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Reserved

**Central Administrative Tribunal Lucknow Bench Lucknow**

**Original Application No. 493/10**

**This, the 5<sup>th</sup> day of April, 2013**

**Hon'ble Mr. Navneet Kumar, Member(J)**

Hari Har Singh Yadav, aged about 57 years, son of Sri Chandra Jeet Singh Yadav, resident of E-4/799 Vinay Khand, Gomti Nagar, Lucknow, at present posted as Sub-Inspector in the office of Deputy Narcotics Commissioner B-40, Mandir Marg, Mahanagar, Lucknow.

**Applicant**

**By Advocate Sri Virendra Mishra.**

**Versus**

1. Union of India through its Secretary Ministry of Finance and Revenue, Central Secretariat, New Delhi.
2. Deputy Narcotics Commissioner Central Bureau of Narcotics B-40, Mandir Marg, Lucknow.
3. District Opium Officer Central Bureau of Narcotics Bareilly.
4. District Opium Officer, Tilhar Distt. Shahjahanpur.
5. Shri D. K. Lalwani District Opium Officer Tilhar Distt. Shahjahanpur.

**Respondents**

**By Advocate Sri Rajendra Singh.**

**(Reserved on 2.4.13)**

**Order**

**By Hon'ble Mr. Navneet Kumar, Member (J)**

The present O.A. has been preferred by the applicant under Section 19 of the Central Administrative Tribunal Act, 1985 with the following reliefs:

(a) To quash the impugned recovery of House Rent allowance to the tune of Rs. 68041/- and the decision if any taken in respect thereof by the respondent No. 2 from summoning the same from his office including the order dated 10/11.05.2010 and 10.6.2010 issued

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from the office of respondent No. 2 contained in annexure No. 1 to 3 respectively.

(b) To issue appropriate order or direction commanding the respondent No. 2 to 4 to refund the entire amount recovered from the salary of the applicant w.e.f. June 2010 toward jHouse Rent Allowance in pursuance of the letter dated 10/11.05 2010 and 10.6.2010 issued from the office of respondent No. 2 along with interest.

(c) To issue any such other order or direction in this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(d) To award the cost of original application to the petitioner."

2. The main grievance of the applicant is that a sum of Rs. 68041/- was recovered from applicant towards House Rent allowance whereas, he was not allotted any house in Tilhar where the applicant was posted. The learned counsel for the applicant has also pointed out that this order of recovery was issued without affording any opportunity to the applicant and also against the provisions of Principles of Natural Justice. As such, the same is liable to be quashed.

3. The learned counsel appearing on behalf of the respondents filed their counter reply as well as the supplementary counter reply. The learned counsel for the respondents through his counter reply has categorically pointed out that the respondents have issued an order on 4.12.2009 whereby, it is clear that the applicant, who is at Serial No. 11 of that list, was residing in the rooms of the office campus since his posting at Tilhar. The learned

counsel for the respondents has also submitted through his reply that statement was recorded and the statement is annexed as Annexure CR-2 to the counter reply. But the said statement does not show the name of the applicant. It is also pointed out that the impugned order dated 10/11.5.2010 was duly served upon the applicant and the applicant was asked to give reply and the reply was not given. He was again issued a letter dated 10.6.2010 and the applicant has submitted the representation to that effect only in July 2010. As such, the opportunity was given to the applicant and the applicant cannot say that without giving any opportunity of hearing, the recovery order was issued against the applicant.

4. The learned counsel for the applicant filed their rejoinder reply and through rejoinder reply, once again it was categorically pointed out by the learned counsel that the applicant was never allotted any house at his place of posting at Tilhar and he was not residing in the office campus where as he was residing in a private accommodation and before issuance of any recovery, no show cause notice was given to the applicant. As such, the notice issue against the applicant is liable to be quashed. The learned counsel for the applicant also relied upon few decision of the Hon'ble High Court which are in regard to mainly on the issue that without affording an opportunity of hearing, the recovery or any adverse material cannot be taken into account with affording any opportunity of hearing. The learned counsel for the applicant has also pointed out a judgment passed by this Tribunal in O.A. 376/2010 at Allahabad Bench and also pointed out that the said issue

involved is similar in nature and the applicant is also entitled to get the benefit of the same.

5. Heard the counsel for the parties and perused the record.

6. The applicant was in the government organization and was posted as District Opium Officer at Tilhar. On his transfer in the year 2009 and while he was posted at Tilhar, a recovery was issued against the applicant for over payment of HRA amounting to Rs. 68041/-. The applicant failed to submit any reply to the same. He was again given an opportunity vide letter dated 10.6.2010 and finally the applicant has submitted a representation denying the averments made in the aforesaid notices through his representation dated 13.7.10. In the said representation, the applicant has asked for allotment letter issued in favour of the applicant and apart from this, he has also asked a number of other documents and finally submitted that since he has not been allotted any government accommodation at Tilhar, as such, the recovery so ordered against the applicant is bad in the eyes of law. The learned counsel for the respondents though pointed out the names of 11 persons through his reply, and submitted that all these persons were residing in the room of office campus since their posting in the office the Dy. Norcotics Commissioner Tilhar and has also submitted that the statement were also recorded. But in the said statement, the name of the applicant does not find place anywhere. It is also correct that the representation submitted by the applicant on 13.7.10 is still pending for final adjudication and the same has yet not been decided by the respondents.

7. The bare perusal of the order passed in O.A. 376/10 passing by the coordinate Bench at Allahabad also in regard to one of the person who was working as a District Opium Officer at Tilhar and his name also finds place in the order dated 4.12.2009 which is annexed with the counter reply. The said O.A. was considered by the Tribunal and the Tribunal remanded back the matter to carry out the enquiries. In case any adverse material is drawn and is to be taken into consideration must be given to the delinquent employee and the representation filed by the applicant dated 13.7.2010 is still pending for final adjudication and the respondents fail to communicate the adverse material to the applicant.

8. Considering the averments made by the learned counsel for the applicant, it is clear that the applicant was not given any opportunity of hearing to put up his case though he has not submitted any rental receipts, but the respondents should have given an opportunity of hearing to the applicant before passing the order of recovery.

9. Considering the averments made by the learned counsel for the parties, I am of the considered view that the impugned recovery order dated 10/11.5.2010 as well as order dated 10.6.2010 contained in Annexure No. 1, 2 and 3 of the O.A. are liable to be quashed. Accordingly, the aforesaid orders dated 10/11.5.2010 and order dated 10.6.2010 are quashed. The O.A. is allowed. However, the respondents are at liberty to issue a show cause notices to the applicant and seek his explanation in regard to the recovery of the excess amount of HRA paid to him after giving him full opportunity of hearing to the applicant and pass a reasoned and speaking order. The said exercise may

be done by the respondents within a period of six months from the date of receipt of copy of this order. .

10. With the above observation, O.A. stands allowed. No order as to costs.

VR Agrawal  
(Navneet Kumar)  
Member (J)

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