

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.233 of 1992(O&M)
and XOBJC-13-C-1992
Date of Order:13.09.2023**

State of Haryana and another

.Appellants

Versus

R.K.Jindal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaspal Singh Pannu, AAG, Haryana

**Mr. Gurinder Jit Singh, Advocate
for the respondent.**

ANIL KSHETARPAL, J

1. This order shall dispose of Regular Second Appeal No.233 of 1992 and the Cross Objection No.13-C of 1992.
2. This is the defendants' appeal (State of Haryana) against the judgment and decree passed by the First Appellate Court while reversing the judgment and decree passed by the trial Court.
3. In substance, the plaintiff's suit for grant of decree of declaration that the order passed by the Joint Secretary to Government of Haryana, on 05.03.1985, is illegal, null and void. At the relevant time, the plaintiff was posted as a Junior Engineer. He was entrusted with the construction of a public toilet in as many as 17 villages. Thereafter, on 03.08.1982, he was transferred from Thanesar to Uchana Block. A charge-sheet was issued to the plaintiff with the allegations that he has misappropriated a sum of Rs.24,395/-. It is alleged that the plaintiff failed to maintain the day-book regarding the entries of the stock and also failed to record the entries in the measurement book. An Inquiry Officer was

appointed for conducting the disciplinary proceedings. After completion of the inquiry proceedings, the Inquiry Officer reported that the department has failed to substantiate the charges against him. Thereafter, the disciplinary authority while disagreeing with the report of the Inquiry Officer imposed punishment of stoppage of two annual increments with cumulative effect apart from ordering recovery of Rs.24,395/-. This order was the subject matter of challenge before the civil Court.

4. The trial Court dismissed the suit, however, the First Appellate Court on re-appreciation of the evidence found that the plaintiff was not given an opportunity of hearing by the disciplinary authority even when the said authority was proposing to disagree with the report of the Inquiry Officer. Thus, the First Appellate Court reversed the judgment and decree passed by the trial Court.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book as well as the requisitioned record.

6. The learned counsel representing the appellant-State of Haryana submits that the First Appellate Court has erred in reversing the judgment as the plaintiff was granted a proper opportunity during the disciplinary inquiry. He submits that the disciplinary authority has the enabling power to disagree with the report of the Inquiry Officer and therefore, the First Appellate Court has erred in passing the decree.

7. This court has considered the submissions of the learned counsel representing the appellant.

8. It is evident that the First Appellate Court has held that the disciplinary authority before disagreeing with the inquiry report was

required to afford an opportunity of hearing to the charge-sheeted officer. In fact, the reasons which are sought to be made the basis of such disagreement are required to be brought to the notice of the charge sheeted employee to enable him to furnish his comments. This is in consonance with the principles of natural justice. Moreover, it has come on record that the plaintiff was transferred from Thanesar to Uchana Block and he was asked to leave the charge immediately. At that time, the construction work assigned to him was not complete. He came from Uchana to hand-over the charge to Sh. Madan, who had taken over in his place, however, Sh. Madan avoided taking over the charge. The efforts made by the plaintiff through the Superintending Engineer to hand-over the charge did not succeed. In such circumstances, the First Appellate Court has considered it appropriate to set aside the order of imposing penalty of Rs.24,395/- while granting liberty to the State of Haryana to pass a fresh appropriate order if the law permits, after affording an opportunity of hearing to the charge-sheeted officer.

9. In the cross-objections, the plaintiff claims that the First Appellate Court has erred in maintaining the punishment of stoppage of two annual increment with cumulative effect which was also imposed by a common order dated 05.03.1985 and 24/25.11.1986. He submits that if one part of the order is illegal, then the second part which is also made on the same basis cannot be upheld.

10. This court has considered the submission of the learned counsel representing the cross-objector.

11. The First Appellate Court has not drawn any distinction between the penalty of stoppage of two annual increments with cumulative

effect and the recovery of Rs.24,395/-. The charge and the inquiry was common. Even the order passed by the punishing authority which was upheld in appeal was also common. Thus, there was a failure on the part of the disciplinary authority to follow the proper procedure.

12. Keeping in view the aforesaid facts and discussion, the appeal filed by the State is dismissed and the cross-objections are allowed. The punishment of stoppage of two annual increments with cumulative effect is also set aside.

13. All the pending miscellaneous applications, if any, are also disposed of.

September 13, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO