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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9295/2025, CAV 244/2025, CM APPL. 39326/2025, CM APPL. 39327/2025 & CM APPL. 39328/2025

CDR YOGESH MAHLA .....Petitioner

Through: Mr. Akshay Bhandari, Adv. Col. Mukul Dev.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Amit Tiwari, CGSC with Ms. Avshreya Pratap Singh Rudy, SPC, Mr. Shivan Sachdeva, GP, Mr. Ayush, Ms. Ayushi, Ms. Usha Jamnal, Ms. Harshita Chaturvedi, Advs. for UOI.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 10.07.2025

C. HARI SHANKAR, J.

1. This writ petition, under Article 226 of the Constitution of India, assails judgment dated 30 May 2025, passed by the Principal Bench of the Armed Forces Tribunal[1] in OA 1024/2025[2].

2. Following a complaint lodged by a lady officer whom we would, for obvious reasons, anonymise and refer to as X, of sexual

[1] "the Tribunal", hereinafter
[2] **42605-B CDR Yogesh Mahla v UOI**

harassment at the hands of the petitioner during his tenure as a Commander at the Naval Dockyard, Vishakhapatnam, an inquiry was initiated and conducted by the Internal Complaints Committee[3] in terms of Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013[4].

3. Consequent on the ICC returning its findings, a show cause notice dated 5 March 2025 was issued to the petitioner, containing various articles of charge and requiring the petitioner to tender his response thereto. The show cause notice was issued by the Chief of Naval Staff.

4. Given the nature of the order we are passing today, it is not necessary for us to reproduce the charges against the petitioner. Suffice it to reproduce the concluding three paragraphs of the show cause notice thus:

> "4. AND WHEREAS, upon scrutiny of the material under consideration, the undersigned is satisfied that in view of the facts and circumstances of the instant case, your Trial by Court Martial is inexpedient and impracticable. In view of the serious and grave misconduct established against you, your further retention in the service is considered most undesirable and detrimental.
>
> 5. AND WHEREAS, the undersigned, after considering and having taken cognizance of the above-mentioned report as well as the nature and gravity of your misconduct, considers to proceed against you under Section 15(2) of the Navy Act, 1957 read in conjunction with Regulation 216 of the Regulations for the Navy Part - II (Statutory) for termination of your service.
>
> 6. NOW THEREFORE, you are hereby called upon to show

[3] "the ICC", hereinafter
[4] "the POSH Act", hereinafter

> cause within ten days of the receipt of this Notice, as to why your services should not be terminated in terms of Regulation 216 of the Regulations for the Navy Part-II (Statutory) read in conjunction with Section 15(2) of the Navy Act, 1957. Take note that if no explanation is received during the stipulated time, it will be taken that you have nothing to say in your defence against the proposed action."

5. One of the contentions of the petitioner before the Tribunal was that the issuance of the show cause notice dated 5 March 2025 violated Section 11 of the POSH Act, as it was issued without following the procedure envisaged in the service rules under the Navy Act, 1957.

6. In view of the said contention, the Tribunal issued notice on the petitioner's OA.

7. By the impugned judgment dated 30 May 2025, however, the Tribunal has proceeded to dismiss the petitioner's OA. Paras 10 to 17 of the impugned judgment may, in this connection, be reproduced:

> "10. It is a settled principle of law, reiterated by the Hon'ble Supreme Court and various High Courts and consistently followed by this Tribunal, that interference at the stage of a show cause notice is not warranted unless there is a demonstrable violation of statutory rules or principles of natural justice. Intervention is permitted only in rare and exceptional circumstances.
>
> 11. In the present case, the complainant, an unmarried junior officer serving aboard INS Shakti on her first posting, lodged a complaint on 02.03.2024 alleging persistent harassment by the applicant from 08.11.2023 onwards. An inquiry was duly conducted by the ICC and based on its findings, the impugned show cause notice was issued.
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> 12. At the admission stage, the Tribunal had issued notice primarily on the ground that the inquiry allegedly violated Section

11 of the POSH Act by not following the service rules under the Navy Act. However, upon examining Navy Order No. 06/2024, which comprises 23 pages and 38 paragraphs, we find that it lays down an exhaustive procedure for conducting inquiries into allegations of sexual harassment. The Navy Order, based on the POSH Act and relevant judicial decisions, effectively serves as a specialized service rule governing such inquiries.

13. Therefore, even if no inquiry or trial was conducted under the general provisions of the Navy Act or the Rules framed thereunder, the Navy Order No. 06/2024 satisfies the procedural requirements under Section 11 of the POSH Act. We are thus unable to accept the applicant's contention regarding statutory violation on this ground.

14. As for the other alleged procedural irregularities, such as insufficient cross-examination, improper constitution of the ICC and absence of certain members during specific proceedings, these are factual issues to be considered by the competent authority. The Chief of Naval Staff, being the authority that issued the show cause notice, is vested with the responsibility of examining these objections at the first instance.

15. The quorum for ICC meetings is not expressly prescribed under the Act but must be understood to mean that a duly constituted ICC can validly conduct proceedings if members are available and there is no indication of bias or procedural irregularity. We find from the records that the findings were recorded by the ICC consisting of five members namely: (i) Cdr Parveen Malik, Presiding Officer; (ii) Mrs. M. Shanti, Member (External Representative); (iii) Cdr Prakash M. Bawankule, Member; (iv) Surg Cdr Sargundeep Singh, Member; and (v) Kumari Runjhun Gupta, Member. In addition, the ICC included two more members: (i) Surg Cdr Rani Malik and (ii) Kumari Arohi Supare. The Presiding Officer Cdr Parveen Malik, a senior female officer, fulfils the requirement. Members such as Cdr Bawankule, Surg Cdr Singh and the two female members, Kumari Gupta and Surg Cdr Rani Malik qualify as internal members. The requirement of at least two employee members is clearly met. Out of the seven members, four are women, fulfilling the requirement that at least half of the ICC members must be women. Thus, the ICC is validly constituted under Section 4 of the Act.

16. The applicant's contention that the ICC's constitution violated Section 4 or that the proceedings were conducted in the absence of required members does not stand for the following reasons:

(a) The composition was in strict compliance with statutory requirements, with due representation of female members and inclusion of an external member.

(b) There is no legal requirement that all members must be present at every sitting unless prescribed by specific institutional rules. In absence of such a rule, as long as a quorum of available members deliberate and decide without bias, the proceedings remain valid.

(c) The presence of seven members shows an effort to form a robust and inclusive panel, strengthening procedural fairness rather than compromising it.

Courts have held that mere technical objections regarding constitution of the ICC will not vitiate the proceedings if the core requirements under the Act are met and the process followed is fair and unbiased. The ICC, as constituted in this case, not only complied with the minimum statutory requirements under Section 4 of the Act but also ensured representation beyond the minimum, including adequate female representation and an external member. There is no procedural infirmity or illegality in the constitution or conduct of proceedings. Accordingly, the allegation of the applicant stands refuted and lacks merit.

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."

8. Aggrieved by the aforesaid decision of the Tribunal, the petitioner has approached this Court under Article 226 of the Constitution of India.

9. We have heard Mr. Akshay Bhandari, learned Counsel for the petitioner, and Mr. Amit Tiwari, learned CGSC along with

Ms. Avshreya Pratap Singh Rudy, learned Senior Panel Counsel for the respondents, at length.

10. Mr. Bhandari submits that the Tribunal erred in assuming that the show cause notice issued to the petitioner was answerable to any authority other than the Tribunal itself.

11. Though this is the manner in which we understood Mr. Bhandari's submission, he intercedes, mid dictation of the order, to submit that it is not his contention that the show cause notice is answerable to the Tribunal, but that the recommendations of the ICC, on the basis of which the show cause notice was issued, were appealable to the Tribunal. In that view of the matter, he submits that the Tribunal could not have refused to entertain the petitioner's OA on merits.

12. To a query from the Court as to the provision of law on the basis of which Mr. Bhandari advances his submission, he places reliance on Section 18(1)[5] of the POSH Act as well as clause 34 of Navy Order 06/2024.

13. We do not find substance in this submission.

14. Section 18 of the POSH Act does not provide an unqualified

[5] **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 sub-section (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

right of appeal to a person who is aggrieved by the recommendations made by the ICC. The right to prefer an appeal is strictly "in accordance with the provisions of the service rules applicable to the said person". Significantly, the provision goes on to state that, "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*".

15. Clearly, what section 18(1) of the POSH Act envisages, or provides for, is a right of appeal against the recommendations of the ICC *only if the service rules applicable to the officer concerned provide for such a right of appeal*. In case no such right of appeal is provided, any appeal that the officer may prefer to prosecute would have to be in such manner as may be prescribed.

16. We, therefore, queried of Mr. Bhandari as to the service rules applicable to him which entitle him to prefer an appeal against the recommendations of the ICC. It is then that Mr. Bhandari drew our attention to Clause 34 of Navy Order 06/2024. We may, therefore, reproduce the said clause:

> "34. Appeal. A person aggrieved with the recommendations made by the ICC or by its non-implementation, may prefer an appeal to the Court or Tribunal iaw the provisions of the service rules applicable to the said person and in the absence of such rules, appeal may be preferred to such authority as prescribed in the rules."

in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

17. The somewhat unhappy acronym "iaw" employed in Navy Order 06/2024, we are informed, is to be read as "in accordance with". Thus read, Clause 34 of Navy Order 06/2024 also permits an appeal, against the recommendations of the ICC, *only if there are existing service rules, to which the officer is subject, which entitles him to prefer such an appeal*.

18. Mr. Bhandari is not able to draw our attention to any service rules, except Clause 34 of Navy Order 06/2024, which entitles him to prefer an appeal against the recommendations of the ICC.

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.

20. "Prescribed" is defined in section 2(k) of the POSH Act as meaning "prescribed by rules made under this Act". The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, being the rules promulgated under the POSH Act do not, however, contain any provision by which an appeal could be preferred by the petitioner against the recommendations of the ICC.

21. Thus, it is clear that the contention of Mr. Bhandari that an appeal would lie, against the recommendations of the ICC, to the Tribunal, is not supported by any statutory or other provision to which

he has been able to draw our attention.

22. In that view of the matter, we have to turn to the provisions of the Armed Forces Tribunal Act, 2007[6], to examine whether an appeal against the recommendations of the ICC would lie to the Tribunal.

23. On perusing the provisions of the AFT Act, we are unable to find any provision which would sustain Mr. Bhandari's submission. Section 14 of the AFT Act delineates its jurisdiction. Mr. Bhandari places reliance on Section 14(2)[7] read with section 3(o)[8] of the AFT Act.

24. Having seen these provisions, we are not satisfied that they support Mr. Bhandari's contention.

25. Section 14(2) states that a person aggrieved by *an order*

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[6] "the AFT Act", hereinafter

[7] (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.

[8] **3. Definitions**—In this Act, unless the context otherwise requires,—

(*o*) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include—

(*i*) remuneration (including allowances), pension and other retirement benefits;

(*ii*) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(*iii*) summary disposal and trials where the punishment of dismissal is awarded;

(*iv*) any other matter, whatsoever,

but shall not include matters relating to—

(*i*) order issued under Section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of Section 15 of the Navy Act, 1957 (62 of 1957) and Section 18 of the Air Force Act, 1950 (45 of 1950); and

(*ii*) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);

(*iii*) leave of any kind;

(*iv*) summary court martial except where the punishment is of dismissal or imprisonment for more than three months;

pertaining to any service matter may make an application to the Tribunal. The application, therefore, lies against an "order". A show cause notice issued to the petitioner cannot, by any stretch of imagination, be treated as an "order". The order would *follow* the show cause notice, after the noticee tenders his response thereto, and the response is considered by the competent authority.

26. In fact, by first petitioning the Tribunal thereafter moving this Court, the petitioner has managed to ensure that the passing of an order on the show cause notice issued to him has been delayed. We are informed that the show cause notice was issued as far back as on 5 March 2025. Owing to the misguided attempts of the petitioner to seek legal redress before fora which has no jurisdiction to proceed in the matter, we are now on the 10th of July 2025 and the show cause notice has not moved an inch. We are also informed that, in this regard, even if one were to exclude the period during which the proceedings of the show cause notice were stayed by the AFT, the petitioner has sought three extensions to respond to the show cause notice, which were granted.

27. Thus, Section 14(2) clearly does not render a show cause notice issued to an officer amenable to challenge before the Tribunal. This position is also fortified when one refers to section 3(o) to which Mr. Bhandari himself drew attention. Clause (iii) of section 3(o) includes, within the meaning of "service matters", "summary disposal and trial where the punishment of dismissal is awarded". Thus, prior to the awarding of any punishment to the officer concerned, it cannot even

be said that his grievance constitutes a "service matter".

28. Thus, the provisions of the AFT Act, too, do not support Mr. Bhandari's contention that the show cause notice was answerable to the Tribunal or that any appeal, against the recommendations of the ICC, would lie before the Tribunal so as to enable the petitioner to bypass the requirement of responding to the show cause notice.

29. The submission, in fact, we are of the considered view that this petition is an attempt to evade the procedure that the Supreme Court, with great pains, laid down in its judgment in ***Vishaka v State of Rajasthan***[9] followed by ***Medha Kotwal Lele v UOI***[10]

> Vishaka
>
> 17. The GUIDELINES and NORMS prescribed herein are as under:
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> > HAVING REGARD to the definition of "human rights" in Section 2(*d*) of the Protection of Human Rights Act, 1993,
> >
> > TAKING NOTE of the fact that the present civil and penal laws in India do not *adequately* provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time,
> >
> > It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:
> >
> > 1. *Duty of the employer or other responsible persons in workplaces and other institutions*:
> >
> > It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement

[9] **(1997) 6 SCC 241**
[10] **(2013) 1 SCC 297**

or prosecution of acts of sexual harassment by taking all steps required.

2. *Definition*:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(*a*) physical contact and advances;

(*b*) a demand or request for sexual favours;

(*c*) sexually-coloured remarks;

(*d*) showing pornography;

(*e*) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. *Preventive steps*:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(*a*) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(*b*) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(*c*) As regards private employers steps should be taken to include the aforesaid prohibitions in the

standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(*d*) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. *Criminal proceedings*:

Where such conduct amounts to a specific offence under the Penal Code, 1860 or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator *or their own transfer.*

5. *Disciplinary action*:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. *Complaint mechanism*:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. *Complaints Committee*:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party,

either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. *Workers' initiative*:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. *Awareness*:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. *Third-party harassment*:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Medha Kotwal Lele

44. In what we have discussed above, we are of the considered view that guidelines in ***Vishaka*** should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil

> Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

30. Thus, the Supreme Court has clearly laid down the protocol to be followed in a case where there is an allegation of sexual harassment by an officer at the workplace. Briefly stated, the matter has to be referred to an ICC. However, the recommendations of the ICC do not put a full stop to the proceedings. If the ICC exonerates the officer, the matter may rest there. However, if the findings of the ICC are against the officer, of which the ICC finds the officer complicit, it constitutes actionable misconduct under the service rules, and disciplinary action has to follow.

31. The Supreme Court has, in its decision in ***Medha Kotwal Lele***, modified the directions in ***Vishaka*** by clarifying that the findings of the ICC would constitute an inquiry report as envisaged in the service rules applicable to the officer and that, therefore, once the ICC rendered its findings, the ball would, so to speak, be in the Court of the disciplinary authority. It would be for the officer concerned to respond to the findings of the ICC, before the disciplinary authority, which would then take a conscious decision as to whether to exonerate the officer or, if the officer is found guilty, to punish him

appropriately.

32. It is this exercise which has been initiated by the show cause notice dated 5 March 2025, the proceedings in which the petitioner has successfully managed to stultify till now.

33. We are of the opinion that any further delay in these proceedings would completely defeat the very philosophy behind the decision in ***Vishaka***.

34. Mr. Bhandari has also sought to contend that, if at all the petitioner had to be proceeded with, consequent on the decision of the ICC, it had to be by a duly constituted Court Martial. It is only if a Court Martial was found to be inexpedient or impracticable that any other proceeding would be followed. He seeks to submit that, in the impugned show cause notice, the Chief of Naval Staff has already expressed a view that a Court Martial would not be expedient or practicable. This, according to him, is not sustainable and, in view of the fact that a decision in this regard has already been taken by the Chief of Naval Staff, the show cause notice was not sustainable.

35. We are not inclined to interfere with the order passed by the Tribunal on this ground. We only protect the petitioner to the extent that it would be open to the petitioner to raise this contention before the Chief of Naval Staff in response to the show cause notice.

36. We are sanguine that an authority of the stature of the Chief of Naval Staff would deal with the contention dispassionately and on its

merits.

37. In exercise of our jurisdiction under Article 226 of the Constitution of India, we are of the opinion that no case has been made out for us to interfere with the decision of the Tribunal or even to issue notice in this writ petition. If we were to allow this petition to remain pending before this Court, it would result in further protraction of the proceedings against the petitioner which, we are clear in our view, would be completely unfair as well as unjust to all parties concerned.

38. In that view of the matter, we decline to issue notice in the writ petition which is, accordingly dismissed. We would have been inclined to award costs; however, as we are not issuing notice in the writ petition, we refrain from doing so.

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.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 10, 2025/*AS*