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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 187/2025, CM APPLs. 14285/2025 & 14286/2025

EDCIL INDIA LTD .....Appellant

Through: Mr. Saurabh Mishra, Ms. Aashnaa Bhatia, Mr. Abhinav Pandey and Mr. Shrimay Mishra, Advs.

versus

G L SAGAR .....Respondent

Through: Mr. S.D. Singh, Mr. K. Prasad, Ms. Meenu Singh and Mr. Siddharth Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 10.03.2025

C. HARI SHANKAR, J.

1. This appeal under Clause X of the Letters Patent applicable to this Court challenges judgment dated 31 January 2025, passed by a learned Single Judge of this Court in WP (C) 10023/2016[1].

2. The services of the respondent, who was working as General Manager (Project Executive) with EDCIL (India), was terminated by order dated 1 April 2003. He challenged the said termination before this Court by way of CWP 3009/2003. While the writ petition was

[1] **G. L. Sagar v EDCIL (India) Ltd**.

pending, the appellant, *vide* order dated 4 February 2004, withdrew the termination order dated 1 April 2003 and permitted the respondent to join duty on 6 February 2004. In the circumstances, CWP 3009/2003 was disposed of as infructuous on 25 February 2004. This Court also directed that the respondent be paid his wages for the period 1 April 2003 to 6 February 2004 as per applicable Rules.

3. The appellant again issued a charge memo to the respondent on 9 April 2004 which was challenged by the respondent before this Court by way of WP (C) 6755/2004. By order dated 12 January 2005, this Court disposed of the said WP (C) 6755/2004 with the consent of parties, appointing a retried Additional District and Sessions Judge as Inquiry Officer[2] to inquire into the charges against the respondent.

4. The IO, *vide* his inquiry report dated 18 June 2005, held that the charges against the respondent were not proved. Accordingly, the respondent was permitted to join duty.

5. The respondent was, thereafter, once again proceeded against, by being placed under suspension by the appellant *vide* order dated 12 January 2007. This was followed by a charge sheet dated 3 April 2007, issued under Rule 25 of EDCIL (Conduct, Discipline and Appeal) Rules, 2003[3].

6. For the purposes of the present order, it is not necessary to enter into the specifics of the charges against the respondent. Suffice it to

[2] "IO", hereinafter
[3] "the 2003 Rules", hereinafter

state that the IO, appointed to inquire into the charges against the respondent, tendered his inquiry report on 6 June 2008, holding Article-I (i), (iii) and (iv) as 'not proved' and (ii) as 'proved'; Article-II as 'proved'; Article-III as 'partially proved with the finding that the respondent could not be blamed entirely for the allegations levelled'; Article-IV as 'not proved'; Article-V 'there was no evidence that CO called Motwani a murderer'; Article-VI as 'proved'; Articles-VII and IX 'while the CO should have attended office on 11 December 2006 and his declaration that Management had resorted to illegal lock out is incorrect, his absence of 01 day only does not deserve to be viewed as a serious misconduct, allegation that CO prevented other employees from entering office is not substantiated'; and Article-VIII as 'not proved'.

7. A copy of the inquiry report was provided to the respondent, who represented against the inquiry report on 18 July 2008. By order dated 9 September 2008, the Chairman and Managing Director[4] of the appellant, in his capacity as the Disciplinary Authority[5] of the respondent, imposed, on the respondent, the penalty of dismissal from service with immediate effect, under Rule 25 of the 2003 Rules, with a further direction that the period of suspension from 12 January 2007 to 9 September 2008 would not be treated as having been spent on duty. The respondent preferred a statutory appeal against the said order under Rule 32 of 2003 Rules. The appeal was dismissed by the Appellate Authority *vide* order dated 20 February 2009, without granting any hearing to the respondent.

[4] "CMD", hereinafter
[5] "DA", hereinafter

8. Aggrieved thereby, the respondent re-approached this Court by way of WP (C) 11487/2009, which was disposed of, by this Court, on 31 August 2015. Among the contentions of the respondent which found favour with this Court was the plea that, before penalising the respondent with dismissal from service, the DA did not issue a disagreement note, as required by the judgments of the Supreme Court in, ***Yoginath D. Bagde v State of Maharashtra***[6] and ***Punjab National Bank v Kunj Behari Misra***[7].

9. Accordingly, this Court remanded the matter to the DA to issue a note of disagreement to the respondent, in respect of the charges which were found by the IO not to have been proved and with which he proposed to disagree, with liberty to pass a fresh order. The appellant filed LPA 111/2016 against the aforesaid order, which was dismissed by the Division Bench on 19 February 2016. SLP (C) 7569/2016, preferred thereagainst, was also dismissed by the Supreme Court on 29 March 2016.

10. Accordingly, the appellant issued Office Order dated 6 April 2016 to the respondent, directing him to report for duty on 7 April 2016. He did so, and re-joined duty.

11. Purportedly in accordance with the liberty granted by this Court, the DA issued a disagreement note to the respondent on 5 May 2016, seeking a reply from the respondent. The respondent replied on

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[6] **(1999) 7 SCC 739**
[7] **(1998) 7 SCC 84**

23 May 2016. The DA, thereafter, by order dated 28 May 2016, once again imposed the penalty of dismissal from service on the respondent under Rule 34 of the 2003 Rules. An appeal, preferred thereagainst, by the respondent, was dismissed on 7 September 2016, provoking the respondent to approach this Court by means of WP (C) 10023/2016, in which presently the impugned order has come to be passed.

12. The learned Single Judge has arrived at the finding that the disagreement note dated 5 May 2016, issued to the respondent by the DA, was not tentative in nature, as required by ***Kunj Behari Misra*** and ***Yoginath D. Bagde*** and other decisions, but amounted to pre-deciding the issue, and arrived at conclusive findings of guilt on the part of the respondent. Paras 18 to 23 of the impugned judgment merit reproduction and read thus:

> "18. From a reading of the aforesaid judgments, it is crystal clear that in the Disagreement Note, the DA can only render a tentative opinion and not a final one as rendering a final opinion at this stage would be pre-judging the issue and the representation of the delinquent employee against the Disagreement Note would be an empty formality. I may now examine the Disagreement Note dated 05.05.2016 in light of the aforementioned judgments. Against Article of Charge-I (iv), DA has observed 'As such, the charge that CO failed to maintain dignity & prestige as Project Manager in the eyes of the Ministry as client stands established and I, thus, disagree with the findings of the Inquiry Authority.' In respect of Article of Charge III, it was observed 'In view of the above, the comments of the Inquiring Authority that others were also responsible does not hold water when the primary responsibility as the coordinator/incharge was that of the CO. This specific finding against the CO thus cannot absolve him, who was a General Manager, from his responsibility in the matter. The Charge is, therefore, fully established.' In respect of Article of Charge-IV, it was observed 'Hence, Inquiring Authority's mention of his performance as OK is with reference to in-house training in NIAW, as discussed in charge no. I, which is technically not related to the Charge no. IV. The Inquiring Authority's comment that "results in domestic training are OK" is, therefore, incorrect with regard to

this charge and thus, his conclusion for domestic training is not correct. Hence, the charge as set out in Article IV stands fully established.'

19. Further, against Article of Charge-V, DA has rendered a finding that it is apparent that image of the Corporation and Management was considerably tarnished and the charge is proved beyond doubt and having agreed with the IO on this aspect, DA came to a final conclusion that Petitioner called Mr. Motwani a murderer. It is evident from the Disagreement Note that at various places, the DA has used expressions such as 'proved beyond doubt', 'clearly indicates', 'crystal clear that the action of the Petitioner was planned and concerted'. It is also observed that as per record of evidence, it is 'proved beyond doubt that Petitioner instigated the employees on 08.12.2006 and 11.12.2006 which vitiated the atmosphere of the office'. In a nut-shell, the tone and tenor of the Disagreement Note leaves no manner of doubt that the opinion of the DA was not tentative but conclusive and final and therefore, learned counsel for the Petitioner is correct in his submission that the exercise of calling the Petitioner to represent was a mere eye-wash and an exercise in futility. Insofar as the last paragraph of the Disagreement Note is concerned, in which it is stated that before taking a final decision, the DA would give an opportunity to the Petitioner to represent and on which much emphasis was laid by the counsel for the Respondents is concerned, the contents of this paragraph are generally found in all Disagreement Notes and it may not be incorrect to state that this is a standard format. But the fact remains that merely stating that the decision is not final, cannot take away from the actual tenor of the conclusions drawn by the DA, leaving no scope for any change in the opinion on a representation by the Petitioner.

20. There is thus a serious taint in the Disagreement Note as the DA had rendered a conclusive and final opinion while penning down the Note and this is in the teeth of the judgment in ***Yoginath D. Bagde***, wherein the Supreme Court held that where the Disciplinary Authority disagrees with the finding of the IO, a tentative reason for disagreement has to be recorded and a final decision can be taken only after giving a chance to the delinquent employee to represent his case on the reasons that weighed with the DA to disagree with the IO. This taint and defect, to my mind, vitiates the Disagreement Note and the consequential penalty order and is incapable of being rectified by a post-decisional hearing. In this view, I find strength from the judgments of Division Benches of this Court in ***R.K. Chauhan v UOI & Ors***[8], and ***Nasimuddin Ansari v Union of India and Others***[9].

[8] **2011 SCC OnLine Del 664**
[9] **2023 SCC OnLine Del 4623**

21. Relevant paragraphs from the judgment in ***Nasimuddin Ansari*** are as follows:-

> "**V. Predisposed mindset in the Tentative Disagreement Note.**
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> 88. The petitioner has also assailed the Tentative Disagreement Note by stating that it is in the nature of a Final Order which displays the predisposed mindset of respondent no. 1. Reliance has been placed on the judgment of this court in ***Laxman Prasad***[10] to aver that Disagreement Note must be tentative in nature and can in no way indicate conclusiveness, which would render it liable to be quashed. Such conclusiveness implies that the Disciplinary Authority has pre determined their decision rendering the right of the charged officer to submit their representation against the Disagreement Note to be an empty formality, which is in turn violative of the principles of natural justice.
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> 90. In the instant case, the Disciplinary Authority, in their Tentative Disagreement Note dated 11.07.2017, has interfered with the findings of the Inquiry officer i.e. "charges not proved" by stating that "Article-II appears as proved". The respondent no. 1 has not only displayed its inclination but also provided the final conclusion in the matter. Any opportunity afforded to the petitioner after such conclusion is only a post decisional opportunity and is violative of the rules of natural justice."

22. It is pertinent to note that in the earlier round of litigation, when W.P. (C) 11487/2009 was allowed on 31.08.2015, remanding the matter back to DA on the ground that no Disagreement Note was issued, the Court had carefully and cautiously extracted relevant passages from the judgment of the Supreme Court in ***Yoginath D. Bagde*** and the judgment of the Division Bench of this Court in ***K.C. Sharma***[11], which clearly lay down that Disagreement Note must be tentative, yet the DA chose to issue the impugned Disagreement Note with a final opinion, completely oblivious of the settled law and the judgment dated 31.08.2015. This only sheds light on how adamant the Disciplinary Authority was to implicate the Petitioner. In my view, the impugned Disagreement Note cannot be sustained in law.

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[10] **Union of India v Laxman Prasad, 2019 SCC OnLine Del 9027**

[11] **K.C. Sharma v BSES Yamuna Power Limited, 2015 SCC OnLine Del 8125**

> 23. Accordingly, the writ petition is partially allowed, quashing the impugned order dated 07.09.2016, Disagreement Note dated 05.05.2016 and penalty order dated 28.05.2016. Matter is remanded back to the Disciplinary Authority for issuing a fresh Disagreement Note, in case the Disciplinary Authority decides to proceed against the Petitioner at this stage. The Disagreement Note and further proceedings will be in consonance with the principles elucidated by the Supreme Court in the aforementioned decisions. If the Petitioner is aggrieved by the decision taken, he will be at liberty to take recourse to legal remedies. It is made clear that if the Disciplinary Authority decides to proceed, the entire exercise will be completed within two months from today, considering the number of years that have elapsed and the number of litigations Petitioner was compelled to undertake. It is also made clear that this Court has not expressed any opinion on the merits of the case."

13. Aggrieved by the aforesaid decision, the respondent before the learned Single Judge, EDCIL India Ltd., has approached this Court by means of the present appeal.

14. We have heard Mr. Saurabh Mishra, learned Counsel for the appellant and perused the record.

15. Mr. Mishra contends that the learned Single Judge was in error in holding that the disagreement note pre-decided the guilt of the respondent and that, as the respondent had been provided an opportunity to respond against it, the observations in the disagreement note were only required to be treated as tentative.

16. The paragraphs from the judgment of the learned Single Judge, reproduced hereinabove, do not persuade us to accept this submission. The manner in which the disagreement note was worded, particularly the words from the disagreement note which the learned Single Judge has correctly extracted, indicate that the DA had made up his mind

regarding the guilt of the respondent, and that the extending of an opportunity to the respondent to represent against the disagreement note was nothing more than lip service to the principles of natural justice and the law laid down by the Supreme Court in that regard.

17. A disagreement note must only convey disagreement and nothing else. It has to be tentative in nature. The DA has to bear in mind the fact that the charged officer has, to his credit, favourable findings by the IO. The disagreement note only voices disagreement with the said findings. Ideally, the disagreement note must only indicate why the DA disagrees with the findings of the IO, which would require the note to point out the infirmity in the findings of the IO, as is perceived by the DA. It is only then that the employee would be aware of the reason for the DA choosing to adopt a view contrary to that of the IO, and have an opportunity to disabuse the DA in that regard. If the note indicates that the disagreement is not a mere disagreement but an *a priori* decision that the findings of the IO are incorrect and that the charged officer is guilty, it loses his character as a disagreement note. It becomes a mere formality of affording the charged officer a chance to represent, before arriving at a conclusion, resulting in an outcome, which is pre-determined.

18. Besides, the entire idea of requiring a disagreement note to be issued, as conceptualised by the Supreme Court, was to ensure that there is complete compliance with the principles of natural justice and fair play. One of the essential ingredients of this would be that the charged officer has to be confident that he would be given a fair hearing and a fair opportunity by the DA. If the disagreement note

issued by the DA already proclaims the charged officer to be guilty, the very purpose of issuing the disagreement note is lost, and it cannot be said that there is any compliance with natural justice. The very *raison d' etre* of requiring a disagreement note to be issued, gets eroded thereby.

19. The disagreement note dated 5 May 2016, issued by the DA in the present case, was clearly not tentative in nature and, therefore, cannot be regarded as a disagreement note within the meaning of the decisions in ***Kunj Behari Misra*** and ***Yoginath Bagde***.

20. That apart, we do not understand why the appellant has even approached this Court in the present case. The learned Single Judge has not exonerated the respondent. All that the learned Single Judge has done is to direct the DA to issue a fresh disagreement note, in accordance with the law, and proceed thereafter.

21. Every order, we may remind the authorities, need not be challenged.

22. This appeal is, therefore, in our view, a needless exercise which has unnecessarily taken up Court time, and protracted the exercise of compliance with the direction issued by the learned Single Judge.

23. We find no merit in the present appeal which is accordingly dismissed.

24. The time granted by the learned Single Judge to the DA for

issuing a fresh disagreement note stands extended by eight weeks from today.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 10, 2025*/aky*

Click here to check corrigendum, if any