

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.102 of 2001

Date of Decision: 29. 8.2001

D.K.Bhalerao  
(By Advocate Shri K.R.Yelwe) - Advocate for Applicant


Versus

Union of India & others - Respondents

Coram:

Hon'ble Mr.B.N.Bahadur - Member (A)

- (1) To be referred to the Reporter or not ? *Yes*
- (2) Whether it needs to be circulated to *x*  
other Benches of the Tribunal?
- (3) Library. *x*

  
(B.N.Bahadur)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.102 of 2001

Dated this the 29th day of August, 2001

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)

Shri D.K.Bhalerao,  
A.E.A., Staff No.5350,,M.T.N.L.,  
Mumbai,  
O/o S.D.E. (P/R)  
Turbhe, Navi Mumbai,  
R/o 002, Anand Vaibhav, Co-operative  
Housing Society, Sector 19, Nerul,  
Navi Mumbai - 400 614.  
By Advocate Shri K.R.Yelwe

- Applicant

Versus

1. Union of India,  
through the Secretary,  
to Government of India,  
Ministry of Communication,  
(Department of Telecommunication)  
Sanchar Bhawan,  
New Delhi.
2. The Chief General Manager,  
Mahanagar Telephone Nigam Ltd.,  
Telephone House, V.S.Marg, Prabhadevi,  
Mumbai - 400 028.
3. The General Manager,  
Mahanagar Telephone Nigam Ltd.,  
Navi Mumbai, C.G.O. Complex,  
C.B.D., Belapur.  
By Advocate Shri S.S.Karkera

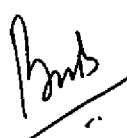
- Respondent

ORDER (Oral)

Per: Mr.B.N.Bahadur - Member (A)

This application made by Shri D.K.Bhalerao seeking the relief from this Tribunal as follows:-

(a) That this Hon'ble Tribunal be pleased to call for the records and proceedings of the matter leading to the issue of letter dated 18.10.2000 and after ascertaining the legality and propriety thereof, quash and set it aside.



....2/

(b) That this Hon'ble Tribunal be pleased to direct the respondents to refund the amount of interest recovered in excess of the prescribed rate i.e. 8% per month to the applicant.

(c) Such other orders as may be deemed necessary in the facts and circumstances of the case.

(d) Cost of the application be provided for.

I have perused the papers in the case and I have heard the learned counsel on both sides namely Shri K.R.Yelwe for applicant and Shri S.S.Karkera for the respondents.

2. The facts as they emerge from the records and after hearing the learned counsel on both sides are in brief as follows:

The applicant was sanctioned House Building Advance for construction/purchase of a flat. The order of sanction is at Annexure-A-4 (Page 20). The conditions attached to the sanction included, inter-alia, a condition which is as follows "The applicant shall insure the flat with the General Insurance Corporation of India at his/her own cost against damage by fire, flood and lightning and keep the flat so insured till entire advance together with due interest is fully paid to the MTNL." Subsequent to this, the applicant signed a mortgage deed (a copy of which is available at page 23 onwards), where, inter alia, he undertook to deal with the terms and conditions of the said rules, among other things (Internal Page 3 & 4 of the Document).

....3/-



The terms and conditions stated inter alia, "if a person to whom such HBA was sanctioned/paid back the dues after following the conditions, a rebate in interest of 2.5% would be provided as per circular dated 20.5.1980.

3. Now the grievance of the applicant in short is that such a rebate of 2.5% has not been provided to him. The interest rate charged includes this 2.5%.

4. The learned counsel for the applicant Shri Yelwe argued the case at length and states that the non-refund of this 2.5% rebate was improper. He took us through the ground recorded in detail at Para 5 of the OA. It was contended that the action was arbitrary and unreasonable and hence unsustainable in law. It was argued by him further that once the HBA is regularly paid it was unreasonable not to provide this rebate of 2.5% and refund of the amounts charged had become a duty of the respondents in view of the fact that all amount was returned and all other rules followed.

5. The learned counsel for respondents Shri Karkera argued to make the point that the action of non-refund and non-provision of rebate came as a direct non-performance of the applicant of the condition of grant of HBA which specifically laid down that the house/flat would be insured as laid down.

Bns

....4/-

6. The issue is in a short compass. The facts are not denied, in that the applicant for some reason or the other, had failed to insure the house in terms of the specific condition as laid down. (Condition reproduced above in the order). It is also true that he had voluntarily accepted the HBA, and had agreed to the terms and conditions. This was a conscious acceptance on the part of the applicant, made voluntarily. Once this is done and the applicant fails to perform the condition regarding non-insurance of the house, the action of the respondents, as taken, cannot certainly be called either capricious or unreasonable. It also cannot be termed as unsustainable in law for any reason. It is also seen as pointed out by the learned counsel Shri Karkera that the Government of India orders (as reproduced in Exhibit R-2 to the written statement of the respondents) are clear on this issue, and government instructions in favour of the action taken by the respondents.

7. Any argument made by learned counsel for the applicant to the effect that all other conditions have been satisfied also cannot come to his rescue. Whether the condition of grant are harsh or otherwise cannot be gone into by the Tribunal. Similarly, the fixing of the figure of 2.5% interest etc. is in the realm of policy, where it is for that administrative ministry to take a decision. Also it cannot be the case that the condition is unsustainable under any law.

....5/-

Bud

OA102/01

8. In view of the above discussions, I am not convinced that any case is made out for interference in the matter. The O.A. is, therefore, dismissed with no order as to costs.

*B.N. Bahadur*

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(B.N. Bahadur)  
Member (A)