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

% *Date of Decision: 31st January, 2025*

\+ W.P.(C) 10023/2016

G L SAGAR .....Petitioner

Through: Mr. S.D. Singh, Mr. Kamla Prasad, Mrs. Meenu Singh, Mr. Siddharth Singh and Ms. Shweta Sinha, Advocates.

versus

EDCIL (INDIA) LTD AND ANR .....Respondents

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

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition is preferred on behalf of the Petitioner laying a challenge to order dated 07.09.2016 passed by the Appellate Authority as also Disagreement Note dated 05.05.2016 issued by Respondent No.2. Writ of mandamus is sought for a direction to the Respondents to reinstate the Petitioner on the post of Chief General Manager with consequential benefits.

2. Factual matrix to the extent necessary is that Petitioner joined Respondent No.1/EDCIL (India) Ltd. and was promoted to the post of Manager in 1993 on which post he continued till March, 1995 when he was selected as Manager (Project Executive). In 2000, Petitioner was selected to the post of GM (Projects) and was confirmed on the post in July, 2001.

3. Petitioner avers that his services were suddenly terminated vide order dated 01.04.2003 which order was challenged by him in writ petition being CWP 3009/2003 before this Court. On 27.01.2004, matter was adjourned to 25.02.2004 by the Court, observing that if no counter affidavit was filed, allegations of the Petitioner will be treated as correct and writ will be disposed of on the next date. Before the next date of hearing, Respondents passed an order on 04.02.2004 withdrawing the termination order dated 01.04.2003 and Petitioner was permitted to join on 06.02.2004. In view of this order, writ petition was disposed of on 25.02.2004 as infructuous and Respondents were directed to pay to the Petitioner his wages w.e.f. 01.04.2003 to 06.02.2004 as per the applicable rules.

4. On subsequent applications being filed by the respective parties, the Court reiterated its direction to the Respondents to pay to the Petitioner his entire salary and emoluments within 07 days with interest @ 9% for the delay in payment vide order dated 27.04.2004. Respondents again issued a charge memo challenging which Petitioner filed W.P. (C) 6755/2004 on ground of *mala fide* and bias of Respondent No.3 therein, relying on some past events. Writ petition was disposed of on 12.01.2005 wherein with the consent of the parties, Court appointed Sh. R.S. Arya, Additional District & Sessions Judge (Retired) as the Inquiry Officer ('IO') with a direction to complete the inquiry within 08 weeks.

5. Sh. R.S. Arya, IO, rendered his report on 18.06.2005 concluding that Petitioner deserved to be absolved of the Articles of Charges. Petitioner joined Respondent No.1 on 29.07.2005 and started discharging his duties. One Sh. V. Arulmuthan, Deputy Manager, committed suicide during the intervening night of 07/08.12.2006 at his residence and as per the Petitioner,

this gave a ground to the CMD to implicate the Petitioner and he issued a suspension order dated 12.01.2007. A charge sheet was issued on 03.04.2007 under Rule 25 of ED.CIL's (Conduct, Discipline and Appeal) Rules, 2003 ('2003 Rules'), with the following Articles of Charges:-

> *"STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SH. G.L. SAGAR, GENERAL MANAGER (PROJECTS), ED.CIL (UNDER SUSPENSION):-*
>
> *Article I*
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> *Sh. G.L. Sagar, General Manager (Projects),Ed. CIL, while working as incharge of the National Institute of Animal Welfare (NIAW), Ballabhgarh, Faridabad, during August 2005 to 12.01.07 was required to manage the prestigious project of National importance as per terms 85 conditions of Memorandum of understanding. However, Sh. Sagar as Porject Manager failed to perform to the satisfaction of the client due to his rude and abrasive behavior and the client had to request for his replacement. He failed on following accounts:*
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> *i. He failed to perform & manage NIA project at Ballabhgarh properly -*
>
> *ii. He failed to maintain 3 telephones at NIAW in working order from Sep, 2006 to 12th Jan, 2007 (the date he was placed under suspension) by ensuring timely payments of telephone bills as mentioned in the letter dated 18.1.07 from Sh.S.K. Sharma . These telephone were installed in June, 2006 activated in July 2006 and disconnected in Sep, 2006 due to non-payment of bills and could not be activated till 12.01.07, the date of his suspension.*
>
> *iii. He failed to provide first aid facilities to meet with the urgent and essential requirement at NIAW.*
>
> *iv. He failed to maintain dignity 85 prestige as Project Manager in the eyes of client as is evident from the letters no. 20-6/03-AWD from Director (AW), Ministry of Environment & Forests, dated 10.11.06.*
>
> *He thus, failed to maintain absolute devotion to duty and acted in a manner unbecoming of Ed. CIL's employee and he thus violated Rule 4.1(ii), 5(5) & 5(9) of Ed. CIL's (Conduct Discipline 85 Appeal) Rules, 2003.*
>
> *Article II*
>
> *Sh. G.L. Sagar, General Manager (Project), Ed. GIL, while working as such during the year 2006-2007 was assigned the task of finalization of a Disciplinary case of Sh. Uma Shankar, messenger, on 18.07.06 and all relevant required papers /information were made available to him on*

24.08.06 for his final orders. He kept the file pending with him from 24.08.06 to 12.01.07 (the date of his suspension) i.e. for more than 4 and half months without any valid reasons/ justification. He thus, failed to fulfill his official responsibilities, (Illegible) or his devotion to duty and violated Rule 4.1 (ii) (iii) 5(5) 85 5(9) of Ed. CIL's (Conduct Discipline 85 Appeal) Rules , 2003.

Article III

Mr. G.L. Sagar while working as General Manager (Projects) Ed. GIL, was nominated as the overall in charge for organizing various events/(Illegible) he Silver Jubilee Celebrations in 2006. He failed miserably to provide, proper initiative/ leadership with the result that the following activities could not be pushed through:-

i) The final function could not be held in the month of February, 2007 as per the schedule.

ii) Film on the achievements of Ed. CIL during the last 25 years was not prepared.

iii) An attractive and presentable booklet could not be printed for being distributed to the guests and clients attending the function.

iv) A new Logo of Ed. CIL, as proposed could not be designed through Logo competition for being launched to mark the occasion.

v) An attractive Momento could not be selected and given to all the employees of the Company.

vi) The awards to the employees on the basis of approved parameters could not be instituted.

vii) The possibility of assisting, some groups/organizations, which are not getting any grants/ funding from the Government/NGO, in the field of education as an attempt to take up Corporate responsibility was not explored.

He thus failed to maintain absolute devotion to duty and acted in a manner unbecoming of Ed. CIL's employee and he thus violated Rules 4.1 (ii), (iii) & 5(9) of Ed. CIL's Conduct Discipline & Appeal Rules, 2003.

Article IV

Sh. G.L. Sagar, while working as General Manager (Projects), Ed. CIL during 2006 was made incharge of Training Division and assigned work of development of domestic training. He was also required to capture very prestigious international technical assistance assignments/ projects including those of Asian Development Bank but he failed to make any progress in both these projects towards his achievements upto 12.01.07 (the date of his suspension, dispite reminders by CMD during quarterly review meeting held on 17.10.2006. He thus, failed to maintain

absolute devotion to duty and acted in a negligent manner and violated Rules 4.1 (ii) 85 5(9) of Ed. CIL's (Conduct Discipline 85 Appeal) Rules , 2003.

Article V

Sh. G.L. Sagar, General Manager(Projects), Ed, GIL, while working as such of 8th Dec.06 failed to act as a responsible senior executive of the level of General Manager to advise Ed. CIL's employees to maintain peaceful and disciplined behavior at the occasion of unnatural death of an officer, Sh. K.V. Arulamuthan, at Fine Home Apartments, Mayur Vihar I, on 08.12.06 and not to raise false and baseless accusations in public instead of exercising restraint 85 decorum he himself indulged in slogan shouting, calling Mr. Motwani, Director(T)/CVO murderer and demanding his arrest and making other false accusations against hi. Mr. Motwani had sought certain clarifications from some employees as part of his duties sh. Sagar, thus, (Illegible) the image & prestige of the organization and tried t obstruct vigilance working and demoralize CVO for performing his official duties. He thus, not only committed grave misconduct, himself but also supported other employees to commit same misconduct and violated Rules 4.1 (iii), 4(2) & 5(20) of Ed. CIL's (Conduct Discipline 85 Appeal) Rules , 2003.

Article VI

Sh. G.L. Sagar, while working as General Manager (Projects) Ed. GIL, during Dec. 2006. Committed grave misconduct in as much as that he talked to the media persons on 08.12.2006 at the Fine Home Apartment's Complex criticizing and blaming Mr. A.K. Motwani, D(l)7 CVO for harassing Mr. Arulamuthan and creating such an atmosphere which led to Mr. Arulamuthan committing suicide. He critically blamed Mr. Motwani for instituting false cases against 5-6 other employees , causing mental torture and harassment them. These statements are not correct and are false. It amounts to criticism of the action of the company. He, thus committed misconduct and acted in indisciplined manner and as such violated Rules 4.1 (ii), (iii), 5(20) & 9 of Ed. CIL's (Conduct Discipline & Appeal) Rules , 2003.

Article VII

Shri G.L. Sagar, General Manager (Projects) Ed. CIL, while working as such during December, 06 committed gross misconduct in as much as that he absented himself from duty on 11.12.06 in an unauthorized manner willfully in pursuance with the concerted action alongwith a group of other employees, which tantamount to illegal strike. He ignored CMD's instructions asking all the employees including him to resume duties. He also prevented other employees from attending the office, creating an atmosphere of fear among the employees. He thus, committed misconduct

and violated Rules 4.1(ii), (iii), 5(5) and 5(18) of Ed. CIL's (Conduct Discipline & Appeal) Rules , 2003.

Article VIII

Sh. G.L. Sagar Manager (Projects) Ed. GIL, while working as such on 12.12.06 showed total disrespect to his deceased colleague officer. Sh. K.V. Arulamuthan and he did not attend condolence meeting at 1600 hrs. on 12.12.06 to condole his sad demise. The notice for condolence meeting was displayed on 11.12.06. He, thus, acted in a manner showing no regard or feeling to even dead colleague &, thus violated Rules 4.1 (iii) of Ed. CIL's (Conduct Discipline & Appeal) Rules , 2003.

Article IX

Sh. G.L. Sagar, General Manager (Projects), Ed. GIL, while working as such during Dec, 06 committed grave misconduct in as that in the joint letter dated 11.12.06 to Jt. Secretary (DL), Ministry of Human resource Development, & copy endorsed to Asst. Labour Commissioner, Noida & Chief Labour Commissioner (Central) he made false and baseless allegations against Ed. CIL Management for resorting to lockout in Ed. CIL's office on 08.12.06. On inquiry by the Asst. Labour Commissioner, Noida. It was found by him that there was no lock out in Ed. CIL on 08.12.06. He, thus, acted in a manner unbecoming of Ed. CIL and committed act of subversive of discipline and good behavior and violated Rules 4.1 (iii), 5(20) & 5(22) of Ed. CIL's (Conduct Discipline & Appeal) Rules , 2003."

6. Petitioner avers that during the inquiry, several irregularities were committed, such as, non-supply of relevant documents relied upon by the prosecution as also not permitting the Petitioner to examine 04 defence witnesses, one of them being Sh. A.K. Srivastava who was a crucial witness. Nevertheless, Petitioner submitted his written arguments and the IO rendered his report on 06.06.2008 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 Petitioner 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*

11.12.2006 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. Petitioner made a representation against IO's report on 18.07.2008 and vide order dated 09.09.2008, CMD of Respondent No.1 i.e. Disciplinary Authority ('DA'), exercising power under Rule 24 of 2003 Rules imposed major penalty of '*dismissal from service with immediate effect*' on the Petitioner under Rule 25 thereof, with a further direction that period of suspension from 12.01.2007 to 09.09.2008 will not be treated as period spent on duty and Petitioner will not be entitled to pay and allowances over and above the subsistence allowance already paid.

8. Petitioner filed a statutory appeal on 07.10.2008 against the dismissal order under Rule 32 and the same was dismissed vide order dated 20.02.2009 without granting any personal hearing to the Petitioner. Aggrieved by the dismissal and appellate orders, Petitioner filed W.P. (C) 11487/2009, which was disposed of on 31.08.2015 after hearing. One of the grounds raised by the Petitioner in the said writ petition was that the IO had found some charges as not established, such as Articles I (iv), III, IV, V, VII, VIII and IX but while disagreeing with the IO, DA did not issue a Note of Disagreement calling upon the Petitioner to represent against the reasons for disagreement, before imposing the penalty. Court agreed with the contention of the Petitioner on this ground and after referring to the judgment of the Supreme Court in ***Yoginath D. Bagde v. State of Maharashtra and Another, (1999) 7 SCC 739,*** allowed the writ petition on

the sole ground that no Note of Disagreement was given by the DA before imposing the penalty. Orders of the DA and Appellate Authority were set aside remanding the matter back to DA to give a tentative Note of Disagreement with regard to charges which were not proved during the inquiry and in respect of DA had disagreed. Court further directed that DA would pass a fresh order after furnishing the Disagreement Note to the Petitioner and calling upon him to make a representation. Respondents were directed to reinstate the Petitioner with 50% backwages from 09.09.2008 till the date of his retirement.

9. It is averred that Petitioner presented himself for joining pursuant to communication dated 04.09.2015 on the post of GM which had been re-designated as Chief General Manager. Petitioner was not reinstated and instead Respondents filed an appeal being LPA No.111/2016, which was dismissed on 19.02.2016 and SLP (C) 7569/2016 was dismissed by the Supreme Court on 29.03.2016. Respondents issued Office Order dated 06.04.2016 asking the Petitioner to report for duty on 07.04.2016 on the post of GM, which the Petitioner did and joined his duties.

10. In implementation of the judgment dated 31.08.2015, DA issued a Disagreement Note dated 05.05.2016 and sought reply from the Petitioner, which he filed on 23.05.2016. DA thereafter passed an order dated 28.05.2016 imposing penalty of dismissal under Rule 34 of amended ED.CIL's (Conduct, Discipline and Appeal) Rules, 2008 ('2008 Rules'). Petitioner challenged the order by way of appeal dated 18.07.2016 which was dismissed by the Appellate Authority vide order dated 07.09.2016 and Petitioner approached this Court by filing the present petition.

11. Learned counsel for the Petitioner *inter alia* argued that order dated 28.05.2016 passed by the DA imposing the major penalty of dismissal on the Petitioner is erroneous being based on a Disagreement Note dated 05.05.2016 which was a conclusive opinion of the DA and not tentative. The order is thus in the teeth of the judgments of the Supreme Court in ***Punjab National Bank and Others v. Kunj Behari Misra, (1998) 7 SCC 84*** and ***Yoginath D. Bagde (supra),*** as also the earlier judgment of this Court rendered on 31.08.2015 in the case of the Petitioner. It was submitted that the earlier writ petition filed by the Petitioner, being W.P. (C) 11487/2009, was allowed on the sole ground that the DA had not rendered a Note of Disagreement on the findings on which it disagreed with the IO and therefore, the penalty order was not sustainable. *Albeit* after the judgment by this Court, Disagreement Note dated 05.05.2016 was issued and Petitioner was called upon to give his response, however, the Note clearly indicates that the view of the DA was final and conclusive leaving no scope for change on the representation of the Petitioner. In ***Yoginath D. Bagde (supra),*** the Supreme Court has held that a delinquent employee has a right of hearing not only during the inquiry proceedings but also at a stage at which those findings are considered by the Disciplinary Authority and the DA forms a tentative opinion that it does not agree with the findings of the IO. If the findings of the IO are in favour of the delinquent employee and it is held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee, before reversing those findings. The formation of opinion should be tentative and not final and the delinquent employee has to be given an opportunity of hearing after he is informed of the reasons on the basis of which DA proposes to disagree with

the findings of the IO and this is in consonance with Article 311(2) of the Constitution of India.

12. Learned counsel submitted that a bare perusal of the Disagreement Note shows that against each of the Articles of Charges 'not proved' during the inquiry, DA has given a final opinion and to buttress this submission, counsel for the Petitioner took the Court through the Disagreement Note where DA has observed 'charges stand fully established', 'proved beyond doubt', 'crystal clear', etc. These expressions, according to the counsel, leave no doubt that the DA was of the final view that the charges were established and IO was incorrect in holding otherwise and therefore, calling for a representation was a mere formality. Reliance was also placed on the judgment of Division Bench of this Court in ***K.C. Sharma v. BSES Yamuna Power Limited, 2015 SCC OnLine Del 8125,*** wherein it was held that it would be imperative for the DA to issue tentative Note of Disagreement and grant an opportunity to the delinquent employee to make a representation.

13. Learned counsel for the Respondents *per contra* defended the impugned orders as also the Disagreement Note. It was argued that the Disagreement Note does not violate the settled law of the land as the opinion of the DA was tentative and not final, which is evident from the last paragraph of the Note stating that before taking a final decision, Petitioner will be given an opportunity of making representation and Petitioner is over-emphasizing the expressions used in different paragraphs of the order. That the opinion of the DA was tentative is evident from the fact that Petitioner was called upon to make a representation against the Disagreement Note within 15 days. It is only after the Petitioner made the

representation that the DA took a final decision and imposed the penalty and no infirmity can be found in this regard.

14. Heard learned counsels for the parties and examined their rival submissions.

15. Be it noted that prior to filing of the present writ petition, Petitioner filed multiple writ petitions ventilating different grievances against the actions of the Respondents, both during and after the inquiry proceedings *albeit* the Articles of Charges were different in W.P. (C) 6755/2004 and the present writ petition has its genesis in the charge sheet dated 03.04.2007. It is significant to note that with respect to the charge sheet dated 03.04.2007, Petitioner had earlier filed W.P. (C) 11487/2009 challenging IO's report dated 06.06.2008, order of penalty dated 09.09.2008 and order of Appellate Authority dated 20.02.2009. While several grounds were raised by the Petitioner, as the reading of the judgment shows, the writ petition was allowed on the sole ground that Disagreement Note was not rendered by the DA with respect to the findings of the IO with which it disagreed. The importance of a Disagreement Note was underscored by the Court relying on the judgments of the Supreme Court in ***Kunj Behari Misra (supra)*** and ***Yoginath D. Bagde (supra)*** as also the judgment of the Division Bench of this Court in ***K.C. Sharma (supra)***. Court quashed the orders impugned therein and remanded the matter back to the DA to render a tentative Note of Disagreement with regard to the charges which were found to be 'not proved' by the IO, but on which the DA disagreed. Petitioner was held entitled to reinstatement with backwages and it was directed that a fresh order will be passed by the DA after calling for a representation from the Petitioner.

16. Pursuant to the judgment passed by this Court, DA rendered a Disagreement Note on 05.05.2016 and after furnishing the same to the Petitioner and examining the representation received from him, passed an order on 28.05.2016 again imposing the major penalty of dismissal from service. The moot question that arises for consideration before this Court is whether the Disagreement Note dated 05.05.2016 is in consonance with the judgments of the Supreme Court and this Court, relied upon by the counsel for the Petitioner. Before proceeding to examine the Disagreement Note, I may allude to observations of the Supreme Court in ***Yoginath D. Bagde (supra),*** which are as follows:-

> ***"31.*** *In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any*

legislative enactment or service rule including rules made under Article 309 of the Constitution."

17. Following the judgments of the Supreme Court in ***Kunj Behari Misra (supra)*** and ***Yoginath D. Bagde (supra),*** the Division Bench of this Court in ***K.C. Sharma (supra)*** held as follows:-

> *"15. In the decisions reported as (1998) 7 SCC 84 Punjab National Bank v. Kunj Bihari Misra and (1999) 7 SCC 739 Yoginath D. Bagde v. State of Maharashtra, the Supreme Court held that a facet of the principles of natural justice was that if the Disciplinary Authority disagreed with the findings returned by an Enquiry Officer it should record tentative reasons for the disagreement, leaving scope for an open mind to consider the response of the charged officer, give the tentative reasons for the disagreement to the charged officer and invite his response and then dealing with the response pass a reasoned order.*
>
> *16. The jurisprudence behind said principle of law is that unless a person is given an opportunity to respond to a tentative reason to disagree, the person affected loses a valuable right of being heard before a decision adverse to his interest is taken and that the final decision must contain the reasons because it is this reasons which would determine the appellate remedy of the person whose interest is adversely affected by the decision.*
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> *17. In Yoginath D. Bagde's case (supra), the Supreme Court held:*
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> > *"a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable*

> *opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."*
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> *18. An argument was advanced in Yoginath Bagde's case before the Supreme Court that a post-decisional hearing may be granted. The Supreme Court negative the plea holding that the same would not be adequate because the Disciplinary Authority had already closed its mind by taking a determinative view."*

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 (supra),*** 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, 2011 SCC OnLine Del 664*** and ***Nasimuddin Ansari v. Union of India and Others, 2023 SCC OnLine Del 4623.***

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

> ***"V. Predisposed mindset in the Tentative Disagreement Note.***
>
> ***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 pre-disposed mindset of respondent no. 1. Reliance has been placed on the judgment of this court in Laxman Prasad (supra) 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.

xxx xxx xxx

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 (supra)*** and the judgment of the Division Bench of this Court in ***K.C. Sharma (supra),*** 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.

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.

24. Writ petition stands disposed of.

JYOTI SINGH, J

JANUARY 31st, 2025*/KA*