

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01008/2018

Monday, this the 22nd day of March 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

R.Suresh Chandran, Aged 60 years,
S/o.K.M.Ramakrishna Pillai,
Retired Chief Controller, Southern Railways.
Residing at Shreenandanam, TC 54/592/3,
Sreeragam Road, Nemom P.O.,
Thiruvananthapuram – 695 020.

...Applicant

(By Advocates Mr.K.T.Shyam Kumar)

v e r s u s

1. The Additional Divisional Railway Manager,
Southern Railways, DRM Office, Thycaud,
Thiruvananthapuram – 695 014.
2. The Senior Divisional Personnel Officer,
Southern Railways, Divisional Office,
Personnel Branch, Thiruvananthapuram.
3. Union of India represented by its Secretary to Government,
Ministry of Railways, Rail Bhavan,
Raisina Road, New Delhi – 110 001.

...Respondents

(By Advocate Mr.V.A.Shaji)

This application having been heard on 16th March 2021, the Tribunal on 22nd March 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant is a retired Chief Controller of Southern Railways. He retired on 31.05.2018. He had availed House Building Advance (HBA) of an amount of Rs.3,85,000/- in the year 2001. As per the terms of the

sanction order for HBA, recovery towards the advance was fixed at Rs.3,340/- per month in 115 installments and Rs.900/- on the 116th monthly installment to commence from 01.02.2001 or from the month following the completion of the house whichever is earlier. Thereafter, there would be further recovery towards the interest at Rs.3,420/- per month in 59 installments and Rs.3,390/- in the 60th installment. According to this, a registered mortgage deed was executed by him with the Railways as document No.792/2001. A copy of the registered memorandum of mortgage has been produced at Annexure A-2.

2. The applicant submits that he has repaid all the installments as per the above in full, the last installment being recovered from his salary during May 2017. He then submitted a letter dated 12.07.2017 before the Senior Personnel Officer, Southern Railways to return his original documents and to re-convey the property mortgage so as to release the charge from his property. He then received a letter, produced at Annexure A-5, dated 08.11.2017 from the Assistant Personnel Officer/E for Senior Divisional Personnel Officer, Thiruvananthapuram that as per the working sheet an amount of Rs.1,28,944/- is due to be remitted towards balance interest on HBA. The receipt should be submitted to them along with the reconveyance deed to process before the Railways would return the original deed. As this came as a surprise, the applicant submitted another letter dated 14.11.2017, stating that he has repaid the entire amount as per the agreement and it is not known as to how this amount is being claimed from him. He was then served with another letter dated 22.12.2017 (at Annexure A-7) stating that

HBA was granted subject to the rules and conditions prescribed in Ministry of Works, Housing and Supply's O.M dated 12.04.1956 wherein it was clearly mentioned that the borrower should insure the house property built using the advance. It was also mentioned that the agreement signed between him as Mortgagor and Additional Divisional Railway Manager/Thiruvananthapuram acting on behalf of the President of India as Mortgagee clearly specified that the mortgagor should abide by the conditions laid down in the aforesaid O.M dated 12.03.1956. Railway Board's letter dated 29.10.1990 specifies the conditions for granting HBA. Insuring the house against any loss is a primary condition and is clearly mentioned in all Rules and Circulars issued from time to time.

3. The applicant then submitted another letter dated 04.01.2018 stating that he had insured his house for a period of 12 years with effect from 14.03.1996. The Insurance Certificate was also provided to the 2nd respondent. Further it was not disclosed as to how the amount of Rs.1,28,944/- was arrived at as arrears. In response to this, the respondents have issued the impugned letter at Annexure A-9 dated 10.04.2018 in which they, inter-alia, have made the following points :

(a) As per the agreement recovery of principal has to be started from February, 2001 but the actual recovery started only in September 2002 which in turn caused the HBA interest from February 2001 to August 2002. Even if the HBA recovery from salary is not started from the date mentioned as per the agreement, the applicant ought to have remitted the amount in the cash office and intimated the office accordingly. Since such representation was not received in the office, an additional amount of Rs.67,071/- towards HBA interest is pending to be recovered as per the working sheet prepared with principal recovery start date as September, 2002.

(b) The completion certificate for the house has not been submitted till date. In terms of Indian Railway Establishment Manual (IREM) and as specified in the agreement, the construction of the house has to be completed within 18 months of the date on which the first installment of the advance is paid to the Railway servant. Since the entire HBA advance was given in a single installment, the 18 months will count from the date of sanction of that installment ie. January 2001. Thus, this condition of grant of HBA has also been violated.

(c) The copy of the insurance certificate which has been submitted shows that the insurance started only with effect from 14.03.2006. In the representation it is stated that the house was insured from the date from which the house became his own. However, as per the IREM, the employee has to insure the house immediately after the completion of house for a sum not less than the amount of advance. Further there is no request/proof for the delay occurred in the construction of the house. Hence, the condition of insuring the house built using the HBA amount has also been violated.

4. It was also stated in the same letter that the application for condonation of non insurance period that the applicant had mentioned (in his representation) was submitted by him in 2011 was also not available as per the office records and there was no proof of having submitted such a condonation application. As per the schedule of powers, for non insurance periods of more than 2 years, the condonation application is to be dealt at Railway Board's level. It was stated that no such reference/communication is available in the office. Further, the violation of conditions as indicated at points (b) and (c) above governing HBA, would invite a penal interest of 2.5% over and above the normal interest rate which is also specified in the earlier referred O.M and Railway Boards' extant rules and guidelines. The 2.5% penal interest had resulted in an additional interest amount of Rs.61,873/- which added to the Rs.67,071/- mentioned at point (a) in total, therefore, has amounted to Rs.1,28,944/-.

5. The applicant then gave another representation dated 15.05.2018 (produced at Annexure A-10), wherein, he has requested the ADRM, Southern Railway, Thiruvananthapuram to “nullify” the order issued by the Senior Divisional Personnel Officer, Thiruvananthapuram demanding Rs.1,28,944/- and to re-convey his property as early as possible as he was retiring on 31.05.2018. He has further stated that, as per the mortgage deed, he, being the mortgagor had authorized the mortgagee, being the Railways, to make deductions from the monthly pay/leave salary/subsistence allowance of the amount of such installments and the mortgagor should after paying the full amount of the advance also pay interest thereon. It is also mentioned in the mortgage deed that if the mortgagor shall utilize the advance for a purpose other than that for which the advance is sanctioned or if the mortgagor shall become insolvent or shall cease to be in service for any reason other than normal retirement, superannuation or if he dies before payment of the advance in full, or if the mortgagor shall fail to observe or perform any of the terms, conditions and stipulations specified in the said Rules and on his part to be observed and performed and in any such cases the whole of the principal amount of the advance or so much thereof as shall then remain due and unpaid shall become payable forthwith to the mortgagee with interest thereon at 11% per annum. Hence, in view of these specific provisions of the mortgage deed, demanding exorbitant amounts on the ground of delayed payment of initial installments on account of the omissions on the part of the department to make deductions from his salary is illegal. Further, the demand of penal interest at 11% + 2.5% = 13.5% on the ground that the applicant delayed in insuring the

house building is unjustifiable. The respondents, however, rejected this representation in a short letter dated 30.07.2018 (produced at Annexure A-11). In this letter they stated that the reply given vide their earlier letter (produced at Annexure A-9) stands good and no further remarks/decisions are offered.

6. The applicant being aggrieved by the non consideration of the contentions made by him in the representation and also since the entire amount has been deducted from the DCRG, without any notice on his retirement, has filed this O.A seeking the following reliefs :

(i) Set aside Annexure A-5, A-7, A-9 orders issued by the 2nd respondent and A-11 order issued by the 1st respondent.

(ii) Declare that the respondents 1 and 2 are not entitled to demand the amounts claimed in Annexure A-5 from the applicant.

(iii) Direct the respondents 1 and 2 to repay the amount of Rs.128944/- illegally deducted from the Death Cum Retirement Gratuity of the applicant with interest at such rate to be fixed by this Hon'ble Tribunal to the applicant as expeditiously as possible at any rate within a time limit to be prescribed by this Hon'ble Tribunal.

(iv) Grant such other reliefs this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

7. In response to the above, the respondents have filed a reply statement wherein they state that an amount of Rs.3,85,000/- was sanctioned and granted to the applicant for payment of loan taken for construction of new house from a non-government source viz., GIC Housing Finance Ltd., as single payment on 09.01.2001. The due installments, as brought out in the O.A., were to start therefore with effect from 01.02.2001. However, the

respondents admit that, inadvertently, the recovery was started in September 2002 nearly after 19 months. For the delayed recovery the due interest has been calculated as Rs.67,071/- payable by the applicant. Further, as per para V(d) of the Annexure A-2 mortgage deed, the applicant ie., mortgagor should have immediately insured the house at his own cost with the Life Insurance Corporation of India for a sum not less than the amount of the aforesaid advance and should have kept it so insured against loss or damage by fire, flood and lightening as provided in the said Rules till the advance was fully repaid to the mortgagee and also should have deposited the policy of insurance with the mortgagee. The respondents accept that in the event of failure on the part of the mortgagor to effect the insurance against fire, flood and lightening, it should be lawful but not obligatory for the mortgagee to insure the said house at the cost of the mortgagor. The respondents submit that it is stipulated in PBC 172/1987 that a higher rate of interest of 2½% above the prescribed rates would be charged in cases wherein the conditions in the memorandum including those relating to the recovery of the advance were not fulfilled completely to the satisfaction of the competent authority. However, if the conditions are fulfilled to the satisfaction of the competent authority, rebate on the interest to the extent of 2½% will be allowed by charging interest in the prescribed rates. A copy of the PBC 172/1987 has been produced by the respondents at Annexure R-1 wherein it has been indicated as follows :

House Building Advance – Rate of Interest on

It has been decided that in all cases, while issuing the sanction for grant of House Building Advance, the rate of interest may be indicated in accordance with the Government of India's Decision No.(1) below Rule 178(2) of the G.R. ie., the sanctions should invariably stipulate a higher rate of interest at 2.1/2 % above the prescribed rates with the stipulation that if conditions attached to the sanction, including those relating to the recovery of amount, are fulfilled completely to the satisfaction of the competent authority, rebate of interest to the extent of 2.1/2 % shall be allowed. The competent authority to decide whether the payments have been made punctually will be the sanctioning authority, who will decide that the conditions attached to the sanction including those relating to the recovery of the amount are fulfilled completely to the satisfaction of the competent authority.

8. The respondents submit that the applicant had not complied, first by not making repayment of installments from 2001 onwards and second, not insuring the house immediately on completion as indemnified. The applicant was liable to be imposed penal interest of 2½ % above the applicable interest rate which was assessed as an amount of Rs.61,873/-. Thus, including the amount of Rs.67,071/- which was assessed as interest towards late payment of loaned amount, the total outstanding came to Rs.1,28,944/- which was communicated to the applicant as per Annexure A-5, Annexure A-7 and Annexure A-9 respectively. The house remained uninsured between 09.07.2002 to 13.03.2006 for a period of 3 years and 8 months which is a clear violation of the terms as per paragraph V(d) of the mortgage deed and invited the penal interest of 2.5% of amount of loan sanctioned.

9. As regards the contention of the applicant that it was for the respondents to start the recovery installments, it is submitted that it was the duty of the applicant to inform the administration to start recovery

installments when it was due and it is his personal interest also to see that the due recovery was effected with regard to the loan availed so that the terms and conditions entered as per the mortgage deed were complied with. It was wrong on his part to claim that he has no liability regarding repayment of the loan availed as per the agreed terms. Since there is a provision in the pension manual that government dues can be recovered from the DCRG, the due amount of outstanding was recovered from his DCRG benefit.

10. We have heard both sides and also have gone through the documents provided. It is not clear from the documents provided as to how exactly the amount of Rs.1,28,944/- calculated as due because of the delayed recovery as well as delayed insurance undertaken has been worked out by the respondents. It has also been indicated in the letter produced at Annexure A-9 from the Senior Divisional Personnel Officer, Thiruvananthapuram that as per the schedule of powers, for non insurance periods of more than 2 years the condonation application is to be dealt at the Railway Board level. Hence, it appears that the amount demanded can be condoned to some extent by a decision at the appropriate level by the respondents. We, therefore, are of the opinion that interest of justice will be met if the applicant makes a fresh representation addressed to the competent authority for the condonation of balance amount to the extent possible under the powers given to the competent authority.

11. Hence, the O.A is disposed of without going into merits with a direction that the applicant will prepare a comprehensive representation requesting for condonation of the amount shown as due to the respondents against the HBA. He will submit the same to the competent authority within a period of one month from the date of issue of this order. The respondents will consider and take a decision on the representation so filed and also pass a speaking order in this regard within a period of three months from the date of receipt of the representation by them. There shall be no order as to costs.

(Dated this the 22nd day of March 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/01008/2018

- 1. Annexure A-1** – A copy of the Memorandum dated 09.01.2001 sanctioning the House Building Advance to the applicant.
 - 2. Annexure A-2** – A copy of the registered memorandum of mortgage No.792/2001 of Sasthamangalam Sub Registrar's Office.
 - 3. Annexure A-3** – A copy of the letter dated 12.07.2017 submitted by the applicant before the Senior Personnel Officer.
 - 4. Annexure A-4** – A copy of the letter dated 25.08.2017 submitted by the applicant before the 2nd respondent.
 - 5. Annexure A-5** – A copy of the letter dated 08.11.2017 issued by the office of the 2nd respondent.
 - 6. Annexure A-6** – A copy of the letter dated 14.11.2017 submitted by the applicant before the 2nd respondent.
 - 7. Annexure A-7** – A copy of the letter dated 22.12.2017 issued by the 2nd respondent.
 - 8. Annexure A-8** – A copy of the letter dated 04.01.2018 submitted by the applicant before the 2nd respondent.
 - 9. Annexure A-9** – A copy of the letter dated 10.04.2018 issued by the 2nd respondent.
 - 10. Annexure A-10** – A copy of the representation dated 15.05.2018 filed by the applicant before the 1st respondent.
 - 11. Annexure A-11** – A copy of the order dated 30.07.2018 issued by the 1st respondent.
 - 12. Annexure R-1** – A copy of the PBC 172/1987.
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