

**(2025) 03 GAU CK 0454**  
**In the Gauhati High Court**  
**Case No : WP(C) Of 2900 Of 2020**

Dambaru Chetia

APPELLANT

Vs

The State Of Assam And 3 Ors.

RESPONDENT

**Date of Decision :** 12-03-2025

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Indian Penal Code, 1860 — Section 34, 342, 384, 420  
Limitation Act, 1963 — Section 5  
Assam Police Manual, 1931 — Rule 66

**Citation :** (2025) 03 GAU CK 0454

**Hon'ble Judges :** Sanjay Kumar Medhi, J

**Bench :** Single Bench

**Advocate :** S. Goswami, K. Konwar

**Final Decision :** Dismissed

## Judgement

Sanjay Kumar Medhi, J

1. The instant petition under Article 226 of the Constitution of India has been filed challenging, inter alia, the action of the respondent authorities in imposing the penalty of stoppage 5 increments with cumulative effect in a departmental proceeding. The petitioner has also challenged the dismissal of the departmental appeal which was preferred against the order of penalty. For ready reference, the relief prayed for in this writ petition is extracted hereinbelow-

"Under the facts and circumstances, it is prayed that Your Lordships may be pleased to admit this petition, called for the records, issue Rule, calling upon the respondents to show cause as to why a writ in the nature of certiorari should not be issued for setting aside and quashing the impugned order of penalty dated 02.12.2008 imposing penalty of stoppage of 5 (three) increments with cumulative effect passed by the respondent no. 3 vide Annexure – VII and WT message dated 2/11/2019 passed by the respondent no. 3 dismissing the Appeal vide Annexure XII and/or as to why a writ in the nature of Mandamus should not

be issued to cancel/ rescind or otherwise for bearing from giving effect to the impugned order of penalty dated 02.12.2008 imposing penalty of stoppage of 5 (three) increments with cumulative effect passed by the respondent No. 4 vide Annexure

– VII and WT Message dated 2/11/2019 and/or any appropriate writ of like nature or directions should not be issued to give full and effective relief(s) to the petitioner on perusal of record and upon the hearing causes shown by the respondent would be pleased to make the Rule absolute and/or pass any other or further order/orders as your lordship may deemed fit and proper.”

2. The projected case of the petitioner, in a nutshell is that he was working as a Constable (Armed Branch) with the Assam Police and at the relevant time was posted at Dibrugarh. However, in connection with his involvement in a criminal case being Dibrugarh PS Case No. 160/2007 under Section 384/420 of the IPC for which a disciplinary proceeding was initiated by issuance of a show-cause notice dated 21.05.2007. The petitioner was already placed under suspension in connection with his involvement in the Dibrugarh PS Case No. 497/2006 under Section 384 IPC. The petitioner was already placed under suspension for his involvement in another Police Case. The suspension order was however revoked due to exigencies of service.

3. The petitioner had accordingly replied to the said show-cause notice on 24.05.2007. The said reply was however not found satisfactory and accordingly, DP No. 05/2007 was drawn up against him by appointment of an enquiry officer. The enquiry was accordingly held and the findings were forwarded to the petitioner vide second show-cause notice dated 18.10.2008. As regards the allegation, though it was admitted that he was arrested in the police case, he replied that he was not involved. The explanation was not found to be reasonable or acceptable and accordingly, the charge was held to be proved. The same was followed by the impugned order dated 02.12.2008 whereby the petitioner was imposed the penalty of stoppage of 5 nos. of increments with cumulative effect and the period of suspension was restricted to the subsistence allowance only.

4. It is the case of the petitioner that he was acquitted in the criminal case vide judgment dated 06.10.2010 passed by the learned CJM, Dibrugarh in GR Case No. 640/2007. Thereafter, the petitioner claims to have submitted a representation to the SP, Dibrugarh dated 16.07.2011 to revoke the penalty order. The petitioner had thereafter, submitted an appeal before the Deputy Inspector General of Police, North-Eastern Region on 24.10.2019. The said appeal was accompanied by an application under Section 5 of the Limitation Act. The same was however rejected as it was filed after a long gap of 10 years which is beyond the prescribed period of 6 months under Rule 66 of the Assam Police Manual. It is the legality and validity of the aforesaid action / orders which are the subject matter of this writ petition.

5. I have heard Ms. S. Goswami, learned counsel for the petitioner whereas the

respondents are represented by Shri K. Konwar, learned Additional Advocate General, Assam.

6. Ms. Goswami, learned counsel for the petitioner has submitted that the impugned order of penalty is not sustainable in law as the charges against the petitioner are not correct. It is submitted that the petitioner was not at all involved with the police case and the impugned penalty is solely based on the assumption of his involvement. It is submitted that the petitioner was not involved in the police case and in fact, in the aforesaid GR Case No. 640/2007, vide judgment dated 06.10.2010 passed by the learned CJM, Dibrugarh, the petitioner was acquitted and therefore, there was no basis to impose the impugned penalty.

7. The learned counsel has also submitted that the rejection of the departmental appeal on the ground of limitation is most unreasonable as the petitioner had filed an application under Section 5 of the Limitation Act which was not considered. She has also highlighted the aspect that though the departmental appeal was filed on 24.10.2019 with a delay condonation application, earlier also, a representation was submitted in the year 2011 which was not considered. She accordingly submits that there was no delay or laches on the part of the petitioner. She has also submitted that the penalty is harsh and unreasonable.

8. In support of her submissions, the learned counsel for the petitioner has relied upon the case of the Hon'ble Delhi High Court reported in AIR

OnLine 2021 Del 1511 [Dewan Chand Vs. the Central Board Trustees] wherein it has been laid down that rules of limitation are not meant to destroy the rights of parties and are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly. Reliance has also been placed on the case of the Hon'ble Kerala High Court passed in Jyothi Vs. State of Kerala reported in 2023 Ker 61149 in which, the manner of consideration of condonation of delay while preferring in a criminal appeal has been laid down. She has also relied upon the case of Hon'ble Supreme Court in Ram Lal Vs. State of Rajasthan reported in 2023 INSC 1047 to contend that the penalty imposed in the disciplinary proceeding is not sustainable as the petitioner has been acquitted in the criminal case.

9. Per contra, Shri Konwar, learned AAG, Assam has raised a preliminary objection on the issue of entertainability of the writ petition. He has submitted that the order of penalty in the disciplinary proceeding is of the year 2009 and the writ petition has been instituted in 2020 after a lapse of about 11 years. He has submitted that the impugned penalty is under Rule 66 of the Assam Police Manual which itself lays down the provision of preferring appeal against imposition of any penalty. The time period prescribed for preferring such an appeal is 6 months. However, the instant appeal has been filed after more than a decade. He accordingly justifies that the order passed by the appellate authority refusing to entertain the appeal.

10. In this connection, the learned AAG has relied upon the case of LICI Vs. Jyotish Chandra Biswas reported in (2000) 6 SCC 562 wherein the Hon'ble Supreme Court had endorsed the view of the High Court which had dismissed the writ petition filed after 6 years against an order of termination from service. He has also referred the decision of the Hon'ble Delhi High Court in the case of Union of India Vs. Shri Narender Kumar reported in 2007:DHC:915-DB. In the said case, a Division Bench, by relying upon the case of Jyotish Chandra Biswas (supra) has held that a challenge against a dismissal order by preferring a departmental appeal after six years was not maintainable.

11. The rival contentions of the learned counsel for the parties have been duly considered.

12. The grievance of the petitioner, as noted above, is against the order of imposition of penalty dated 02.12.2008 and the WT Message dated 02.11.2019 by which the departmental appeal has been refused to be entertained.

13. The powers of judicial review is to be exercised in appropriate cases which is confined only to the scrutiny of the decision making process. Such exercise becomes even more circumscribed when the decision is taken in a departmental proceeding as the primary powers are vested with the authorities to take a decision in accordance with law. Of course, in a given case where the decision is arrived at by grossly ignoring the due process of law or in violation of the principles of natural justice, such powers of judicial review can be exercised.

14. In the instant case, the challenge is against an order of penalty passed in a departmental proceeding. From the materials available before this Court, it appears that there was a specific charge of his involvement in a criminal case being GR Case No. 640/2007 under Section 384/342/34 IPC. The show-cause notice was accordingly served upon the petitioner on 21.05.2007 which he had replied and the explanation not having found satisfactory, the enquiry was conducted. It appears that in the enquiry, 8 nos. of witnesses were examined in which the petitioner was given full opportunity to defend himself and the allegations were found to be proved. The second show-cause notice was issued on 18.10.2008 by forwarding the enquiry report which was followed by passing of the impugned order. The petitioner claims to have submitted a representation on 16.07.2011 to the Superintendent of Police, Dibrugarh. The said representation, apart from not containing any proof of acknowledgment is also not liable to be treated as an appeal as it was allegedly made to the same disciplinary authority.

15. Long thereafter, in 2019 an appeal has been said to be preferred before the Appellate Authority accompanied by an application under Section 5 of the Limitation Act. The said appeal has been seen to be filed under Rule 66 of the Assam Police Manual.

16. The Limitation Act, 1963 states the object as follows:

“An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.”

The aforesaid object makes it clear that the Limitation Act is only applicable to suits and other proceedings and by no stretch of imagination, a disciplinary proceeding can be said to come within the meaning of the said object. Therefore, the decision of the appellate authority in refusing to entertain the departmental appeal cannot be found fault with. In any case, the causes sought to be urged in the said application as well as the present petition which this Court has considered for the interest of justice do not lead this Court to come to a conclusion that there were sufficient or cogent reasons which prevented the petitioner from preferring the appeal within the prescribed period of 6 months. This Court has noticed that all along the petitioner was in service as he was reinstated during the pendency of the disciplinary proceeding itself and even the judgment of acquittal was passed by the learned CJM in the year 2010 whereas the appeal was preferred long thereafter in the year 2019. The said attempt apparently is an afterthought.

17. In view of the fact that this Court has not found any fault in the impugned order of rejection of the appeal, the other aspect of the challenge is not liable to be gone into. However, in the interest of justice on consideration, even the second ground of challenge is not legally tenable. Mere acquittal in a criminal case would not automatically lead to holding a delinquent to be free of any charge in the corresponding disciplinary proceeding. It is trite that the standard of proof in a criminal case is wholly different from that of a disciplinary proceeding as in a criminal case, the charges are required to be proved beyond all reasonable doubt whereas in a disciplinary proceeding the standard is on preponderance of probabilities. The ratio laid down in the case of Ram Lal (supra) is not applicable in the instant case as in that case, the delinquent was acquitted in the criminal case holding that the charges were disproved. In this connection, this Court would also like to refer to the case of GM Tank Vs. State of Gujarat reported in (2006) 5 SCC 446, in which the penalty order in the disciplinary proceeding was interfered. However, the consideration of the Hon'ble Supreme Court in that case was that the delinquent was honorably acquitted in a criminal case which is not the case in hand. That apart, in the present case, there was another distinct allegation against the petitioner apart from the allegation of his involvement in a criminal case.

18. In view of the above, this Court does not find any merit in this writ petition and accordingly, the same stands dismissed.

19. No order as to costs.