

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.498/04

Wednesday this the 14th day of December 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.P.Mathai,
Retired Station Engineer,
All India Radio, Mangalore, residing at;
TC 7/1242/1, Maniymalayil,
Koottamvila Road, Koorra 162,
Vattiyoorkavu P.O.
Thiruvananthapuram-695013. Applicant

(By Advocate Shri P.A.Kumaran)

Vs.

1. Union of India represented by its
Secretary, Ministry of Information and
Broadcasting, New Delhi.
2. The Director General, Prasar bharathi\hi,
All India Radio, Akashvani Bhavan,
Parliament Street, New Delhi-110001.
3. The Pay and Accounts Officer (IRLA Group),
Pay and Accounts Office, Ministry of
Information and Broad Casting,
AGCR Building, New Delhi-110002. Respondents


(By Advocate Shri.TPM Ibrahim Khan, SCGSC)

The application having been heard on 14.12.2005
the Tribunal on the same day delivered the following


ORDER (Oral)

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a retired Station Engineer, All India Radio, Mangalore. While he was working under the respondents the applicant has applied for House Building Advance (HBA for short) for Rs.1,25,000/- and by order dated 24.7.1989 he was sanctioned an amount of Rs.1,20,000/- which was paid to him in January and April 1990. According to the applicant the conditions stipulated in the order is that the entire amount of advance together with interest thereon at 9% per annum should be recovered from the salary/leave salary/subsistence allowance of the



applicant in 132 monthly instalments. The schedule of recoveries for the principle amount will be in 115 instalments (114 instalments of Rs. 1040 and the last instalment of Rs.1440/-) and the interest in 17 instalments of Rs.1040/- each commencing from the pay of the month following the completion of the house or the pay of 18th month after the date on which the first instalment of the advance is paid to him whichever is earlier. The unpaid balance of Rs.34,520/- i.e. interest if any, should be recovered from the Death-Cum-retirement Gratuity admissible vide order dated 24.7.1989 (Annexure A1). For the HBA, the applicant executed a registered mortgage deed on 23.8.1989(A2) witnessed with the same conditions in A-1. After completion of the construction of the house and verification on 6.11.1990 the recovery of the principle amount was started from the salary of the applicant in December, 1991. Since then the recovery was continued without any break and the entire amount were recovered in June, and July 2001 as the 115th installment of the Principle amount (R.1440/-), which is evidenced from Annexure A3(a) and A3(b) respectively. No recovery was made towards interest from he salary for the month of August 2001. He made a representation dated 25.9.2001 before the 2nd respondent requesting to commence the recovery of the HBA interest from the month of October, 2001 onwards as per Annexure A2. As no recovery was effected towards interest, the applicant made repeated representations and reminders dated 25.9.2001, 26.12.2001, 7.3.2002, 10.6.2002 and 2.9.2002 vide Annexures A4(a), A4(b), A4(c), A4(d) and A4(e) respectively. As a matter of fact, Rs.2000/- each was recovered towards interest from the salary of the applicant in the months of August and September, 2003. Thereafter, no recovery was made. In the pay slip (A5) for the month of August, an amount of Rs.90,934 was shown as outstanding HBA interest. Against A-5 the applicant made a representation dated 24.9.2003 before the 2nd respondent stating that, after the principle amount has been fully recovered, the interest of Rs.52,200/- only remains to be recovered. He has made two reminders on 1.12.2003 (A6(b)) and 22.1.2004 (A6(c)) respectively before the 2nd respondent requesting to recover the interest. Nothing was fulfilled. When the applicant availed the HBA in the year 1989, he was to retire on superannuation at the age of 58 years. Thereafter the retirement age was enhanced to 60 years. The applicant was retired on superannuation w.e.f.31.1.2004. The applicant received an amount of Rs.5,66,043/- only as pensionary benefits after deducting the HBA interest. The applicant came to know that, instead of Rs.48,200/- being interest on



HBA, an amount of Rs.86,934/- was recovered from his DCRG, as per A-7. He made a representation dated 6.3.2004 (A8) to the 3rd respondent requesting to refund the excess amount of Rs.38,734/-. He has made a representation on 15.4.2004(A9) to the 3rd respondent requesting for issuance of a 'No Due Certificate' regarding HBA so as to approach the 2nd respondent to get the Deeds related to the House. Later an amount of Rs. 21,660/- was refunded to the applicant. Aggrieved by the action on the part of the respondents the applicant has filed this O.A. seeking the following main reliefs:

- i. To direct the 2nd respondent to refund the excess amount of Rs.38,734/- recovered as interest violating the conditions in Annexure A1 and A2.
- ii. To direct the 2nd respondent to pay ;an interest @ 18% for Rs.38,734/- per annum from 1.2.2004, the date on which the excess amount was recovered from DCRG.
- iii. To direct the 2nd respondent to return the deeds pertaining to the property mortgaged by the applicant.

2. The respondents have filed a detailed reply statement contending that no penal interest was calculated. Interest calculation was done by the Department, which was verified by the Pay & Accounts Officer. The principle amount of Rs. 1,20,000/- was drawn in two installments at the rate of Rs. 60,000/- each for the month of January and May 1990 respectively. The recovery of principle amount was made from the applicant at the rate of Rs. 1,040/- for the period from December 1991 to June 2001, amounting to Rs. 1,19,600/-(115 months) and Rs. 400/- for the month of July 2001, totaling to Rs. 1,20,000/-. The amount of interest@ 9% per annum worked out to Rs. 71,274/- as per the calculation sheet. The respondents has produced Annexure R1 dated 20-9-2004 to substantiate their contentions as to the calculation of interest. They also contended that only actual interest has been calculated and there is absolutely nothing wrong in the calculation.

3. The applicant has filed a rejoinder reiterating the same contentions as raised in the O.A.

4. The respondents have filed an additional reply statement and also produced the calculation statement further.

5. I have heard Sri. P.A. Kumaran, Learned Counsel appearing for the applicant and Sri. T.P.M. Ibrahim Khan, SCGSC, appearing for the respondents. Learned Counsel for the parties have taken me to the various pleadings, evidence and material placed on record. Counsel for the applicant argued that as per the mortgage deed an agreement has been executed between the parties in August 1989 and the rate for calculation of interest was fixed in the document at the prevailing rate and the respondents are not justified in calculating excess amount of interest on the basis of flexible variations.

6. Respondents' counsel on the other hand persuasively argued that, no penal interest what so ever has been charged but the interest was not able to recover from the applicant so far as scheduled as per the document and therefore, the recovery started. Therefore, the delay has been caused to recover the interest from the applicant.

7. The short question for consideration is that whether the interest that has been calculated by the respondents on the flexible interest rate is justified or not?

8. The housing loan facilities are made available to the employees by the Government being a nodal employer to facilitate them to get housing loan facilities on the scheduled interest rate and it is in furtherance of the policy of the government to promote in giving shelter to the employees of their own. Therefore a liberal scheme has been enuntiated by the Government and therefore A1 and A2 documents have been made to sign by the parties. In A1 and A2 what is the principal amount to be repaid and on what instructions and how the interest to be calculated and how they are to be repaid/recovered has been specifically stipulated. Moreover, the same principle has been repeated in the mortgage deed (A2) executed by the parties.

9. Now the question is whether the conditions that has been laid/stipulated in A1 memorandum and A2 Mortgage Deed can be changed or not ? This is a contract. The contract alone can be made enforceable. The contract is made by agreeing to fulfill the covenants that have been laid down therein and both parties agree with that to adhere to strictly. Therefore, the contentions of the respondents that inadvertently they failed to recover a month's interest from the applicant cannot be a reason for recovering interest whereby the applicant has been put to great hardship. This is beyond the scope of the contract and there is no stipulation for the same in the said documents. Every employee is very calculative of their



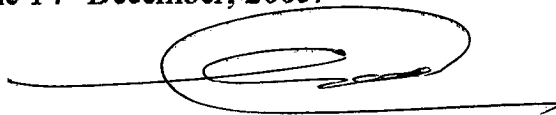
income and spending of the same. Only after making all adjustments an employee agree for the repayment of interest, taking stock of the monthly budget. Any change/flexibility made therein that too unilaterally will adversely affect the financial position of the employee. This is not justified in the absence of any stipulation. In a celebrated decision of the Supreme Court in Abati Bezbaruah vs. Deputy Director General, Geological Survey of India, 2003 AIR SCW 1266 the Court has held that, "the interest is a compensation for forbearance or detention of money and that interest being awarded to a party only for being kept him out of the money which ought to have been paid to him." No principle amount can be deducted nor any rate of interest can be fixed. On going through the facts of the case, I find that, the applicant was in no way responsible for not paying the interest in excess amount and the respondents cannot now contend that, they are entitled for recovering the amount of interest in lumpsum from the DCRG of the applicant against the covenants of the mortgage deed that has been executed by the parties.

10. In the above circumstances, I am of the considered view that the excess amount that has been recovered to the tune of Rs. 17074/- is to be refunded to the applicant forthwith.

11. In the circumstance I direct the respondent to refund the sum of Rs.17074/-, the excess amount that has been recovered as interest from the applicant in contravention of the stipulations made in the documents and to return the deeds pertaining to the property mortgaged by the applicant forthwith in any case within three months from the date of receipt of a copy of this order.

12. O.A. is allowed. There is no order as to costs.

Dated the 14th December, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER