

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-239/92

Date: 7.7.1993.

Shri Shiv Lal Applicant

Versus

Commissioner of Police, Respondents
Delhi.

For the Applicant Mrs. Avnish Ahlawat, Advocate

For the Respondents Ms. Anju Doshi, Proxy for
Ms. Geeta Luthra, Advocate.

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. To be referred to the Reporters or not?

Single Bench Judgement (Oral)

(By Hon'ble Mr. J.P. Sharma, Member (Judl.))

The applicant is an Assistant Sub-Inspector (ASI) in the Delhi Police and has been promoted as such from lower ranks. He was earlier allotted a Type I quarter, P-3/3, Police Colony, Andrewz Ganj. Subsequently, he got a Type II quarter on 3.6.1991 at Police Station, R.K. Puram, Quarter No.75. He was issued a show-cause notice by the respondents on 19.7.1991 (Annexure 'B') wherein, on the basis of vigilance enquiry, it was found that the applicant while earlier in occupation of Type I quarter at Andrewz Ganj, sublet the same against the rules. A reply was sought from him and compliance with the said notice. The applicant, by

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letter dated 1st August, 1991, requested for furnishing a copy of the report of the Vigilance Branch referred to in the show-cause notice. In reply by the Memo, dated 13.9.1991, he was informed that his request for supply of the report of the Vigilance Branch could not be acceded to and he should furnish his reply. He submitted his reply dated 22.9.1991 denying the allegation of subletting and averred that he lived in the said quarter along with his family. His reply did not find favour with the respondents and the impugned order dated 9.1.1992 was passed that since he had sublet the earlier allotted premises, licence fee and damage charges be deducted from his pay from the date of occupation of Government quarter, i.e., from 9.1.1986 to 2.6.1991.

2. Aggrieved by the aforesaid order, the present application has been filed on 28th January, 1991 and an interim direction was issued on 30th January, 1991, injuncting the respondents not to implement the aforesaid impugned order.

3. The relief claimed by the applicant is that the aforesaid order dated 9.2.1992 be quashed.

4. The respondents contested the application and in a reply only a reference had been made to an enquiry conducted by the Vigilance Branch whereby it was found, on the basis of the findings of that enquiry, that the applicant illegally and in violation of the rules, sublet the Government quarter allotted to him. Besides, there is formal denial of various

averments urged in various paragraphs of the original application.

5. I have heard the learned counsel for the applicant and Ms. Anju Doshi, appearing as Proxy Counsel of Ms. Geeta Luthra. Firstly, the applicant before the issue of show-cause notice, had already been shifted to Type II accommodation in Quarter No.75, R.K. Puram. If, at any time, it was in the knowledge of the respondents that the applicant had committed breach of allotment rules, it would be a travesty of rules of fairplay and justice to reward a person who has committed violation of the allotment rules by subletting the earlier allotted premises. Secondly, when a request was made to the respondents to supply the report of the Vigilance Branch or to apprise the basic facts coming to the notice of the respondents which led to the conclusion of subletting, the respondent's rebuffed the written contention of the applicant and coerced him to file a reply to the show-cause notice aforesaid. A person cannot be condemned in secrecy or without being disclosed as to what is to be considered against him. The respondent, as Police Officer, must be aware that any order of punishment cannot be passed without telling the guilty the facts coming against him. Ignoring all rules and canons of justice arbitrarily, an order has been passed punishing the applicant for recovery of licence fee at damage rates. This is not justified.

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6. Otherwise also, a subletting is to be proved as a fact. Subletting consists of the facts which can easily be established either by circumstances or by deposition of persons who have seen some other person sharing the accommodation for consideration in cash, kind, or otherwise. A photocopy of the incomplete alleged Vigilance Branch report has been passed over by the learned Proxy Counsel which has been placed on record. This only goes to show that in Quarter No.P-3/3, which was allotted to Shri Shiv Lal, he only visits the quarter casually. His relatives used to reside there. By no stretch of imagination, it can be said to be subletting. A relative cannot be said to be a sub-tenant unless his sharing of the accommodation brings him within the parameters of well-defined and laid down principles of subletting or sub-tenancy. This Vigilance Branch report does not name the relative or the consideration charged by the applicant in order to give them shelter.

7. I have heard the learned counsel for the applicant at length and I am convinced that the impugned order has been passed without giving any opportunity to the applicant and cannot stand.

8. The application is, therefore, allowed and the impugned order dated 9.1.1992 is hereby quashed and set

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aside, leaving the respondents only to recover the normal
licence fee not already paid by the applicant. Costs on
parties.

S. P. Sharma
(J.P. Sharma)
Member (J)