

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 69 of 2008

Thursday, this the 22nd day of January, 2009

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

1. N. Chandrabhanu,
S/o. K.P. Narayanan,
LSG, Supervisor,
RMS, SRO, Alappuzha,
Padathveetil House,
S.L. Puram P.O., Alappuzha

2. P. Mohammed Haneefa,
S/o. P.A. Abdul Azees,
BCRMM SRO, Alappuzha,
Ammen Manzil, Najnath Ward,
Alappuzha.

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Applicants.

(By Advocate Mr. PMM Najeeb Khan)


v e r s u s

1. Senior Superintendent,
RMS T.V. Division,
Thiruvananthapuram.
2. The Secretary,
Postal Telecom BSNL Employees
Co-Operative Society Ltd. No. 940,
Thiruvananthapuram.
3. M.K. Madhavan,
Apathikuzhi Building,
Ezhakkaranadu South,
Puthencruz P.O., Ernakulam : 682 308

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Respondents.

(By Advocate Mr. M.V.S. Nampoothiry, ACGSC)



(The Original Application having been heard on 5.1.09, this Tribunal on 22-1-09. delivered the following) :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The two applicants, serving employees under the first respondent stood surety to the third respondent when the latter obtained some loan from the second respondent (Postal Telecom BSNL Employees Co. operative Society Ltd). The loan paid to the third respondent was to be recovered from the monthly salary of the said third respondent. However, due to irregular attendance and ultimate compulsory retirement of the third respondent, the dues payable by him to the second respondent mounted and the second respondent had started recovery of the dues from the applicants and the details of the amounts are as under:-

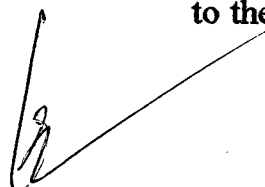
Total loan outstanding against third Applicant (Rs 1,45,000) including interest upto 09-01-2008 (Rs 31,618)	Rs 1,76,618.00
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Surety recovery details:

From Applicant No. 1	Rs 13,887.00
From Applicant No. 2	Rs 15,420.00

2. The third respondent is entitled to certain amount of terminal benefits.

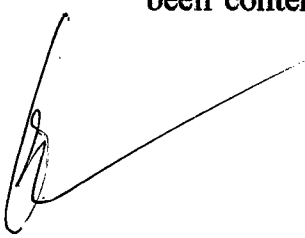
The applicants have obtained from the third respondent request letter addressed to the senior Superintendent of Post Office, RMS TV Division to recover the



dues payable by him to the second Respondent, vide Annexure A-2. However, since a third party had filed a suit for recovery of Rs 40,000/- plus interest from the third respondent, the civil court has passed an injunction order restraining the first respondent from releasing any terminal dues in favour of the said third respondent. Hence, the amount due to the third respondent towards the terminal dues has not been worked out. It is under these circumstances that the applicants have approached the Tribunal seeking the following relief(s):-

- (a) To declare that the applicants are not liable to pay any amount due in the loan account of the third respondent due to the second respondent.
- (b) To direct the first respondent not to make any recovery from the salaries/DCRG of the applicants without taking any recovery steps against the third respondent.
- (c) To direct the first respondent to release the amount so far recovered from the salary of the applicants for the loan account of the third respondent from the DCRG of the third respondent.

3. Respondent No. 1 has contested the OA by filing a reply. According to them, the restraint order against the release of the terminal dues to the third respondent has compelled them not to effect any recovery from the terminal dues towards outstanding dues payable by the third respondent to the second respondent. Again, provisions of pension rules provide for adjustment of terminal benefits only in respect of government dues and not others. It has also been contended that the dispute is one between the applicants and the second

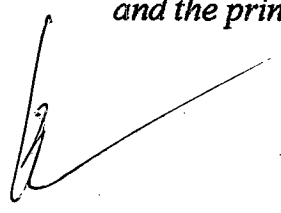


respondent society and the third respondent and the first respondent has been unnecessarily impleaded.

4. Neither the second respondent nor the third respondent had filed any reply.

5. During the course of hearing, applicants were not represented. Hence, invoking the provisions of Rule 15 of the CAT(P) Rules, 1987, arguments of the first respondent's counsel have been heard. Orders were reserved with liberty to the applicant to furnish written submission within seven days. However, as no such written submission had been filed, the OA is decided with the available documents and the arguments advanced on behalf of the first respondent.

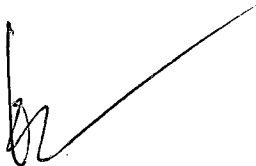
6. The society had lent loan to the third respondent on the basis of his capacity to pay and on the basis of the two sureties. As held by the Apex Court in the case of Maharashtra State Electricity Board v. Official Liquidator, High Court, (1982) 3 SCC 358, "Under Section 128 of the Indian Contract Act, the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Indian Contract Act by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act



or omission of the creditor, the legal consequence of which is the discharge of the principal debtor."

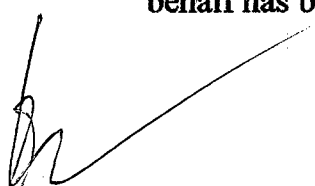
7. In the instant case, since the society had not released the third respondent from the liability by any act or omission, the liability of the applicants cannot be thoroughly wiped out. Hence, the first relief sought for as extracted above cannot be granted.

8. In so far as the contention of the second respondent that the applicants have unnecessarily impleaded the second respondent, it is to be held that the contention cannot be accepted. For, it is the second respondent who has to recover the amount due to the society by the second respondent from the said respondent and pay the same to the society. There must in all probability be an agreement between the Society, its members and the Department that loan amount due to the society is recovered by the Department from the employees and remitted to the Society. Thus, it is not that there is absolutely no link between the first respondent and the transaction in question. Again, if this contention of the first respondent is accepted, then they have no business to truncate the amount of salary due to the applicants by withholding the amount sought to be recovered by the society from the applicants in their capacities as sureties.



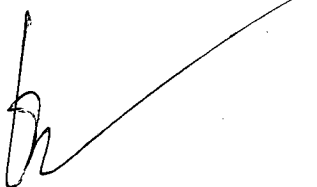
9. The predicament or inability of the first respondent in releasing the terminal dues to the third respondent (by way of adjustment of the amount dues to the second respondent on the basis of the undertaking given by the third respondent) is twofold – (a) There is a restraint order from a civil court in a suit filed by a third party against the third respondent in which the first respondent has been impleaded as one of the defendants, and by the said injunction order, the first respondent is forbidden from releasing the dues to the third respondent and (b) Provision does not exist in the Pension Rules for adjustment from the terminal benefits, of any dues other than certain specified dues specified in the Rules.

10. In so far as item (b) of the preceding para is concerned, there is a consent letter from the third respondent and as such, the amount due to the said respondent can well be adjusted. (It is worth mentioning that from family pension even government dues cannot be recovered, but if the pensioner gives consent for recovery of government dues or dues to the cooperative society, the same could be recovered. Thus, when with consent recovery could be made even from family pension, there cannot be any embargo in recovering the dues to the cooperative society from the Gratuity when specific consent on that behalf has been given by the third respondent).



11. Coming to (a) above, it is seen from the records that the civil suit is for recovery of Rs 40,000/- alleged to have been paid to the third respondent by the plaintiff to the civil suit on 01-02-2007 which got incremented with interest to Rs 41,000/- and the suit is for recovery of the said amount with interest @ 18%. The extent of gratuity etc., payable to the third respondent would be much more than the above amount. Since the Drawing and Disbursement officer is one of the defendants in the civil suit, he can well move the Court seeking permission to withhold the amount of Rs 41,000/- plus some more towards interest (which amount may be quantified by the Court) and release the balance of the Gratuity etc., so that the said amount could well be utilized towards liquidation of the society dues as per the consent given by the third respondent.

12. The first respondent has to act judiciously in such matter. True, the Society had lent the loan to the third respondent on the strength of the sureties furnished by the applicants. However, the extent of loan etc., is worked out on the basis of the repaying capacity of the borrower first and it is only thereafter that the surety comes into picture. If certain sureties are victimized like the applicants here, then no one would come forward for standing sureties to the borrowers and there may not be any transaction of loan and the purpose of the existence of such society would not be achieved. Hence, a responsibility is cast upon the first respondent to ensure that recovery is made from the borrower and it is only driven to the wall that sureties should be made liable to the dues to the

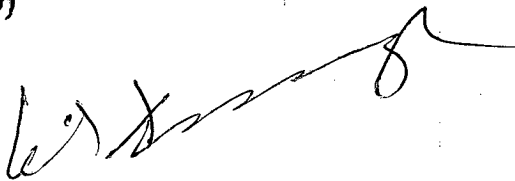


cooperative society. Now that the consent has been given by the third respondent, the first respondent should move the Civil court for relaxing the constraint order as stated in the preceding paragraph and on the same being granted by the Civil Court, the dues to the Second Respondent could be paid from the amount available in the DCR Gratuity etc., payable to the third respondent. Balance if any payable to the society could well be recovered from the sureties. Till such time the above exercise is undertaken, there shall be no recovery from the salary/terminal dues of the applicants.

13. The O.A. is disposed of on the above terms. No costs.

(Dated, the 22nd January, 2009)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

cvt.