

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 6605 OF 2025

RINKU SINGH
-Vs-
UNION OF INDIA & ORS.

For the Petitioner:	Ms. Manika Roy, Adv., Mr. Atanu Sur, Adv.
For the Union of India:	Mr. Brajesh Jha, Adv., Mr. Rameshwar Sinha, Adv.
Hearing concluded on:	15.05.2026
Judgment on:	20.05.2026

PARTHA SARATHI SEN, J. : –

1. The subject matter of the instant writ petition is the order dated 09.12.2024 being the order of punishment as imposed by the respondent authorities upon the writ petitioner, the order of the reviewing authority dated 13.02.2024 under Section 163 of the Navy Act, 1957 hereinafter referred to as the “said Act” in short and the order dated 24.07.2024 as passed by the Armed Forces Tribunal, Regional bench, Kolkata in OA No. 119 of 2024. By the impugned order dated 09.12.2024 the respondent authorities dismissed the writ petitioner from naval service along with deprivation of Third, Second and

First GCB. By the impugned order dated 13.02.2024 as passed by the reviewing authority under Section 163 of the said Act, the competent authority while allowing the review petition of the writ petitioner set aside the trial proceeding and punishment order dated 20.02.2023 with a direction to retry the writ petitioner in accordance with the said Act. By the impugned order dated 24.07.2024 the said Tribunal in OA No. 119 of 2024 recorded a finding that retrial of the writ petitioner was completed and thus, recorded that appropriate orders including *qua* grant of interim relief as prayed for in the said original application would be considered on the next date. In the instant writ petition the writ petitioner apart from the aforementioned three reliefs has also prayed for other consequential and ancillary reliefs including the prayer to allow him to join the Naval Service with full back wages and consequential benefits including promotions as per his counterpart or batchmate of A131 Class.

2. At the time of hearing Ms. Roy, learned Advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page no. 42 of the instant writ petition (Annexure A-1). It is submitted that from Annexure A-1 it would reveal that the writ petitioner was charged under three heads for allegedly committing offences punishable under Section(s) 60(a)/ 47(c)/ 74 of the said Act. It is submitted by Ms. Roy that on perusal of page no. 55 (Annexure A-3) of the writ petition it would reveal that after conclusion of the summary trial in respect of the aforementioned three alleged offences, the respondent authorities by its memo dated 20.02.2023 imposed the following

punishments namely: (i) Stoppage of leave: 60 days, (ii) Reprimand by Captain, (iii) Reduction in rank: EA(R) 4 and (iv) Deprivation of GCB: Second and First.

3. It is submitted further on behalf of the writ petitioner that on perusal of page no. 61 of the instant writ petition (Annexure A-5) it would reveal that by an order dated 13.02.2024 the reviewing authority while disposing the review petition under Section 163 of the said Act though set aside the said summary trial proceeding as well as the punishments however directed for retrial of the writ petitioner in accordance with the said Act. In her next limb of submission it is further argued by Ms. Roy that though the reviewing authority set aside the punishments dated 20.02.2023 of the writ petitioner, however the respondent authorities did not restore the writ petitioner to his original position prior to initiation of retrial proceeding as would be evident from page no. 48 of the supplementary affidavit being a copy of staff minute sheet dated 18.03.2024 and as a result, whereof the writ petitioner had to suffer the punishments as imposed upon him vide memo dated 20.02.2023 and thus, the punishments as awarded by the respondent authorities in the retrial proceeding vide memo dated 09.12.2024 (Annexure P-29) (page no. 143 of the supplementary affidavit) tantamount to “double jeopardy” and thus, a valuable constitutional right of the writ petitioner as enshrined in Article 20(2) of the Constitution of India is violated and on this ground alone, the instant writ petition may be allowed by granting the reliefs to the writ petitioner as prayed for.

4. Drawing attention to the different provisions of Navy (Discipline and Miscellaneous Provisions) Regulations, 1965 ('Regulations' in short), it is argued by Ms. Roy that the Regulations 22 to 33 which come under Section II- Investigation of the said Regulations, postulates investigation of departmental offences by the Departmental Officer or divisional officer and in case the said Departmental or Divisional Officer decides not to deal with the case by himself or themselves, by the Executive Officer and in case the Executive Officer decided not to deal with the case himself, by the commanding officer.
5. Drawing attention to page no. 50 of the instant writ petition vis-à-vis page no. 54 of the supplementary affidavit filed by the writ petitioner, it is submitted by Ms. Roy that on comparative study of the said two documents, it would reveal that in the first round of departmental proceeding, the enquiry was conducted by one, Sri Joydeep Chakraborty, the then Executive Officer of the department and after order of retrial in the aforementioned review, the self same person held the retrial proceeding against the writ petitioner. It is thus submitted that it is the specific case of the writ petitioner that subsequent retrial proceeding is vitiated by "*Doctrine of Bias*" in view of the fact that the self same person who conducted departmental proceeding against the writ petitioner in the first round, conducted the retrial proceeding by himself.
6. Drawing further attention to page nos. 49 and 54 of the supplementary affidavit it is submitted on behalf of the writ petitioner that on comparative study of the aforementioned two documents, it would reveal that on 04.04.2024 the aforementioned Executive Officer issued a memo to the

Commanding Officer, INS, Delhi requesting him to reinstate the writ petitioner to his original rank prior to deputing the writ petitioner to his unit for conducting retrial, however, from page no. 49 of the supplementary affidavit it would reveal that the respondent authorities transferred the writ petitioner to INS, Netaji Subhash on TY duty for retrial of summary trial, and thus, the reinstatement of rank of the writ petitioner was never given effect to and further it would reveal that retrial proceeding of the writ petitioner was practically initiated on 19.03.2024 that is much prior to 04.04.2024 when formalities with regard to retrial was under process which caused serious miscarriage of justice.

7. In course of her argument Ms. Roy draws attention of this Court to Section 163 of the said Act. Attention of this Court is also drawn to page no. 61 of the writ petition being a copy of of the order dated 13.02.2024 (Annexure A-5) whereby and whereunder one, Sri K.P. Sreesan, Captain, Capt (PS) though set aside the trial proceeding against the writ petitioner and the punishments awarded to the petitioner in the first round, however, ordered for retrial of the writ petitioner herein. It is submitted that Section 163 of the said Act clearly mandates that an order for retrial can be given either by the Central Government or the Chief of the Naval Staff. However, in the case in hand, it would reveal that such order for retrial dated 13.02.2024 was passed by a Captain who is much below the rank of the Chief of Naval Staff and therefore, while issuing the order for retrial dated 13.02.2024 the said Captain exercised

his power which is not vested to him under the law and thus, the said order for retrial is basically a nullity.

8. Ms. Roy further submits that from page nos. 38 and 39 of the supplementary affidavit (Annexure P-13) being a copy of the punishment warrant form dated 20.02.2023, it would reveal that the respondent authorities in the first round found the writ petitioner guilty under Section(s) 60(a)/ 47(c)/ 74 of the said Act. However, after being ordered for retrial, one letter dated 25.06.2024 (page no. 103 of the supplementary affidavit) was issued by the Captain, Commanding Officer (AOD) appointing Lieutenant Saurav (10218-Y) as 'Defending Officer' in respect of a proceeding against the writ petitioner under Regulation 235(2) of REGS Navy Part II which are punishable under Section(s) 68/ 74/ 68/ 60 of the said Act. It is thus submitted by Ms. Roy that on comparative study of the above said two documents it is palpably clear that in the retrial proceeding charges were altered and/or escalated though in the order for retrial dated 13.02.2024 (Annexure A-5 of the writ petition at page no. 61) no order was passed for retrial of the writ petitioner upon alteration and/or escalation of charges.

9. At this juncture, Ms. Roy took me to page nos. 8, 13, 20 and 21 of the supplementary affidavit dated 07.05.2025. It is submitted that it is the specific pleading of the writ petitioner that in the retrial proceeding no document including altered charge-sheet was supplied to him despite issuance of several letters except genform and thus, the respondent authorities failed to observe the principle of natural justice in the retrial proceeding against the writ

petitioner and for that reason the entire retrial proceeding including the punishment as imposed therein upon the writ petitioner was vitiated.

10. Drawing attention to page no. 105 of the supplementary affidavit (Annexure P-24) being a copy of show-cause notice dated 27.06.2024 as issued to the writ petitioner, it is submitted by Ms. Roy that such show-cause notice was restricted to Section 68 of the said Act only, however, on perusal of the copy of the punishment warrant form at page nos. 143 and 144 of the supplementary affidavit (Annexure P-29) it would reveal that the respondent authorities conducted retrial of the writ petitioner under Section(s) 60(a)/ 47(c)/ 60(a)/ 47(A) of the said Act which tantamounts to miscarriage of justice.
11. In the course of her submission Ms. Roy again draws attention of this Court to page no. 103 of the supplementary affidavit being a copy of the letter dated 25.06.2024 whereby one Lieutenant Saurav was appointed as Defending Officer vis-à-vis page no. 105 of the self-same supplementary affidavit (Annexure P-24) being a copy of the show-cause notice dated 27.06.2024 as issued to the writ petitioner. It is submitted that on comparative study of the aforesaid two letters dated 25.06.2024 and 27.06.2024, it would reveal again that prior to issuance of show-cause notice against the writ petitioner, a Defending Officer has been appointed which clearly indicates that the respondent authorities are not impartial and on the contrary they were determined to impose punishment upon the writ petitioner.

12. It is thus submitted that on account of such procedural irregularity and biasness of the respondent authorities, the writ petitioner is entitled to the reliefs as prayed for in the instant writ petition.
13. Drawing attention to page nos. 128, 41, 74, 78 and 91 of the supplementary affidavit, Ms. Roy submits further before this Court that on perusal of the aforesaid series of papers it would reveal that despite issuance of several letters by the writ petitioner requesting the respondent authorities to provide all papers and documents for retrial, such request was never adhered to and on the contrary by issuing the memo dated 03.03.2023 (Annexure P-14) of the supplementary affidavit at page no. 41, the writ petitioner was informed that in absence of any specific provision in Indian Navy, the copy of the summary trial proceeding cannot be provided to the aggrieved person who is willing to challenge such proceeding in higher forum and thus, the very basic principle of natural justice has been violated at the instance of the respondent authorities.
14. In course of her submission Ms. Roy further places her reliance on Section 93 of the said Act as well as Regulation 15 of the said Regulations. It is submitted by Ms. Roy that the aforementioned two provisions clearly mandate that no order of dismissal would be carried into effect until approved by the prescribed authorities that is the Chief of the Naval Staff. It is further submitted that from the impugned order of punishment dated 09.12.2024 it would reveal further that prior to imposition of punishments of dismissal from the Naval Service, the approval of the Chief of the Naval Staff was not taken.

15. In her next limb of submission Ms. Roy submitted that Regulation 13 of the said Regulations shall have got no application in case of an Artificer apprentices and thus, the writ petitioner being an Electrical Artificer (Radio), Third Class cannot be punished in terms of Regulation 13 of the said Regulations.

16. In course of her argument Ms. Roy places her reliance upon the following reported decisions:

- (i) ***Biecco Lawrie Limited & Anr. vs. State of West Bengal & Anr.*** reported in ***(2009) 10 SCC 32***,
- (ii) ***The Siemens Engineering & Manufacturing Co. of India Ltd. vs. The Union of India & Anr.*** reported in ***(1976) 2 SCC 981***,
- (iii) ***S.N. Mukherjee vs. Union of India*** reported in ***(1990) 4 SCC 594***,
- (iv) ***Mrs. Maneka Gandhi Vs. Union of India & Anr.*** reported in ***(1978) 1 SCC 248***,
- (v) ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.*** reported in ***(1978) 1 SCC 405***,
- (vi) ***Anita Kushwaha vs. Pushap Sudan*** reported in ***(2016) 8 SCC 509***,
- (vii) Judgment dated 11.01.2022 as passed in ***WP No. 28777 of 2017 (V. Kumar vs. The Deputy Commissioner (Works), Greater Chennai Corporation, Chennai)*** as passed by the Hon'ble High Court of Madras,
- (viii) ***Balai Chandra Singha Roy vs. Union of India*** reported in ***1983 SCC OnLine Cal 134***,

(ix) ***Raj Kumar M.E.-1 vs. Union of India & Ors.*** reported in ***ILR (2012) V Delhi 599.***

17. Ms. Roy thus submits that it is a fit case for allowing the instant writ petition by granting the reliefs as prayed for.
18. At the time of his argument Mr. Jha duly assisted by Mr. Sinha Learned Advocates for the respondents authorities filed two numbers of file relating to review petition filed by the writ petitioner and the file leading to punishment warrant as issued in the name of the Writ petitioner by the respondent authorities after giving due inspection to Ms. Roy, Learned Advocate for the writ petitioner in terms of the order dated 30.04.2026 as has been also recorded in the order dated 15.05.2026.
19. Mr. Jha at the very outset draws attention of this court to Section 163 and 93 of the said Act. Attention of this court is also drawn to regulation 7, 13, 15, 22 to 27 of the said Regulations. At this juncture Mr. Jha took this Court to page no. 61 of the Writ Petition being a copy of the memo dated 13.02.2024 as issued by the Captain, Capt (PS), a copy of which has also been annexed at page no. 109 of the supplementary affidavit as filed by the writ petitioner.
20. Drawing attention to the original file relating to review petition as submitted by the respondents authorities, it is submitted by Mr. Jha that from the said original file it would reveal that the Chief of Naval Staff (CNS in short) has reviewed the matter personally and in terms of the provisions of section 163 of the said Act quashed the earlier summary proceeding as conducted against the writ petitioner at INS Netaji Subhas and directed for retrial with

regard to the alleged offences committed by the writ petitioner. It is submitted that the said memo dated 13.02.2024 is merely a communication of the CNS as has been communicated by his subordinate i.e. the Captain. It is argued by Mr. Jha that it is preposterous to suggest that an authority not competent to entertain the review petition of the writ petitioner has passed an order for retrial under Section 163 of the said Act.

21. In his next limb of submission, Mr. Jha draws attention of this Court to Section 93 (2) of the said Act vis-à-vis regulation 7, 13 and 15 of the said Regulations. It is argued by Mr. Jha that Section 93 (2) of the said Act prescribes for summary trial for an offence which is not Capital as committed by a person other than an officer by the commanding officer of the ship to which the offender belongs either at the time of the commission or of the trial of the offence subject to condition that no sentence of imprisonment or dismissal for service shall be carried into effect until approved by the prescribed authorities. It is further submitted by Mr. Jha the Regulation 7 deals with the power of punishment of commanding officer, Regulation 13 deals with the nature of punishment as may be awarded in a summary proceeding and Regulation 15 deals with the punishments requiring approval of the superior authority.

22. At this juncture attention of this court is further drawn to different pages of the file relating to punishment warrant in respect of the writ petitioner. It is submitted that from the different papers of the said file as well as from the note-sheet of the said file it would reveal that in the retrial proceeding which

has been tried summarily, the concerned commander imposed the punishment of dismissal from the Naval Service and deprivation of third, second and first good conduct badges which have been duly approved by the CNS on 28.11.2024 in compliance of the provision of Section 163 of the said Act as well as in terms of the Regulations 7, 13 and 15 of the said Regulations. It is thus submitted that there occurred no procedural irregularity in imposing the above punishments upon the writ petitioner and thus there is hardly any scope to interfere with the same in a judicial review.

23. In course of his argument Mr. Jha took this Court to Regulation 22 to 27 of the said Regulations under Section II- Investigation. He draws attention of this court to the Investigation in terms of Regulation 22(1) of the said Regulation in respect of offences under Section 60 (a)/47(c) of the said Act as allegedly committed by the writ petitioner on 22.12.2022 and 19.01.2023 and pursuant to the decision of the said IO the matter was 'held over'/forwarded to the Executive Officer under Regulation 22(2) of the said Regulations.

24. Attention of this court is further drawn to the investigation conducted by the IO in relation to subsequent two offences as allegedly committed by the writ petitioner on 21.06.2024 under Sections 68/74 of the said Act wherein the Investigating Officer though found the charges have been duly proved but the punishment prescribed therefore was/were beyond his power and accordingly, he forwarded the case to the Executive Officer. It is further submitted by Mr. Jha that from the papers relating to proceeding before the Executive Officer on 04.07.2024 it would reveal that the summary trial against the writ petitioner

was conducted in respect of six charges as framed against the writ petitioner namely; for the offence under Section 60(a) of the said Act as allegedly committed on 20.12.2022, under Section 47(c) of the said Act as allegedly committed on 19.01.2023, under Section 68 of the said Act as allegedly committed on 21.06.2024, under Sections 74/60(a) of the said Act as allegedly committed on 21.06.2024 and under Section 68 of the said Act as allegedly committed on 25.06.2024 wherein it was found that two charges namely Charge (iii) and (iv) i.e. offences under Section 47(c) and 68 of the said Act were found to be not proved and hence dropped however, the said Executive Officer found that the remaining four charges have been duly proved and thus gave an endorsement 'Commodore's Report'.

25. It is submitted further that from the file of papers it would reveal that one P Sasi Kumar, Commodore (04698-A), Commanding Officer conducted the summary trial and on conclusion of the same he found that the charges have been duly proved and thus he decided the matter with the endorsement 'remanded' and on the basis of which the said Commodore issued the impugned 'punishment warrant form' containing the impugned punishment dated 29.07.2024 as has been approved by the Regulating Officer on 24.08.2024 and the same has also been approved the CNS vide his endorsement dated 28.11.2024.

26. It is further submitted by Mr. Jha that from the materials as available in the file relating to punishment warrant of the writ petitioner it would reveal that in terms of the Regulation 22 to 33 of the said Regulations, all the charges

were read over to the writ petitioner / accused in the process of investigation (s) as well as while holding summary trial and thus the allegation as labeled by the writ petitioner that principle of natural justice has not followed in the said summary trial proceeding is contrary to the truth. It is further submitted that in connection with the said summary trial proceeding as well as investigation due opportunity was given to the writ petitioner to avail the assistance of the defending officer.

27. It is further submitted that the allegation regarding enhancement of charges in the retrial proceeding is also not correct since according to the respondent authorities, the writ petitioner committed four more naval offences within the meaning of Section 3(13) of the said Act and thus the respondent authorities are justified to try those four offences as committed after the order of retrial along with the two original charges in the retrial proceeding. It is thus submitted that no miscarriage of justice occurred in the retrial proceeding as wrongly argued. It is thus submitted by Mr. Jha that it is a fit case for dismissal of the instant writ petition.

28. In course of her reply Ms. Roy however, contended that the memo dated 13.02.2024 is the order of the reviewing authority as has been passed by an inappropriate authority in an inappropriate manner. It is contended further that there occurred a mismatch of the numbers of the punishment warrant form as received by the writ petitioner and as available in the original file which cannot be explained by the respondent authorities raising a serious doubt with regard to the genuineness of the said punishment proceeding.

29. This Court has meticulously gone through the entire materials as placed before me including the relevant provisions of the said Act as well as the relevant regulations of the said Regulations. This Court has given due consideration over the submissions of the Learned Advocates for the contending parties.

30. For effective adjudication of the instant *lis*, this Court at the very outset proposes to look to Sections 3(13), 93 and 163 of the said Act which are quoted hereinbelow in verbatim.

31. Section 3(13) of the said Act is as under:-

“3(13). *“naval offence” means any of the offences under sections 34 to 76;”*

32. Section 93 of the said Act is as under:-

“93. Power of court-martial and commanding officers to try offences.— *(1) An offence triable under this Act may be tried and punished by court-martial.*

(2) An offence not capital which is triable under this Act and which is committed by a person other than an officer (and in cases by this Act expressly provided for when committed by an officer), may, subject to regulations made under this Act be summarily tried and punished by the commanding officer of the ship to which the offender belongs at the time either of the commission or of the trial of the offence, subject to the restriction that the commanding officer shall not have power to award imprisonment or detention for more than three months, or to award dismissal with disgrace from the naval service: Provided that no sentence of imprisonment or dismissal shall be carried into effect until approved by the prescribed authorities.

(3)

(4)”

33. Section 163 of the said Act is as under:-

“163. Powers of Central Government and the Chief of the Naval Staff in respect of findings and sentences.—(1) *Where any person is tried under the provisions of this Act, the Central Government or the Chief of the Naval Staff, may, in the case of a conviction,—*

(a) set aside the finding and sentence and acquit or discharge the accused or order him to be retried, or

(b) alter the finding, maintaining the sentence (provided that such sentence may be legally passed on the altered finding), or 50

(c) with or without altering the finding, reduce the sentence or commute the punishment awarded for any punishment inferior in scale, or

(d) either with or without conditions, pardon the person or remit the whole or any part of the punishment awarded, or

Provided that a sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment awarded, and a sentence of dismissal with disgrace not accompanied by a sentence of imprisonment shall not be commuted for a sentence of detention:

Provided further that nothing in this section shall authorise the Central Government or the Chief of the Naval Staff to enhance the sentence.

(2)

(3)”

34. In considered view of this Court some of the regulations of the said Regulations are required to be looked into and those are also quoted hereinbelow in verbatim.

“7. Powers of punishment of Commanding Officer: -

(1) The Commanding officer may summarily try and punish any offence triable under the Act Committed by a sailor other than a capital offence and may, subject to the

provisions of these regulations, award the several punishments specified in regulation 13, provided that: -

(a) If the offence is alleged to have been committed by a sailor who is entitled under these regulations to electorial by court-martial, the procedure described in these regulations therefore shall be followed;

(b) except as provided in regulation 36 a Chief Petty Officer, a Petty Officer, a sailor holding a leading rank or a sailor holding a good conduct badge shall not be summarily sentenced to imprisonment or detention;

(c) a Commanding Officer shall not try summarily an offence where the Chief of the Naval Staff has by general or special order directed that it shall be dealt with by court-martial.

(2)

(3)”

“13. Summary Punishments: - (1) The following punishments may be awarded summarily to sailors other than Artificer Apprentices and Boys under training subject to the provisions of the Act and these regulations and may be referred to by the numbers prefixed to each of them, namely: -

No. 1 - Imprisonment for a period not exceeding three months;

No.2- Detention for a period not exceeding three months;

No.3- Dismissal from the Naval service;

No.3A- Forfeiture of seniority in rank of not more than 12 months in case of Master Chief Petty Officer;

No.3B- Forfeiture of time for promotion of not more than 12 months in case of Master Chief Petty Officer;

No.4- Reduction in rank;

No.5- Fine in respect of Civil offences;

No.6- Mulcts of pay and allowances;

No.7- Omitted;

No.8- Solitary confinement in a cell or under a canvas screen for a period not exceeding fourteen days;

No.9- Deprivation of Good Conduct Badge and Good Conduct Medal;

No.10 - Reprimand by the Captain;

No.11- Extra work and drill for a period not exceeding fourteen days;

No.12- Stoppage of leave for a period not exceeding sixty days;

No.13- Extra work or drill for not more than two hours in a day for a period not exceeding seven days;

No.14- Admonition.

(2) The punishments which may be awarded to Artificer Apprentices and Boys under training shall be as set forth in Chapter III of these Regulations.”

“15. Punishments requiring approval of superior authority: -(1) Punishment No.3, dismissal from the Naval Service, and where any other punishment accompanies it, the whole of the punishment proposed to be awarded shall require the approval of the Chief of the Naval Staff.

(2) Punishment No.1, imprisonment, and punishment No.2, detention, Punishment No.3A, forfeiture of seniority in rank in case of Master Chief Petty Officer and Punishment No.3B, Forfeiture of time for promotion in case of Master Chief Petty Officer, shall require the approval of the Administrative Authority.

(3) Punishment No.4, 5 and punishment No.9 (in so far as it refers to the deprivation of a Good Conduct Medal) shall require the approval of a Flag Officer or Commodore.”

“22. Investigation of departmental offences: - (1) If a sailor commits a departmental or a divisional offence, the offence shall be investigated by his departmental or Divisional officer as the case may be, and he may be summarily tried and punished by his Departmental officer or his Divisional officer provided that the offence can be adequately punished within the powers of punishment delegated to such officer.

(2) If the Departmental or the Divisional officer decides not to deal with the case himself, he shall refer the case to the Executive officer.

(3) Where a sailor commits any other offence such offence may be investigated and the sailor may be tried

and punished by the officer of the watch or the officer of the day provided that the offence can be adequately punished within the powers of punishment delegated to the officer of the watch or the officer of the day.

(4) If the officer of the watch or the officer of the Day decides not to deal with the case himself, he shall refer it to the Executive officer.

(5) The Executive Officer may investigate and try and punish summarily any offence referred to him provided it can be adequately punished within the powers of punishment delegated to him.

(6) If the Executive officer decides not to deal with the case himself, he shall refer it to the Commanding Officer.”

“25. Investigation of other offences: - *(1) The preliminary investigation of offences by the officer of the Watch or officer of the day shall take place as soon as possible after the commission of the offence while witnesses’ memory is still fresh.*

(2) The formal investigation of offences shall, when the service and circumstances admit, be deferred until the day following that of the commission of the offence.

(3) Hasty charges shall not be made and as far as practicable there shall not be any delay in the investigation of the charge and the decision of the case and, when the accused is found guilty in the award of the punishment.

(4) The fact that an offender’s Service Documents are not available shall not normally delay the investigation of an offence though there may be some delay in the infliction of punishment if the said documents are expected within a reasonable time.

(5) All charges shall be investigated fully on the quarterdeck or other suitable place, in the presence of the complainant and the accused and the complainant, accused and the witnesses shall be heard fully and with impartiality.

(6) The accused, the Divisional Officer or other defending officer, the complainant and the Master-At-Arms (or the

person performing his duties) shall be present throughout the investigation.

(7) The witnesses shall be kept apart and out of earshot so that they cannot hear what other witnesses are saying when giving evidence and they shall withdraw after they have given evidence.

(8) The investigating officer shall, in every case consider whether the case is sufficiently serious to warrant the recording of the evidence and whether is desirable to record it as a precaution against a witness changing his evidence.

(9) Inconsiderate punishments:- Inconsiderate punishments, as well as needlessly protracted punishments, shall be avoided and in awarding punishment regard shall be had to –

(i) the necessity for prevention of crime or offences and for the maintenance of proper order and discipline;

(ii) the gravity of the offence and the previous character of the offender

(iii) any consequences which may arise indirectly as a result of the offence or of the award, particularly in regard to the charges against the offender's pay for offences of absence or desertion, or for damage to or loss of stores and such other matters.

(10) In cases of repeated offences the effect of gradually increasing the degree of punishment until the maximum is reached shall be tried before awarding the maximum punishment.

(11) All altercations with excited or drunken men shall be avoided; no man under the influence of temper or drink shall be placed in a situation likely to excite him further and thereby lead him to acts of violence or insubordination.”

“26. Assistance to the accused: - (1) if the alleged offence is one which may be brought before the Commanding officer, the accused may request and shall be afforded at the earliest stage at which this is practicable, the assistance of any officer or other person in his ship whose assistance is reasonably available.

(2) If no such request is made, it shall be the duty of the Divisional officer or such other officer as the Commanding officer may detail, having regard to the requirements of the case, to advise the accused at all stages.

(3) The officer or person advising the accused may be changed at any stage either at the request of the accused or on account of exigencies of service.”

“27. Procedure at investigation in general: -(1) At all investigations the evidence in support of the charge shall be heard first.

(2) Immediately after the charge has been read out, the investigating officer shall warn the accused that he should not make any statement or give any evidence on his own behalf until all the evidence against him has been heard.

(3) On conclusion of the evidence in support of the charge, the investigating officer shall decide whether a case has been made out against the accused.

(4) If there is no case, the investigating officer shall either dismiss the case or, if further evidence is likely to become available, stand it over and if there is a prima facie case, and it is a simple one with which the investigating officer thinks he can deal with himself, he shall ask the accused if he admits the charge.

(5) If the accused does not admit the charge and the matter is one within the investigating officer’s powers of punishment, he shall inform the accused that he will proceed to try the case, giving him an opportunity of making a statement and calling witnesses.”

“28. Investigation by the officer of the watch, the officer of the Day, or the Executive officer: - (1) if, after hearing the evidence in support of the charge, the officer of the watch, the officer of the Day or the Executive officer is of opinion that the charge, if proved, would be beyond his power to punish, he must bear in mind that a confession made before him by the accused will not be admissible in evidence at any further proceedings unless the accused has been cautioned, before he speaks, that he is not obliged to say any thing unless he wishes to do so,

and that any statement he may make may be given in evidence. Care should be taken to avoid any suggestion that the accused's answers can only be used in evidence against him, as this may discourage an innocent person from making a statement which might help to clear him of the charge. The investigating officer must also bear in mind that in case beyond his power of punishment his functions are to see whether there is a Prima facie case, to collect evidence when it is important that evidence be collected immediately, and, to give the accused a chance to make a statement. If the alleged offence is one which is likely in itself to lead at least to a warrant punishment (as distinct from one which may lead to a warrant punishment because it is the culminating offence in a series of minor offences), the investigating officer should address the accused in the following words after hearing the evidence in support of the charges: -

“Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so; but whatever you say will be taken down in writing and may be given in evidence.”

(2) The officer of the watch or officer of the Day need not use these words unless he decides to hear then defence before sending the case to the Executive Officer.

(3) If the accused makes a statement, it should be taken down in writing, On conclusion of this statement the investigating officer should not ask any question save to point out any ambiguity and ask if the accused wishes to clear it up or to point out that no reference has been made to some charge and ask if the accused wishes to say anything about it. In particular, nothing must be said which indicates that the accused is expected to make any further statement.

(4) If he has not already done so, the investigating officer must then make up his mind whether the case against the accused has been made out. If he decides that no case has been made out, he is to dismiss the charge.

(5) If the investigating officer decides to refer the case to higher authority, the accused is to be informed

accordingly, the customary terminology “Commander’s report” or “Captain’s report”, as the case may be, being used.”

35. Keeping in mind the aforementioned legislative provisions and the different regulations of the said Regulations if this Court looks to the facts and circumstances as involved in the instant writ petition it appears that sufficient materials have been placed on behalf of the respondents authorities by filing the two numbers of original file containing the review proceeding as preferred by the writ petitioner wherefrom it appears that in terms of the provision of Section 163 of the said Act, the said review petition was disposed of by none other than the CNS and not by any officer subordinate to him and thus due compliance of the provision of the said Section has been proved. As rightly argued by Mr. Jha that the memo dated 13.02.2024 (Annexure A5 of the Writ Petition) is merely a communication by the concerned Captain. It thus appears to this Court that in absence of proof of alleged violation of the provision of Section 163 of the said Act on the part of respondent authorities, interference is not at all called for in a judicial review.

36. The argument of Ms. Roy that during the retrial proceeding the charges were escalated are found to be not correct in as much as materials have been placed before this court that after communication of the finding of the reviewing authority and before initiation of the retrial proceeding by the commander, the writ petitioner allegedly committed four more offences within the meaning of Section 3(13) of the said Act and thus the respondent authorities were very much justified in clubbing four more additional charges

with the two charges as have been directed to be retried by the reviewing authority and thus in considered view of this Court no miscarriage of justice occurred warranting intervention of this court as prayed for.

37. The argument of Ms. Roy regarding non-supply/ non-service of the altered charge-sheet including the relevant documents prior to initiation of the summary proceeding is found also to be not correct in as much as regulation 27 of the said Regulations clearly postulates regarding the procedure for reading out the charges to the accused after considering the evidence in support of the charge at the stage of each investigation as mentioned in Section II of the said Regulations which deals with 'Investigation'. This court has meticulously gone through the entire files regarding punishment warrant of the writ petitioner and it has been noticed that in all stages of investigation, charges were read out to the writ petitioner prior to commencement of the investigation/summary proceeding. In view of such, this court has got no hesitation to hold that principles of natural justice and fair play have been duly observed by the respondent authorities in retrial proceeding.

38. In course of her argument Ms. Roy was very vocal with regard to the alleged 'double jeopardy' as suffered by the writ petitioner in as much as it is her contention that prior to initiation of the retrial proceeding, the respondents authorities did not restore the writ petitioner to his original position ignoring the finding of the reviewing authority regarding quashing of the four punishments in the earlier round of summary proceeding which is however strongly disputed by Mr. Jha in course of his argument.

39. This Court has meticulously gone through the finding of one Sri P Sasi Kumar, Commodore (04698-A), Commanding Officer dated 29.07.2024 as available in the relevant file wherein while dealing with the background of the summary proceeding as conducted by him the said commodore observed as under:-

“3. The sailor filed a review petition u/s 163 of the Navy Act 1957 and proceeded on transfer to INS Dega on 25 Mar 23. Considering the Review Petition submitted by the Sailor, the competent authority at NHQ set aside the trial proceedings and punishments with a direction to re-try the Sailor Vide letter quoted at Para 1(a) ibid. Accordingly, HQENC/SO(P) had directed this unit to restore the Sailor’s original rank by cancelling the Punishment Genform. Therefore, the Punishment Genform iro the sailor was cancelled and forwarded to CABS for cancellation of BOP.”

[Emphasis Supplied]

40. It thus appears to this court that the competent authority while disposing the summary proceeding came to a factual finding on consideration of the relevant documents as available before him that prior to initiation of retrial proceeding the writ petitioner was restored his original rank by cancelling the earlier punishment and in absence of any contrary material, this court finds no reason to disbelieve such factual finding in judicial review and thus this court holds that the contention of the writ petitioner that he suffered ‘double jeopardy’ has got no basis at all.

41. The contention of the writ petitioner that the retrial proceeding was vitiated by ‘doctrine of bias’ is also found to be incorrect in as much as from the original file with the caption ‘punishment warrant-Rinku Singh’, it would reveal

that after investigation, retrial proceeding was actually conducted by Sri P. Sasi Kumar, Commodore (04698-A), Commanding Officer and not by one Sri Joydeep Chakraborty.

42. It thus appears to this court that in the retrial proceeding the respondent authorities acted in accordance with the relevant provisions of the said Act and the said Regulations. It further appears that there was sufficient justification on part of the respondents authorities to add four more charges with the two original charges in the retrial proceeding on account of commission of subsequent offences within the meaning of Section 3(13) of the said Act and thus no miscarriage of justice occurred in re-trial proceeding.

43. In considered view of this court the reported decision of ***Biecco Lawrie Ltd. (Supra)*** as cited of behalf of the writ petitioner is practically helpful for the respondents in view of the fact from the files as placed before this Court by the respondents authorities it would reveal that the said authorities prior to commencement of the summary proceeding have duly followed the procedure of investigation as envisaged in Section II of the said Regulations giving adequate opportunity to the writ petitioner to meet the charges as framed against him and to make an effective defense.

44. The reported decisions of ***Siemens Engineering (supra)*** and ***S.N. Mukherjee (supra)*** are also helpful to the respondent authorities in view of the fact that this court has already come to a finding that the respondent authority/authorities while passing the order for re-trial as well as while

imposing the punishment as impugned before this court had recorded its reason in support of the order it makes.

45. Since in the forgoing paragraphs this court has already reached at its logical conclusion that in the impugned proceedings before the respondent authorities the principles of natural justice and fairness have been duly followed, in further considered view of this court the reported decisions of ***Mrs. Maneka Gandhi (Supra)***, ***Mohinder Singh Gill (Supra)***, ***Anita Kushwaha (supra)*** and ***Raj Kumar M.E.-1 (supra)*** are no way helpful to the writ petitioner. In further considered view of this court the reported decisions of ***V. Kumar (Supra)*** and ***Balai Chandra Singha Roy (Supra)*** are no way applicable to the facts and circumstances of the instant writ petition in as much as this court has noticed that at no material point of time any delegation of power took place either in the review proceeding or while imposing impugned punishment upon the writ petitioner since the CNS himself passed the said order for retrial in the review proceeding and he himself approved the punishment of the writ petitioner from the Naval Service in terms of the provision of regulation 15 of the said Regulations.

46. In view of the discussion made hereinabove this court thus finds no reason to interfere with the order of dismissal as communicated to the writ petitioner vide Punishment Warrant Form dated 09.12.2024 (page 102 of the Writ Petition and page 143) and as have been approved by the Chief of the Naval Staff on 28.11.2024.

47. As a result the instant writ petition fails and is hereby dismissed. There shall be however no order as to cost.
48. Assistant Court Officer attached to this Court is directed to return the two original files to the learned Advocate on record for the respondents authorities on receipt of an acknowledgment to be kept in the file.
49. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)