

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 231 of 2007

Wednesday, this the 18th day of April, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

K.C. Subramanian,
Sealer (V/C 896),
Southern Railway,
Irumpanam P.O.,
Thripunithura, Ernakulam

... Applicant.

(By Advocate Mr. D. Sreekumar)

v e r s u s

1. Senior Divisional Personnel officer,
Thiruvananthapuram Division,
Southern Railway, Thiruvananthapuram
2. The Divisional Personnel Manager,
Southern Railway, Ernakulam.
3. T.J. Simon,
Diesel Mechanic,
Ernakulam Junction (ERS),
Southern Railway, Ernakulam
4. The Branch Manager,
Syndicate Bank,
First Floor, Pioneer Towers,
Shanmugham Road,
Ernakulam, Kochi - 682 031

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 13.04.07, this
Tribunal on 18-4-07 delivered the following :

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

The question: Whether a dispute, arising out of a Government employee standing surety for bank loan taken by another government employee, would fall within the ambit of "service matter" under the provisions of the Administrative Tribunals Act, 1985?

2. Capsulated facts of case: The applicant, an employee of the Southern Railways stood surety to the third respondent, another Railway employee in connection with the latter's house building loan taken from the Fourth Respondent Syndicate Bank. Non payment of the installment of loan by the third respondent would entail recovery being effected by the bank from the applicant, in accordance with the terms of surety. Though the third respondent maintains his bank account with the Fourth Respondent Bank, where the salary of the said respondent is credited, as the extent of salary so credited is not sufficient for repayment of the installment, the Fourth Respondent had approached the Railways with the request that with a view to getting the amount due from the Third Respondent recovered, the extent of terminal benefits accrued to the said Third Respondent who is to retire shortly be credited in the ^{his} account maintained with the Fourth Respondent. Annexure A-1 refers. The extent of present balance due works out to Rs 63,028.31 with an over due of Rs 43432.57. A copy of the same has been endorsed to the Third Respondent with the observation, "we will be constrained to recover the dues from the salary of the guarantor Sri K. C. Subramaniam in

case you fail to clear the loan amount." It is this observation that has panicked the applicant, who had, by Annexure A-2 letter requested the Railways to recover the loan amount due from the Third respondent. As the third respondent is to retire by 30th April, 2007, the applicant has moved this Tribunal through this OA seeking the following main relief(s).

- (i) *To direct the 1st and 2nd respondents to remit the entire dues, till date with respect to Bank Account No. 218/2456, owes to the 4th respondent Bank from the retirement and pensionary benefits including DCRG of the 3rd respondent before he is allowed to retire on 30th April, 2007.*
- (ii) *To declare that 1st and 2nd respondents have a statutory duty and obligation to ensure prompt repayment of housing loan amount due to a nationalised bank like 4th respondent on public interest.*
- (iii) *To direct the first respondent to take all emergent and positive action on Annexure - 1 & 2 representations before 30th April, 2007.*
- (iv) *To award entire costs of the proceedings from the respondents.*

3. Counsel for the official respondents at the time of admission hearing raised the issue of jurisdiction as the transaction does not come within the purview of 'service mater' within the meaning of the Administrative Tribunals Act, 1985.

4. Counsel for the applicant submitted that in the event of the official respondent's failure to recover the amount due from the Third respondent and payment of the same to the Fourth Respondent, it would be the pay and allowances of the applicant that would be encroached upon by the Fourth

b/n

Respondent and as such, though not explicitly, the matter does fall at least implicitly, within the purview of the A.T. Act.

5. Arguments were heard and documents perused. Railway Services (Conduct) Rules 1965 contain a bundle of "dos and dont's" and Rule 17 reads as under:-

17. Insolvency and habitual indebtedness: (1) A government servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A Government servant against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent shall forthwith report the full facts of the legal proceedings to the Government."

6. Apparently, if the words of the fourth respondent are given their face value, there has been a clear default by the third respondent in relation to repayment of the loan taken by him from the fourth respondent, thus, the omission by the third respondent directly and proximately affecting the reputation of the applicant in addition to he being driven to the stage of repayment of the amount due from the third respondent as the applicant has stood surety to the said third respondent. If the default comes within the purview of the aforesaid Conduct Rules governing the third respondent, perhaps, the official respondents could take action against him since the Apex Court, has held in the case of **Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409**, as under:

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"...we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago though the bribe may be small, yet the fault is great.

29. The instances above catalogued are not exhaustive."

(Emphasis supplied)

7. Perhaps what would have prompted the fourth respondent to inter alia inform the Railways, vide Annexure A-1, "As a Nationalized Bank, we feel Government Authorities should take the responsibility of their staff's financial discipline" Is the above provisions of Conduct Rules, as non payment of the loan taken from the Bank would mean that the third respondent has **acted in a manner as would reflect on his reputation for integrity or good faith.** If the act on the part of the third respondent, does not in any way affect the applicant, this Tribunal would have simply rejected the case of the applicant.

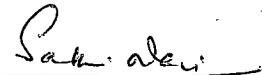
Since, in the event of the third respondent being let free by releasing the terminal benefits which may have to be paid on or immediately after 01.05.2007 at the time of retirement of the said Respondent, the said respondent would, in the eyes of a nationalized bank, lose his reputation and his integrity too would be affected and the Railways may be contributory to the same, which, if permitted would directly affect the applicant, as he fears. Now that the Bank had taken up the matter with the Railways, in our view, due action in accordance with the extant rules may be taken by the Railways with a view to resolving the issue, in which event, the applicant may not be seriously affected by way of recovery of the dues in question from him. But, the discretion is purely left to the Railways. This Tribunal has no jurisdiction to pass any direction in this regard within the powers vested with the same.

8. With the above observation, the OA is closed. No costs.

(Dated, the 18th April, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvr.