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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.1114/91

New Delhi this the 4th Day of July, 1995.

Hon'ble Sh. A.V. Hardasan, Vice-Chairman(J)
Hon'ble Sh. B.K. Singh, Member(A)

Shri Balraj Singh,
R/o Vill. P.O. Nathupur,
Distt. Sonipat,
Haryana.

Applicant

(through Sh. B.B. Raval, advocate)

versus

1. The Commissioner of Police,
Delhi Police,
Delhi.
2. Sh. Surjeet Singh,
Assistant Sub Inspector,
Delhi Police, Delhi.

C/o Qr.No.12-A,
Police Station Civil Lines,
New Delhi.

Respondents

(through Sh. Arun Bhardwaj, advocate)

ORDER(ORAL)

delivered by Hon'ble Sh.A.V.Haridasan, Vice-Chairman(J)

The applicant Sh. Balraj Singh a Head Constable in Delhi Police has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the order dated 20.02.1991 (Annexure-A) issued by the Deputy Commissioner of Police, Delhi may be quashed as the same is arbitrary, illegal, malafide and non-est in the eyes of law.

The facts necessary for the disposal of this application can be stated as follows:-

The applicant was appointed as a Constable (M.T. Helper) in M.T. Section of the Delhi Police on 08.12.1985. His father

Sh. Hoshiar Singh was also serving in the Delhi Police as Assistant Sub-Inspector. After joining as Constable the applicant was said to be staying at H.No.120, Village Naharpur, Rohini from 10.12.85 to 30.04.89. On 1.5.1989 the applicant allegedly shifted his residence to Quarter No.54, Type-II, Police Station, Civil Lines, Delhi-54 in which his father was residing. Immediately on shifting his residence he submitted a representation to the authorities requesting them to stop payment of HRA and also to allot the same quarter to him as his father was going to retire soon. While so it is alleged that one Sh. Surjit Singh, Assistant Sub Inspector who was resident of Quarter No.12, Type-I, Police Station Civil Lines, Delhi and the applicant's father exchanged their quarters mutually after obtaining permission from the authorities and that this exchange remained only in paper while the actual transfer of the residence did not take place. Thereafter, it is alleged that Sh. Surjit Singh for the reasons known to him made a complaint to the authorities alleging that the applicant had been falsely drawing H.R.A. though he had been residing in the quarter allotted to his father ever since his enlistment to the Delhi Police. On the basis of the above complaint, a show cause notice was issued to the applicant on 16.7.1990 (Annexure A-5)

alleging that he committed a misconduct of drawing H.R.A. while residing in the quarter allotted to his father and calling upon him to explain why he should not be punished. Shortly thereafter another show cause notice dated 21.06.1990 was issued to the applicant wherein it was alleged that he had been residing with his father in Govt. Qr.No.54, Type-II, P.S. Civil Lines from the date of enlistment in Delhi Police and has been drawing H.R.A. against the rules calling upon him to explain why the entire amount of H.R.A. illegally drawn by him should not be recovered. The show cause notice dated 16.7.1990 was later by order dt. 28.8.1990 vacated. But on the other show cause notice the impugned order has been issued whereby recovery of the entire H.R.A. drawn by him from 10.12.1985 to 30.04.1989 was ordered to be recovered from the applicant besides debarring him from the allotment of Government accommodation for a period of five years. Aggrieved by this order, the applicant has filed this application. The applicant has alleged that A.S.I. Surjit Singh in collaboration with his colleagues in the department cause a false vigilance enquiry held which led to issue of the impugned order. According to the applicant the order being violative of principles of natural justice, in as much as he has not been given an effective

opportunity to meet the allegations before the impugned order has been issued, the same is not sustainable in law.

The respondents in their reply admit that the vigilance enquiry was conducted pursuant to the complaint received from A.S.I. Surjit Singh in which it was found that the applicant was residing with his father ever since his enlistment in Delhi Police. The applicant being not entitled to draw H.R.A. he is bound to refund the amount and he is also not entitled to reside in Government accommodation for a period of five years according to the respondents.

We have perused the pleadings and the documents placed on record. We have heard the learned counsel for the parties.

The impugned order (Annexure-A) is an order which adversely affected the applicant. The order has two parts. One is that the applicant is liable to refund the huge amount of HRA which was drawn by him during four years. The second part is that he would not be entitled to get Government accommodation for a period of five years. The deprival of the right of allotment of Government accommodation in a place like Delhi is of very serious consequence. The refund of huge amount is also an order of considerable hardship and financial loss. If the conduct of the applicant deserved such punitive action, no doubt the department is at liberty and is bound to take appropriate action but the law enjoins duty on the authority to give the concerned

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official reasonable opportunity to establish his innocence if he is innocent before passing such a punitive order, whether the applicant was really residing with his father in a quarter as is alleged in the impugned order or whether he was residing in a rented accommodation in his own right as is contended by him is a disputed fact. This can be established only in an enquiry with which the applicant is associated. The report of vigilance officer cannot be considered as a proof of the disputed facts. On the basis of the vigilance enquiry the department could either prosecute the applicant or proceed against him departmentally. Neither of these courses had been adopted by the respondents. Instead without affording the applicant a reasonable opportunity to establish his case and without even an iota of evidence the respondents have passed the impugned order debarring the applicant from getting Government accommodation for a period of five years and for recovery of the huge amount of H.R.A. drawn by him, we are of the considered view that the impugned order is violative of principles of natural justice. The order, therefore, is not sustainable and has to be struck down.

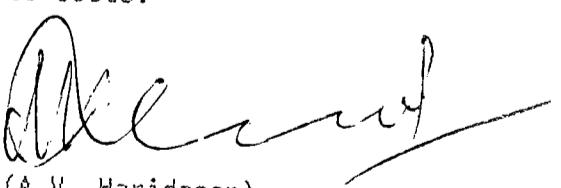
In the result, the impugned order is set aside.

There will be no order as to costs.


(B.K. Singh)

Member(A)

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(A.V. Haridasan)

Vice-Chairman(J)