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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 111/2016, CM APPL.5937-5939/2016

EDCIL (INDIA) LTD & ANR

..... Appellants

Through: Mr. Saurabh Mishra, Advocate.

versus

GL SAGAR & ANR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

19.02.2016

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The learned Single Judge by the impugned order has set aside the order imposing the penalty of dismissal of the respondent/employee on the ground that the competent authority did not follow the law and that it did not provide an opportunity to him to represent against the Disciplinary Authority's disagreement on the finding of not guilty rendered by the Enquiry Officer. The Enquiry Officer had by its report indicated that the respondent employee was partly guilty and exonerated him partly in respect of one charge and exonerated fully in respect of other. Although, the enquiry report was furnished to the respondent employee, the disciplinary authority did not indicate that he would disagree with the findings of the Enquiry Officer and convert the findings of exoneration into one of guilt. The learned Single Judge noticed the binding decision of the Court and noted that this was contrary to Rule 26 (2) of the Rules governing the appellant and also the law declared in *Punjab National Bank v. Kunj Bihari Mishra*, (1998) 7 SCC 84. The Single Judge, therefore, set aside the penalty of dismissal but granted liberty to the appellant/management to

complete the proceedings at the stage when the disciplinary authority proposed to disagree by giving adequate opportunity to the respondent in that regard.

Learned counsel for the appellant submits that having regard to the overall circumstances of the case, the learned Single Judge fell into error inasmuch as he directed reinstatement with 50% backwages from 09.09.2008 onwards. It is submitted that the Management does not have any grievance with respect to the application of law declared in *Kunj Bihari Mishra* (supra) but the directions to pay 50% backwages along with reinstatement is not warranted.

This Court noticed that the declaration of law in *Kunj Bihari Mishra* (supra) was made in 1998; it was subsequently followed in other judgments including *Yoginath D. Bagde v. State of Maharashtra* (1999) 7 SCC 739. The appellant/management, therefore, cannot claim to be ignorant of the law - at least in this case because the order of dismissal was made on 09.09.2008. Furthermore, the appellant would have at the very first opportunity after the employee filed W.P.(C)11487/2009 continue with the enquiry from the stage it has been directed to do so by the impugned order. It, however, chose to contest the proceedings in totality and suffered an adverse order almost seven years later. In these circumstances, this Court is of the opinion that the exercising discretion in directing 50% backwages and reinstatement is not unreasonable or faulty. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 19, 2016/vikas/