

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.312 OF 2017

DISTRICT : THANE

1. Shri Vinod D. Pitrubhakta.)
Age : 36, Occu.: Forest Guard at Range Forest)
Office, Sawa, Ta. Vikramgad, Dist. Palghar.)
R/o Jambhul Vihir (W), Krushi Colony, Post &)
Tal. Jawhar, Dist. Palghar.)
2. Shri Anand Kishor Prabhu.)
Age : 33, Occu.: Forest Guard at Range Forest)
Office, Sawa, Ta. Vikramgad, Dist. Palghar.)
R/o. Sanman Co.op.Housing Society, B-wing,)
Room No.31, 2nd floor, Kharegaon, Kalwa,)
Dist. : Thane.)
3. Shri Vinod D. Pitrubhakta.)
Age : 36, Occu.: Forest Guard at Range Forest)
Office, Sawa, Ta. Vikramgad, Dist. Palghar.)
R/o. Jambhul Vihir (W), Krushi Colony, Post &)
Tal.: Jawhar, Dist.: Palghar.)
4. Shri Kiran Ashok Bhavsar.)
Age : 33, Occu.: Forest Guard at Range Forest)
Office, Sawa, Ta. Vikramgad, Dist. Palghar.)
R/o. Jambhul Vihir (W), near Bharat Mandap,)
Post & Tal.: Jawhar, Dist.: Palghar.)
5. Shri Mahadev Goroba Ingale.)
Age : 40, Occu.: Clerk, O/at. Deputy)
Conservator of Forest, Jawhar.Dist. Palghar.)
R/o. At Rajuri, Tal. & Dist.: Osmanabad.)
6. Shri Sunil N. Phalke.)
Age : 43, Occu.: Forest Guard at Range Forest)
Office, Sawa, Ta. Vikramgad, Dist. Palghar.)
R/o. Sah Niwas Chawl, Near Krushi Nagar,)

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Jambhul Vihir, A/P/T Jawhar, Dist.: Palghar.)

7. Shri Ajay Y. Kothe.)
Age : 54, Occu.: Forester at Range Forest)
Office, Sawa, Ta. Vikramgad, Dist. Palghar.)
R/o. Maan, Post.Onde, TalVikramgad,)
Dist.: Palghar.)
8. Shri Pankaj M. Bhadane.)
Age : 32, Occu.: Forest Guard at Range Forest)
Office, Mokhada, Tal.Mokhada, Dist.Palghar.)
R/o Jambhul Vihir (W), Krushi Colony, Post &)
Tal. Jawhar, Dist.: Palghar.)
9. Shri Prashant R. Pagnis.)
Age : 41, Occu.: Forest Guard at Range Forest)
Office,Khodala, Tal.Mokhada, Dist. Palghar.)
R/o Jambhul Vihir (W), Krushi Colony, Post &)
Tal. Jawhar, Dist.: Palghar.)
10. Shri Santosh Ukhaji Borale.)
Age : 34, Occu.: Forest Guard at Range Forest)
Office, East Wada, Dist. Palghar.)
R/o. Flat No.12, Yamuna Apt. Nashik Road,)
Dist.: Nashik.)
11. Shri Arun Ashok Ghadge,)
Age : 39, Occu: Forester at Range Forest)
Office, East Wada, Dist. Palghar.)
R/o. B/205, Jai Maharashtra Bldg. Agra Road,)
Kalyan (W), Dist.: Thane.)
12. Shri Ashok Y. Patil,)
Age : 34, Occu.: Forest Guard at Range Forest)
Office, East Wada, Dist. Palghar.)
R/o. A/P. Pik, Tal.Wada, Dist.: Palghar.)
13. Shri Avinash K. Kachare,)
Age : 31, Occu.: Forest Guard at Range Forest)
Office, Kanchad, Dist. Palghar.)
R/o. Patil Aali, Vishnu Niwas, Suyog Nagar,)
Wada, Dist.: Palghar.)

14. Shri Amir M. Shaikh.)
 Age : 48, Occu.: Forest Guard at Range Forest)
 Office, Saiwan, Dist. Palghar.)
 R/o. Swami Complex, Dahanu Road,)
 Vikramgad, Dist.: Palghar.)
15. Shri Shamsundar M. Bahir,)
 Age : 33, Occu.: Forest Guard at Range Forest)
 Office, Khandeswari Naka, Wada, Dist. Palghar.)
 R/o. Radha Krushna Temple, Near Viveknagar,)
 Wada, Dist.: Palghar.)
16. Shri Deepak T. Pawar,)
 Age : 45 years, working as Driver, O/at.)
 Deputy Conservator of Forest, Jawhar, Tal.)
 Jawhar, Dist. Palghar.)
 R/o. Anand Nagar, Room No.159, Galli No.7,)
 Near Kopari Bridge, Thane (E).)
17. Shri Pramod K. Thore ,)
 Age : 33, Occu.: Forest Guard at Range Forest)
 Office, Sawa, Ta. Vikramgad, Dist. Palghar.)
 R/o. Kajale Niwas, Jawahar, Palghar.)...**Applicants**

Versus

1. The Deputy Conservator of Forest,)
 Jawhar Forest Division, Jawhar Forest)
 Division, Jawhar, O/at Opp.Rajiv Gandhi)
 Stadium, Jawhar, Dist.: Palghar,)
2. The Chief Conservator of Forest, Thane)
 Having office at Microwave Tower, Bara)
 Bungalow Area, Thane (E).)
3. The State of Maharashtra, through)
 Principal Secretary, (Forest), Revenue &)
 Forest Dept., Mantralaya,)
 Mumbai - 400 032.)...**Respondents**

Mr. A. V. Bandiwadekar, Advocate for Applicants

Smt. S.P Manchekar, Chief Presenting Officers for Respondents.

Wm

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 26.11.2019

JUDGMENT

1. This O.A. is filed by seventeen Applicants jointly challenging the impugned orders dated 26.07.2016, 10.11.2016 passed by the Respondent No.1 for recovery of penal interest because of their failure to submit mortgage deed and insurance policy within stipulated period.

2. Shortly stated facts giving rise to this application are as under :-

The Applicants were working as Forester in the Forest Department. They have applied for grant of home loan. Accordingly, home loan was granted to them by Respondent No.2 i.e Chief Conservator of Forest, Thane. They availed the loan. However, they failed to submit original mortgage deed and insurance policy within stipulated period i.e. three months from the date of availment/disbursement. Therefore, show cause notice was given to them by Respondent No.1 i.e. Deputy Conservator of Forest. The explanation given by them, found not satisfactory. Therefore, the Respondent No.1 issued orders for recovery of penal interest @ 2.75% per annum invoking Rule 124(b) of Bombay Financial Rules, 1959 (hereinafter referred to as 'Rules of 1959' for brevity). The Applicants have challenged this order in present O.A.

3. Following chart indicates the details regarding loan amount availed, date of disbursement, date of submission of mortgage deed, insurance policy and amount charged towards penal interest and date of impugned orders.

अनु. क.	अग्रिमाची मागणी केलेल्या कर्मचारी यांचे नाव व पदनाव (सर्वश्री)	अग्रिम मंजूर केलेल्या दिनांक	मंजूर केलेल्या अग्रिमाची रक्कम	खरेदी खत	गहाण खत सादर केलेल्याची तारीख	पोलिसी सादर केलेल्याची तारीख	आकारलेली दंडणीय रक्कम	आदेशाची तारीख
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१	श्री.विनोद पितृभक्त	२४.०३. २०१४	५५८५००	१०.०६. २०१४	०५.१२. २०१५	०५.१२. २०१५	२४, ४७१	२६.०७. २०१६
२	श्री.महादेव गोरोबा इंगळे	२७.०३. २०१४	७५३५००	०४.०१. २०१६	०४.०१. २०१६	०४.०१. २०१६	१७,७५५	१०.११. २०१६
३.	श्री.प्रशांत पागणीस	२४.०३. २०१४	५९३०००	२६.११. २०१५	२६.११. २०१५	२६.११. २०१५	२६,७९२	२६.०७. २०१६
४	श्री.सुनिल फाळके	२७.०३. २०१४	६५२०००	२६.११. २०१५	२६.११. २०१५	२६.११. २०१५	२८,८६७	२६.०७. २०१६
५	श्री.अजय कोथे	२७.०३. २०१४	८५००००	१४.११. २०१४	२८.०४. २०१४	१५.०१. २०१५	३२,३८४	२६.०७. २०१६
६	श्री.संतोष बोराळे	२७.०३. २०१४	५९३०००	१७.१२. २०१५	१७.१२. २०१५	१७.१२. २०१५	२७०४७	२६.०७. २०१६
७	श्री.अरुणकुमार घाडगे	२७.०३. २०१४	५९९०००				२७३१९	२६.०७. २०१६
८	श्री.अविनाश कचरे	२७.०३. २०१४	५९३०००				२७३२४	२६.०७. २०१६
९	श्री. अमीर शेख	२७.०३. २०१४	५९३०००	२८.११. २०१४	१३.०१. २०१६	१३.०१. २०१६	२७६९१	२६.०७. २०१६
१०	श्री. प्रशांत देशमुख	२७.०३. २०१४	७९५५००				३६२८८	२६.०७. २०१६
११	श्री. अशोक पाटील	२४.०३. २०१४	५९३०००	१५.१२. २०१५	१५.१२. २०१५	१५.१२. २०१५	२७१९२	२६.०७. २०१६
१२	श्री. शामसुंदर बहीर	२७.०३. २०१४	५९३०००	१५.१२. २०१५	१५.१२. २०१५	१५.१२. २०१५	२७१८९	२६.०७. २०१६
१३	श्री.प्रमोद थोरे	२४.०३. २०१४	५९९०००	२६.११. २०१५	२६.११. २०१५	२६.११. २०१५	२७०३०	२६.०७. २०१६
१४	श्री.किरण भावसार	२४.०३. २०१४	५९३०००	२६.११. २०१५	२६.११. २०१५	२६.११. २०१५	२७०४७	२६.०७. २०१६
१५	श्री.आनंद प्रभु	२४.०३. २०१४	५९९०००	२६.११. २०१५	२६.११. २०१५	२६.११. २०१५	२७३१९	२६.०७. २०१६
१६	श्री.पंकज भदाणे	२७.०३. २०१४	५९३०००	२६.११. २०१५	२६.११. २०१५	२६.११. २०१५	२७०४७	२६.०७. २०१६
१७	श्री.दिपक पवार	२४.०३. २०१४	६३३५००	२८.११. २०१४	२८.११. २०१४	११.१२. २०१४	२८३९९	२६.०७. २०१६

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant has raised following points to assail impugned orders.

- (A) There is no rule for charging penal interest @ 2.75% p.a. for failure of the Applicants to submit Mortgage Deed and Insurance Policy within three months from the date of disbursement.
- (B) There is no stipulation in sanction order to show that the Applicants will be liable to pay penal interest @ 2.75% p.a. or

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at any rate, if they failed to submit the documents within three months.

- (C) Respondent No.1, Deputy Conservator of Forest is not a competent authority to issue impugned orders.

5. Per contra, learned C.P.O. for the Respondents pointed out that as per amendment in Bombay Financial Rules, 1959, the Applicants were required to submit documents within three months and failing in which they are liable to pay interest as charged in the impugned orders. She submits that, in view of G.R. dated 27.02.2012, the Applicants were liable to pay penal interest @ 2.75% p.a. because of their failure to submit documents within three months from the date of disbursement of loan. As regard competency, learned C.P.O. submits that, by letter dated 12.10.2015, the Respondent No.2 – Chief Conservator of Forest, Thane had issued directions to Respondent No.1 - Deputy Conservator of Forest, Palghar and in pursuance of it, impugned action was taken.

6. In view of submissions advanced at the Bar, the crux of the matter is whether the Applicants are liable to pay penal interest @ 2.75% p.a. because of their failure to submit Mortgage Deed and Insurance Policy within three months from the date of disbursement of loan and Respondent No.1 – Deputy Conservator of Forest is competent for the same.

7. Admittedly, the Applicants could not submit Mortgage Deed and Insurance Policy within three months from the date of disbursement of loan as explicit from the Chart. However, the question is whether they have incurred any such liability in law or in terms of contract.

8. In Impugned order, the Respondent No.1 referred Rules 124(b) and 133 of 'Rules of 1959' and G.R. dated 26.09.1997. In addition to it, during the course of hearing, the learned CPO referred to G.R. dated 27.02.2012 in attempt to show that the Applicants are liable to pay penal

interest @ 2.75% p.a. Whereas, the learned Advocate for the Applicants has pointed out that none of the documents or Rules referred by the learned CPO provides charging penal interest @ 2.75% p.a. or at any rate for failure to submit documents to the Office within three months.

9. To begin with, it is necessary to point out that, in sanction order, there is absolutely no whisper that the Applicants will have to submit Mortgage Deed and Insurance Policy within three months of disbursement of loan and failing which, they will be liable to pay penal interest @ 2.75% p.a. All terms and conditions regarding loan, its repayment, etc. have been specifically incorporated in sanction order. However, on this crucial aspect of charging penal interest @ 2.75% p.a. for failure to submit documents, it is completely silent.

10. Now, let us see Rule 124(b) referred in the impugned order. Rule 124(b) of 'Rules of 1959' is as under :-

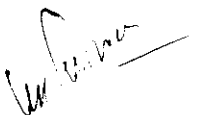
"124. Reporting of default in payment of loan to Government.

(a)

(b) The authority which sanctions a loan may, in so far as the law allows, enforce a penal rate of compound interest, upon all overdue installments of interest or principal and interest. If a penal rate is enforced, it should not be less than '[14 ½ percent per annum or more than 17 percent] per annum. '[The penal rate of interest should be charged in lieu of the rate of interest charged.]"

Thus, Rule 124(b) applies for compound interest on overdue installments and it has nothing to do with present situation. It is not relevant here.

11. In so far as Rule No.133 is concerned, it provides for regulating the drawing of advance bearing interests. It is also silent on the penal interest for failure to submit documents.



12. Now turning to Appendix 26 as per amendment to 'Rules of 1959', it seems that, in exercise of powers conferred under Article 166 of Constitution of India, by Notification dated 28th July, 1962, Appendix 26 was inserted. Here, Clause 6(e) relied by learned CPO is relevant, which is as follows :-

"6(e) Advance required for purchasing a ready-built house may be sanctioned by the competent authority after being satisfied that prima facie the title of the Government servant on completion of the contemplated purchase will be good and marketing. Payment of the entire amount required by and admissible to the applicant may be made in one lump sum on the applicant executing an agreement in Form "A2" for the repayment of the loan. The purchase shall be completed and the house mortgaged to Government within 3 months of the drawal of the advance by execution of a mortgage-deed in Form "B4" attached hereto failing which the advance together with the interest thereon shall be refunded to Government forthwith, unless an extension of time is granted by the Head of Department concerned.

While authorising disbursement of an instalment of an advance under rule 6, the Head of Department will issue a certificate to the effect that the required formalities in pursuance of which the instalment has become due, have been complied with."

13. In so far as the above provision is concerned, all that, it provides that the Government servant should submit Mortgage Deed in Form 'B' within three months of the drawal of advance and failing which, the Government servant will be liable to refund advance availed by him together with interest thereon, unless an extension of time is granted by the Head of Department. Suffice to say, it does not provide for charging penal interest @ 2.75% p.a. or at any rate. Indeed, it only provides for refund of advance with accrued interest thereof. This being the position, it cannot be said that, by virtue of this provision, the Applicants have incurred any liability of penal interest for failure to submit documents within three months.

14. Now turning to G.R. dated 27.02.2012, Condition No.12 of the G.R. is relied upon by the learned CPO, which is as follows :-

"१२. शासकीय अधिकारी / कर्मचा-यांना मंजूर करण्यात आलेले अग्रिम ज्या प्रयोजनाकरीता मंजूर केले आहे त्या कारणाकरीता त्याचा विनियोग न केल्यास किंवा अग्रिम व व्याज परतफेडीच्या संदर्भातील अटी व शर्तीचे पालन न केल्यास

किंवा त्यात कोणत्याही प्रकारची कसूर झाल्यास कसुरदाराकडून अंशमाची रक्कम प्रचलित व्याजदरापेक्षा २.७५ प्रतिशत जास्त दराने दंडनीय व्याजाची आकारणी करून, दंडनीय व्याजासह अंशमाची रक्कम एकरकमी वसूल करण्यात यावी.”

15. True, the above G.R. provides for charging 2.75% interest as a penal interest but it is restricted to the failure of Government servant to use the advance for the purpose other than the purpose of grant of loan and if the Government servant commits any default in payment of installment or commits any default of terms and conditions of repayment, in that event only, the Government servant will be liable to pay penal interest @ 2.75% p.a. Needless to mention that the plain reading of Clause No.12 of G.R. dated 27.02.2012 makes it quite clear that the liability of penal interest @ 2.75% p.a. is applicable where the Government servant fails to repay the loan as per the conditions set out or used the advance for other purpose. This Clause cannot be construed in the manner Respondents proposed. One need to interpret Clause No.12 as it is and nothing more can be inserted or added therein. It is well settled principle of construction or interpretation of documents that one has to give plain meaning to it on the basis of words used therein keeping in mind its object and which is not there cannot be imported therein, particularly when, it is prejudicial to the interest of party concerned. The intention has to be gathered from the contents of the documents and the same shall be in conformity with the real intention of the parties to the documents.

16. As such, the documents, the provisions of G.R. sought to be relied by the learned CPO are absolutely silent that Applicant will be liable to pay penal interest @ 2.75. p.a. due to failure of submission of documents within three months. There is absolutely no such specific provision in any of the documents relied by the learned CPO. Therefore, in absence of such specific stipulation, the impugned action of charging penal interest is unsustainable in law. Needless to mention that penal liability cannot be inferred and there has to be specific stipulation in the documents or provision to that effect and it is not matter of inference. Therefore, in my considered opinion, the impugned action is illegal.

17. Now turning to the competency, admittedly, it is Respondent No.2 – Chief Conservator of Forest being Head of the Department who has sanctioned the advance. This being the position, for any alleged default, the Competent Authority is Chief Conservator of Forest, if at all warranted in law. Whereas, in the present case, the impugned order was passed by Chief Conservator of Forest.

18. The learned CPO sought to contend that, in pursuance of the letter issued by Chief Conservator of Forest, the Deputy Conservator of Forest has initiated action and passed impugned orders. This cannot be termed as delegation of power. The Deputy Conservator of Forest was required to place the matter before Chief Conservator of Forest and who in turn would have been competent to pass any such orders, if at all warranted in law. As such, on the ground of competency also, the impugned action is unsustainable.

19. The totality of aforesaid discussion leads me to conclude that the impugned orders of recovery of penal interest are not sustainable in law and liable to be quashed and set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders of recovery of penal interest dated 10.11.2016 and 26.07.2016 are quashed and set aside.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 26.11.2019

Dictation taken by : S.K. Wamanse

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