2) provides that the works carried on under sub-section (1) shall be maintained at the cost of the owner, occupier, the State Government or the local authority at whose request the works were done.

Sub-clause (3) lays down that in case of any difference between the railway administration and the owner, occupier or the State Government or the local authority, in relation to the necessity of or expenses incurred on the construction of accommodation works, the same shall be referred to the Central Government whose decision thereon shall be final.

18. Fences, gates and bars – The Central Government may, within such time as may be specified by it or within such further time, as it may grant, require that –

- (a) boundary marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith ;
- (b) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by railway administration at level crossings ;
- (c) persons be employed by a railway administration to open and shut gates, chains or bars.

Comments

Section 18 provides that the Central Government may require boundary marks or fences to be provided by a railway administration and further provides that suitable gates, chains, bars, etc. may be erected and renewed at level crossing or that persons be employed by a railway administration to open and close such gates, chains, or bars etc.

Obligation on railways to provided fencing, if absolute – There is no duty on the part of the railway administration to fence the Railway line so as to prevent children from getting over the railway tracks. It cannot be the connection that providing fencing to the railway quarters located in the precincts of the station would safeguard the children from going to the line. At any rate, in the present case, there is no evidence whatsoever that the railway quarters of the plaintiff's father was not provided with fencing. Even if such fencing is provided, the Railways cannot be blamed if children are allowed by the parents to go out of the fencing.

19. Over bridges and under bridges – (1) Where a railway administration has constructed lines of rails across a public road at the same level, the State Government or the local authority maintaining the road, may, at anytime, in the interest of public safety, require the railway administration to take the road either under or over the railway by means of a bridge or arch with convenient ascents and descents and other convenient approaches instead of crossing the road on the level, or to execute such other works as may in the circumstances of the case, appear to the State Government or the local authority maintaining the road to be best adapted fro removing or diminishing the danger arising from the level crossing.

(2) The railway administration may require the State Government or the local authority, as the case may be, as a condition of executing any work under sub-section (1), to undertake to pay the whole of the cost of the work and the expense of maintaining the work, to the railway administration or such proportion of the cost and expenses as the Central Government considers just as reasonable.

(3) In the case of any difference of opinion between the railway administration and the State Government or the local authority, as the case may be, over any of the matters mentioned in sub-section (1), it shall be referred to the Central Government. Whose decision thereon shall be final.

Comments

Section 19 provides for construction of over bridges and under bridges at a level crossing at the instance of the State Government or the local authority in the interest of the public safety.

Public Safety – There is no need to strictly construe the words “public safety” laid down in section.19 of the Indian Railways Act. A Level crossing is to be manned twenty-four hours by railway employee on duty at the gate. It has been submitted that since the railway administration has met fifty percent of the expenditure on the flyover it would be in the interest of public exchequer to so construct the flyover as to totally avoid placement on duty for twenty four hours of railway employees at the level crossing. It is with this view that sub-way is being provided and is being constructed and a wall is being constructed on both sides of the subway so as to prevent flow of traffic over the railway line and to obviate the need of level crossing gate on the railway line.

20. Power of Central Government to give directions for safety – Notwithstanding anything contained in any other law the Central Government may, if it is of the opinion that any work undertaken or may be undertaken, is likely to alter or impede the natural course of water flow or cause an increase in the volume of such flow endangering any cutting, embankment or other work on a railway, issue directions in writing to any person, officer or authority responsible for such work to close, regulate or prohibit that work.

CHAPTER V

Opening Of Railways

21. **Sanction of the Central Government to the opening of railway**
– No railway shall be opened for the public carriage of passengers until the government has, by order, sanctioned the opening thereof for the purpose.

Comments

Section 21 lays down that no railway shall be opened for the public carriage of passengers until the Central Government has sanctioned the opening thereof.

22. **Formalities to be compiled with before giving sanction to the opening of a railway** – (1) the Central Government shall, before giving its sanction to the opening of a railway under Sec. 21, obtain a report from the commissioner that –

- a) he has made a careful inspection of the railway and the rolling stock that may be used thereon ;
- b) the moving and fixed dimensions as laid down by the Central Government have not been infringed ;
- c) the structure of lines of rails, strength of bridges, general structural character of the works and size of, and maximum gross load upon, the axles of any rolling stock, comply with the requirements laid down by the Central Government ; and
- d) in is opinion , the railway can be opened for the public carriage of passengers without any danger to the public using it.

(2) if the Commissioner is of the opinion that the railway cannot be opened without any danger to the public using it, shall be, in is report, state the grounds therefore, as also the requirements which, in his opinion, are to be compiled with before sanction is given by the Central Government.

- (4) The Central Government, after considering the report of the Commissioner, may sanction the opening of a railway under Sec.21 as such or subject to such conditions as may be considered necessary by it for the safety of the public.

Comments

Section 22 lays down the formalities to be compiled with before sanction to the opening of a railway is given by the Central Government.

Shall – It is a well – known principle that in the interpretation of status that where the situation and the context warrants it, the word “shall” used in a section or rule of a status has to be constructed as “may”.

23. **Section 21 and 22 to apply to the opening of certain works** – The provision sod Secs. 21 & 22 shall apply to the opening of the following works if they form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed subsequent to the giving of a report by the Commissioner under Sec 22, namely :

- (a) opening of additional lines of railway and deviation lines;

- (b) opening of stations, junctions and level crossings;
- (c) re-modelling of yards and re-building of bridges;
- (d) introduction of electric traction ; and
- (e) any alteration or re-construction materially affecting the structural character of any work to which the provision of Secs. 21 and 22 apply or are extended by this section.

Comments

Section 23 lays down that the provisions of Secs. 21 & 22 shall apply to the opening of additional lines of railway, deviation lines, opening of stations, junctions, level crossings, introduction of electric traction, etc.

Preferential allotment Raks – In so far as the consideration of the committee concerned it appears that such constitution of such a committee had been accepted by all the parties appearing in this proceedings including the State authorities and/or Railway authorities. Accordingly the Court, directs that (i) a committee should be constituted consisting of the Secretary. Department of food and supply. Government of West Bengal, (ii) Assistant Director of Consumer Affairs, Government of West Bengal, (iii) Assistant Commissioner, Calcutta, and (iv) one representative of the Railway Board. The said Committee shall first consider the requirement of Salt district-wise on the basis of the basis of information or otherwise and accordingly, the rakes should be determined district-wise. Such determination will be made only on the basis of the need of a particular district so that the iodised salt may reach in that district for the consumers in question having regard with the object of giving [preferential treatment in the matter of allotment of rake for iodised salt and having regard to the very object for declaring entire state of West Bengal as *Goitre endemic area*.

24. Temporary suspension of traffic :- When an accident has occurs on a railway resulting in a temporary suspension of traffic, and either the original lines of rails and works have been restored to their original standard or a temporary diversions has been laid for the purpose of restoring communication, the original lines of rails and works so restored, or the temporary diversions, as the case may be may, without prior inspection by the commissioner, be opened for the public carriage of passengers, subject to the following conditions, namely:

- (a) the railway servant incharge of the works undertaken by reason of the accident has certified in writing that the opening of the restored lines of rails and works, or of the temporary diversion will not in his opinion be attended with danger tot the public: and

- (b) a notice of the opening of the lines of rails and works or the diversion shall be sent immediately to the Commissioner.

Comment

Section 24 provides that where an accident has occurred on a railway resulting in a temporary suspension of traffic may be opened for the public carriage of passengers without prior inspection by the Commissioner if the railway servant in charge of the works undertaken by reason of the accident certifies that opening of the lines or rails, works and temporary diversion will not be attended with danger to the public and notice of the opening of such lines of rails, works or other diversion is sent by telegraph to the Commissioner.

25. Power to close railway opened for the public carriage of passengers

:- Where after the inspection of any railway opened and used for the public carriage of passengers or any rolling stock used thereon, the Commissioner is of the opinion that the use of the railway or of any rolling stock will be attended with danger to the public using it, the Commissioner shall send a report to the Central Government who may thereupon direct that –

- i) the railway be closed for the public carriage of passengers; or
- ii) the use of the rolling stock be discontinued or
- ii) the railway or the rolling stock may be used for the public carriage of passengers subjects to such conditions as it may consider necessary for the safety of public.

Comment

Section 25 empowers the Central Government to close railway opened for the public carriage of passengers on receipt of the opinion of the Commissioner.

26. **Re-opening of closed railway.** :- When the Central Government has, under sec. 25 directed the closure of a railway or the discontinuance of the use of any rolling stock-

- (a) the railway shall not be re-opened for the public carriage of passengers until it has been inspected by the Commissioner and its re-opening is sanctioned in accordance with the provisions of this Chapter ; and

- (b) the rolling stock shall not be used until it has been inspected by the Commissioner and its re-use is sanctioned in accordance with the provisions of this chapter.

Comment

Section 26 lays down the conditions for re-opening of closed railway.

27. Use of rolling stock :- A railway administration may use rolling stock as it may consider necessary for the construction, operation and working of a railway:

Provided that before using rolling stock of a design or type different from that already running on any section of the railway, the previous sanction of the Central Government shall be obtained for such use :

Provided further that before giving any such sanction, the Central Government shall obtain a report from the Commissioner that he has a careful inspection of the rolling stock and , in his opinion, such rolling stock can be used.

Comment

Section 27 enjoins on a railway administration a duty to obtain the previous sanction of the Central Government before using any rolling stock of a design or type different form that already running on any section of the railway.

28. Delegation of powers :- The Central Government, by notification, direct that any of its powers or functions under this Chapter, except Sec. 29 or the rules made there under shall, in relation to such matters and subject to such conditions. If any, as may be specified in the notification be exercised or discharged also by a Commissioner.

Comment

Section 28 provides that the powers of the Central Government relating to opening of railways may be delegated to the Commissioner subject to such conditioned as may be specified.

29 Power to make rules in respect of matters in this Chapter :-

- (1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.
- (2) In particular, and without prejudice to the generality of the force going power. Such rules may provide for all or any of the following matters . namely:

- (a) the duties of a railway administration and the commissioner in regard to the opening of a railway for the public carriage of passengers:
- (b) the arrangements to be made for and the formalities to be complied with before opening a railway for the public carriage of passengers;
- (c) for regulating the manner in which, and the speed at which rolling stock used on railway is to be moved or propelled ; and
- (d) the case in which and the extent to which the procedure provided in this Chapter may be dispensed with.

Comments.

Section 29 provides inter alia that the Central Government, before opening a railway for the public carriage of passengers may make rules in respect of the duties of railway administration and the Commissioner, the arrangements to be made and the formalities to be observed before such opening of railway.

Rules – Whether validity framed. – The question whether rules are validity framed to carry out the purposes of the Act can be determined on the analysis of the provisions of the Act.

CHAPTER VI

Fixation of Rates

30.Power to fix rates.- (1) The Central Government may, from time to time, by general or special order fix, for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and specify in such order the conditions subject to which such rates shall apply.

(2) The Central Government may by a like order, fix the rates of any other charges identical to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to which such rates shall apply.

Comments

Section 30 sub-rule (1) empowers the Central Government to fix rates for the carriage of passengers and goods and specify the conditions subject to which such rates shall apply.

Sub-rule (2) empowers the Central Government to fix rates or other charges including demurrage and wharfage and the conditions subject to which such rates or charges shall apply.

31. Power to classify commodities or alter rates. – The Central Government shall have power to-

- (a) classify or reclassify any commodity for the purpose of determining the rates to be charged for the carriage of such commodities; and
- (b) increase or reduce the class rates and other charges.

Comment

Section 31 empowers the Central Government to classify commodities and alter rates therefore.

32. Power of railway administration to charge certain rates,- Notwithstanding anything continues in this Chapter, a railway administration may, in respect of the carriage of any commodity and subject to such conditions as may be specified,-

- (a) quote a station to station rate;
- (b) increase or reduce or cancel, after due notice in the manner determined by the Central Government, a station to station rate, not being a station to station rate introduced in compliance with an order made by the Tribunal;
- (c) Withdraw, alter or amend the conditions attached to a station to station rate other than conditions introduced in compliance with an order made by the Tribunal; and
- (d) Charge any lump sum rate.

Comment

Section 32 empowers a railway administration to charge station to station rate, increase, reduce or cancel such rates and withdraw, alter or amend the conditions attached to such rate and to charge any lump-sum rate.

CHAPTER VII

Railway Rates Tribunal

33. Constitution of the Railway Rates Tribunal – (1) There shall be a Tribunal, to be called the Railway Rates Tribunal, for the purpose of discharging the functions specified in this Chapter.

(2) The Tribunal shall consist of a Chairman and two other members to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is, or has been, a judge of the Supreme Court or a High Court and of the other two members, one shall be a person, who in the opinion of the Central Government, has special knowledge of the commercial, industrial or economic conditions of the country and the other shall be a person, who, in the commercial working of the railways.

(4) The Chairman and the other members of the Tribunal shall hold office for such period, not exceeding five years, as may be prescribed.

(5) In case the Chairman or any other member is, by infirmity or otherwise, rendered incapable of carrying out his duties or absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government may appoint another person to act in his place during his absence.

(6) A person who holds office as the Chairman or other member of the Tribunal shall, on the expiration of the term of his office (not being an office to fill a casual vacancy) be ineligible for re-appointment to that office.

(7) Subject to the provisions of sub-sections (5) and (6), the Chairman and other members of the Tribunal shall hold office on such terms and conditions as may be prescribed.

(8) No act or proceeding of the Tribunal shall be invalidated merely by reason of-

(a) any vacancy in, or any defect in the constitution of the Tribunal; or

(b) any defect in the appointment of a person acting as a Chairman or

other member of the Tribunal.

Comment

Section 33 provides for establishment of a Railway Rates Tribunal and qualification of persons who may be Chairman and members of such Tribunal,

34. Staff of the Tribunal :- (1) The Tribunal may, with the previous approval of the Central Government, appoint such officers and employees as it considers necessary for the efficient discharge of its functions under this Chapter.

(2) The terms and conditions of service of the officers and employees of the Tribunal shall be such as may be determined by regulations.

Comment

Section 34 provides that the Tribunal may, with the previous approval of the Central Government, appoint officers and employees for the efficient discharge of its functions under Chapter VII.

35. Sittings of the Tribunal. :- The Tribunal may sit at such place or places as it may find convenient for the transaction of its business.

Comment

Section 35 lays down that the Tribunal may sit at such places as it may find convenient.

36. Complaints against a railway administration :- Any complaint that a railway administration -

- (a) is contravening the provisions of Sec. 70; or
- (b) is charging for the carriage of any commodity between two stations a rate which is unreasonable; or
- (c) is levying any other charge which is unreasonable,

may be made to the Tribunal, and the Tribunal shall hear and decide any such complaint in accordance with the provisions of this Chapter.

Comments

Section 36 provides for the nature of complaints against a railway administration which may be made to the Tribunal.

Jurisdiction of Claims Tribunal:- The jurisdiction on the subject matter about reasonability of the charges and its jurisdiction under the Goods Tariff, which was the part of the agreement, were the questions which fall exclusively within the jurisdiction of the Tribunal. Therefore, the relief on refund also could not have been granted, as before granting it, the Civil Court would have been required to encroach upon the exclusive jurisdiction given to the Tribunal under Sec. 41 (Sec. 36 new) of the Act.

37 **Matters not written the jurisdiction of the Tribunal.**- nothing in this Chapter shall confer jurisdiction on any commodity;

- (a) Classification or re-classification of any commodity;
- (b) Fixation of wharfage and demurrage charges (including conditions attached to such charges);
- (c) Fixation of fares levied for the carriage of passengers and freight levied for the carriage of luggage, parcels, railway material and military traffic and
- (d) Fixation of lump sum rates.

Comment

Section 37 lays down the bar on the jurisdiction of Tribunal in certain matters such as classification of a commodity, fixation of wharfage and demurrage charges, fares levied of the carriage of passengers and freight levied for the carriage of passengers and freight levied for the carriage³ of luggage. Etc.

38. Powers of the Tribunal.- (1) The Tribunal shall have the powers of a civil court under the Civil Procedure, 1908(5 of 1908), for the purposes of taking evidence on oath, enforcing the attendance of witness, compelling the discovery and production of documents, issuing commissions for the examination of witness and of review and shall be deemed to be a Civil Court for all the purpos⁴es of Sec. 195 and Chapter XXXV of the code of Criminal Procedure, 1973 (2 of 1974) and any reference in such section of Chapter to the presiding Officer of a court shall be deemed to include a reference to the Chairman of the Tribunal.

(3) The Tribunal shall also have power to pass such interim and final orders as the circumstances may require, including orders for the payment of costs.

Comment

Section 38 provides that the Tribunal shall be a Civil Court under the Code of Civil Procedure, 1908; for the purpose of taking evidence on oath, etc., and shall also be deemed to be a civil Court for all the purposes of Sec. 195 and Chapter XXXV of the code of Criminal Procedure. 1973.

39. Reference to the Tribunal.- Notwithstanding anything contained in Sec. 37 the Central Government may make a reference to the Tribunal in respect of any of the matter specified in that section and where any such reference is

made in respect of any such matter, the Tribunal shall make an inquiry into that matter and submit its report thereon to the Central Government.

Section 39 lays down that the Central Government may make a reference to the Tribunal in respect of matters specified in Sec. 37.

40. Assistance by the Central Government. - (1) The Central Government shall give to the Tribunal such assistance as it may require and shall also place at its disposal any information in the possession of the Central Government which that Government may think relevant to any matter before the Tribunal.

(2) Any person duly authorized in this behalf by the Central Government shall be entitled to appear and be heard in any proceedings before the Tribunal.

Comment

Section 40 enjoins on the Central Government a duty to give assistance to the Tribunal.

41. Burden of proof, etc.—In the case of any complaint under Cl. (a) of Sec. 36.-

- (a) whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area, lower rates for the same or similar goods or lower charges for the same or similar services than it charges to other traders in any other local area, the burden of proving that such lower rate or charge does not amount to an undue preference, shall lie on the railway administration:
- (b) In deciding whether a lower rate or charge does not amount to an undue preference, the Tribunal may, in addition to any other considerations affecting the case, take into consideration whether such lower rate or charge is necessary in the interests of the public.

Comments

Section 41(a) provides that where lower rates are charged, the burden of proving that such lower rate does not amount to undue preference shall lie on the railway administration.

(b) Provides that while considering the question of undue preference the Tribunal may take into consideration whether such lower rate charge is necessary in the interest of public.

The burden of proof to disapprove negligence lies on the bailee. HE has to prove that he exercised due care and was not negligent.

42. Decision, etc., or the Tribunal.- The decision or orders of the Tribunal shall be by a majority of the members sitting and shall be final.

Comment

Section 42 provides for the finality of the decision of the Tribunal.

43. Bar of jurisdiction of Courts.- No suit shall be instituted or proceeding taken in respect of any matter which the Tribunal is empowered to deal with, or decide, under this chapter

Comment

Section 43 bars the jurisdiction of Courts in respect of any matters which the Tribunal is empowered to deal with or decide.

44. Relief which the Tribunal may grant.- In the case of any complaint made under Cl. (b) or Cl (c) of Sec. 36 the Tribunal may

- (i) fix such rate or charge as it considers reasonable from any date as it may deem proper, not being a date earlier to the date of the filing of the complaint;
- (ii) fix such a refund of a amount, if any as being the excess of the rate or charge fixed by the Tribunal under Cl.(i)

Section 44 enunciates the reliefs the Tribunal may grant.

45. Revision of decisions given by the Tribunal. – Where a railway administration considers that since the date of decision by the Tribunal, it may, has been a material change in the circumstances on which it was based, it may, after the expiry of one year from such date, make an application to the Tribunal and the Tribunal may, after making such inquiry as it considers necessary, vary or revoke the decision.

Comments

Section 45 confers on the Tribunal power in certain circumstances.

Appeal, an appeal lies from final judgment passed in a summary suit.- An appeal lies from the final judgment passed in a summary suit directing the defendant to pay the decree claim in default of security not having been furnished to suit under Order XXXVII rule3(2).

Plaint rejected, appeal cannot be a continuation of a non-existing thing.- The plaint had been rejected and , therefore, there was nothing before the Court.

The appeal, therefore could not be said, in such a case, to be continuation of a non-existing thing.

Admissibility of the document cannot be assailed in appeal.- Certified copy of the registered sale deed, dated 26th September, 1927, was admissible in evidence and the admissibility of the document could not have been assailed in appeal.

46. Execution of decisions or orders of the Tribunal.- The Tribunal may transmit any decision or order made by it to a civil Court having local jurisdiction and such civil court shall execute the decision or order as if were a decree made by that court.

Comment

Section 46 provides that the order of the Tribunal shall be a decree of the civil court and shall be executed accordingly.

47. Report of the Central Government.- The Tribunal shall present annually a report to the Central Government of all its proceedings under this Chapter.

Comment.

Section 47 provides that the Tribunal shall make an annual report to the Central Government of its proceedings.

48. Power of the Tribunal to make regulations. – (1) The Tribunal may, with the previous approval of the Central Government, make regulations consistence with this Act and rules generally to regulate its procedure for the effective discharge of its functions under this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters namely,

- (a) the terms and conditions of service of the officers and employees of the Tribunal;
- (b) the award of costs by the Tribunal in any proceedings before it;
- (c) the reference of any question to a member of the Tribunal or any other person appointed by the Tribunal, for report after holding a local inquiry;

- (d) the right of audience before the Tribunal, provided that any party shall be entitled to be heard in person, or by a representative duly authorized in writing, or by a legal practitioner.
- (e) The disposal by the Tribunal of any proceedings before it, notwithstanding that in the course thereof there has been a change in the persons sitting as members of the Tribunal;
- (f) A scale of fees for and in connection with the proceedings before the Tribunal.

Comment

Section 48 empowers the Tribunal to make regulations with the previous approval of the Central Government. Such regulations may inter alia be made in regard to the award of costs reference of any question to a member or officer of the Tribunal for report, the right of audience, the scale of fees, etc.

CHAPTER VIII

Carriage of Passengers

49 Exhibition of certain timings and Tables of fares at situations.-

(i) Every railway administration shall cause to be pasted in a conspicuous and accessible place at every station in Hindi and English and also in the regional language commonly in use in the area where the station is situated,-

(i) a table of timings of arrival and departure of trains which carry passengers and stop at that station, and

(ii) list of fares from such station to such other stations as it may consider necessary.

(2) At every station where tickets are issued to passengers, a copy of fares at every station.

50. Supply of tickets on payment of fare.- (1) Any person desirous of traveling on a railway shall, upon payment of the fare, be supplied with a ticket by a railway servant or an agent authorized in this behalf and such ticket shall contain the following particulars, namely :-

- (i) the date of issue;

(ii) the class of carriage;

(iii) the place from and the place to which it is issued; and

(iv) the amount of the fare.

(2) Every railway administration shall display the hours during which booking windows at a station shall be kept open for the issue tickets to passengers.

(3) The particulars required to be specified on a ticket under Cls. (ii) and (iii) of sub-section (i) shall,-

(a) if it is for the lowest class of carriage, be set forth in Hindi, English and the regional language commonly in use at the place of issue of the ticket; and

(b) if it is for any other of carriage, be set forth in Hindi and English:

Provided that where it is not feasible to specify such particulars in any such language due to mechanization or any other reason, the Central Government may exempt such particulars being specified in that language.

Section 50 provides for issue of tickets the particulars to be given on each ticket and also provides for display of hours at station during which tickets may be issued.

51. Provisions for case in which ticket is issued for class or train not having accommodation. – (1) A ticket shall be deemed to have been issued subject to the condition of availability of accommodation in the class of carriage and the train for which the ticket is issued.

(2) If no accommodation is available in the class of carriage for which a ticket is issued, and the holder thereof travels in a carriage of a lower class, he shall, on returning such ticket, be entitled to a refund of the difference between the fare paid and the fare payable for the class of carriage in which he travels.

Comment

Section 52 provides for cancellation of ticket and refund therefore.

53. Prohibition against transfer of certain tickets.- A ticket issued in the name of a person shall be used only by that person :

Provided that nothing contained in this section shall prevent mutual transfer of a seat or berth by passengers traveling by the same train:

Provided further that a railway servant authorized in this behalf may permit change of name of a passenger having reserved a seat or Berth subject to such circumstances as may be prescribed.

Comment

Section 53 prohibits the transfer issued in the name of a person

54. Exhibition and surrender of passes and tickets.- Every passenger shall, on demand by any railway servant authorized in this behalf, present his pass or ticket to such railway servant authorized in this behalf, present his pass or tickets to such railway servant for examination during the journey or at the end of the journey and surrender such ticket-

(a) at the end of the journey

(b) if such ticket is issued for a specified period, on the expiration of such period.

Comment

Section 54 provides for exhibition of pass and ticket during the journey or at the end of journey and surrender thereof.

55. Exhibition against traveling without pass or ticket.- (1) No person shall enter or remain in any carriage on a railway for the purpose traveling therein as passenger unless he has with him a proper pass or ticket or obtained permission of a railway servant authorized in this behalf for such travel.

(2) A person obtaining permission under sub-section (1) shall ordinarily get a certificate from the railway servant referred to in that sub-section that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be traveled.

Comment

Section 55 prohibits the entry and traveling in any carriage without proper pass or ticket.

56. Power to refuse to carry persons suffering from infectious or contagious diseases.-

(1) A person suffering from such infections or contagious diseases, as may be prescribed, shall not enter or remain in any carriage on a railway or travel in a train without the permission of a railway servant authorized in this behalf.

(2) The railway servant giving permission under sub-section (1) shall arrange for the separation of the person suffering from such disease from other persons in the train and such person shall be carried in the train subject to such other conditions as may be prescribed.

(3) Any person who enters or remains in any carriage or travels in a train without permission as required under sub-section (1) or in contravention of any condition prescribed under sub-section (2) such person and a person accompanying him shall be liable to the forfeiture of their passes of tickets and removal from railway by any railway servant.

Comment

Section 56 provides for the manner in which the person suffering from infectious or contagious disease may enter or travel in a carriage.

57. Maximum number of passenger for each compartment.- Subject to the approval of the Central Government, every railway administration shall fix the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment in Hindi, English and also in one or more of the regional languages commonly in use in the areas served by the railway.

Comment

Section 57 empowers a railway administration to fix the maximum number of passengers which may be carried in each compartment.

58. Earmarking of compartment, etc. for ladies. – Every railway administration shall, in every train carrying passengers, earmark for the exclusive of females, one compartment or such number of berths or seats as the railway administration may think fit.

Comment

Section 58 empowers a railway administration to earmark compartments, berths or seats in every train for exclusive use of females.

59. Communications between passengers and railway servant in charge of train. – A railway administration shall provide and maintain in every train carrying passengers, such efficient means of communication between the passengers and the railway servant in charge of the train as may be approved by the Central Government.

Provided that the railway administration is satisfied that the means of communication provided in a train are being misused, it may cause such means to be disconnected in that train for such period as it thinks fit:

Provided further that the Central Government may specify the circumstances under which a railway administration may be exempted from providing such means of communication in any train.

Comment

Section 59 enjoins on a railway administration a duty to provide and maintain efficient means of communication between passengers and the railway servants in charge of the train.

60. Power to make rules in respect of matters in this Chapter.- (1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generally of the foregoing power, such rules provide for all or any of the following matters, namely:-

- (a) the convenience and accommodation (including the reservation of seats or berths in trains) to passengers.
 - (b) The amount of refund for the cancellation of a ticket;
 - (c) The circumstances under which change of names of passengers, having reserved seats or berths, may be permitted;
 - (d) The carriage of luggage and the conditions subject to which luggage may be kept in the cloak rooms at the stations.
 - (e) Diseases which are infectious or contagious;
 - (f) The conditions subject to which a railway administration may carry passengers suffering from infectious or contagious diseases and the manner in which carriages used by such passengers may be disinfected;
 - (g) Generally, for regulating the traveling upon, and the use, working and management of the railways.
- (3) Any rule made under this section may provide that a contravention thereof shall be punishable with the fine which shall not exceed five hundred rupees.

- (4) Every railway administration shall keep at every station on its railway a copy of all the rules made under this section and shall also allow any person to inspect it free of charge,

Comments

Section 60, sub-clauses (1) and (2) empower the Central Government to make rules regarding carriage of passengers and their luggage under Chapter VIII. The matters in respect of which rules may be made are enumerated in sub-clause(2).

Sub-clauses (3) and (4) empower the Central Government to provide for punishment for contravention of rules, made under this clause and impose an obligation on railway administration to allow the inspection of such rules free of charge.

CHAPTER IX

Carriage of goods

61. Maintenance of rate-books, etc., for carriage of goods.- Every railway administration shall maintain, at each station and at such other places where goods are received for carriage, the rate-books or other documents which shall contain the rate authorized for the carriage of goods from one station to another and make them available for the reference of any person during all reasonable hours without payment of any fee.

Comment

Section 61 imposes an obligation on every railway administration to maintain the rate-books or other documents relating to rates and make them available for reference to any person without payment of any fee.

62. Conditions for receiving, etc., of goods. – (1) A railway administration may impose conditions, not inconsistent with this Act or any rules made there under, with respect to the receiving, forwarding, carrying or delivering of any goods;

(2) A railway administration shall maintain, at each station and at such other places where goods are received for carriage, a copy of the conditions for the time being in force under sub-section (1) and make them available for the reference of any person during all reasonable hours without payment of any fee.

Comment

Section 62 empowers railway administration to impose conditions with respect to receiving, forwarding, carrying or delivering of goods and

maintenance of copy thereof at each station where goods are received for carriage and make it available for reference of any person without payment of any fee.

63. Provision of risk rates.- (1) Where any goods are entrusted to a railway administration for carriage, such carriage shall except where owner's risk rate is applicable in respect of such goods, be at railway risk rate.

(2) Any goods for which owner's risk rate and railway risk rate are in force, may be entrusted for carriage at either of the rates and if no rate is opted, the goods shall be deemed to have been entrusted at owner's risk rate.

Comment

Section 63 provides for risk rates at which goods may be entrusted to railway for carriage.

64. Forwarding note.- (1) Every person entrusting any goods to a railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government:

Provided that no forwarding note shall be executed in the case of such goods as may be prescribed.

(2) The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note.

(3) The consignor shall identify the railway administration against any damage suffered by if reason of the incorrectness of incompleteness of the particulars in the forwarding note.

Comments

Section 64 provides for execution of a forwarding note by a person entrusting goods for carriage by railway.

65. Railway receipt. – (1) A railway administration shall, -

- (a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading ; or
- (b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

(2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein :

Provided that in the case of a consignment in wagon-load or train – load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.

Comments

Section 65, sub-clause (1) imposes an obligation on railway administration issue railway receipt for the goods entrusted to it.

Sub-clause (2) lays down the circumstance under which the railway administration shall not be responsible for correctness of weight description or classification or number of packages mentioned in railway receipt.

66. Powers to require statement relating to the description of goods. – (1) The owner or a person having charge of any goods which are brought upon a railway for the purposes of carriage by railway, and the consignee or the endorsee of any consignment shall, on the request of any railway servant authorized in this behalf, deliver to such railway servant a statement in writing signed by such owner or person or by such consignee or endorsee, as the case may be, containing such description of the goods as would enable the railway servant to determine the rate for such carriage.

(2) If such owner or person refuses or neglects to give the statement as required under Sub-section (1) and refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to refuse to accept such goods for carriage unless such owner or person pays for such carriage the highest rate for any class of goods ;

(3) If the consignee or endorsee refuses or neglects to give the statement as required under the Sub-section (1) and refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to the charge in respect of the carriage of the goods the highest rate for any class of goods.

(4) If the statement delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, the railway administration may charge in respect of the carriage of such goods such rate, not exceeding double the highest rate for any class of goods as may be specified by the Central Government.

(5) If any difference arises between a railway servant and such owner or person, the consignee or the endorsee, as the case may be in respect of the description of the goods for which a statement has been delivered under sub-section 91), the railway servant may detain and examine the goods.

(6) Where any goods have been detained under sub-section 95) for examination and upon such examination it is found that the description of the goods is different from that given in the statement delivered under sub-section (1), the cost of such detention and examination shall be borne by such owner or person, the consignee or the endorsee, as the case may be, and the railway administration shall not be liable for any loss, damage or deterioration which may be caused by such detention or examination.

Comments

Section 66, sub-clause (1) provides for delivery of a statement of description of goods by owner, consignee or endorsee to a railway servant.

Sub-clause (2) empowers the railway administration to refuse to accept the goods in the circumstances mentioned therein.

Sub-clause (3) empowers the railway administration to charge the highest rate for any class of goods in cases mentioned therein.

Sub-causes (4), 95) and (6) empower the railway administration to charge the rate not exceeding double the highest rate for any class of goods in case the statement delivered under sub-clause (1) is materially false and examination of goods at the cost of the owner, etc.

67. Carriage of dangerous or offensive goods.- (1) No person shall take with him on a railway, or require a railway administration to carry such dangerous or offensive goods, as may be prescribed, except in accordance with the provisions of this section.

(2) No person shall take with him on a railway the goods referred to in sub-section (1) unless he given a notice in writing of their dangerous or offensive nature to the railway servant authorized in this behalf.

(3) No person shall entrust the goods referred to in sub-section (1) to a railway servant authorized in this behalf for carriage unless the distinctly marks on the outside of the package containing such goods their dangerous or offensive nature and gives a notice in writing of their dangerous or offensive nature to such Railway Servant.

(4) If any railway servant has reason to believe that goods contained in a package are dangerous or offensive and noticed as required Under Sub-section

(2) or sub-section (3) as the case may be, in respect of such goods is not given, he may cause such package to be opened for the purpose of ascertaining its contents.

(5) Notwithstanding anything contained in this section, any railway servant may refuse to accept any dangerous or offensive goods for carriage or stop, in transit, such goods or cause the same to be removed, as the case may be, if he has reason to believe that the provision of the section for such carriage are not complied.

(6) Nothing in this section shall be construed to derogate from the provision of the Indian Explosives Act, 1884 (4 of 1884) or any rule or order made under that Act, and nothing in sub-sections, (4) and (5) shall be construed to apply to any goods entrusted for carriage by order or on behalf of the Government or to any goods which a soldier, Sailor, Airman or any other Officer Armed Forces of the Union or a Police Officer or a member of a territorial Army or of the National Cadet Corps may take with him on a railway in the course of his employment or duty as such.

COMMENT

Section 67 lays down the manner of carriage the dangerous or offensive goods by Railway

68. Carriage of animals suffering from infectious or contagious diseases.-

A railway administration shall not be bound carry any animal suffering from such infectious or contagious diseases as may be prescribed.

COMMENT

Section 68 provides that that railway shall not carry any animal suffering from infectious or contagious disease.

69. Deviation of route.- Where due to any cause beyond the control of a railway administration or due to congestion in the yard or any other operational reasons, goods are carried over a route other than the route by which such goods are booked, the railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of the route.

COMMENT

Section 69 empowers the railway administration to carry goods or to deviate the route under circumstances mentioned therein.

70. Prohibition of undue preference.- A railway administration shall not make or give any undue or unreasonable preference or advantage to , or in favour of, any particular person or any particular description of traffic in the carriage of goods.

COMMENT

Section 70 prohibits a railway administration from giving undue or unreasonable preference in favour of any particular person or traffic.

71. Power to give direction in regard to carriage of certain goods.- (1) The Central Government may, if it is of the opinion that it is necessary in the public interest so to do, by general or special order, direct any railway administration.-

- (a) to give special facilities for, or preference to, the carriage of such goods or class of goods consigned by or to the Central Government of any State or of such other goods or class of goods;
- (b) to carry any goods or class of goods by such route or routes and at such rates;
- (c) to restrict or refuse acceptance of such goods or class of goods at or to such station for carriage,

as may be specified in the order.

(2) Any order made under sub-section (1) shall cease to have effect after the expiration of a period of one year from the date of such order, but may, by a like order, be renewed from time to time for such period not exceeding one year at a time as may be specified in the order.

(3) Notwithstanding anything contained in this Act, every railway administration shall be bound to comply with any order given under sub-section (1) and any action taken by a railway administration in pursuance of any such order shall not be deemed to be a contravention of Sec. 70.

COMMENT

Section 71, sub-clause (1) empowers the Central Government to give directions to the railway administration with regard to –

- (a) Special facilities for the carriage of goods consigned by to the Central Government or the State Government or any other goods;
- (b) The route or the rate at which any goods may be carried; and

(c) To restrict or refuse acceptance of any goods at or to any station.

Sub-clause (2) provides that an order under sub-clause (1) shall be in force for one year and may be renewed for a period not exceeding one year at a time.

72. Maximum carrying capacity for wagons and trucks.- (1) The gross weight of every wagon or truck bearing on the axles when the wagon or truck is loaded to its maximum carrying capacity shall not exceed such limit as may be fixed by the Central Government for the class of axle under the wagon or truck.

(2) Subject to the limit fixed under sub-section (1) every railway administration shall determine the normal carrying capacity for every wagon or truck in its possession and shall exhibit in words and figures the normal carrying capacity so determined in a conspicuous manner on the outside of every such wagon or truck.

(3) Every person owning a wagon or truck which passes over a railway shall determine and exhibit the normal carrying capacity for the wagon or truck in the manner specified in sub-section.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), where a railway administration considers it necessary or expedient so to do in respect of any wagon or truck carrying any specified class of goods or any class of wagons or trucks of any specified type, it may vary the normal carrying capacity for such wagon or truck or such class of wagons or trucks and subject to such conditions as it may think fit to impose, determine for the wagon or truck or class of wagons or trucks such carrying capacity as may be specified in the notification and it shall not be necessary to exhibit the words and figures representing the carrying capacity so determined on the outside of such wagon or truck or such class of wagons or trucks.

Comment

Section 72 empowers the Central Government to fix the maximum carrying capacity of a wagon or truck.

73. Punitive charge for over-loading a wagon.- Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4) of Sec. 72 a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the

forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account.

Comment

Section 73 provides for levy of punitive charges for overloading a wagon.

Penal Provision.- It is to be construed rigidly.

74. Passing of property in the goods covered by railway receipt.- The property in the consignment covered by a railway receipt shall to the consignee of 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.

Comment

Section 74 provides for passing of property in the consignment covered by a railway receipt.

75. Section 74 not to affect right of stoppage in transit or claims for freight.- Nothing contained in Sec. 74 shall prejudice or affect-

- (a) any right of the consignor for stoppage of goods in transit as an unpaid vendor (as defined under the Sale of Goods Act, 1930 (3) of 1930) on his written request to the railway administration;
- (b) any right of the railway to claim freight from the consignor; or
- (c) any liability of the consignee or the endorsee, referred to in that section by reason of his being such consignee or endorsee.

Comment

Section 75 lays down the right of stoppage in transit by consignor as an unpaid vendor and right of railway administration for unpaid freight.

76. Surrender of railway receipt.- The railway administration shall deliver the consignment under a railway receipt on the surrender of such railway receipt

Provided that in case the railway receipt is not forthcoming, the consignment may be delivered to the person, entitled in the opinion of the railway administration to receive the goods, in such manner as may be prescribed.

Comment

Section 76 provides delivery of the consignment on surrender of railway receipt.

77. Power of railway administration to deliver goods or sale proceeds thereof in certain cases.- Where no railway receipt is forthcoming and any consignment or the sale proceeds of any consignment are claimed by two or more persons, the railway administration may withhold delivery of such consignment or sale proceeds, as the case may be, and shall deliver such consignment or sale proceeds in such manner as may be prescribed.

Comment

Section 77 provides for the manner in which delivery of consignment or sale proceeds may be made where two or more persons claim the same.

78. Power to measure, weigh , etc.

Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to –

(i) re-measure, re-weigh or re-classify any consignment;

(ii) re-calculate the freight and other charges ; and

(iii) correct any other error or collect any amount that may have been omitted to be charge.

Comment

Section 78 gives right to railway administration to re-measure or re-classify any consignment and re-calculate the freight and other charges and to collect any amount that has been omitted.

79. Weighment of consignment on request of the consignee or endorsee :

A railway administration may on the request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any ;

Provided that except in cases where a railway servant authorized in this behalf considers it necessary so to do, no weighment shall be allowed of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit;

Provided further that no request for weighment of consignment in wagon load or train –load shall be allowed if the weighment is not feasible due to congestion in the yard or such other circumstances as may be prescribed.

Comment

Section 79 provides for weighment of consignment at the request of the consignee or the endorsee and the circumstances under which such weighment may not be permitted.

80. Liability of railway administration for wrong delivery :

Where a railway administration delivers the consignment to the persons who produce the railway receipt, it shall not be responsible for any wrong delivery on the ground that such person is not entitled thereto or that the endorsement on the railway receipt is forged or otherwise defective.

Comment

Section 80 absolves the railway administration from liabilities for delivery of consignment on production of railway receipt.

81. Open delivery of consignments : Where the consignment arrives in a damaged condition or shows signs of having been tampered with and the consignee or the endorsee demands open delivery, the railway administration shall give open delivery in such manner as may be prescribed.

Comment

Section 81 provided for open delivery of consignment if received in damaged condition.

82. Partial delivery of consignment :

(1) The consignee or endorses shall, as soon as the consignment or part thereof is ready for delivery, take delivery of such consignment or part thereof notwithstanding that such consignment or part thereof is damaged.

(2) In the case of partial delivery under sub-section (1) the railway administration shall furnish a partial delivery certificate, in such form as may be prescribed.

(3) If the consignee or endorsee refuses to take delivery under sub-section (1), the consignment or part thereof shall be subject to wharfage charges beyond the time allowed for removal.

Comment

Section 82 lays down that the consignee or the endorsee shall take delivery of the consignment or part thereof and in case of failure to take delivery wharfage charges may be levied.

83. Lien for freight or any other sum due.- (1) If the consignor, the consignee or the endorsee fails to pay on demand any freight or other charges due from him in respect of any consignment, the railway administration may detain such consignment or part thereof or, if such consignment is delivered, it may detain any other consignment of such person which is in, or thereafter comes into, its possession.

(2) The railway administration may, if the consignment detained under sub-section (1) is --

(a) perishable in nature, sell at once ; or

(b) not perishable in nature, sell by public auction,

Such consignment or part thereof, as may be necessary to realize a sum equal to the freight or other charges:

Provided that where a railway administration for reasons to be recorded in writing is of the opinion that it is not expedient to hold the auction, such consignment or part thereof may be sold in such manner as may be prescribed.

(3) The railway administration may, shall give a notice of not less than seven days of the public auction under Cl. (b) of sub-section (2) in one or more local news papers or where there are no such manner as may be prescribed.

(4) The railway administration may, out of the sale proceeds received under sub-section (2) retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus of such proceeds and the part of the consignment, if any, shall be rendered to the person entitled thereto.

Comment

Section 83 provides for detention of consignment, part thereof or any other consignment of a person from whom any charges are recoverable by a railway administration and the manner of disposal of such consignment and rendering the surplus of sale proceeds to the person entitled thereto.

84. Unclaimed consignment.- (1) if any person fails to take delivery of-

- (a) any consignment ; or
- (b) the consignment released from detention made under sub-section (1) of Sec. 83 ; or
- (c) any remaining part of the consignment under sub-section (2) of Sec. 83.

Such consignment shall be treated as unclaimed.

(2) The railway administration may,-

(a) in the case of an unclaimed consignment which is perishable in nature, sell such consignment in the manner provided in Cl. (a) of sub-section (2) of Sec. 83 or

(b) in the case of an unclaimed consignment which is not perishable in nature, cause a notice to be served upon the consignee if his name and address are known, and upon the consignor if the name and address of the consignee are not known, requiring him to remove the goods within a period of seven days from the receipt thereof and if such notice cannot be served or there is a failure to comply with the requisition in the notice, sell such consignment in the manner provided in Cl. (b) of sub-section (2) of Sec. 83.

(3) The railway administration shall out of the sale proceeds received under sub-section (2) retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus, if any, of such sale proceeds shall be rendered to the person entitled thereto.

Comment

Section 84 provides for treating certain consignments as unclaimed and the manner of disposal of such consignments and rendering the surplus of sale proceeds to the person entitled thereto.

85. Disposal of perishable consignments in certain circumstances.- (1) Where by reason of any flood, land-slip, breach of any lines of rails, collision between trains, derailment of , or other accident to a train or any other cause, traffic on any route is interrupted and there is no likelihood of early resumption of such traffic, nor is there any other reasonable route whereby traffic of perishable consignment may be diverted to prevent, loss or deterioration of, or damage to such consignment, the railway administration may sell them in the manner provided in Cl. (a) of sub-section (2) of Sec.

(2) The railway administration shall, out of the sale proceeds received under sub-section (1) retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus, if any, of such sale proceeds, shall be rendered to the person entitled thereto.

Comment

Section 85 provides for disposal of perishable consignment in the circumstances mentioned therein.

86. Sales under Secs. 83 to 85 not to affect the right to suit.- Notwithstanding anything contained in this chapter the right of sale under Secs. 83 to 85 shall be without prejudice to the right of the railway administration to recover by suit, any freight, charge, amount or other expenses due to it.

Comment

Section 86 lays down that right of sale under Secs. 83 to 85 shall not be a bar to the recovery of freight or other charges, etc. by railway administration by suit.

87. Power to make rules in respect of matters in this Chapter.- (1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) in particular, and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) goods in respect of which no forwarding note shall be executed under proviso sub-section (1) of Sec. 64 ;

(b) dangerous and offensive goods for the purposes of sub-section (1) of Sec. 67;

(c) infectious or contagious diseases for the purposes of Sec. 68 ;

(d) rates of penalty charges under Sec. 73 ;

(e) the manner in which the consignment may be delivered without a railway receipt under Sec. 76;

(f) the manner in which the consignment or the sale proceeds to the person entitled thereto under Sec. 77 ;

(g) the conditions subject to which and charges payable for allowing weighment and circumstances for not allowing weighment of consignment in wagon-load or train-load under Sec. 79 ;

(h) the manner of giving open delivery under Sec. 81 ;

(i) the form of partial delivery certificate under sub-section (2) of Sec. 82 ;

(j) the manner of sale of consignment or part thereof under the proviso to sub-section (2) of Sec. 83 ;

(k) the manner in which a notice under sub-section (3) of Sec. 83 may be given ; (l) generally, for regulating the carriage of goods by the railways.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to one hundred and fifty rupees.

(4) Every railway administration shall keep at each station a copy of the rules for the time being in force under this section, and shall allow any person to refer to it free of charge.

Comment

Section 87, sub-section (1) and (2) empower the Central Government to make rules for carrying out the purposes of Chapter IX. The matters in respect of which rules may be made by the Central Government are enumerated in detail in sub-section (2) sub-sections (3) and (4) empower the Central Government to provide for punishment for contravention of rules made under this clause and impose an obligation on railway administration to allow the inspection of such rules free of charge.

Rules - Power of framing .- The general power of framing rules for effectuating the purposes of the Act would plainly authorize and sanctify the framing of such a rule.

CHAPTER X

Special Provisions as to Goods Booked to Notified Stations

88. Definitions .- In this Chapter, unless the context otherwise requires,-

- (a) "essential commodity" means an essential commodity as defined in Cl. (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955)

- (b) “notified station “ means a station declared to be a notified station under Sec. 89 ;
- (c) “State Government” in relation to a notified station, means the government of the State in which such station is situated, or where such station is situated in a Union territory, the administration of that Union territory appointed under Art. 239 of the Constitution.

Comment

Section 88 defines certain words and expressions used in Chapter X

89. Power to declare notified stations.- (1) The Central Government may , if it is satisfied that it is necessary that goods entrusted for carriage by train intended solely for the carriage of goods to any railway station should be removed without delay from such railway station, declare, by notification, such railway station to be a notified station for such period as may be specified in the notification :

Provided that before declaring any railway station to be a notified station under this Sub-Section, the Central Government shall have regarded to all or any of the following factors, namely :-

- (a) the volume of traffic and the storage space available at such railway station ;
- (b) the nature and quantities of goods generally booked to such railway station ;
- (c) the scope for causing scarcity of such goods by not removing them for long periods from such railway station and the hardship which such scarcity may cause to the community ;
- (d) the number of wagons likely to be held up at such railway station if goods are not removed there from quickly and the need for quick movement and availability of such wagons ;
- (e) Such other factors (being relevant from the point of view of the interest of the general public) as may be prescribed :

Provided further that the period specified in any notification issued under this subsection in respect of any railway station shall not exceed six months in the first instance, but such period may by notification, be extended from time to time by a period not exceeding six months on each occasion.

(2) If any person entrusting any goods to a railway administration to be carried to a notified station makes an application in which form and manner as may be prescribed and specifies therein the address of the person to whom intimation by registered post of the arrival of the goods at the notified station shall be given and pays the postage of the arrival of the goods at the notified station shall be given and pays the postage charges required for giving such intimation, the railway administration shall, as soon as may be after the arrival of the goods at the notified station, shall such intimation accordingly.

(3) There shall be exhibited at a conspicuous place at each notified station a statement in the prescribed form setting out the description of the goods which by reason of the fact that they have not been removed from the station within a period of seven days from the termination of transit thereof are liable to be sold, in accordance with the provision, of sub-section (1) of sec. 90 by public auction and the dates on which they would be do sold :

Provided that different statements may be so exhibited in respect of goods proposed to be sold on different dates.

(4) If the goods specified in any statement to be exhibited under sub-section (3) include essential commodities, the railway servant preparing the statement shall, as soon as may be after the preparation of such statement, forward a copy thereof to -

- (a) the representative of the Central Government nominated by that Government in this behalf ;
- (b) the representative of the State Government, nominated by that Government in this behalf; and
- (c) the District Magistrate within the local limits of whose jurisdiction the railway station is situated.

Comment

Section 89, sub-section (1) empowers the Central Government to declare a station to be notified station for the purposes of removing consignment without delay under the circumstances specified therein.

Sub-section (2) lays down the manner of giving notice of goods carried to a notified station.

Sub-section (3) provides that goods not removed from a notified station within seven days from the termination of transit may be sold under sub-clause (1) of Cl. 88 by public auction.

Sub-section (4) provides that if the goods to be sold include essential commodities, the copy of statement may be sent to the representative of the Central Government, the State Government and the District Magistrate within whose local limits such notified station is situated.

90. Disposal of unremoved goods at stations.- (1) If any goods entrusted for carriage to any notified station by a train intended solely for the carriage of goods are not removed from such station by a person entitled to do so within a period of seven days after the termination of transit thereof at such station, the railway administration may, subject to the provisions of sub-section (2), sell such goods by public auction and apart from exhibiting, in accordance with the provisions of sub-sections (3) of Sec. 89, a statement containing a description of such goods, it shall not be necessary to give any notice of such public auction, but the date on which such auction may be held under this sub-section may be notified in one or more local newspapers, or where there are no such newspapers, in such manner as may be prescribed :

Provided that if at any time before the sale of such goods under this sub-section, the person entitled thereto pays the freight and other charges and the expenses due in respect thereof to the railway administration, he shall be allowed to remove such goods.

(2) If any goods which may be sold by public auction under sub-section (1) at a notified station, being essential commodities, are required by the Central Government or the State Government for its own use or if the Central Government or such State Government considers that it is necessary for securing the availability of all or any such essential commodities at fair prices to do, it may, by order in writing, direct the railway servant in-charge of such auction to transfer such goods to it or to such agency, co-operative society or other person (being an agency, co-operative society or other person subject to the control of the Government) engaged in the business of selling such essential commodities as may be specified in the direction.

(3) Every direction issued under sub-section (2) in respect of any essential commodity shall be binding on the railway servant to whom it is issued and the railway administration and it shall be a sufficient defence against any claim by the person entitled to the goods that such essential commodities have been transferred in compliance with such direction :

Provided that –

- (a) such direction shall not be binding on such railway servant or the railway administration –

- i) If it has not been received by the railway servant sufficiently in time to enable him to prevent the sale of the essential commodities to which it relates; or
- ii) if before the time appointed for such sale, the person entitled to such goods pays the freight and other charges and the expenses due in respect thereof and claims that he be allowed to remove the goods; or
- iii) if the price payable for such goods (as estimated by the Central Government or, as the case may be, the State Government) is not credited to the railway administration in the prescribed manner and the and the railway administration is not indemnified against any additional amount which it may become liable to pay towards the price by reason of he of the price not having been computed in accordance with the provisions of sub-section (4);

(b) Where directions are issued in respect of the same goods both by the Central Government , the directions received earlier shall prevail.

(4) The price payable for any essential commodity transferred in compliance with a direction issued under sub-section (2) shall be the price calculated in accordance with the provisions of sub-section (3) of Sec. 3 of the Essential Commodities Act, 1955 (10 of 1955).

Provided that –

- (a) in the case of any essential commodity being a food-stuff in respect whereof a notification issued under sub-section (2) shall be the price calculated in accordance with the provisions of sub-section (3) of Sec. 3 of the Essential Commodities Act, 1955 (10 of 1955) is in force in the locality in which the notified station is situated, the price payable shall be calculated in accordance with the provisions of Cls. (iii) and (ii) of that sub-section;
- (b) in the case of an essential commodity being any grade or variety of foodgrains, edible oil-seeds or edible oils in respect whereof no notification issued under sub-section (3-A) of Sec. 3 of Essential Commodities Act, 1955 (10 of 1955), is in force in the locality in which the notified station is situated, the price payable shall be calculated in accordance with the provisions of sub-section (3-B) of that section;
- (c) in the case of an essential commodity being any kind of sugar in respect whereof no notification issued under sub-section (30A) of Sec. 3 of the Essential Commodities Act, 1955 (10 of 1955), is in force

in the locality in which the notified station is situated, the price payable shall, if such sugar has been booked by the producer to himself, be calculated in accordance with the provisions of sub-sections (3-C) of that section

Explanation.- For the purposes of this clause, the expressions “Producer” and “Sugar” shall have the meanings assigned to these expressions in the Explanation to sub-section (3-C) of Sec. 3 and Cl. (e) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955) respectively.

Comment

Section 90 provides for the manner of disposal not removed from notified stations.

91. Price to be paid to person entitled after deducting dues.- (1) Out of the proceeds of any sale of goods under sub-section (1) of Sec. 90 or the price payable therefore under sub-section (4) of that section, the railway administration may retain a sum equal to the freight and other charges due in respect of such goods and the expenses incurred in respect of the goods and the auction thereof and render the surplus, if any, to the person entitled thereto.

(2) Notwithstanding anything contained in sub-section (1) the railway administration may recover by suit any such freight or charge or expenses referred to therein or balance thereof.

(3) Any goods sold under sub-section (1) of Sec. 90 or transferred in compliance with the directions issued under sub-sections(2) of that section shall vest in the buyer or the transferee free from all encumbrances but subject to a priority being given for the sum which may be retained by a railway administration under sub-section(1), the person in whose favour such encumbrance subsists may have a claim in respect of such encumbrance against the surplus, if any, referred to in that sub-section.

Section 91, Sub-section (1) lays down the railway administration may retain the freight and other charges and render the surplus to the person entitled thereto.

Sub-section (2) provides that realization of freight and other charges by public auction of the goods shall not bar recovery by suit of freight and other charges by railway administration.

Sub-section (3) provides that any goods sold under sub-section (1) shall vest in the buyer of the transferee free from all encumbrances.

92. Power to make rules in respect of matters in the chapter. – (1)
The Central Government may, by notification, make rules to carry out the purposes of this chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the factors to which the central Government shall have regard under clause (e) of the first proviso to sub-section (1) of sec. 89 ;
- (b) the form and manner in which an application may be made under sub-section (2) of Sec. 89 ;
- (c) the form in which a statement is required to be exhibited under sub-section (3) of sec.89.
- (d) the manner in which the dates of public auction may be notified under sub-section (1) of Sec. 90 ;
- (e) the manner of crediting to the railway administration the price of goods referred to in sub-clause (iii) of Cl. (a) of the proviso to sub-section (3) of Sec. 90.

Comments

Section 92 empowers the Central Government to make rules for the purposes of Chapter X. The matter in respect of which such rules may be made are enumerated in sub-section (2).

Rules - Whether validity framed. – The question whether rules are validly framed to carry out the purposes of the Act can be determined on the analysis of the provisions of the Act.

CHAPTER XI

Responsibilities of Railway Administration as Carriers

93. General responsibilities of a railway administration as carrier of goods.
– Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage or deterioration in transit, or Non-delivery of any consignment, arising from any cause except the following namely.

-

- i. act of God ;

- ii. act of War ;
- iii. act of public enemies;
- iv. arrest, restrain or seizure under legal process;
- v. orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorized by it in this behalf ;
- vi. act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee;
- vii. natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods ;
- viii. latent defects;
- ix. fire, explosion or any unforeseen risk :

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.

Comments

Section 93 provides that railway administration shall be responsible for the loss, destruction, damage, etc., of any consignment arising from any cause except the causes mentioned therein.

Railway's liability :

The learned counsel for the appellant has argued that if the goods are seized from the possession of the railways, only then this provisions can be taken report to by the railways in escaping the liability. This contention raised by the counsel for the appellant has no force as there is no limitation placed in Cl. (d) where the goods were stolen and were soon after recovered and were seized and they remained in legal process. Obviously if any deterioration has taken place in the goods during the period of seizure and legal process, the liability cannot be imposed on the railways.

Limitation :

Right to apply for compensation accrued to the claimant within the meaning of Art. 137 of 1963 Act on the date when open delivery was granted. In the present case, open delivery having been granted on 11th April, 1980, the claim application filed before the Tribunal on 18th May, 1963 was well within the statutory period of three years and two months as two months time was granted for service of statutory notice.

94. Goods to be loaded or delivered at a siding not belonging to a railway administration.- (1) Where goods are required to be loaded at a siding not belonging to a railway administration for carriage by railway the railway administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising until the wagon containing the goods has been placed at the specified point of interchange of wagons between the siding and the railway administration and railway servant authorized in this behalf has been informed in writing accordingly by the owner of the siding.

(2) Where any consignment is required to be delivered by a railway administration at a siding not belonging to a railway administration, the railway administration shall not be responsible for any loss, destruction, damage or deterioration or non-delivery of such consignment from whatever cause arising after the wagon containing the consignment has been placed at the specified point of interchange of wagons between the railway and the siding and the owner of the siding has been informed in writing accordingly by a railway servant authorized in this behalf.

Comment

Section 94 lays down the responsibility of the railway administration in case of the goods are loaded or delivered at a siding not belonging to railway administration.

95. Delay or retention in transit. – A railway administration shall not be responsible for the loss, destruction, damage or deterioration of a consignment proved by the owner to have been caused by the delay or detention in their carriage if the railway administration proves that the delay or detention arose for reasons beyond its control or without negligence or misconduct on its part or on the part of any of its servants.

Comments

Section 95 lays down that a railway administration shall not be liable for any loss, destruction, etc. for delay or detention in transit for the reasons beyond the control of railway administration or without negligence on its part.

96. traffic passing over railway in India and railways in foreign countries. –

Where in the course of carriage of any consignment from a place in India to a place outside India or from a place outside India to a Place in India or from one place outside India to another place outside India or from one place in India to another place in India over any territory outside India, it is carried over the railways of any railway administration in India the railway administration shall not be responsible under any of the provisions of this chapter for the loss, destruction, damage or deterioration of the goods, from whatever cause arising, unless it is proved by the owner of the goods that such loss, destruction, damage or deterioration arose over the railway of the railway administration.

Comments

Section 96 lays down that in case of traffic passing over railways in India and railways in foreign country the railway administration shall not be liable for any loss, destruction, etc. unless such loss has taken place over the railway of the railway administration.

97. Goods carried at owner's risk rate. – Notwithstanding anything contained in Sec. 93, a railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery in transit, of any consignment carried at owner's risk rate, from whatever cause arising, except upon proof, that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on its part or on the part of its servants.

Provided that –

- (a) where the whole of such consignment or the whole of nay package forming part of such consignment is not delivered to the consignee or the endorsee and such non-delivery is not provided by the railway administration to have been due to fire or to any accident to the train ;
or
- (b) where in respect of any such consignment or of any package forming part of such consignment which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of the consignment or package had been pilfered in transit, the railway administration shall be bound to disclose the consignor, the consignee or the endorsee how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of the servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor, the consignee or the endorsee.

Comments

Section 97 absolves a railway administration from responsibility in the absence of negligence or misconduct on its part for any loss, destruction, etc. of the consignment carried at owners risk rate.

Question of impleading the parties – procedure of – it is well settled law that the question of impleading the parties can be entertained only before the original Court and not before the Appellate Court.

98. Goods in defective condition or defectively packed. – (1) Notwithstanding anything contained in the foregoing provisions of this chapter, when any goods entrusted to a railway administration for carriage –

- (a) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage ; or
- (b) are either defectively packed or not packed in such manner as may be prescribed and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage,

and the fact or such condition or defective or improper packing has been recorded by the consignor or his agent in the forwarding note, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage or for the condition in which such goods are available for delivery at destination :

Proved that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage or for the condition in which such goods are available for delivery at destination if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

(2) When any goods entrusted to a railway administration for carriage are found on arrival at the destination station to have been damaged or to have suffered deterioration, leakage or wastage , the railway administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by railway administration –

- (a) that the goods were, at the time of entrustment to the railway administration, in a defective condition, or were at that time either defectively packed or not packed in such manner as may be prescribed and as a result of which were liable to damage, deterioration, leakage or wastage; and
- (b) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or any of its servants

at the time of entrustment of the goods to the railway administration for carriage by railways;

provided that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

Comments

Section 98 provided for the responsibility of railways in cases of consignment which are in defective condition or are defectively packed.

Proviso. – In *Abdul Jabar Butt v. Sate of Jammu and Kashmir*, it was held that a proviso must be considered with relation to the principle matter to which it stands as a proviso.

99. Responsibility of a railway administration after termination of transit. –

1. A railway administration shall be responsible as a bailee under secs. 151, 152, and 161 of the Indian Contract Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of any consignment up to a period of seven days after the termination of transit;

Provided that where the consignment is at owner's risk rate, the railway administration shall not be responsible as a bailee for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants .

2) The railway administration shall not be responsible ;in any case for the loss, destruction, damage deterioration or non-delivery of any consignment arising after the expiry of a period of seven days after the termination of transit.

3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of perishable goods, animals explosives and such dangerous or other goods as may be prescribed, after the termination of transit.

4) Nothing in the foregoing provisions of this section shall affect the liability of any person to pay any demurrage or wharfage, as the case may be, for so long as the consignment is not unloaded from the railway wagons or removed from the railway premises.

100. Responsibility as carrier or luggage.

A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage unless a railway servant has booked the luggage and given a receipt therefore and in the case of luggage which is carried by the passenger in his charge, unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on the part of any of its servants.

Comments

Section 100 deals with the responsibility of the railway administration for any loss, destruction, etc. of luggage.

101. Responsibility as a carrier of animals. – A railway administration shall not be responsible for any loss or destruction of or injuries to any animal carried by railway arising from fright or restiveness of the animal or from over – loading of wagons by the consignor.

Comment

Section 101 absolves the railway administration of its responsibility for any loss, destruction or injury to animal arising from fright or restiveness of the animal or from overloading of wagon by the consignor.

Comments

102. Exoneration from liability in certain cases. – Notwithstanding anything contained in the foregoing provisions of the chapter, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any consignment –

- (a) when such loss, destruction, damage, deterioration or non-delivery is due to the fact that a materially false description of the consignment is given in the statement delivered under section (1) of Sec. 66, or
- (b) Where a fraud has been practiced by the consignor or the consignee or the endorsee or by an agent of the consignor, consignee or the endorsee; or
- (c) Where it is proved by the railway administration to have been caused by, or to have arisen from –
 - i. improper loading or unloading by the consignor or the consignee or the endorsee or by an agent of the consignor, consignee or the endorsee;

- ii. riot, civil commotion, strike, lockout, stoppage or restraint of labour from whatever cause arising whether partial or general ; or
- (d) for any indirect or consequential loss or damage or for loss of particular market.

Comments

Section 102 provides for exoneration from liability of railway administration in cases specified therein.

Railway is liable for compensation for non-delivery – The Tribunal, therefore, rightly held that Sec. 77-B of the Old Act of 1890 is not applicable in case of non-delivery and hence the railway is liable for non-delivery.

The Railway, however, was exonerated for partial shortage in 5 bales.

103. Extent of monetary liability in respect of any consignment – (1) Where any consignment is entrusted to a railway administration for carriage by railway and the value of such consignment has not been declared as required under sub-section(2) by the consignor, the amount of liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of the consignment shall in no case exceed such amount calculated with reference to the weight of the consignment as may be prescribed, and where such consignment consists of an animal, the liability shall not be exceed such amount as may be prescribed.

(2) Notwithstanding anything contained in sub-section(1), where the consignor declares the value of any consignment at the time of its entrustment to a railway administration for carriage by railway, and pays such percentage charge as may be prescribed on so much of the value of such consignment as is in excess of the liability of the railway administration as calculated or specified as the case may be, under sub-section (1), the liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of such consignment shall not exceed the value so declared.

- (1) The Central Government may from time to time, by notification, direct that such goods as may be specified in the notification shall not be accepted for carriage by railway unless the value of such goods is declared and percentage charge is paid as required under sub-section(2).

Comments

Section 103 lays down the extent of monetary liability of the railway in respect of loss, destruction, damage, etc. of a consignment.

104. Extent of liability in respect of goods carried in open wagon –

Where any goods, which, under ordinary circumstances, would be carried in covered wagon and would be liable to damage, if carried otherwise, are with the consent of the consignor, recorded in the forwarding note, carried in open wagon, the responsibility of railway administration for destruction, damage or deterioration which may arise only by reason of the goods being so carried, shall be one-half of the amount of liability for such destruction, damage or deterioration determined under this chapter.

Comments

Doctrine of promissory estoppel, cannot be applied in teeth of an obligation or liability imposed by law. – The doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law.

Doctrine of estoppel, applies when there is clear and unequivocal promise. – The doctrine of promissory estoppel applies when, inter alia, there is a clear and unequivocal promise relying on which the other act was to his prejudice.

105. Right of railway administration to check contents of certain consignment or luggage – Where the value has been declared under sec. 103 in respect of any consignment a railway administration may make it a condition of carrying such consignment that a railway servant authorized by it in this behalf has been satisfied by examination or otherwise that the consignment tendered for carriage contain the articles declared.

Comments

Section 105 provides for examination by railway administration of goods/consignment of which value has been declared.

106. Re-weighment of goods when obligatory. – It is true that Railway Administration is not always bound to reweigh the goods. But when the railway administration had decided to impose penalty such re-weighment is obligatory. Therefore, the railway authority is bound to re-weigh the goods when asked for.

A person shall not be entitled to claim compensation against railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf, -

- (a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administration mentioned in subsection (1) by or on behalf of the persons within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefore has been served by him or on his behalf to the railway administration to which the over-charge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

Comments

Section 106 provides the railway administration to which and the period within which the notice of claim for compensation or refund of overcharge shall be given for loss, destruction etc. of the goods carried by railway or for overcharges.

Since the act itself provides the mode it must be held that claim under Sec. 78-B (new Sec. 106) may be preferred by sending such claim to the Chief Commercial Superintendent under a prepared letter and registered under the Indian Post Office Act. Further Sec. 142 (new Sec. 194) of the Act provides for raising statutory presumption of service if letter was properly addressed and registered.

Overcharge – Meaning of. – In common parlance. The simple meaning of “overcharge” is anything charged in excess of what is actually to be charged for a particular thing.

It must be held that when a claimant avails the statutory procedure of the Act within six months then it is sufficient compliance of sec. 78-B (new Sec. 106).

107. Application for compensation for loss, etc. of goods. – An application for compensation for loss, destruction, damage, deterioration or non-delivery of goods shall be filed against the railway administration on whom a notice under Sec. 106 has been served.

Comments

Section 107 provides that application for compensation for loss, destruction, damage, etc. of goods should be filed against the railway administration on whom a notice under Sec. 106 has already been served.

108. Person entitled to claim compensation – (1) If a railway administration pays compensation for the loss, destruction, damage, deterioration or non-delivery of goods entrusted to it for carriage, to the consignee or the endorsee producing the railway receipt, the railway administration shall be deemed to have discharged its liability and no application before the Claims Tribunal or any other legal proceedings shall lie against the railway administration on the ground that the consignee or the endorsee was not legally entitled to receive such compensation.

(2) Nothing in Sub-section(1) shall affect the right of any person having any interest in the goods to enforce the same against the consignee or the endorsee receiving compensation under that sub-section.

Comments

Section 108 deals with the person entitled to claim compensation, absolves the railway administration of its responsibilities and bar suit against it, in cases the claim has been paid to a person on production of railway receipt.

108. Appellant is estopped from taking plea that respondent's father is not duly constituted attorney of the respondent. – The Court cannot in law take the plea that the respondents father had no power of attorney in his favour to file the petitions. Accepting the respondents father as the attorney of the respondent the appellant took the advantage and the appellant should be deemed to be stopped from taking the plea that the respondents father is not the duly constituted attorney of the respondent.

109. Railway administration against which application for compensation for personal injury is to be filed. – An application before the Claims tribunal for compensation for the loss of life or personal injury to a passenger, may be instituted against. –

- (a) the railway administration from which the passenger obtained his pass or purchased his ticket, or
- (b) the railway administration on whose railway the destination station lies or the loss or personal injury occurred.

Comment

“Entertain “ – means of : The expression “Entertain” does not mean same thing as filing of the application. The aforesaid view was expressed by the

Allahabad High Court in Kundan Lal v. Jagannath shargza. A similar view was again taken in Dhoom Chand chain V. Chaman lal gupta, in which the learned Chief Justice Mr. Desai and Mr. Justice Dwivedi gave the same meaning to the expression "Entertain" .

110. Burden of proof : In an application before the Claims Tribunal for compensation for loss, destruction, damage, deterioration or non – delivery of any goods, the burden of proving –

- (a) the monetary loss actually sustained; or
- (b) Where the value has been declared under sub-section (2) of Sec. 103

In respect of any consignment that the value so declared is its true value, shall lie on the person claiming compensation, but subject to the other provisions contained in this act, it shall not be necessary for him to prove how the loss, destruction , damage, deterioration or non-delivery was caused.

Comment

Section 110 provides that burden of proof regarding monetary loss in suits for compensation for any loss, destruction. Etc., lies on the person claiming compensation.

111. Extent of liability of railway administration in respect of accidents at sea.

(1) When a railway administration contracts to carry passengers or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to goods which may happen during the carriage by sea from act of god, public enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers and navigation of whatever nature and kind shall, without being expressed , be deemed to be part of the contract, and subject to that condition the railway administration shall, irrespective of the nationality or ownerships of the ship used for the carriage to goods which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping ACT, 1958 (44 of 1958), if the ships were registered under that Act and the railway administration were owner of the ship and not to any greater extent.

(2) The burden of Proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by seal shall lie on the railway administration.

Comment

Section 111 deals with the liability of Railway Administration in respect of accidents at sea.

112. Power to make rules in respect of matters in this chapter :

(1) The Central Government may, by notification . make rules to carry out the purposes of this chapter.

(2) In particular, and without prejudice to the generality of the foregoing power. Such rules may provide for all or any of the following matters, namely:

(a) the manner of packing of goods entrusted to a railway administration under Cl. (b) To sub-section (1) of Sec.98 ;

(b)The goods for the purposes of sub-section (3) of sec. 99; and

(c) the maximum amount payable by the railway administration for the loss, destruction, damage, deterioration or non-delivery of any consignment under sub-section (1) of Sec. 103.

COMMENT

Section 112 empowers the Central Government to make rules to carry out the purposes of Chapter XI. The matters in respect of which the rules shall be made by the Central Government are enumerated in sub-section (2)

CHAPTER XII

Accidents

113. Notice of railway accident :

(a) any accident attended with loss of any human life, or with grievous hurt, as defined in the Indian Penal Code (45 of 1860) , or with such serious injury to property as may be prescribed ; or

(b) any collision between trains of which one is a train carrying passengers ; or

(c) the derailment of any train carrying passengers, or of any part of such train; or

(d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property; or

(e) any accident, of any other description which the Central Government may notify in this behalf in the Official Gazette, occurs, or where there is no station master, the railway servant in charge of the section of the railway on which the accident occurs to the District Magistrate and Superintendent of Police, within whose jurisdiction the accident occurs, the officer in charge of the police station within the local limits of which the accident occurs and to such other Magistrate or police officer as may be appointed in this behalf by the Central Government.

(2) The railway administration within whose jurisdiction the accident occurs, as also the railway administration to whom the train involved in the accident belongs, shall without delay, give notice of the accident to the State Government and the Commissioner having jurisdiction over the place of the accident.

Comments

Section 113, sub-section (1) imposes an obligation on the station master or the railway servant in charge of the section where any railway accident takes place to give a notice of such accident to the District Magistrate Superintendent of Police, etc.,

Sub-section (2) imposes an obligation on the railway administration to give a notice of such accident to the State Government and the Commissioner.

114. Inquiry by Commissioner :

(1) On the receipt of a notice under Sec. 113 of the occurrence of an accident to a train carrying passengers resulting in loss of human life or grievous hurt causing total or partial disablement of permanent nature to a passenger or serious damage to railway property, the Commissioner shall, as soon as may be, notify the railway administration in whose jurisdiction the accident occurred of his intention to hold an inquiry into the causes that led to the accident and shall at the same time fix and communicate the date, time and place of inquiry;

Provided that it shall be open to the Commissioner to hold an inquiry into any other accident which, in his opinion, requires the holding of such an inquiry.

(2) If for any reason, the Commissioner is not able to hold an inquiry as soon as may be after the occurrence of the accident, he shall notify the railway administration accordingly.

Comments.

Section 114 empowers the Commissioner to hold inquiry into any railway accident resulting in the loss of human life or grievous hurt to a passenger or serious damage to railway property.

115. Inquiry by railway administration. – Where no inquiry is held by the commissioner under Sub-section (1) of Sec. 114 or where the Commissioner has informed the railway administration under Sub-section (2) of that section that he is not able to hold an inquiry, the railway administration within whose jurisdiction the accident occurs, shall cause an inquiry to be made in accordance with the prescribed procedure.

Comments

Section 115 provides that in cases where the Commissioner does not hold an inquiry under Sec. 114 the same may be held by the railway administration.

116. Powers of Commissioner in relation to the enquiries. –(1) For the purpose of conducting an inquiry under this chapter into the causes of any accident on a a railway, the Commissioner shall, in addition to the powers specified in sec. 7, have the powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :-

- (a) Summoning and enforcing the attendance of persons and examining them on oath ;
- (b) Requiring the discovery and production of documents ;
- (c) Receiving evidence of affidavits ;
- (d) Requisitioning any public record or copies thereof from any court or office ;
- (e) Any other matter which may be prescribed.

(2) The Commissioner while conducting an enquiry under this Chapter shall be deemed to be a Civil Court for the purpose of Sec. And Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974).

Comment

Section 116 empowers the commissioner with the powers of the Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the matters enumerated therein.

117. Statement made before Commissioner.- No statement made by a person in the course of giving evidence in an inquiry before the Commissioner shall subject him to, or be used against him in, any civil or criminal proceeding, except a prosecution for giving false evidence by such statement :

Provided that the statement is-

- (a) made in reply to a question which is required by the Commissioner to answer ; or
- (b) relevant to the subject-matter of the inquiry.

Comment

Section 117 protects the person against civil or criminal proceedings in respect or any evidence given by him in an inquiry before the Commissioner.

118. Procedure, etc. - Any railway administration or the Commissioner conducting an inquiry under this Chapter may send notice of the inquiry to such persons, follow such procedure, and prepare the report in such manner as may be prescribed.

Comment

Section 118 deals with the notice of the inquiry the procedure to be followed and the preparation of the report.

119. No inquiry, investigation, etc. to be made if the Commission of Inquiry is appointed. - Notwithstanding anything contained in the foregoing provisions of this Chapter, where a Commission of inquiry is appointed under the Commissions of Inquiry Act, 1952 (3 of 1952) to inquire into an accident, any inquiry, investigation or other proceeding pending in relation to that accident shall not be proceeded with, and all records or other documents relating to such inquiry shall be forwarded to such authority as may be specified by the Central Government in this behalf.

Comment

Section 119 provides that no inquiry or investigation to be made if the Commission of inquiry is appointed under the Commissions of Inquiry Act, 1952 to inquire into any accident, etc.

120.- Inquiry into accident not covered by Sec. 113.- Where any accident of the nature not specified in Sec. 113 occurs in the course of working a railway, the railway administration within whose jurisdiction the accident occurs, may cause such inquiry to be made into the causes of the accident, as may be prescribed.

Comment

Section 120 provides for an inquiry by the railway administration in accidents other than those mentioned in clause 111.

121. Returns.-- every railway administration shall send to the Central Government, a return of accidents occurring on its railway, whether attended with injury to any person or not, in such form and manner and at such intervals as may prescribed.

Comment

Section 121 imposes an obligation on the railway administration to send return of accidents to the Central Government.

122. Power to make rules in respect of matters in this Chapter.--

(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the injury to property which shall be considered serious under Cl. (a) of sub-section (1) of Sec. 133;
- (b) the forms of notice of accidents to be given under Sec. 113 and the particulars of the accident such notices shall contain ;
- (c) the manner of sending the notices of accidents, including the class of accidents to be sent immediately after the accident;
- (d) the duties of the Commissioner, railway administration, railway servants, police officers and Magistrates on the occurrence of an accident ;
- (e) the persons to whom notices in respect of any inquiry under this Chapter are to be sent, the procedure to be followed in such inquiry and the manner in which a report or such inquiry shall be prepared ;
- (f) the nature of inquiry to be made by a railway administration into the causes of an accident under Sec. 120 ;
- (g) the form and manner of sending a return of accidents by a railway administration under Sec. 121.

Comment

Section 122 empowers the Central Government to make rules to carry out the purposes of Chapter XII. The matters in respect of which rules shall be made by the Central Government are enumerated in detail in sub-section (2) of this clause.

CHAPTER XIII

Liability of Railway Administration for Death and injury to passengers due to accidents.

123. Definitions. In this Chapter , unless the context otherwise requires,--

- (a) "accident" means an accident of the nature described in Sec.124:
- (b) "dependant" means any of the following relatives of a deceased passenger, namely:-
 - (1) the wife, husband , son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent:
 - (2) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child or a predeceased son, if dependent wholly or partly on ;the deceased passenger:
 - (3) a minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger:
 - (4) the paternal grand parent wholly dependent on the deceased passenger.

2© "Untoward incident" means –

- (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of sec. 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987),
or
- (ii) the making of violent attack or the commission of robbery or dacoity;
or
- (iii) the indulging in rioting, shoot-out or arson.

By any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station: or

- (2) the accidental falling of any passenger from a train carrying passengers.)

COMMENTS

Section 123 deals with and defines the various words and expressions used in Chapter XIII.3

Other wise. - The word 'other wise' is not to be construed ejusdem generis with the words "Circulars, advertisements".4

124. Extent of liability. - when in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.- For the purpose of this section "passenger" includes a railway servant on duty.

Comments

Section 124 provides for the extent of liability of the railway administration in case of death or injury to a passenger or damage to his goods in an accident.1

Accident – Meaning. – Perusal of the Sec.82-A of the old Act shows that it contemplates liability of railway administration in respect of accidents to train carrying passengers. In particular it shows that the accident contemplated therein is an accident which has occurred due to other collision between trains of which one is a train carrying passengers, or the derailment of or other accidents to a train or any part of a train carrying passengers. The emphasis in Sec.82.A is upon the accident to the train . If there is an accident to the train as contemplated therein, then notwithstanding the fact that there has been no wrongful act, neglect or default on the part of the railway administration, any passenger in such a train who has been injured or who has suffered loss in such accident to the train is entitled to maintain an action and recover compensation from the railway administration concerned, in respect of the injury or loss suffered by his. In the new Railway Act, the provisions in this regard are made in Sec.124 thereof.2

In the instant case, there is clearly an averment in the Claim Petition that when the appellant was about to board the Bangalore – Hyderabad Express train, a heavy iron girder which was loosely and carelessly fixed for electrification work, suddenly fell on the train and thereafter on the applicant resulting in grievous injuries to him. Since the learned counsel for the respondent disputes this averment found in the Claim petition. The Court reserved liberty to the respondent to contest that position at the time of enquiry. However one thing is clear that if this averment is proved satisfactorily then a case is made out for the purpose of maintenance of this application under Sec.82.A of the Act, in as much as if, at the time of the applicant boarding the train, a heavy iron girder which was loosely and carelessly fixed for electrification work, fell suddenly on the train and then on him resulting in the injuries to him, it would amount to an “accident” coming within the purview of Sec.82-A and not a “mishap” to the passenger. It clearly attracts category 3(iii) “other accident to a train”. Thus there is no doubt, that the Tribunal failed to apply its mind in considering the third category viz. “other accident to a train” in view of the decision of the Supreme Court in Union of India V.Sunil Kumar Ghosh.³

Whether a railway servant who is on duty is a passenger. _ In the case of T.T.E who was on duty at the relevant time, it cannot be said that he was traveling by that train without permission and in view of the matter he cannot be treated as an unauthorized passenger. The controversy whether a railway servant traveling on duty is a passenger for the purpose of the liability of the Railways has been set at rest by the Railway Act, 1989, wherein the explanation to Sec.124 of the Railways Act, 1989, corresponding to old Sec.82.A of the Indian Railways Act, includes a railway servant on duty as passenger. Thus, the petition of claimant for compensation under Sec.82-A was maintainable and claims commissioner committed error in taking contrary view.

124.A. Compensation on account of untoward incidents. – When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident.

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to –

- (a) suicide or attempted suicide by him:
- (b) self-inflicted injury:

- (c) his own criminal act:
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation. – For the purposes of this section, “passenger” includes –

- (a) a railway servant on duty : and
- (b) a person who has purchased a valid ticket for traveling , by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.)

125. Application for compensation. – (1) An application for compensation under section 124 (or Sec.124-A) may be made to the Claims Tribunal –

- (a) by the person who has sustained the injury or suffered any loss. Or
 - (b) by any agent duly authorized by such person in this behalf. Or
 - (c) where such person is minor, by his guardian or
 - (d) where death has resulted from the accident (or the untoward incident) by any dependant of the deceased or where such a dependant is a minor, by his guardian.
- (2) Every application by a dependant for compensation under this section shall be for the benefit of every other dependent.

Comments

Section 125 lays down the persons who can make an application for compensation under sec.124 and the time limit within which such application may be made.

Retrospective effect.- In view of the fact that the rights are to be determined at the time of commencement of the lis, and that Chapter XIII of the Railway Act,1989 has not been made retrospectively applicable, expressly or by implication, therefore, subsequent change in law cannot be taken into consideration for holding the application for compensation filed under Sec.82© of the old act 1890 as maintainable, as the appellants

do not fall within the definition of “dependant” as given in Explanation after sub-section(3) of Sec.82-C of the old act 1890 and the meaning assigned to it under sec.2(d) of the workmen’s Compensation Act.

126. Interim relief by railway administration: (1) Where a person who has made an application for compensation under Sec.125 desires to be paid interim relief, he may apply to the railway administration for payment of interim relief along with a copy of the application made under that section.

(2) Where , on the receipt of an application made under sub-section (1) and after making such inquiry as it may deem fit, the railway administration is satisfied that circumstances exist which require relief to be afforded to the applicant immediately , it may, pending determination by the Claims Tribunal of the actual amount of compensation payable under sec.124 (or 124-A) pay to any person who has sustained the injury or suffered any loss, or where death has resulted from the accident , to any dependant of the deceased, such sum as it considers reasonable for affording such relief , so however that the sum paid shall not exceed the amount of compensation payable at such rates as may be prescribed.

(3) The railway administration shall, as soon as may be, after making an order regarding payment of interim relief under sub-section (2) , send a copy thereof to the Claims Tribunal.

(4) Any sum paid by the railway administration under sub-section(2) shall be taken into account by the Claims Tribunal while determining the amount of compensation payable.

Comment

Section 126 provides for giving interim relief by railway administration in case of accidents.

127. Determination of compensation in respect of any injury or loss of goods.- (1) subject to rules as may be made, the rates of compensation payable in respect of any injury shall be determined by the Claims Tribunal.

(2) The compensation payable in respect of any loss of goods shall be such as the Claims Tribunal may, having regard to the circumstances of the case, determine to be reasonable.

Comment

Section 127 provides for the manner in which the rates of compensation payable in respect of injury , compensation for any loss of goods shall be determined by the Claims Commissioner.5

Doctrine of estoppel does not arise in the case the petitioner is not a party to the disputed document. – The question of estoppel does not arise in view of the fact that the petitioner is not a party to the document and the respondent itself admitted that the guarantee was a mobilization of advance guarantee.

128. Savings as to certain rights : (1) The right of any person to claim compensation under Sec. 124 shall not affect the right of any such person to recover compensation payable under the workmen's compensation Act, 1923 ,(8 of 1923) or any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same accident.

(2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for payment of compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance.

Comment

Section 128 saves the right of a person to claim compensation recoverable under any other law.

129. Power to make rules in respect of matters in this chapter : (1) The central Government may, by notification , make rules to carry out the purposes of this chapter.

(2) In particular , and without prejudice to the generally of the foregoing power. Such rules may provide for all or any of the following matters, namely :

- (a) the compensation payable for detah;
- (b) the nature of the injuries for which compensation shall be paid and the amount of such compensation.

Comment

Section 129 empowers the Central Government to make rules for carrying out the purposes of Chapter XIII. The matters in respect of which rules shall be made by the Central Government are enumerated in detail in sub-section (2) of this section.

CHAPTER XIV

Regulation of hours of work and period of rest

130. Definitions : In this Chapter, unless the context otherwise requires :

(a) the employment of a railway servant is said to be “Continuous” except when it is excluded or has been declared to be essentially intermittent or intensive ;

(b) the employment of a railway servant is said to be “essentially intermittent” when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the railway servant normally include periods of inaction aggregation to the fifty per cent, or more (including at least one such periods of not less than half an hour each)

(c) the employment of a railway servant is said to be “ excluded ” , if he belongs to any one of the following categories, namely : -

(i) railway servant employed in a managerial or confidential capacity ;

(ii) armed guards or other personnel subject to discipline similar to that of any of the armed police forces ;

(iii) staff of the railway schools imparting technical training or academic education;

(iv) such staff as may be specified as supervisory under the rules ;

(v) such other categories of staff as may be prescribed;

(d) the employment of a railway servant is said to be “ intensive ” when it has been declared to be so the prescribed authority on the ground that it is of a strenuous nature involving continued concentration or hard manual labour with little or no period of relaxation.

Comment

Section 130 deals with the definition of certain expressions used in chapter XIV.

131. Chapter not to apply to certain railway servants : Nothing in this chapter shall apply to any railway servant to whom the Factories Act, 1948 (63 of 1948) or the Mines Act, 1952 (35 of 1952) or the Railway Protection Force Act, 1957 (23 of 1957) or the Merchant Shipping Act, 1958 (44 Of 1958) applies.

Comment

Section 131 provides that this chapter shall not apply to a railway servant whom the Factories Act, 1948 or the Mines Act, 1952 or the Merchant Shipping Act, 1958 applies.

132. Limitations of hours of work.- (1) A railway servant whose employment is essentially inermittent shall not be employed for more than seventy-five hours in any week.

(2) A railway servant whose employment for more than fifty hours a week on an average in a two-weekly period of fourteen days.

(3) A railway servant whose employment is intensive shall not be employed for more than forty-five hours a week on an average in a two-weekly period of fourteen days.

(4) Subject to such rules as may be prescribed temporary exemptions of railway servants from the provisions of sub-sections (1) or sub-section (2) of sub-section (3) may be made by the prescribed authority is\ if it is of opinion that such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway or in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling stock or in a any emergency which could not have been foreseen or prevented, or in other cases of exceptional pressure of work.

Provided that where such exception results in the increase of hours of employment of a railway servant referred to in any of the sub-sections, he shall be paid over time at not less, than two times his ordinary rate of pay for the excess hours of work.

133. Grant of Periodical rest. – (1) Subject to the provisions of this section, a railway servant –

- (a) whose employment is intensive or continuous shall, for every week commencing on a Sunday, be granted a rest of not less than thirty consecutive hours ;
- (b) whose employment is essentially intermittent shall, for every week commencing on a Sunday, be granted a rest of not less than twenty – four consecutive hours including a full night.

(2) Notwithstanding anything contained in sub-section (1), -

- i. any locomotive or traffic running staff shall be granted, each month, a rest of at least four periods of not less than thirty consecutive hours each or at least five periods of not less than twenty – two consecutive hours each, including a full night ;

- ii. the Central Government may, by rules, specify the railway servants to whom periods of rest on scales less than those laid down under sub-section (1) may be granted and the periods thereof.

(3) subject to such rules as may be made in this behalf, if the prescribed authority is of the opinion that such circumstances as are referred to in sub-section (4) of Sec. 132 are present. It may exempt any railway servant from the provision of sub-section (1) or Cl. (i) of sub-section (2) :

Provided that a railway servant so exempted shall, in such circumstances as may be prescribed, be granted compensatory periods of rest for the periods he has forgone.

Comments

Section 132 provide for limitation of hours of work and Sec. 133 periodical rest for various category of railway servants.

134. Railway servant to remain on duty. – Nothing in this chapter or the rules made there under shall, where due provision has been made for the relief of a railway servant, authorise him to leave his duty until he has been relieved.

Comments

Section 134 lays down that a railway servant shall remain on duty until he is relieved.

135. Supervisors of railway labour. – (1) Subject to such rules as may be made in this behalf, the Central Government may appoint supervisors of railway labour.

(2) The duties of supervisors of railway labour shall be –

- i. to inspect railways in order to determine whether the provisions of this chapter or of the rules made there under are duly observed; and
- ii. to perform such other functions as may be prescribed.

(3) A supervisor of railway labour shall be deemed to be a Commissioner for the purposes of Secs. 7 and 9.

Comments

Section 135 deals with appointment of the supervisors and their duties.

136. Power to make rules in respect of matters in this chapter. –

- (1) The Central Government may, by notification, make rules to carry out the purposes of this chapter.
- (2) In particular, and without prejudice to the generally of the foregoing power, such rules may be provided for all or any of the following matters, namely;
 - (a) the authorities who may declare the employment of any railway servant essentially intermittent or intensive;
 - (b) the appeals against any such declaration and the manner in which, and the conditions subject to which any such appeal may be filed and heard;
 - (c) the categories of staff that may be specified under sub-clauses (iv) and (v) of Cl. © of sec. 130;
 - (d) the authorities by whom exemptions under sub-section (4) of sec. 132 or sub-section (3) of sec. 133 may be made;
 - (e) the delegation of power by the authorities referred to in Cl. (d);
 - (f) the railway servants to whom Cl. (ii) of Sub-section (2) of Sec. 133 apply and the periods of rest to be granted to them;
 - (g) the appointment of supervisors of railway labour and their functions.

Section 136 empowers the Central Government to make rules for carrying out the purposes of Chapter XIV. The matter in respect of which rules are to be made by the central Government are enumerated in sub-section (2).

CHAPTER XV

Penalties and Offences

137. Fraudulently traveling or attempting to travel without proper pass or ticket. – (1) If any person, with intend to defraud a railway administration, -

- (a) enter or remains in any carriage on a railway or travels in a train in contravention of Sec.55, or

- (b) uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.

(2) The person referred to in sub-section (1) shall also be liable to pay the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has traveled, or where there is any doubt as to the station from which the train originally started, or if the tickets of passengers traveling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or, in case of their having been examined more than once, were last examined.

(3) The excess charge referred to in sub-section (2) shall be a sum equal to the ordinary single fare referred to in that sub-section or fifty rupees, whichever ever is more.

(4) Notwithstanding anything contained in Sec. 65 of the Indian Penal code, (45 of 1860) the court convicting an offender may direct that the person in default of payment of any fine inflicted by the court shall suffer imprisonment for a term which may extend to six months.

Comment

Section 137 provides for punishment for traveling or attempting to travel fraudulently without a pass or ticket.

Penal Provision : The law in its wisdom seeks to punish the guilty who commits the sin and not the person, who is innocent.

138. Levy of excess charge and fare for traveling without proper pass or ticket or beyond authorized distance.

(1) If any passenger,-

(a) being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on a demand being made therefore under Sec. 54, or

(b) travels in a train in contravention of the provisions of Sec. 55, he shall be liable to pay, on the demand of any railway servant authorized in this behalf, the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has traveled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers traveling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or in the case of their having been examined more than once, were last examined.

(2) If any passenger , -

(a) travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket; or

(b) travels in or on a carriage beyond the place authorized by his pass or ticket,

he shall be liable to pay, on the demand of any railway servant authorized in this behalf, any difference between the fare paid by him and the fare payable in respect of the journey he has made and the excess referred to in sub-section (3)

(3) The excess charge shall be a sum equal to the amount payable under sub-section (1) or sub-section (1) or sub-section (2), as the case may be, or fifty rupees, whichever is more :

Provided that if the passenger has with him a certificate granted under sub-section (2) of Sec. 55, no excess charge shall be payable.

(4) If any passenger liable to pay the excess charge and the fare mentioned in sub-section (1) or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on a demand being made therefore under one or other of these sub-sections, as the case may be, any railway servant authorized by the railway administration in this behalf may apply to any Metropolitan Magistrate or a Judicial Magistrate of the first or second class, as the case may be, for the recovery of the sum payable as if it were a fine and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month but not less than ten days.

(5) Any sum recovered under sub-section (4) shall, as and when it is recovered, be paid to the railway administration.

Comment

Sec. 138 provides for levy of excess charge and fare for traveling proper pass of ticket or beyond authorized distances and for punishment in case of refusal or failure to pay fare and excess charge.

139. Power to remove persons.- any person falling or refusing to pay the fare and the excess charge referred to in Sec. 138 may be removed by any railway servant authorized in this behalf who may call to his aid any other person to effect such removal.

Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket.

Provided further that a woman or a child if unaccompanied by a male passenger, shall not be so removed except either at the station from where she or he commences her or his journey or at a junction or terminal station or station at the headquarters of a civil district and such removal shall be made only during the day.

Comment

Section 139 empowers the railway servant to remove persons from railway on failure or refusal to [pay fare and excess charge.

140. Security for good behavior in certain cases.- (1) When a court convicting a person of an offence under Sec. 137 or Sec. 138 finds that he has been habitually committing or attempting to commit that offence and the court is of opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such court may at the time of passing the sentence on the person, order him to execute a bond with or without sureties for such amount and for such period not exceeding three years as it deems fit.

(2) An order under sub-section (1) may also be made by an appellate Court or by the High Court when exercising its powers of revision.

Comment

Section 140 provides for execution of bond for good behaviour in cases mentioned therein.

141. Needlessly interfering with means of communication in a train.- If any passenger or any other person, without reasonable and sufficient cause, makes use of, or interferes with any means provided by a railway administration in a train for communication between passengers and the railway servant in

charge of the train he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, where a passenger without reasonable and sufficient cause, makes use of the alarm chain provided by a railway administration, such punishment shall not be less than –

- (a) a fine of five hundred rupees, in the case of conviction for the first offence; and
- (b) imprisonment for three months in case of conviction for the second or subsequent offence.

Comment

Section 141 provides for punishment for interfering with means of communication in a train.

142. Penalty for transfer of tickets.- (1) if any person not being a railway servant or an agent authorised in this behalf -

- (a) sells or attempts to sell any ticket or any half of a return ticket; or
- (b) parts or attempts to part with the possession of a ticket against which reservation of a seat or berth has been made or any half of a return ticket or a season ticket,

in order to enable any other person to travel therewith, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and shall also forfeit the ticket which he sells or attempts to sell or parts of attempts to part.

(3) If any person purchases any ticket referred to in Cl. (a) of sub-section (1) or obtains the possession of any ticket referred to in Cl. (b) or that sub-section from any person other than a railway servant or an agent authorized in this behalf, he shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees and if the purchaser or holder of any ticket aforesaid travels or attempts to travel therewith, he shall forfeit the ticket which he so purchased or obtained and shall be deemed to be traveling without a proper ticket and shall be liable to be dealt with U/Sec.138:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, the punishment under

sub-section (1) or sub-section (2) shall not be less than a fine of two hundred and fifty rupees.

Comments

Section 142 provides for penalty for unauthorized sale or transfer of ticket.

Penal provision:

Penal provision is to be construed rigidly.

143. Prohibition for unauthorized carrying on of business of procuring and supplying of railway tickets:- (1) If any person, not being a railway servant or an agent authorized in this behalf;-

(a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or

(b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person,

he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he so procures, supplies, purchases, sells or attempts to purchase or sell:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.

(2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence.

Comments

Section 143 provides for penalty for unauthorized carrying on of business of procuring and supply of railway tickets.

144. Prohibition on hawking, etc. and begging:- (1) If any person canvasses for any custom or hawks or exposes for sale any article whatsoever in any railway carriage or upon any part of a railway, except under and in accordance with the terms and conditions of a licence granted by the railway

administration in this behalf, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of one thousand rupees.

(2) If any person begs in any railway carriage or upon a railway station, he shall be liable for punishment as provided under sub-section (1).

(3) Any person referred to in sub-section (1) or sub-section (2) may be removed from the railway carriage or any part of the railway or railway station, as the case may be, by any railway servant authorized in his behalf or by any other person whom such railway servant may call to his aid.

Comments

Section 144 prohibits unauthorized hawking and begging on railway and punishment therefore.

145. Drunkenness or nuisance:- If any person in any railway carriage or upon any part of a railway:-

- (a) is in a state of intoxication; or
- (b) commits any nuisance or act of indecency or uses abusive or obscene language; or
- (c) willfully or without excuse interferes with any amenity provided by the railway administration so as to affect the comfortable travel of any passenger,

he may be removed from the railway by any railway servant and shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months and with fine which may extend to five hundred rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than:-

- (a) a fine of one hundred rupees in the case of conviction for the first offence; and
- (b) imprisonment of one month and a fine of two hundred and fifty rupees, in the case of conviction for second or subsequent offence.

Comments

Section 145 provides for punishment for drunkenness or nuisance on railway.

146. Obstructing railway servant in his duties:- If any person willfully obstructs or prevents any railway servant in the discharge of his duties, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Comments

Section 146 provides for punishment for obstruction of railway servant while on duty.

147. Trespass and refusal to desist from trespass:- (1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than fine of five hundred rupees.

(2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.

Comments

Section 147 provides for punishment for trespass upon a railway.

148. Penalty for making a false statement in an application for compensation:- If in any application for compensation U/Sec.125, any person makes a statement which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

149. Making a false claim for compensation:- If any person requiring compensation from a railway administration for loss, destruction, damage, deterioration or non-delivery of any consignment makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Comments

Section 148 & 149 respectively provides for punishment for making false claim in case of injury or death of passenger or loss, damage, etc. of goods.

150. Maliciously wrecking or attempting to wreck a train:- (1)

Subject to the provisions of sub-section (2), if any person unlawfully:-

- (a) puts or throws upon or across any railways, any wood, stone or other matter or thing; or
- (b) takes up, removes, loosens or displaces any rail, sleeper or other matter or things matter or things belonging to any railway; or
- (c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway; or
- (d) makes or shows, or hides or removes, any signal or light upon or near to any railway; or
- (e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent or with knowledge that he is likely to endanger the safety of any person traveling on or being upon the railway, he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a person is punishable with rigorous imprisonment such imprisonment shall not be less than:-

- (a) three years, in the case of a conviction for the first offence; and
- (b) seven years, in the case of conviction for the second or subsequent offence.

(2) If any person unlawfully does any act or thing referred to in any of the clauses of sub-section (1) -

- (a) with intent to cause the death of any person and the doing of such act or thing causes the death of any person ; or

(b) with knowledge that such act of thing is so immediately dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of such person,

he shall be punishable with death or imprisonment for life

151. Damage to or destruction of certain railway properties.- (1) If any person, with intent to cause or knowing that he is likely to cause damage or destruction to any property of a railway referred to in sub-section (2), causes by fire, explosive substance or otherwise, damage to such property or destruction of such property, he shall be punishable with imprisonment for term which may extend to five years, or with fine, or with both.

(2) The properties of a railway referred to in sub-section (1) are railway track, bridges, station buildings and installations, carriages or wagons, locomotives, signaling, telecommunications, electric traction and block equipments and such other properties as the Central Government being of the opinion that damage thereto or destruction thereof is likely to endanger the operation of a railway may, by notification, specify.

Comment

Section 150 and 152 respectively provide for punishment for maliciously wrecking or attempting to wreck a train for causing any damage or destruction of railway property.

152. Maliciously hurting or attempting to hurt persons traveling by railway.- If any person unlawfully throws or causes to fall or strike at against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for a term which may extend to ten years.

Comment

Section 152 provides for punishment for maliciously hurting or attempting to hurt persons traveling by railway.

153. Endangering safety of persons traveling by railway by willful act of omission.- If any person by any unlawful act or by any willful omission or neglect, endangers or causes to be endangered the safety of any person traveling on or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punishable with imprisonment for a term may extend to five years.

154. Endangering safety of persons traveling by railway by rash of negligent act or omission.- If any person in rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act of omission is likely to endanger the safety of any person traveling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine of with both.

Comment

Section 153 and 154 respectively provide for punishment for endangering safety of persons traveling by railway by willful act or omission or negligent act or omission.

155. Entering into a compartment reserved or resisting entry into a compartment not reserved.- (1) If any passenger -

- (a) having entered a compartment wherein no berth or seat has been reserved by a railway administration for his use, or
- (b) having unauthorisedly occupied a berth or seat reserved by a railway administration for the use of another passenger, refuses to leave it when required to do so by any railway servant authorized in this behalf, such railway servant may remove him or cause him to be removed, with the aid of any other person, from the compartment, berth or seat, as the case may be, and he shall also be punishable with fine which may extend to five hundred rupees.

(2) If any passenger resists the lawful entry of another passenger into a compartment not reserved for the use of the passenger resisting, he shall be punishable with the fine which may extend to two hundred rupees.

Comment

Section 155 provides for punishment for a person for refusing to leave a reserved compartment in which no berth or seat is reserved for him or for resisting lawful entry into a reserved compartment.

156. Travelling on roof, step or engine of a train.—If any passenger or any other person, after being warned by a railway servant to desist, persist in traveling on the roof, step or foot-board of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with the which may extend to five hundred rupees, or with both and may be removed from the railway by any railway servant.

Comment

Section 156 provides for punishment for traveling on roof, steps or engine of a train.

157. Altering or defacing pass or ticket. - If any passenger willfully alters or defaces his pass or ticket so as to render the date, number if any material portion thereof illegible, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Comment

Section 157 provides for punishment for altering or defacing a pass or ticket.

158. Penalty for contravention of any of the provision of Chapter XIV.- Any person under whose authority any railway servant is employed in contravention of any of the provisions of Chapter XIV or of the rules made there under shall be punishable with fine which may extend to five hundred rupees.

Comment

Section 158 provides for punishment for contravention of any provision of Chapter XIV or rules made there under.

159. Disobedience of drivers or conductors of vehicles to directions of railway servant etc: If any driver or conductor of any vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Comment

Section 159 provides for punishment for driver or conductor of any vehicle on the premises of a railway for disobeying direction given by the railway servant.

160. Opening or breaking a level crossing gate : (1) if any person, other than a railway servant or a person authorized in this behalf, opens any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to three years.

(2) If any person breaks any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punishable with imprisonment for a term which may extend to five years.

Comment

Section 160 provides for punishment for a person opening or breaking a level crossing gate.

161. Negligently crossing unmanned level crossing : If any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable with imprisonment which may extend to one year.

Explanation : For the purposes of this section, “ negligence” in relation to any person driving or leading a vehicle in crossing an unmanned level crossing means the crossing of such level crossing by such person-

- (a) without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or
- (b) even while an approaching rolling stock is in sight.

Comment

Section 161 lays down the punishment for any person negligently driving or leading a vehicle across in unmanned level crossing.

Loss due to negligence burden to disapprove negligence lies on bailee.- It is well settled that in cases governed by Secs. 152 and 152 Contract Act the loss or damages of goods entrusted to a bailee is prima facie evidence of negligence and therefore the burden to disapprove negligence lies on the bailee. The bailee has to prove that he exercised due care and was not negligent.

162. Entering carriage or other place reserved for females.- If a male person knowing or having reason to believe that a carriage, compartment berth or seat in a train or room or other place is reserved by a railway administration for the exclusive use of females, without lawful excuse,-

- (a) enters such carriage, compartment, room or other place,, or having entered such carriage, compartment, room or place, remains therein ; or
- (b) occupies any such berth or seat having been required by any railway servant to vacate it,

he shall in addition to being liable to forfeiture of his pass or ticket, be punishable with fine which may extend to five hundred rupees and may also removed by any railway servant.

Comment

Section 162 provides for punishment for entering a carriage or other place reserved for females.

163. Giving false account of goods. - If any person required to furnish an account of goods under Sec. 66 gives an account which is materially false he and, if he is not the owner also shall, without prejudice to his liability to pay any freight or other charge under any provision of this Act, be punishable with fine which may extend to five hundred rupees every quintal or part thereof of such goods.

Comment

Section 163 lays down punishment for any person furnishing false account of goods on requisition by railway servant.

Estoppel, doctrine does not apply when fraud has been played authorities.- The doctrine of promissory estoppel does not apply when a false certificate has been obtained and fraud has been played on the authorities.

164. Unlawfully bringing dangerous goods on a railways. – If any person, in contravention of Sec. 67, takes with him any dangerous goods or entrusts such goods for carriage to the railway administration, he shall be punishable with imprisonment for a term which may be extended to three years, or with fine which may be extended to one thousand rupees or with both and shall also be liable for any loss, injury or damage which may be caused by reason of bringing such goods on railway.

165. Unlawfully bringing offensive goods on a railway. – If any person, in contravention of Sec. 67, takes with him any offensive goods or entrusts such goods for carriage to the railway administration, he shall be punishable with fine which may extend to five hundred rupees and shall also be liable for any loss, injury or damage which may be caused by reason of bringing such goods on a railway.

Comment

Section 164 and 165 respectively provide for punishment for unlawfully bringing dangerous and offensive goods on a railway.

166. Defacing public notices. – If any person without lawful authority -

- (a) pulls down or willfully damages any board or document set up or posted by the order of a railway administration on a railway or any rolling stock ; or

- (b) obliterates or alters any letters or figures upon any such board or document or upon any rolling stock,

he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Comment

Section 166 provides for punishment for defacing public notices on railway.

167. Smoking. – No person in any compartment of a train shall, if objected to by any other passenger in that compartment, smoke therein.

(2) Notwithstanding anything contained in sub-section (1), a railway administration may prohibit smoking in any train or part of a train.

(3) Whosoever contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with fine which may extend to one hundred rupees.

Comment

Section 167 prohibits smoking in a train when objected to by a co-passenger and provides punishment therefore.

168. Provision with respect to commission of offence by the children of acts endangering safety of person traveling on railway. – (1) if a person under the age of twelve years is guilty of any of the offences under Secs. 150 to 154, the court convicting him may require the father or guardian of such person to execute, within such time as the court may fix, a bond for such amount and for such period as the court may direct for the good conduct of such person.

(2) The amount of the bond, if forfeited, shall be recoverable by the court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be punishable with fine which may extend to fifty rupees.

Comment

Section 168 provides execution of bond for good conduct by the guardian of a person under the age of twelve years in cases of offences mentioned therein.

169. Levy of penalty on non-Government railway.- If a non-Government railway fails to comply with, any requisition made, decision or direction given, by the Central Government, under any of the provisions of this Act, or otherwise contravenes any of the provisions of this Act, it shall be open to the Central Government, by order, to levy a penalty not exceeding two hundred and fifty rupees for every day during which the contravention continues :

Provided that no such penalty shall be levied except after giving a reasonable opportunity to the Non-government railway to make such representation as it deems fit.

170. Recovery of Penalty. – Any penalty imposed by the Central Government under Sec. 169, shall be recoverable by a suit in the district Court having jurisdiction in the place where the head office of the non-Government railway is situated.

171. Section 169 or 170 not to preclude Central Government from taking any other action. – Nothing in Sec. 169 or 170 shall preclude the Central Government from resorting to any other action to compel a non-Government railway to discharge any obligation imposed upon it by or under this Act.

Section 169, 170 and 171 provide for levy of penalty on non-Government railways, mode of recovery of the penalty and that levy of penalty shall not preclude the Central Government from resorting to any other action against such railway.

172. Penalty for intoxication. – If any railway servant is in a state of intoxication while on duty, he shall be punishable with fine which may extend to five hundred rupees and when the performance of any duty in such state is likely to endanger the safety of any person traveling on or being upon a railway, such railway servant shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Comment

Section 172 provides for punishment for a railway servant for drunkenness on duty.

173. Abandoning train, etc., without authority. – If any railway servant, when on duty, is entrusted with any responsibility connected with the running of a train, or of any other rolling stock from one station or place to another station or place, and he abandons his duty before reaching such station or place without authority or without properly handing over such train or rolling stock to another authorized railway servant, he shall be punishable with imprisonment for a term

which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Comments.

Section 173 provides for punishment for a railway servant on duty for abandoning train without authority.

174. Obstructing running of train, etc. – If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway, -

- (a) by squatting or picketing or during any rail roko agitation or bandh, ; or
- (b) by keeping without authority any rolling stock on the railway or
- (c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

Comment

Section 174 provides for punishment for any person including a railway servant for causing obstruction to trains.

175. Endangering the safety of persons. – If any railway servant for causing obstructions to trains.

- (a) by disobeying any rule made under this Act ; or
- (b) by disobeying any instruction, direction or order under this Act or the rules made there under ; or
- (c) by any rash or negligence act or omission,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Section 175 provides for punishment for railway servants on duty for endangering the safety of any person traveling on a railway.

176. Obstructing level crossing. – If any railway servant unnecessarily

–

- (a) allows any rolling stock to stand across a place where the railway crosses a public road on the level ; or
- (b) keeps a level crossing closed against the public, he shall be punishable with fine which may extend to one hundred rupees.

Comment

Section 176 lays down the punishment for a railway servant unnecessarily obstructing railway crossing.

177. False returns. – If any railway servant required to furnish return by or under this Act, signs and furnishes a return which is false in any material particular or which he knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Comment

Section 177 provides for punishment for a railway servant furnishing false returns.

178. Making a false report by a railway servant. –If any railway servant who is required by a railway administration to inquire into a claim for loss, destruction, damage, deterioration or non-delivery of any consignment makes a report which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Comment

Section 178 provides punishment for a railway servant for making a false report in claims enquiry.

179. Arrest for offences under certain sections. –

(1) IF any person commits any offence mentioned in sections 150 to 152, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head Constable.

(2) If any person commits any offence mentioned in Secs. 137, 141 to 147, 153 to 157, 159 to 167, and 172 to 176, he may be arrested without warrant or other written authority by the officer authorised by a notified order of the Central Government.

(3) the railway servant or the police officer or the officer authorised, as the case may call to his aid any other person to effect the arrest under sub-section (1).

(4) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place or arrest to the court of the Magistrate.

Comment.

Section 179 provides for arrest of a person without warrant for the offences mentioned therein.

180. Arrest of persons likely to abscond, etc. – (1) | any person who commits any offence under this Act, other than an offence mentioned in Sec. 179, or is liable to pay any excess charge or other sum demanded under Sec. 138, fails or refuses to give his name and address or there is reason to believe that the name and address given by him and fictitious or that he will (officer authorised) any railway servant authorized in this behalf or any police officer not below the rank of a head constable may arrest him without warrant or written authority.

(2) The officer authorised may call to his aid any other person to effect the arrest under sub-section (1).

(3) Any person arrested under this section shall be produced before the nearest Magistrate within a period of 24 twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate unless he is released earlier or giving bail or if his true name and address are ascertained before on executing a bond without sureties for his appearance before the Magistrate having jurisdiction to try him for the offence.

(4) The provisions of chapter. XXIII of the Code of Criminal Procedure, 1973 (2 of 1974), shall so far as may be, apply to the giving of bail and the execution of bonds under this section.

Comments

Any police officer not below the rank of head constable, or any railway servant authorised in this behalf is empowered to arrest any person accused of any offence under this act, except in case of an offence under section 179 or a liability under section 138, without warrant.

“180(A) –Inquiry by officer authorised to ascertain commission of offence:

For ascertaining facts and circumstances of a case, the officer authorized may make an inquiry into the commission of an offence mentioned in sub-section (2) of Sec.179 and may file a complaint in the competent court if the offence is found to have been committed.

180(B) – Powers of officer authorised to inquire:

While making an inquiry, the Officer authorized shall have power to -

- i. Summon and enforce the attendance of any person and record his statement.
- ii. Require the discovery and production of any document.
- iii. Requisition any public record or copy thereof from any office , authorized or person.
- iv. Enter and search any premises or person and seize any property or document which may be relevant to the subject matter of the inquiry.

180(C) – Disposal of persons arrested:

Every person arrested for an offence punishable under Sub-Section (2) of section 179 shall, if the arrest was made by a person other than the officer authorized, be forwarded , without delay, to such officer.

180(D) – Inquiry how to be made against arrested person: (i) - when any person is arrested by the Officer authorized for an offence punishable under this act, such Officer shall proceed to inquire into the charge against such person.

ii) For this purpose, the Officer authorized may exercise the same power and shall be subject to the same provisions as the officer in charge of a Police station may exercise and is subject to the provisions of the code of Criminal Procedure, 1973, when investigating a cognizable case :

Provided that;

- a) If the Officer authorized is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a magistrate having jurisdiction in the case, or forward him in custody to such magistrate
- b) If it appears to the Officer authorized that there is not sufficient evidence or reasonable ground of suspicion against the accused person he shall released the accused person on his executing a bond , with or without

sureties as the Officer authorized may direct, to appear, if and when so required, before the Magistrate having jurisdiction/

180(E) Search, seizure and arrest how to be made: All searches, seizures and arrest made under this act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating respectively to searches and arrests made under that code.

180(F) Cognizance by court on a complaint made by officer authorised: No Court shall take cognizance of an offence mentioned in sub-section (2) of Section 179 except on a complaint made by the officer authorized.

180(G) Punishment for certain offences in relation to inquiry: - Whoever intentionally insults or causes any interruption in the inquiry proceedings or deliberately makes a false statement before the enquiring Officer shall be punished with simple imprisonment for a term which may extent to Six months, or with fine which may extent to one thousand rupees, or with both.

181. Magistrates having jurisdiction under the Act.- Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974), no, Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence under this Act.

182. Place of trial. – (1) Any person committing an offence under this Act or any rule made there under shall be triable for such offence in any place in which he may be or which the State Government may notify in the behalf, as well as in any other place in which he is liable to be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at such railway station as the State Government direct.

Comment

Section 181 and 182 respectively provide for the court for trying the offences and the place of trial.

CHAPTER XVI

Miscellaneous

183. Power to provide other transport services. – (1) A railway administration may, for the purpose of facilitating the carriage of passengers or goods to provide integrated service for such carriage, provide any other mode of transport.

(2) Notwithstanding anything contained in any other law for the time being in force the provisions of this Act shall apply to the carriage of passengers or goods by the mode of transport referred to in sub-section (1).

Comment

Section 183 empowers the railway administration to provide or maintain any mode of transport for the purposes mentioned therein.

184. Taxation on railways by local authorities. – (1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

(2) While a notification of the Central Government under sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax specified in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Central Government may, having regard to all the circumstances of the case, from time to time, determine to be fair and reasonable.

(3) The Central Government may at any time revoke or vary a notification issued under sub-section (1).

(4) Nothing in this section shall be construed to prevent any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other services which the local authority may be rendering or be prepared to render to the railway administration.

Comment

Section 184 provides for an exemption to the railway administration from the payment of tax to any local authority unless directed by the Central Government.

185. Taxation on railways for advertisement. – (1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax to any local authority in respect of any advertisement made on any part of the railway unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

(2) The Central Government may at any time revoke or vary a notification issued under sub-section (1).

Comment

Section 185 provides for exemption to the railway administration from the payment of tax to any local authority in respect of advertisement made on any part of the railway unless directed by the central Government.

186. Protection of action taken in good faith. – No suit, prosecution or other legal proceeding shall lie against the Central Government, any railway administration, a railway servant or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made there under.

Comment.

Section 186 provides that no suit, prosecution or other legal proceedings shall lie against the Central Government, railway administration, railway servant or any other person for anything done in good faith or intended to be done in pursuance of this Act.

187. Restriction on execution against railway property. – (1) No rolling stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of traffic on its railway, or of its station or workshop, shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law the power to attach or distrain property or otherwise to cause property to be taken in execution, without the previous sanction of the Central Government.

2) Nothing in sub-section (1) shall be construed to affect the authority of any court to attach the earnings of a railway in execution of a decree or order.

188. Railway servants to be public servants for the purposes of Chapter IX and Sec.409 of the Indian Penal Code-

1) Any railway servant, who is not a public servant within the meaning of Sec.21 of the Indian Penal Code(45 of 1860) shall be deemed to be a public servant for purposes of Chapter IX and Sec.409 of that code.

2) In the definition of 'legal remuneration' in Sec.161 of the Indian Penal Code(45 of 1860), the word "Government"

189. Railway servants not to engage in trade:-

A railway servant shall not-

- (a) purchase or bid for, either in person or by an agent, in his own name or in that of another, or jointly or in shares with others, any property put to auction under sect.83 or sec.84 or sec.85 or sec.90 or
- (b) in contravention of any direction of the railway administration in this behalf, engage in trade.

190. Procedure of delivery to railway administration of property detained by a railway servant.

If a railway servant is discharged from service or is suspended, or dies or absconds or absents himself, and he or his wife or widow or any member of his family or his representative refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration or to a person appointed by the railway administration, in the behalf any station, office or other building with its appurtenances, or any books papers, keys, equipment or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Metropolitan Magistrate or Judicial Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police officer, with proper assistance, to enter upon the station , office or other building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the railway administration or to a person appointed by the railway administration in that behalf.

Comment

Section 190 provides for the procedure to be followed by a railway servant for delivery of property detained by him to railway administration.

191. Proof of entries in records and documents. – Entries made in record or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration, and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries or by production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession.

Comment

Section 191 provides that entries in the records or other documents of the railway administration shall be admitted in evidence and the method of their proof.

192. Service of notice, etc., on railway administration. – Any notice or other document required or authorized by this Act to be served on a railway administration may be served, in the case of a Zonal Railway, on the General Manager or any of the railway servant authorized by the General Manager, and in the case of any other railway, on the owner or lessee of the railway or the person working the railway under an agreement –

- (a) by delivering it to him ; or
- (b) by leaving at his office ; or
- (c) by registered post to his office address.

193. Service of notice by railway administration. – Unless otherwise provided in this Act or the rules framed there under, any notice or other document required or authorized by this act to be served on any person by a railway administration may be served –

- (a) by delivering it to the person ; or
- (b) by leaving it at the usual or last known place of abode of the person ;
or
- (c) by registered post addressed to the person at his usual or last known place of abode.

Comment

Section 192 and 193 provide for the manner of service of notice on the railway administration and by the railway administration respectively.

194. Presumption where notice is served by post. – Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service, it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Comment

Section 194 provides that where a notice, etc. is served by the post it shall be deemed to have been served if it was properly addressed and registered.

195. Representation of railway administration. - (1) A railway administration may, by order in writing, authorise any railway servant or other person to act for, or represent it, as the case may be, in any proceeding before any civil, criminal or other court.

(2) A person authorized by a railway administration to conduct prosecution on its behalf shall, notwithstanding anything in Sec. 302 of the Code of Criminal procedure, 1973 (2 of 1974), be entitled to conduct such prosecution without the permission of the magistrate.

Comment

Section 195 provides for representation of railway administration in proceedings before Civil, Criminal and other Courts.

196. Power to exempt railway from Act. – (1) the Central Government may, by notification, exempt any railway from all or any of the provision of this Act.

(2) Every notification issued under sub-section (1) shall be laid as soon as may be after it is issued before each House of Parliament.

Comment

Section 196 empowers the Central Government to exempt any railway from all or any provisions of this Act.

197. Matters supplemental to the definitions of “railway” and “railway servant” . – (1) for the purposes of Secs. 67, 113, 121, 123, 147, 151 to 154, 160, 164, 166, 168, 170, 171, 173 to 176, 179, 180, 184, 185, 187 to 190, 192, 193, 195 and of this section, the word “railway” whether it occurs alone or as a prefix to another word, as reference to the railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in Cl. (31) of Sec. 2.

(2) For the purposes of Secs. 7, 24, 113, 146, 172 to 176 and 188 to 190, the expression “railway servant” includes a person employed under a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

Comment.

Section 197 provides for the matters supplemental to the definition of railway and railway servant.

198. General Power to make rules. – Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules generally to carry out the purposes of this Act.

Comment.

Section 198 empowers the Central Government to make rules generally to carry out the purposes of this Act.

199. Rules to be laid before parliament. –Every rule made under this Act shall be laid, as soon as may be after it made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Comment

Section 199 provides that any rule and regulation made under this Bill shall be laid before Houses of Parliament.

200. Repeal and saving. – (1) The Indian Railways Act, 1890 (9 of 1890) is hereby repealed.

(2) Notwithstanding the repeal of the Indian Railways Act, 1890 (9 of 1890) (herein after referred to as the repealed Act) -

- (a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or notice made or issued, or any appointment or declaration made or any license, permission, authorization or exemption granted or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.
- (b) Any complaint made by the Railway Rates Tribunal under sub-section (1) of Sec. 41 of the repealed Act but not imposed or before the commencement of this Act and any complaint that may be made to the said Tribunal against any act or omission of a railway administration under the repealed Act shall be heard and decided by the Tribunal

constituted under this Act in accordance with the provisions of Chapter VII of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of Sec. 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal.

Comment

Section 200 seeks to repeal the Indian Railways Act, 1890 and saves any action taken under the repealed Act.

Distinction between “repeal” and “amendment”. – It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision submitted. There is no real distinction between “repeal” and an “amendment”.

Prior amendments stand repealed only if it was not consistent with provision of Central Act. – The provision of the Central Act, be given full effect and any prior amendment made by the High Court or by the State Legislature, would stand repealed only if it was not consistent with the provision of the Central Act.
