

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.865 OF 2007

Kuldip Singh Jodha, S/o.Amar Singh Jodha,
Age 29 years, Presently working at
INS Kunjali (Provost), Near USO Club,
Colaba, Mumbai-400005.

Petitioner

versus

1. The Union of India represented by
Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff,
Naval Headquarters, DHQ Post,
New Delhi-110 011.
3. The Flag Officer Commanding-in-Chief,
Headquarters, Eastern Naval Command,
Naval Base, Visakhapatnam.
4. The Commanding Officer, INS Circars,
Naval Base, visakhapatnam.
5. The Commanding Officer,
INS Khukhri, C/o.Fleet Mail Office,
Naval Base, Visakhapatnam.
6. The Commodore Bureau of Sailors,
Cheeta Camp, Mankhurd, Mumbai.
7. The Logistics Officer-in-Charge,
Naval Pay Office, SBS Road,
INS Angre, Mumbai.
8. The Commanding Officer,
INS Eksila, Malagada Area,
Mindi Post, Visakhapatnam-12.
9. The Commending Officer,
INS Kunjali (Provost), Near USO Club,
Colaba, Mumbai-400 005.

Respondents

**CORAM : A.A.SAYED AND
PRAKASH D. NAIK, JJ.**

Date of Reserving the Judgment : 30th August 2019

Date of Pronouncing the Judgment : 17th October 2019

JUDGMENT (Per – Prakash D. Naik, J) :-

1. The Petitioner invokes writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the verdict and sentence passed by Commanding Officer, INS Circars dated 22nd June 2005 and order dated 21st August 2006 passed by the Under Secretary to the Government of India rejecting the Review Petition of the Petitioner.

2. The Petitioner at the relevant time was serving as a Sailor in the Indian Navy, Armed Forces of the Union, holding the rank and status of Radio Operator (Telegraphist), First Class. He joined Indian Navy on 27th January 1997. The Petitioner contends that he volunteered for change of branch and was considered eligible for transfer to the Regulating Branch. He was selected to undergo Leading Patrolman (LPM) course commencing from 3rd July 2000. He completed the said course on 6th January 2001 and converted to the Provost Cadre of the Navy and ranked as Acting LPM. After one year the Petitioner was confirmed as LPM with effect from 6th January 2001. It is further contended that the Petitioner was selected to undergo Regulating Petty Officer's course commencing from 3rd February 2002 and successfully completed the course on 27th April 2002. He was transferred to NDA Khadakwasala, Pune.

3. According to the Petitioner, a complaint was filed against him by one Smt.Subhadra Babbar to the Officer In-charge, Navy Wing NDA (K) alleging that the Petitioner had illicit relationship with her daughter on promise of marrying her and that he has taken some property documents. The Petitioner denied the said allegations. Investigation was carried out with regards to the allegations. The said complaint was withdrawn. The investigation was closed and the Petitioner was permitted to proceed on transfer to Visakhapatnam. The Petitioner reported On-Board Ship Khukri on 1st October 2004.

4. According to the Petitioner, Smt.Subhadra Babbar visited Visakhapatnam on 8th November 2004 and made a complaint against the Petitioner to the Commanding Officer, INS Khukri Commander A.S.Rana and to Provost Martial, with the same allegations. The Petitioner denied the allegations. He also learnt that Smt.Subhadra Babbar has also lodged a FIR with Town Police Station under Sections 354, 476 and 420 of Indian Penal Code against the Petitioner and that the said FIR was transferred to Pune for want of jurisdiction. The statement of Petitioner was recorded wherein he denied the allegations and the report of investigation was submitted to the concerned authority. The Petitioner thereafter learnt that Smt.Subhadra Babbar has again lodged another FIR against the Petitioner in January-2005 under Sections 354, 376 and 420 of Indian Penal Code alleging that the Petitioner had illicit relationship with complainant's daughter on 8th November 2004 at the hotel where they were staying on the pretext that he was marrying her. The Petitioner was arrested and released on bail. Smt.Babbar thereafter lodged another FIR against the Petitioner for the same

allegations with Kothrud Police Station under Sections 354, 420 and 376 of Indian Penal Code. It is contended that the Petitioner was required to be present for investigation at Pune. Accordingly he requested his Commanding Officer for grant of 45 days annual leave to enable him to attend his case at Pune and if required to apply for anticipatory bail. The Petitioner's application for leave was rejected by the Commanding Officer with assurance that if it is necessary, either the case will be taken over by Navy for investigation under the Navy Act, 1957 or the Petitioner would be transferred to NDA (K) on temporary duty. The Petitioner thereafter learnt that non-bailable warrant is likely to be issued against him if he fails to report for investigation with Kothrud Police Station. Thus, the Petitioner decided to go to Pune to do the needful to defend the case. The Petitioner applied for 45 days leave and explained the emergency to Executive Officer in detail. He was granted leave of four days with condition that the Petitioner shall report back On-Board Ship by 1st April 2005 at Kochi as the ship was sailing from Visakhapatnam to Mumbai en-route Kochi Port staying for two days. In the situation, the Petitioner accepted the condition of leave and left Visakhapatnam for Pune on 28th April 2005 and reached Pune on 30th March 2005. It is further stated that the Petitioner preferred an application for anticipatory bail before the Court of Sessions, at Pune. Interim bail was granted to the Petitioner till 6th April 2005 with condition that he must attend Kothrud Police Station on every Monday between 10 am to 1 pm. Bail Application was then adjourned to 11th April 2005. The Bail Application was finally allowed on 11th April 2005 with a direction that the Petitioner attends Kothrud Police Station on every Monday between 10 am to 1 pm and to make himself available to the Investigating Officer to complete his investigation as and when

called. The Petitioner states that after ascertaining the approximate time required by the Investigating Officer to complete his investigation, the Petitioner informed his Commanding Officer on 11th April 2005 through a telegram and registered letter seeking extension of leave for at least 26 days to complete the formalities of the investigation. It is contended that the Petitioner did not get any reply and he continued to stay at Pune for investigation as per the Court's order. He reported back to his ship on 29th April 2005. He came to know that the Commanding Officer had rejected his request for grant of extension of leave and this fact was intimated to his native place at Jodhpur and not at Pune, although Commanding Officer was aware that the Petitioner was in Pune. The Commanding Officer requested to transfer the Petitioner from ship to INS Circars for investigation/trial for desertion.

5. The Petitioner was charged for desertion u/s 49(2)(b) of Navy Act, 1957 with an alternative charge i.e. absence without leave for 29 days under Section 51 of Navy Act. According to the Petitioner, his previous Commanding Officer wrote several letters to Commanding Officer INS Circars maligning his image on criminal case against him, which prejudiced the mind of the Commanding Officer INS Circars towards the Petitioner. The Commanding Officer of Circars finally investigated the charges on 21st June 2006 and after having dropped charge of desertion u/s 49(2)(b) of Navy Act, 1957 and holding the Petitioner guilty in the alternative charge i.e. "Absent without leave for 29 days" u/s 51 of Navy Act. 1957.

6. On 23rd June 2005 punishment warrant was read out awarding sentence to the Petitioner viz. : (a) Reduction in rank to Radio

Operator First Class (Telegraphist); (b) Deprivation of first Good Conduct Badge; (c) Mulcts of pay and allowances for 60 days; (d) Stoppage of leave for sixty days.

7. The Petitioner challenged the aforesaid order by preferring Review Petition u/s 163 of Navy Act before the Central Government. The said Appeal was rejected vide order dated 26th August 2006.

8. Mr. Ajay Pal Singh, learned Advocate for Petitioner, submitted that the Commanding Officer did not assign any reason for awarding such harsh and dis-proportionate punishment of reduction in rank, particularly when his absence was beyond his control as he was under the order of competent Court. The Petitioner was not provided any document including charge sheet, statements of witnesses during trial and no witness was offered for cross-examination at the time of trial. He was made to sign a certificate subsequent to completion of trial, that he declined to cross-examine the Commanding Officer A.S. Rana. The Appeal preferred by the Petitioner was rejected after one year from the date of Appeal. The Petitioner was transferred to INS Circars for investigation. The trial is illegal and it is contrary to Reg.132 Part-II r/w Navy Order (Str/07/02 Reg.132). The sentence of reduction in rank below the lowest rank in Provost Cadre is in violation of Regulation 38, Part-II. Reverting the Petitioner back to previous branch by reduction in rank amounts to change of Branch/Cadre, which is not permissible. Mech 4 being lowest after the change of Branch from other technical/non-technical Branches and on similar line LPM rank is the lowest rank in Provost/Regulating Cadre, whereas Mech 4 cannot be reduced in rank below Mech 4 being lowest rank in the changed Cadre. The

reduction in rank is totally dis-proportionate as except Petitioner no Sailor has been awarded reduction in rank for the similar offences. The same Commanding Officer has not awarded reduction in rank in similar cases in respect of Vijayan, LPM and S.Saha, Leading Seaman. The Petitioner relied upon documents annexed to the Petition at Exhibits-L and M in support of this submission. The Commanding Officer INS Circars has taken letter of Commanding Officer INS Khukri dated 22nd June 2005 on record subsequent to closing of trial. The Petitioner had excellent service record. The requested documents relied upon by Commanding Officer for conviction and for awarding sentence against the Petitioner, were not supplied to him. For absence of 29 days, the Commanding Officer has awarded mulcts of pay and allowances for 60 days which is illegal and without jurisdiction. The discrimination shown by the said Commanding Officer in the matter of award of punishment to the Petitioner while he had not awarded to any similarly situated personnel in the same unit. There is no evidence to support alleged offence that the Petitioner has absented while on leave without any valid cause and excuse.

9. The learned Counsel for Petitioner has relied upon following decisions :

- (i) Ranjit Thakur Vs. Union of India and others¹,
- (ii) Ex-Surgeon Commander Bhaskar Roy Vs. Union of India & others²;
- (iii) Mahipal Singh Vs. Union of India and others³;
- (iv) Major S.K.Chatterji Vs. Union of India and others⁴.

1 AIR-1987-SC-2386

2 1998(1)-Mh.L.J.-220

3 1994(8)-Service Law Reporter-434

4 1994(7)-Service Law Reporter-248

10. Learned Counsel for Respondents Mr.Sethna has vehemently opposed the reliefs sought by the Petitioner and submitted that the Petition is devoid of merits and deserves to be dismissed. The Respondents have filed Affidavit-in-Reply dated 14th August 2017 and 6th December 2016 and Additional Affidavit dated 7th July 2009. The Petitioner had filed Affidavit-in-Rejoinder. The Respondents have placed on record the documents in compliance with order dated 12th December 2007 and 30th April 2008 passed by this Court. Mr.Sethna submitted that the Petitioner was granted four days leave as requested by him. From 1st April 2005 to 11th April 2005 there was no communication between Petitioner and the Commanding Officer of INS Khukri and as per Regulation 132 of the Navy Regulations, Part-II, the Petitioner was marked "RUN" on 8th April 2005 and all pay and allowances were withheld and he was tried summarily for the charge of being absent without leave u/s 51 of Navy Act, 1957. The Petitioner was not transferred to INS Circars for trial. INS Khukri was scheduled for extensive sailing in the coming months and keeping in mind the cases filed against the Petitioner and requirement to be present before the Court, the Petitioner was transferred to a shore establishment by the Headquarters Eastern Naval Command vide letter dated 24th May 2005. The Petitioner was assured of all possible assistance and was granted four days leave as requested by him. The allegations of bias are denied. To warn the Petitioner under the provisions of Regulation 279(1)(b) of Navy Regulations, Part-III, on the request of Commanding Officer INS Circars to the appropriate authority, he was transferred vide letter dated 25th August 2006 as his retention in the same unit after grave allegations on the Commanding Officer was neither desirable nor proper. The Petitioner was directed to be present at Kothrud Police

Station on every Monday and hence he had a week's time to go to Mumbai and meet his Commanding Officer. However, the Petitioner showed total dis-respect to the instructions of Commanding Officer and stayed at Pune though he was repeatedly told that extension of leave was not granted and that the Commanding Officer is responsible to make him available before the Court as and when required, and he showed complete dis-respect to the instructions of the Commanding Officer and Navy Regulations. High standards of discipline must be maintained by Provost personnel at any given point of time. The Petitioner remained absent without leave for 28 days and 15 hours and hence warranted punishment of reduction in rank and other accompanying punishments in accordance with Regulation 38 of Navy Regulations, Part-II as envisaged in Column-5 of the table for sailors branches to the Navy Instructions 2/S/96 and was reduced to the rank to Radio Operator First Class in accordance with Regulations. Retention of a sailor in Provost Cadre is based on Rules, Regulations and Policies on the subject and the minimum qualification of the rank to be in the Provost Cadre is that the sailor should be of Leading Rank. In the present case, the Petitioner was summarily tried and reduced in rank and has no vested right to be in the Provost Cadre as he falls short of the qualification prescribed for that Cadre. It is further submitted that the Petitioner was found to be in defiant in nature exhibiting no faith towards his Commanding Officer. It was the considered opinion of the Commanding Officer, INS Circars that the conduct of the Petitioner did not merit award of good conduct badge which was due to be awarded to the Petitioner.

11. Mr.Sethna submitted that the order of the Central Government dated 21st August 2006 is exhaustive, well reasoned and speaking

order. The policy letter dated 2nd June 2008 relied upon by the Petitioner will only be applicable prospectively i.e. post 2nd June 2008. The said letter stipulates that it would be applicable for LPMs found unsuitable for Provost Cadre. The Petitioner was not entitled for any parity as illustrative action initiated against others was based on different factual matrix. The Petitioner had joined as R.O. The highest rank is Lead R.O. Thereafter the Petitioner had appeared for examination and appointed as LPM in a distinct cadre. Thus, the Petitioner cannot contend that reduction of his post was improper. The Petitioner did not join as LPM, whereas he joined as R.O. He relied upon following decisions :

- (i) Mithilesh Singh Vs Union of India and others⁵;
- (ii) Union of India and others Vs. Himmat Singh Chahar⁶;
- (iii) Union of India and others Vs. Ram Sunder Ram⁷.

12. In the light of submissions of both the sides and documents on record it is apparent that the Petitioner reported on INS Khukri at Visakhapatnam on permanent duty from NDA Khadakwasala, Pune in October-2004. Complaint was lodged against the Petitioner with Provost Martial, Eastern Naval Command, Visakhapatnam by Ms.Priya Babbar along with her mother Smt.Subhadra Babbar in November-2004 stating that the Petitioner had developed acquaintance and intimacy with minor girl Ms.Priya during his tenure at Khadakwasala at Pune. The Petitioner learnt that Smt.Subhadra Babbar has filed another FIR with Kothrud Police Station, Pune under Sections 376, 354 and 420 of IPC in March-2005. The Petitioner requested for leave w.e.f. 28th March 2005 in

5 AIR-2003-SC-1724

6 (1999)4-SCC-521

7 MANU/WB/0655/2004

order to obtain anticipatory bail. He was granted four days leave and directed to report and join the ship at Kochi on 1st April 2005. The Petitioner did not join the ship at Kochi on 1st April 2005. When the ship reached Mumbai, he did not report on ship on 6th April 2005. On 8th April 2005 the Petitioner was marked "RUN" in accordance with Regulation 132 of the Regulations for Navy, Part-II. The Petitioner's contention is that Smt.Subhadra Babbar had lodged several false complaints against the Petitioner. On learning that a warrant has been issued against him by Kothrud Police Station, the Petitioner sought leave with a view to obtain anticipatory bail for a period of 45 days. However, he was granted leave of four days with condition that he should report back on board ship at Kochi on expiry of leave on 1st April 2005. The Petitioner had no option but to accept this impossible condition. The Petitioner applied for anticipatory bail in the Court at Pune. By order dated 2nd April 2005 he was granted interim protection with a direction that he shall attend Kothrud Police Station on every Monday between 10 am to 1 pm. The interim protection was then extended till 11th April 2005 with similar condition. The application was finally allowed vide order dated 11th April 2005 with direction to attend Kothrud Police Station on every Monday between 10 am to 1 pm and to make himself available to the Investigating Officer if and when called. The Petitioner contended that on 29th April 2005 he reported to his ship INS Khukri at Visakhapatnam and learnt that extension of leave was refused and this was communicated to his father at his native place in Jodhpur. The Petitioner was absent without leave for 28 days and 15 hours. On 1st June 2005 the Petitioner was transferred to INS Circars, a shore establishment, on permanent duty on considering the case of the Petitioner i.e. to attend the Police Station at Kothrud on

every Monday between 10 am to 1 pm and to make himself available to the Investigating Officer as and when required. On 23rd June 2005 the Commanding Officer, INS Circars awarded punishment to the Petitioner vide Punishment Award No.10/2005. The Petitioner was charged for offence punishable u/s 49(2)(b) of the Navy Act, 1957 and Section 51 of Navy Act, 1957. The Petitioner was warned in accordance with Regulation 279 of Navy Regulations, Part-III as SNLR for conduct unbecoming of a sailor of the Provost Branch and he was remanded. The Petitioner was, however, exonerated of the offence u/s 49(2)(b) and was punished for violating Section 51 of the Navy Act which was the alternative charge viz to remain absent over part of annual leave of 2005 whilst borne on the books of Indian Naval ship Khukri for 687 hours namely from 0800 hours on 1st April 2005 to 2300 hours on 29th April 2005 and thereby committed offence u/s 51 of Navy Act, which is being an aggravated offence of leave breaking.

13. The statement of Petitioner was recorded on 8th June 2005 before the Investigating Officer, which was read back to him and accepted it and signed by him. In the said statement he has stated that he understood the charges and feels guilty, but the circumstances were such he could not avoid it. The statement of Petitioner was also recorded on 10th June 2005 before the Executing Officer which indicates that the Petitioner was warned in accordance with Regulation 28 of Regs. Navy Part-II stating that “do you wish to say anything in answer in regard to the charge? You are not obliged to say anything unless to wish to do so, but whatever you say will be taken down in writing and may be given in evidence”. He was asked whether he understood the warning and whether he pleads guilty to the charge which was answered by him in affirmative. In answer to

the charge the Petitioner stated that he could not report the ship on account of circumstances and the order passed by the Court. Thereafter again the statement of Petitioner was recorded before the Commanding Officer on 22nd June 2005 wherein he stated that he has given his written statement and does not want to say anything. However, he stated that he does not plead guilty to the charge. The statement of the Commander A.S.Rana was recorded and on completion of his deposition the Petitioner was asked by the Commanding Officer if he wanted to cross-examine the witnesses, to which he replied "No". The documents indicating aforesaid aspects were placed on record by Respondents vide Affidavit-in-Reply dated 14th August 2007.

14. The Petitioner challenged the aforesaid verdict before the Central Government by preferring Review Petition in terms of Section 163 of the Navy Act on 18th February 2006. The said Review Petition was dismissed by order dated 21st August 2006. We have perused the said order. The authority has dealt with the contentions of Petitioner and by assigning the reasons rejected the Review Petition. We do not find that there was non application of mind as contended by the Petitioner in the said impugned order. The said order mentions that the Ministry has carefully examined the points raised in the Review Petition. It is further mentioned that the Commanding Officer rendered all possible assistance to ensure that the persons in custody are released on bail. In the present case, neither the warrant of arrest of the Petitioner was received on board INS Khukri nor he was arrested till 27th March 2005. Immediately after knowledge of registration of case against him, the Petitioner apprehending arrest went on four days leave for obtaining anticipatory bail. It was also

observed that the Petitioner had displayed defiant attitude against the good order and naval discipline. He was granted bail on 11th April 2005. INS Khukri was at Mumbai on 13th April 2005 and the Petitioner was contacted by the ship to report on board but he did not report. The contention of the Petitioner about reduction in rank awarded to him by the Commanding Officer, INS Circars, was dealt with by stating that as a LPM, he can be reverted to the rank earlier held by him in accordance with Column-5 of Appendix-III of N.I.2/S/96. It was also observed that the Petitioner had voluntarily accepted grant of four days leave and proceeded to Pune. No records are available to confirm that he had asked for 48 days leave. He was contacted on 13th April 2005 to 19th April 2005 and advised to return to the ship. However, the Petitioner instead of traveling to Mumbai from Pune decided to stay without leave and also stopped answering the telephone calls made to him from the ship after 13th April 2005. The Commanding Officer, INS Circars before passing the sentence had considered all aspects of the case and particularly the defiant attitude of the Petitioner. The attitude of the Petitioner towards Naval service became in-different. His retention in naval service was considered to be detrimental. Hence, he was warned in accordance with Regulation 279(1)(b) of Navy Regulations, Part-III. It was also stated that the documents can be given to a sailor when he makes a request through his Commanding Officer as per normal service channel. The Petitioner never applied for documents as per procedure and has chosen through his Advocate to obtain documents. The Ministry found that action was taken against the Petitioner as per prescribed procedure and he was awarded punishment commensurate with the wrongs committed by him.

15. The Petitioner has contended that the law demands reduction in rank to any lower rank in his own category or to any low class in his rank, and the Provost Branch of Navy as Leading Patrolman, lowest rank in the category and class, thus reduction in rank to Telegraphist is in violation of law. According to him, the award of punishment of reduction in rank to Radio Operator, First Class violates Regulation 38 of the Regulations for Navy, Part-II. The Petitioner had joined as R.O. The highest rank is Lead R.O. Subsequently the Petitioner had appeared for examination and appointed LPM in a distinct cadre. The contention that by way of punishment reduction of his post is improper, lacks merits. He did not join as LPM. The said aspect was agitated before the Review Committee and the same was dealt with by assigning reasons. The view taken by the Review Committee in respect to the said issue does not require interference. High standards of discipline is required to be maintained by Provost Personnel at any given point of time. In this case the Petitioner remained absent without leave for 28 days and 15 hours and awarded punishment of reduction in rank and other accompanying punishments as laid down in Regulation 38 of the Navy Regulations, Part-II, as envisaged in Column-5 of the table for Sailors Branch (Appendix-III) to the Navy Instructions 2/7/96 and was reduced in rank to Radio Operator, First Class, in compliance of the said Regulations/Instructions. The contention of the Respondents is that retention of a sailor in Provost Cadre is based on Rules, Regulations and Policies on the subject and the minimum qualification of rank to be in Provost Cadre is that the sailor should be on leading rank. The Petitioner was summarily tried and reduced in rank and has no vested right to be in the Provost Cadre. The

offences committed by the Provost Personnel must be viewed seriously.

16. Learned Counsel for Respondents has pointed out that the Petitioner has never requested for supply of any documents pertaining to his trial through the established channels and on the contrary asked his Counsel to obtain the documents for him, without following the prescribed procedure which was in contravention of service rules and regulations. The Petitioner was granted four days leave. The Commanding Officer, INS Khukri took up the case of Petitioner vide letter dated 17th February 2005 with the appropriate Naval Authority to transfer the Petitioner to a shore establishment or a nearby naval unit. The Commanding Officer, INS Khukri granted four days leave w.e.f. 28th March 2005 to the Petitioner to go to Pune from Visakhapatnam to attend Court and report back at Kochi on completion of leave. The Petitioner failed to report on board INS Khukri on 1st April 2005 at Kochi. He did not communicate to the Commanding Officer, INS Khukri and as per Regulation 132 of the Regulations for Navy, Part-III, the Petitioner was marked "RUN" on 8th April 2005 w.e.f. 1st April 2005. Apparently the Petitioner sent a telegram for extension of 26 days leave without assigning any reason whatsoever, which was not granted due to operational requirements of the ship. The Respondents have contended that while at Mumbai on 13th April 2005, the ship made numerous calls to the Petitioner advising him to report on ship and assured him of all help from the Commanding Officer, but the Petitioner decided to stay without leave. The Petitioner surrendered on board INS Khukri on 29th April 2005. He was transferred to INS Circars for trial. INS Khukri was scheduled for extensive sailing and in view of complexities involved

to keep track of the cases while the ship was deployed at sea, and retention of the Petitioner on board the ship was considered detrimental to the progress of cases and moral of the ships company and hence it was recommended to transfer him to INS Circars, a Depot Shore establishment, vide HQ Eastern Naval Command's letter dated 24th May 2005 and the Petitioner was transferred from INS Khukri to INS Circars.

17. The Petitioner was charged u/s 51 of the Navy Act. When the ship was at Mumbai from 13th April 2005 to 19th April 2005, the Petitioner did not contact the ship. He was charged for remaining absent without leave for 28 days and 15 hours and the charge was substantiated against him.

18. The Petitioner has also contended that the Respondents have awarded discriminatory punishment to the Petitioner. It was contended that lesser punishment was awarded to other sailors in similar charge. Learned Counsel for the Respondents has pointed out that the Petitioner cannot make such a grievance as the cases of other sailors were based on different circumstances. It is also contended on behalf of the Petitioner that the punishment is disproportionate. The summary punishments provided under Regulation-13 of Regs. Navy-Part II, provided for various punishments; such as, imprisonment for a period not exceeding three months, detention for a period not exceeding three months, dismissal, disrating, fine, mulcts of pay and allowances, reduction to second class conduct, solitary confinement, deprivation of good conduct badge and good conduct medal etc.. The punishment awarded to the Petitioner, therefore, cannot be considered to be

disproportionate as grave punishment provided under the Regulations has not been imposed upon him although it was an aggravated offence of leave breaking.

19. We have perused the documents on record, the order of punishment as well as order passed by the Review Committee. We do not find any illegality in the said decisions. On 11th April 2005 when the Petitioner was in Pune and was instructed to be present at Kothrud Police Station, Pune on every Monday, he had a week's time to go to Mumbai and meet his Commanding Officer. The Petitioner apparently showed total disregard to the instructions of Commanding Officer and stayed at Pune. The extension of leave was not granted. It is pertinent to note that communication of rejection of extension of leave was forwarded to his native place. The Petitioner, however, contends that he did not know the decision taken by the authorities with regards to rejection of his application for extension of leave. It is expected that the Petitioner has to be diligent and was required to find out the decision taken on the application seeking extension of leave. Admittedly the leave was not extended. The Petitioner was absent on duty for a long period of time as stated hereinabove. The contention of the Petitioner that he could not attend the duty on account of circumstances beyond his control, cannot be accepted. High standards of discipline must be maintained by a Provost Personnel.

20. The order of Central Government dated 21st August 2006 which disposed of the Review Petition of the Petitioner is exhaustive, well reasoned and speaking order. The Petitioner has not been able to demonstrate any illegality or infirmity in the said order. The Petitioner has not been able to point out any gross illegality

committed by the competent authority in passing the said order, which would justify the exercise of writ jurisdiction of this Court. Taking into consideration the aforesaid circumstances, the documents on record and the orders passed by the concerned authorities, we do not find that any interference is called for in exercise of powers under Article 226 of the Constitution of India.

21. The contention of the Petitioner is that INS Circars has not considered that the absence of the Petitioner was involuntary and should have regularized the absence. It is relevant to note that the Petitioner was granted leave of four days w.e.f. 28th March 2005 and the Petitioner was to report back for duty on 1st April 2005 at Kochi. However, he failed to report on-board on INS Khukri on that date. He was declared as 'RUN' and it is admitted position that the Petitioner has reported to duty belatedly after a period of about 26 days. The Petitioner had sent a telegram seeking extension of 26 days leave. However, the extension was not granted to him. The Petitioner did not bother to find out whether extension has been granted and continued out of duty till he boarded the ship. He was brought before Commanding Officer on 22nd June 2005 and charge was read out to him. The Petitioner made a statement which is signed before the Commanding Officer on 22nd June 2005. The witness Commanding Officer A.S.Rana, INS Khukri also made a statement before Commanding Officer, INS Circars in the presence of Petitioner on 22nd June 2005, and the Petitioner was afforded an opportunity to cross-examine the witness. Apparently the date on the charge sheet was inadvertently mentioned as 21st June 2005, whereas, the documentary evidence shows that the Petitioner was charged and remanded on 22nd June 2005.

22. Learned Counsel for Petitioner relied upon several decisions in support of his submissions. In the case of Ranjit Thakur Vs. Union of India and others (supra), it was observed that judicial review is not directed against a decision but is directed against the decision making process. The question of choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. The sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of concept of judicial review, would ensure that even on an aspect which is otherwise within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In the present case, however, we do not find that there was bias or perversity in sentence awarded against the Petitioner. Sufficient opportunity was afforded to the Petitioner. The procedure was followed. The Petitioner had also preferred Review Petition, which has been dismissed by assigning cogent reasons. For the reasons stated hereinabove, it cannot be said that the sentence was vindictive or harsh or disproportionate.

23. The Petitioner then relied upon the decision in case of Mahipal Singh Vs. Union of India and others (supra). In the said decision the Court was dealing with the prosecution of the Petitioner by a regular Court Martial so that he was afforded a better right of defence. Hence the issue involved therein is not applicable in the case of Petitioner.

24. In the case of Ex-Surgeon Commander Bhaskar Roy Vs. Union of India & others (supra), a learned Single Judge of this Court was considering the prosecution of the Petitioner therein by Court Martial proceedings. The Court observed that there was serious refraction of principles of natural justice committed by Court Martial for not stating the Court the reasons for its findings. In the present case, there is no violation of principles of natural justice in any manner whatsoever.

25. The Petitioner also relied upon the decision in Major S.K.Chatterji Vs. Union of India and others (supra). In the said decision it was observed that the entire adverse material on the basis of which the authorities had come to the conclusion, ought to have been supplied to the Petitioner and failure to do so amounts to violation of Rule 4(2) of Army Rules. Even the aforesaid decision is not applicable in the factual matrix of present case.

26. Mr.Sethna appearing for the Respondents has relied upon the decision of Supreme Court in case of Mithilesh Singh Vs Union of India and others (supra). In the case case it was observed that the scope of interference with the punishment awarded by the disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same.

27. The Respondents have relied on the decision of Supreme Court in case of Union of India and others Vs. Himmat Singh Chahar (supra). It was observed by the Supreme Court that power of judicial review cannot be a power of appellate authority permitting

the High Court to re-appreciate the evidence and coming to a conclusion that evidence is insufficient for the conclusion that has arrived by the competent authorities in Court Martial proceedings. Learned Counsel also placed reliance on the judgment in case of Union of India and others Vs. Ram Sunder Ram (supra). The Court has held that the Respondent therein was given an opportunity of hearing and cross-examining the witnesses when evidence was collected but the Respondent did not avail of that opportunity. The Respondent was also given a chance to show cause and gave reply and there was no lack of opportunity of defence given to the Respondent under the Rules. It was also observed that the Respondent was working in Armed Forces and service conditions of Armed Forces stand on slightly different footing from those who hold civil posts either under the State or Government of India. It is incorrect to equate the width of natural justice principles which are made available to a person holding a civil post and a person who is working with the Armed Forces. This is required in order to achieve the twin purposes of ensuring a proper discharge of duties and maintenance of discipline in such forces. Thus the provisions of Army Act and Rules framed thereunder must be construed keeping these question in mind. In the present case, the Petitioner was afforded opportunity. The charge was read out to him. The Inquiry was conducted. His statement was recorded. The statement of witness was also recorded. Opportunity was given to him to cross-examine the witness, which was declined by him. The verdict was challenged by him before the Review Committee and the Review Petition was dismissed by assigning reasons. In the light of Regulations and the provisions of Navy Act and considering the totality of circumstances and the documents on record, we do not

find that the Petitioner has made out any case to set aside the impugned decisions which are under challenge in this Petition. The Petition is devoid of merits and deserves to be dismissed.

28. Hence, we pass following order :

ORDER

(i) Writ Petition No.865 of 2007 is dismissed, with no order as to costs.

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(PRAKASH D. NAIK, J.)

(A.A.SAYED, J.)

MST