Om Kumar And Ors vs Union Of India on 17 November, 2000

Equivalent citations: AIR 2000 SUPREME COURT 3689, 2001 (2) SCC 386, 2000 AIR SCW 4361, 2001 LAB. I. C. 304, (2002) 3 LAB LN 64, 2000 (3) JT (SUPP) 92, 2000 (7) SCALE 524, 2001 (4) LRI 1049, 2000 (10) SRJ 285, (2000) 7 SCALE 524, (2001) 1 SERVLR 299, (2000) 27 ALLCRIR 823, (2000) ALLCRIC 263, (2000) 2 ALL WC 1420, (2001) 1 ESC 15, (2001) 1 SCT 214, (2000) 8 SUPREME 217, 2001 SCC (L&S) 1039

Bench: M. Jagannadha Rao, U.C. Banerjee

CASE NO.:
Special Leave Petition (civil) 21000 of 1993

PETITIONER:
OM KUMAR AND ORS.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT: 17/11/2000

BENCH:
M. JAGANNADHA RAO & U.C. BANERJEE

JUDGMENT:

JUDGMENT IN DELHI DEVELOPMENT AUTHORITY Vs. SKIPPER CONSTRUCTION AND ANR.

2000 Supp(4) SCR 693 The following order of the Court was delivered :

M. JAGANNADHA RAO. J. This case concerns the proceedings arising out of an order of this Court dated 4.5.2000 proposing to re-open the quantum of punishments imposed in departmental inquiries on certain officers of the Delhi Development Authority (hereinafter called the DDA) who were connected with the land of the DDA allotted to M/s Skipper Construction Co. It was proposed to consider imposition of higher degree of punishments in view of the role of these officers in the said matter. After directions were given by this Court that disciplinary action be taken and punishments were imposed, this Court had no occasion to examine whether the right punishments were awarded to the officers in accordance with well known principles of law or whether the punishments required any upward revision.

The facts of the case limited to the present order are as follows :

By an order dated 29.11.94, this Court requested Justice O. Chinnappa Reddy (former Judge of this Court), to investigate into the conduct of the officials of the DDA including its ex-officio chairman at the relevant time, in handing over the possession of the suit land in M/s. Skipper Construction Pvt. Ltd. before receiving the auction amount in full and also in "conniving" at the construction thereon as well as at the advertisements given by it for bookings in the building in question. The learned Judge was also requested to "look into the legality and propriety of the order dated 4.10.98 passed by the then ex-officio Chairman of the DDA and the directions given by the Central Government under Section 41 of the Delhi Development Act."

Report of Justice Chinnappa Reddy and orders thereon:

Justice Reddy submitted his report on 7.7.95. Thereafter, this Court accepted the Report and passed an Order of 29.11.95, directing the Department of Personnel to initiate disciplinary proceedings against five officers (i) Sri V.S. Ailawadi IAS (retired), (ii) Sri K.S. Baidwan, IAS

(iii) Sri Virendra Nath IAS, (iv) Sri R.S. Sethi IAS and (v) Sri Om Kumar IAS. This Court, in its order, stated that so far as Sri Om Kumar was concerned, only a minor punishment could be imposed.

Consequent Disciplinary Inquiry:

Thereafter, Sri P.K. Gopinath was appointed as Inquiry Officer on 8.8.96. Report of the Inquiry Officer was received on 31.8.96 so far as Sri Virendra Nath and Sri Om Kumar were concerned. Copy was sent to the officers on 11.1.96 and replies of the officers were received. Similarly, in the case of Sri K.S. Baidwan and Sri R.S. Sethi. Inquiry Officer, Sri P.K. Gopinath was appointed on 20.8.96, report was received on 31.10.96 and copies were given to the officers on 14.11.96 and replies were received from them. As regards , Sri V.S. Ailawadi, in view of the expiry of four years prescribed in Rule 6(1) (b) (ii) of the All India Service (Death-cum- Retirement Benefits) Rules, 1958 upon which the officer relied, the Department did not take any action.

On 5.2.97 after taking tentative decisions, the cases of the four officers were referred to the U.P.S.C. as required by the All India Service (Discipline and Appeal) Rules, 1969. The advice of the U.P.S.C. dated 28.2.97 was received by the department on 3.3.97. The said advice was favourable to the officers. Since there was difference in the tentative decisions of the Competent Authority and the advice of the UPSC, the matter was reconsidered by the Department of Personnel so far as Sri Virendra Nath and Sri Om Kumar. Similarly, the Ministry of Home Affairs, in the cases of Sri K.S. Baidwan and Sri R.S. Sethi, differed from a similar view of the UPSC.

It was considered by the Committee of Secretaries that the UPSC must be asked to reconsider its advice. The Home Ministry was requested to take action in this behalf in the case of Sri K.S. Baidwan and Sri R.S. Sethi. The reconsidered advice of the UPSC was received on 16.6.97. It was in favour of the officers. The matter concerning the four officers was placed again before the Committee of Secretaries and then before the respective competent authorities.

The Orders of Punishment in Respect of Four Officers:

> On 27.8.97, the Department of Personel imposed a 'Major' penalty on Sri Virendra Nath and a 'minor' penalty of'censure' on Sri Om Kumar. The Ministry of Home Affairs imposed a 'Major' penalties on Sri K.S. Baidwan and Sri R.S. Sethi on 27.8.97. the following are the punishments imposed.
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> (1) Sri Om Kumar : 'Censure' (Minor penalty)
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> (2) Sri Virendra Nath : (Major penalty)-Reduction to the pay of
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> Rs. 7,500 in the existing grade for a period of two years with further directions that he will not earn increment during this period and that on the expiry of the said period the reduction will have the effect of postponing his further increments. As and when new pay scales are notified this pay will be refixed with regard to the penalty imposed in the revised pay scale with all the above stipulations.
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> (3) Sri K.S. Baidwan : (Major Penalty)-His pay was to be reduced by one stage from Rs. 7600 to Rs. 7500 in the time scale of pay of Rs.

7300-100-7600 for 2 years with immediate effect and he would not earn increments of pay during the said period of 2 years with immediate effect, and on expiry thereof, the reduction in pay will have effect of postponing future increments of his pay; in the event of the time-scale being revised, the refixation was to be subject to the above stipulations.

(4) Sri R.S. Sethi : (Major Penalty)-His pay be reduced by one stage from Rs. 7100 to Rs. 6900 in the time-scale of Rs. 5900-6700 for 2 years with immediate effect and he would not earn increment during the said period, and the reduction in pay will have the effect of postponing future increments; in the case of pay revision- the refixation was to be subject to the above stipulations.

Subsequent Litigation in this Court between Skipper and prospective buyers of flats:

> Skipper Construction having obtained possession from DDA without paying the consideration in full, advertised and collected crores of rupees from would be purchasers. In that process, it collected amounts from more persons than there were flats. It was the case of the purchasers that the company had also diverted funds elsewhere.

In that state of affairs, this Court directed possession to be given back by Skipper Construction CO. to DDA, together with the structure under construction, and permitted DDA to resell the property in auction. The property was resold by DDA. Out of the amount fetched in re-auction, this court directed Rs. 16 crores to be deposited in this Court for disbursal among the various persons who had earlier deposited monies with Skipper Construction Co. The genuineness and validity of claims of the depositors had to be gone into. This Court was, in fact, thereafter flooded with claims. The misery of the depositors over the years is unprecedented.

Two Commissions were appointed by this Court viz. one in favour of Justice O. Chinnappa Reddy and another in favour of Justice R.C. Lahoti. The Commission went into the claims of hundreds of depositors from whom Skipper Construction Co. had collected monies. After the Commissions submitted reports, a few crores were disbursed to the claimants. There were further claims before this Court and Justice P.K. Bahri, retired Judge of Delhi High Court was appointed to go into the further claims. The inquiry, we are told is almost over. In this process, this court had to spend a lot of time to sort out various complicated legal and factual issues concerning the claimants. Several orders passed running into two huge volumes have been passed during the last five years. Many more orders remain to be passed. In fact, it took considerable time to bring the directors of Skipper Company/family members before this Court to see that they cooperate in sorting out the mess that was created. If only these officers of DDA had cancelled the contract, encashed the Bank guarantees in time and had not granted extensions to Skipper Construction Company, all this litigation could have been easily avoided.

Show Cause Notice by this Court proposing to refer the matter to the Vigilance Commission by re-opening the quantum of punishment.

This court felt that the officers of the DDA who dealt with these matters at the relevant time were solely responsible for the misery of hundreds of claimants who had put in their life's earnings in the Skipper Construction Company, and that these depositors were virtually taken for a ride. This Court directed that disciplinary action be initiated and thereafter, proceedings were initiated and punishments, as above stated, were imposed. Thereafter, this Court felt that prima facie the punishments imposed on these officers were not proportionate to the gravity of misconduct and that the punishments needed to be upgraded. An order was, therefore, passed on 4.5.2000 to re-open the punishments imposed and to refer them for reconsideration by the Vigilance Commissioner. Before taking further action, this Court issued notice to the five officers to show cause, why the question relating to the quantum of punishments should not be re-opened and referred to the Vigilance Commissioner for re-examination.

Replies to show cause and submissions of counsel:

Pursuant thereto, reply affidavits have been filed by the officers and we are now passing orders in their cases i.e. in the cases of (1) Sri Om Kumar, (2) Sri Virendra Nath, (3) Sri K.S. Baidwan and (4) Sri R.S. Sethi. The matter relating to Sri Ailawadi Stood adjourned at the request of learned senior counsel Sri Kapil Sibal.

We have heard submissions of learned Senior Counsel Sri K. Parasaran on behalf of Sri Om Kumar and of Dr. Rajeev Dhawan on behalf of Sri Virendra Nath. We have heard learned senior counsel Sri KTS Tulsi on behalf of Sri K.S. Baidwan and of Sri Gopal Subramaniam on behalf of Sri R.S. Sethi. We have also heard the submissions of the learned Amicus Curiae, Sri Joseph Vellapally and of Sri Dayan Krishnan the Counsel for DDA and Union of India. The records of the disciplinary proceedings have also been placed before us.

During the course of the hearing, while Sri K. Parasaran, learned Senior counsel for Sri Om Kumar and Dr. Rajeev Dhawan for Sri Virendra Nath submitted that the respective punishments awarded to their clients namely, censure, reduction in pay and increments did not need any enhancement, Sri Gopal Subramaniam for Sri R.S. Sethi pointed out that his client had filed a petition before the Central Administrative Tribunal and the matter is pending. Sri K.T.S. Tulsi, appearing for Sri Baidwan submitted that his client's role was so meagre in the entire episode that it was a case where he should have been exonerated fully. A memorial filed by him is pending before the Competent Authority.

Our view in regard to four officers: Sri R.S. Sethi:

After hearing the submissions on behalf of Sri R.S. Sethi as stated above, we were of view that, so far as Sri R.S. Sethi was concerned, inasmuch as a major punishment had been imposed, we should not go into further enhancement of punishment, so far as reduction of punishment is concerned, his case is now pending before the Central Administrative Tribunal. We, had therefore, stated that it would be for the Tribunal to consider his case in accordance with law.

Sri Baidwan:

So far as Sri Baidwan is concerned, the basic contention of learned Senior Counsel, Sri KTS Tulsi is that the major punishment awarded to him is unjustified and that the charge against him nullifies itself since the same emanated slightly from the "note" dated 31.5.1982 recorded by Mr. Virendra Nath. For convenience sake, the "note" is reproduced hereinbelow :

"On 28.5.82 the V.C. had desired that before issuing orders 1 shall get in touch with Secretary to L.G. Accordingly, on 29th I got in touch with the Secretary to L.G. and he asked me to wait till Monday. Since there are no further instructions from Secy, to L.G. further action may be taken as proposed."

Sd/-

(Virendra Nath) Commission (Lands) 31.5.82 Mr. Tulsi contended rather strongly that there was existing no evidence against him except for the alleged telephonic instructions appearing in the "Note" Mr. Tulsi contended that in terms of Rules II and HI of AIS Conduct Rules, there was existing an obligation to have a "note" confirmed in the event there was any involvement of any other officer and it was on this basis the Union Public Service Commission in its advice dated 28th February, 1987 categorically held that though Virendra Nath had recorded a "note" on 31.5.1982 regarding instruction received on telephone resulting in obtaining stay order by M/s. Skipper, no action was taken by Vice-

Chairman to whom the file had been put up again on 2.6.1982 to confirm the telephonic instructions alleged to have been received from Baidwan nor was the matter brought to the notice of the Lt. Governor immediately as required under the Rules. The Union Public Service Commission had further noted that the Vice-Chairman, as a matter of fact, had stated before Justice Chinnappa Reddy Commission that he did not recollect exactly the conversation he had with Sri Baidwan on 28.5.1982.

Mr. Tulsi contended that the "note" of Sri Virendra Nath regarding the telephonic instructions was one clearly created by Mr. Virendra Nath to save his own skin and that this was apparent from the fact that the Vice- Chairman, DDA had failed to carry out the orders of the Lt. Governor dated 6.4.82, in which the Lt. Governor had ordered that he did not expect the case to be put up before him for the purpose of extension again. Inspite of the clear orders of the Lt. Governor, the then Vice-Chairman failed to cancel the bid of M/s. Skipper Constructions on 1.5.1982 and chose to recommend another extension and sent the case to the Lt. Governor. This failure on the part of the Vice-Chairman to take any action for 25 days, itself negated the inference of collusion between him and the deponent with regard to the alleged delay of two days from 29.5.82 to 31.5.82.

Mr. Tulsi further relied on the evidence of the former Lt. Governor Shri S.L. Khurana, conceptually ruling out the possibility of Sri Baidwan's involvement in the telephone affair and it was on this score Mr. Tulsi contended that imposition of major penalty- or for that matter, any penalty- was wholly unwarranted and the career of Sri K.S. Baidwan had been very seriously damaged in an otherwise unblemished record of service as a bureaucrat for 34 years, thus depriving him of a good chance of promotion to the level of Secretary to the Government of India.

We do find some force in the contention of Mr. Tulsi but we are not expressing any opinion in regard thereto since a "memorial" submitted by Sri Baidwan is pending consideration before the appropriate authority. Save and except recording that the available documentary evidence would definitely cast a doubt as regards the aspersion cast on to Sri K.S. Baidwan, we are of the view that this aspect of the matter may be reconsidered by the concerned authority while dealing with the "memorial". We do not want to express any opinion one way or the other on the merits inasmuch as the "memorial" of Sri Baidwan is pending before the Competent Authority.

We are of the view that in the case of Sri Baidwan. First his "memorial" be disposed of by the Competent Authority within six weeks from today. In case it goes in his favour, of course, the matter would end there. But, in case it goes against him either wholly or in part, it will be for him to move the appropriate forum, namely, the Central Administrative Tribunal. In the above circumstances, we are of the view that it is not necessary for this Court to refer his case to the Vigilance Commissioner.

Shri Om Kumar and Shri Virendra Nalh:

> That leaves the cases of Sri Om Kumar, who was awarded a minor punishment (as directed in the order of this Court dated 29.11.95) and of Sri Virendra Nath, who was awarded a major punishment.
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> Submissions of counsel and Legal Issues emanating therefrom:
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> It was argued at great length by learned senior counsel Sri K. Parasaran and Dr. Rajeev Dhawan that the question as to the quantum of punishment to be imposed was for the competent authority and that the Courts would not normally interfere with the same unless the punishment was grossly disproportionate. The punishments awarded satisfied the Wednesbury rules. On the other hand, learned Amicus Curiae argued that, on the facts of the case, the cases of these two officers justify reference to the Vigilance Commissioner.
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> We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well known principles known as Wednesbury principles. (See Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 KB 223. This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the.principle of 'proportionality' in Administrative law was considered exhaustively in Union of India v. Ganayutham, [1997] 7 SCC 463 where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

We shall, therefore, have to examine the cases of Sri Om Kumar and of Sri Virendra Nath from the stand point of basic principles applicable under Administrative Law, namely, Wednesbury principles and the doctrine of proportionality. It has, therefore, become necessary to make reference to these principles and trace certain recent developments in the law.

I (a) Wednesbury principle:

> Lord Greene said in 1948 in the Wednesbury case that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or other of the

following conditions were satisfied-namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union v. Minister of Civil Services, (1983) 1 AC 768 (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following-viz. Illegality, procedural irregularity and irrationality. He, however, opined that 'proportionality' was a 'future possibility.'

(b) Proportionality:

The principle originated in Prussia in the nineteenth Century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court had applied the principle of 'proportionality' to legislative action since 1950, as stated in detail below.

By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality.

The above principle of proportionality has been applied by the European Court to protect the rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and, in particular, for considering whether restrictions imposed were restrictions which were 'necessary'-Within Articles 8 to 11 of the said convention (corresponding to our Article 19(1) and to find out whether the restrictions imposed on fundamental freedoms were more excessive than required. (Handyside v. UK, (1976) I EHR p. 737. Articles 2 and 5 of the Convention contain provisions similar to Article 21 of our Constitution relating to life and liberty. The European Court has applied the principle of proportionality also to questions of discrimination under Article 14 of the Convention (corresponding to Article 14 of our Constitution). (See European Administrative Law by J. Schwarze, 1992, pp. 677-866.

(II) Proportionality and Legislation in U.K. & India:

On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability similar to the one experienced by English Courts for declaring as unconstitutional legislation on the principle of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of 'proportionality' has indeed been applied vigorously to legislative (and administrative action) in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India-such as freedom of speech and expression, freedom to assessable peacably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India-this court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. 'Reasonable restrictions' under Article 19(2) to (6) could be imposed on these freedoms only by legislation and Courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this court, the extent to which 'reasonable restrictions' could be imposed was considered. In Chintaman Rao v. State of U.P., [1950] SCR 759, Mahajan J, (as he then was) observed that 'reasonable restrictions' which the State could impose on the fundamental rights 'should not be arbitrary or of an excessive nature, beyond what is required for achieving the objects of the legislation.' 'Reasonable' implied intelligent care and deliberations, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Article 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri CJ in State of Madras v. V.S. Row, [1952] SCR 597, observed that the Court must keep in mind the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions of the time. This principle of proportionality vis-a-vis legislation was referred to by Jeevan Reddy J in State of A.P. v. MC Dowell & Co., [1996] 3 SCC 709 recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in the last fifty years. Decided cases run into thousands.

Article 21 guarantees liberty and has also been subjected to principles of 'proportionality'. Provisions of Criminal Procedure Code, 1974 and the Indian Penal Code came up for consideration in Bachan Singh v. State of Punjab, [1980] 2 SCC 684, the majority upholding the legislation. The dissenting judgment of Bhagwati J See [1982] 3 SCC 24 dealt elaborately with 'proportionality' and held that the punishment provided by the statute was disproportionate.

> So far as Article 14 is concerned, the Courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the Court considered the question weather the classification was based on intelligible differentia, the Courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable See Air India v. Nergesh Meerza and Ors.. [1981] 4 SCC 335 at 372-373. But this latter aspect of striking down legislation only on the basis of 'arbitrariness' has been doubted in State of A.P. v. Mc Dowell and Co., [1996] 3 SCC 709.
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> In Australia and Canada, the principle of proportionality has been applied to test the validity of statutes [See Cunliffe v. Commonwealth, (1994) 68 Aust. L,J 791 (at 827, 839) (799, 810. 821). In R. v. Oakes. (1986) 26 DLR (4th) 200 Dickson, CJ of the Canadian Supreme Court has observed that there are three important components of the proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Secondly, the means, must not only be rationally connected to the objective in the first sense, but should impair as little as possible the right to freedom in question. Thirdly, there must be 'proportionality' between the effects of the measures and the objective. See also Ross v.

Brunswick School Dishut, No. 15 [1996] 1 SCR 825 at 872 referring to proportionality. English Courts had no occasion to apply this principle to legislation. Aggrieved parties had to go to the European Court at Strasbourg for a declaration.

In USA, in City of Boerne v. Flares. [1997] 521 U.S. 507, the principle of proportionality has been applied to legislation by stating that "there must be congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end".

Thus, the principle that legislation relating to restrictions on fundamental freedoms could be tested on the anvil of 'proportionality' has never been doubted in India. This is called 'primary' review by the Courts of the validity of legislation which offended fundamental freedoms.

IIIA Proportionality and Administration Action (In England):

> In Administrative Law, the principle of 'proportionality' has been applied in several European Countries. But, in England, it was considered a future possibility in the GCHQ case by Lord Diplock. In India, as stated below, it has always been applied to administrative action affecting fundamental freedoms.
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> (i) From Wednesbury to strict scrutiny or proportionality:

> The development of the principle of 'strict Scrutiny" or 'proportionality' in Administrative Law in England is, however, recent. Administrative action was traditionally being tested on Wednesbury grounds. But in the last few years, administrative action affecting the freedom of expression or liberty has been declared invalid in several cases applying the principle of 'strict scrutiny'. In the case of these freedoms, Wednesbury principles are no longer applied. The Courts in England could not expressly apply proportionality in the absence of the Convention but tried to safeguard the rights zealously by treating the said rights as basic to the Common Law and the Courts then applied the strict scrutiny test. In the Scatcher Case Alt. General v. Guardian Newspapers Ltd., (No.2) (1990) 1 AC 109 (at pp. 283-284), Lord Goff stated that there was no inconsistency between the Convention and the Common Law. In Derbyshire Country Council v. Times Newspapers Ltd., (1993) AC 534, Lord Keith treated freedom of expression as part of Common Law, Recently, in R v.

Secretary of State for Home Department, Ex P. Simms, [1999] 3 All ER 400 (H.L.), the right of a prisoner to grant an interview to a journalist was upheld treating the right as part of the Common Law. Lord Hobhouse held the policy of the administrator was disproportionate. The need for a more intense and anxious judicial scrutiny in administrative decisions which engage fundamental human rights was re-emphasised in R v. Lord Saville Ex. pt., [1999] 4 All ER 860 870, 872 CCA. In all these cases, the English Courts applied the 'strict scrutiny' test rather than describe the test as one of 'proportionality'. But, in any event, in respect of these rights 'Wednesbury' rule has ceased to apply.

(ii) Brind and proportionality: Primary and Secondary review:

> However, the principle of 'Strict Scrutiny' or 'proportionality' and primary review came to be explained in R v. Secretary of State for the Home Department, ex. P. Brind, (1991) 1 A.C. 696. That case related to directions given by the Home Secretary under the Broadcasting Act, 1981 requiring BBC and IBA to refrain from broadcasting certain matters through persons who represented organisations which were prescribed under legislation concerning the prevention of terrorism. The extent of prohibition was linked with the direct statement made by the members of the organisations. It did not however, for example, preclude the broadcasting by such persons through the medium of a film, provided there was a 'voice-over' account, paraphrasing that they said. The applicant's claim was based directly on the European Convention of Human Rights. Lord Bridge noticed that the Convention rights were not still expressly engrafted into English Law but stated that freedom of expression was.basic to the Common Law and that, even in the absence of the Convention, English Courts could go into the question (See p. 748-749).
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> "..... Whether the Secretary of State, in the exercise of his discretion could reasonably impose the restriction he has imposed on the broadcasting organisations"

and that the Courts were "not perfectly entitled to start from the premise that any restriction of the right to freedom of expression requires to be justified and nothing less than an important public

interest will be sufficient to justify it."

Lord Templeman also said in the above case that the Courts could go into the question whether a reasonable minister could reasonably have concluded that the interference with this freedom was justifiable. He said that 'in terms of the Convention' any such interference must be both necessary and proportionate (ibid pp. 750-751).

In a famous passage, the seeds of the principle of Primary and Secondary review by Courts were planted in the Administrative law by Lord Bridge in the Brind case. Where convention rights were in question the courts could exercise a right of primary review. However, the Courts would exercise a right of secondary review based only on Wednesbury principles in cases not affecting the rights under the Convention. Adverting to cases where fundamental freedoms were not invoked and where administrative action was questioned, it was said that the Courts were then confined only to a secondary review while the primary decision would be with the administrator. Lord Bridge explained the primary and secondary review as follows:

> "The primary judgment as to whether the particular competing public interest justifying 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 whether a reasonable Secretary of State, on the material before him, could reasonably make the primary judgment".

(iii) Smith explains Proportionality further: Primary and Secondary roles of the Court The principle of proportionality and the primary role of the Courts where fundamental freedoms were involved was further developed by Simon Brown LJ. in the Divisional Court in R.v. Ministry of Defence. Exp. Smith, (1996) Q.B. 517 at 541 as follows. Adverting to the primary role of the Court in cases of freedoms under the Convention, the learned Judge stated:

> "If the Convention for the Protection of Human Rights and Fundamental Freedoms were part of our law and we are accordingly entitled to ask whether the policy answers a pressing social need and whether the restriction on human rights involved can be shown disproportionate to its benefits, then clearly the primary judgment (subject only to a limited' margin of appreciation') would be for us and not for others; the constitutional balance could shift."

Adverting to the position (in 1996) i.e.-before the Convention was adopted-Simon Brown LJ Stated that the Courts had then only to play a secondary role and apply Wednesbury rules. The learned Judge said:

> "In exercising merely secondary Judgment, this Court is bound, even though acting in a human rights context, to act with some reticence."

On appeal, the above principles were affirmed in the same case in R v. Ministry of Defence Exp. Smith, (1996) 1 All ER. 257 CA. In the Court of Appeal, Lord Bingham M.R. said the Court, in the

absence of the Convention was not thrown into the position of the decision maker. Henry LJ (p-272) stated as follows:

> "If the Convention were part of our law, then as Simon Brown LJ said in the Divisional Court, the primary judgment on this issue would be for the judges. But Parliament has both given us the primary jurisdiction on this issue. Our present Constitutional role was correctly identified by Simon Brown LJ as exercising a secondary or reviewing judgment, as it is, in relation to the Convention, the only primary judicial role lies with the Europe Court at Strasbourg."

Thus, the principle of Primary review and proportionality on the one hand and the principle of secondary review and Wednesbury reasonableness on the other hand gave a new dimension to Administrative law, the former applying in the case of fundamental freedoms and the latter, in other cases.

(iv) Area of discretion of administrator-varies in different situations:

> While the Courts' level of scrutiny will be more in case of restrictions on fundamental freedoms, the Courts give a large amount of discretion to the administrator in matters of high-level economic and social policy and may be reluctant to interfere: R v. Secretary of State for the Environment. Ex p. Nothinghanshore Country Council, (1986) AC 240: R v. Secretary of States for Environment, exp. Hammersmith and Fultan London Borough Council, (1991) 1 AC 521(597). Smith speaks of 'variable margin of appreciation'. The new Rule 1 of the Civil Procedure Rules, 1999 permits the Courts to apply 'proportionality' but taking into account the financial issues, complexities of the matter and the special facts of the case.
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> (v) Post-Smith and the Human Rights Act, 1998 After Smith, the English Human Rights Act, 1998 has since been passed and is to be effective from 2.10.2000. The possibility of the demise of Wednesbury rules so far as administrative action affecting fundamental freedoms are concerned, is now clearly visualised. (See Prof. R.P. Craig's Administrative Law. 4th Ed. 1999 pp. 585-586) Though the Act itself does not explicitly enjoin the English Courts to apply the test of 'proportionality', it is arguable that it is implicit because Section 2(1) (a) requires the Court to take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights when the Courts thinks it fit relevant to proceedings regarding Convention rights.

Under Article 3(1) of the Human Rights Act, 1998, the English Court can now declare the legislative action as incompatible with the rights and freedoms referred to in the Schedule. The Minister is then to move Parliament for necessary amendment to remove the incompatibility. While doing so, the English Court, can now apply strict scrutiny or proportionality to legislative and administrative action. The principle is now treated as Central to English Law (See Human Rights Law and Practice by Lord Lester of Herne Hill, Q.C. & David Pannick Q.C., (1999) Para 3.16). The more the threshold

of Wednesbury irrationality is lowered when fundamental human rights are on play, the easier it will become to establish judicial review as an effective remedy with Article 13 of the 1998 Act (See, ibid, Supplement August, 2000) (Para 4.13.12).

The Privy Council, in a case arising under the Constitution of the Republic of Trinidad and Tobago had occasion to deal with life and liberty and validity of certain instructions imposed by Government prescribing time limits for convicts of death sentence to submit representations to international bodies (as per Conventions ratified by the State). The privy Council held that the instructions were violative of 'porportionality' and due process. (See Thomas v. Baptists) (2000) 2 AC I at 20 (Per Lord Millet for majority). Recently, Lord Irvine of Lairg, the Lord Chancellor has explained the position of 'proportionality' after the Commencement of the English Human Rights Act, 1998. (See 'The Development of Human Rights in Britain under an Incorporated Convention on Human Rights) (1998 Public Law, 221) (at pp. 233-234). The difference between the approach of Courts in the cases governed by this Act and the traditional Wednesbury rules has been pointed out by the Lord Chancellor as Follows:

> "Although there is some encouragement in British decisions for the view that the margin of appreciation under the Convention is simply the Wednesbury test under another guise, statements by the Court of Human Rights seem to draw significant distinction. The Court of Human Rights has said in terms that its review is not limited to checking that the 'national authority exercised its discretion reasonably, carefully and in good faith'. It has to go further. It has to satisfy itself that the decision was based on an "acceptable assessment of the relevant facts" and that the interference was no more than reasonably necessary to achieve the legislative aim pursued".

Explaining 'Strict Scrutiny' or 'proportionality' as above, In the wake of the Human Rights Act, 1998, the Lord Chancellor referred to the Principles laid down by Simon Brown LJ in Ex.P. Smkith. In cases under the Human Rights Act, 1998, he said "a more rigorous scrutiny than the traditional judicial review will be required." The Lord Chancellor further observed:

> "In areas where the Convention applies, the Court will be less concerned whether there has been a failure in this sense (i.e. Wednesbury sense) but will inquire more closely into the merits of the decision to see for example that necessity justified the limitations of a positive right, and that it was no more of a limitation than was needed. This is a discernible shift which may be seen in essence as a shift from form to substance."

*Thus, the principle of primary and secondary review respectively in Convention cases and non-convention cases has become more or less crystalised. These Principles were accepted in Ganayutham.

*See also Sir John Laws 'The Limitations of Human Rights in Britain: 1998 Public Law 254 (at 262,265): Davind Pannick, Principles of Interpretation of Convention Rights under the Human

Rights Act and the Discretionary area of judgment' 1998 Public Law 545 (at 549). Towards the Nut Cracking Principle. Reconsidering the objections to proportionality by Garreth Wong 2000 Public Law 92) (vi) The recent case in UK in ITF (1999):

> While the English Courts were settling down to the principle of 'strict scrutiny' or 'proportionality' for review of administrative action touching fundamental freedoms, leaving Wednesbury principles to apply to other non-convention cases, a new approach has recently been made in a case decided by the House of Lords in R v. Chief Constable of Sussesc. ex.p. International Trader's Ferry Ltd., (1999) 1 All E.R.129. In that case, the decision of the police not to provide the required help to the ITF for transport of goods across the English Channel by securing adequate police force to remove the activitist protesters from the scene,- was upheld. It was stated that the chief Police Constable had properly balanced the right to protest and the right to free movement of goods, by taking into consideration, the lack of finances and the number of policeman available and the risk of injury to protesters etc. (see a country view of our Supreme Court recently in Navinchandra N. Majithia v. Stale of Meghalaya and Ors.. JT [2000] Suppl. 1 SC 538).
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> In that connection, the House of Lords appeared to deviate and almost equate Wednesbury and proportionality. Lord Slynn for the majority after referring to Brind said that in 'Practice", ' Wednesbury reasonableness and proportionality' may mean the same, and that whichever test is adopted, the result is the same. Lord Cooke went further and said that Lord Greene's test in Wednesbury was 'tautologous and exaggerate' and he advocated a simpler test:
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> "was the decision one which a reasonable authority could reach?"

It must be said that the House of Lords has deviated both from proportionality and Wednesbury. This deviation, in our view, is likely to lead to considerable vagueness in the administrative law which has just now been crystallising. It is difficult for us to understand how the primary role of the Courts in cases involving fundamental freedoms and the secondary role of Courts in other cases not involving such rights and where Wednesbury rule is to be applied, can be equated.

In our opinion, the principles laid down in Brind and Exp. Smith and also as explained by the Lord Chancellor to which we have made reference earlier are more clear-cut and must be adhered to. A differentiation must, in our view, be respectively maintained between the Court's primary and secondary roles in Convention cases and non-Convention cases (see in this Connection see Prof. Craig, Admn. Law, 1999, 4th Ed. pp. 573, 589, 621 dealing with Lord Cooke's new test).

lll(b). Proportionality and Administrative Action in India:

> (i) Fundamental Freedoms under Article 19(1) & Article 21.

In the Indian scene the existence of a charter of fundamental freedoms from 1950 distinguishes our law and has placed our Courts in a more advantageous position than in England so far as judging the validity of legislative as well as administrative action. We have already dealt with proportionality and legislation. Now, we shall deal with administrative decisions and proportionality.

Now under Articles 19(2) to (6), restrictions on fundamental freedoms can be imposed only be legislation. In cases where such legislation is made and the restrictions are reasonable yet, if the concerned statute permitted the administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restriction etc. In such cases, the administrative action in our country, in our view, has to be tested on the principle of 'proportionality', just as it is done in the case of the main legislation. This, in fact, is being done by our Courts.

Administrative action in India affecting fundamental freedoms has always been tested on the anvil of 'proportionality' in the last fifty years even though it has not been expressly stated that the principle that is applied is the 'proportionality' principle. For example, a condition in a licence issued to a cinema house to exhibit, at every show, a certain minimum length of 'approved films' was questioned. The restriction was held reasonable [see R.M. Seshadri v. Dist. Magistrate Tanjore and Anr., AIR (1954) SC 747. Union of India v. Motion Picture Association, [1999] 6 SCC 150 also related, inter alia, to validity of licensing conditions. In another case, an order refusing permission to exhibit a film relating to the alleged obnoxious or unjust aspects of reservation policy was held violative of freedom of expression under Article 19 (1) (a) S. Rangarajan v. P. Jagjivan Ram and Ors., [1989] 2 SCC 574. Cases of surveillance by police came up for consideration in Malak Singh and Ors. v. State of P&H and Ors., [1981] 1 SCC 420. Cases of orders relating to movement of goods came up in Bishambhar Dayal Chandra Mohan and Ors. v. State of U.P. and Ors., [1982] 1 SCC 39. There are hundreds of such cases dealt with by our Courts. In all these matters, the proportionality of administrative action affecting the freedoms under Article 19 (1) or Article 21 has been tested by the Courts as a primary reviewing authority and not on the basis of Wednvsbury principles. It may be that the Courts did not call this proportionality but it really was.

In Ganayutham, the above aspect was left for further discussion. However, we are now pointing out that in administrative action affecting fundamental freedoms, proportionality has always been applied in our country though the word 'proportionality' has not been specifically used.

We may point out that in Israel, the Supreme Court of Israel has now recognised 'proportionality' as a separate ground in administrative law- different from unreasonableness. It is stated that it consists of three elements. First, the means adopted by the authority in exercising its power should rationally fit the legislative purpose. Secondly, the authority should adopt such means that do not injure the individual more than necessary. And third, the injury caused to the individual by the exercise of the power should not be disporportional to the benefit which accrues to the general public. Under this test, the court recently invalidated several administrative actions (see De Smith, Woolf, Jowell, first Cumulative Supplement to Judicial Review of Administrative Action, 1998, p. 114).

(ii) Article 14 and Administrative Action:- Discriminative classification and arbitrariness:

We next come to the most important aspect of the case. Discussion here can be divided into two parts.

(a)(I) Classification test under Article 14:

Initially, our Courts, while testing legislation as well as administrative action which was challenged as being discriminatory under Article 14, were examining whether the classification was discriminatory, in the sense whether the criteria for differentiation were intelligible and whether there was a rational relation between the classification and the object sought to be achieved by the classification . It is not necessary to give citation of cases decided by this court where administrative action was struck down as being discriminative. There are numerous. (ii) Arbitrariness test under Article 14:

But, in E.P. Royappa v. State of Tamil Nadu, [1974] 4 SCC 31, Bhagwati, J. laid down another test for purposes of Article 14. It was stated that if the administrative action was 'arbitrary', it could be struck down under Article 14. This principle is now uniformly followed in all Courts more rigorously than the one based on classification. Arbitrary action by the administrator is described as one that is irrational and not based on sound reason. It is also described as one that is unreasonable.

(b) If, under Article 14, administrative action is to be struck down as discriminative, proportionality applies and it is primary review. If it is held arbitrary, Wednesbury applies and it is secondary review:

We have now reached the crucial aspect directly arising in the case. This aspect was left open for discussion in future in Ganayutham but as the question of 'arbitrariness' (and not of discriminatory classification) arises here, we wish to make the legal position clear.

When does the Court apply, under article 14, the proportionality test as a primary reviewing authority and when does the Court apply the Wednesbury rule as a secondary reviewing authority? From the earlier review of basic principles, the answer becomes simple. In fact, we have further guidance in this behalf.

In the European Court, it appears that administrative action can be challenged under Article 14 of the Convention (corresponding to Article 14 of our Constitution) as being discriminatory and be tested by applying the principle of 'proportionality'. Prof. Craig refers to the judgment of the European Court under Article 14 in Lithgow v. UK, (1996) ECHR 329 as follows;

"The differential treatment must not only pursue a legitimate aim. It had to be proportionate. There had to be relationship of proportionality between the means

employed and the aim sought to be realised".

Similarly, in the European law, in relation to discrimination on ground of sex, the principle of proportionality has been applied and it has been held that the State has to justify its action. In EU Law and Human Rights [by Lammy Betten and Nicholas Grief (1998 at P. 98)], it is stated:

> "If indirect discrimination were established, the Government would have to show 'very weighty reasons' by way of objective justification. bearing in mind that derogations from fundamental rights must be construed strictly and in accordance with the principle of proportionality". [Johnstone v. Chief Constable of the RVC, (1986) ECR 1651 (para38.51)].
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> In the context of Article 14 of the English Act, 1998, (which is similar to our Article 14) Prof. Craig refers to the above principle. (See Administrative Law, Craig 4th Ed., 1999 Page 652). Thus, it would appear that under Article 14 of the European Convention, principle of proportionality is invoked and where questions of discrimination are involved and the Court is a primary reviewing authority. According to Prof. Craig, this is likely to be the position under Article 14 of the English Act, 1998.
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> In the US, in the matter of discrimination, tests of 'intermediate scrutiny' and 'strict scrutiny' have been laid down. In cases of affirmative action, the US Courts have hitherto been applying the intermediate scrutiny test'. See the discussion in Indira Sawhney v. Union of India. [1992] Supp. 3 SCC at 217, at PP.634-685 by Jeevan Reddy, J. But recently, however, in 1995, the US Supreme Court has shifted, in matters of affirmative action, from the 'intermediate scrutiny' test to the 'strict scrutiny' test. See Adarand Constructors Inc. v. Pena, (1995) 75 US 200 referred to by the Constitution Bench recently in Ajit Singh (II) v. State of Punjab, [1999] 7 SCC 209, at P. 232.
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> It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.
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> But where, an administrative action is challenged as 'arbitrary' under Article 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator

> has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In G.B. Mahajan v. Jalgaon Municipal Council, [1991] 3 SCC 91, at 111. Venkatachaliah, J, (as he then was) pointed out that 'reasonableness' of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata's Cellular v. Union of India, [1994] 6 SCC 651 (at PP. 679-680); Indian Express Newspapers v. Union of India, [1985] 1 SCC 641 at
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> 691), Supreme Court Employees' Welfare Association v. Union of India and Anr., [1989] 4 SCC 187, at. 241 and U.P. Financial Corporation v. GEM CAP (India) Pvt. Ltd., [1993] 2 SCC 299, at 307, while Judging whether the administrative action is 'arbitrary' under Article 14 (i.e. Otherwise then being discriminatory, this Court has confined itself to a Wednesbury review always.

Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying proportionality. However, where administrative action is questioned as 'arbitrary' under Article 14, the principle of secondary review based on Wednesbury principles applies.

Proportionality and Punishments in Service Law:

> The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of 'arbitrariness' of the order of punishment is questioned under Article 14.
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> In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India, [1987] 4 SCC 611, this Court referred to 'proportionality' in the quantum of punishment but the Court observed that the punishment was 'shockingly' disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India, [1995] 6 SCC 749, this Court stated that the court will not interfere unless the punishment awards was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in Ganayutham.
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> Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the

matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.

On Facts:

In the light of the above discussion, we shall now deal with the cases of the two officers and test, on Wednesbury grounds and as a Court of Secondary review the punishments could be interfered with as being arbitrary.

Sri Om Kumar:

So far as Sri Om Kumar is concerned, learned senior counsel Sri K. Parasaran has taken us through the entire record including the Report of Justice O. Chinnappa Reddy holding that there is a prima facie case, the Report of the Inquiry Officer which is adverse to the Officer, the recommendation of the UPSC which is favourable to him and to the order of the disciplinary authority which has not accepted the recommendation of the UPSC. On facts, the disciplinary authority felt that misconduct was proved as held by the Inquiry Officer. However, it felt that the officer deserved only 'censure' because of two mitigating factors: (i) the complicated stage at which Sri Om Kumar was required to handle the case and (ii) absence of malafides. Question is whether the punishment requires upward revision.

Learned senior counsel Sri K. Parasaran has, however, contended that as a secondary reviewing authority we should not interfere and that in the order of this Court dated 29.1.95. this Court itself recommended that only a 'minor penalty' should be imposed and that 'censure' was a minor penalty. Whether a more severe minor penalty could have been chosen or not was for the primary reviewing authority. Learned senior counsel referred to the direction of this Court earlier that, so far as Sri Om Kumar was concerned, only a minor punishment could be awarded. This court said:

"It is brought to our notice that he (Sri Om Kumar) was brought to DDA as Vice Chairman to set right the mess which the DDA had become under Sri Prem Kumar, Vice Chairman, we take note of the fact that by that time the matter relating to sale of the said plot to Skipper had become sufficiently complicated. Having regard to these facts, we direct that disciplinary proceedings for a minor penalty be taken by the Government....."

Learned senior counsel Sri K. Parasaran, therefore, argued on the basis of Wednesbury rules as explained in Ganayutham that it is now not open to this Court to say that the punishment of 'censure' awarded was not the proper one and that Sri Om Kumar deserved some other minor punishment of a higher degree. That would amount to assuming a primary role. According to learned counsel, it could not be said

that the punishment of "censure" awarded could be described as shocking the conscience of the Court, Counsel also submitted that in hindsight one might now say that when Skipper Company defaulted, Sri Om Kumar who was the senior most officer in DDA ought to have cancelled the bid and encashed the bank guarantee rather than give extensions of time on the pretext that the plans were not made ready by DDA.

After giving our anxious consideration to the above submissions and the facts and the legal principles above referred to, we have finally come to the conclusion that it will be difficult for us to say that among the permissible minor punishment, the choice of the punishment of 'censure' was violative of the Wednesbury rules. No relevant fact was omitted nor irrelevant fact was taken into account. There is no illegality. Nor could we say that it was shockingly disproportionate. The administrator had considered the report of Justice Chinnappa Reddy Commission, the finding of the Inquiry Officer, the opinion of the UPSC which was given twice and the views of the Committee of Secretaries. Some were against the officer and some were in his favour. The administrator felt that there were two mitigating factors (i) the complicated stage at which the officer was sent to DDA and (ii) the absence of malafides. In the final analysis, we are not inclined to refer the matter to the Vigilance Commissioner for upward revisions of punishment.

Sri Virendra Nath:

So far as Sri Virendra Nath is concerned, learned senior counsel Dr. Rajeev Dhawan advanced elaborate arguments. The punishments imposed on the officer was one of the major punishments. On a consideration of the report of Justice Chinnappa Reddy, the report of the Inquiry Officer-Which are no doubt both adverse to the officer, and the recommendations of the UPSC which were favourable to the officer on both occasions and the order of the disciplinary authority which accepted the finding as to misconduct. We feel that the administrator's decision in the primary role is not violative of Wednesbury Rules. The punishment awarded was a major punishment. We, therefore, do not propose to refer the matter to the Vigilance Commissioner for further upward revision of the punishment.

In the result, we do not purpose to pursue the matter further and we drop further proceedings. The Show Cause Notice is disposed of accordingly.