

GAHC010040212025



2026:GAU-AS:828

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

Case No. : WP(C)/1076/2025

BHUPESH CHANDRA DAS
S/O. SRI GIRISH CH. DAS, RESIDENT OF HOUSE NO. 2, NAVADOY NAGAR
PATH, GHORAMARA, GUWAHATI, DISTRICT KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE PRINCIPAL SECRETARY, PERSONNEL
DEPARTMENT (PERSONNEL A), ASSAM SECRETARIAT, DISPUR,
GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
(PERSONNEL A) DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
(PERSONNEL A) DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006

4:UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS (DEPARTMENT OF PERSONNEL
AND TRAINING) GOVT. OF INDIA
NORTH BLOCK
RAISINA HILLS
NEW DELHI-11000

Advocate for the Petitioner : MS N MAHANTA, MR. K N CHOUDHURY, MR. R M DEKA, MR. TANUZ KASHYAP

Advocate for the Respondent : DY.S.G.I., GA, ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant (s) : Mr. K N Choudhury, Mr. R M Deka, Ms. N Mahanta, Mr. T Kashyap, Mr. D J Das, Advocates.

For the Respondent(s) : Mr. T C Chutia, learned Additional Senior Government Advocate, Assam.

Date on which judgment is reserved : **N/A**

Date of pronouncement of judgment : **22.01.2026**

Whether the pronouncement is of the operative part of the judgment ? : **N/A.**

Whether the full judgment has been Pronounced : **Yes.**

JUDGMENT & ORDER (ORAL)

(K. GOSWAMI, J)

Heard Mr. K N Choudhury, learned Senior counsel assisted by Mr. D J Das, learned counsel for the petitioner. Also heard Mr. T C Chutia, learned Additional Senior Government Advocate, Assam for the State respondents.

2. The petitioner has assailed the order dated 06.02.2025 whereby the respondent State has appointed a new enquiry officer in connection with the show cause notice dated 09.02.2018 issued against the petitioner, thereby seeking to continue the departmental proceedings, notwithstanding that the petitioner has already been acquitted in the corresponding criminal case arising from the same incident and despite earlier orders passed by this Court directing a time bound conclusion of the departmental proceedings.

3. It is not in dispute that earlier the petitioner had approached this Court in WP(C) No. 1053/2024 assailing the pendency of the departmental proceeding despite the conclusion of the criminal trial. Upon consideration of the materials, including comparison of the charge-sheet in the departmental proceeding and the criminal case and the list of witnesses, this Court, by judgment and order dated 29.10.2024 had directed the State respondents to conclude the departmental proceeding within a time frame of one month.

Relevant paragraphs of the aforesaid judgment reads as under -

“33. As noted above, in the present case, the departmental proceeding and the criminal case are based on identical and similar set of facts and the charge in the departmental case and the charge before the Criminal Court

against the petitioner are also one and the same. The listed witnesses in the departmental case were examined in the criminal case and the Criminal Court upon examination of such witnesses has concluded that the prosecution has failed to establish that the petitioner/accused had demanded illegal gratification from the informant. That being so, in the considered opinion of this Court, further continuation of the departmental proceeding against the petitioner is wholly unfair and unjustified.

34. Accordingly, this Court deems appropriate to dispose of the writ petition, in the interest of justice, by directing the respondent authorities to conclude the departmental proceeding which is pending against the petitioner in accordance with law by keeping in mind the observations made hereinabove within a period of 1 (one) month from the date of the receipt of the certified copy of the Court's order."

4. It is also brought to the notice of this Court that during the currency of the time frame fixed for conclusion of the departmental proceeding, the State respondents had filed an interlocutory application, being I.A.(Civil) No. 3844/2024, seeking extension of the time, which was rejected by this Court by order dated 09.01.2025.

Relevant paragraph of the aforesaid order reads as under-

"Today, when the matter was called for; Mr. D Nath, learned Addl. Senior Government Advocate submits on instructions that a further period of three months would be required to conclude the departmental proceeding. It appears that the departmental proceeding against the respondent is pending for a long time despite conclusion of the criminal trial resulting acquittal of the respondent. In the considered opinion of this Court, the further period of three months in the context of the present case appears to be unreasonable and as such direct the State respondent to conclude the departmental proceeding, as directed earlier by this Court, strictly within a period of 1 (one) month from today, failing which, adverse consequences in accordance with law shall, if required, be faced with."

5. It is thus apparent from the above that this Court dismissed the aforesaid application, holding that since the criminal trial had already culminated in an acquittal on merits, there remains no justification to delay the departmental

proceeding.

6. The order of the learned Single Judge dated 29.10.2024 was thereafter carried in appeal before the Division Bench of this Court in W.A. No. 401/2025, wherein the learned Division Bench of this Court by judgment and order dated 19.01.2026 was pleased to uphold the order of the learned Single Judge dated 29.10.2024 and declined interference thereof. It was also observed by the learned Division Bench that the learned Single Judge could have even set aside the departmental proceeding itself rather than remitting the matter to the departmental authority. Relevant paragraphs of the said judgment and order read as under-

“11. We are at a loss to understand as to why the matter was relegated to the enquiring authority, when the learned Single Judge, on the analysis and comparison of the Statement of allegation in the departmental proceeding and the Charge-sheet in the criminal case, found that they were one and the same and that continuance of the departmental proceeding would be unfair.

12. The curtains ought to have been drawn then. Nonetheless, aligning with the observations made by the learned Single Judge, as noted above, the enquiring authority should have concluded the departmental proceeding within the stipulated time, which, somehow or the other, has yet not been concluded.

16. On going through the various paragraphs of the judgment of the trial Court, we are of the view that the acquittal was on merits as the prosecution could not prove an important aspects of the charge, namely, demand and acceptance of the bribe money. That apart, we have found that the learned Single Judge has not only made a comparison between the Statement of allegation in the departmental proceeding and the Charge-sheet in the criminal case, but has also examined the list of witnesses and the documents relied upon by the trial Court as also the enquiring authority.

17. Under such circumstances, we do not find any fault with the judgment impugned, when the learned Single Judge has considered and rejected the proposed distinction between the departmental proceeding and criminal proceeding on the basis of approach and the burden of proof in the two

proceedings.

18. That apart, since we have not found any serious vulnerability in the judgment, we do not wish to interfere with the same.”

7. It is now seen that despite the above, instead of bringing the departmental proceeding to its logical end, i.e., closure of the departmental proceeding in terms of the acquittal granted by the criminal Court, the respondents have appointed a new enquiry officer, thereby seeking to continue the proceedings afresh, which action has been assailed in the present writ petition.

8. This Court has carefully considered the rival submissions and perused the materials on record.

9. In the considered view of this Court, the action of the respondent State in appointing a new enquiry officer and persisting with the departmental proceedings is wholly arbitrary, malafide in law and is in effect an attempt to circumvent and overreach the earlier orders passed by this Court and affirmed by the Division Bench.

10. It is settled that ordinarily departmental proceedings may proceed independent of criminal proceedings. However, the present case stands on a different footing, inasmuch as the allegations in both proceedings arise out of the same incident, the charges in both proceedings are identical, the witnesses and evidence relied upon are the same and the criminal Court has already adjudicated the matter on evidence and rendered a verdict acquitting the petitioner of all charges.

11. It is further evident from the previous orders that this Court had already found that there existed no scope for the respondents to keep the matter pending, and hence, a strict time frame has been fixed. Even an interlocutory

prayer for extension of time was rejected. The Division Bench, while affirming the order of the learned Single Judge, went a step further and observed in clear terms that the learned Single Judge could even have set aside the disciplinary proceeding itself, instead of merely directing the conclusion of the same. The tenor of the Division Bench judgment unmistakably indicates a judicial finding that, on the face of the criminal Court's verdict on identical charges and evidence, continuation of the departmental proceedings was not warranted. Thus, the issue as to whether the departmental proceedings could justifiably continue after such acquittal was no longer *res integra* between the parties. The Division Bench decision has attained finality and is binding on the respondents.

12. In such a background, appointing a new enquiry officer does not amount to a bonafide conclusion of the enquiry. Rather, it is a device to perpetuate the departmental proceeding, despite judicial orders mandating its closure upon being satisfied that the same is unjustified in the given factual context.

13. The law that departmental proceedings and criminal trials can run independently is not in dispute. However, once this Court, having examined the specific facts of the case, i.e., identical charges, identical witnesses and acquittal on merits by the criminal Court and having held that further continuation was unwarranted, the respondents cannot fall back upon general propositions of service law to defeat a case-specific judicial mandate.

14. This Court, therefore, finds that continuation of the departmental proceedings after such acquittal, on the same charges and evidence, would be an abuse of process and amount to acting in derogation of binding judicial findings and fairness in State action under Article 14 of the Constitution of India.

15. The departmental authority, being a State instrumentality, cannot act in a

manner that results in harassment of the petitioner by keeping him entangled in continued enquiries when the very foundation of the allegation has already been disbelieved in a criminal trial on its merits and when the departmental proceeding itself has been directed by this Court to be concluded.

16. Further, reconstitution of enquiry machinery instead of concluding the same by appointing a new enquiry officer on the pretext that upon examination of the enquiry report by the disciplinary authority, statements of the main complainant and of vital witnesses were either not found or not recorded by the earlier enquiry officer, despite judicial time-bound directions mandating closure, in the context of the present case, amounts to institutional delay and is hit by the principles of judicial discipline, finality of litigation and denial of fair procedure and therefore, is liable to be interdicted by this Court under Article 226.

17. For the reasons stated above, the writ petition stands allowed.

18. Accordingly, the impugned appointment order dated 06.02.2025 issued by the Secretary to the Govt. of Assam, Personnel (A) Department, is hereby set aside and quashed.

19. Consequently, the continuation of departmental proceedings pursuant to the show cause notice dated 09.02.2018 is hereby set aside and quashed.

20. Before parting with the records, it is pertinent to observe that the writ petitioner in the present writ petition, while challenging the appointment of the new enquiry officer and continuation of the departmental proceeding, has also sought for a direction to the State respondents to consider his candidature for promotion/ appointment to the Indian Administrative Service cadre .

21. In support of the aforesaid prayer, this Court by order dated 06.03.2025

directed the State respondents to obtain instruction as to whether the departmental candidates junior to the petitioner are being considered for nomination to the IAS cadre or not, and if so, whether steps have been taken to consider the petitioner's case. The State respondents in this regard, by filing an additional affidavit on 06.06.2025, have stated as under –

“In this regard the deponent begs to state that a list of eligible ACS Officers for nomination to IAS for a particular select year has been prepared based on the consolidated seniority list as on the 1st January of that Select year and no departmental candidates junior to the petitioner in the consolidated seniority list as on 1st of January of the select year are being considered for nomination to the IAS cadre. For the Select Year 2023, there are 4 vacancies to be filled up from the ACS Officers for promotion to IAS cadre, in which there are 12 officers in the Zone of consideration and Shri Bhupesh Chandra Das is one of them and he is at serial no. 4 (i.e., 4th position in the list)

The deponent further states that there are laid down rules and procedures in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 for appointment by promotion of State Civil Service Officers to IAS. As per the said regulation there is no provision for "Sealed Cover" in case of any candidate against whom departmental proceeding or criminal proceeding is pending. Regulation 5(5) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 states that the inclusion of the name of an Officer in the Select year shall be treated as provisional if the State Govt. withholds the Integrity certificate in respect of such an officer or any proceeding, departmental or criminal, are pending against the Officer or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government. The Regulation 5(5) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 also provides that the officers included provisionally in any of the Select List so prepared, shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the Select List determined by the Central Govt. for such year.”

22. In view of the aforesaid stand taken by the State respondents, it is provided that the State respondents shall consider the case of the petitioner for

promotion/appointment to IAS cadre in accordance with law. It is needless to be clarified that the Integrity Certificate, if not released, shall be released to the petitioner since the departmental proceeding has already been set aside and quashed by this Court.

23. The respondents are further directed to extend all consequential service benefits to the petitioner, flowing from this order, as admissible in law.

24. Interim order, if any, stands merged with this order.

JUDGE

Comparing Assistant