GAHC010122672026

2026:GAU-AS:17009-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WRIT APPEAL NO.284 OF 2026

1. The State of Assam, represented by the Secretary to the Government of Assam, Home & Political (B) Department, Assam, Dispur, Guwahati.

2. The Director General of Police, Ulubari, Guwahati, Assam, PIN – 781007.

3. The Inspector General of Police, C.R. Diphu, Karbi Anglong, Assam, PIN – 782460.

4. The Superintendent of Police-cum-Disciplinary Authority, Diphu, Karbi Anglong, Assam, PIN – 782460.

5. The Deputy Superintendent of Police-cum-Enquiry Officer, Diphu, Karbi Anglong, Assam, PIN – 782460.

……***Appellants***

-Versus-

Habizur Rahman Laskar,
Son of Late Nasib Ali Laskar,
Resident of Village: Tupkhana, PO: Arunachal, PS: Silchar,
District: Cachar, Assam, PIN – 788025.

……***Respondent***

– **BEFORE –**
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) **:** Mr. D. Nath, Senior Government Advocate, Assam, assisted by Ms. N. Paul, Advocates.

For the Respondent(s) **:** Mr. S. Dutta, Senior Advocate, assisted by Mr. P.K. Deka, Advocate.

Date of Judgment **: 18 November, 2026.**

JUDGMENT & ORDER (ORAL)

(Ashutosh Kumar, CJ)

We have heard Mr. D. Nath, learned Senior Government Advocate, Assam for the appellants/State of Assam and others and Mr. S. Dutta, learned Senior Advocate, assisted by Mr. P.K. Deka, learned Advocate for the sole respondent.

2. By the impugned judgment dated 15.05.2026 passed by a learned Single Judge of this Court in WP(C) No.6551/2025, the penalty of compulsory retirement saddled on the respondent has been set aside and a direction has been issued that he be reinstated forthwith on the post of Constable and be also paid the entire arrears of salary together with all allowances and benefits from the date of his suspension. A direction has also been issued to allow the respondent to work till his retirement. All this exercise, according to the judgment, is to be concluded within 1(one) month from the date of receipt of a certified copy of the judgment impugned by the appellant authorities.

3. A Departmental Proceeding had been initiated against the respondent on the charge of his having raped a minor girl. At the relevant point of time, the respondent was working as a Constable. In the Departmental Proceeding, though no Presenting Officer was appointed at any stage, but the witnesses on behalf of the Department and the victim and her mother were cross-examined by the respondent. In their statements before the Enquiry Officer, the allegation of rape on the victim was substantiated.

4. The Enquiry Officer submitted his report by concluding that the

allegation against the respondent of committing the act of moral turpitude, gross misconduct, indiscipline and negligence in duty stood proved without any doubt. Thereafter, the Disciplinary Authority, accepting the report of the Enquiry Officer, imposed punishment of compulsory retirement on the respondent.

5. It appears that simultaneously a criminal case also was lodged against the respondent vide Diphu Police Station Case No.69/2013 under Sections 336-A/376(f)/34 of the IPC. In the afore-noted case, the respondent was charge-sheeted and was subjected to trial. 7(seven) years later than the punishment imposed upon him in the departmental proceeding, the Trial Cout acquitted the respondent on the ground that the prosecutrix did not support the allegation and did not even identify him in the dock. The trial proceedings, therefore, cannot be said to have been contested in right earnest. The Trial Court instead of robust judging, we must say, only recorded the finding without himself putting questions to the victim or the mother about their statements during the trial.

6. After the acquittal, which the respondent claims to be an "honorable acquittal", a writ petition came to be filed seeking setting aside of the punishment in the Departmental Proceeding and his reinstatement in service.

In that instance, this Court had directed that the respondent be given adequate opportunity to submit a reply to the Enquiry Report and a fresh reasoned order be passed. However, the order of punishment was never interfered with and it was clarified that any fresh order by the Disciplinary Authority would prevail over the other order. The Court but

had not accepted the proposition that the Enquiry Officer acted as the Presenting Officer.

7. This remand of the case of the respondent was challenged by him in Writ Appeal No.7/2023. The said appeal was dismissed but with an observation that the Presenting Officer was never appointed at any point of time during the enquiry. After the dismissal of the afore-noted writ appeal, a fresh order was passed by the Disciplinary Authority on perusing the reply of the respondent on 07.10.2025, upholding the earlier penalty of compulsory retirement.

This order passed by the Disciplinary Authority was put to challenge by the respondent vide WP(C) No.6551/2025.

8. The contentions raised by the respondent before the Writ Court were that in the absence of any Presenting Officer during the Disciplinary Proceedings, he was severely prejudiced and that upholding such order of punishment in an enquiry like that, was in breach of the settled principles of domestic enquiry, wherein appointment of a Presenting Officer is a must. The respondent had referred to the judgment of this Court in ***Dharani Dhar Kalita -Vs- Union of India & Ors. :: 2015 2 GLR 732***.

The other ground raised by the respondent was that the reply submitted by him on remand was never considered in proper perspective and lastly, that the Criminal Court had honourably acquitted him and it was not an acquittal giving benefit of doubt to him. The acquittal was on account of the prosecution having miserably failed to prove the case.

It was urged before the Writ Court that since the facts,

circumstances and the evidence in the Departmental Proceeding and in the trial were identical, it would be unjust to allow the punishment in the Departmental Proceeding to continue.

9. The learned Single Judge relying on several judgments of the Supreme Court, namely, **(i)** ***Capt. M. Paul Anthony -Vs- Bharat Gold Mines Limited & Anr. :: (1999) 3 SCC 679***; **(ii)** ***G.M. Tank -Vs- State of Gujarat & Ors. :: (2006) 5 SCC 446***; **(iii)** ***Ram Lal -Vs- State of Rajasthan & Ors. :: (2024) 1 SCC 175*** and **(iv)** ***State Bank of Hyderabad & Anr. -Vs- P. Kata Rao :: (2008) 15 SCC 657*** agreed with the proposition and set aside the punishment order with a direction to reinstate the respondent in service, as noted above, with all back-wages and benefits.

10. Mr. Nath, learned Senior Government Advocate, Assam, while assailing the afore-noted judgment, has submitted that the Departmental Proceeding was conducted in a thorough manner much before the criminal trial in which witnesses were examined and the Enquiry Officer had ensured that the respondent is present during the proceedings, except when the minor victim was making her statement before the Disciplinary Authority.

11. A perusal of the findings of the Enquiry Officer would demonstrate that the respondent asked questions to the mother of the victim and other Police Officers appearing on behalf of the Department. Under such circumstances, any acquittal by a criminal Court after 7(seven) years, would not entitle the respondent to seek for setting aside of his punishment and his reinstatement in service with full back-wages and benefits.

12. In ***G.M. Tank*** (supra), the Supreme Court had noticed that the same witnesses were examined in the criminal case and in the Departmental Proceedings. In the facts of the present case, the victim though had supported the allegation in the Departmental Proceedings but had failed to identify the respondent during the trial proceedings. In such circumstances, the principles enunciated in ***G.M. Tank*** (supra) and ***Capt. M. Paul Anthony*** (supra) cannot be applied straightaway.

13. The victim being a minor at the time of the Departmental Proceeding and the respondent being a Police Officer posted locally, had to be taken into account before according any benefit to the respondent. It was further argued on behalf of the State that any direction for back-wages was bad as it would be deleterious to the maintenance of discipline if a person suspended on valid considerations is given full back-wages as matter of course on his acquittal. [Refer to - ***Krishnakant Raghunath Bibhavnekar -Vs- State of Maharashtra & Ors. :: (1997) 3 SCC 636***]

14. After having perused the order passed by the Disciplinary Authority and the Trial Court's judgment of acquittal as also the impugned judgment rendered by the learned Single Judge, we find that the reliance of the learned Single Judge in the present set of circumstances on the judgments of the Supreme Court was not appropriate. The victim had made a definite disclosure before the Disciplinary Authority about her being subjected to sexual misdemeanor at the hands of the respondent.

15. And in any case, acquittal in a criminal case of a Police

Constable is not always conclusive of the suitability of the person in such post. It is very difficult for us to believe that the respondent was falsely involved in the case.

That apart, the expression "*honourable acquittal*" has many shades.

16. The meaning of such expression has come up for consideration before the Supreme Court in a number of cases. [Refer to – ***Management of Reserve Bank of India -Vs- Bhopal Singh Panchal :: (1994) 1 SCC 541; Commissioner of Police, New Delhi & Anr. -Vs- Mehar Singh :: (2013) 7 SCC 685; State of Madhya Pradesh & Ors. -Vs- Parvez Khan :: (2015) 2 SCC 591*** and ***Imtiyaz Ahmad Malla -Vs- State of JMMU & Kashmir & Ors. :: (2023) 19 SCC 588.*** While dealing with such expression, the Supreme Court has held that such an expression is not synonymous with "fully exonerated". In fact, such expressions are unknown to the Code of Criminal Procedure or the Penal Code and these are the expressions coined through judicial pronouncements.

17. Only when the accused is acquitted after full consideration of prosecution evidence and it is found that the prosecution has miserably failed to prove the charges levelled against the accused, then only it can possibly be said that the accused has been honourably acquitted.

18. We have already noted that the minor victim, after so many years of the occurrence, failed to identify the respondent in the dock. Thus, primary evidence of the sexual act of the accused was missing from the trial but it cannot be lost sight of that during the Departmental Proceeding initiated immediately after the report of the occurrence, the

victim had narrated the entire events and had supported the prosecution version. Supporting the allegation against the respondent, the mother of the victim also made a clear disclosure. There were additional evidences before the Enquiry Officer through the mouth of the official witnesses. Under such circumstances, we reiterate, acquittal of the respondent in the criminal case many years after the occurrence would be no ground for setting aside the punishment in the Departmental Proceeding; more so while keeping in mind the nature of the job that the respondent was entrusted with, namely, policing.

19. In ***Mehar Singh*** (supra), it was clarified by the Supreme Court that since the purpose of the departmental proceeding is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the Department, if found necessary, because they pollute the Department. In that case, surely the principles of suitability will apply with utmost vigour and it would be absolutely unsafe to bring such person back in service. It was also observed in ***Mehar Singh*** (supra) and ***Parvez Khan*** (supra) that persons in Police Service must be of impeccable character and integrity and that even a suspicion against them would be fatal for their continuing in service.

Even otherwise, we find that the respondent has been lightly dealt with in the Departmental Proceeding as only a punishment of compulsory retirement has been imposed upon him, in which case if he completes the formalities, he would be entitled to the pensionary benefits.

20. While concluding, we must say that appointment of a Presenting Officer in a Departmental Proceeding is necessary, but in this case the proceedings have not been vitiated as the respondent had all along been present during the trial and was permitted to cross-examine the witnesses. The tenor of the questions put by the respondent to the witnesses clearly indicate that he understood the entire gravamen of charges against him and that he understood the context in which the allegations and disclosures were made by the witnesses.

21. Thus, we are of the view that the respondent was never prejudiced on any count much less on account of Presenting Officer not having been appointed.

22. Based on the afore-noted reasonings, we are not in agreement with the judgment rendered by the learned Single Judge, which has been impugned in the present appeal.

Perforce, we set it aside and restore the punishment imposed upon the respondent.

23. The appeal stands allowed.

24. Cost easy.

JUDGE **CHIEF JUSTICE**

Mukut Sharma
Digitally signed by Mukut Sharma
Date: 2026.11.19 12:35:33 +05'30'

Comparing Assistant