Supreme Court of India Union Of India & Another vs G. Ganayutham on 27 August, 1997 Author: M J Rao Bench: Sujata V. Manohar, M. Jagannadha Rao PETITIONER: UNION OF INDIA & ANOTHER

Vs.

RESPONDENT: G. GANAYUTHAM

DATE OF JUDGMENT: 27/08/1997

BENCH: SUJATA V. MANOHAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT: J U D G M E N T M. JAGANNADHA RAO,J. This is an appeal by the Union of India and the Collector of Central Excise against the judgment of the Central Administrative Tribunal in Tr. A.No.660 of 1986 dated 5.12.1986 allowing the petition filed by the respondent. The respondent was working as Superintendent of Central Excise. While so, on 14.11.1977, was served with a memo of eight charges and an inquiry was conducted. The Inquiry Officer submitted a report dated 17.5.1978 stating hat charge No.4 was not proved, charge NO.8 was partly proved, and other charges were held proved. The respondent retired from service on 31.5.1978. A show cause notice dated 18.3.1982 was issue under Rule 9 of the Central Civil Services (pension) Rules, 1972 (hereinafter called the 'Rules') proposing withdrawal of full pension and gratuity admissible to the respondent on the ground that the Government suffered substantial loss of revenue due to the misconduct of the respondent. The respondent submitted an explanation. The Union Public Service Commission was consulted and the Commission felt that charges 4 and 6 were not proved but concurred with the findings of the Inquiry Officer on other charges. based on the Commission's advice, a penalty of withholding 50% of the pension and 50^ of gratuity was awarded to the respondent by orders dated 8.5.1984. Questioning the same, a writ petition was filed by the respondent in the High Court of Madras which was later transferred to the Tribunal. After hearing the respective counsel for the parties, the Tribunal held by judgment dated 5.12.1986 that under Rule 9 of the Rules the competent authority could not withdraw any art of the gratuity inasmuch as the said provision referred merely to withholding of pension and not gratuity. It held that the definition of 'pension' in rule 3(1)(o) which included gratuity was not applicable for purposes of Rule 9. So far as the penalty of withholding 50% of the pension was concerned, it held that the punishment awarded was 'too severe', that the lapses were procedural, there was no collusion between the respondent and any party, that the officer had otherwise done excellent work and, therefore, it was a fit case where the withholding of pension of 50% had to be restricted for a period of 10 years instead of on a permanent basis. Aggrieved by the said decision of the Tribunal, the Union of India and the Collector, Central Excise have preferred this appeal. During the pendency of this appeal, the respondent died and his legal representatives have

been bought on record. It was contended by the learned counsel for the appellants that the Tribunal was wrong in law in holding that the power to withhold 'pension' as specified in rule 9 did not include the power to withhold the whole or part of the gratuity. It was argued that under Rule 3(1)(o)), the word 'pension' is defined to include the 'gratuity' except when the term 'pension' is used in contradistinction to gratuity and that in Rule 9 there is no question of the word 'pension' being used in contradistinction gratuity. This point, according to the appellant's counsel is covered by the judgment of this Court in Jarnail Singh vs. Secretary, Ministry of Home Affairs [1993 (1) SCC 47] in favour of the appellant and against the respondent. It was also contended that the Tribunal ought not to have gone into the question as to whether the punishment of withholding 50% of the pension and gratuity was commensurate with the gravity of the misconduct proved and that this amounted to going into the 'proportionality' of the punishment which was not permissible in law. The charges proved showed that the conduct of the respondent related to loss of revenue to the government and that the competent authority had taken a 'reasonable' decision as to quantum of punishment weighing all the relevant factors and the decision of the said authority could not be said to be one which no reasonable person could have reasonably taken. In any event, there was also no finding by the Tribunal that the punishment imposed was 'shockingly' disproportionate to the gravity of charges. In Ranjit Thakur Vs. Union of India [1987 (4) SCC 611], though the principle of 'proportionality' was referred to, still it was only after arriving at a finding that the punishment was 'shockingly' disproportionate that this Court interfered with the punishment and that too under Article 136 of the Constitution of India. Learned counsel for the respondent could not place before us any other decision to persuade us to take a view different from the view taken in Jarnail Singh's case (supra). So far as the punishment was concerned, the argued that the Tribunal felt that the punishment was far severe having regard to the charges proved and it was, in those circumstances, permissible for the Tribunal to interfere with the quantum of punishment. Learned counsel relied upon the decision of this Court in State of Maharashtra vs. M.H.Mazumdar [1988 (2) SCC 52] where, on facts, it was held that withdrawing 50% of the pension permanently was harsh and the matter was remanded by this Court to the Government for fresh consideration of the quantum of punishment. The following points arise for consideration. (1) Whether while interpreting Rule 9 of the Central Civil Services (Pension) Rules, 1972 in regard to withdrawal of whole or part of pension, it is permissible to apply the definition of 'pension' in rule 3 and hold that under Rule 9 death-cum-gratuity could also be withdrawn wholly r in part? (2) Whether it is permissible for the Court or Tribunal to interfere with the quantum of punishment imposed by the competent authority on the ground that it was too severe and hence 'disproportionate' to the gravity of the charges proved? Point No.1: Rule 9 of the Rule refers to the power of the President to withhold or withdraw pension, whether permanently or for a specified period, and to the ordering of recovery from the pension, of the whole or part of any pecuniary loss caused to the government, in any departmental or Judicial proceedings, if the pensioner is found guilty of grave misconduct

of negligence during the period of his service, including service rendered upon re-employment after retirement. The proviso requires that the Union Public Service Commission be consulted before any final orders are passed. Rule 3 of the Rules defines 'pension' as including 'gratuity' except when the term pension is used in contradistinction to gratuity. In Jarnail Singh vs. Secretary, Ministry of Home Affairs [1993 (1) SCC 47] it was held that 'the term 'pension' used in Rule 9(1) must be construed to include gratuity since the said word, in the context, was not used in constradistinction to gratuity'. It was further hold that the amendment made in Rule 9(1) by the Central Civil Services (Pension) Third Amendment Rules, 1991 which substituted the words 'pension or gratuity, or both' in the body of Rule 9 was clarificatory and was intended to remove the doubt created by certain decisions of the Court rendered in 1990. It was also held that in an earlier decision in D.V.Kapoor vs. union of India [1990 (4) SCC 314] which took a contrary view, Rule 3(1)(o) was not brought to the notice of the Court. As to Jesuratnam vs. Union of India, [1990 supp.SCC 640] it was said that there was no discussion in that case. We may also state that subsequently, in State of U.P. vs. UP University Colleges Pensioners' association [1994 (2) SCC 729], the decision in Jarnail Singh's case was distinguished as the latter was based on rule 3. In yet another case in Sita Ram Yadava vs. union of India [1995 Suppl. (4) SCC 618], special leave was initially granted because of a contention based on D.V.kapoor's case that gratuity could not be withdrawn, wholly or partly, under rule 9. But at the time when the matter was disposed of, it was said that inasmuch as the gratuity had already been released in full to the employee, it was not necessary to go into the question whether gratuity could be withheld under the Pension Rules. We are of the view that the last two decision, namely, State of UP vs. UP University Colleges Pensioners' Association [1994 (2) SCC 729] and Sita Ram yadava vs. Union of India [1995 Suppl. (4) SCC 618] do not, for the reasons stated above, affect the ratio of the case in Jarnail Singh vs. Secretary, Ministry of Home Affairs [1993 (1) SCC 47]. Therefore, the Tribunal was wrong in thinking that under rule 9, 50% of the gratuity could not be withheld. We accordingly set aside the finding of the Tribunal on this point. Point 2; The point is whether judicial review powers in administrative law permit the High Courts or the Administrative Tribunals to apply the principle of 'proportionality? Before we refer to the rulings of this Court on the question of 'proportionality' in the administrative law sphere, we shall refer to the leading cases in England on the question of judicial review of administrative action. The Wednesbury Case (1948): This case is treated as laying down various basic principle relating to judicial review of administrative or statutory discretion. Before summarising the substance of the Principles laid down there we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation [9148 (1) K.B. 223(p.229)]. It reads as follows; "It is true that discretion must be exercised reasonably. Now that does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the words 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently been used and is frequently used as a general description

of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority.... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another" Lord Greene also observed (p.230): "...it must be proved to be unreasonable in the sense that the Court considers it to be a decision that no reasonable body can come to. it is not what the Court considers unreasonable... The effect of the legislation is not to set up the Court as an arbiter of he correctness of one view over another" Therefore, to arrive at a decision on 'reasonableness' the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bonafide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view. The CCSU Case(1985) and the expectation of future adoption of proportionality:- The principles of judicial review of administrative action wee further summarised in 1985 by Lord Diplock in CCSU vs. Minister for Civil Services [1985 (1) AC 374] as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic community. Lord Diplock' observed in that case as follows: "...Judicial review has I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by Judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add future of the principle of 'proportionality', which is recognised in the administrative law of several of our fellow members of the European Economic Community.....". Lord Diplock explained 'irrationality' as follows: "By irrationality, I mean what can now be succintly be referred to as 'Wednesbury unreasonabless'... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at" In other words, to characterise a decision of the administrator as 'irrational' the Court has to hold, on material, that it is a decision 'so outrageous' as to be in total defiance of logic or moral standards. Adoption of 'proportionality' into administrative law was left for the future. Ranjit Thakur vs. Union of India (1987) refers to 'proportionality': The first decision of this Court in administrative law which re-

ferred to 'proportionality' is the one in Ranjit Thakur vs. Union of India [1987 (4) SCC 611]. In that case the appellant was found guilty in Court Martial proceedings and a punishment of dismissal from service and sentence of imprisonment was imposed as permitted by the Army Act. While quashing the said punishment on the ground of its being 'strikingly disproportionate', this Court observed: "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportioality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction, Irrationality and perversity are recognised grounds of judicial review". It is clear that Ranjit Thakur treated 'proportionality' as part of judicial review in administrative law. But it will also be noticed that while observing that 'proportionality' was an aspect of judicial review, the Court still referred to the CCSU description of irrationality - namely, that it should be in outrageous in defiance of logic if it was to be treated as irrational, Ranjit Thakur was followed in Ex.Naik Sardar Singh vs. union of India [1991 (3) SCC 213, again a case under the Army Act. What it proportionality? In R vs. Goldstein [1983 (1) WLR 151 (157)], Lord Diplock said: "This would indeed be using a sledge-hammer to crack a nut". Sir John Laws (Judge of the Q.B. Division) has described 'proportionality' as a principle here the Court is "Concerned with the way in which the decision-maker has ordered his priortities; the very essence of decision making consists surely, in the attribution of relative importance to the factors in the case, and here is my point: This is precisely what proportionality is about" He further says: "What is therefore needed is a preparendness to hold that a decision which overrides a fundamental right without sufficient objective justification will, as a matter of law necessarily be disproportionate to the aims in view... The deployment of proportionality sets in focus the true nature of the exercise; the elaboration of a rule about permissible priorities". Desmith, Woolf and Jowell, (Judicial Review of Administrative Action (1995 5th ed., para 13.085 pp.601-605) point out that 'proportionality' used in human rights context involves a balancing test and the necessity test. The 'balancing test' means scrutiny of excessive onerous penalties or infringements of rights or interests and a manifest imbalance of relevant considerations. The 'necessity test' means that infringement of human rights in question must be by the least restrictive alternative. (Ranjit Thakur is quoted (1) 'Is the High Court the Guardian of Fundamental Constitutional Rights? (1993 P.L.. 59). in f.n.p.601). Brind (HL)(1991) - administrative law - proportionality - debatable in India in cases not involving fundamental freedoms: Tata Cellular (SC) (1994) and McDowell (SC) (1996): From 1985, we proceed to the next decision rendered in 1991 by the House of Lords in. R. v. Secretary for Home Dept. Ex.p. Brind [1991 (1) AC 6961. That decision stated that even by 1991. proportionality had not still become part of the Administrative law

in England. This was because the European Convention of Human Rights and Fundamental Freedoms had not been expressly incorporated into English law as yet (See Lord Bridge (p.748); Lord Roskill (p.750); Lord Templeman (p.751) and Lord Ackner (p.763). It is sufficient to refer to what Lord Ackner stated: "Unless and until Parliament incorporates the Convention into democratic law, a course which it is well known has a strong body of support, there appears to me to be at present no basis upon which proportionality doctrine applied by the European Courts can be followed by the Courts in the Country". Two decisions of this Court referred to Brind (1991) and appear to us to have struck a slightly different note than the one stated in Ranjit Thakur in regard to the question whether proportionality is part of our administrative law. In Tata Cellular vs. union of India [1994 (6) SCC 651]. It was observed by this Court after referring to Brind that the principles available in administrative law were basically illegality, irrationality (Wednesbury unreasonableness) and procedural impropriety. However, it was possible that more grounds could be added in future, - like proportionality. This Court observed (p.677-678): "those are only the broad grounds but it does not rule out addition of future grounds in course of time. As a matter of fact, in R. vs. Secretary of State for the Home dept. Ex.p. Bring, Lord Diplock refers to one development, namely, the possible recognition of the principle of proportionality" Then in 1996 came the decision in State of A.P. vs. mcDowell & Co. [1996 (3) SCC 709] where the Court after referring to Brind and the speeches of Lords Lowry and Ackner, observed that the applicability of the principle of 'proportionality' in administrative law is still 'debatable' and has not yet been 'fully and finally settled'. This Court observed that there were only three grounds as stated in CCSU: "... In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz (i) unreasonableness, which can be more accurately called irrationality, (ii) illegality and (iii) procedural impropriety (see Council of Civil Service union vs. Minister of Civil Service, which decision has been accepted by this Court as well)." Adverting to proportionality it was observed that the applicability thereof in administrative law is debatable and not dully and finally settled in administrative law. This Court observed: "The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue, (See the opinion of Lords Lowry and Ackner in R vs. Secretary of State for Home Dept. Ex p. Brind AC p.766-67 and 762). It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled" From Tata Cellular and McDowell it is fairly clear that a view has been expressed - somewhat different from Ranjit Thakur - that it is still debatable whether proportionality is part of our administrative law. The scope of its applicability in the context of fundamental freedoms was not discussed or gone into. Statute law in India: proportionality applies; Mcdowell however makes it clear that so far as the validity of a statute is concerned, the same can be judged by applying the principle of proportionality for finding our whether the restrictions imposed by the statute are permissible and within the bounds prescribed by our Constitution. McDowell referred to this exception as

follows; "It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted.'That a statute can be struck down if the restrictions imposed by it are disproportionate or excessive having regard to the purpose of the statute and that the Court can go into the question whether there is a proper balancing of the fundamental right and the restriction imposed, is well settled. (See Chintaman vs. State of M.P. [1950 SCR 759]; State of Madras vs. V.G.Row [1952 SCR 597]; India Express Newspapers vs. Union of India [1985 (1) SCC 641 & 691) etc. (The principle of 'proportionality' is applied in Australia and Canada also, to test the validity of statutes). Of course, as already stated, the Court in McDowell had no occasion to consider whether the existence of a written Constitution with a chapter on Fundamental freedoms made any difference between the English administrative law and our administrative law. We have already referred to the observation in Brind, particularly those of Lord Ackner, s to why 'proportionality' has not become part of the administrative law in England, namely, the absence of the incorporation of the European Human Rights Convention. With proportionality, Court is primary judge of administrative action - Without it, Court's role is secondary: Brind and Smith; This, in our view, is the most important aspect. it is here that Brind (1991) explains the different (2) Cunliffe vs. Commonwealth (1994) 68.Aust.L.J.791 (also 799. 810, 821) Australian Capital Tel.Co, vs. Commonwealth [1992 CL p.106(at 157)(Aus.) R.Vs.Big M Drug Mart Ltd. [1985 (1) SCR 295 (can) consequences of the application of 'proportionality' on the one hand and Wednesbury and CCSU tests on the other. This vital difference was further explained in clearer language by the Court of Appeal in 1996. As stated in Brind and as set out earlier, if the European Human Rights Convention (which, as stated earlier contains several provisions similar to part III of our Constitution) was incorporated, then the Courts in England would be able to apply the principle of 'proportionality, Brind points out that in that event, the Courts in England would (like the Human Rights Court at Strasbourg) become the primary judges of the validity of administrative action or of discretionary powers exercised under statute. If, on the other hand, the Human Rights Convention was not incorporated and the principle of proportionality was not available. English Courts would be left with Wednesbury and CCSU tests. Then the Court's role would only be a secondary one while the primary role would remain with the administrator. What did this mean? It meant that in its secondary role, the English Courts would only consider whether the administrator had reasonably come to his primary decision on the material before him. This distinction between the primary and secondary roles was explained by Lord Bridge in Brind (p.749) as follows: "The primary judgment as to whether the particular competing public interest justifies the particular restriction imposed falls to be made by the Secretary of State to whom Parliament has entrusted the discretion. But we are entitled to exercise a secondary judgment by asking wether a reasonable secretary of State, on the material before him, could reasonably make the primary judgment. In a recent case 1996, in R vs. Min-

istry of Defence, ex.p. Smith [1996 (1) AllE.R.257] in the Court of Appeal, Lord Bingham M.R. explained (p.264-265) the position of the Court in the absence of the Convention and of proportionality, as follows:-"The appellant's right as human beings is very much in issue. It is now accepted that this issue is justiciable. This does not of course mean that the Court is thrust into the position of the primary decision maker.' Focusing on this point more clearly, Henry L.J. (p.272) explained in the same case as follows;"If the convention were part of our law, then as Simon Brown L.J. said in the Divisional Court, the primary judgment on this issue would be for the judges, But parliament has not given us the primary jurisdiction on this issue. Our present constitutional role was correctly identified by Simon Brown L.j. as exercising a secondary or reviewing judgment, as it is, in relation to the Convention, the only primary judicial role lies with the European Court of Human Rights at Strasbourg.'The Court of Appeal agreed with the observations of Simon Brown, L.J. in the Divisional Court. We are of the view that even in our country, - in cases not involving fundamental freedoms, - the role of our Courts/Tribunals in administrative law is purely Secondary and while applying Wednesbury and CCSU principles to test the validity of executive action or administrative action taken in exercise of statutory powers, the Courts and Tribunals in our country can only go into the matter, as a secondary reviewing Court to find out if the executive of the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority the Court/Tribunal cannot substitute its view as to what is reasonable. Fundamental rights - Proportionality - administrative law - question left open. The question arises whether our Courts while dealing with executive or administrative action or discretion exercised under statutory powers where fundamental freedoms are involved could apply 'proportionality' and take up a primary role. In England it has been accepted that the English Court could apply 'proportionality' if the Convention were incorporated into English law. But, so for as our Courts are concerned, we do not propose to decide the question in the present case inasmuch as it is not contended before us that any fundamental freedom is affected. As and when an executive act or administrative action taken in excess of statutory powers, is alleged to offend fundamental freedoms, it will then be for this Court to decide whether the principle of proporionality applies in administrative law sphere in our country and whether the Courts will take up a primary role. Whether the primary role will be confined to Article 19.21 etc. and not to Article 14 will also have to be decided. Before parting with this aspect, we may state that in England in R vs. Secretary of State Exp. Bugdaycay [1987 (1) AC 514] and in Brind as well as Smith it has been, of course, laid down that at the moment, in the absence of the convention and proportionality, English Courts will apply a 'strict scrutiny' test to the administrative action rather than the Wednesbury and CCSU tests, whenever liberty and freedom of expression etc, which are treated as part of Common Law are involved. The Courts would consider whether the restrictions imposed by the administrator are necessary for protecting some 'competing public interest'. This would no doubt amount to lowering the 'threshold of Wednesbury'.

Margin of appreciation and judicial restraint; We may also state that even if the Courts in England by virtue of incorporation of the Convention should become the primary Judges of the validity of administrative decisions, still they would exercise great judicial restraint in matters concerning governmental policies, national security, or taxation, finance and economy of the country and similar such matters of grave public policy. This restraint on the part of the judiciary is described in administrative law as giving a greater margin of appreciation to the administrator in certain areas. See Brind, (lord Templeman, (p.751), Ackner (p.762) and Lord Lowry (p.766). Similar principles have been laid down by this court while testing the validity of legislative measures in the context of Art, 19(2) to (6). The Courts would give a 'reasonable margin' to the legislature (Manoharlal vs. State of Punjab [1961 (2) SCR 343]} in several situations. Summing up: The current position of proportionality in administrative law in England and India can be summarised as follows;- (1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bonafide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test. (2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is nor ruled out. These are the CCSU principles. (3)(a) As per Bugdaycay, Brind and Smith, as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he had done. (3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon. (4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority. (4)(b) Whether in the case of administrative or executive action af-

fecting fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Article 19, 21 etc. are involve and not for Article 14. Punishment in disciplinary matters: Wednesbury & CCSU tests: Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of 'proportionality'. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to 'irrationality', there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in 'outrageous' defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain 'Ranjit Thakur'. In Ranjit Thakur, this Court interfered with the punishment only after coming to he conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B.C. Chaturvedi vs. Union of India [1995 (6) SCC 749], a three Judge Bench said the same thing as follows; "The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusions 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 would the relief, either by directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it ma itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof" Similar view was taken in India Oil Corporation vs. Ashok Kumar Arora [1997 (3) SCC 72], that the Court will not intervene unless the punishment is wholly disproportionate. In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C.Chaturvedi's case that the Court might, - to shorten litigation - think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C.Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different). For the reasons given above, the case cited for the respondent, namely, State of Maharashtra vs. M.H.Mazumdar cannot be of any help. For the aforesaid reasons, we set aside the order of the Tribunal which has interfered with the quantum of punishment and which has also substituted its own view of the punishment. The punishment awarded by the departmental authorities is restored. In the circumstances, there will be no order as to costs.