CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1243/2003

New Delhi, this the 24th day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

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

(Shri T.C. Aggarwal, Advocate)

versus

Union of India, through

1. Foreign Secretary
   Ministry of External Affairs
   South Block, New Delhi

2. Joint Secretary (CNV)
   Now the Director (CNV)
   Ministry of External Affairs
   South Block, New Delhi

3. Secretary
   Union Public Service Commission
   Shahjahan Road, New Delhi .. Respondents

Shri N.S.Mehta, Advocate)

ORDER

Justice V.S. Aggarwal

Applicant (P.S.Meena) had joined the service in 1971. In 1989, he was posted as Passport Officer and transferred to Bareilly where he worked upto 2.5.1991. Pertaining to the period while he was at Bareilly, articles of charge were served on the applicant which were followed by an inquiry. The inquiry officer held that the articles of charge No.I and V had been partly proved. The same

read:-

" 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."

2. The report of the inquiry officer had been accepted. The disciplinary authority dismissed the applicant from service. The said ~~Order~~ findings had been upheld.

3. The applicant challenged the same by filing OA No.1147/2000. On 10.12.2001, this Tribunal recorded that 'there are no reasons forthcoming for imposing the extreme penalty of dismissal which shows non-appliction of mind. The

impugned order had been quashed and the matter was remitted with the following order:-

> "9. In this view of the matter, we are of the view that ends of justice would be duly met if we remit the case back to the respondents to consider imposing any other penalty other than dismissal or removal from service on the applicant, keeping in view the findings of the inquiry authority as also the submissions made by the applicant in his representation, by passing a speaking, reasoned and detailed order.
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> 10. In the result, we allow the present OA and quash and set aside the impugned order dated 27th October, 2000 (Annexure P/8). The case is remitted back to the respondents for taking further action on the above lines. This exercise shall be completed by them within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs."

After the matter was remitted, the disciplinary had passed a fresh order on 27.3.2002. Reasons were recorded in the following words:-

> "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 to duty. The Charged Officer by violating Ministry's written instructions exhibited conduct unbecoming of a Government servant. Ministry has also taken into 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."

Thereupon, the penalty of compulsory retirement was imposed upon the applicant instead of dismissal from service. He preferred a review application which was dismissed on 12.3.2003.

4. By virtue of the present application, the applicant assails the present orders that have been passed.

5. The learned counsel for the applicant at the outset contended and vehemently urged that the reasons and the findings arrived at holding the applicant to have derelicted in duty are based on no evidence and, therefore, the findings to that effect cannot withstand scrutiny. On this count, we take liberty in referring to the earlier order passed by this Tribunal in OA No.1147/2000. This Tribunal held that all the procedures have been adopted and there is no violation of the principles of natural justice. The findings read:-

"We have carefully perused the records and we find that the disciplinary proceedings initiated by the respondents are in accordance

with law, rules and instructions. The applicant was given full opportunity to defend himself and he was supplied with all the required documents and therefore there is no violation of principles of natural justice. In fact, the DA has proposed to impose the penalty of compulsory retirement on the applicant while seeking the advice of UPSC. However, the UPSC had advised penalty of dismissal from service to be imposed on the applicant and accordingly respondents have accepted the advice and imposed the penalty. We, therefore, do not find any fault with the procedure followed by the respondents in holding disciplinary proceedings against the applicant."

Once the merits had been considered by a coordinate Bench of this Tribunal, in that event, this fact will be beyond the said findings. It is not a case where this Tribunal had on earlier occasion refused to delve into the merits of the matter and passed an order only on quantum of sentence. When the merits had been touched and adversely commented upon qua the applicant, it is not open to him to re-agitate the said facts.

6. To state that certain other points were also available to the applicant would not cut much ice. The reasons are obvious. When a person argues on merits of the matter and if a particular fact is not touched at that time, the same is deemed to have been waived and it will not be permissible for him to turn around and take up a fresh plea in face of the findings already arrived at by this Tribunal in the earlier application. We hold that the applicant cannot be permitted to re-agitate the merits of the matter.

7. In that event, the learned counsel for the applicant again urged that still the penalty imposed is far exceeding the alleged dereliction of duty.

8. Quantum of punishment is one of the matters in the discretion of the disciplinary authority. Jurisdiction in judicial review thus is limited and is confined to the well known principles known as WEDNESBURY PRINCIPLES enumerated in Associated Provisional Picluse Heads Vs. Wednesbury Corporation 1948(1) KB 223. Lord Greene held that when discretion is given to an authority, the scope of judicial review would remain limited. Interference was not permissible unless one of the grounds mentioned was satisfied. One such ground was that no reasonable person would arrive at such a conclusion. The Supreme Court in the case of **Om Kumar and Others** v. **Union of India**, 2001 SCC (L&S) 1039 had also referred with approval to the Wednesbury principle.

9. In the case of **B.C.Chaturvedi** v. **Union of India and Others**, JT 1995 (8) S.C.65, this question had also been looked into. The Supreme Court held that ordinarily it is within the purview of the concerned authorities to impose the penalty. Only if it shocks the conscience of this Tribunal, it

will be permissible to interfere. In paragraph 18, the Supreme Court held:-

> "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."

10. The issuance of a passport indeed is an important function. If a person exercises his discretion in a mala fide manner, it would be a grave misconduct. Keeping in view, the sum total of the nature of the dereliction of duty and the totality of the facts, it cannot be termed that the penalty now imposed shocks the conscience of this Tribunal. We find, therefore, no reason to interfere in this regard.

11. For these reasons, the present application being without merit must fail and is

dismissed. No costs.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/sns/