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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL- LUCKNOW BENCH, LUCKNOW.

O.A. No. 58 of 1990.

Dr. P.B.De.Chaudhury..... Applicant.

Versus

The Union of India & others..... Respondents.

A N D

O.S. No. 59 of 1990.

Dr. G.S. Gill..... Applicant.

Versus

The Union of India & others..... Respondents.

Hon'ble Mr. Justice U.C.Srivasteva- V.C.
Hon'ble Mr. A.B. Gorthi- A.M.

(By Hon'ble Mr. A.B. Gorthi- A.M.)

Facts stated in both the above applications being some-what similar and questions of law raised therein being identical, we are deciding both the cases by this common judgment.

Dr. P.B. De Chaudhury was the General Duty Medical Officer-I (G.D.M.O.-I) in the Office of Deputy Asstt. Director (DAD) in the Central Government Health Scheme (C.G.H.S.), Kanpur during the period 1972 - 75. Dr. ~~S~~ G.S. Gill was the Deputy Assistant Director at that time. There was an allegation that both these doctors in collusion with the Sarva Sri V.S. Misra, V.S. Gupta Pharmacists, carried out un-authorised/ fake purchase medicines resulting in pecuniary loss to the Government. Dr. De Chaudhury is alleged to have caused a loss of Rs. 426.50 P. whereas the amount of loss averred against Dr. G.S.Gill was Rs. 189.35 P. An F.I.R. was lodged, but only V.S. Misra and V.S. Gupta were prosecuted, whereas the case against the appli was dropped. The Pharmacists were convicted by the Special Ju but, on an appeal, were acquitted by the High Court. As the High Court, in its' judgment, observed that there appeared to be a racket of purchasing medicines on fictitious prescriptions p ant in the office of D.A.D., the matter was raked-up once aga by the department and on 18.8.85 charge memos were served up

the applicants followed by separate departmental inquiries. Sri M. Neelakanthan, C.D.I. of the Central vigilance commission was appointed as the inquiry officer. The applicants, therefore sought permission to be defended by a legal Practitioner. This request of these applicants was however rejected.

At the time of admission of the applications, the Tribunal passed an interim order staying the disciplinary proceedings.

The applicant assailed the disciplinary proceedings on the ground that it was un-just to re-open the case which was closed against them long time back. The allegations in the charge memos pertained to the period of 1974 - 75. Though the two pharmacists were prosecuted, the case against the applicants was dropped for want of evidence. The applicants, therefore contend that it would be un-just and unfair to proceed against them after a lapse of more than 10 years from the date of the alleged incident in which the money involved was of a paltry sum of Rs. 426.50 P. in respect of Dr. Chaudhury and Rs. 189.35 P. in respect of Dr. G.S. Gill. They further alleged that the respondents' refusal to allow them to engage legal practitioners to defend them was also illegal and un-just.

The respondents while admitting the essential facts of the case refuted the arguments advanced on behalf of the applicants. According to the respondents the cases against the applicants were dropped initially as there was no evidence against them, but when the High Court observed that a fradulent practice was being followed in the office of the D.A.D, whereby fictitious transactions of purchase of medicines were being conducted causing ~~official~~ financial loss to the Government, the respondents had to initiate de novo ~~denomo~~ departmental disciplinary action against the applicants.

Dr. Chaudhury has retired from the service on 30.4.87 and Dr. Gill also retired on 28.2.89.

In the case of State of Madhya Pradesh Versus Bani Singh

(1991) 16 A.T.C. 514, Hon'ble Supreme Court held that where a delay of over 12 years was not satisfactorily explained, the disciplinary proceedings initiated after such a long lapse of tim were liable to be quashed. In the instant case we find that there does not appear to be any justification for the respondents to re-open the disciplinary cases against the applicants, which the respondents deliberately closed long time back on the ground that there was no evidence. The observations made by the High Court referred to a system of fraud being practiced by the staff in the office of D.A.D.. It did not neceesarily mean that any new evidence or facts were throwup against the applicants or that the applicants were the actual perpetrators of the fraud. The respondents would have been justified in carrying out a general Administrative enquiry into the scandal with a view to detect & loop holes in the system of & purchase of medicines fraudulent so that the practice was put to an end. That & was the true purport of the observations of the High Court.

Keeping in view the totality of the circumstances of these two cases, we find that it would be not only un-just but grossly un-fair to let the disciplinary proceedings against the applicants to continue. The respondents acted arbitrarily in denying the applicants' request for the engagement of legal practitioners to defend them. In the result the applications are allowed and the disciplinary preceeding initiated against the applicants are quashed. As both the applicants have since retired, the respondents are directed to release the gratuity/ leave encashment & amounts and such other amount, if any, due to the applicants within a period of three months from the date of communication of this order.

O.A. No. 58 of 1990 and O.A. No. 59 of 1990 are allowed in the above terms. Parties shall bear their own costs.

Member (A)
Dt: May 15, 1992.

Vice Chairman

(DPS)