

III

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 361 of 1987.

Date of decision: March 22, 1990.

Narayan Chandra Rakshit ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant

...

M/s. B. Pal,
S.C. Parija,
O.N. Ghosh,
R.K. Sahoo, Advocates.

For the respondents ...

Mr. Ganeswar Rath,
Sr. Standing Counsel (Central)

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C O R A M:

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *Y*.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J) The facts material in this case lie in a short compass. Admittedly, the applicant was first appointed as a Ward Boy. Subsequently he was promoted as Nursing Assistant in the Dandakaranya Project. While he was working as Nursing Assistant it was alleged that he treated one lady, Smt. Rani Mirdha in an unethical way and assaulted her on 31.3.1984 in his residence. On these allegations, a disciplinary proceeding was drawn up

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and also an F.I.R. was made to the Police which gave rise to G.R. Case No.153 of 1984 of the Court of Sub-Divisional Judicial Magistrate, Malkangiri. The Disciplinary authority of the applicant was the Chief Medical Officer, Dandakaranya Development Authority. An enquiring officer and a presenting officer were appointed and after receipt of the report of the enquiry, the disciplinary authority imposed the punishment of reduction of the applicant from the rank of Nursing Assistant to the post of Ward Boy for a period of two years and if found fit to be restored to the rank of Nursing Assistant after that period. Against this order of punishment the applicant preferred an appeal but that bore no fruit. He also carried the matter in revision but that also ended against him. In the Criminal case he was acquitted by the Sub-Divisional Judicial Magistrate, Malkangiri. The applicant has averred that in view of the acquittal in the criminal case, on 29.10.1986 he is entitled to be restored to the rank of Nursing Assistant.

2. The respondents in their counter have stated that the charge of ill-treatment meted by the applicant to Smt. Hajari Rani Mirgha was duly enquired into and after weighing the evidence adduced in the disciplinary proceeding, the disciplinary authority imposed the punishment. There was a difference in the contents of the charges levelled in the disciplinary proceeding and those in the criminal case. Therefore, the applicant cannot rely on the acquittal in the criminal case as a ground for setting aside the punishment imposed by the Disciplinary authority.

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3. We have heard Mr. S.C. Parija, learned counsel for the

applicant and Mr. Ganeswar Rath, learned Standing Counsel (Central) for the respondents. The short question that falls for consideration is whether the ultimate result in the criminal case would govern the ~~facte~~ of the disciplinary proceeding. It is now settled beyond controversy that a departmental proceeding and a criminal case may continue simultaneously but however if allegations in both the proceedings are the same, it would not be proper for simultaneous prosecution of both such proceedings. In the instant case, the disciplinary authority passed the order of reduction in rank on 9/11.5.1985 i.e. much prior to the judgment of the Sub-Divisional Judicial Magistrate, Malkangiri acquitting the applicant of the charges for offences punishable under sections 354/323 of the Indian Penal Code. Once a finding ~~not~~ is reached in a disciplinary proceeding, it cannot be decided on the strength of an order in a criminal court. Apart from that, on reading ^{the} copy of the judgment of the Sub-Divisional Judicial Magistrate, Malkangiri which forms Annexure-A/3 to the applicant, it would be found that the learned Magistrate did not entirely disbelieve the prosecution story of the applicant having ~~assaulted~~ Smt. Mirdha or to have pulled her out of the house but he acquitted the applicant on the evidence recorded by him, ^{suggesting that -} all these acts were done under a bonafide mistaken impression. In our opinion, the judgment of the Sub-Divisional Judicial Magistrate cannot lend any support to the plea of the applicant that he was entitled to be exonerated of the charges of unethical behaviour towards Smt. Mirdha.

Manu Singh

4. In view of these circumstances, we would dismiss the application, but however without costs.

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Vice-Chairman

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22.3.90.

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Member (Judicial)

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22.3.90.