

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1443-2013 (O&M)

Date of Decision:-09.02.2018.

Haryana Urban Development Authority (HUDA) and another

.....Appellants

Versus

Surbhi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mrs. Geeta Sharma, Advocate for the appellants.

Mr. Naveen Daryal, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, appellants have questioned the validity of decree as well as Appellate Authority order dated 03.08.2010 and 26.09.2012, respectively.

(2.) Respondent-deceased employee was subjected to disciplinary proceedings and it was ended in imposing the penalty of stoppage of 4 annual increments with cumulative effect along with recovery of amount of ₹ 3,33,790/-. Deceased-Harsh Wardhan Sharma failed to exercise remedy of appeal and filed a suit questioning the order of penalty. Suit was decreed. Consequently, appellants have preferred appeal before the Appellate Court. Appellate Court affirmed the order of the decree.

(3.) Learned counsel for the appellant pointed out error committed by the Appellate Court to the extent that there is a finding that inquiry was held in accordance with law. Sufficient opportunity had been given to the deceased employee and the same was not availed by him. Further Appellate

Court held that appellants are not empowered to impose 2 penalties simultaneously. To that extent there is an error committed by the Appellate Court. Consequently, decree as well as Appellate Court order dated 03.08.2010 and 26.09.2012, respectively are liable to be set aside.

(4.) Per contra, learned counsel for the respondents submitted that suit was decreed in favour of the deceased employee. Appellate Court has rightly considered the appellant's appeal. It was further contended that disciplinary authority failed to pass a speaking order to the extent in not considering the plea raised by him against the show cause notice dated 12.08.2003. Therefore, there were no infirmities in the decisions of the Court below. Appellant has not made out a case to interfere.

(5.) Heard learned counsel for the parties.

(6.) Short question for consideration in the present appeal is whether disciplinary authority has passed a speaking order or not. Disciplinary authority order dated 20.08.2004 reads as under:-

**“HARYANA URBAN DEVELOPMENT AUTHORITY
OFFICE ORDER**

No.EA-5-2004/28314

Dated 20.08.2004

Sh. Harshvardhan Sharma, Clerk while working in the office of Executive Engineer, HUDA Division Karnal was charge sheeted under rule-7 of P&A Rules, 1987 vide this office memo No.EA-5-1999/28931 dated 10.09.1999 on the following counts:-

1. Sh. Harshvardhan Sharma, Clerk embezzled amounting to Rs.3,33,789.70 by way of adopting fraudulent measures with ulterior motives.

2. Sh. Harshvardhan Sharma, Clerk deliberately defaulted to maintain proper account of collection against bills for water and sewerage charges

and made attempt to conceal embezzled amount of Rs.75,138/- which was got deposited on detection of fraud.

3. Sh. Harshvardhan Sharma, Clerk also got printed duplicate receipt books No.11435,10868,13058, and 11460 of his own under malafide intention emanating to embezzle heavy amount and to fabricate record to cover up misdeeds.

4. In violation of Rule 2.4 of PFR Vol.1 (Part 1), Sh. Harshvardhan Sharma, Clerk failed to make necessary entries of daily receipts in the Cash Book and to deposit the same in the Bank on the same day, which shows his malafide intention to defraud HUDA.

5. Sh. Harshvardhan Sharma, Clerk kept the record of Receipt books with him for months together with a view to keep his misdeeds hidden. In addition to this, he also made fraudulent and wrong entry in the register of Receipt books in certain cases, which is a grave act of falsification and tampering with record with mischievous intentions to defraud HUDA.

6. Sh. Harshvardhan Sharma, Clerk has absolutely failed to discharge his official duty honestly and in a responsible manner and the way he has acted pinpoints his doubtful integrity.

After consideration of his defence reply, the Superintending Engineer, HUDA, Karnal was appointed as an Enquiry Officer on dated 16.2.2001 to hold a regular enquiry against Sh. Harshvardhan Sharma. The Enquiry Officer submitted his report. The Enquiry Officer has held Sh. Harshvardhan Sharma, Clerk guilty of all charges stand proved. After examining the related record and finding of the enquiry report, the delinquent official was served a show cause notice on 12.8.2003

proposing the punishment of “termination of services” and recovery of embezzled amount. The official submitted his reply against the proposed punishment wherein he has denied the allegations. He was given an opportunity of personal hearing by the undersigned on 13.10.2003, 26.4.2004 and in the month of May, 2004. But delinquent failed to turn up for personal hearing on any of the dates. He submitted a representation requesting therein that enquiry may be got conducted from another officer. All this proved that he was deliberately evading the hearing with some vested purpose and delaying the case without any cogent reasons.

Therefore, keeping in view the facts and circumstances of the case, I have arrived at the conclusion that Sh. Harshvardhan Sharma, Clerk is responsible for embezzlement of HUDA funds and tampering with the record. However, being the proposed punishment on higher side the case needs to be decided by taking a lenient view. Hence, the punishment of stoppage of four annual increments with cumulative effect along with the recovery of embezzled amount of Rs.3,33,790/- is hereby awarded to Sh. Harshvardhan Sharma, Clerk to meet the end of justice.

I order, accordingly.

Sd/-

(N.C. WADHWA)

*Chief Administrator, HUDA, Panchkula,
Panchkula.*

*Sh. Harshvardhan Sharma, Clerk
O/o S.E. HUDA, Karnal”*

Perusal of the disciplinary authority order, it is evident that he has extracted allegations and consequential events like appointment of Inquiry Officer, issuance of show cause notice, reply etc. However, there is

12.08.2003. It was issued along with the Inquiry Officer's report. Rightly or wrongly some contentions have been raised by the respondent-deceased employee. The same has not been considered by the disciplinary authority as is evident from the order. The very object of issuance of show cause notice and furnishing Inquiry Officer's report and seeking explanation on the Inquiry Officer's report and its non-consideration would defeat the principle of natural justice to the concerned employee. It is not an empty formality of issuance of show cause notice and seeking explanation on the Inquiry Officer's report. Therefore, order dated 20.08.2004 is liable to be set aside. Thus, there is no infirmity in the decree. No doubt Appellate Court has dismissed the appellant's appeal on a different ground that 2 penalties cannot be imposed simultaneously, even that issue is not taken into consideration, on the ground of non-speaking of the disciplinary authority dated 20.08.2004 is liable to be set aside. It is to be noted that legal heirs of the deceased employee are on record. Therefore, at this stage, it is not appropriate to remand the matter to the disciplinary authority to pass a fresh order while considering the deceased employee's reply on the show cause notice dated 12.08.2003 with reference to Inquiry Officer's report. Thus, appellants have not made out a case.

Appeal stands dismissed.

(P.B. BAJANTHRI)
JUDGE

February 09, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.