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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.39/94.

Date of Judgement : 19-1-95

Wg. Cdr. M.S.Prasad (Retd) .. Applicant

Vs.

1. The Union of India,
Reptd. by the Secretary,
Min. of Defence,
Govt. of India,
Research & Development
Organisation,
Dept. of Planning &
Resource Management,
New Delhi-110011.

2. The Director-General,
Min. of Defence,
Govt. of India,
R&D Orgn.,/DP & RM,
Dept. of Planning &
Resource Management,
New Delhi-110005.

3. The Director,
Defence Electronics
Research Laboratories,
Govt. of India,
Min. of Defence,
Chandrayangutta Lines,
Hyderabad-500005. .. Respondents

Counsel for the Applicant :: Shri Y.Suryanarayana

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

C O R A M

Hon'ble Shri A.B.Gorthi : Member (A)

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(A) X

The Applicant sought for and secured for himself a sum of Rs.1,37,800/- in two instalments as House Building Advance (H.B.A. for short) and gave an undertaking to repay the amount in 34 monthly instalments of Rs.4,055/-. His grievance is that on account of the consequential monthly recoveries, his carry-home salary has come to nothing and that his representation to the Respondents for reducing the amount of monthly recovery to Rs.2,000/- was

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unreasonably rejected. His prayer is for a direction to the Respondents to recover only Rs.2,000/- p.m. from the Applicant's salary and quash the order of the Respondent No.3 dt. 17.12.93 which reiterated that the Applicant was bound to pay the monthly instalment of Rs.4,055/-.

2. The Applicant is a retired Wing Commander of the Indian Air Force. He joined the Defence Electronics Research Laboratory (DLRL for short) as a Scientist 'D' on 1.3.89. He immediately desired to obtain H.B.A. but was wrongly advised that he could apply for it only after completion of one year's probation of service. He could therefore apply for H.B.A. only in March, 1990. His application was processed for grant of loan of Rs.2.4 lakhs. Hoping that he would get that amount, he planned the structure of his house and laid the plinth. His loan was however sanctioned at the instance of Respondent No.3 for a reduced sum of Rs.1,37,800/- only which was paid to him in two instalments. As per extant rules, recovery commenced on the expiry of 18 months from the date of sanction of H.B.A. Due to the recovery of Rs.4,055/- p.m. from his salary, there was nothing left for him to take home. In fact, he was required to pay additional sums as his salary after the other usual deductions was not sufficient even to honour the recovery of Rs.4,055/-. Due to all these financial constraints resulting from the harsh and unsympathetic attitude of the Respondents, the Applicant could not complete the construction of his house within the scheduled time and this further aggravated the situation, as he is deprived of the rental income of about Rs.3,000/- p.m. which he would have otherwise had. He has claimed that if the recovery is reduced to 50% of the

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basic pay (Rs.2,500/-), he would be able to complete the house soon and that thereafter he would somehow or the other raise funds and liquidate the outstanding dues before his retirement.

3. The Respondents stated in their counter affidavit that keeping in view the fact that the Applicant is due to retire from the DLRL on 31.7.96, his application for H.B.A. was processed only for Rs.1,25,000/-. Finally he was given Rs.1,37,800/- as H.B.A. in two instalments. The amount was to be repaid, as per agreement, in 34 instalments of Rs.4,055/- each. The Respondents assert that the Applicant made a voluntary declaration to the effect that in case the amount to be recovered from the salary exceeded 1/3rd of his total salary, he could still maintain his family without financial hardship and that his wife is "working as an Advocate (self-employed)". He also executed a deed of mortgage in favour of the President of India, one of the conditions therein being that he would "repay to the mortgagee the advance of Rs.1,37,800/- by 34 monthly instalments of Rs.4,055/- from the pay of the mortgagor". The Respondents thus contend that their decision to deduct the instalment amount from the salary is in accordance with the terms agreed upon by the Applicant and that their refusal to reduce the instalment is due to the reason that the H.B.A. amount has to be recovered in full from the Applicant before his retirement on 31.7.96.

4. Shri Y.Suryanarayana, learned counsel for the Applicant advanced three issues before me. Firstly, he questioned the legality of the Respondents' action in withholding the entire amount of balance of salary payable to him. By doing so, the Respondents thoroughly

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demoralised the Applicant who is consequently neither able to go ahead with the construction of the house nor devote his full attention to his work. Secondly, as per "Rules regulating the grant of advances to Central Government Servants for building houses" (H.B.A. Rules for short), in the case of an official retiring within 10 years, the "repaying capacity of the Government Servant" should be taken as 50% of the basic pay. Learned counsel for the Applicant placed reliance on O.M.No.1/17015/- dated 10-12-1981 which lays down, inter-alia, that for the purpose of determining the amount of H.B.A. admissible to a Central Government Servant as well as for fixing the number of instalments of recovery, the amount of gratuity adjustable and the repaying capacity will be taken as follows:-

Category of Central Govt. servants.	Gratuity adjustable against the house building advance.	Repaying capacity of the Govt. serv- vant concerned.	Re- marks
(1)	(2)	(3)	(4)
(i) Officials who are due to retire after 20 yrs.	-	35% of the basic pay.	-
(ii) Officials retiring after 10 yrs. but not later than 20 yrs.	60% of DCRG admissible.	40% of the basic pay.	-
(iii) Officials retiring within 10 yrs.	70% of the total amount of gratuity admissible.	50% of the basic pay.	-

The above O.M. gives guidelines for fixing the quantum of advance and lays down that in case of an official retirement within 10 years, it should not exceed 70% the gratuity plus amount recoverable in monthly instalments not exceeding 50% of the basic pay. It does not lay down as a rule or proposition that the amount of monthly recovery shall not

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exceed 50% of the basic pay. Admittedly, the Applicant having already received Rs.82,150/- as gratuity is not likely to receive additional gratuity after his retirement from DLRL. Thus, the only means of recovering the entire loan amount was through deductions from his monthly salary. In this context it may be noted that Rule 8(a)(iii) of the H.B.A. Rules reads as under:-

"(iii) It will be open to Govt. servants to repay the amount in a shorter period, if they so desire. In any case, the entire advance must be repaid in full (with interest thereon) before the date on which they are due to retire from service."

5. That the Applicant agreed to repay the loan in 34 monthly instalments of Rs.4,055/- would be evident from the Deed of Mortgage executed by him. In other words, it cannot be said that the Respondents unilaterally decided to recover more than 50% of the basic pay of the Applicant. In these circumstances, the recovery of Rs.4,055/- from the monthly salary of the Applicant cannot be held to be illegal or violative of the H.B.A. Rules.

6. Learned counsel for the Applicant advanced the plea that the Applicant was in such a disadvantageous position that he had no alternative but to agree to the heavy recovery stipulated in the Mortgage Bond. He urged that the Department was in a position to dominate the will of the Applicant and that it thus gained an unfair advantage in specifying the items of recovery of loan. In this context it would be seen from the record that the Applicant was all along aware of his rather short tenure with DLRL before reaching the age of 58 years, and of the salary payable to him. He initially desired a higher amount of loan to the tune of Rs.2.4 lakhs.

That was substantially reduced to Rs.1,37,800/- when it was sanctioned. The Applicant gave a written declaration that in case of recovery from his salary exceeded 1/3rd of total salary he could maintain his family without financial hardship. It would thus be seen that he made the Respondents believe that he was in a position to repay the loan amount of even Rs.2.4 lakhs if it was sanctioned to him and that such repayment of loans could only be from deductions from his salary, as he was not likely to receive any gratuity at the time of his retirement from DLRL. Looking at all the relevant circumstances of the case, nothing unconscionable can be discerned in any of the terms of the agreement between the Applicant and the Respondents.

7. It was finally urged on behalf of the Applicant that he had sufficient other resources - both movable and immovable, and would have no difficulty in repaying the entire loan amount before his retirement. His request is only for reducing the instalment of recovery to Rs.2,000/- so that his routine financial management is not unduly upset. If such a concession is given, he would be able to complete the construction of house and rent it out. In any case, the Government has the legal right, as per the Deed of Mortgage, to recover the outstanding dues by selling the house. The Applicant had already repaid a substantial amount of the advance and there is no reason for the Respondents for not considering his request sympathetically as the amount outstanding would not be too high. There is no doubt that the request of the Applicant merits consideration, but that must come from the Respondents. It is not for the Tribunal to alter the terms of an agreement, when it is otherwise found that there was nothing illegal or arbitrary or unfair in the

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any of the terms stipulated therein, including the stipulation of the quantum of recovery from the monthly salary of the Applicant.

8. In view of the above discussion, the O.A. is dismissed so far it relates to the reliefs claimed. It will however be open to the Respondents to reconsider the plea of the Applicant on such terms as are mutually acceptable.

9. The O.A. is ordered accordingly. No costs.

for signature

(A.B.Gorthi)

Member(A) *Amulya*

Dated: 19 January, 1995. *23-1-95* Deputy Registrar(Judl.)

br.

Copy to:-

1. Secretary, Ministry of Defence, Govt. of India, Research & Development Organisation, Dept. of Planning & Resource Management, Union of India, New Delhi-011.
2. The Director General, Min. of Defence, Govt. of India, R&D Orgn.,/DP & RM, Dept. of Planning & Resource Management, New Delhi-005.
3. The Director, Defence Electronics Research Laboratories Govt. of India, Min. of Defence, Chandrayanagutta lines, Hyderabad-005.
4. One copy to Sri. Y.Suryanarayana, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

39/94

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR. A. V. HARIDASAN : MEMBER (C)

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

DATED :

19/1/95

ORDER/JUDGEMENT.

M.A.R.P/C.P. No.

O.A. No.

in
39/94.

Admitted and Interim directions
issued

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

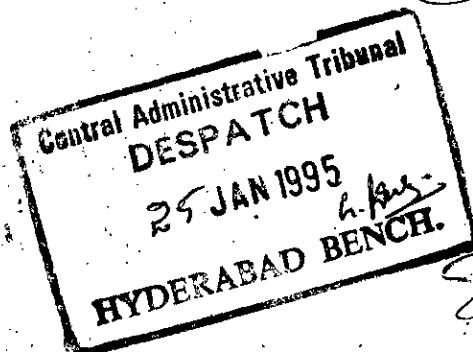
Dismissed for Default.

Rejected/Ordered

No order as to costs.

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20/1/95