

Issue
2/6/25

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

106.

OA 1024/2025 WITH MA 2228/2025

Cdr Yogesh Mahla
Versus
Union of India & Ors.

..... Applicant
..... Respondents

For Applicant : Mr. Rajeev Manglik and Ms. Shriya Gilhotra
Advocates
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC with Cdr Rajat
Gupta, OIC Legal Cell

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
30.05.2025

1. The applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 challenging the tenability of a show cause notice dated 05.03.2025, issued by the Chief of Naval Staff. The notice calls upon the applicant to explain why his services should not be terminated under Regulation 216 of the Regulations for the Navy Part II (Statutory), read with Section 15(2) of the Navy Act, 1957.
2. The allegation against the applicant pertains to sexual harassment of a subordinate lady officer. The impugned show cause notice is based on the findings of a Committee constituted under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter, "the POSH Act"). Following a complaint lodged by the aggrieved lady officer, who was serving under the applicant, a Commander at the Naval Dockyard, Visakhapatnam. an inquiry was conducted by the Internal Complaints Committee (ICC) established under Section 4 of the POSH Act. Based on the findings of the

ICC, the show cause notice was issued, detailing 14 to 15 specific acts of alleged misconduct by the applicant, as enumerated in Paragraph 2 of the notice.

3. When the Original Application was listed for admission on 16.04.2025, the respondents appeared on advance notice and submitted that, at this preliminary stage, when only a show cause notice has been issued, judicial interference would be premature. However, learned counsel for the applicant contended that although the ICC had purportedly conducted an inquiry under the POSH Act and submitted its report, the procedure adopted was flawed. It was argued that, in terms of Section 11 of the POSH Act, any inquiry against the applicant ought to have been conducted in accordance with the Service Rules applicable to him viz. the provisions of the Navy Act, 1957 and the Rules framed thereunder. Since the inquiry was not conducted in accordance with these governing service rules, a serious procedural irregularity had occurred. Considering the submission, we issued notice to the respondents, while observing as follows in Paragraphs 3 and 4 of our order:

3. Learned counsel for the applicant invited our attention to Section 11 of the SH Act, 2013, and argued that as per this provision the procedure for making an inquiry into the complaint has to be in accordance with the provisions of the service rules applicable to the applicant. Meaning thereby that the inquiry should have been conducted in accordance with the requirement of the Navy Act and Rules framed thereunder. It is the case of the applicant before us that the inquiry in question by the Internal Committee was not conducted in consonance with the requirement of Section 11 of the SH Act, 2013. It is, therefore, unsustainable in law and the SCN issued on the basis of such an inquiry cannot be upheld in law.

4. Even though, the respondents objected to the same and argued that the inquiry was properly conducted, prima facie, at this stage without expressing any opinion on the merit of the matter, we direct the respondents to demonstrate that the inquiry in question based on the complaint submitted by the prosecutrix was conducted in accordance with the requirement of the SH

Act, 2013. They are granted two weeks' time to file their objections/reply to the same and for a period of two weeks till next date further action into the SCN shall be kept in abeyance.

4. In response, the respondents filed a detailed affidavit justifying the issuance of the show cause notice. They also sought vacation of the interim stay and requested permission to proceed with and finalize the matter. The applicant filed a brief rejoinder reiterating that the inquiry was procedurally flawed, that the ICC was not properly constituted, that cross-examination opportunities were inadequate and that the findings lacked proper evidentiary appreciation.

5. Learned counsel for the applicant vehemently argued that the inquiry did not conform to the POSH Act. He submitted that the ICC's constitution violated Section 4 of the Act; that proceedings were conducted despite the absence of required members; that cross-examinations were not held as per law and that at certain stages, questions were merely conveyed to the complainant, who was allowed to respond in summary form. The primary contention was that the entire inquiry process violated procedural safeguards, including those under Section 11 of the POSH Act, which requires inquiries to be conducted in accordance with applicable service rules, in this case, the Navy Act and the Rules framed thereunder.

6. In reply, learned counsel for the respondents placed reliance on the law laid down by the Hon'ble Supreme Court in *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011), where the Vishaka Guidelines were held to apply even to the Armed Forces. Pursuant to these guidelines, the Parliament enacted the POSH Act. The Madras High Court in *State v. Commandant* (2023 SCC Online Mad 4769) emphasized the applicability of the POSH Act in the Armed Forces. More recently, the Hon'ble Supreme Court in *Aureliano Fernandes v. State of Goa* [(2024) 1 SCC 632] laid down binding directions regarding the constitution and functioning of ICCs.

7. In compliance, the Indian Navy promulgated Navy Order No. 06/2024 (Exhibit 1(a)) outlining detailed procedures for inquiries by the ICC into complaints of sexual harassment. The respondents contended that these instructions are aligned with the statutory mandate of the POSH Act and the Hon'ble Supreme Court's rulings and thus form a part of the service rules applicable to naval personnel.

8. The respondents further submitted that the complainant declined conciliation under Section 10 of the POSH Act. Accordingly, a formal inquiry was commenced after due notice to the applicant, who submitted his reply. Details of witness examination, cross-examination and procedural adherence were provided in the counter affidavit, including a chart in Para (J) listing all key dates and participants. It was argued that all legal mandates were complied with and that the applicant's procedural objections are unfounded. The respondents also raised a preliminary objection regarding maintainability, contending that judicial interference at the stage of show cause notice is premature.

9. We have heard learned counsel for the parties at length and perused the records, including the ICC's proceedings and findings placed before us.

10. It is a settled principle of law, reiterated by the Hon'ble Supreme Court and various High Courts and consistently followed by this Tribunal, that interference at the stage of a show cause notice is not warranted unless there is a demonstrable violation of statutory rules or principles of natural justice. Intervention is permitted only in rare and exceptional circumstances.

11. In the present case, the complainant, an unmarried junior officer serving aboard INS Shakti on her first posting, lodged a complaint on 02.03.2024 alleging persistent harassment by the applicant from 08.11.2023 onwards. An inquiry was duly conducted by the ICC and based on its findings, the impugned show cause notice was issued.

12. At the admission stage, the Tribunal had issued notice primarily on the ground that the inquiry allegedly violated Section 11 of the POSH Act by not following the service rules under the Navy Act. However, upon examining the Navy Order No. 06/2024, which comprises 23 pages and 38 paragraphs, we find that it lays down an exhaustive procedure for conducting inquiries into allegations of sexual harassment. The Navy Order, based on the POSH Act and relevant judicial decisions, effectively serves as a specialized service rule governing such inquiries.

13. Therefore, even if no inquiry or trial was conducted under the general provisions of the Navy Act or the Rules framed thereunder, the Navy Order No. 06/2024 satisfies the procedural requirements under Section 11 of the POSH Act. We are thus unable to accept the applicant's contention regarding statutory violation on this ground.

14. As for the other alleged procedural irregularities, such as insufficient cross-examination, improper constitution of the ICC and absence of certain members during specific proceedings, these are factual issues to be considered by the competent authority. The Chief of Naval Staff, being the authority that issued the show cause notice, is vested with the responsibility of examining these objections at the first instance.

15. The quorum for ICC meetings is not expressly prescribed under the Act but must be understood to mean that a duly constituted ICC can validly conduct proceedings if members are available and there is no indication of bias or procedural irregularity. We find from the records that the findings were recorded by the ICC consisting of five members namely: (i) Cdr Parveen Malik, Presiding Officer; (ii) Mrs. M. Shanti, Member (External Representative); (iii) Cdr Prakash M. Bawankule, Member; (iv) Surg Cdr Sargundee Singh, Member; and (v) Kumari Runjhun Gupta, Member. In addition, the ICC included two more members: (i) Surg Cdr Rani Malik and (ii) Kumari Arohi Supare. The Presiding Officer Cdr Parveen

Malik, a senior female officer, fulfils the requirement. Members such as Cdr Bawankule, Surg Cdr Singh and the two female members, Kumari Gupta and Surg Cdr Rani Malik qualify as internal members. The requirement of at least two employee members is clearly met. Out of the seven members, four are women, fulfilling the requirement that at least half of the ICC members must be women. Thus, the ICC is validly constituted under Section 4 of the Act.

16. The applicant's contention that the ICC's constitution violated Section 4 or that the proceedings were conducted in the absence of required members does not stand for the following reasons:

- (a) The composition was in strict compliance with statutory requirements, with due representation of female members and inclusion of an external member.
- (b) There is no legal requirement that all members must be present at every sitting, unless prescribed by specific institutional rules. In absence of such a rule, as long as a quorum of available members deliberate and decide without bias, the proceedings remain valid.
- (c) The presence of seven members shows an effort to form a robust and inclusive panel, strengthening procedural fairness rather than compromising it.

Courts have held that mere technical objections regarding constitution of the ICC will not vitiate the proceedings if the core requirements under the Act are met and the process followed is fair and unbiased. The ICC, as constituted in this case, not only complied with the minimum statutory requirements under Section 4 of the Act but also ensured representation beyond the minimum, including adequate female representation and an external member. There is no procedural infirmity or illegality in the constitution or conduct of proceedings. Accordingly, the allegation of the applicant stands refuted and lacks merit.

17. In view of the above, we are of the considered opinion that, at this stage, when only a show cause notice has been issued, it is neither appropriate nor

legally tenable for this Tribunal to interfere or assume the role of the disciplinary authority. The applicant is at liberty to submit his detailed representation to the competent authority raising all the objections and grounds as may be available to him under law. It is only upon the conclusion of that process and exhaustion of remedies that any cause of action may accrue for invoking the jurisdiction of this Tribunal.

18. The findings and observations made hereinabove are purely prima facie and are limited to the consideration of whether interference is warranted at this initial stage, where only a show cause notice has been issued. They shall not be construed as final conclusions on the issues involved.

19. Accordingly, the Original Application stands dismissed. There shall be no order as to costs.

20. In view of the dismissal of the Original Application, the interim protection and stay granted on 16.04.2025 also stand vacated.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)