

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-842/95

New Delhi this the 4th day of October, 1996.

Hon'ble Sh. R.K. Aahooja, Member(A)

Sh. S.K.B. Srivastava,
S/o Sh. P.N. Srivastava,
R/o 5/11766, Sat Nagar,
Karol Bagh,
New Delhi-5.

Applicant

(through Sh. Surinder Singh, advocate)

versus

1. Union of India,
through its Secretary,
Ministry of Home Affairs,
North Block,
Central Secretariat,
New Delhi-1.

2. The Registrar General of India,
2/A, Mansingh Road,
New Delhi-11.

3. Government of India,
Ministry of Home Affairs,
Office of Director of
Census Operation U.P.,
Lekh Raj Market-3,
Indra Nagar,
Lucknow-226016.

Respondents

(through Sh. K.C.D. Gangwani, advocate)

ORDER

The applicant who was working as Head Assistant under Respondent No.3 superannuated on 31.3.1993. He is aggrieved that his DCRG amounting to Rs.43,890/- was withheld on account that he had stood surety in respect of one of his colleagues Sh. K.S. Chauhan ~~for~~ whom the amount of H.B.A. ~~had~~ to be recovered.

2. The undisputed facts of the case are briefly stated. Sh. K.S. Chauhan, the colleague of the applicant was granted the H.B.A. of Rs. 50,000/- on 15.10.1985. He was subsequently allowed an

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additional amount of Rs.15,000/- on 11.10.1988. The applicant and one of his other colleagues Sh. I.L. Shah stood surety for the second amount of Rs.15,000/-.

The services of Sh. Chauhan ~~was~~, however, terminated on account of embezzlement of Government money sometimes in April, 1992. Prior to this, an amount of Rs. 25,000/- had been recovered from Sh. Chauhan which left a balance of Rs.40,000/- and the interest on the ~~delay~~ advance to be recovered from Sh. Chauhan. As the applicant had alongwith Sh. Shah ~~stood~~ ^{surety} for the second advance of Rs.15,000/-, the respondents withheld the entire amount of his gratuity and despite a number of representations between 1993-1995 continued to withhold the same. At that stage, the applicant offered to the respondents that they may deduct a sum of Rs.7500/- towards ^{his} ~~previous~~ share of the surety and the remaining amount may be paid to him. The applicant submits that this offer was given on an erroneous understanding of the legal position and he submits that he now withdraws this offer.

3. The respondents assert that the applicant is liable for payment of Rs.7500/- duly shared, as he had stood surety for Rs. 15,000/- of the H.B.A. given to Sh. Chauhan. They further state that there is another O.A.No.489/93 Shri K.S. Chauhan Vs. Union of India & Others and in that O.A. the Tribunal has given an order on 3.12.93 that the respondents shall not make

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recovery of amount till the decision of the case. The respondents say that no amount of gratuity can be paid to the applicant till this order is operative.

4. ~~When~~ the matter was before this Tribunal, the respondents made part payment of the gratuity withholding an amount of Rs.7500/- therefrom. The matter, therefore, now remains only in respect of the remaining amount.

5. The learned counsel for the applicant pointed out that the first charge for the recovery of the advance is property which has been mortgaged to the lender. In this connection he invited attention to Rule 8(d) of the House Building Advance Rules which prescribes that if the advance together with interest due thereon has been fully recovered, the property mortgaged as security for the advance should be reconveyed to the Central Government servant. In other words, the reconveyance of the property can take place only if the advance has been recovered. The learned counsel argued that the question of recovery from the sureties would arise only if the respondents are ~~unable~~ entitled to recover the advance fully after sale of the property. In this connection he also submitted that the vide Annexure A-7 wife of Sh. Chauhan has already deposited an amount of Rs.70,000/- and 46,000/- and for the remaining amount, ~~she~~ deposited the papers in respect of the house and the respondents were free to recover the remaining amount ~~through~~ ^{through} ~~as~~ sale of the said property.

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6. I have considered the matter carefully and find that the applicant cannot claim the release of the amount of Rs.7500/- withheld by the respondents. It is true that the first charge for recovery of the advance would be the property itself. Even though the applicant claims ^{that} ~~for~~ the value of the property is much more than the H.B.A. alongwith interest thereon, this ^{for granted} ~~is~~ cannot be taken unless there is a property valuation. It is also an admitted fact that as a result of an order of the Tribunal in OA-489/93, the respondents are not capable to make any recoveries at this stage from Sh. Chauhan. In the circumstances, therefore, the respondents ^{have} ~~are~~ prepared to protect the public interest by withholding the amount of Rs.7500/- from the applicant as he had stood surety to that extent. As and when this amount is released by the respondents, the applicant would of course be entitled to interest thereon in terms of extant orders regarding payment of interest on delayed releases of terminal benefits.

7. In the light of the above discussion, the application is dismissed. There will be no order as to costs.

R.K. Aahooja
(R.K. Aahooja)

Member(A)

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