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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
XXOPXXXXXXEYXXXX

O.A. No. 510 OF 1987.
~~Ex-Acc No.~~

DATE OF DECISION 9.6.1989.

SHRI DILIPKUMAR P. PAREKH, Petitioner

MR.D.G.KARIA WITH MR.C.T.MANIAR Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ans*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri Dilipkumar P. Parekh,
Flat No. 204, Block No. H-17,
Gujarat Housing Board,
Anandnagar, Chandlodia Road,
Nava Wadaj,
Ahmedabad - 380 013.

..... Petitioner.

(Advocate: Mr.D.G.Karia with
Mr. C.T. Maniar)

Versus.

1. Director General,
Employees State Insurance Coprn.,
ESIC Building,
Kolia Road,
New Delhi.
2. Regional Director,
Employees State Insurance Corp.,
Gujarat Region Office,
ESIC Bhavan, Ashram Road,
Ahmedabad - 14.
3. Deputy Regional Director,
Administration,
Employees State Insurance Corp.,
ESIC Bhavan,
Ashram Road, Ahmedabad.
4. Assistant Regional Director (Adm)
ESIC Bhavan,
Ashram Road, Ahmedabad. Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.NO. 510 OF 1987.

Date: 9.6.1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri Dilipkumar P. Parekh, working as Upper Division Clerk since 4.12.1973, in the "Gujarat Region Office of Employees State Insurance Corporation" (hereinafter referred to as "Corporation"), has filed this application under section 19 of the Administrative Tribunals Act, 1985 on 14.10.1987. He claims that he is entitled to a loan in the sum of Rs. 37,000/- under "House Building

Advance Rules". But the corporation has sanctioned only a sum of Rs. 26,980/- and hence the respondents be directed to sanction an additional sum of Rs. 10,020/- and the same be paid to enable him to execute a deed of Conveyance and Mortgage Deed within 3 months thereafter. According to him, when no full disbursement of loan is made, the action of the Corporation in recovering the loan amount by way of double deduction of monthly instalment from salary is illegal and in contravention of H.B.A. Rules. He has therefore prayed that the excess amount recovered from him be refunded to him and it may be declared that he is entitled to an additional amount of loan as per revised scale and a sum of Rs. 5,498/- be paid to him with interest at the rate of 12% per annum, being the damages for the delay in payment of the loan applied for. By way of amendment allowed by the Tribunal, the petitioner has prayed that the orders dated 11.8.1988 withholding his salary from the month of August 1988 onwards be quashed and set aside and the respondents be restrained from recovering the entire amount of loan. The impugned orders reads as under :-

Sub: House Building Advance.

With reference to his letter dated 15.6.88 in reply to the notice dated 6.6.88 issued by this office to him on the above cited subject, Shri D.P.Parekh, UDC Ins. Br.I is informed that after careful examination of his reply and in view of his failure to refund the entire amount of HBA and interest thereon in one lump sum, the Regional Director has ordered to withhold his salary from the month of August, 1988 onwards till the completion of the recovery of entire amount of outstanding House Building & interest thereon.

Sd/-
(R.C. SHARMA)
ASST. REGIONAL DIRECTOR.
FOR REGIONAL DIRECTOR.

2. The respondent-corporation have resisted the application and denied the assertions and allegations made by the petitioner. According to them, a sum of Rs. 26,980/- was sanctioned as H.B.A. in terms of the instruction contained in Ministry of Works and Housing - office memo bearing No. I/17015/6/83-H.III dated 7th April, 1984. They have denied the petitioner's averments that he had made application on 28.4.1984. It was submitted that the application was forwarded by the Regional Director on 4.9.1984 and received in Head Quarter's office on 11.9.1984 and as there were some discrepancies, the papers were returned to Regional Director on 25.10.1984, 21.11.1984 and 27.12.1984 and thereafter the case was processed in consultation with Finance Wings and the final sanction for grant of H.B.A. was issued on 18.10.1985. It was contended inter-alia that the petitioner was not entitled for advance, as the 'Flat' was allotted in the name of his wife. However, the Housing Board consented to transfer the said 'Flat' in the name of the petitioner, subject to full payment of costs of the 'Flat'. The papers were sent to Delhi for sanction of the amount which were returned on 27.10.1987 and after disbursement of the amount of the loan sanctioned, the petitioner failed to execute Mortgage Deed and the submission of the Deed of conveyance of the property acquired within a period of 3 months from the date of the drawal of the amount. The entire amount of H.B.A. together with interest was liable to be recovered in one lumpsum as per rule 5(a) of H.B.A. Rules. It was further submitted that there was no provision for grant of additional H.B.A. where the entire amount

had already been drawn and as such, the petitioner is not entitled to the relief as prayed for.

3. During the pendency of the proceedings the respondents were restrained from operating the order dated 7.11.1986 in so far as it increased the instalment of recovery which was fixed earlier by way of interim relief vide our order dated 29.1.1988. Further, it was directed vide our order dated 18.10.1988 that the petitioner is entitled to the relief in terms of the respondents passing fresh orders within 15 days withholding not more than 1/3rd of his salary. It is conceded that such orders are passed by the respondent-Corporation.

4. When the matter came up for hearing, Mr. D.G.Karia with Mr. C.T.Maniar and Mr. J.D.Ajmera, the learned counsel for the petitioner and respondents respectively are heard. The materials including rejoinder and further reply to the rejoinder filed by the respondents are also perused and considered.

5. During the course of his arguments, it was vehemently contended by Mr. Karia that the petitioner was entitled to Rs. 37,000/- as loan in accordance with "House Building Advance Rules" but the Director General by his letter dated 19th May, 1985 accorded sanction only for Rs. 26,980/-. According to him, even under revised scales, the petitioner was entitled to additional loan as prayed for in his application dated 15.9.1987 (Annexure '31' P.B. Page 56). It was further contended that the petitioner has been discriminated inasmuch as his co-worker Mr. K.V.Shah has been paid full amount as per his

(1)

basic pay (Rs. 404/-). As against this, Mr. J.D. Ajmera on behalf of the Corporation, submitted that the case of Mr. Shah can not be considered, as paying capacity in his case was considered at Rs. 404/- whereas in the case of the petitioner it was considered at Rs. 370/-. According to him, as per the instructions dated 7th April, 1984, the petitioner who is retiring after 20 years of service, he is entitled to H.B.A. amounting to 100 times of basic pay, but the admissibility is limited to his repaying capacity which is 50% of his basic pay on the date of the application and accordingly, the sum of Rs. 26,980/- was sanctioned in his favour which was recoverable in 142 equal instalment of Rs. 190/- each which was 50% of his basic pay i.e. Rs. 380/-.

6. Before advertizing to the rival contentions raised by the parties, it is pertinent to note that the petitioner, in pursuance of his intention to procure ^a house or a building of his own by availing of the scheme of the Gujarat Housing Board, got the name of his wife, registered for the purpose some time prior to 1982. He knew well that the cost of such house or building would be about 50,000/- or so. It is borne out from the Annexure 13, the receipt dated 4.11.1985 that a sum of Rs. 5,000/- was already paid by the petitioner on 27.9.1982 i.e., on the date of registration. He had also paid a sum of Rs. 8,500/- on 12.1.1984 i.e., before obtaining the possession of the flat allotted to his wife. Later on, he also paid a sum of Rs. 566/- being the amount of first instalment on 5.5.1984. It is thus obvious

that the petitioner had proceeded in his plan to acquire a ready built house, presumably, on the basis of his own resources and without any contemplation of securing any loan from the Corporation.

7. The petitioner sought permission for acquisition of property vide his application dated 28.4.1984 and the requisite sanction was granted as prayed for vide memorandum dt. 30.5.1984, 13.6.1984 (Annexure A-3 P.B.21). It is stated by the petitioner that for the first time, he made an application on 28.4.1984 for house building advance, for Rs. 37,000/- for purchasing a ready built 'Flat', from Gujarat Housing Board at Ahmedabad at a cost of Rs. 50,250/- which was registered in the name of his wife. This fact has been denied by the respondents. The petitioner has not produced a copy of such application made by him. However, it transpires from the subsequent correspondence, brought on record, wherein he has averred that he had made such application on 27.7.1984 (see Annexure A-16 P.B.39). The petitioner has claimed a sum of Rs. 5,468/- from the Corporation on the ground that he was required to pay such amount as interest due to delay in depositing the amount with Gujarat Housing Board. It is not understood, how the Corporation could be made liable for such damages either under any terms of contract or any rules. As a matter of fact, if he was required to pay any amount towards interest to the Gujarat Housing Board, it was due to his commitment with the Gujarat Housing

Board, which was much prior to the petitioner's action of seeking loan from the Corporation as advance under relevant Rules.

8. It is significant to note that when the respondent - corporation accorded sanction of a house building Advance of Rs. 26,980/- vide memo dated 14.5.1985 (Annexure A-8) for the purchase of a ready built 'Flat' at Nava Vadaj, Ahmedabad from Gujarat Housing Board and the intimation of the approval of the Director of administration to release the house building advance of Rs. 26,980/- vide memo dt. 18.10.1985 (A-11), the petitioner had not preferred to raise any objection. On the contrary, he accepted the payment of the said amount on 25.10.1985 without any demur and later on, also obtained the possession of the 'flat' allotted to his wife by the Gujarat Housing Board by utilising the said amount paid to him as loan. Before disbursement of the amount of loan sanctioned to the petitioner, he was required to execute an agreement as prescribed under Form No. 5 under rule 5(a) (i), 5(a) (iii) and 5(a) (v) of H.B.A. Rules. Under the terms and conditions of the grant of sanction of the house building advance, the petitioner was required to comply with the obligation as follows :

(a) to repay to the Corporation the said amount of Rs. 26,980/- (Rupees Twenty six thousand nine hundred eighty only) insert full amount sanctioned) with interest calculated in accordance with the said rules for the time being in force by 142 (one hundred forty two only) (number to be filled in) monthly instalments of Rs. 190/- (Rupees one hundred ninety only) from his pay

commencing from the month following in which the House Building Advance of Rs. 26,980/- is drawn for the purchase of ready built flat, whichever is earlier and the Borrower hereby authorises the Corporation to make such deduction from his monthly pay, leave salary and subsistence allowance bills.

(b) Within two months from the date of receipt of the amount of Rs. 26,980/- (Rupees twenty six thousand nine hundred eighty only) insert amount of instalment to be paid) out of the said sanctioned advance or within such further time as Corporation may allow in this behalf, to expend the aforesaid amount in the purchase of flat produce for inspection of the Corporation the sale deed in respect thereof failing which, the borrower shall refund to the Corporation the entire amount of the advance received by him together with interest thereon.

(c) Within three months from the date of the receipt of the aforesaid advance of Rs. 26,980/- (Rupees twenty six thousand nine hundred eighty only) to expend the aforesaid amount in the purchase of the said ready built house and mortgage it to the Corporation failing which the borrower shall refund forthwith to the Corporation the entire amount of advance received by him together with interest thereon unless an extension of time is granted by the Corporation.

9. It is conceded that the petitioner on receipt of the sum of Rs. 26,980/- sanctioned for the loan, he was required to submit a deed of conveyance of the property purchased by him and he was also required to execute a Mortgage Deed within 3 months from the date of withdrawal of the H.B.A. Admittedly, the breach of condition entailed the liability on the petitioner to pay the entire amount of advance together with interest accruing thereon to the Corporation. The fact that the petitioner failed to obtain a Deed of Conveyance from the Housing Board in respect of the 'flat' purchased by him in the name of his wife

(29)

and did not submit such Deed of Conveyance to the Corporation till today, is not in dispute.

Moreover, the fact that he failed to execute a Mortgage Deed in favour of the Corporation in terms of the obligation enjoined upon him under the agreement, is not controverted. The plea of the petitioner is that he was entitled to get a loan of Rs. 37,000/- instead of Rs. 26,980/-

sanctioned by the Corporation, with the result, he has not been able to discharge his obligation.

It was therefore contended that the actions of the Corporation including the recovery of the entire amount of loan from him were not justified.

The petitioner has not been able to establish that it was obligatory on the part of the Corporation to sanction the loan of Rs. 37,000/- as applied for by him. The rules and the principles governing

the grant of House Building Advance to the Central Govt. employees are laid down under the office memorandum dt. 7.4.1984. In sanctioning a loan

to the employee, the Corporation is required to take into consideration the basic pay, number of years of service prior to retirement, capacity

of repaying, the principal amount and the interest in consonance with the multiple instalment. Now,

while sanctioning the sum of Rs. 26,980/- as loan

to the petitioner, $\frac{1}{2}$ of the basic pay i.e. Rs. 380/-

and multiple of 182 has been taken into account.

$$190 \times 190 \times 142 = \text{Rs. } 26,980/-$$

Out of the aforesaid amount
the interest at the rate of
7% per annum on Rs. 25,000/- Rs. 10,354.17

On the remaining amount i.e.
1,980/- at the rate of 8.5% Rs. 996.00

Rs. 11,350.17

Total Rs. 38,330/-

10. On perusal of the aforesaid calculation, in consonance with the guidelines laid down under the office memorandum dt. 7.4.1984, the total liability, including the interest and the principal amount, comes to Rs. 38,330.17 ps. Accordingly, the principal amount can be repaid within 142 months and the interest can be repaid within 16 months. Now, on the aforesaid basis if a sum of Rs. 34,200/- (190 x 180) is sanctioned as claimed by the petitioner, the liability of the petitioner would come to Rs. 53,190/- (liability including the interest) which is beyond the capacity of the repayment of the petitioner. Thus, it cannot be said that the respondent had committed any error in according the sanction of Rs. 26,980/- as loan to the petitioner as against his claim of Rs. 37,000/-.

11. With regard to the petitioner's claim for additional amount of loan on the basis of the revised scale under O.M. No. 1017011/3/86/H.III dt. 24th June, 1987, it may be stated that his claim do not merit consideration. In this regard, the petitioner had made application dt. 15.9.1987 (Annexure A-31 P.B. 56). But his request was rejected by the respondents vide memo dt. 18.9.1987 which reads as under :

" MEMO

Subject : Grant of HBA as per revised pay scale.

Shri D.P. Parekh, UDC, Genl. Br. is informed that his request for enhancement of HBA, vide his letter dt. 15.9.1987 (addressed to the Director General) is not acceded to. In terms of para IV of the Govt. of India's instruction No. 1/17011/3/86-H.III dated 24.6.87, past cases where

27

HBA has already been sanctioned but not drawn by the employee, may be reviewed for enhancement of advance. In his case, since the amount has already been drawn, his request is not agreed to.

Further, as per para 1 of his letter dated 20.8.1986, he has settled his Account with Gujarat Housing Board, by way of paying cost of the flat i.e. Rs. 37,000/- in addition to Rs. 13,050/- already paid by him to the Gujarat Housing Board. It is also, observed from his letter dt. 20.8.1986, that he needs money to make interest payment and execution of Conveyance Deed etc. for which there is no provision to grant additional loan.

He is, therefore, again advised to furnish requisite documents immediately, failing which further actions as deemed fit will have to be initiated against him without any notice.

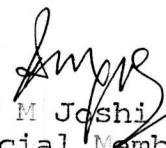
Sd/-
(R.C. Sharma)
ASSTT. REGIONAL DIRECTOR"

12. Now, turning to the liberalisation of House Building Advance Scheme for the Central Govt. Employees laid down under the guidelines stated in 24th June, 1987, it is clearly stated that the past cases where the House Building Advance has already been sanctioned but not drawn by the employee, may be reviewed. It has been further clarified under the letter dated 20th July, 1988, that the question of enhancement in such cases is not admissible, if the applicant has paid full cost of the house or flat to the 'Housing Agency'. In the present case, admittedly, the petitioner has paid full price (Rs. 50,250/-) of the 'Flat' to the Gujarat Housing Board (see letter of Asstt. Manager, Gujarat Housing Board, Ahmedabad dt. 22.5.1987 - A/26). Thus, the petitioner's claim for the benefit of additional loan even as per revised scale does not seem to

32

be well founded. Moreover, when basic pay of Mr. K.V. Shah is admittedly, Rs. 404/- it cannot be said that the petitioner has been discriminated, when a sum of Rs. 26,980/- has been sanctioned in his favour. It is conceded during the course of the argument that the action of withholding the salary of the petitioner from the month of August, 1988, towards such compliance of the recovery of entire amount of outstanding house building loan and interest thereon, has been cancelled and it has been now reduced to 1/3rd in consonance with rule 215 of the Central Treasury Rules. Hence the question of quashing any order regarding recovery does not survive.

13. For the reasons stated above, I have no hesitation in holding that the petitioner is not entitled to the declaration as prayed for. He is not entitled to claim any additional amount as loan from the Corporation. The application, therefore, merits no consideration and stands dismissed with no order as to costs.


(P M Joshi)
Judicial Member