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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1407/2002

New Delhi this the 25th day of October, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI M.P.SINGH, MEMBER (A)

Shri P.S.Meena
S/o Late Shri G.R.Meena
R/o C-42, East of Kailash
New Delhi.

...Applicant

(By Shri Dhruv Mehta , Advocate)

-versus-

1. Union of India
Through the Foreign Secretary
Ministry of External Affairs
South Block
New Delhi.
2. The Joint Secretary
Now The Director (CNV)
Ministry of External Affairs
South Block
New Delhi.
3. The Secretary
Union Public Service Commission
Shahjahan Road
New Delhi.
4. Central Vigilance Commissioner
GPO Complex, INA, Satkara Bhawan
New Delhi. ... Respondents

(By Shri N.S.Mehta, Advocate)

O R D E R

JUSTICE V.S.AGGARWAL:-

Applicant (Shri P.S.Meena) joined as Welfare Officer in the Ministry of External Affairs in 1971. In 1989, he was posted as Passport Officer at Bareilly and continued to remain there upto 2.5.1991. Vide order dated 5.7.1991, the applicant in contemplation

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of departmental enquiry under Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 had been placed under suspension. The articles of charge Nos.I and V with which we are presently concerned were:-

"Article I

That the said Shri P.S.Meena while functioning as Assistant Passport Officer-cum-Acting Passport Officer, Bareilly during the period from 23.10.89 to 2.5.91 had shown undue haste in issuing fresh passports in selected cases. He got such applications processed on an out of turn basis at every stage, even without recording any speaking orders and/or without getting any documentary evidence in support of urgency followed by issue of passports on the same day or within a few days whereas it was normally taking 4 months period to issue of passports in routine.

Article V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri P.S.Meena showed undue haste in issuing duplicate passport in lieu of damaged/lost passports in large number of cases without recording any speaking orders and without getting the documentary proof in support of urgency. He got certain applications processed on an out of turn basis and issued duplicate passports even on the same day whereas other such applications remained pending for months together."

An enquiry officer had been appointed. With respect to other charges though the applicant was exonerated, pertaining to articles I and V, the report indicated that the enquiry officer found that they had been partly proved. As regards the article of charge No.I, the findings were:-

"A sample check of Ex.S.1 to S.225 shows that the CO had not recorded the



reasons as to why the passport should be issued on out of turn basis and also there are no documents on record to justify the issuance of passports on out of turn basis. So it is held that the CO did not record the reasons for issuing passports on out of turn basis and he also did not keep on record documents to justify the issuance of passports on out of turn basis. Rest of the allegations are held as not proved.

Article I of the charge is held as partly proved."

The conclusions of the enquiry officer pertaining to Article of charge No. V were:-

"There is a prima facie evidence that the applicant had requested for issue of a passport urgently because of the death of her daughter in Pakistan. The action of the CO in this regard cannot be faulted. As regards Ex.S.292, the CO has not explained whether the duplicate passport was issued in turn or not and if not then why not. There are number of other passport applications from Ex.S.285 to S.349. The duplicate passports were issued in most of these cases in a short period of time and no reasons have been recorded for issuing duplicate passports/additional booklets in short period of time. In most of these passport applications there are no request for issue of passports urgently. However, no case has been pointed out where the passports have been delivered to so called un-recognized travel agents. In view of this, it is held that the CO authorised issue of duplicate passports in number of cases without their being any request for urgency and without recording speaking orders as to why the passport should be issued on urgent basis although the reasons should have been recorded as per circular dt.6.6.89 (Ex.D.6). Rest of the allegations are held as not proved.

Article V is held as partly proved."

The disciplinary authority after agreeing with the advice of the Union Public Service Commission had imposed the penalty of dismissal from service. The applicant had challenged the said order of the disciplinary authority in Original Application

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1147/2000 which was decided by this Tribunal on 10.12.2001. This Tribunal held that it did not find any fault with the procedure followed by the respondents in holding the disciplinary proceedings. It was further held that this Tribunal ordinarily would not interfere with the quantum of punishment but the punishment appeared to be disproportionate to the dereliction of duty. Accordingly the matter was remitted back to the respondents to consider imposing any penalty other than dismissal from service on the applicant keeping in view the findings of the enquiry authority and the submissions made by the applicant in his representation by passing a speaking order.

2. In pursuance of the decision of this Tribunal referred to above, the matter had been reconsidered by the disciplinary authority and instead of the penalty of dismissal from service, an order was passed whereby the applicant was deemed to have compulsorily retired from the date of original order.

The reasons read:-

"11. The Disciplinary Authority is of the view that passport is a sovereign document. The irregularities committed by the Charged Officer in exercising his discretion in a mala fide manner in issuing passports on out of turn basis without any records justifying the same and without recording of speaking orders, in defiance of clear instructions of the Ministry, cannot be viewed lightly. The irregularities committed by the Charged Officer, in fact, constitute grave misconducts on his part. They reflect adversely on his integrity and devotion of duty. The Charged Officer by violating Ministry's written instructions exhibited conduct unbecoming of a Government servant. Ministry has also taken into

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consideration the fact that in the departmental proceedings the proof required was that of preponderance of probability and not proof beyond reasonable doubt. By that yardstick there was good and sufficient reason for imposition of penalty of dismissal from service on the charged officer. However, the Disciplinary Authority has decided to follow the order of Hon'ble Tribunal dated 10th December 2001 and revert to MEA's original decision for imposing the penalty of "compulsory retirement" on the Charged Officer.

12. In view of the facts and circumstances explained above, Shri P.S.Meena shall be deemed to have "compulsorily retired from the date of original order dated 27.10.2000" instead of having been "dismissed from service".

3. Aggrieved by the said order of 27.3.2002, the present application has been preferred seeking quashing of the same.

4. In paragraph 6 of the application, the applicant has asserted that an appeal would be an exercise in futility and, therefore, has filed the present application without exhausting the said remedy.

5. Section 20 of the Administrative Tribunals Act, 1985 reads as under:-

20. Applications not be admitted unless other remedies exhausted.-(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the



Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

6. We are conscious of the fact that the legislature in its wisdom has used the word "ordinarily" which necessarily implies that in a special case, this Tribunal may not entertain an application unless all the remedies available under the rules and the Act are exhausted. It is only in ^{-al} exception cases that the Tribunal may, where the exigencies so arise, entertain an application without the other remedies being exhausted. Once the applicant himself admits that an appeal can be filed by him, we find no reason to accept his plea that filing of an appeal would be not appropriate or it is an academic exercise. In that view of the matter to state that an appeal would delay the matter would be inappropriate. This would be going against the principle of law. Therefore, we are of the considered opinion that unless the said remedy is exhausted, the present application should not be entertained.

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7. For these reasons, the application fails and is dismissed. No costs.

M.P.S.
(M. P. SINGH)

MEMBER (A)

V.S.A.
(V. S. AGGARWAL)

CHAIRMAN

/sns/