

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 10459 of 2005 (T)

PETITIONER(S):

**B.JAYAKUMAR,
REDDIAR BUILDINGS, VAN ROSS JUNCTION
THIRUVANANTHAPURAM-39.**

**BY ADVS.SRI.M.K.DAMODARAN (SR.)
SRI.V.JAYAKUMAR**

RESPONDENT(S):

- 1. THE FOOD CORPORATION OF INDIA,
REP. BY THE MANAGING DIRECTOR, 16-20 BARAKHAMBHA LANE
NEW DELHI-110 001.**
- 2. THE CHAIRMAN,
FOOD CORPORATION OF INDIA, 16-20 BARAKHAMBHA LANE
NEW DELHI-110 001.**
- 3. THE ZONAL MANAGER,
FOOD CORPORATION OF INDIA, ZONAL OFFICE, MADRAS.**
- 4. THE SENIOR REGIONAL MANAGER,
FOOD CORPORATION OF INDIA, KESAVADASAPURAM
THIRUVANANTHAPURAM.**

R1-R4 BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, FCI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1: COPY OF JUDGMENT DATED 19.08.2005 IN CC 27/84 OF THE ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE I, TRIVANDRUM
- P2: COPY OF ORDER DT.14.01.1986 ISSUED BY SENIOR REGIONAL MANAGER, FCI, TRIVANDRUM
- P3: COPY OF JUDGMENT DT.08.08.1991 IN OP NO.8047/87 & 5178/88 OF THE HON'BLE HIGH COURT
- P4: COPY OF JUDGMENT DT.27.09.99 IN WA NO.1234/91 OF THE HON'BLE HIGH COURT
- P5: COPY OF REPRESENTATION DT.10.11.99 FILED BY PETITIONER BEFORE MD, FCI, NEW DELHI
- P6: COPY OF ORDER DT.03.04.2000 ISSUED BY CHAIRMAN, FCI, NEW DELHI
- P7: COPY OF STATEMENT DT.14.08.83 GIVEN BY V.KRISHNANKUTTY, TO THE DM, FCI, TRIVANDRUM
- P8: COPY OF STATEMENT DT. 15.08.83 GIVEN BY IBRAHIM PILLAI, DRIVER, KLT 7635
- P9: COPY OF ORDER DT.20.05.88, NO.VIG.5(57)/86, ISSUED BY MD, FCI, NEW DELHI
- P10: COPY OF ORDER DT.20.05.88, NO.VIG.5(54)/86, ISSUED BY MD, FCI, NEW DELHI
- P11: COPY OF DEPOSITION OF WITNESS PW3 DT.10.04.85 IN CC 27/84 OF THE ADDITIONAL JUDICIAL 1ST CLASS MAGISTRATE I, TRIVANDRUM
- P12: COPY OF DEPOSITION OF WITNESS PW1 DT.21.01.85 IN CC 27/84 OF THE ADDITIONAL JUDICIAL FIRST CLASS MAGISTRATE I, TRIVANDRUM
- P13: COPY OF JUDGMENT DT.24.09.04 IN OP NO.26615/2000 OF THE HON'BLE HIGH COURT
- P14: COPY OF REPRESENTATION DT.25.11.04 FILED BY PETITIONER BEFORE THE CHAIRMAN, FCI, NEW DELHI
- P15: COPY OF TELEGRAM DT.16.12.04 SENT BY FCI, TRIVANDRUM TO THE PETITIONER

(CNTD)

P16: COPY OF ORDER DT.03.01.05 ISSUED BY CHAIRMAN & MD, FCI, NEW DELHI

RESPONDENTS' EXHIBITS:

R4(A): COPY OF THE ORDER NO.V&S.5(15)/86 DATED 31.07.86 PASSED BY THE 4TH
RESPONDENT-SENIOR REGIONAL MANAGER, FOOD CORPORATION OF INDIA

R4(B): COPY OF THE ORDER NO.VIG.(57)/86 DATED 20.05.1988 ISSUED BY THE FIRST
RESPONDENT

R4(C): COPY OF THE ARTICLES OF CHARGES FRAMED AGAINST THE PETITIONER
AND THE WATCHMEN

R4(D): COPY OF THE ORDER NO.VIG.5(54)/86 DATED 20.05.1988 ISSUED ON BEHALF
OF THE MANAGING DIRECTOR

R4(E): COPY OF THE DEPOSITION OF DW-3

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.10459 of 2005

Dated this the 29th day of June, 2015

JUDGMENT

The petitioner, who was working as Grade III Assistant in Food Corporation of India, (FCI) was dismissed from service on 14.01.1986 by Ext.P2 order. The said order of dismissal was under challenge in O.P. No.8047/1987, which ended in dismissal by Ext.P3 judgment. Ext.P3 judgment was under challenge in WA No.1237/1991. This Court, by Ext.P4 judgment, set aside Ext.P3 judgment and directed the 1st respondent to reconsider the question of punishment imposed on the petitioner in the light of the orders issued in respect of similarly situated persons. Pursuant to Ext.P4 judgment, the petitioner submitted Ext.P5 representation. By Ext.P6 the 2nd respondent refused to review the punishment.

2. Ext.P6 order was under challenge in OP No.26615/2000 and this Court, by Ext.P13 judgment, set aside the same and directed the 1st respondent to reconsider the punishment in the light of the observations contained in the judgment. Paragraph 6

of Ext.P13 judgment reads thus:

"The Division Bench of this court in Ext.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 Ext.P4. 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 Ext.P6 in the former and Ext.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."

3. Pursuant to Ext.P13 judgment of this Court, the petitioner submitted Ext.P14 representation before the 1st respondent. By Ext.P15 telegram, the petitioner was directed to appear for a personal hearing scheduled to be held at New Delhi on 23.12.2004. After conducting personal hearing, the 1st respondent rejected the request made by the petitioner by Ext.P16 order dated 03.01.2012 and the relevant paragraph of Ext.P16 reads thus:

"As per the judgment dated 24.09.2004 of Hon'ble High Court of Kerala, the personal hearing was granted to the petitioner and he was heard by the Board of Directors on 23.12.2004. The Board in its 296th Meeting on 23.12.2004 considered the case of Sh.B.Jayakumar, Ex.AG.III(D) and went into the detailed facts and circumstances of the case and did not find any substantial material for a lesser punishment and accordingly arrived at a conclusion that the punishment of "Dismissal from FCI" on Sh.B. Jayakumar, Ex.AG.III (D) commensurated with the proven guilt."

4. It is aggrieved by Ext.P16, the petitioner has filed this writ petition seeking a writ of certiorari to quash the aforesaid order as it is not in compliance with Ext.P13 judgment of this Court and for other consequential reliefs.

5. A counter affidavit has been filed on behalf of the respondents contending, inter alia, that there is no refusal on the part of the 1st respondent in following the directions contained in Ext.P13 judgment and the Board of Directors have made a thorough scrutiny on all the relevant documents of the case for reconsideration as per the directions contained in the said judgment of this Court and that, Ext.P16 order is one passed strictly in compliance of the directions contained in that judgment of this Court.

6. The issue that arises for consideration in this writ petition is as to whether Ext.P16 order passed by the 1st respondent is in strict compliance of Ext.P13 judgment of this Court. As already noticed, by Ext.P13 judgment this Court has directed the 1st respondent to pass a proper order in the light of the directions issued by the Division Bench of this Court in the earlier judgment and also considering the observations contained in Ext.P13 judgment as well. This Court has also made it clear that, the

petitioner shall also be given an opportunity of personal hearing. Pursuant to Ext.P13 judgment, the petitioner has submitted Ext.P14 representation before the 1st respondent and a personal hearing was also conducted on 23.12.2004. But a reading of Ext.P16 order passed by the 1st respondent would show that the only reason stated in the said order in order to reject the request made by the petitioner is as follows:

"Board of Directors on 23.12.2004 and that the Board of Directors in its meeting held on 23.12.2004 considered the case of the petitioner and went into detailed facts and circumstances of the case and did not find any specific materials for a lesser punishment and accordingly arrived at a conclusion that the punishment of dismissal from service of the petitioner commensurated with the proven guilt".

7. When this Court in Ext.P13 judgment specifically directed the 1st respondent to take a decision in the light of the directions contained in the judgment of the Division Bench and also the observations contained in Ext.P13 judgment, the 1st respondent is expected to pass a reasoned order meeting all the contentions raised by the petitioner. A reading of Ext.P16 would show that no such exercise, as directed in Ext.P13, has been undertaken while rejecting the request made by the petitioner.

Even in respect of administrative orders **Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971 (1) All.ER. 1148]** observed that "the giving of reasons is one of the fundamentals of good administration". In **Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120]** it was observed that, "failure to give reasons amounts to denial of justice". Following the principle laid down in the aforesaid judgments, the Apex Court in **Chairman and Managing Director, United Commercial Bank v. P.C.Kakkar [2003 (4) SCC 364]** has held that one of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, speaking out. In that view of the matter, Ext.P16 order passed by the 1st respondent cannot be sustained.

In the result, this writ petition is allowed setting aside Ext.P16 order passed by the 1st respondent and directing the 1st respondent to reconsider the matter and pass a reasoned order strictly in accordance with the directions of this Court contained in Ext.P13 judgment. Such exercise shall be undertaken within a period of three months from the date of receipt of a certified copy of this judgment, with notice to the petitioner and after affording him a reasonable opportunity of being heard. Since

the other reliefs sought for in this writ petition are dependent upon the decision that has to be taken by the 1st respondent pursuant to this judgment, all such issues are left open.

JV

SD/-
ANIL K. NARENDRAN,
JUDGE