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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.154 of 2008
Cuttack, this the ~~27th~~ day of April, 2009

Akshaya Kumar Parida Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.154 of 2008

Cuttack, this the 27th day of April, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Shri Akshaya Kumar Parida, aged about 61 years, son of Late Keshab Chandra Parida Village/Po. Bilikana, PS-Aul, Dist. Kendrapara at present Senior Auditor (Retd.) Office of the Principal Accountant General (Audit-I&II), Orissa Bhubaneswar, Dist. Khurda.

.....Applicant

Advocate for Applicant. : In person.

-Vs-

1. Union of India represented through the Principal Accountant General (Audit-I), Orissa, At/Po-Bhubaneswar, Dist. Khurda.
2. The SENIOR Deputy Accountant General (Admn.), Office of the Principal Accountant General (Audit-I), Orissa, At/Po-Bhubaneswar, Dist. Khurda.
3. The Pay and Accounts Officer (IV), Office of the Accountant General (A&E), Orissa, At/Po. Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.Mr.U.B.Mohapatra

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

Akshaya Kumar Parida, a retired Senior Auditor of the office of the Principal Accountant General (Audit-I & II), Orissa Bhubaneswar by filing this Original Application under section 19 of the A.T. Act, 1985 seeks the following relief:

"The direction issued to calculate interest without allowing the rebate 2.5% on house building advance as per order dated 18.3.2008 (Annexure-A/6) be quashed and set aside and also pass necessary direction to return back the sale deed (as per schedule) to the applicant after due reconveyance and due process of law since the entire amount (principal + interest) as per Annexure-A/4 has been recovered from the salary/subsistence allowance of

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the applicant since long and also pass necessary direction to allow the cost for such unnecessary litigation created by the respondents which will be recovered from the Respondents and to be paid to the applicant and also pass any other suitable order/orders as the Hon'ble Tribunal deems just and proper."

2. The grounds taken by the applicant in support of the above prayers are that Applicant while working as Senior Auditor sought sanction of House Building Advance amounting to Rs.2,00,000/- for construction of residential building at Bhubaneswar. Accordingly, as per rules, the applicant was sanctioned Rs.67,000/- which was paid in two installments @ Rs.33,500/- during September, 1992 and Rs.33,500/- during March, 1993. As with the sanctioned amount the building in question could not reach finality he requested for according permission to avail second loan from HDFC as per rules. But no decision was communicated on the said repeated request of the applicant. However, recovery towards HBA Loan started from the salary of applicant w.e.f. January, 1994 and after recovery of the principal amount the interest amount of Rs.32,801/- was also recovered from the salary of the applicant as was intimated by the Respondents vide order under Annexure-A/10 dated 8.4.2008. The Applicant retired from service on 30.04.2007 after which he requested in letter dated 27.12.2007 for return of the documents submitted by him at the time of sanction of the HBA in term of Rule 12 of the HBA Rules. In turn the Respondent No.2 directed the Respondent No.3 vide order under Annexure-A/6 dated 18.03.2008 to recalculate the interest at the enhanced rate of 2.5% and recover the shortfall amount from the dues of the Applicant. By relying on the decision of the Hon'ble Apex Court in the case of **Union of India and others v**

E.G.Nambudiri, AIR 1991 SC 1216, of the Delhi High Court in the case of **Nirmal Lakra v UOI and others**, 2003 (3) AISLJ 151 and of the Tribunal in the case of **N.Mohammad v UOI and others**, 2007 (3) AISLJ 1 it has been contended by the Applicant that as the order under Annexure-A/6 was passed without affording any opportunity to have his say in the matter, the same is not sustainable and is liable to be quashed. His further stand is that levy of 2.5% interest on the allegation of not fulfilling the condition is far from truth; because if at all he did not fulfill the conditions and not utilized the money advanced for the purpose; the Respondents could have initiated disciplinary proceedings apart from imposing additional interest of 2.5%. Having not done so, imposition of 2.5% more interest on presumption is imagination and colourable exercise of power. His further contention that the Respondents are estopped under law to reopen the settled matter at this distant place of time and in this connection he has relied on the decision of the Hon'ble Apex Court in the case of **Sunil Kumar Goyal v Rajasthan Public Service Commission**, 2003 (3) AISLJ SC 48. His next contention is that the authority has no jurisdiction or competence to supersede the order under Annexure-A/4 by which the applicant was informed that the HBA amount taken by the applicant has been liquidated and that the said authority has no jurisdiction he has relied on the decisions reported in 1972 AISLR (SC) 803 (**Deokinandan Prashar v Agra District Co-operative Bank, Agra and others**); and in 2003 (3) AISLJ 503 (Delhi) (**Susil Kumari and others v Govt. of NCT of Delhi and**

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others. By stating so, the Applicant strongly claims for allowing the prayer made in his Original Application as extracted above.

3. It is the contention of the Respondents both in counter as also during hearing that as per Rule 8(d) (Annexure-R/6), the property mortgaged to the Government shall be re-conveyed on the prescribed form (Form No.7) to the Government servant concerned after the advance together with interest thereon has been repaid to Government in full and ensuring that the employee is entitled to rebate on satisfying the sanctioning authority that he fulfilled the conditions of sanction by producing Insurance Certificate, Completion Certificate, Local Taxes receipts etc. in terms of sanction and mortgage deed in support of the construction of house and respondents are duty bound to ensure fulfillment of terms and conditions of sanction. The above documents have not been submitted so far although the request for re-conveyance was made. As such Respondent No.2 who is head of office in the office of Respondent No.1 has intimated the chargeability of 2.5% interest to Respondent No.3 and to the applicant through letter dated 18.03.2008 (Annexure-R/7). Accordingly, the Respondents prayed for dismissal of this OA.

4. By filing rejoinder, it has been stated by the applicant that there is no need to furnish any certificate to the respondents along with the application for re-conveyance. As per rule 13 of the HBA Rules no such provision is available nor is such condition attached with the agreement. Since the rule is silent over the matter, the plea taken by the present respondents is without any merit and is liable to be over ruled.

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5. Thoughtful consideration having been given to various points raised by the Applicant, we have gone through the decisions relied on by the applicant as also documents relied on in support of the pleadings of the parties.

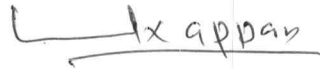
6. It is seen from the rulings placed by the Respondents under Annexure-R/2 that failure to comply with the conditions to the satisfaction of the competent authority stipulated in the sanctioned order levy of 2.5% above the prescribed rate of interest is chargeable on the Government servant availing the HBA and this was also made known to the applicant in the sanction order under Annexure-R/2. It is not the case of the applicant that although he complied with the conditions, according to the Respondents not complied with, 2.5% interest has been charged on the Applicant. As such according to us, charging of 2.5% interest on failure to comply with the conditions to the satisfaction of the competent authority is in no way illegal or irregular.

7. It is the further contention of the Applicant that after the order under Annexure-A/4 the Respondents are not competent to reopen the matter and charge of 2.5% interest as has been ordered under Annexure-A/6. In this connection it is noted that merely because an order was passed that there is no outstanding cannot create any estoppel to correct the mistake committed while passing the order. No employee has a right to claim estoppel for correcting the mistake or recovery of dues illegally allowed to an employee. As such, estoppel cannot be pleaded particularly in a situation like the present one. Hence, this plea of the Applicant is held to be without any merit.

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8. The next contention of the Applicant is that the order under Annexure-A/6 being made without any opportunity the same is bad in law and is liable to be quashed. In this connection we have gone through the decisions cited by the Applicant. But we find those decisions are hardly of any help to the applicant; the facts of those cases are distinctly different than the present one. Levy of 2.5% interest was charged on the applicant as a part of the understanding given in the sanction order. The Applicant having accepted the condition and availed the HBA is estopped to challenge the same at this juncture. Similarly the delay in passing the order cannot wipe out the right vested with the Respondents to recover the interest when the applicant admittedly failed to comply with the conditions based on which he availed the HBA.

9. In view of the discussions made above, we find hardly any scope for this Tribunal to interfere in the order impugned in this OA. Hence, the OA stands dismissed by leaving the parties to bear their own costs.


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)