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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. Srivastava- 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 somewhat 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. 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 purchases of 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 applicant was dropped. The Pharmacists were convicted by the Special Judge, 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 prevalent in the office of D.A.D., the matter was raked-up once again by the department and on 18.5.85 charge memos were served upon

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 fraudulent practice was being followed in the office of the D.A.O., whereby fictitious transactions of purchase of medicines were being conducted causing ^{financial} official loss to the Government, the respondents had to initiate ^{de novo} departmental disciplinary action against the applicants.

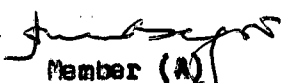
Dr. Chaudhury has retired from the service on 30.4.87 and Dr. Gill also retired on 28.2.89.

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 time 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 practised by the staff in the office of D.A.O.. It did not necessarily mean that any new evidence or facts were thrown up 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 ^{al} scandal with a view to ^{detect & b} evolve loop holes in the system of ^{fraudulent} purchase of medicines so that the practice was ~~xxxx~~ put to an end. That ~~x~~ 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 ~~xx~~ be not only un-justified 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 proceeding initiated against the applicants are quashed. As both the applicants have since retired, the respondents are directed to release the gratuity/leave encashment ~~xxx~~ 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.

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


Member (A)
Dt: May 15, 1992.

(DPS)


Vice Chairman