

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This the 18th day of January 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/00984/2014

1. Saroj Kumar Dubey, son of Hari Nandan Dubey, working on the post of S.S.E (J.E.) (Karma S. 12876) in the Diesel Locomotive Works Varanasi.
2. Mohammad Shamsad Khan son of Abdul Hameed Khan working on the post of Crain Driver (Karma S. 12116) in the Diesel Locomotive Works Varanasi.

.....Applicants

By Advocate: Shri Abhiraj Singh/Shri R.C Srivastava

Versus

1. Diesel Locomotive Works Varanasi through its General Manager, Varanasi.
2. General Manager, Diesel Locomotive Works, Varanasi.
3. Chief Personal Officer, Diesel Locomotive Works, Varanasi.
4. Chief Mechanical Engineer (Personal), Diesel Locomotive Works, Varanasi.
5. Branch Manager, Northern Railway Primary Cooperative Bank Ltd., Lucknow Branch Diesel Locomotive Works, Varanasi.
6. Manoj Karmkar son of Nakul Karmkar posted as Assistant SSE/HWS (Karma S. 16145) Diesel Locomotive Works Varanasi.

. . . Respondents

By Adv: Shri G.K. Tripathi/Shri K.D. Tiwari

ORDER

1. Case of applicants Saroj Kumar Dubey and Mohammad Shamsad Khan is that they are employed in Diesel Locomotive Works, Varanasi. Respondent No. 6 took a loan of Rs.150000/- for repayment of which loan, applicants stood as guarantors. The case of applicants, as per, paragraph No. 2 of the O.A. as

quoted below is that respondent No. 6 has defaulted in payment of loan and the amounts are being deducted from their salaries towards the repayment of the balance amount of loan:-

"2. That the deduction of the instalment towards the loan taken by the respondent No. 6 is being made from the salary of the applicants being guarantor. Being aggrieved with the inaction of the authorities concerned the applicants moved an application before the respondent No. 5 on 20.9.2013 stating therein that respondent No. 6 is running absent from the month of Feb. 2013 and deduction from the respondent No.5 towards the loan which have taken by him is closed. A notice has been sent from the office of the respondent No. 5 against the applicants for deduction/recovery of the instalments towards the loan from the applicants while the respondent No. 6 has given full authority to railway administration as well as you for recovery of the amount from him or from my successors in case of non payment of the loan amount. As such making pressure for recovery from the applicant being guarantor is not justified, remaining the movable and immovable property of the respondent No 6 and prayed for making deduction from the gratuity, insurance P.F and leave encashment from the respondent No. 5. A true copy and photocopy of the application dated 20.9.2013 given to respondent No. 4 is being filed herewith and marked as Annexure No.2 to the compilation No.2".

2. Applicants' case is that the deduction from their salary towards the recovery of loan amount before recovering the same from respondent No. 6 is illegal and arbitrary and therefore the applicants seek the following reliefs:

- “i) Issue an order or direction in the nature of mandamus commanding the respondents not to make any recovery/deduction from the salary of the applicants without making recovery from the respondent No.5.
 - ii) issue an order or direction in the nature of mandamus commanding the respondents to refund the amount deducted from the salary of the applicants towards the loan taken by the respondent No.6.
 - iii) Awards costs of proceedings and
 - iv) Pass any other order/direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case”.
3. In their counter affidavit, the facts are not denied by the respondents and their plea is that since the applicants stood as guarantors for respondent No. 6 for repayment of the loan amount, the liability of applicants is coextensive with that of respondent No. 6 and therefore, the action of the respondents for recovery of the loan amount from the guarantors (Applicants) is perfectly legal and the O.A. being meritless deserves to be dismissed.
4. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
5. The admitted facts are that the applicants stood as guarantors for the repayment of the loan taken by respondent No. 6 from respondent No. 5 (respondent-Bank) and entered into contract in form of Bank guarantees to ensure that the loan is

repaid in its entirety. Now that respondent No. 6 has defaulted in repayment of loan, respondent No. 5 is taking legal action against the applicants for repayment of the loan given to respondent No. 6.

6. Regarding the liability of the applicants to ensure payment of loan since they stood as guarantors, reference may be made to Usha Rani v/s Delhi Financial Corporation, AIR 2013 Delhi 207 wherein the Hon'ble High Court opined that recovery of outstanding loan amount can be recovered from the guarantors as :

"The question involved in this writ petition is as to whether the respondent No. 1 can simultaneously recover the amount due to it from the petitioners or not. Since the petitioners had admittedly stood as guarantors for the loan taken by respondent No. 2, the liability of the guarantors being co-extensive and the liability of the principal borrower and the guarantors being joint as well as several, it is open to respondent No. 1 to recover its dues either from the petitioners or from respondent No. 2 or from all of them.

3. The legal position with respect to obligation of a guarantor to pay the amount guaranteed by him to the lender was upheld by the Apex Court in *Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala* JT 2009 (10) SC 533 where the Apex Court, after considering its earlier decision on the subject, *inter alia*, held as under:-

"30. The legal position as crystallized by a series of cases of this court is clear that the liability of the guarantor and principle debtors are co-extensive and not in alternative. When we examine the impugned judgment in the light of the consistent position of law, then the obvious

conclusion has to be that the High Court under its power of superintendence under Article 227 of the Constitution of India was not justified to stay further proceedings in O.A. 156 of 1997."

4. Since the liability of the petitioners is co-extensive and not in the alternative, no infirmity was committed by respondent No. 1 in seeking to recover the balance amount due to it, from the petitioners."

7. Another reason that may be ground for refusing the relief to the applicants is that this is a contractual matter and not a matter relating to their service conditions.
8. Even so, in view of the admitted facts of the case and the settled position of law as enumerated above, I am of the opinion that there can be no legal impediment for the respondent No. 5 to recover the outstanding loan amount from the applicants who stood as guarantors for its repayment and their liability is co-extensive. Accordingly, O.A. is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

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