

**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. OF 2026**

(Arising out of Special Leave Petition (Civil) No.19815 of 2025)

42605-B CDR YOGESH MAHLA**...Appellant****VERSUS****UNION OF INDIA & OTHERS****...Respondents****JUDGMENT****NAGARATHNA, J.**

Leave granted.

2. This appeal has been filed against the judgment and order dated 10.07.2025 passed by the High Court of Delhi in Writ Petition (C) No.9295 of 2025.

3. Briefly stated the facts of the case are that the appellant was commissioned in the Indian Navy on 01.01.2006, subsequently promoted to the rank of Commander and later

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joined INS Shakti as Commander (Engineering) in April 2022.

4. On 02.03.2024, the Complainant who was working as a Principal Medical Officer wrote a letter to Capt. J. Sachdeva, Commanding Officer, INS Shakti alleging that the appellant, during the course of his deployment, committed acts of sexual harassment against her on different occasions and in pursuance to the said complaint, the Internal Complaints Committee (for short, “ICC”) was constituted on 08.03.2024 under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short “POSH Act”).

5. Thereafter, between the period of 02.04.2024 to 08.05.2024, the ICC conducted an inquiry into the complaint and upon culmination of the said inquiry, a report was submitted recommending that appropriate action may be initiated against the appellant. Based on the findings and recommendations of the ICC report, a show cause notice dated 05.03.2025 was issued to the appellant calling upon him to show cause within ten days of the receipt of the said notice as to, whether, his services should not be terminated in terms of Regulation 216 of the Regulations for the Navy Part-II (Statutory) read with Section 15(2) of the

Navy Act, 1957 (herein after called 'Regulations' for the sake of convenience).

6. Being aggrieved by the report, the recommendations made by the ICC constituted by the respondents and the Show Cause Notice dated 05.03.2025, the appellant herein filed O.A. No.1024/2025 with M.A. No.2228/2025 before the Armed Forces Tribunal, Principal Bench, New Delhi ("the Tribunal" for the sake of convenience) seeking the following reliefs:

- “(a) To quash the proceedings and the recommendations of the Internal Complaints Committee constituted *vide* Eastern Naval Command General Order No.2/2024; and
- (b) To quash the Show Cause Notice dated 05.03.2025 issued by Respondent No.2 for showing cause against termination of the Applicant's services; and
- (c) Such further order or orders, direction / directions be passed as to this Learned Tribunal may deem fit and proper in accordance with law.”

7. At this stage itself it may be noted that the appellant herein sought the following two-fold reliefs before the Tribunal:

firstly, assailing the proceedings and recommendations of the ICC constituted *vide* Eastern Naval Command General Order No.2/2024; and

secondly, seeking quashing of the Show Cause Notice dated 05.03.2025 issued by respondent No.2 for showing cause against termination of the appellant's services.

8. The Tribunal by its order dated 30.05.2025 observed at paragraphs 17 to 20 as under:

“17. In view of the above, we are of the considered opinion that, at this stage, when only a show cause notice has been issued, it is neither appropriate nor legally tenable for this Tribunal to interfere or assume the role of the disciplinary authority. The applicant is at liberty to submit his detailed representation to the competent authority raising all the objections and grounds as may be available to him under law. It is only upon the conclusion of that process and exhaustion of remedies that any cause of action may accrue for invoking the jurisdiction of this Tribunal.

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

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

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

9. Being aggrieved by the said order, the appellant herein preferred W.P.(C)No.9295/2025 along with Miscellaneous Applications. The Division Bench of the High Court of Delhi while dismissing the Writ Petition *vide* the impugned order dated 10.07.2025 observed at paragraph 19 as hereunder:

“19. In that view of the matter, the right of appeal against the recommendations of the ICC, as envisaged in Section 18 (1) of the POSH Act, is obviously not available to the petitioner. Any appeal, therefore, that the petitioner may choose to prefer would have to be in accordance in such manner as may be prescribed.”

10. Furthermore, Paragraphs 39 to 42 of the impugned order of the High Court read as under:

“39. The writ petition is, accordingly, dismissed in *limine*.

40. We make it clear that we have not expressed any merit on the allegations against the petitioner or the merits of the show cause notice and that the adjudication of the show cause notice would proceed uninfluenced by the decision of the Tribunal or by our judgment insofar as the merits of the case are concerned.

41. We have only examined whether a case for interference with the Tribunal’s decision not to entertain the OA has made out or not. In our view, no such case is made out.

42. We extend the time to file the reply to the show cause notice by two weeks from today.”

11. We have heard learned senior counsel, Mr. Sanjiv Sen and learned counsel, Mr. Akshay Bhandari for the appellant and learned ASG, Mr. Vikramjeet Banerjee for the respondents at length. We have perused the material on record in detail.

12. It was submitted on behalf of the appellant that the appeal filed before the Tribunal was under Section 14 of the Armed Forces Tribunal Act, 2007 (for short “AFT Act, 2007”) read with Section 18 of the POSH Act. For ease of reference the said provisions are extracted as under:

“14. Jurisdiction, powers and authority in service matters. - (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an application for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.”

Section 18 of the POSH Act is extracted as under:

“18. Appeal.—(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.”

13. It was submitted on behalf of the appellant that the two-fold challenge made before the Tribunal has not been perceived in its proper perspective. The Tribunal primarily proceeded on the basis that what was in issue was the Show Cause Notice dated 05.03.2025 and since the matter was at the preliminary stage, there was always an opportunity for the appellant to reply to the same and there would have been consideration of the said reply and further action taken in accordance with law. Learned senior counsel and learned counsel for the appellant submitted that the Tribunal failed to note that the Show Cause Notice dated 05.03.2025 was premised on the report of the ICC and its

recommendations. It was submitted that when the same were in challenge before the Tribunal it could not have been held that only a Show Cause Notice was in challenge. This is because the Show Cause Notice was on the basis of the report of the ICC. If the Tribunal had gone into the question as to, whether, the report of the ICC was correct and in accordance with law or not, the consequential issue regarding correctness or otherwise of the Show Cause Notice would also have been considered by the Tribunal. However, in the instant case the Tribunal proceeded to consider only certain contentions of the appellant with regard to the correctness or otherwise of the report and recommendations of the ICC and simply proceeded to hold that since an opportunity was being given to the appellant to reply to the impugned Show Cause Notice, there was no further necessity of considering any other aspect of the case and hence dismissed the Original Application which was, in fact, an appeal under Section 18 of the POSH Act.

14. It was pointed out that the appellant became worse off when he assailed the Tribunal's order before the High Court inasmuch as the High Court observed that the appellant had no right to

approach the Tribunal under Section 18 of the POSH Act. It was submitted that the High Court has misconceived the object and purpose of the appeal that was filed by the appellant herein before the Tribunal inasmuch as the correctness or otherwise of the report and recommendations of the ICC was also a subject matter of challenge before the Tribunal. The High Court was not right in holding that the appellant had no right of appeal under Section 18 of the POSH Act. On the other hand, Section 18 could be read within the scope, meaning and ambit of Section 14 of the AFT Act, 2007 and that was precisely the appeal that was filed by the appellant herein. It was contended that since the High Court was not right in dismissing the Writ Petition by holding that the appellant had no right of appeal under Section 18 of the POSH Act, therefore, the impugned orders of the High Court as well as the Tribunal may be set aside and the matter may be remanded to the said Tribunal for a reconsideration of the appeal filed by the appellant herein which was under Section 18 of the POSH Act and in accordance with law.

15. *Per contra*, learned ASG appearing for the respondents vehemently contended that the action initiated by the respondents *vis-à-vis* the Show Cause Notice dated 05.03.2025 was in accordance with Section 15(2) of the Navy Act, 1957 read with Regulation 216 of the Regulations, 1967 which for ease of reference are extracted as under:

Section 15(2) of the Navy Act, 1957:

“15. Tenure of service of officers and sailors.—

- (1) xxx
- (2) Subject to the provisions of this Act and the regulations made thereunder,—
 - (a) the Central Government may dismiss or discharge or retire from the naval service any officer or sailor;
 - (b) the Chief of the Naval Staff or any prescribed officer may dismiss or discharge from the naval service any sailor.”

Regulation 216 of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1967:

“216. Misconduct of Officers-termination of service by Government on grounds of misconduct:- (1) When it is proposed to terminate the service of an officer under section 15 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-regulation (2) against that action:

Provided that this sub-regulation shall not apply:-

- (a) Where the service is terminated on the ground of misconduct which has led to his conviction by a civil court; or
- (b) Where the Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Government or the Chief of the Naval Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion that the further retention of the said officer in the service is undesirable, the chief of the Naval Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence;

Provided that the Chief of the Naval Staff may withhold from disclosure any such report or portion thereof it, in his opinion, its disclosure is not in the interest of the security of the state.

(3) In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Naval Staff, or when so directed by the Government, the case shall be submitted to the Government with the officer's defence and the recommendation of the Chief of the Naval Staff as to the termination of the officer's service in the manner specified in sub-regulation (5).

(4) DELETED

(5) When submitting a case to the Government under sub-regulation (3), the Chief of the Naval Staff shall make his recommendation whether the officer's service should be terminated and if so, whether the officer should be-

- (a) dismissed from the Naval Service; or
- (b) discharged from the service; or
- (c) called upon to retire; or
- (d) called upon to resign.

(6) The Government after considering the reports and the officer's defence, if any, as the case may be, and the recommendation of the Chief of the Naval Staff, may dismiss or discharge the officer with or without pension or call upon him to retire or resign and on his refusing to do so, the officer may be compulsorily retired or discharged from the service on pension or gratuity, if any, admissible to him."

16. Learned ASG also submitted that the allegations against the appellant are serious in nature and have been proved as is evident on a reading of the report of the ICC. In the circumstances, on there being satisfaction, the Show Cause Notice was issued on the basis of sub-regulation (2) of the Regulation 216 of the Regulations. An opportunity to reply to the said Show Cause Notice is permitted under the said Regulations. Instead of replying to the show cause notice, the appellant attempted to assail the same before the Armed Forces Tribunal which was therefore right in dismissing the said case and the High Court was also right in dismissing the Writ Petition.

17. It was contended by learned ASG that any action which is initiated in terms of Section 15 of the Navy Act read with Regulation 216 of the Regulations cannot be the subject matter of an appeal before the Tribunal at the stage of issuance of the Show Cause Notice. If at all, the said appellant was aggrieved by any order to be made in future the same could have been a subject matter of appeal before the said Tribunal. Therefore, the Tribunal was justified in not interfering at the stage of issuance of the Show Cause Notice. He, therefore, submitted that there is no merit in this appeal.

18. We have considered the arguments advanced at the Bar and given our anxious consideration to the fact that the Show Cause Notice dated 05.03.2025 issued by respondent No.2 herein was premised on the basis of the report of the ICC and further on certain incidental findings of the ICC. No doubt the power under Section 15 of the Navy Act read with Regulation 216 could be exercised but on following foundational facts:

Firstly, the report of the officer's misconduct must be considered meaningfully;

Secondly, the Government or the Chief of Naval Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable; and

Thirdly, there must be an opinion formed that further retention of the said officer in the service is undesirable.

19. When all these facts co-exists then the Chief of Naval Staff shall inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence. The disclosure of the report to the officer may be withheld if it is not in the interest of the security of the State. If the explanation of the officer is considered unsatisfactory by the Chief of Naval Staff, the case shall be submitted to the Government with the officer's defence and the recommendation of the Chief of the Naval Staff as to the termination of the officer's service in the manner specified in Regulation 216(5). While submitting the case to the Government, the Chief of Naval Staff shall make his recommendation as to whether the officer's service should be terminated or not. If it has to be terminated then whether he should be-

- (a) dismissed from the Naval Service; or
- (b) discharged from the service; or
- (c) called upon to retire; or
- (d) called upon to resign.

20. The Government after considering the report and the officer's defence, if any, and the recommendation of the Chief of the Naval Staff, may dismiss or discharge the officer with or without pension or call upon him to retire or resign and on his refusing to do so, the officer may be compulsorily retired or discharged from the service on pension or gratuity, if any, admissible to him.

21. In the instant case what is an issue is the power to terminate the services of an officer by invoking sub-section (2) of Regulation 216 of the Regulations on the one hand and the right of a person who has been charged with serious and grave misconduct by the ICC to assail the correctness of the said report and its findings by way of an appeal.

22. Section 18 of the POSH Act provides that if there is adverse recommendation made by the ICC under Section 13(3)(i) an

appeal could be made to the Court or the Tribunal in terms of the service rules.

23. In this regard, we find that Regulation 216 is general in nature *vis-à-vis* any complaint that could be made against a naval officer or other persons serving the Navy whereas Section 18 is specific inasmuch as it is under a special enactment which enables a person who intends to assail the report and recommendations of the ICC to proceed under that provision to the Tribunal by filing an appeal under Section 18 of the POSH Act which the appellant has done so in the instant case.

24. Section 14 of the AFT Act, 2007 when read in juxtaposition with Section 18 of the POSH Act, we find that the appellant herein had rightly approached the Tribunal so as to assail the report as well as the recommendations of the ICC. The Tribunal ought to have considered the correctness of the said report in accordance with law. The Show Cause Notice dated 05.03.2025 was premised on the basis of the recommendations of the ICC.

25. In the circumstances, the Show Cause Notice was not simply a preliminary notice as such, it was a notice relatable

directly to the report and the recommendations of the ICC which were a subject matter of challenge before the Tribunal.

26. In the circumstances, we find that the High Court was not right in holding that the appellant had no right under Section 18 of the POSH Act. We find that the Tribunal has not adjudicated the appeal filed by the Tribunal in terms of the Section 18 of the POSH Act read with Section 14 of the AFT Act, 2007 but has primarily proceeded on the basis that what was in issue was essentially the Show Cause Notice dated 05.03.2025 and this was at a preliminary stage of the proceedings, whereas the appeal under Section 18 of POSH Act was the subject matter of OA No.1024 of 2025.

27. For these reasons, we find that the interest of justice would be served in the instant case if the impugned orders are set aside and the matter is remanded to the Tribunal for afresh adjudication and consequently, O.A. No.1024/2025 is restored on the file of the Tribunal. Ordered as above.

28. Since the parties are represented by their respective counsel, they shall appear before the Tribunal on 09.02.2026

without expecting separate notices from the Tribunal and the Tribunal is requested to dispose of the said Original Appeal in accordance with the observations made above and in accordance with law and as expeditiously as possible.

29. Consequently, pending consideration of the appeal being O.A. No.1024/2025, the Show Cause Notice dated 05.03.2025 shall not be acted upon.

30. We clarify that we have not made any observations on the merits of the case.

31. This appeal is disposed of in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JANUARY 20, 2026