

14 I/s

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.**

Original Application No. 237/04

Date of decision: 02.03.2006.

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Suresh Chandra Ajmera, S/o Shri Kaser Lal Ji, aged about 61 years, r/o 13-A, Umaid Bhawan Road Near Circuit House, Official Post: Retd Inspector, Income Tax Department, Jodhpur.

: Applicant.

Rep. By Mr. Kamal Dave : Counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. Commissioner of Income Tax (1) Aya Kar Bhawan, Pata C Road, Jodhpur.
3. Zonal Accounts Officer, Central Board of Direct Taxes, New NCR Building, Statue Circle, 'C' Scheme, Jaipur.

Rep. By Mr. M. Godhara Proxy Counsel
for Mr. Vinit Mathur :

Counsel for the
Respondents

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant impugnes the letter dated 03.09.2004, issued by the respondents informing him that as per the records available with the Zonal Accounts Officer and vide his letter dated 30.08.2004 House Building Advance to the tune of Rs. 27,360/- (Principal) and a sum of Rs. 48,883/- (interest upto 31.08.2002) which also includes penal interest at the rate of 2 ½ % as interest; thus a totaling Rs. 76,243/- is due from him and he was directed to make the payment of the said amount and inform the office.





15 II/10

2. The case of the applicant is that on his superannuation on 31.08.2002, he became eligible for the retiral benefits. However, prior to his retirement, he was served with a charge sheet and after detailed inquiry he was removed from service. Against the said order of removal, he filed an O.A before this Bench of the Tribunal and the same was allowed partly protecting the pensionary rights apart from certain other benefits. It is submitted by the applicant that despite the judgement in his favour, the respondents did not disburse the retiral benefits and certain other monetary benefits were withheld erroneously, for which the applicant was invoking jurisdiction of this Tribunal under Sec. 19 of the Administrative Tribunals Act, 1985, separately. It is further submitted by the applicant that at the time of superannuation, the competent authority under whom the applicant was working, while forwarding the pension papers have clearly stated against the Column 'Balance of HBA" as NIL (Annex. A/2) and it is for the first time, the applicant has been informed vide letter dated 15.04.2002 that the HBA sanctioned in the year 1981, to the tune of Rs, 27,360/- (Rs. 8160 – for purchase of plot and Rs. 19,200/- as first instalment) and the calculated interest to the tune of Rs. 76,233/- thus totaling Rs. 1,03,593/- had to be recovered from him. It is stated by the applicant that he remained out of service for about 10 years after the penalty of removal was inflicted upon him, which was challenged and ultimately culminated into reinstatement in the year 2000. Hence the recovery of HBA should have been effected by the department from his salary and hence the department is solely



/a

16 2/11

responsible for the lapse on their part for not effecting recovery and the applicant could not be penalized for the inaction on the part of the respondents. It is further stated by the applicant that vide letter dated 15.04.2004 (Annex A/3) the respondents have informed him that a sum of Rs. 1,03,593/- is to be recovered (Principal amount Rs.27, 360 + interest Rs. 76,233/-). It is also stated by the applicant that at the time of sanctioning the HBA, he was informed that the principal amount would be recovered in 140 instalments and out of the total HBA amount of Rs.72,160/-. The applicant further states that he was sanctioned Rs. 8160/- towards purchase of land and Rs. 19,200/- as first instalment for construction of house and as such the rate of interest should be 7% since as per the HBA rules then existed, the rate of interest for HBA amount to the tune of less than 25,000/- was only 7%. since the applicant did not draw the remaining amount Rs. 44,800/- However, the respondents, vide Annex. A/1, have now informed the applicant that a sum of Rs. 76,243/- is due from the applicant. The applicant made a representation and have also submitted that penal rate of interest cannot be levied on the applicant for the fault of department. Since the department is going to recover the above said amount from the leave encashment, this OA has been preferred.



3. The respondents are contesting the O.A by filing a detailed reply. It is stated that the applicant had taken House Building Advance and the department could not effect the recovery because of the circumstances of removal of the applicant from service and litigation thereafter. The applicant cannot take the

/K

plea that since the respondents have not recovered the HBA amount for a pretty long time, he is not liable to pay the same. Since it is a public money, the recovery has to be made in accordance with the rules. It is further stated that no retiral benefit of the applicant had been withheld and all the pensionary benefits have been released and only the leave encashment has not been paid, which is not a pensionary benefit in terms of Government of India, Department of Pension and Pensioners Welfare OM dated 05.10.99. It is further averred that a sum of Rs. 8,160/- was sanctioned towards purchase of plot and out of a further sanction of Rs. 64,000/- only a sum of Rs. 19,200/- was paid to the applicant as first instalment vide letter dated 21.03.85 and the rest of the amount was not drawn by him and thus a sum of Rs. 27,360/- was to be paid by the applicant and no recovery was made from the applicant. The applicant was asked to submit utilization certificate vide Annex. R/5 but the applicant had not submitted the utilization certificate. It is further averred that the mentioning of the word 'NIL' against the column balance of HBA in the pension papers does not absolve the applicant from repaying the loan taken for house building purposes. Thus it is stated that the applicant has not made out any case for interference by this Tribunal and therefore it should be dismissed.



4. I have heard the learned counsel for both the parties and perused the records and pleadings of this case very carefully. At the outset the learned counsel appearing for the applicant submitted that since the department is going to effect the

/K

18 2/13

recovery from the pensionary benefits, as per CCS (Pension) Rules, 1972, no recovery can be made from the pensionary benefits. However, I find from the records that it is not the case of both parties that the HBA amount and interest thereon would be recovered from the pensionary benefits of the applicant. But it is clearly stated in the reply that no pensionary benefit is pending for disbursement to the applicant and the recovery is to be effected only from the amount of leave encashment. It is also made clear that leave encashment is not a retiral benefit and leave encashment is governed by leave rules, as per Annex. R/1(extract from Swamy's CCS (Pension) Rules 1972- OM No. 38/64/98 P & PW (F) dated 5th October 1999).



5. The learned counsel for the applicant relying on Rule 8 of HBA Rules, further submitted that House building Advance granted to a Government servant under HBA rules, together with the interest thereon, shall be repaid in full by monthly instalments within a period not exceeding 20 years. Firstly, the recovery of the advance shall be made in not more than 180 instalments, and then interest shall be recovered in not more than 60 monthly instalments. The learned counsel also submitted by relying on Rule 8 (iv) of HBA Rules that in order to avoid undue hardship to a Government servant who is due to retire within 20 years of the date of application for the grant of an advance under the service rules applicable to him is eligible for the grant of a Gratuity or Death cum Retirement Gratuity, the Head of the Department may permit him to repay the advance with interest in convenient monthly instalments (the

amount of the instalment shall not be less than that worked out on the basis of repayment within a period of 20 years) during the remaining period of his 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 his retirement or death preceding retirement from the whole or any specified part of the gratuity that may be sanctioned to him. Thus the learned counsel for the applicant tried to canvass that in case the Government servant is to retire within 20 years, it was the duty of the Head of the Department to ensure that the recovery should be effected from the amount of gratuity by incorporating a suitable clause in the prescribed agreement and Mortgage Deed Form and hence the respondents cannot now recover the HBA amount from the pension being paid to the applicant since this is against Rule 71 of CCS (Pension) Rules, 1972. As against this, the learned counsel for the respondents submitted that since the recovery is to be effected from the leave encashment their action is within the rules. In my view also since no recovery is to be made from pension. So the contentions raised by the applicant have no merit. In any case the applicant cannot take the plea that he is not liable to refund the amount at all. Since it is a public money the same has to be recovered as per law.

6. As regards, the charging penal interest, the learned counsel for the applicant had submitted that it is the

department, which is at fault and not the applicant. It is the duty of the department to recover the HBA in time and the department cannot impose penal interest on the applicant for their fault. In this regard, I am of the considered view that this contention of the learned counsel for the applicant has no merit, because, HBA is granted to a Government servant to facilitate him to construct a dwelling place of his own. Rule 3 of the HBA Rules provides that an advance may be granted for (a) constructing a new house (including the acquisition of a suitable plot of land for the purpose; enlarging living accommodation in an existing house owned by the Government servant concerned. Rule 5 deals with disbursement and security. An advance required partly for the purchase of land and partly for constructing a single storied new house or enlarging living accommodation in an existing house shall be paid as follows:



- (i) An amount not exceeding 40 per cent of the sanctioned advance will be payable to the applicant for purchasing a developed plot of land on which construction can commence immediately on receipt of the loan on his executing an agreement in the prescribed form (vide Form No. 5 or 5-A as applicable for the repayment of advance

The concept of disbursing HBA remains the same whether it may be for partly for purchasing a plot and construction of a house thereon or whether it is for the purpose of buying the ready built house.

7. Admittedly in this case, the applicant was sanctioned HBA first for purchasing a plot and then one instalment for the construction of the House but the applicant did not utilize the remaining amount. At this juncture it may also be mentioned

Km

1
21 2/16

that since the applicant after utilizing the amount for the purchase of plot and after utilizing the first instalment towards construction went out of job because of disciplinary proceedings as he was removed from service, for which he took up his case before this Tribunal and he was reinstated only after a period of 10 years. It appears that he could not construct his house. The Government of India order No. 4 under Rule 8 of HBA Rules (page 91 of Swamy's House Building Advance Rules 2005 edition) provides as under:



- (a) As soon as it becomes known that due to circumstances beyond the control of the Government servant concerned, it would not be possible for him to under take construction of the house, **he should be asked to refund the entire amount drawn by him together with interest in one lump sum as the rules do not contemplate the grant of loan assistance for the purchase of land only**

(emphasis supplied)

In this regard, the respondents have also written a letter to the applicant on 26.10.1987 (Annex. R/6), mentioning clearly therein that the applicant did not fully utilize the amount and he had not file any utilization certificate regarding the loan taken by him and the department had also received information that he had sold the land on which he proposed to take construction of a house. He was informed that the whole amount along with interest is due for recovery and he was requested to make arrangement for the payment of the sum along with interest immediately. But it is seen that the applicant had not complied with the request made to him for arranging payment and deposit the same. Therefore, now the applicant cannot take the plea that the department is at fault for not recovering the amount and hence the applicant is not liable to pay interest including

penal interest. When once the department had asked the applicant to deposit the entire amount along with interest the applicant should have made arrangements for depositing the same. As per Government of India Order No. 4 below Rule 8 of the HBA Rules, that certain cases have come to the notice where Government servants, who were granted advances for the construction of houses (including the acquisition of suitable land for the purpose) did not find themselves in a position to undertake the actual construction of houses after they had drawn the first instalment of loan and purchased plots of land for constructions of houses. In such cases, it is necessary under the House Building Advance Rules, that the **Government servants concerned should refund the entire amount advanced to them together with the interest thereon in one lump sum**.



Thus a duty is cast on the government servant to deposit the entire amount in one lump sum where the Government servant was unable to undertake the construction. Thus the plea of the applicant that it is the duty cast on the respondents to recover the amounts and since they have failed to recover, he cannot be asked to pay interest has no force.

8. As regards the contention that the applicant is not liable to pay penal interest, it is also provided in the HBA Rules, that the sanction should stipulate the interest 2½% over and above the scheduled 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, a rebate of interest to the extent of 2½%

Km

53 2/18

will be allowed. In the instant case the conditions attached to the sanction were not fulfilled as the applicant did not undertake the construction of house, rather he sold the plot and hence he is liable to pay penal interest as per the rules in this regard.



9. In view of the above discussion, I am of the considered opinion that the action of the respondents does not call for any interference from this Tribunal and their action is quite right. The O.A is therefore dismissed. No costs.

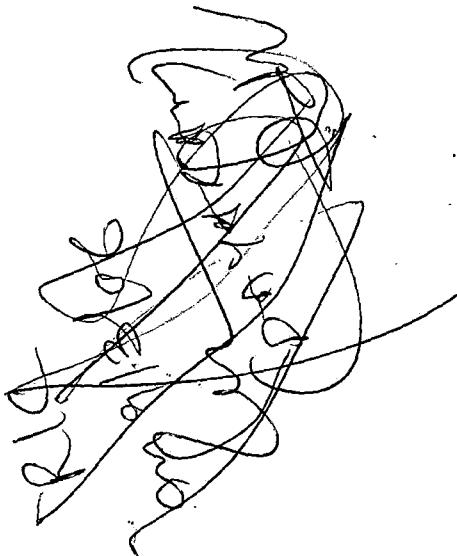

(Kuldip Singh)
Vice Chairman.

jsv

Part II and III destroyed
in my presence on 04-4-14
under the supervision of
section officer () as per
order dated 3/1/14.....


Section officer (Record)

4/4/14



h/copy
Q/24
913

R. J. G.
L. J. G.