

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WA.No. 575 of 2010 () IN WP(C).11224/2005

AGAINST THE ORDER/JUDGMENT IN WP(C) 11224/2005 of HIGH COURT OF
KERALA DATED 18-01-2010

APPELLANT(S) :

1. FOOD CORPORATION OF INDIA ,
REPRESENTED BY ITS CHAIRMAN, 16-20, BARAKHAMBA LANE
NEW DELHI-110 001.

2. THE MANAGING DIRECTOR, FOOD CORPORATION
OF INDIA, 16-20, BARAKHAMBA LANE
NEW DELHI-110 001.

3. THE ZONAL MANAGER, FOOD CORPORATION OF
INDIA, ZONAL OFFICE, MOUNT ROAD
CHENNAI-600 006.

4. THE SENIOR REGIONAL MANAGER,
FOOD CORPORATION OF INDIA, REGIONAL OFFICE, KESAVADASAPURAM
THIRUVANANTHAPURAM-694 004.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, FCI

RESPONDENT(S) :

M.ABOOBACKER
CORPORATION OF INDIA DISTRICT OFFICE
THIRUVANANTHAPURAM-8, (UNDER ORDERS OF DISMISSAL
RESIDING AT ABU BUILDING, PUTHUKULANGARA.P.O
THIRUVANANTHAPURAM-695 547.

BY ADV. SRI.JOHNSON P.JOHN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23.7.2015
ALONG WITH WA. 1165/2010, THE COURT ON 31.7.2015 DELIVERED THE
FOLLOWING:

'C.R'

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.Nos.575 and 1165 of 2010

Dated this the 31st July, 2015

JUDGMENT

Ashok Bhushan, CJ.

These two Writ Appeals have been filed against the same judgment dated 18.1.2010 passed in W.P(C). No.11224 of 2005. The parties shall be referred to as described in the Writ Petition. By the judgment dated 18.1.2010 the learned Single Judge disposed of the Writ Petition by issuing directions in paragraph 6 of the judgment, which shall be hereinafter noted in detail. The brief facts giving rise to the Writ Petition are:

At the relevant time the petitioner was working as Assistant Grade-II (Depot) at the Kochuveli Goodshed, Thiruvananthapuram. He was in-charge of the FCI unloading operations at the Railway Station, Kochuveli.

Disciplinary proceedings were initiated against the petitioner vide memorandum dated 19.9.1984 containing five articles of charges. The disciplinary authority, after conducting enquiry, passed an order dated 14.1.1986 awarding penalty of dismissal from service. Challenging the dismissal order, the petitioner filed O.P.No.5178 of 1988. The learned Single Judge by judgment dated 8.8.1991 dismissed the Writ Petition on merits. A Writ Appeal was filed by the petitioner against the judgment of the learned Single Judge being W.A.No.1212 of 1991. The Division Bench of this Court disposed of the Writ Appeal giving liberty to the appellant to make appropriate representation before the concerned authority for reconsideration on the question of punishment. On the basis of the Division Bench judgment dated 27.9.1999, the petitioner filed an application before the Managing Director. The Board of Directors by its resolution dated 16.3.2000, treating the application as a review petition, rejected the prayer observing that there was no material

circumstance for a lesser punishment. The order of the Board of Directors dated 16.3.2000 was again challenged by the petitioner by filing O.P.No.32152 of 2001. The said Original Petition was disposed of by judgment dated 24.9.2004 setting aside the order of the Board of Directors and directing for reconsideration after giving an opportunity of personal hearing to the petitioner. After the judgment of the learned Single Judge dated 24.9.2004, in the 296th meeting of the Board of Directors, the petitioner was heard and by resolution dated 23.12.2004 it was resolved that in the facts and circumstances of the case, the Board did not find any substantial material for a lesser punishment and found that the punishment of dismissal imposed on the petitioner was commensurate with the proven guilt. Aggrieved by the decision of the Board of Directors, the petitioner again filed W.P(C).No.11224 of 2005. The learned Single Judge by judgment dated 18.1.2010 quashed Exhibit P4, which was a communication of decision of the Board of Directors to the

petitioner. The learned Single Judge having noted that the petitioner had been superannuated on 27.3.2006, directed that the petitioner shall be deemed to have been imposed with the same punishment as was given to the watchmen involved in the same disciplinary proceedings and the petitioner would be entitled to the retirement benefits. The learned Single Judge further directed that no back wages need be paid to the petitioner. It is useful to quote paragraph 6 of the judgment, which reads as under:

“6. It is submitted before me that the petitioner had attained the age of superannuation on 27.3.2006. In the above circumstances, the petitioner shall be deemed to have been imposed with the same punishment as given to the watchmen involved in the same disciplinary proceedings as co-delinquents and continued in service till the date of superannuation. He would be entitled to retirement benefits accordingly. However, I direct that no back wages need be paid to the petitioner.”

2. The Food Corporation of India, aggrieved by the above judgment, has come up in W.A.No.575 of 2010. The writ petitioner, aggrieved by the judgment of the learned

Single Judge in so far as back wages were denied, has filed W.A.No.1165 of 2010.

3. We have heard Sri.T.P.M.Ibrahim Khan, learned counsel appearing for the Food Corporation of India and Sri.Johnson P.John, learned counsel appearing for the writ petitioner.

4. Learned counsel for the Corporation submitted that the only direction given by the Division Bench of this Court vide its judgment dated 27.9.1999 was to reconsider the question of punishment. It is submitted that the learned Single Judge by subsequent judgment dated 24.9.2004 has again directed the Board of Directors to reconsider the punishment after giving the petitioner an opportunity of personal hearing. It is submitted that the Board of Directors reconsidered all facts and circumstances of the case and found that the punishment awarded to the petitioner was commensurate with the proven guilt. It is submitted that no error was committed by the Board of Directors in taking a decision maintaining

the same punishment after reconsidering the entire issue. It is submitted that although the petitioner had claimed parity in the punishment with regard to cases of watchmen, who were awarded lesser punishment, but the charges against the petitioner as well as the watchmen were not same, except one charge. The petitioner was entrusted with the duties in loading operation at the Railway Goodshed, Kochuveli and unauthorised removal of stocks for personal gain, lack of integrity and devotion to duty, manipulation/falsification of accounts and acting in a manner which is most unbecoming of an FCI employee were the charges levelled against him. All the charges against the petitioner as well as that of watchmen being different, the duties and responsibilities of the petitioner as well as watchmen being also different, award of punishment of dismissal imposed on the petitioner on the proven charge was not disproportionate, and has rightly been maintained by the Board of Directors. Learned counsel for the Corporation submitted that the learned

Single Judge committed error in interfering with the decision of the Board of Directors. He submitted that as no breach of any procedure has been proved and the decision was taken after hearing the petitioner, this Court in exercise of writ jurisdiction, shall not interfere with the punishment awarded on the basis of proven charges.

5. Learned counsel for the writ petitioner, refuting the submissions of the learned counsel for the Corporation, contended that all the arguments, which are sought to be raised by the Corporation were considered by the learned Single Judge in its judgment dated 24.9.2004 and after considering the submissions, the learned Single Judge set aside the earlier order of the Board of Directors and remitted the matter to the Board of Directors for reconsideration. Hence, it is not open for the Corporation to contend the same grounds. He submitted that the petitioner as well as one B.Jayakumar, another Assistant, and two watchmen were levelled the same charge of unauthorised removal of lorry load of rice for

personal gain. Imposition of lesser punishment to one of the watchmen and subsequently on representation exoneration of second watchman was the relevant factor for consideration while imposing punishment on the petitioner. It is submitted that the learned Single Judge has rightly set aside the decision of the Board of Directors and disposed of the Writ Petition. He, however, submitted that the decision of the Board of Directors having been set aside, the petitioner ought to have been awarded the back wages, which has been erroneously denied by the learned Single Judge.

6. We have considered the submissions of both the parties and have perused the records.

7. Before we proceed further, it is relevant to notice the articles of charges, which were levelled against the petitioner. By letter dated 19.9.1984 the following five articles of charges were levelled against the petitioner:

“Article I

The District Manager, Trivandrum vide letter No.V&S/4(1)/83-84 dated 17.8.'83 had reported that

one lorry load of rice was unauthorizedly removed from Kochuveli Goodshed on 13.8.'83 by S/Sri M.Abubacker Kunju, AG II(D), B.Jayakumar, AG III(D), S.Babukuttan Nair, Watchman and M.Gopinathan, Watchman who were on duty at the Kochuveli Goodshed. The lorry was allowed to leave the Goodshed without any Truck Chit and the consignment was taken to Balaramapuram as per the directions of the above FCI employees and with their knowledge. To make up the resultant shortage of 100 bags, corresponding number of empty gunnies were brought to the Goodshed through KLT 7635.

Thus there was clandestine removal of foodgrain bags from Kochuveli Goodshed on 13.8.'83 by Sri.Abubacker Kunju, AG II(D) in connivance with the other staff referred to above for personal gain and with financial loss to the FCI.

Article II

It has been reported that 100 gunnies were brought to the Kochuveli Goodshed on 13.8.'83 by the lorry No.KLT 7635. These were not accounted in the Gunny Accounts. These gunnies were brought privately for adjustment of shortage of gunnies with malafide motive of creating false evidence and to cover up the unauthorized removal of rice.

Article III

Scrutiny of the wagons unloaded at Kochuveli Goodshed during the period from 10.8.'83 to

15.8.'83, shows that the Transit loss in respect of wagons unloaded on 13.8.'83 is recorded as quite abnormal, and that sweepings from wagons collected on this day is shown as far less. In as much as the consignments despatched from the same station and received at Kochuveli on earlier occasions had recorded negligible losses in transit, this proves that the quantity of Transit loss reported for 13.8.'83 is not true and that accounts were falsified with malafide motives.

Article IV

S/Sri Abubacker Kunju, AG II(D) in collusion with Sri B.Jayakumar, AG III(D) and Watchmen on duty managed to remove 100 bags of rice from Kochuveli Goodshed on 13.8.'83 without any Truckchit. Eventhough the Driver of the vehicle KLT 7635 demanded necessary documents, this was not supplied. This is criminal breach of Trust. Sri Abubacker Kunju has therefore failed to safeguard the interests of the FCI and has made himself liable for misconduct and dereliction of duty.

Article V

Sri Abubacker Kunju, AG II(D) was holding charge of the ADS at Kochuveli Goodshed on 13.8.'83. It has been reported that 100 bags of rice were removed unauthorizedly by the lorry No.KLT 7635 on that date from the Goodshed. Thus there was complete lack of supervision of the transactions

at the Goodshed and that the unauthorized movement was carried out with his connivance. Sri Abubacker Kunju by the above has failed to maintain absolute integrity and devotion to duty and acted dishonestly."

8. Disciplinary enquiry was held and after charges having been found proved, by order dated 14.1.1986, penalty of dismissal was imposed on the petitioner. Appeal filed against the said decision was also dismissed by order dated 31.7.1986. The petitioner also preferred a review petition before the Managing Director, which too was dismissed on 20.5.1988, against which order O.P.No.5178 of 1988 was filed by the petitioner. This Court dismissed the Original Petition on merits, against which W.A.No.1212 of 1991 was filed. It is useful to quote the operative portion of the judgment in W.A.No.1212 of 1991, which reads as under:

"These two Writ Appeals are disposed of liberty being given to the appellants to make appropriate representation before the concerned authority for reconsideration on the question of punishment. It is stated that other persons similarly

situated were dealt with leniently by the concerned authority. The relevance and applicability of those cases to the facts of the appellants' case shall be considered by the appropriate authority."

9. Perusal of the Division Bench judgment clearly indicates that liberty was granted to the appellant, i.e., the petitioner to make appropriate representation before the authority for reconsideration on the question of punishment. The finding on proven charges was not interfered by the Division Bench and only for limited purpose, i.e., for consideration on the quantum of punishment, liberty was granted to reconsider the matter. The matter was remitted for reconsideration on the submission of learned counsel for the petitioner that watchmen similarly situated have been dealt with leniently in the matter of punishment. After the aforesaid judgment of the Division Bench, the matter was considered by the Board of Directors in its meeting dated 16.3.2000 and resolved that there was no material circumstances for a lesser punishment. The Board of

Directors treated the matter as a review of punishment and rejected the review, aggrieved by which an Original Petition was filed by the petitioner being O.P.No.32152 of 2001, which was allowed by the learned Single Judge. The relevant portion of the judgment in O.P.No.32152 of 2001 reads as under:

“6. The Division Bench of this court in Exhibit P4 judgment having given a positive direction to take into consideration the relevance and applicability of the treatment given to the watchmen in the matter of punishment, the Food Corporation of India is bound to take into consideration of the same set of facts and circumstances in the case of the petitioners also. Incident is one and the same, circumstances are one and the same, evidence is one and the same and the witnesses are also one and the same. The first charge which is the main charge against all the four accused is also one and the same. These crucial aspects should be taken into consideration, as directed by the Division Bench in Exhibit P45. For the only reason that there are certain observations against the petitioners in the judgment of the learned Single Judge, once liberty is granted to the petitioners to represent before the authority for consideration on the question of punishment, with a further direction

to take into consideration the relevance and applicability of the treatment in the matter of punishment meted out to the watchmen, the Food Corporation of India cannot reject the representations. The authority apparently misdirected construing the direction by the Division Bench as a review. It is certainly not for that. It is only for reconsideration of the punishment. In the above circumstances I quash the impugned order Exhibit P6 in the former and Exhibit P9 in the latter. There will be a direction to the respondents to pass a proper order in the light of the directions issued by the Division Bench and taking into consideration the observations contained in the judgment. The petitioners shall also be given an opportunity for personal hearing. The orders shall be passed within a period of three months from the date of production of a copy of this judgment."

10. The learned Single Judge took the view that the crucial aspects that the incident is one and the same, circumstances are one and the same, evidence is one and the same, the witnesses are one and the same and the first charge, which is the main charge against all the four accused, is also one and the same, were required to be

considered by the Board of Directors. The learned Single Judge held that the authority apparently misdirected construing the direction by the Division Bench as a review, which was certainly not for that. The order being reconsideration of issue, the matter need be reconsidered.

11. After the judgment of the learned Single Judge, the petitioner was heard in person on 23.12.2004 by the Board of Directors. The Board of Directors, in its 296th Board meeting passed the following resolution:

“ITEM NO.58/2004 (296th - BOD)

SUBJECT: JUDGMENT DATED 24.9.2004 OF MR.JUSTICE KURIAN JOSEPH, OF THE HON'BLE HIGHER COURT OF KERALA AT ERNAIULAM IN O.P.NO.32152 OF 2001(C) & O.P.NO.2415 OF 2000 FILED BY S/SHRI M.ABOOBACKER KUNJU, EX-AG.II(D) AND B.JAYA KUMAR, EX-AG.III(D) DIRECTING THE RESPONDENTS TO PASS ORDERS WITHIN 3 MONTHS i.e. UPTO 7.1.2005 AFTER AFFORDING PERSONAL HEARINGS TO THE PETITIONERS BY THE BOARD OF DIRECTORS.

As per the common judgment dated 24.9.2004 of Hon'ble High Court of Kerala in OP No.26615/2000 and 32152/2001, the case of both the ex-officials was placed before the

Board of directors. The Board of Directors heard in person both the ex-officials namely S/Shri M.Aboobacker Kunju and B.Jayakumar on 23.12.2004 to their satisfaction.

The Board of Directors went into the detailed facts and circumstances of the case of both the ex-officials and did not find any substantial materil for a lesser punishment and accordingly arrived at a conclusion that the punishment of dismissal on both the officials commensurated with the proved guilt."

12. The resolution passed on 23.12.2004 was challenged in W.P(C).No.11224 of 2005 giving rise to these two Writ Appeals.

13. The Corporation had filed a counter affidavit in the Writ Petition pleading that all relevant facts have been considered by the Board of Directors and a decision was taken after personal hearing of the petitioner. The Board went into the detailed facts and circumstances of the case but did not find any substantial material for a lesser punishment and hence arrived at a conclusion that the punishment of dismissal from service is commensurate with the proven guilt. The learned Single Judge while

hearing the Writ Petition, on 4.1.2010 has directed the Corporation to produce documents, if any, regarding the consideration of relevant materials by the Board of Directors pursuant to the judgment of the learned Single Judge. The proceedings of the 296th Meeting of the Board of Directors held on 23.12.2004 as well as the detailed notes submitted to the Board of Directors by the Executive Director have been placed on record by the Corporation. In the detailed note submitted before the Board of Directors, entire history of the case, including the five articles of charges, which were alleged against the petitioner and details of proceedings were mentioned including the earlier resolution dated 16.3.2000. Relevant comments on the proceedings were also noted in the note. In the detailed note submitted before the Board of Directors for consideration the following portion of the comments need to be quoted:

“COMMENTS:

Even though Shri Babukuttan Nair, Watchman was also involved in the case, the Reviewing

Authority i.e the Managing Director set aside the penalty of 'Dismissal' by a speaking order giving full justification for his reinstatement. The watchman had, only acted upon the instructions of the petitioners, whereas the petitioners being the supervisory officials for supervising the operations of the foodgrains at Railway Goods Shed during the period in question were fully responsible for the misappropriation of the FCI stocks. The relevance of the applicability of the case of the applicants to that of the Watchman could not be compared as the Watchman stood at a different footing to that of the petitioners. The prosecution during the inquiry also failed to prove that the Watchman viz. Shri Babukuttan Nair was present on 13.8.83 at the point through which the trucks with loads were passing out of the goods shed. Thus, the two petitioners who were in supervisory position in the depot cannot escape their responsibility by claiming to have limited functional jurisdiction."

14. The Board of Directors was made aware of all the proceedings including the direction of the Court that reconsideration of punishment has to be met in the light of lesser punishment given to the watchmen. The Board of Directors have taken a resolution that there is no

substantial material for a lesser punishment, since the punishment of dismissal of both the officials is commensurate with the proven guilt. From the materials placed by the Corporation, it is clear that the Board was well aware of the lesser punishment awarded to the watchmen and in spite of that the Board resolved not to award any lesser punishment to the petitioner. The judgment of the Division Bench as stated above as well as the judgment of the learned Single Judge dated 18.1.2010 were orders and directions to the Board of Directors to reconsider the punishment awarded to the petitioner in the light of the facts and circumstances of the case, including lesser punishment awarded to the watchmen. All details pertaining to the proceedings being before the Board, it cannot be said that the Board in any way disregarded the direction of the Division Bench and the learned Single Judge. The mere fact that the Board has reiterated its decision not to award any lesser punishment cannot be said to be a decision disregarding the orders of the Court.

15. The scope of judicial review of punishment awarded to an employee after disciplinary enquiry is well settled. The Apex Court in large number of decisions has held that the High Court, in exercise of jurisdiction under Article 226 of the Constitution, shall interfere with the punishment awarded after disciplinary enquiry and after proven guilt only when punishment is shockingly proportionate to the charges proved. Present is a case where there is no dispute that the charges levelled against the petitioner were serious and the disciplinary proceedings drawn against the petitioner were not interfered with by this Court. The only liberty which was given to the petitioner was to submit a representation against the punishment. The High Court, in exercise of writ jurisdiction, shall not substitute a decision on a quantum of punishment, when there is no error pointed out in the procedure adopted by the Board to reconsider the matter. There is no dispute that the petitioner was personally heard as per the direction of the learned Single

Judge. Materials have been brought on record to indicate that all relevant facts were brought before the Board of Directors by detailed agenda note, which has also been filed in the writ proceedings. The learned Single Judge in the first paragraph of the judgment itself has observed that all the persons were found guilty of serious allegations of misconduct. The judgment of the Division Bench as well as the learned Single Judge directing for reconsideration were orders for reconsideration of the punishment along with all the relevant facts and circumstances. The orders cannot be read as a direction to the Board to award lesser punishment to the petitioner. The matter having been reconsidered and the prayer for awarding lesser punishment to the petitioner having been denied, we do not see any ground to interfere with the decision of the Board of Directors. The learned Single Judge was swayed away with the fact that in spite of the direction of the learned Single Judge and the Division Bench for reconsideration, the Board of Directors is taking

the same decision again and again. The decision making was obviously left to the Board of Directors, which was the competent authority to take decision regarding quantum of punishment. The mere fact that twice they have taken same decision, in no way, can be read as decision, in any way, disregarding the directions of the Court.

16. Learned counsel for the petitioner sought to contend that a criminal case was also instituted against the petitioner, B.Jayakumar, another Assistant and two watchmen, in which they were exonerated. It is contended that the charges in the criminal case and the disciplinary proceedings being same, disciplinary proceedings ought not to have been taken. He has also placed reliance on the judgment of the Apex Court in ***M.Paul Anthony v. Bharat Gold Mines Ltd.*** (AIR 1999 SC 1416). The above issue is not open for the petitioner to contend before us. Since the disciplinary proceedings against the petitioner were already concluded, the petitioner's argument that the petitioner has been acquitted in the criminal case was

also raised before the Corporation. The argument on the basis of acquittal in the criminal case was noted by the Corporation while rejecting the petitioner's prayer to review the dismissal order. The Division Bench having granted liberty to the petitioner only to represent with regard to quantum of punishment and other issues stand closed, the petitioner cannot be allowed to challenge the disciplinary proceedings before us in this Writ Appeal, in which limited scope of enquiry as to whether the Board of Directors while taking a decision dated 23.12.2004 had considered all relevant materials or not. Thus, the petitioner's submission on the basis of acquittal in the criminal case need not be considered in this proceedings.

17. Learned counsel for the petitioner has also placed reliance on a judgment of the Apex Court in ***Central Bank of India and another v. Nripendra Nath Sarkar*** [(2008)11 SCC 249]. In the above case, after disciplinary proceedings the respondent was dismissed, which dismissal order was challenged before

the learned Single Judge. In the disciplinary proceedings, the learned Single Judge found several infirmities. The learned Single Judge after noticing the various shortcomings in the order directed the appellate authority to permit the delinquent to file appeal and directed the appellate authority to go into the question afresh in the light of the observation made by the learned Single Judge. The appellate authority did not decide the case in accordance with the observation made by the learned Single Judge. The matter was again taken before the High Court, where the Division Bench observed that the appellate authority has not decided the case according to the observation of the Court. The Division Bench directed the appellate authority to decide the appeal in accordance with the observation made by the learned Single Judge. Against the judgment of the Division Bench the Bank filed appeal before the Apex Court. The Apex Court refused to interfere with the direction of the Division Bench. The following was observed by the Apex Court in paragraphs 13 and 14 of the judgment:

“13.We have carefully perused the entire record of the case and all the proceedings before various courts. The Division Bench in the impugned judgment while dismissing the appeal gave four weeks' time to the Appellate Authority to decide the appeal in accordance with the observations made by the learned Single Judge in the order dated 24th March, 2006 and the observations made by the Division Bench.

14.In the facts and circumstances of this case, the observations made in the impugned judgment are absolutely just and fair. The Appellate Authority is directed to carry out the direction given by the learned Single Judge and the Division Bench in its true spirits. We find no infirmity in the directions given by the Division Bench in the impugned judgment.”

18. The above case is clearly distinguishable. In the above case the Bank had approached the Apex Court against the subsequent direction of the Division Bench, by which the appellate authority was directed to decide the matter afresh in the light of earlier directions of the learned Single Judge dated 24.3.2006. The said case does not help the appellant in the present case.

19. The scope of interference by this Court under Article 226 of the Constitution with disciplinary proceedings and especially with the quantum of punishment has time and again reiterated by the Apex Court. It is sufficient to refer to the judgment of the Apex Court in **B.C.Chaturvedi v. Union of India** [(1995)6 SCC 749]. In the above case the Apex Court made the following observations in paragraph 18 of the judgment:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to

shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

20. In view of the foregoing discussion, we are of the considered opinion that the order of the Board of Directors dated 23.12.2004 cannot be said to be a decision of the Board of Directors disregarding any of the directions of the Division Bench and the learned Single Judge of this Court as noted above. All relevant materials were placed before the Board of Directors. The petitioner was also given personal hearing. The Board of Directors being made aware of all facts and it having passed the resolution concluding that the punishment of dismissal imposed on the petitioner is commensurate with the proven guilt and the Board does not find any material circumstance for a lesser punishment, no exception can be taken to the said decision. The learned Single Judge committed error in setting aside the decision of the Board of Directors and awarding punishment, which was awarded to the watchmen, to the petitioner and issuing consequential directions.

In the result, W.A.No.575 of 2010 is allowed and the judgment of the learned Single Judge is set aside. W.P(C). No.11224 of 2005 filed by the petitioner is dismissed. W.A.No.1165 of 2010 is dismissed.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs