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CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

O.A.NO. 957/89 : Date of decision: 16.7.93

Munnalal Sharma : Applicant.

Mr. R.D.Rastogi : Counsel for the applicant.

VERSUS

Union of India & Ors. : Respondents.

Mr. U.D.Sharma : Counsel for the respondents.

CORAM:

HON'BLE MR. B.B.MAHAJAN, ADMINISTRATIVE MEMBER

HON'BLE MR. GOPAL KRISHNA, JUDL MEMBER

PER HON'BLE MR. B.B.MAHAJAN, ADMINISTRATIVE MEMBER

Munnalal Sharma has filed this application under section 19 of the Administrative Tribunals Act, 1985, against the order for lump sum recovery of the house building advance sanctioned to him along with the penal interest.

2. The applicant was sanctioned house building advance of Rs. 51,200 vide the Post Master General Raj. Circle, Jaipur memo dated 7.12.88 (Annex.A-1). As per this sanction amount of Rs. 25,600 was paid to the applicant as he had already mortgaged the land together with the house to be erected thereon. The subsequent instalment of Rs. 25,600 was to be authorised for payment on receipt of certificate from the ASOPs/ IPOs to the effect that the

(Annexure.A/9) that his request had been rejected and the entire amount of house building advance and penal interest thereon had been ordered to be recovered from his pay from the month of Oct,89 onwards. The applicant represented against this order (Annexure.A/10) and also sent a notice for demand of justice through his counsel on 22.10.89 (Annexure.A/14). Since this representation was not accepted, he filed this O.A. The respondents have taking the plea that the house has not been constructed according to the approved plan and less area has been constructed as shown in R/4, the amount has rightly been ordered to be recovered in lump sum along with the penal interest as per conditions of the sanction order dated 7.12.88 Annexure.A/1. The applicant has represented in the rejoinder that he had not constructed less area than the approved plan and he has fully utilised the amount sanctioned to him for the construction of the house for which it has been sanctioned.

3. We have heard the counsel for the parties. It is an admitted position that the applicant did make some changes from the approved plan while constructing his house. The basic purpose of the grant of house building advance by Govt. to its employees, however is to enable them to construct a house. The purpose of insisting on the plan being approved before hand and requiring construction to be according to approved plan is to ensure that the entire amount is utilised for the purpose for which it was sanctioned and no part of it is mis-utilised. So long as the amount of

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Advance is utilised for the construction of a residential house and the amount spent on the same is not less than the amount of advance given, it cannot be held that the advance amount has been misutilised. The respondents' contention is that the area constructed is much less than the area for which the plan was approved, as shown by them in Annexure.R/4. The contention of the applicant is that he has not constructed less area than that for which the plan was approved although he has made some changes in the sizes of the rooms. This is a question of fact. The respondents have based their contention on the inspection report dated 21.6.89 (Annex. R/3). The contention of the applicant is based on report of Sarpanch dated 23.10.89 (Annex.A/13). It is therefore, possible that after the report by the inspecting officer of the Departments the applicant has completed the house as per the revised plan filed at Annexure.A/13.

4. In view of the above, we direct that the respondents may have position regarding actual construction of the house done by the applicant again verified from their concerned inspector in the presence of the applicant. In case it is found that the applicant had constructed area much less than the area for which the plan had been approved, the order for recovery of the amount of advance in lump sum would be justified (although only with the interest at 10.5 per cent as provided in Class 4 of the sanction order (Annexure.A/1) as no provision

for recovery of penal interest is shown to exist either in the sanction order or in the relevant rules). If the area constructed by the applicant is not less than that in the approved plan or the shortfall is only marginal there would be no justification for recovery of the amount of advance in lump sum and the recovery may then be made in instalments as per the rules. The applicants counsel has pleaded that in case the area constructed is found to be not less than in the approved plan the respondents may be directed to approve his revised plan and sanction the 2nd instalment of House Building Advance. There is no justification for issue of such direction at this stage as the house has already been constructed about 4 years back. The operation of the impugned order dated 18.10.89 (Annex.A/9) which was stayed vide the interim order of the Tribunal dated 21.12.89 will continue to be stayed till fresh order is passed by the competent authority on the receipt of the fresh report from the inspecting officer. The applicant has stated that his salary for the month of Nov.89 had been withheld. The learned counsel for the respondents states that the salary had not been withheld by the Department and it has not been accepted by the applicant himself.

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The salary for the month of Nov.89 shall now be paid to the applicant without deduction of the instalment for the house building advance in pursuance of order dated 18.10.89 (Annex.A/9). With these directions, O.A. stands disposed of. Parties to bear their own costs.

G.Krishna
(GOPAL KRISHNA)
Judl.Member


(B.B.MAHAJAN)
Adm.Member

Anil