

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/00984/2019

ORDER RESERVED ON 02.02.2021

DATE OF ORDER: 09.03.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Sri J.H.Gopalakrishna

S/o late Hanumantharayappa

Aged about 64 years

Retired sorting Postman

R/at No.30, 1* Block

Sri LakshminarasimhaNilaya

Doddabommasandra

Vidyaranyapuram Post

Bangalore-560 097.

....Applicant

(By Advocate Shri M.Rajakumar)

Vs.

1. The Union of India

by Secretary

Department of Post

DakBhavan, New Delhi-110001.

2. The Chief Post Master General

(HBA), Karnataka Circle

Bangalore-560 002.

3. The Assistant Accounts Officer (A&P)

Office of the Chief Post Master General

Karnataka Circle, Bangalore-560 001.

....Respondents

(By Advocate Shri Vishnu Bhat)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- a. Direct the respondents to refund a sum of Rs.94,967/- recovered from the applicant retirement gratuity together with interest at the rate of 18% per annum from 21.10.2014 till the realization of payment of the entire amount.
- b. Grant the cost of Rs.2,00,000/- which the applicant suffered mental agony and sufferings.
- c. To issue any other appropriate order or direction as this Hon'ble Tribunal deems fit in the facts and circumstances of the case, in the interest of justice and equity.

2. The facts of the case as pleaded by the learned counsel for the applicant, Shri M.Rajakumar, are as follows:

- a. The applicant was working as sorting postman in the office of Benson Town Sub Office, Bangalore-560 046 before his retirement from the postal department in the month of October 2014. The applicant had obtained a housing loan of Rs.1,94,000/- duly sanctioned vide Memo dated 01.08.2003 for construction of house. This loan was due for repayment in 125 monthly instalments of Rs.1,552/- from the pay of the applicant from the month of September 2003.
- b. The applicant, after construction of his house, got the same insured with Oriental Insurance Company and respective policy copies were made available in respondent department. The entire loan amount was paid and

recovered 10 months before his retirement but respondents illegally deducted sum of Rs.2000/- every month till his retirement in October 2014. The entire loan amount had been recovered in the month of December 2013 itself.

- c. The applicant had insured his house with Oriental Insurance Company and renewed every year as per the terms and conditions of HBA loan and there were no dues in respect of payment of EMI before 10 months from the date of his retirement. However, the respondents have illegally deducted an amount of Rs.94,967/- from his service benefits allegedly being the outstanding HBA interest and after the reduction of the said amount, the respondents paid the remaining amount of Rs.4,18,068/- being the total retirement benefits.
- d. In response to a legal notice issued by the applicant on 23.4.2016, respondent No.2 intimated that the sum of Rs.94,967/- has been deducted from the retirement gratuity of the applicant as the applicant had failed to insure the property. That according to GID 6 below rule 7 of House Building Advance, non-insurance period up to 2 years is condonable by the Head of the Department. According to the respondents, the applicant had failed to insure the property from 9.3.2006 to 1.2.2008 and 1.2.2013 to 31.10.2014 (total 3 years and 7 months). Since this period is more than a period of 2 years and since the Competent Authority has not condoned the case of refund of penal interest, hence, the amount of Rs.94,967/- was deducted from his retirement dues. The respondents are required, as per the

rules, to take up the case of condonation of delay of more than 2 years with the Ministry as per clause-6 of HBA Rules dated 30.11.1989 & 16.6.1995. It is the bounden duty of 2nd respondent to forward the representations of applicant to the Ministry to condone break up period of insurance before the applicant's retirement. However, they have not done anything in the matter resulting in unjust deduction of a huge amount of Rs.94,967/- from his retiral dues.

- e. The applicant approached consumer redressal forum on 28.12.2016 vide his complaint No.1719/2016 seeking redressal of the grievance suffered by him. However, after detailed hearing, the Hon'ble consumer forum has dismissed the complaint and taken a view that the applicant is not a consumer.
3. Shri Vishnu Bhat, learned counsel for the respondents in his reply statement has averred as follows:

- a. The applicant had applied for House Building Advance for an estimated cost of Rs.400,000/-. In accordance with Rule 8(a) & 8(a)(iv) of HBA Rules, the advance granted to a Govt. servant under these rules, together with the interest thereon, has to be repaid in full by monthly instalments within a period not exceeding 20 years. Firstly, the recovery of the advance is to be made in not more than 180 monthly instalments and then interest is supposed to be recovered in not more than 60 monthly instalments. Further, as per Rule 8(a)(iv), in order to avoid undue hardship, a Government servant, who is due for retirement within 20 years of date of application for

grant of an advance, and who, under the service rules applicable to him, is eligible for the grant of a Gratuity or Death-cum-Retirement Gratuity, Head of the Department may permit him to repay the advance with interest in convenient monthly instalments, during the remaining period of service, provided he agrees to the incorporation of a suitable clause in the prescribed Agreement and Mortgage Deed Form to the effect that the Government shall be entitled to recover the balance of the said advance with interest remaining unpaid at the time of retirement, or death preceding retirement, from the whole, or any specified part of the gratuity, that may be sanctioned to him.

- b. In the instant case, the applicant was having only about 11 years i.e., less than 20 years of service. Therefore, in accordance with Rule 8 (a)(iv), the applicant was allowed to repay the advance of Rs.194000/- by 125 monthly instalments of Rs.1552/- commencing from the month of September 2003 or from the month following the completion of the house, whichever is earlier, till the date of his superannuation, and the balance remaining on his superannuation, together with the interest on the advance from the date of the application to the date of repayment, from his Gratuity/Death cum Retirement Gratuity.
- c. The HBA was sanctioned on 1.8.2003 as per the existing rules on the subject. The details of amount sanctioned, rates of interest, recovery of principal and interest, are clearly mentioned and the fact that the balance shall be recovered from DCRG in one lumpsum at the rate as communicated by the

Director of Postal Accounts, Karnataka Circle, Bengaluru in due course, is also intimated.

- d. As per the standard procedure of recovery schedule, the principal amount of Rs.194000/- was recovered in fixed EMI of Rs.1552/- from his pay since 2003 and thereafter the interest accrued to the extent of Rs.1,12,967/-, out of which, an amount of Rs.18,000/- was recovered till his retirement and the remaining outstanding interest of Rs.94,967/- was recovered from DCRG after retirement, as per the clause agreed upon in the Mortgage Deed.
- e. As per the HBA Rule 7(b) and subsequent instructions received on the subject, the Government Servant is required to insure the house at his own cost, for a sum not less than the amount of advance and shall keep it so insured against damage by fire, flood and lightning, till the advance together with interest, is fully repaid to Government, and deposit the policy with the Government. On insuring the house, interest of 2.5% above the prescribed rate in the sanction is recovered from the Government Servant. If the conditions attached to the sanction are fulfilled completely, to the satisfaction of the competent authority, rebate of interest to the extent of 2.5% is allowed.
- f. In the instant case, the applicant did not submit the HBA documents i.e. tax paid receipts and Renewed Insurance policy schedule and Annual Certificate in the prescribed proforma, within the prescribed time limits. He was requested on several occasions vide letters dated 19.06.2006, 23.4.2007,

19.11.2007, 6.7.2009 & 20.3.2013 to submit the required documents relating to inter-alia insurance policy papers duly renewed. As per the documents, there was a break in the insurance coverage during the loan period from 9.3.2006 to 1.2.2008 and 1.2.2013 to 31.10.2014 i.e. totally for a period of 3 years and 7 months. Hence, the applicant was not eligible for the rebate of 2.5% on interest and hence interest was charged at the flat rate of 11% instead of 8.5%.

g. The applicant after his retirement represented through letter dated 19.6.2015 that he had taken insurance policy from 2005 till 19.6.2015 (date of representation), but could not produce the policy documents. He further stated that the quantum of penal interest is very high and requested to condone the non-insurance period from 9.3.2006 to 1.2.2008 and 1.2.2013 to 31.10.2014. The department had appraised the applicant on several instances for timely renewal of insurance and submission of policy documents failing which 2.5% rebate was not admissible if the conditions of the sanction are not fulfilled. But there was no response from the applicant while he was in service, and it was only after his retirement, that he has represented on 19.6.2015. Moreover, he claims that he has taken insurance since 2015 till his date of representation, and on the other hand has also requested for condonation of non-insurance period which itself is contradictory.

h. As per Rule 8(a) & Rule 8(a)(iv) of HBA Rules, there was a clause in the Mortgage Deed at page No.4 under point (1) that Mortgagor Sri J.H.Gopala Krishna, authorizes the Mortgagee to make deductions from his monthly

pay/leave salary of the amount of instalments and from his Gratuity/death-cum-retirement gratuity of such of the balances remaining unpaid at the time of his death/retirement/superannuation.

- i. As per Rule 8(a), the payment of advance with interest shall be made in full by monthly instalments within a period not exceeding 20 years (180 months for Principal& 60 months for interest). In the instant case, length of the remaining service of the employee is around 11 years i.e. less than 240 months of service. Accordingly, the Head of the Department permitted him to repay the advance with interest in convenient monthly instalments during the remaining period of service, provided he agrees to the incorporation of a suitable clause in the prescribed agreement and Mortgage Deed Form to the effect that the Government shall be entitled to recover the balance of the said advance with interest remaining unpaid at the time of retirement or death preceding retirement, from the whole or any specified part of the gratuity that may be sanctioned to him. The total outstanding amount at the time of his retirement was Rs.94967/- which was accordingly recovered from his DCRG as per the Mortgage Deed and is in order.
- j. In reply to the legal notice sent through the Advocate of the applicant regarding refund of 2.5% of penal interest from HBA, it is clearly explained to the applicant, that due to the insurance break up period from 9.3.2006 to 1.2.2008 and 1.2.2013 to 31.10.2014, he was not eligible for rebate of 2.5%. His request for condonation of the period cannot be processed now, since despite being reminded for timely renewal of insurance and submission of

policy documents, the applicant did not do the needful. On one hand, he is claiming that he has taken policy till 2015 but was unable to produce the policy documents, on the other hand he is requesting for condonation. Therefore, the request for refund is contradictory and not in order.

4. In his rejoinder to the reply filed by the respondents, the applicant has stated as follows:

a. As per clause-5(d) of the Mortgage Deed, the following is mentioned:

“The Mortgagor shall pay regularly the premium in respect of the said insurance from time to time and will when required produce to the mortgagee the premium receipts for inspection. In the event of failure on the part of the mortgagor to the effect the insurance against fire, flood and lightening, it shall be lawful but not obligatory for the mortgagee, to insure the said house at the cost of the mortgagor and add the amount of the premium to the outstanding amount of advance and the mortgagor shall thereupon be liable to pay interest there on as if the amount of premium had been advanced to him as part of the aforesaid advance at 8.5% till the amount is repaid to the mortgagee or is recovered as if it were an amount covered by the security of these presents. The mortgagor shall give a letter to the mortgagee as often as required, addressed to the Insurer, with which the house is insured with a view to enable to the mortgagee to notify to the insurer to the fact that mortgagee is interested in the insurance policy secured.”

Hence, there is no question of paying 2.5% of penal interest.

b. The applicant has paid the premium of more than 125 instalments till his retirement i.e. October 2014. He has lost the premium renewal receipts. He has never received Annexure-R5 letters forwarded to him which are concocted documents.

c. The applicant stated that the entire loan amount was paid and recovered even 10 months earlier before his retirement but respondents illegally deducted sum of Rs.2000/- in every month till his retirement i.e. October 2014.

d. The applicant had insured his house with Oriental Insurance Company and renewed every year as per the terms and conditions of HBA loan and there was no due in respect of payment of EMI before 10 months from the date of retirement of the applicant but the respondents illegally deducted this till his retirement.

e. The applicant requested the 2nd respondent not to deduct any amount from his DCRG which had been recovered without notice and any fault from him. However, the respondents had stated that they are supposed to recover Rs.94967/- from applicant's DCRG which is due from HBA loan. He was not able to produce the policy renewal receipts and finally requested to condone the non-insurance period under the provision of OM dated 06.02.1987 & 30.11.1989.

5. After going through the pleadings furnished by the applicant and the respondents and hearing the arguments put forth by both the learned counsels, the following is observed:

a) As per the HBA rules, the methodology of recovery of HBA is prescribed as recovery of principal first in the first fifteen years in not more than 180 monthly instalments and interest thereafter in next five years in not more than 60 monthly instalments. The advance carries simple interest from

the date of payment of first instalment. In cases where the period left, of service of a Government servant, is less than 20 years from the date of application for grant of an advance, and who, under the service rules applicable to him, is eligible for the grant of a Gratuity or Death-cum-Retirement Gratuity, Head of the Department may permit him to repay the advance with interest in convenient monthly instalments, during the remaining period of service, provided he agrees to the incorporation of a suitable clause in the prescribed Agreement and Mortgage Deed Form to the effect that the Government shall be entitled to recover the balance of the said advance with interest remaining unpaid at the time of retirement, or death preceding retirement, from the whole, or any specified part of the gratuity, that may be sanctioned to him.

- b) In the present case, the advance of HBA was sanctioned in the year 2003 and the service left of the applicant was less than 20 years. The copy of the memo submitted by the applicant at Annexure-A9 clearly indicates that the advance of Rs.1,94,000/- was to be provisionally recovered in 125 monthly instalments of Rs.1552/- from the pay of the official from the month of September 2003. The simple interest accruing on the loan was to be recovered after the recovery of the principal amount of loan, from the pay of the official in 9 monthly instalments (till his superannuation) and the balance remaining amount due, if any, from the DCRG in one lump sum. After complete recovery of the principal loan amount in 125 instalments, the accrued simple interest was to be

recovered at 11% (prescribed rate of interest 8.5% + 2.5%) per annum. If, however, the conditions attached to the sanction including those relating to the recovery of amount were fulfilled completely to the satisfaction of the competent authority, a rebate of interest to the extent of 2.5% would have been allowed.

- c) As per the conditions provided in the sanction order, an amount of Rs.1552/- has been recovered from the pay of the applicant from September, 2003 till the entire loan amount was repaid. The accrued interest due after repayment of the principal amount was Rs.1,12,967/- at the rate of 11%.An amount of Rs.18,000/- was recovered through 9 instalments of Rs.2000/- each from the salary of the applicant till his superannuation. The remaining outstanding amount of Rs.94,967/- was recovered in one lumpsum from the DCRG amount payable to the applicant as per the provisions of sanction order dated 01.07.2003. The total interest accrued on the loan @ 11% was Rs. 1,12,967/-. Out of this, the penal interest (@ 2.5%) which was charged from the applicant amounts to Rs.25,674/-. The rebate of penal interest would have become due to the applicant if he had submitted the papers relating to the insurance of the house to the satisfaction of the authorities concerned. However, as per the documents furnished by the respondents, it is clear that despite repeated reminders, issued from time to time, the applicant failed to provide copies of the insurance premium receipts when

demanded from him, to certify that he had been insuring the house, as per the requirements to the satisfaction of the Competent Authority.

6. Keeping this in view, there can be no reasonable grounds for condoning the act of the applicant in not furnishing the copies of the insurance premium receipts which could possibly have entitled him to get the rebate of 2.50 percent in interest amounting to Rs.25,674/. Even after his superannuation, the applicant has failed to provide any proof of payment of insurance premium for the entire period of loan and has simply claimed to have misplaced them. He has only requested for condonation for this period of around 3 years and 7 months after his superannuation.

7. It is, therefore, clear from the records of the case, that the relief claimed by the applicant, for refund of Rs.94,967/- recovered from his gratuity, together with interest at the rate of 18% per annum from 21.10.2014, is completely untenable and liable to be dismissed. At best, a relief of Rs.25,674/- could have been admissible to him towards refund of penal interest at 2.5% provided he had submitted the papers relating to his insurance premium, in time, to the satisfaction of the Competent Authority or requested for condonation for this period of non-insurance at the appropriate point of time.

8. The request of the applicant to condone his failure to keep his house under insurance cover for a total period of 3 years and 7 months at a belated stage, subsequent to his superannuation, is not tenable. The respondents cannot be faulted for not condoning this lapse at this stage after his superannuation, particularly

when they had repeatedly requested the applicant for providing the requisite documents at the appropriate time as per the rules. The OA being, therefore, completely devoid of any merits, is liable to be dismissed.

9. Accordingly, the OA is dismissed.

10. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/