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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No.118/98

Date of order: 15.1.1999

R.N.Khurana S/o Shri Chandi Ram aged about 60 years, resident of House No. D-2/1, Door Shanchar Colony, Jaipur at present F-205, Shyam Nagar Extension, Jaipur, last employed on the post of Superintending Engineer (Civil), in the office of Telecom Department, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Telecommunication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
3. Chief Accounts Officer (TA), O/o the CGMT, Raj. Telecom Circle, E-14, Chitrangan Marg, C-Scheme, Jaipur.

.. Respondents

Mr. C.B.Sharma, counsel for the applicant

Mr. Amit Ojha, Proxy for Mr. M.Rafiq, counsel for the respondents.

CORAM:

HON'BLE Mr. RATAN PRAKASH, JUDICIAL MEMBER

ORDER

Per Hon'ble Mr. Ratan Prakash, Judicial Member

Applicant herein Shri R.N.Khurana has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to seek a direction against the respondents to declare illegal and quash the impugned order dated 2.7.97 (Ann.A1) asking him to deposit an amount of Rs. 10,826/- with a further direction to the respondents to return him the Title papers/Mortgage Deed of the house.

2. Facts relevant for disposal of this application in brief are that the applicant was granted House Building Advance (HBA) of an amount of Rs. 70,000/- vide memo dated 14.12.82 (Ann.A2) on conditions incorporated therein. It is the case of the applicant that
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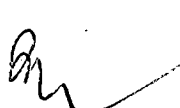
he cleared the aforesaid HBA and to this effect a communication dated 4.1.96 (Ann.A3) was also sent by the Executive Engineer (HQ) to the Senior Accounts Officer.

3. The grievance of the applicant is that vide their impugned order dated 2.7.97 (Ann.A1) the respondents have now asked the applicant to deposit an amount of Rs. 10,826/- towards penal interest for not getting the house insured till the completion of construction. The applicant replied to that letter but the respondents have not acceded to his request not to recover the penal interest; hence he has approached this Tribunal to claim the aforesaid relief.

4. The respondents have opposed this application by filing a written reply to which no rejoinder has been filed by the applicant. The stand of the respondents has been that the HBA was sanctioned to the applicant on conditions which also included the condition regarding compulsory insurance of the house. It has, therefore, been urged that though the applicant was asked to comply with the aforesaid conditions and to this effect letters were issued on 16.5.83, 28.4.86 and 10.6.86 (Ann.R1 to R3); yet the applicant did not comply and hence there has been no illegality or irregularity in issuance of the impugned order as at Ann.A1.

5. I heard the learned counsel for the parties and have examined the record in great detail.

6. The material question to be determined in this OA is whether at the time of granting the HBA any condition was incorporated in the memo of sanction of HBA dated 14.12.82 to the effect that the house has to be compulsorily insured and non compliance of it would entail a penal interest at the rate of 2.5%.



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7. Though the respondents have taken the stand that in the sanction of the HBA, this condition was incorporated and that the applicant having failed to get his house insured, there is no ground to quash the impugned order as at Ann.A1. A perusal of the memo dated 14.12.82 indicates that one of the conditions of sanctioning the HBA which relate to the insurance of the house reads as under:

"The official should insure the House with Life Insurance Corporation of India at his cost immediately its completion and keep the house so insured till the entire amount of the advance has been recovered alongwith interest."

A perusal of above condition indicates that there is no penal clause attached with the condition as to what would happen if the official to whom the HBA has been issued fails to get the house insured.

8. The respondents in support of their arguments have also relied upon Ann.R4 which is an extract of Swamy's HBA Rules which pertains to the aspect to failure to insure/renew without fail as at Sl.No.6. This is an extract of OM dated 6th February, 1987 which in other words is by way of clarification directing to 'ensure that in future the requirements of OM dated 17.12.1975, 11.9.1978 and 20.5.1980 are enforced strictly and rigidly so that there should no occasion for any condonation of lapses in this respect both in respect of the responsibility of the organization and the beneficiaries'. On the basis of this OM, it has been argued that it is must that the applicant should have got his house insured after the sanction of the HBA and having failed to do so, the respondents are entitled to recover penal interest at the rate of 2.5% on the sanctioned amount.

9. Though it is true that this OM dated 6.2.1987 is of clarificatory nature; yet it cannot be said that there is any specific

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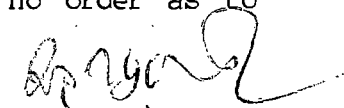
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condition to the effect that a person who secures a loan from the Department and fails to insure his house has to pay interest at the rate of 2.5% above the prescribed rate. Moreover, in the applicant's case there has been a default on the part of the respondent Department itself as not to incorporate the condition of penal interest in the sanction of the HBA dated 14.12.1982 (Ann.A2). Further, there is a letter issued by the Executive Engineer to the Senior Accounts Officer dated 4.1.96 that too after retirement of the applicant from the Department which specifically lays down that in case of Shri R.N.Khurana no recovery of 2.5% interest is admissible and that complete recovery has been made from Shri R.N.Khurana in respect of HBA sanctioned to him. To this communication dated 4.1.96 (Ann.A3) the respondents have not given any specific reply and there is a vague denial.

10. In view of the facts as have emerged from the pleadings of the parties, it cannot be said that the applicant from whom a complete recovery of HBA has been made in consonance of the memo of sanction dated 14.12.82 (Ann.A2) and that too before retirement a penal interest at the rate of 2.5% has yet to be recovered. The respondent Department has itself been at fault and when all the retiral benefits of the applicant have been settled and paid by them, this matter of recovery of penal interest at the rate of 2.5% for not getting the house insured, cannot be reopened.

11. For all the aforesaid reasons, the impugned order as at Ann.A1 dated 2.7.97 is not tenable and is hereby quashed. The respondents are directed to return all the documents i.e. Title Deed and Mortgage Deed in respect of the house of the applicant to him within a period of one month from the date of receipt of a copy of this order.

12. The OA stands disposed of accordingly with no order as to costs.

  
(RATAN PRAKASH)  
Judicial Member