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**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

08.09.2009

OA No. 486/2008

Mr. C.B. Sharma, Counsel for applicant.
None present for respondents.

Learned counsel for the applicant has placed reliance on Para nos. 6 to 8 of the decision of this Bench in the case of R.N. Khurana vs. Union of India & Others [OA No. 118/98 decided on 15.01.1999]

Learned counsel for the applicant is directed to file specific reply to the order of this Bench dated 25.08.2009 within a period of two weeks with advance copy to the learned counsel for the respondents.

List it on 29.09.2009



(B.L. KHATRI)
MEMBER (A)

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29.9.2009

Mr. C.B. Sharma, Counsel for applicant
Mr. Hemant Mathur, Counsel for respondents

Heard learned Counsel for the parties.
For the reasons dictated separately,
the OA is dismissed


(B.L. Khatri)
M(A)

Reply not
filed

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of September, 2009

ORIGINAL APPLICATION No.486/2008

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Gyandan
S/o Shri Laidan,
R/o C-390-A, 4C Colony,
Near Road No.14, Vishwakarma,
Jaipur.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to the Govt.,
Department of Posts,
Ministry of Communication,
Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Sr.Supdt. of Post Offices,
Jaipur City Postal Division,
Jaipur.
4. Director of Accounts (Postal),
Tilak Nagar,
Jaipur.

... Respondents

(By Advocate : Shri Hemant Mathur)

ORDER (ORAL)

The applicant has filed this OA against the recovery of
Rs.10,723/- on account of interest on House Building Advance,

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as per Ann.A/1. Through this OA, the applicant has prayed for the following relief :

- "i) That the respondents be directed to refund Rs.10,723/- on account of interest @ 2.5% excess charge from the applicant alongwith interest at the market rate.
- ii) That the respondents be further directed to calculate interest @ 7.5% instead of 9% and to refund excess amount alongwith interest at the market rate."

2. Brief facts of the case are that the applicant while working in the respondent department applied for House Building Advance [HBA] in the year 1991. Respondent No.2 sanctioned the HBA as Rs.65,600/-, payable in two installments and recoverable in 121 installments from the month of September, 1992 @ 11.50 % interest per annum, from which 2.5% rebate was to be allowed if the conditions attached to the sanction order are fulfilled.

3. That consequent upon full repayment of the principal amount of HBA, the DDO inadvertently calculated the interest by applying 7.5% rate of interest, instead of 11.5% per annum (9% + 2.5%), which was checked by the Director of Accounts (Postal), Jaipur. At the time of issuing 'No dues certificate' it was noticed that the HBA carried a simple rate of interest @ 9% + 2.5% above the prescribed rate with the stipulation that if conditions attached to the sanction including those relating to the recovery of amount are fulfilled completely, rebate of interest to the extent of 2.5% will be allowed in view of Government of India 2 below Rule 06 of Swamy's Compilation of HBA Rules.

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4. The respondents had recovered interest @ 2.5% over and above the prescribed rate of interest as the applicant did not fulfill the conditions attached to the sanction order and did not insure the house.

5. In this connection, learned counsel for the applicant had relied upon the order passed by this Bench, on 15.1.99, in the case of **R.N.Khurana v. Union of India & Ors.** [OA No.118/98]. On the contrary, learned counsel for the respondents submitted that facts of the said case are distinguishable with the facts of the present case. In this connection, it is considered necessary to reproduce para 9,10 & 11 of the said order, as follows :

"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 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 which a complete recovery of HBA has been made in consonance of the memo of sanction dated 14.12.82 (Ann. A2) and that too

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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."

6. From perusal of the order, reproduced above, it is evident that facts of the case relied upon by learned counsel for the applicant are not same, as in that case the respondents did not attach the condition with the sanction order 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. Besides, there was a letter issued by the Executive Engineer to the Senior Accounts Officer dated 4.1.96, 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 Khurana in respect of HBA sanctioned to him.

7. Learned counsel for the applicant was specifically asked, vide order-sheet dated 25.8.2009, to file a copy of the sanction order. He has filed the same alongwith additional affidavit. In this connection, it is considered necessary to reproduce the conditions No.4,5 & 7 of the sanction order, as under :

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"4. The advance granted to him carries simple interest as per rules i.e. 11 ½% per annum from the date of payment of first installment and will be calculated on the balance outstanding of the last date each month.

5. Rebate of interest to the extent of 2 ½% per annum will be allowed to the official if all the conditions attached to the sanction including those relating to the recovery of the amount is fulfilled completely to the satisfaction of the competent authority.

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

8. From perusal of Condition No.7, it is evident that in case the applicant could have insured the house, he would have been allowed rebate of interest to the extent of 2.5 %. However, it is admitted fact that the applicant did not insure the house.

9. Contention of the respondents find support from the Government of India's orders quoted under the head 'Interest' at page 70 to 73 of the Swamy's Compilation of House Building Advance Rules, Edition - 2005. In this connection, it is also considered necessary to quote para-2 of the OM. No.1/17011/4/78-H-III dated 20th May, 1980, which reads as under :

"(2) Rate of interest to be shown 2.5% above the prescribed rate - It has been decided that in all cases, while issuing the sanction for grant of House Building Advance, the rate of interest may be indicated in accordance with the Government of India's Decision No.(1) below Rule 178(2) of the GFRs i.e. the sanctions should invariably stipulate a higher rate of interest at 2.5% above prescribed rates with the stipulation that if conditions attached to the sanction, including those relating to the recovery of amount, are fulfilled

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completely to the satisfaction of the Competent Authority, rebate of interest to the extent of 2.5% will be allowed. The Competent Authority to decide whether the payments have been made punctually will be the sanctioning authority who will decide that the conditions attached to the sanction including those relating to the recovery of the amount are fulfilled completely to the satisfaction of the Competent Authority."

10. As admitted by the applicant, the house was not insured as per condition No.7 attached to the sanction order, the respondents have rightly not allowed rebate of interest to the extent of 2.5%.

11. In the result, the OA stands dismissed with no order as to costs.


(B.L. KHATRI)
MEMBER (A)

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