

Dig K.Janardhanan @APPELLANT @Has Union Of India

Court: High Court Of Kerala

Date of Decision: Jan. 13, 2025

Acts Referred: Constitution of India, 1950 " Article 32, 142, 226, 227

Coast Guard Act, 1978 " Section 14, 14(1), 53, 53(1)(b), 53(1)(c), 55, 56, 57, 58, 65(4), 71, 114, 117, 119

Coast Guard (Discipline) Rules, 1983 " Rule 16

Hon'ble Judges: Harisankar V. Menon, J

Bench: Single Bench

Advocate: C.Unnikrishnan, A.V.Indira, Johnson Gomez, Uthara A.S, N.S.Daya Sindhu Shree Hari

Final Decision: Dismissed

Judgement

Harisankar V. Menon, J

1. 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.

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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.Ã¢â€

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

Ã¢â€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. Ã¢â€

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 Ã¢â€Command Responsibility.Ã¢â€ 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 Ã¢â€Command Responsibility and AccountabilityÃ¢â€ 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:-

Ã¢â€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:

Ã¢â€ 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.

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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

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(a)

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

(Underlining supplied)

iii) 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

3,

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.

Ã, (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.Ã¢â¬â¢

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 Ã¢â¬â¢inferior in degreeÃ¢â¬â¢ to every punishment preceding it. Therefore, imprisonment is a superior punishment to dismissal. Section 55

provides that the punishment under clause (c) Ã¢â¬â¢dismissal Ã¢â¬â¢ 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,

Ã¢â¬â¢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.