



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

MONDAY, THE 13TH DAY OF JANUARY 2025 / 23RD POUSHA, 1946

WP(C) NO.30634 OF 2017

PETITIONER:

DIG K.JANARDHANAN, AGED 52 YEARS,
TM (0172-P), C/O.SRI.MPG NAMBIAR,
HOUSE NO.3/257, CHAITHRA, MAJOR SANTHOSH ROAD,
NADAKAVU POST, CALICUT, KERALA-673011.

BY ADVS.
SRI.C.UNNIKRISHNAN (KOLLAM)
SMT.A.V.INDIRA
SRI.JOHNSON GOMEZ
SMT.UTHARA A.S

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY
TO THE GOVERNMENT OF INDIA, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI-110011.
- 2 THE DIRECTOR GENERAL OF COAST GUARD
COAST GUARD HEADQUARTERS, NATIONAL STADIUM COMPLEX,
NEW DELHI -110001.

BY SRI.N.S.DAYA SINDHU SHREE HARI, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12.12.2024, THE COURT ON 13.01.2025 DELIVERED THE FOLLOWING:

**"C.R."****JUDGMENT**

The petitioner, who was working as the Deputy Inspector General of the Coast Guard, has filed the captioned writ petition challenging:

- i. Ext.P18, by which the Coast Guard Court imposed the punishment of dismissal from service and six months simple imprisonment on the petitioner.
- ii. Ext.P20, by which the petitioner's name has been struck off from the Coast Guard rolls.
- iii. Ext.P22, by which the sentence imposed as above is reduced to one of dismissal from service alone; and
- iv. Ext.P25, by which the statutory petition filed by the petitioner seeking to quash the sentence passed by the Coast Guard Court stood rejected by the Government of India.



2. The short facts necessary for the disposal of this writ petition are as under.

The petitioner states that he entered the service of the Coast Guard as an Assistant Commandant in 1987, having been awarded the Tatrakshak Medal by the President of India for his meritorious service in the Coast Guard. The Coast Guard built a new vessel named "Vaibhav"(hereinafter referred to as the "vessel") from Goa Shipyard Ltd., and the petitioner was posted as the Commanding Officer (Designate) of the afore new vessel. In the line of commissioning the afore vessel, two familiarization sorties (one day-time and one night-time) were scheduled. During the course of the night-time sortie on 24.04.2013, the vessel was provided with an additional mission of sailing up to Malpe. The petitioner contends that when the vessel was coming back in the early hours of 25.04.2013, it brushed upon a fishing boat; however, no injury/damage was noticed to the fishing boat. Therefore, the petitioner says that the Coast Guard vessel proceeded back to Goa as scheduled without stopping, and the



incident was reported to the higher-ups once the vessel reached Goa port. By Ext.P2 communication, the Boat Owners Association informed the Goa Coast Guard about the afore incident, leading to a few of the fishermen on board the fishing boat going missing. On the afore basis, the Board of Inquiry was constituted. Ext.P5 is the FIR filed in the local police station in Goa and later transferred to Yellow Gate Police Station, Mumbai on account of the territorial limits. The Board of Inquiry submitted Ext.P6 report containing 13 charges. Though Ext.P7 charge sheet is filed by the Mumbai Police before the Criminal Court, Mumbai, on an application filed by the Coast Guard, the Magistrate, through Ext.P8, transferred the crime to Cost Guard Court. On the basis of the afore, Ext.P10 charge sheet was served on the petitioner containing as many as 12 charges. The Coast Guard Court was later constituted pursuant to Ext.P16 order and Ext.P17 charge sheet was filed. By Ext.P18, the Coast Guard Court found the petitioner guilty of 7 charges and imposed the punishment noticed as above. By Ext.P20, the



petitioner's name is struck off from the rolls and by Ext.P22, the sentence passed by the Coast Guard Court is modified as one of dismissal from service alone. The statutory petition filed is also rejected as noticed above, through Ext.P25.

3. It is in the afore circumstances that the petitioner has filed the captioned writ petition.

4. I have heard Sri.C.Unnikrishnan, the learned counsel for the petitioner and Sri.Dhayasindhu Sreehari, the learned Central Government Counsel for the respondents.

5. Sri.Unnikrishnan, after making extensive reference to the documents forming part of the paper book and various statutes, contends that:

- i. The withdrawal of the criminal case pursuant to Ext.P8 to the Cost Guard Court was without jurisdiction.
- ii. The deputation of an officer of the same rank and two years junior to the petitioner for preparing the Record of Evidence was illegal and arbitrary.



- iii. None of the authorities could conclude that the Coast Guard vessel "Vaibhav" collided with the fishing boat in question.
- iv. In Ext.P15 Inquiry Report of the Mercantile Marine Department (MMD) there is not even a single finding against the petitioner, whereas the findings were against the Officer of Watch (OOW) of the Coast Guard vessel and against the Tindal of the boat.
- v. The trial conducted by the Coast Guard Court was illegal since,
 - a. it had no jurisdiction to consider the charge of causing the death of civilians.
 - b. instead of a joint trial, the petitioner and the OOW were sought to be tried separately.
 - c. the composition of the Coast Guard Court including a senior DIG who was due for promotion as IG was against the statute.
- vi. Prior to issuing Ext.P22, the petitioner was not heard by the Director General.
- vii. The retention of the dismissal, pursuant to Ext. P22 order is in violation of Section 114 of the Coast Guard Act, 1978 (for short, the 'Act').



viii. Without prejudice, the punishment awarded to the petitioner is excessive, harsh and disproportionate, and the petitioner has been made a scapegoat.

6. *Per contra*, the learned Central Government Counsel contends that,

- i. The petitioner is not entitled to maintain the writ petition in this Court, since no part of the cause of action has arisen in the State of Kerala.
- ii. The constitution of the Board of Inquiry/Coast Guard Court was in tune with the statute.
- iii. The withdrawal of the case from the Coast Guard Court was a prerogative of the Coast Guard, with reference to Section 71 of the Act.

7. I have considered the rival contentions and the connected records.

8. The first issue arising for consideration in this writ petition is as to the maintainability of this writ petition before this Court. The respondents contend that no part of the cause of action has arisen within the jurisdiction of this Court - the



incident happening in the sea off Malpe in the State of Goa, FIR initially being lodged there, trial happening in Goa, etc.

9. The learned Central Government Counsel relies on the judgments of this Court in **Nakul Deo Singh v. Deputy Commandant [1999 (3) KLT 629]**, **Registrar, Indian Maritime University, Chennai v. Dr. K.G Viswanthan and Another [2014 (4) KLT 798]** and **Dental Council of India (DCI) v. Dr. V. Viswanthan and Others [2018 (3) KLT 255]** in support of the afore contention.

10. I notice that in the case at hand, the petitioner has challenged the proceeding at Exts.P18, P22 and P25. Ext.P18 has been issued by the Coast Guard Court admittedly not constituted in Kerala. On the basis of the afore, the petitioner is dismissed from service and removed also from the rolls with effect from 16.01.2015. The petitioner, thereafter, submitted Ext.P21 application seeking judicial review under Section 117 of the Act before the Chief Law Officer. The afore application is



filed by the petitioner on 24.01.2015 from his address in Kerala. The reply received is the communication at Ext.P22 dated 22.06.2015 again in the address in Kerala. The petitioner, thereafter, submitted Ext.P23 to the Government of India under Section 119 of the Act which stood rejected by Ext.P25. Both the afore communications are with reference to the petitioner, stationed at his residence in Kozhikode, Kerala.

11. Article 226 of the Constitution of India confers power on the High Court when the cause of action arises “wholly or in part” within Kerala. From the afore, it is clear that a part of the cause of action has arisen within the jurisdiction of this Court and hence, the petitioner is entitled to maintain this writ petition. In this connection, I notice the judgment of the Apex Court in **Nawal Kishore Sharma v. Union of India and Others [(2014) 9 SCC 329]**, wherein the Apex Court considered an almost similar situation. There, the Shipping Corporation in Mumbai cancelled the registration of a seaman after finding him permanently unfit due to medical reasons. The employee sent a



letter seeking various benefits from his native place in Bihar and later filed the writ petition in the Patna High Court which stood rejected on the ground of lack of jurisdiction. In the afore situation, the Apex Court found as under:

"17. We have perused the facts pleaded in the writ petition and the documents relied upon by the Appellant. Indisputably, the Appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the Respondent permanently declared the Appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the Appellant as a seaman. A copy of the letter was sent to the Appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the Appellant sent a representation from his home in the State of Bihar to the Respondent claiming disability compensation. The said representation was replied by the Respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the Appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed



representation from his home address at Gaya and those letters and representations were entertained by the Respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, Appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.”

The principles laid down above, apply to the case at hand also. The judgments cited on behalf of the respondents are not applicable in the light of the afore judgment of the Supreme Court. True, the Full Bench of this Court in **Registrar, Indian Maritime University** (*supra*) referred to the judgment of the Apex Court in **Nawal Kishor Sharma** (*supra*) and concluded that the Apex Court granted relief in **Nawal Kishor Sharma** (*supra*) considering the peculiar facts and circumstances of that case, in exercise of the power under Article 142 of Constitution



of India. However, I notice that in paragraph 20 of the judgment in **Nawal Kishor Sharma** (*supra*), part of the cause of action was found to have arisen, with reference to the factual situation noticed earlier and not with reference to the peculiar facts noticed in paragraph 22 by the Apex Court. In the light of the afore, I hold that the petitioner is entitled to maintain this writ petition under Article 226 of the Constitution of India insofar as part of the cause of action has arisen within the State of Kerala.

12. Therefore, I proceed to decide on the issues raised in this writ petition on its merits. The case at hand is one where the petitioner while serving the Coast Guard, was dismissed from service pursuant to the punishment imposed by the Coast Guard Court.

13. Before venturing to consider the issues on merits, the following aspects are to be noticed:

i) Scope of Judicial review under Art. 226 against the findings of the Coast Guard Court



In **Union of India and Others v. Major A. Hussain [(1998) 1 SCC 537]**, the Apex Court considered the punishments being imposed through the Court-martial proceedings and the scope of judicial review in such cases holding as under:

"23. Though court-martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court-martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the CrPC where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A court-martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law



relating to court-martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court-martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court-martial has jurisdiction over the subject-matter and has followed the prescribed procedure and is within its powers to award punishment.”

In Union of India and Others v. R.K Sharma [(2001) 9 SCC 592], the Apex Court reiterated the position as under:

“13.The above observations are not to be taken to mean that a court can, while exercising powers under Article 226 or 227 and/or under Article 32, interfere with the punishment because it considers the punishment to be disproportionate. It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review. Merely on compassionate grounds a court should not interfere. ”



ii) Scope of applicability of the Doctrine of Command Responsibility

The petitioner admittedly was a member of the Coast Guard service. The Coast Guard is akin to the Armed Forces, a uniformed force controlled by discipline among its ranks. The discipline among the rank is to be maintained by the Commanding Officers and in services like the Coast Guard, an officer acts as the leader of those who are placed under him, and he is required to command them. The orders issued by the Commander are to be carried out in letter and spirit, meaning thereby, consequences are to follow when there is disobedience to the orders issued. The Officer/ Commander commanding the men under him in such circumstances has "Command Responsibility." The Commander cannot disown the actions of those under him by stating that he was not aware about the actions of his subordinates. In the article "Command Responsibility and Accountability" by Lieutenant Colonel Joe Doty, Ph.D., U.S. Army, Retired, and Captain Chuk Doty, U.S.



Navy, Retired published in Military Review January-February-2012, (<https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/MR-90th-Anniversary/90th-Doty/>) the authors have opined as under:-

"In the Army, there is an old saying that the commander is responsible for everything the unit does or fails to do. But are they *accountable*? Historically, the Army does not relieve commanders at the O-5/O-6 level at the same rate as the Navy, and maybe it shouldn't. Maybe the Navy is too quick to relieve ship commanders. However, for our Army to maintain a healthy professional ethic, commanders need to embrace the *spirit* of this saying as their command *responsibility*, and Army leadership should consider how they hold commanders *accountable* for what their units and soldiers do and fail to do.

A few common themes permeate the two adages mentioned above:

- A commander can delegate authority but not responsibility. Authority refers to who is in charge, while responsibility refers to who is accountable.
- A commander is responsible but very often *not* in control.
- Commanders have a responsibility to ensure their subordinates are trained and can operate independently based on the commander's intent.
- Commanders have a responsibility to set a command climate wherein subordinates will act ethically in the absence of leaders.



.....

The key learning point behind the statement that the commander is responsible for everything the unit does and fails to do is really philosophical because in reality commanders cannot lead, supervise, or micromanage their subordinates 24 hours a day, 7 days a week, nor should they. Commanders and leaders cannot prevent every possible bad thing from happening in a unit, but commanders who understand, internalize, and command their unit by being *responsible but not in control* will be thinking, planning, and acting in a way that sets up the unit and its soldiers for success.

In practical terms, accountability means consequences, both positive (awards, promotions, superb ratings, etc.) and negative (letters of reprimand, Article 15s, relief for cause, poor ratings, etc.).

(Underlining supplied)

Thus, applying the doctrine of Command Responsibility, a Commander cannot shy away from the aftermath of the actions of his subordinates.

iii) Relevant provisions of the Coast Guard Act, 1978

The Coast Guard Act is enacted by the parliament for the constitution and regulation of the Armed Forces of the Union for ensuring the security of the Maritime zones. Chapter III of the



Act provides for the duties and functions of the Coast Guard under Section 14 as under:-

"Section 14 (1) It shall be the duty of the Coast Guard to protect by such measures, as it thinks fit, the maritime and other national interests of India in the maritime zones of India.

(2) Without prejudice to the generality of the provisions of sub-section (1), the measures referred to therein may provide for -

(a)

(b) providing protection to fishermen including assistance to them at sea while in distress;"

(Underlining supplied)

iv) Factual position of the mishap that occurred in the early hours of 25-04-2013 involving the vessel and the fishing boat and its aftermath

In the early hours of 25.04.2013, the vessel under the command of the petitioner collided with the fishing boat. This incident occurred on or around 05:00 hours. There were 29 crew members (fishermen) in the fishing boat. The fishing boat, on account of the collision, broke into two parts. The fishing boat started to sink, and the members of the crew were thrown into



the sea. Admittedly, the vessel did not stop and ventured into the search and rescue operation. Instead, it proceeded to its base even as admitted by the petitioner. The fishermen were rescued almost 5 hours later by another fishing boat. By that time, six fishermen were lost in the sea and dead bodies of five of them were recovered. The body of the sixth missing crew member was not recovered. The fact that the fishermen could have been saved had the vessel stopped and ventured into search and rescue, is not a matter of dispute. It is true that the petitioner had some explanations for the ship not stopping after the incident, which, however, did not find favour with the Coast Guard Court.

14. The various contentions raised in this writ petition are to be considered with reference to the touchstone of the principles laid down in the afore judgments/doctrine/factual position. In the light of the principles laid down by the Apex Court in the decisions referred to above, I am of the opinion that the majority of the contentions raised by the petitioner on the



technicality of the constitution of the Board of Inquiry, the Coast Guard Court, the sufficiency of evidence implicating the petitioner, etc. do not arise for consideration herein. Even on the face of the afore, taking note of the persuasive submissions of the learned counsel Sri. Unnikrishnan, I proceed to consider the various contentions raised by him.

15. The first contention raised against the impugned proceedings is as to the legality or otherwise of the withdrawal of the case from the criminal court to the Coast Guard Court. The petitioner relies on the Coast Guard Order 3 of 2012 in support of his contention. Sri. Unnikrishnan, the learned counsel, would rely on paragraph 6(a)(iv) and paragraph 6(c)(iii) to contend that when the offence is related to the properties of the civilian, the case is not to be taken over by the Coast Guard Court. But here as already noticed, the entire proceedings against the petitioner are not with reference to the loss of properties/life of civilian/s alone. A reading of the charges leveled against the petitioner would show that the petitioner



was proceeded against primarily on the basis of the decision/s made by him, after the accident in the sea. Therefore, I am of the opinion that the withdrawal of the case from the criminal court cannot be found fault, especially in light of Section 71 of the Act, as per which it is the discretion of the Director General of the Coast Guard to choose between the criminal court and the Coast Guard Court. Further, the provisions of Rule 16 to the Coast Guard (Discipline) Rules, 1983, provide as under:

"16. Trial of Cases either by Coast Guard Court or Criminal

Court - (1) Where an offence is triable by a criminal court and the Coast Guard Court, an officer referred to in Section 71, may

(a) (i) Where the offence is committed by the accused in the course of the performance of his duty as a member of the Coast Guard; or

(ii) Where the offence is committed in relation to property belonging to the Government or Coast Guard or a person subject to the Act; or

(iii) Where the offence is committed against a person subject to the Act,

direct that any person subject to the Act, who is alleged to have committed such an offence, be tried by a Court; and"

Thus, it has been categorically provided that it is the choice of



the Coast Guard between the Criminal Court and the Coast Guard Court, when the alleged offence committed by the petitioner was in his capacity as the Commander of the vessel in question. The provisions of Rule 2(d) of the afore Rules define the term "Court" as a "Coast Guard Court" and conclude the position.

16. The second issue raised by the petitioner is with reference to the deputation of an officer of the same rank for the preparation of a Record of Evidence. Here, I notice that the petitioner did not raise any such objection initially at the time of issuance of Ext.P11 deputing the officer concerned to record the evidence. Furthermore, there is no prejudice caused to the petitioner on account of the deputation of the officer of the same rank for the preparation of the record of evidence. This Court also notices that the evidence was recorded with reference to the incident that occurred in the sea and its aftermath and that by itself has not concluded the issue for or against the petitioner.



17. Thirdly, it is contended that even at the time Ext. P2 communication was issued by the Boat Owners Association, the complainants were not sure about the vessel involved. However, I notice that Ext.P2 communication was specifically addressed to the Coast Guard, Goa, and therefore, the mere reference to the vessel concerned as a Navy vessel, cannot be of any help to the petitioner. This can be only taken as an inadvertent mistake while drafting the letter on the morning after the incident. The petitioner further relies on Ext.P16 Inquiry Report of the MMD and contends that there were no observations against him and the findings were against the OOW and the Tindal of the boat. However, in Ext.P15 the following specific observations have been made:

"13. Six crew-members of the fishing boat had slept in the forward area of the fishing boat. The collision appears to have occurred near the forward area of the fishing boat where the 6 crew-members were sleeping. Bodies of 5 of these crew-members were recovered. Body of the 6th crew-member was not recovered.



14. Post mortem report of all the 5 deceased crew-members of the fishing boat whose bodies were recovered indicates cause of death to be head injury. This indicates that they could have suffered the injury during the collision."

(Underlining supplied)

Thus, the report finds that the post-mortem report of the unfortunate fishermen (5 in number) showed that they died due to the head injury suffered in the collision. This points to the gravity of the accident/collision of the vessel with the fishing boat. The fact that the vessel did not stop after the incident and ventured into search and rescue is also the admitted position. The Coast Guard Court also found that there were no other vessels stationed near the place where the accident occurred. This finding strikes at the root of the contention raised that the vessel has not been involved at all in the incident and also shows that the failure of the vessel to stop has solely caused the death of the fishermen. Again, it was the duty of the petitioner to have ordered the vessel to stop, return and carry out search and rescue as provided under the Coast Guard Act, noticed earlier. Admittedly this was also not done.



18. The next contention raised is with reference to the illegality of the trial. According to the petitioner, the main charge is the death of five civilians and the Coast Guard Court has no jurisdiction over that matter. However, as already noticed, the gravamen of the allegations against the petitioner are with reference to the aftermath of the accident. For example, the third charge against the petitioner was with reference to the non-reporting of the collision at the first available opportunity, the fourth charge of not investigating the result of the collision, etc. The afore can only be tried by the Coast Guard Court, and the contention to the contrary is only to be rejected. Similarly, the petitioner's challenge against the constitution of the court also cannot be accepted in view of the mandate under Section 65(4) of the Act as per which the presiding officer and at least two members of the court are to be of the same rank as of the accused or of a higher rank. The constitution of the court as per Ext.P16 is in tune with the mandate under Section 65(4) of the Act and hence, the above contention is also to be rejected.



19. The next contention raised is with reference to the hearing conducted prior to the issue of Ext.P22, which is seen signed by a Commandant. However, Ext.P22 is only a communication for and on behalf of the Director General of the Coast Guard informing the petitioner of the decision taken by the Director General. Therefore, the petitioner cannot raise any complaint in that regard.

20. The next point raised by the learned counsel for the petitioner is with reference to the modification of the sentence, read with the provisions of Section 114 of the Act. According to him the original punishment imposed by the Court is modified by Ext.P22 order by remitting the sentence of imprisonment. Therefore, he relies on Section 114 of the Act which reads as under:

"Section 114 (1) Where in addition to any other sentence, the punishment of dismissal has been awarded under this Act and such other sentence is suspended under section 107,



then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 107.

(2) If such other sentence is remitted under section 110, the punishment of dismissal shall also be remitted.”

and contends that since the sentence of imprisonment was remitted under section 114, the punishment of dismissal was also to be remitted.

21. Here, reference is to be made to the provisions of Chapter V of the Act dealing with punishments. Section 53 of the Act, provides as under:

“Section 53 (1) Punishments may be inflicted in respect of offences committed by person subject to this Act and convicted by Coast Guard Courts according to the scale following, that is to say,

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term;
- (c) dismissal from the Coast Guard;
- (d) detention in Coast Guard custody for a period not exceeding two years;
- (e) reduction to the ranks or to a lower rank in the case of sailors;



- (f) forfeiture of seniority of rank, forfeiture of all or any part of the service for the purpose of promotion;
- (g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (h) fine, in respect of civil offences;
- (i) mulcts of pay and allowances;
- (j) severe reprimand or reprimand except in the case of persons below the rank of an Uttam Navik or Uttam Yantrik

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale."

The provisions of Sections 55 and 58 of the Act are also to be referred to, which reads as under,

"Section 55. Subject to the provisions of section 58, a sentence of a Coast Guard Court may award in addition to, or without any one other punishment, the punishment specified in clause (c) of sub- section (1) of section 53 and any one or more of the punishments specified in clauses (e) to (j) (both inclusive) of that sub-section."

"Section 58 (1) The punishments that may be inflicted under this Act shall be awarded in accordance with the provisions of this section.

(2) A sentence of imprisonment under this Act shall, in all cases, be accompanied by a sentence of dismissal.



(3) A sentence of imprisonment may be rigorous or simple or partly rigorous and partly simple.

(4) No officer shall be subject to detention for any offence under this Act.

(5) No subordinate officer shall be sentenced to detention except for desertion.

(6) A sentence of detention shall not be accompanied by a sentence of dismissal from the Coast Guard.

(7) A sentence of detention for a period exceeding fourteen days shall in all cases be accompanied by stoppage of pay and allowances during the period of detention.

(8) Where mulcts of pay and allowances are awarded for absence without leave, the absence shall be treated as regularised for all purposes.”

Section 53, extracted above, provides for the punishments that may be inflicted upon conviction by the Coast Guard Court. Clause (b) of Section 53(1) provides for imprisonment and clause (c) provides for the dismissal from service. By virtue of sub-section (2), the punishments under sub-section (1) are deemed to be “inferior in degree” to every punishment preceding it. Therefore, imprisonment is a superior punishment to dismissal. Section 55 provides that the punishment under clause (c) – dismissal – can be inflicted independently. It is only



that under section 58(2) whenever a sentence of imprisonment is ordered, the same is to be accompanied by a sentence of dismissal. But the statute does not provide the other way round, i.e., whenever a sentence of dismissal is ordered, the same is to be accompanied by an order of imprisonment.

22. Here, the petitioner is admittedly sentenced to imprisonment as also dismissal from service pursuant to Ext.P18. Against the above, the petitioner has admittedly filed an application under Section 117 as seen from Ext.P21. Section 117 of the Act reads as under,

“117. (1) All proceedings of trials by Coast Guard Courts shall be reviewed by the Chief Law Officer either on his own motion or on application made to him within the prescribed time by any person aggrieved by any sentence or finding, and the Chief Law Officer shall transmit the report of such review together with such recommendations as may appear to him just and proper to the Director - General for his consideration and for such action as the Director-General may think fit.

(2) Where any person aggrieved has made an application under sub-section (1), the Chief Law Officer may, if the



circumstances of the case so require, give him an opportunity of being heard either in person or through a legal practitioner or an officer of the Coast Guard.

Thus, on the basis of Ext.P21 application, the Chief Law Officer reviewed Ext.P18 and transmitted his recommendations to the Director General. It is on that basis Ext.P22 is issued, which can only be an order of judicial review under Chapter XI. The suspension of sentence under Section 107 and remission under Section 110 cannot be read along with the judicial review under Section 117 referred to above. Therefore, I am of the opinion that the petitioner is not entitled to seek shelter under Section 114(2) of the Act.

23. The last contention raised is with reference to the punishment awarded being excessive, harsh and disproportionate. This contention has to be considered with reference to the doctrine of Command Responsibility and the scope of judicial review in cases of the present nature, as noticed earlier. It is found that the petitioner cannot shy away



from his responsibilities on account of being the Commander of the vessel concerned. The nature of the loss on account of the accident - the death of six fishermen - cannot be lost sight of. The petitioner has been shown the required leniency pursuant to Ext.P22 order and in my opinion, the punishment of dismissal from service retained by Ext.P22 cannot be found fault with. Further, the nature of the punishment, etc. cannot be the subject matter of judicial review as held by the Apex Court in the afore judgments.

24. On the whole, I am of the considered opinion that the petitioner is not entitled to any of the reliefs prayed for in this writ petition.

Resultantly, the captioned writ petition would stand dismissed.

Sd/-

HARISANKAR V. MENON, JUDGE

In

APPENDIX OF WP(C) NO.30634/2017

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE CGHQ LETTER DATED 21.1.2013 APPOINTING THE PETITIONER AS THE COMMANDING OFFICER (DESIGNATE) OF THE NEW CONSTRUCTION SHIP, YEAR-1205 (VAIBHAV) .
- EXHIBIT P2 TRUE COPY OF THE FAX MESSAGE DATED 25.4.2013.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 25.4.2013 CONSTITUTING THE BOARD OF INQUIRY.
- EXHIBIT P4 TRUE COPY OF CGHQ FAX DATED 29.4.2013 DIRECTING THE PETITIONER TO HANDOVER CHARGE OF THE SHIP.
- EXHIBIT P5 TRUE COPY OF THE FIRST INFORMATION REPORT NO.63/13 DATED 26.4.2013 REGISTERED BY THE GOA POLICE.
- EXHIBIT P6 TRUE COPY OF THE FINDINGS OF THE BOI.
- EXHIBIT P7 TRUE COPY OF THE TRANSLATION OF CHARGE SHEET DATED 30.4.2013 FILED BY YELLOW GATE POLICE.
- EXHIBIT P8 TRUE COPY OF THE ORDER OF THE 16TH METROPOLITAN COURT, BALLARD PIER, MUMBAI DATED 5.9.2013.
- EXHIBIT P9 TRUE COPY OF THE FAX DATED 5.9.2013 ISSUED BY THE REGIONAL HEADQUARTERS (WEST) DIRECTING FOR COMMENCEMENT OF THE RECORD OF EVIDENCE AT COAST GUARD STATION, GOA.
- EXHIBIT P10 TRUE COPY OF THE CHARGE SHEET DATED 18.9.2013 SERVED ON THE PETITIONER PRIOR TO THE COMMENCEMENT OF THE RECORD OF EVIDENCE.
- EXHIBIT P11 TRUE COPY OF THE ORDER DATED 23.9.2013 NOMINATING DIG KAILASH NEGI RECORDING OFFICER.



- EXHIBIT P12 TRUE COPY OF THE LETTER DATED 7.2.2014 FROM DIG M.V BAADKAR, THE COMMANDING OFFICER, COAST GUARD STATION GOA AGAINST THE MANNER IN WHICH THE RECORD OF EVIDENCE WAS CONDUCTED BY THE RECORDING OFFICER.
- EXHIBIT P13 TRUE COPY LETTER DATED 21.4.2014 FROM DIG M.V BAADKAR, THE COMMANDING OFFICER, COAST GUARD STATION, GOA AFTER RECORDING OF EVIDENCE RECOMMENDING TO DROP 8 OUT OF THE 12 CHARGES.
- EXHIBIT P14 TRUE COPY OF THE AFFIDAVIT FILED BY DIG M.V BAADKAR THE COMMANDING OFFICER COAST GUARD STATION GOA BEFORE THE DISTRICT COURT IN SOUTH IN GOA ON 19.11.2014.
- EXHIBIT P15 TRUE COPY OF THE INQUIRY REPORT DATED 16.12.2013 OF THE MERCANTILE MARINE DEPARTMENT.
- EXHIBIT P16 TRUE COPY OF THE ORDER DATED 24.10.2014 CONSTITUTING THE COAST GUARD COURT FOR TRAIL OF PETITIONER.
- EXHIBIT P17 TRUE COPY OF CHARGE SHEET DATED 24.10.2014 SERVED TO THE PETITIONER IN TRIAL.
- EXHIBIT P18 TRUE COPY OF THE EXTRACT OF FINDINGS AND SENTENCE DATED 16.1.2015 TAKEN FROM THE COAST GUARD COURT PROCEEDINGS.
- EXHIBIT P19 TRUE COPY OF ORDER DATED 16.1.2015 OF THE 2ND RESPONDENT DATED 16.1.2015 GRANTING SUSPENSION OF IMPRISONMENT.
- EXHIBIT 20 TRUE COPY OF THE GENFORM DATED 16.1.2015 NOTIFYING DISMISSAL OF PETITIONER FROM SERVICE.
- EXHIBIT P21 TRUE COPY OF THE APPLICATION FOR JUDICIAL REVIEW DATED 24.1.2015 (EXCLUDING THE ENCLOSURES/ANNEXURES)
- EXHIBIT P22 TRUE COPY OF LETTER DATED 22.6.2015 SIGNED BY COMMANDANT, S.S AZAD, INFORMING DIRECTIONS OF



THE 2ND RESPONDENT ON THE REVIEW PETITION.

EXHIBIT P23 TRUE COPY OF STATUTORY PETITION DATED 9.9.2015
(EXCLUDING THE ENCLOSURES/ANNEXURES.

EXHIBIT P24 TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH
COURT OF KERALA DATED 15.7.2016.

EXHIBIT P25 TRUE COPY OF ORDER DATED 24.5.2017 OF 1ST
RESPONDENT RECEIVED ON 29.5.2017.

RESPONDENTS' EXHIBITS:

EXHIBIT R2 (A) TRUE COPY OF THE SAILING ORDER AND OPS
INSTRUCTION DATED 23.04.2013.

EXHIBIT R2 (B) TRUE COPY OF THE ACQUAINTANCE SORTIE DATED 24
& 25 APRIL 2013.

EXHIBIT R2 (C) TRUE COPY OF THE CAPTAIN'S NIGHT ORDER DATED
24.04.2013.

EXHIBIT R2 (D) TRUE COPY OF THE SITREP AS APPROVED BY THE
PETITIONER.

EXHIBIT R2 (E) TRUE COPY OF THE INCIDENT REPORT TO COMDIS 11
DATED 25.04.2013.

EXHIBIT R2 (F) TRUE COPY OF THE DETAILED REPORT TO COMCG (W)
LETTER DATED 25.04.2013.

EXHIBIT R2 (G) TRUE COPY OF THE SUSPENSION OF SENTENCE DATED
16.01.2015.

EXHIBIT R2 (H) TRUE COPY OF THE COMMUNICATION DATED
20.01.2015.

EXHIBIT R2 (I) TRUE COPY OF THE LETTER DATED 21.01.2015.

EXHIBIT R2 (J) TRUE COPY OF THE EXTRACT OF RELEVANT PAGES OF
BOI IE PAGE 412-413.

EXHIBIT R2 (K) TRUE COPY OF THE PRE INQUIRY DELIBERATION.

EXHIBIT R2 (L) TRUE COPY OF THE CGO 3/2012.



- EXHIBIT R2 (M)** **TRUE COPY OF THE LETTER NO. LW/YARD-1205/2
DATED 21.09.2013**
- EXHIBIT R1 (A)** **TRUE COPY OF THE REQUEST LETTER 242/KJ/01/15
DATED 16 JAN 2015 SUBMITTED BY PETITIONER FOR
SUSPENSION OF THE SENTENCE.**
- EXHIBIT R1 (B)** **TRUE COPY OF THE COMMUNICATION OF SUSPENSION
OF SENTENCE VIDE SIGNAL DATED 20 JAN 2015.**