

LIST OF DATES

Date	Event
19.04.1992	The Petitioner was born in Chapra, Bihar to Shri Om Prakash Giri and Smt. Usha Devi (father and mother respectively), and was assigned male gender at birth.
30.07.2010	The Petitioner was enrolled as a young sailor in the Indian Navy at Senior Secondary Recruit ('SSR') in his male gender identity, after clearing written, physical fitness and medical tests.
2011 onwards	The Petitioner felt more and more discomfiture with her male gender identity. She started identifying as a woman, and desired to appear and present herself as a woman.
2011	<p>In order to express her female gender openly, the Petitioner would leave the Navy, and go to other transgender persons, who could understand and empathise with her. She remained absent without leave three times from INS Airawat, Vishakhapatnam, and INS Shivaji, Lonavala, Pune, and was meted out punishment in all three cases.</p> <p>Owing to gender incongruity, the Petitioner suffered from headaches, lack of sleep, mood swings, suicidal thoughts, and a great discomfort with her male body.</p>
November, 2012	<p>After the Petitioner informed her parents about her gender identity, her parents failed to understand and forced the Petitioner to marry a woman from their village. Thereafter, the Petitioner felt more distressed and anxious.</p> <p>The Petitioner informed her peers and friends in Navy about her gender identity.</p>

September- November, 2012	The Petitioner remained absent without leave from INS Ganga, Mumbai, since she went to a private doctor, as she was struggling with her gender identity, and the compulsion to appear as male sailor in the Navy.
April, 2013	The Petitioner informed the Navy medical personnel that she was a transgender person, and wanted to undergo SRS to align her body with her gender identity of female. They did not pay any attention to her concerns. Instead, they diagnosed her as a case of 'Adjustment Disorder', and put her in low medical category.
December- January, 2014	In one of her absent without leave cases, the Petitioner was awarded one of the severest punishment of No. 6 (Mulcts of pay and allowances) for 60 days and detention in Detention Quarters for 60 days. The Petitioner was detained in a detention cell for two months and made to wear only her undergarments and remain bare-chested, merely for being absent without leave. The Petitioner was humiliated and degraded and suffered severe effects on her physical and mental health.
April, 2014	The Petitioner came on board the INS Eksila at Vishakhapatnam, and was attached with that base till her discharge on 6th October, 2017.
06.08.2014	The Petitioner was served with a warning for ' <i>Services No Longer Required</i> ', purportedly in accordance with Regulation 279 (B) of Regulations, Navy Part III (Statutory), wherein she was warned that her retention would be the detrimental to service, unless she showed sufficient improvement in her conduct within reasonable period.
November- December, 2014	The Petitioner was absent without leave twice from INS Eksila, wherein she was transferred to INS Kalyani at Pune in November, 2014.

- 18.02.2015 The Petitioner was served a show cause notice ('SCN') through the Respondent No. 5 for discharge from Service as 'Services No Longer Required' purportedly under Regulation 279 (b) of Regulations Navy Part III (Statutory).
- 24.02.2015 In her reply to the SCN, the Petitioner stated that she was suffering from a psychological issue with respect to her gender identity since the last three to four years. She further stated that she had not been able to disclose her situation to anyone, and was absent without leave many times.
- 18.03.2015 The Respondent No. 5 gave a warning to the Petitioner, purportedly in accordance with Regulation 279 (B) of Regulations, Navy Part III (Statutory), and did not take action on the SCN.
- April, 2016 Due to alleged 'mal-adjustment in service', the Petitioner was placed in S2A2 (S) Perm without medication, i.e., under permanent low medical category.
- April to August, 2016 The Petitioner continued to experience severe distress and anxiety, owing to her gender identity. Because of already being served with two warnings for SNLR and one show cause notice, she could not even leave the Naval base.
- 10.08.2016 Left with no option, and encouraged by her well-wishers, the Petitioner consulted a psychiatrist, Dr. Raju, at Vishakhapatnam for gender dysphoria. He diagnosed her with 'Gender Identity Disorder', and declared her fit to undergo surgery. The Petitioner thereafter started on hormone therapy, in order to align her body with her gender identity, and she felt lot better.
- 29.09.2016 The Petitioner, since she already on HRT, and was required to live in her self identified gender, wore nail polish, trimmed her eyebrows, and grew her hair long. She was counseled by the Department Regulator, Divisional Officer to comply with service

regulations on appearance.

- October, 2016 The Petitioner was counseled twice to comply with service norms by the Department Regulator and Divisional Officer respectively.
- 26.10.2016 The Petitioner underwent Sex Reassignment Surgery (stage-1) in a private clinic in Delhi (Olmec, Pitampura under the supervision of Dr. Narendra Kaushik).
- 07.11.2016 The Petitioner complained of pain in the perineum and puss discharge, and was admitted at INHS Kalyani for treatment. It was then the Navy doctors found out that she had undergone SRS in a civil hospital. She was first kept in ICU for three weeks and then kept in a male psychiatric ward, with three guards watching her all the time.
- 08.11.2016 INHS Kalyani reported the Petitioner's case to the Integrated Headquarters, Ministry of Defence (Navy), New Delhi, who sought a detailed report.
- 09.12.2016 The Petitioner was examined by a psychologist at INHS Kalyani, who noted that she was cooperative throughout the interview and testing. The psychologist noted that the orientation and judgment of the Petitioner were intact; and her cognitive abilities appeared to be in normal range.
- December, 2016 The Petitioner also wrote to the Commanding Officer, INHS Kalyani that she underwent SRS in Delhi. She had informed her superior Major Sanjay Kumar in INHS Kalyani in 2015 who understood her concern, but was helpless, being in service.
- 14.12.2016 The INHS Kalyani was requested by the Respondent No. 3 to convene a Medical Board in respect of the Petitioner to ascertain whether she was "*medically fit/suitable*" to remain in service after undergoing SRS. The medical examination so convened "*was carried out so as to enable/using the same for boarding out/SNLR purposes in accordance with Regulation 278 of Regulations*

Navy (Part III)".

- 17.01.2017 On 17.01.2017, the Petitioner was examined by Surgeon Commander Amitabh Mohan, Graded Specialist Surgery and Reconstructive Surgery at INHS Kalyani, who recommended that *"in view of gender reassignment surgery which does not confirm to meet the surgical standards of Indian Navy for Mail sailors, placed in LMC S3A2 (P) pmt"*.
- Another surgeon G.K. Shreeram, Senior Advisor and Head Surgery and trained in Vascular surgery opined that *"the above condition is rarest of rare case where there is no clear laid down policy on the subject for disposal/employability."*
- 19.01.2017 The Petitioner was examined by Major S.K. Samal, Graded Specialist (Psychiatry), INHS Kalyani who noted the whole history of her case, including her gender identity issues from 2011 onwards. He recommended the Petitioner's *"invalidment from service in cat S5A5 (S) for disability of Recurrent Depressive Disorder and Gender Identity Disorder."*
- His opinion was sent for concurrence.
- 20.01.2017 The Petitioner was transferred to the Command Hospital (Eastern Command), Kolkata for concurrence of opinion, with three escorts. The Petitioner was kept there for three days and examined in detail by the Senior Advisor, Psychiatry, Col. Jyoti Prakash.
- 23.01.2017 The Petitioner was discharged, after being examined by Col. Jyoti Prakash, Sr. Adv (Psychiatry) to concur with the opinion of Major S.K. Samal dated 19.01.2017 at INHS Kalyani. He, in fact, did not agree with the recommendation of invalidment of the Petitioner made by Major S.K. Samal, and sought instruction from higher authorities. He noted that *this is a rarest of the rare case and there is no precedence or guidelines in existing Navy Order 07/2014, DG Memorandum 171/2002 or any other guidelines of healthcare system published from time to time.*

January-February, 2017 Rahul Ray, Surg Commodore, Commanding Officer, INS Kalyani wrote two letters to the Respondent No. 3 seeking disposal instructions in respect of the Petitioner.

02.03.2017 The Integrated Headquarters, MOD (Navy) sent a letter to the Respondent No. 3 regarding suitability of continuation of the Petitioner in the Armed Forces. It recommended the disposal of the Petitioner, due to phenotype change from male to female.

09.03.2017 The Petitioner requested leave for 10 days to visit her parents, since she was admitted at the psychiatric ward at INHS Kalyani for the past three months. She was kept under constant watch, with three guards, and was not allowed to talk or meet with anybody.

30.03.2017 Major S.K. Samal at INHS Kalyani wrote another opinion taking note of the new developments, i.e. divergence of medical opinion on the invalidment of the Petitioner, and did not recommend the same in his revised opinion.

12.04.2017 The Petitioner was discharged from INHS Kalyani, after being kept in detention for almost six months from 7th November, 2016 onwards.

13-14.04.2017 The Petitioner appeared in her service uniform, but could not change her appearance. She was thereafter "*counseled*" twice by the authorities, without any scientific or medical basis.

19.04.2017 The Petitioner was served a show cause notice for 'SNLR' by the Respondent No. 5, which, detailed her entire service record, i.e., all absent without leave for which she was duly punished in each case.

- 21.04.2017 The Petitioner replied to the show cause notice.
- 04.10.2017 The Petitioner was discharged from service as SNLR by the Respondent No. 5, with effect from 06.10.2017.
- 05.10.2017 The Petitioner was discharged (locally) from service, as part of the formalities of release in INS Eksila. She was also asked to submit her identity card.
- 06.10.2017 The Petitioner was issued a railway warrant from Vishakhapatnam to Chapra, Bihar, as part of the discharge formalities.
- 09.10.2017 The Respondents issued a press release, which stated that:

"The Indian Navy has discharged Manish Giri, a naval sailor evoking the clause of Service No Longer Required under the Navy Regulations. The serving sailor who underwent sex reassignment surgery at a private facility whilst on leave was administratively discharged from the Service..... The existing service rules and regulations do not permit the sailor's continued employment owing to his altered gender status, medical condition and resultant employability restrictions."
- 23.10.2017 Hence, this Petition.

v. M.V. Rao, Commander
Cdr (Admin & Co-ord)
For Commanding Officer, INS Eksila
Through
The Integrated Headquarters,
Ministry of Defence (Navy)
'C' Wing, Sena Bhawan
New Delhi-110001

...Respondent No. 5

IN THE MATTER OF:

INFRINGEMENT OF FUNDAMENTAL
RIGHTS GUARANTEED UNDER
ARTICLES 14, 15, 16, 19, AND 21 OF
THE CONSTITUTION OF INDIA

AND IN THE MATTER OF:

SECTIONS 9, 15, AND 16 OF THE
NAVY ACT, 1957 READ WITH
REGULATIONS 261, 268, 269, 278
AND 279, NAVY REGULATION
(STATUTORY)-PART III

AND IN THE MATTER OF:

CIVIL WRIT PETITION UNDER
ARTICLE 226 OF THE
CONSTITUTION OF INDIA
DECLARING THAT SECTION 9 OF
THE NAVY ACT, 1957 READ WITH
THE RELEVANT REGULATIONS ARE
ULTRA VIRES OF THE
CONSTITUTION OF INDIA

TO,
THE HON'BLE CHIEF
JUSTICE AND HIS
COMPANION JUSTICES
OF THIS HON'BLE
COURT

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH THAT:

1. The present petition challenges the order dated 04.10.2017 discharging the Petitioner from the Indian Navy with effect from 06.10.2017. The Petitioner is a transgender person and identifies as a woman. The Petitioner has been addressed in her female gender identity and in female pronoun in the Petition. The Petitioner was enrolled as a young sailor in the Indian Navy in July, 2010 in her gender assigned at birth, i.e., male. During the course of her service, she slowly started identifying as female, and wanted to appear and express herself in her female gender identity. She informed the Navy Authorities in February, 2015, that she was suffering from gender dysphoria, and needed medical intervention. They failed to pay any heed to her concern, and subjected her to psychiatric counseling. Left with no option, the Petitioner underwent Sex Re-assignment Surgery (hereinafter 'SRS') in a private hospital in Delhi in October, 2016. When the Respondent Nos. 3, 4 and 5 found out about the SRS, they confined the Petitioner to a psychiatric ward for five months without any basis, whatsoever, and subjected her to innumerable medical assessments. When she re-joined work in April, 2017, she was served a show cause notice for SNLR under Regulation 279(b), Navy Regulations-Part III on 19th April, 2017, to which she duly replied. On 4th October, 2017, the Respondent Nos. 1 and 2 finally issued the order of discharge against the Petitioner from the Indian Navy for SNLR, on the basis that "*the existing service rules and*

regulations do not permit the sailor's continued employment owing to his altered gender status, medical condition and resultant employability restrictions." The discharge of the Petitioner from the Indian Navy on the ground of her transgender identity is wholly illegal and arbitrary, and violative of her fundamental rights to equality, non-discrimination, freedom of gender expression, dignity, autonomy and health guaranteed under Articles 14, 15, 16, 19 and 21 of the Constitution of India. The petition further challenges the validity of Section 9, The Navy Act, 1957 read with the relevant regulations that allow the enrolment of only male sailors and limited entry of women sailors in specific departments, but has no provision for enrolment or continued employment of transgender sailors, which is discriminatory, and violative of the constitutional guarantee of Articles 14, 15, 16, 19 and 21. The validity of Section 9 along with the corresponding Navy Regulations is also challenged on the ground that there exists no policy/regulation for transgender sailors, like the Petitioner, who are already employed in the Indian Navy, thereby violating Articles 14 and 21 of the Constitution. The Petitioner is fully and functionally fit to perform her duties as required of her under law. However, a transgender sailor cannot be expected to follow the service norms of appearance of male sailors, which the Respondents want of her, in complete violation of her dignity and autonomy under Article 21 of the Constitution. The Petitioner has no

efficacious remedy, but to approach this Hon'ble Court for seeking the appropriate reliefs.

2. The Petitioner is an Indian citizen, presently 25 years of age. She was born in Chapra, Bihar on 19th April, 1992, and underwent schooling up to Class XIIth from Bihar. She then got enrolled as a sailor in the Indian Navy in July, 2010, and was illegally discharged for SNLR from INS Eksila, Vishakhapatnam on 04.10.2017. A true copy of her Aadhar Card is annexed hereto as '**Annexure P-1**'.

3. The Respondent No. 1 is the Ministry of Defence, Government of India, which is the nodal Ministry for all Armed Forces, including the Navy. The Respondent No. 2 the Chief of Naval Staff, Integrated Headquarters (Navy), Ministry of Defence, Government of India, is the commander and the highest ranking officer in the Indian Navy. He is the Competent Authority to issue the order of discharge for sailors in the Navy. The Respondent No. 3 is the Flag Officer, Commanding in Chief, Eastern Naval Command, Vishakhapatnam, who is the head of the Naval Command, with which the Petitioner was last attached, and was discharged from the INS Eksila. The Respondent No. 4 is the Commanding Officer, INS Eksila who dealt with the Petitioner's case, and issued the final order of discharge dated 04.10.2017. The Respondent No. 5 is the Department Officer, Commander Cdr (Admin & Co-ord), For

Commanding Officer, INS Eksila who dealt with the Petitioner's case.

BRIEF FACTS OF THE CASE

4. The brief facts which necessitate the filing of the present writ petition are as under:
5. On 19.04.1992, the Petitioner was born in Chapra, Bihar to Shri Om Prakash Giri and Smt. Usha Devi (father and mother respectively), and was assigned male gender at birth. The Petitioner passed Class Xth from K.D.S. High School, Ghurapali, Bihar in 2007, and completed Class XIIth from Jagdam Mahavidyalay (College), Chapra, Bihar in 2009.
6. On 30.07.2010, at the age of 18, the Petitioner, a young boy at the time, was enrolled as a sailor in the Indian Navy at Senior Secondary Recruit ('SSR') in his male gender identity. The recruitment process included a written test, physical fitness test and a medical examination. She cleared all tests and was found to be fit for recruitment. She was duly enrolled after three months of her recruitment in the Navy.
7. From 2011 onwards, the Petitioner felt more and more discomfiture with her male gender identity. She started identifying as a woman, and desired to appear and present herself as a woman. Since she was employed in Navy, and being from a conservative background, she could not share her desires with anyone, including her family and friends.

8. In 2011, though the Petitioner wanted to express her female gender identity openly, the Navy has strict regulations in terms of appearance, males, including uniform and hair, amongst others. In order to express her female gender, the Petitioner would leave the Navy, and go to her friends' houses in other places, who were transgender persons, and could understand and empathise with her. Since the Petitioner would not get leave often, she remained absent without leave three times from INS Airawat, Vishakhapatnam, and INS Shivaji, Lonavala, Pune, and was meted out punishment in all three cases.

9. From 2011 onwards, owing to gender incongruity, the Petitioner suffered from headaches, lack of sleep, mood swings, suicidal thoughts, and a great discomfort with her male body. She underwent psychiatric evaluation in 2011 in the Navy, but could not disclose her transgender identity. She was found to have no syndromal psychiatric illness. This is evident from Major S.K. Samal's medical opinion dated 19.01.2017, which has been referred to subsequently.

10. In 2012, the Petitioner informed her parents about her gender identity, and that she identified as female. Her parents, being not exposed or aware of the rights of transgender persons, could not understand the Petitioner's concern and subsequently forced her to marry a woman from their village in November, 2012, when the Petitioner was on leave. The

Petitioner became more stressed about her life after marriage, and she told her peers at the Navy that she was a transgender person, and identified as a transgender woman. Some personnel in the Navy were okay with this disclosure, while others became distant.

11. From September-November, 2012, the Petitioner went to a private doctor, since she was struggling with her gender identity, and the compulsion to appear as male sailor in the Navy. After she re-joined, she was referred for psychiatric evaluation, but investigations showed no '*abnormality*'. Since she was absent without leave from INS Ganga, Mumbai, she was punished severely by the Respondent Naval authorities.

12. In April, 2013, the Petitioner informed the Navy medical personnel that she was a transgender person, and wanted to undergo SRS to align her body with her gender identity of female. They did not pay any attention to her concerns. Instead, they diagnosed her as a case of '*Adjustment Disorder*', and put her in low medical category. Thus, there can be no doubt that the Respondent Naval Authorities were well aware of the Petitioner's transgender identity, at least from April, 2013.

13. In 2013-early 2014, the Petitioner was going through lot of anxiety and needed to be with peers who understood her. She got to know from her friends that medical intervention, including counseling and hormone therapy, can alleviate her

distress. As a result, she was absent without leave twice from INS Trata, and was again punished. In fact, on one occasion when the Petitioner was absent without leave for three weeks from 11.12.2013 to 01.01.2104, she was awarded one of the severest punishment of No. 6 (Mulcts of pay and allowances) for 60 days and detention in Detention Quarters for 60 days. This is when the Respondents clearly had an idea about her gender incongruity and the consequent distress associated with it. The Petitioner was subject to solitary confinement in a detention cell for two months, during which time she was only permitted to wear her undergarments and remained bare chested, merely for being absent without leave. Such a punishment is cruel, humiliating and degrading to say the least. For the Petitioner, who was already struggling with her body, the punishment was particularly humiliating and degrading, with having a severe effect on her physical and mental health.

14. In April, 2014, the Petitioner came on board the INS Eksila at Vishakhapatnam, and was attached with that base till her discharge on 6th October, 2017.

15. In June, 2014, the Petitioner was absent without leave for ten days, and was punished with (No. 6 Mulcts of Pay & Allowances) for ten days and stoppage of leave for thirty days, after a summary trial.

16. On 06.08.2014, the Petitioner was served with a warning for '*Services No Longer Required*', purportedly in accordance with Regulation 279 (B) of Regulations, Navy Part III (Statutory), wherein she was warned that her retention would be detrimental to service, unless she showed sufficient improvement in her conduct within reasonable period. A true copy for the said warning dated 06.08.2014 is annexed hereto as '**Annexure P-2**'. It is noted that despite having knowledge about Petitioner's gender incongruity, the Navy treated this case as a regular case relating to discipline, and did not probe why the Petitioner was being absent on leave. Even the warning to her was without any application of mind, since she could not improve upon her 'gender identity'.

17. From November-December, 2014, the Petitioner was having tremendous emotional troubles appearing in male gender identity, and she had to leave the base, and go to meet her friends, where she could dress and appear as a woman. Despite notifying the Navy, the Petitioner got no empathy, and was instead treated for non-existent illnesses. The Petitioner was absent without leave twice from INS Eksila, wherein she was transferred to INS Kalyani at Pune in November, 2014.

18. On 18.02.2015, the Petitioner was served a show cause notice through the Respondent No. 5 for discharge from Service as '*Services No Longer Required*' purportedly under Regulation 279 (b) of Regulations Navy Part III (Statutory), vide INS

Eksila Letter 635/REG/224845-N dated 18th February, 2015. A true copy of the said show cause notice is annexed hereto as **'Annexure P-3'**.

19. On 24.02.2015, in her reply to the show cause notice, the Petitioner stated that she was suffering from a psychological issue with respect to her gender identity since last three to four years. She further stated that she had not been able to disclose her situation to anyone, and was absent without leave many times. When she finally discussed her issue with the Commanding Officer at Eksila, who then advised her to be counseled and treated by specialists. A true copy of the reply dated 24.02.2015 is annexed hereto as **'Annexure P-4'**. Still, the Respondent Nos. 1-5 did not even acknowledge the Petitioner's transgender identity, and her difficulties in appearing as a male person, owing to gender incongruity.

20. On 18.03.2015, the Respondent No. 5 gave a warning to the Petitioner, purportedly in accordance with Regulation 279 (B) of Regulations, Navy Part III (Statutory), and did not take any further action on the show cause notice dated 18th February, 2015. It is submitted that the warning was arbitrary, without application of mind and, therefore, illegal, as it required the Petitioner to comply with the service regulations, despite to the knowledge of the Respondents that she was a transgender person, and, therefore, could not comply with the regulations meant for men.

21. On 07.04.2015, the Petitioner was again punished with stoppage of leave for 60 days, and had sought leave on medical ground.

22. In April, 2016, due to alleged '*mal-adjustment in service*', the Petitioner was placed in S2A2 (S) [Perm] without medication, i.e., under permanent low medical category. This was, despite the fact that she was functionally fully fit to do the job that she was recruited for.

23. From April to August, 2016, the Petitioner continued to experience severe distress and anxiety, owing to her gender identity. Because of already being served with two warnings for SNLR and one show cause notice, she could not even leave the Naval base. She longed to be female, to appear and express herself as female in her dressing, behavior and presentation, as well as serve the Navy. She had huge stress about the future of her job. She felt isolated, and lonely, and got no assistance from Navy.

24. On 10.08.2016, left with no option, and encouraged by her well-wishers, the Petitioner consulted a psychiatrist, Dr. Raju, at Vishakhapatnam for gender dysphoria. He diagnosed her with '*Gender Identity Disorder*', and declared her fit to undergo surgery. A true copy of the said certificate is annexed hereto as '**Annexure P-5**'. The Petitioner thereafter started on hormone therapy, in order to align her body with her

gender identity, and she felt lot better. Her mood improved, and she felt comfortable with her body after a long time. She realized that with medical intervention, she could transition to female, and could live her regular life as woman.

25. On 29.09.2016, the Petitioner, since she was already on HRT and also required to live in her self-identified gender, wore nail polish, trimmed her eyebrows, and grew her hair long. She was counseled by the Department Regulator, Divisional Officer to comply with service regulations on appearance, i.e., having service pattern haircut and not to trim eyebrows. Again this was done in gross disregard to the transgender identity of the Petitioner and with the arbitrary application of service regulations meant for men to her. At the same time, the Department Regulator noted that "*the general behavior of sailor is good, obeys all the commands and order given to him other than the hair cut, removal of nail polish and making of eyebrow.*" It is thus clear that the Petitioner was doing her duties efficiently, with no cause for complaint.

26. In October, 2016, the Petitioner was counseled twice to comply with service norms by the Department Regulator and Divisional Officer respectively. Despite having full knowledge of the Petitioner's gender identity, the officers of the Respondent No. 2 pretended as if it was not an issue to be dealt with, let alone addressed. Counseling the Petitioner to act and appear contrary to her gender identity is against all

medical ethics and standards. The Petitioner thereafter went on three weeks of annual leave from 24th October, 2016 to 11th November, 2016.

27. On 26.10.2016, the Petitioner underwent Sex Reassignment Surgery in a private clinic in Delhi (Olmec, Pitampura under the supervision of Dr. Narendra Kaushik), i.e., removal of testes, implantation of testicular skin to the perineum and partial excision of urethra. A true copy of the certificate of SRS is annexed hereto as '**Annexure P-6**'. Importantly, no SRS procedure is available as a part of the armed forces medical services, leaving the Petitioner with no option, but to undertake the procedure in a private facility.

28. On 07.11.2016, the Petitioner complained of pain in the perineum and puss discharge, and was admitted at INHS Kalyani for treatment. It was then the Navy doctors found out that she had undergone SRS in a civil hospital. She was then admitted in ICU for treatment for three weeks and then confined in a male psychiatric ward, with three guards watching her all the time. The Petitioner was never informed why she was kept in a psychiatric ward or the reason for her detention.

29. On 08.11.2016, INHS Kalyani reported the Petitioner's case to the Integrated Headquarters, Ministry of Defence (Navy), New Delhi. The Navy Authorities then sought a detailed report on the Petitioner's case at INS Eksila. True copies of the above-

stated documents are annexed hereto as '**Annexure P-7 colly**'.

30. On 09.12.2016, the Petitioner was examined by a psychologist at INHS Kalyani, who noted that she was cooperative throughout the interview and testing. The psychologist noted that he managed to establish rapport and maintained it; the orientation and judgment of the Petitioner were intact; and her cognitive abilities appeared to be in normal range. A true copy of the report is annexed hereto as '**Annexure P-8**'. This makes it clear that the Petitioner was absolutely alright, and had no reason to be detained.

31. In December, 2016, the Petitioner also wrote to the Commanding Officer, INHS Kalyani that she underwent SRS in Delhi. She stated that she had informed Major Sanjay Kumar, her superior at INHS Kalyani in 2015 who understood her concern, but was helpless, being in service. She further stated that she then consulted a civil psychologist and psychiatrist, and got a diagnosis of gender dysphoria. Thereafter, she started hormonal replacement therapy, which made her feel better psychologically. A true copy of the Petitioner's statement is annexed hereto as '**Annexure 9**'.

32. On 14.12.2016, the INHS Kalyani was requested by the Respondent No. 3 to convene a Medical Board in respect of the Petitioner to ascertain whether she was "*medically fit/suitable*"

to remain in service after undergoing SRS. The medical examination so convened *“was carried out so as to enable/using the same for boarding out/SNLR purposes in accordance with Regulation 278 of Regulations Navy (Part III)”*. Thus, it is clear that the Respondents had already pre-determined that the Petitioner was to be discharged, without taking into consideration whether she was otherwise fit to do her duties as a navy sailor. The constitution of a medical board merely sought to add a veneer of legality and fair process where there was none. A true copy of the said letter is annexed hereto as **'Annexure P-10'**.

33. On 17.01.2017, the Petitioner was examined by Surgeon Commander Amitabh Mohan, Graded Specialist Surgery and Reconstructive Surgery at INHS Kalyani, who recommended the following:

- i. Medical Classification: In view of gender reassignment surgery which does not conform to meet the surgical standards of Indian Navy for Male sailors, placed in LMC S3A2 (P) pmt*
- ii. Disability profile: No laid down policy on the present condition for arriving at the disability to be awarded Medical Recommendations and employability restrictions as per Code 'E'.*

34. On the same day, another surgeon G.K. Shreeram, Senior Advisor and Head Surgery and trained in Vascular surgery gave the following opinion:

“The above condition is rarest of rare case where there is no clear laid down policy on the subject for disposal/employability and it appears that the present surgical condition is a sequelae of voluntary gender

reassignment surgery due to underlying sexual preference. The individual does not meet the laid down physical (surgical) standards for male sailors of Indian Navy. In view of the above, it is advised that opinion and further disposal with regards to employability involving active military duties be obtained from Psychiatrist." (emphasis supplied)

A true copy of the above medical opinion is annexed hereto as

'Annexure P-11'.

35. On 19.01.2017, the Petitioner was examined by Major S.K. Samal, Graded Specialist (Psychiatry), INHS Kalyani who noted the whole history of her case, including her gender identity issues from 2011 onwards. He recommended the following:

"As per NO 7/2014 Section 4 para 1 (a) (iv), the sailor is recommended for invalidment from service in cat S5A5 (S) for disability of Recurrent Depressive Disorder and Gender Identity Disorder. The case was informed to higher echelons as a unusual incidence and discussed by the CO, INHS Kalyani with CMO (E) who recommended for concurrence of opinion by Senior Advisor, Psychiatry, vide NO 7/2014 Section 4 para 1 (d) (iii) and (iv) being a rarest of rare case."

A true copy of the said opinion is annexed hereto as

'Annexure P-12'.

36. On 20.01.2017, the Petitioner was transferred to the Command Hospital (Eastern Command), Kolkata for concurrence of opinion, with three escorts. The Petitioner was kept there for three days and examined in detailed by the Senior Advisor, Psychiatry, Col. Jyoti Prakash. Thus, it is evident that the Petitioner was subject to innumerable medical

examinations and kept under watch all the time for no reason, except that she had undergone SRS.

37. On 23.01.2017, the Petitioner was discharged, after being examined by Col. Jyoti Prakash, Sr. Adv (Psychiatry) to concur with the opinion of Major S.K. Samal dated 19.01.2017 at INHS Kalyani. He, in fact, did not agree with the recommendation of invalidment of the Petitioner made by Major S.K. Samal, and recommended the following:

a. *"I agree to revision of diagnosis from Adjustment Disorder (Diagnosis no. 2) to Recurrent Depressive Disorder (Diagnosis no. 1) as brought out by the treating psychiatrist. He presented with syndromal depressive features in 2013, treated initially in civil and later in service hospital. Inpatient evaluation at service hospital brought out adjustment issues to fore which were managed. His medication was stopped during OPD review and he was found to be maintaining remission subsequently. In May, 2016, he was found to be in remission without medication and unit reported improvement to pre-illness level. He was kept in S2A2 (S) Permanent for further drug free observation before final upgradation. He again had syndromal depression in November, 2016 requiring definitive management. Considering his longitudinal profile and repeat depressive episode, his revision of diagnosis to Recurrent Depressive Disorder is as per existing diagnostic classification. However, keeping in view adequate response of initial depressive symptoms in 2013 subsequent drug free observation period with adequate remission noted during subsequent reviews, freshly revised diagnosis of Recurrent Depressive Disorder, recent institution of psychopharmacological treatment for the same and fair response to the treatment; I do not consider it prudent to contemplate invalidment for the said diagnosis. (Emphasis supplied)*

b. *I also agree with the diagnosis no. 3 (Gender identity Disorder) given by the treating psychiatrist. The*

individual has undergone hormonal treatment and irreversible sex reassignment surgery in civil, which has affected the individual's gender status and has implication for employment in the assigned role. This is a rarest of the rare case and there is no precedence or guidelines in existing Navy Order 07/2014, DG Memorandum 171/2002 or any other guidelines of healthcare system published from time to time. Hence, it is recommended that suitable instructions may please be obtained from competent authority regarding suitability of continuation of the individual in Indian Armed Forces as a sailor with the changed gender status from that of the time of enrolment in service."

Thus, it is evident that the Senior Advisor (Psychiatry) did not agree with the recommendation of invalidment of the Petitioner made by Major S.K. Samal. A true copy of the said opinion dated 23.01.2017 is annexed hereto as '**Annexure P-13**'. The Petitioner was then transferred back to Vishakhapatnam.

38. Thereafter, in January and February, 2017, Rahul Ray, Surg Commodore, Commanding Officer, INS Kalyani wrote two letters to the Respondent No. 3 seeking disposal instructions in respect of the Petitioner. It referred to the above-noted medical documents, and especially to the opinion of Col. Jyoti Prakash at Eastern Command Hospital, Kolkata dated 23.01.2017 who did not recommend invalidment of the Petitioner on medical grounds. True copies of the said letters are annexed herewith as '**Annexure P-14** and **Annexure P-15**'.

39. On 02.03.2017, the Integrated Headquarters, MOD (Navy) sent a letter to the Respondent No. 3 regarding suitability of continuation of the Petitioner in the Armed Forces. It recommended the following for the disposal of the Petitioner:

- a. Psychiatric condition of the individual, its disposal and treatment should be in accordance with the existing instruction for disposal of psychiatric disorders,*
- b. With regard to the disposal of the patient due to phenotype change from male to female is concerned, it is to be dealt as an administrative matter, and disposal would be as per the acceptable requirements of Navy.*

A true copy of the said letter dated 2nd March, 2017 is annexed hereto as '**Annexure P-16**'.

40. On 09.03.2017, the Petitioner requested leave for 10 days to visit her parents, since she was admitted at the psychiatric ward at INHS Kalyani for the past three months. She was kept under constant watch, with three guards, and was not allowed to talk or meet with anybody. As is evident from the medical opinions, the Petitioner was cooperating with the doctors, and did not show any signs of self-harm or suicidal tendencies. There was no justification whatsoever for her to be kept in detention for four months. Forwarding her request, Major S.K. Samal recommended that the Petitioner may undergo next stage of SRS during the leave or dessert. He also noted that a "decision on the 'escorts'" also had to be taken. A true copy of the letter with the said recommendation is annexed hereto as '**Annexure P-17**'. It is thus clear that the Petitioner was kept

under constant monitoring and was not allowed to go anywhere, including visiting her parents, without escorts.

41. On 30.03.2017, Major S.K. Samal at INHS Kalyani wrote another opinion taking note of the new developments, which recommended the following:

"This 25 yrs old serving sailor with six years of service, with no family h/o psychiatric illness or substance abuse; manifested Gender Identity Disorder that evolved from dual role transvestism to transsexualism over last five years; suffered depressive episodes with chronic socio-occupational maladjustment. Following sex reassignment surgery in civil without informing authorities, individual manifested with a severe depressive episode that was managed adequately. Recommendation was given for change of diagnosis from Adjustment Disorder to Recurrent Depressive Disorder, addition of diagnosis Gender Identity Disorder and invalidment from service in view of multiple psychiatric disabilities. Being a rarest of rare case, concurrence of Senior Advisor, Psychiatry at CH (EC) was sought who agreed to the change and addition of diagnoses; but did not agree to invalidment from service for Recurrent Depressive Disorder. Disposal instructions regarding Gender Identity Disorder and gender status were sought from higher headquarters which was obtained, vide IHQ of MOD (Navy) Letter No. MH/3865/Health Issues dated 02 Mar 17. In view of the above, the sailor is recommended for upgradation to S1A1 for Adjustment Disorder and to be downgraded to S3A2 (S) T-24 for disabilities of Recurrent Depressive Disorder and Gender identity Disorder. Review when due with fresh AFMSF-10X03.

He then advised the following:

- i. To continue under supervision of AMA [Tab Sodium Valproate (750 mg) 0-0-1, Tab Mirtazepine (15 mg) 0-0-1*
- ii. Monthly review at Psychiatry/Medical OPD*
- iii. Not to consume alcohol/intoxicants*
- iv. To work under supervision*
- v. Unfit to handle arms/live ammunition/explosives*

- vi. *Unfit for active combat/counter insurgency/HAA duties*
- vii. *Other employability restrictions as per NO 7/2014*

It is clear from the aforesaid opinion that Major S.K. Samal in his revised opinion did not reaffirm his earlier recommendation of invalidment of the Petitioner from service. He even advised that the Petitioner could work under supervision and recommended an upgradation. A true copy of the said opinion dated 30th March, 2017 is annexed hereto as '**Annexure P-18**'.

42. On 12.04.2017, the Petitioner was discharged from INHS Kalyani, after being kept in detention for almost six months from 7th November, 2016 onwards, without taking into consideration the opinions of the psychiatrists. A true copy of the hospital discharge slip dated 12.04.2017 is annexed hereto as '**Annexure P-19**'.

43. On 12.04.2017, the Petitioner reported back to INS Eksila in civilian clothing, and appeared in her gender identity, with "*long hair, pierced nose, and trimmed eyebrows*". She could not help, but express her female gender. After undergoing SRS, the Petitioner had changed her male body to align with her female gender identity, and it would be completely arbitrary and illegal to expect her to appear as male anymore. The requirement of the Navy to dress contrary to her gender identity was discriminatory, and against her constitutional rights.

44. On 13-14.04.2017, the Petitioner appeared in her service uniform, but could not change her appearance. She was thereafter "counseled" twice by the authorities. The counseling was without any scientific or medical basis, as it proceeded on the assumption that the Petitioner could change her appearance and thus her identity to male, which she could not after her transition to female.

45. On 19.04.2017, the Petitioner was served a show cause notice for 'SNLR' by the Respondent No. 4 which, after detailing her entire service record, i.e., all absent without leave for which she was duly punished in each case, noted:

*"10. And WHEREAS, despite being given adequate opportunities to improve in the form of counselings, SNLR warnings and Show Cause Notice for discharge, you have failed to show improvement in your conduct throughout your service of approximately seven years as brought out above. Such poor conduct, which is continued to be exhibited by you post your discharge from Hospital on 12 Apr 17 has manifested in your refusal to follow basic norms of service wherein you have failed to adhere to **wearing proper Uniform and taking service pattern haircut.** You have displayed un-service like conduct and behavior and utter disregard for service norms." (emphasis supplied)*

The Petitioner was asked to reply to the notice within 10 days of the receipt of show cause notice. As is evident from the show cause notice, it nowhere mentions that there was a divergence of medical opinion regarding the issue of invalidment of the Petitioner on medical grounds. Since the Navy's attempt to use medical ground for invalidment was

frustrated by the divergent opinion, they had to resort to making it a matter of discipline and issuing a show cause notice for SNLR. A true copy of the said notice is annexed hereto as '**Annexure P-20**'.

46. On 21.04.2017, the Petitioner replied to the show cause notice dated 19.04.2017 and stated that:

"1. I, M.K. Giri, ME-II, P.No. 224845-N got a show cause notice from you on 19 Apr 17 at 1515 hrs and I would like to say that I have been suffering from gender identity issue for last five to six years and due to this reason, I have absconded six times as you mentioned in notice and this was only reason which led to me being absent without leave. I also had got another notice like this by Commodore S.N. Alamanda, Commanding Officer, INS Eksila, then in 18 Feb 2015. I revealed my gender identity issue to him first time. After that, he got me admitted in INHS Kalyani for this issue. From INHS Kalyani, I was referred to CH(SC) Pune for getting treatment. I was counseled by doctor at CH(SC) Pune which was helpful for me for a short period of time. They put me in low medical category for adjustment disorder. Therefore, again I was admitted in INHS Kalyani for recat having same problem. I explained my same problem to Major Sanjay Kumar a psychiatrist. He suggested me being a service personnel of Armed Forces, I cannot treat you for this. Then I consulted to a civil doctor and he helped me to get rid of gender dysphoric.

....

3. As you know I have undergone through sex reassignment surgery to confirm my gender which was very necessary for me because I never felt comfortable being in a male body.

4. Yes, I agreed with you that my divisional officer advised me not to do feminine activity but it was not possible for me being a patient of gender dysphoria.

..."

A true copy of the said reply dated 21.04.2017 is annexed hereto as '**Annexure P-21**'.

47. From April to August, 2017, the Petitioner was not informed of any decision on the show cause notice. She sought audience with the higher authorities in Navy, but to no avail.

48. On 04.10.2017, the Petitioner was discharged from service as SNLR by the Respondent No. 5, with effect from 06.10.2017, wherein the order stated that

"2.After having considered your reply to the Show Cause Notice and the entire facts and circumstances of your case, the Competent Authority has accorded approval for your discharge from Service as 'Services No Longer Required (SNLR)' in accordance with Regulation 279 of REGS Navy Part III."

In fact, the actual order of discharge, vide CABS fax **ADM/0101/224845N/DIS** dated 03 Oct 17 was never served on the Petitioner. Further, a bare perusal of the discharge order dated 04.10.2017 does not disclose any reasons for the said discharge, nor does it mention any charges against the Petitioner. Going by the show cause notice, it seems that the reason for her discharge was her decision to undergo SRS, and to transition from male to female. A true copy of the said discharge order dated 04.10.2017 is annexed hereto as '**Annexure P-22**'.

49. On 05.10.2017, the Petitioner was discharged (locally) from service, as part of the formalities of release in INS Eksila. She was also asked to submit her identity card. True copies of the said documents are annexed hereto as '**Annexure P- 23 colly**'.

50. On 06.10.2017, the Petitioner was issued a railway warrant from Vishakhapatnam to Chapra, Bihar, as part of the discharge formalities. A true copy of the said warrant is annexed hereto as **'Annexure P-24'**.

51. On 09.10.2017, the Respondents issued a press release, which stated that:

"The Indian Navy has discharged Manish Giri, a naval sailor evoking the clause of Service No Longer Required under the Navy Regulations. The serving sailor who underwent sex reassignment surgery at a private facility whilst on leave was administratively discharged from the Service. The individual chose to undergo irreversible gender re-assignment on his own accord, whilst on leave wilfully altering his gender status from the one he was recruited for at the time of his induction. He has therefore breached the Recruitment Regulations and eligibility criteria for his employment as a Sailor in the Indian Navy. The existing service rules and regulations do not permit the sailor's continued employment owing to his altered gender status, medical condition and resultant employability restrictions." (emphasis supplied)

A true copy of the said press release is annexed hereto as **'Annexure P-25'**.

52. It is thus evident from above that the Petitioner was discharged from the Navy, precisely on account of her transgender identity. The Petitioner had informed the Navy authorities in April, 2013 about her gender incongruity, though it is not on record in any of the documents. Instead of understanding her concern, and providing relief to her, the Navy doctors diagnosed her with 'Adjustment Disorder' and

put her in low medical category. From February, 2015 onwards, the Respondents had notice of the Petitioner's dissonance with her male gender assigned at birth, but they merely counseled the Petitioner to follow the service norms, which was totally illegal in as much as they were applicable to men.

53. The Petitioner has been wrongfully and illegally terminated from active service, in light of the discharge order dated 04.10.2017 when she still had eight years of active service left. The Petitioner had suffered for almost five years in Navy, owing to her gender identity, wherein it was almost torture for her to appear in the male identity. She would go on absent without leave only because of that reason, so that she could appear and present as a woman to her friends. After she was given show cause notice on 18.02.2015 for SNLR, she never again remained absent without leave. Despite her severe mental stress, due to her gender incongruity, there is nothing on record to show that the Petitioner did not do her work efficiently and diligently. In fact, the Petitioner has got commendations for her work, if one peruses her service record. When she got no support from the Navy establishment with respect to her gender incongruity, she had no option, but to seek medical intervention from a civil hospital. To punish the Petitioner for who she is or for her inherent personality is against all constitutional and legal norms as well as against the military ethos of integrity.

54. On account of the illegal actions of the Naval Authorities, the Petitioner has now been left with no livelihood. She joined the Navy straight after school and has no other training, apart from the skills she learnt in the Navy. The Petitioner has been practically consigned to the streets, as she has been forced to rely on her meager savings and the good will of her friends. Transgender persons face severe discrimination in all forms of life, and particularly, in matters of employment and it will thus be extremely difficult for the Petitioner to find an alternate form of employment.

BRIEF OVERVIEW OF THE NAVY ACT, 1957 AND NAVY REGULATIONS

55. The Indian Navy has been modeled on the British Royal Navy. In 1934, the Indian Navy (Discipline) Act, 1934 was enacted, pursuant to Section 66 of the Government of India Act, 1919, which empowered the then Indian Legislature to apply the provisions of the U.K. Naval Discipline Act to the Naval Forces raised in India.

56. In 1957, the *Navy Act* was enacted by Parliament to consolidate and amend the law relating to the government of the Indian Navy, repealing all the prior naval laws. It is evident from the Statement of Objects and Reasons that that the main object of the Act was to make the law self-sufficient by incorporating the necessary provisions of certain other related enactments and regulation and to adapt the existing

provisions to suit the new constitutional set-up. It came into force on 01.01.1958. The relevant definitions and provisions are as follows:

- a. **Section 3(20)** defines **sailor** as "*a person in the naval service other than an officer*";
- b. **Section 9: Eligibility for appointment or enrolment-** (1) No person who is not a citizen of India shall be eligible for *appointment* or enrolment in the Indian Navy or the Indian Naval Reserve Forces except with the consent of the Central Government:
Provided that nothing in this section shall render a person ineligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces on the ground that he is a subject of Nepal.
(2) No woman shall be eligible for appointment for enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forming part thereof or attached thereto and subject to such conditions as the Central Government may, by notification in the Official Gazette specify in this behalf.
- c. **Section 15: Tenure of service of officers and sailors—**(1) Every officer and sailor shall hold office during the pleasure of the President.
(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.

57. During the debate in Parliament on the Navy Bill in 1957, several Members of Parliament raised concerns about the exclusion of women from Navy and only permitting their employment in certain departments. Serious issues were raised with regard to the constitutional validity of such exclusion.

58. A bare perusal of the relevant provisions of the Navy Act, 1957, makes it clear that the Act contemplates only two categories for enrolment, i.e., male and female. However, the recruitment of women is treated as an exception in Section 9(2) in restricted categories. It does not contemplate either the enrolment of transgender persons as officers and/or sailors or contains provisions dealing with existing personnel who may have transitioned from their gender assigned at birth to their self-identified gender during the course of service. Regulation 279, in fact, makes it explicit that only male sailors are enrolled in the Navy, with no provision for transgender persons or women. A true copy of the relevant regulations are annexed hereto as '**Annexure P-26**', and extracts from the website of the Navy regarding the standards for uniform and physical fitness are annexed hereto as '**Annexure P-27 (colly)**'.

59. It may be noted that there are specific service regulations on haircut, and appearance, which are not available in public domain or available with the Petitioner. This Hon'ble Court may be pleased to direct the Respondents to produce all relevant service rules and regulations pertaining to the present case.

60. It is submitted that the Petitioner was not given a copy of her service documents when she was discharged, contrary to the Navy Act and the Regulations. She only managed to get

photos of some of the documents. This Hon'ble Court may be pleased to direct the Respondents to produce the entire service record of the Petitioner and to give her a copy of the same.

61. Besides, the Navy had failed to give permanent commission to women officers who were recruited under Section 9(2), while male officers were given the same benefit. This Hon'ble Court in *Annie Nagaraja & Ors. vs. Union of India*, Writ Petition (Civil) No. 7336/2010, date of order: 04.09.2015] termed Navy's action discriminatory, and directed the Navy to grant women also permanent commission on equal basis.

TRANSGENDER IDENTITY AND RIGHTS IN INDIA

51. India has had a long history of the existence of transgender persons, who have occupied prominent political and administrative positions during the Mughal times. Transgender persons are those persons whose gender assigned at birth does not conform to their self-identified gender identity, expression or behaviour. It is a person's deeply felt internal and individual experience of gender, which may or may not correspond with the gender assigned at birth. It is innate and personal. It includes those who identify in the gender binary of male and female, i.e., male to female transgender persons, or female to male transgender persons, whether or not they have undergone any medical intervention, including SRS. It also includes

those persons who are non-binary or do not identify as male or female, but as 'third gender', like *Hijras, Kinnars, Aravanis, Jogappas*, and other socio-cultural identities, according to the rich and pluralist cultures in India.

62. It is well-established that transgender persons are not suffering from any medical disorder. What is classified as a medical condition is 'Gender Dysphoria', i.e., "*the distress/discomfort that may be caused by the incongruence between one's experienced or expressed gender and sex assigned at birth*". [*Diagnosics and Statistical Manual of Mental Disorders, Fifth Edition, 2013* published by American Psychiatric Association, which is annexed hereto as '**Annexure 28**']. In fact, not all transgender persons have to or want to go through medical intervention. Only in some cases, a transgender person may experience distress, or what is known as 'gender dysphoria', and only some persons experiencing gender dysphoria may need treatment at some point in their lives, which may range from counseling to surgical intervention. Sometimes, transgender persons choose to alter through medical intervention, including SRS in order to make their bodies congruent with their gender identity and to live fully in their self-identified gender. At the same time, there are other persons who choose to live and appear in their self identified gender but do not want to or do not have the financial means to undergo SRS [*Standards of Care for the Health of Transsexual, Transgender and Gender Non*

Conforming People, Version 7, World Professional Association of Transgender Health (2011), which is annexed hereto as **'Annexure P-29'**].

63. Despite the long existence of transgender persons in the Indian society, their rights have only been recently recognised. Before 2014, some attempts were made, mostly at administrative levels to recognise transgender identity, i.e., Passports, Voter's ID, etc, or at judicial level, but there was no legal recognition of transgender identity as such. In 2011, this Hon'ble Court in *Faizan Siddiqui vs. Sashastra Seema Bal* [2011(124) DRJ 542] struck down the decision of *Sashastra Seema Bal* ('SSB') to deny employment to a person with an inter sex variation as arbitrary and illegal, since it was not based on any relevant materials as well as predicated on incorrect medical knowledge. Though not pertaining to transgender person, that decision is landmark in its recognition that an otherwise qualified person fully functionally fit to carry out the required duties cannot be denied employment, even in para-military forces, owing to sexual or gender differentiation from the prevalent norms.

64. On 15th April, 2014, the Hon'ble Supreme Court in *National Legal Services Authority vs. Union of India* [(2014)5SCC 438, hereinafter '*WALSA*'] granted legal recognition to transgender identity in India. It held that transgender persons have a fundamental right to be recognised in their self-identified

gender as male/female/transgender, independent of any medical intervention, including SRS. It further upheld the constitutional rights of equality, non-discrimination, freedom of gender expression, dignity, and autonomy of transgender persons guaranteed under Articles 14, 15, 16, 19 and 21 of the Constitution. It gave specific directions to the Central Government and the State governments to protect the rights of transgender persons.

65. Following *NALSA*, various High Courts have upheld the rights of transgender persons who were denied employment by the State. In particular, the Hon'ble Madras High Court, in a series of decisions pertaining to police recruitment/employment, upheld the right of transgender persons to access public employment with equality and non-discrimination [*Thanusu v. Government of Tamil Nadu* (2014)6MLJ93, *Nangai v. Superintendent of Police* (2014)4MLJ12, *Nagalakshmi v. Director General of Police* (2014)7MLJ452].

66. The Petitioner being aggrieved by the discharge order dated 04.10.2017 issued by the Respondent Nos. 3, 4 and 5 after the approval of the Respondent No. 2, which is illegal, and arbitrary, seeks to challenge the validity of Section 9, Navy Act, and all relevant regulations which do not recognise transgender identity, as well as challenge the discharge order on the following, amongst other grounds, which are without prejudice to each other:

A. Because Section 9, Navy Act, 1957 along with Regulations 261, 268, 269, 278 and 279 of Navy Regulations (Part-III), to the extent that they do not recognise transgender identities, violate Articles 14, 15, 16, 19, and 21 of the Constitution and are thus unconstitutional and liable to be so declared/struck down

- i. Section 9(1) of the Navy Act provides for appointment or enrolment of sailors in the Indian Navy or the Indian Naval Reserve Forces. Sub-clause (2) bars women from being appointed or enrolled, except in certain specific departments, not including sailors. This, in effect, makes it clear that only male persons are eligible to be recruited as sailors.
- ii. Though Section 9(1) read with Section 3(20) of the Navy Act use the phrase 'person' which is gender neutral, Regulations 261, 268, 269, 278 and 279 further make it clear that only male persons can be sailors, on account of the use of phrases 'man' and 'boy' therein. No person who identifies in any gender, other than male, is eligible to be appointed or enrolled as sailors under the Navy Act along with its Regulations. In effect, no transgender person can be enrolled as a sailor. This is a clear violation of equal protection of laws guaranteed under Article 14 of the Constitution.

- iii. In the same vein, the Navy Act and the Regulations do not envisage cases where a person, who was enrolled as a male sailor, has transitioned to his/her self-identified gender of female. There is nothing in the service regulations to deal with such cases, as is evident from the repeated statements of the medical doctors who examined the case of the Petitioner in the last few months.
- iv. It is well-settled that the ability of an individual to make choices lies at the core of the human personality. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The Hon'ble Supreme Court in *K.S. Puttuswamy vs. Union of India* [Writ Petition (Civil) No. 494 of 2012, date of judgment: 24.08.2017], in a nine judge decision, emphatically upheld the fundamental right to privacy under Article 21 of the Constitution. It held that "*the autonomy of the individual is associated over matters, which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop.*" It is noted that gender identity lies at the core of this private sphere.

- v. It is well-established that non-recognition of the identity of transgender persons denies them equal protection of law, and violates the constitutional guarantee of equality under Article 14 of the Constitution.
- vi. It is also a settled principle of law that there exists a positive obligation on the State to ensure equal protection of laws by bringing in necessary social, economic and legislative changes so that transgender persons are not denied such protection.
- vii. The Hon'ble Supreme Court in *NALSA* held that gender identity is one of the most fundamental aspects of life, which refers to a person's intrinsic sense of being male, female or transgender person.
- viii. This Hon'ble Court in *Shivani Bhat vs. NCT of Delhi* [Writ Petition (Criminal) No. 2133 of 2015, date of judgment: 05.10.2015] held that *"every human being has certain inalienable rights. This is a doctrine that is firmly enshrined in our Constitution. Gender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom. These freedoms lie at the heart of personal autonomy and freedom of individuals. A transgender's sense or experience of gender is integral to their core personality and sense of being. Insofar as, I understand the law, everyone has a fundamental right to be recognized in their chosen gender."*

- ix. The non-recognition of transgender identity amounts to discrimination on the ground of 'sex', which is prohibited under Articles 15 and 16 of the Constitution.
- x. It is well-established that failure to recognise transgender identity also violates the fundamental right to gender expression, through dress, speech and mannerism, guaranteed under Article 19(1)(a) of the Constitution.
- xi. It is also well-settled that non-recognition of gender identity violates the fundamental rights to dignity, autonomy and self-determination guaranteed under Article 21 of the Constitution.
- xii. In *NALSA*, it was further held that non-recognition of transgender identity results in extreme discrimination against transgender persons in all spheres of society, especially in the field of employment, education, health care, etc. This is exactly what has happened with the Petitioner.
- xiii. In the instant case, the Petitioner enrolled as a male sailor in the Indian Navy in July, 2010, when she was only 18 years of age. It was during the next few years in service that she, on account of inherent feelings in her, started identifying as a woman, and wanted to appear and present as a woman, but she was repeatedly instructed to follow the service norms meant for male sailors. No policy or regulation existed to address her concerns, or to recognise her transgender

identity. Further, the Petitioner was subjected to repeated rounds of "counselling", which was solely on the basis that she could present herself as a man, which is entirely discriminatory.

- xiv. The Respondent Nos. 1-5 are bound by the declaration of the Hon'ble Supreme Court in *NALSA*, which granted legal recognition to transgender persons. There existed an obligation on them to recognise transgender identity in the Navy Act and Regulations, and their failure to do so has violated the fundamental rights of the Petitioner under Articles 14, 15, 19(1)(a) and 21 of the Constitution of India.
- xv. Thus, Section 9 of the Navy Act along with Regulations 261, 268, 269, 278, 279 and all others, to the extent they fail to recognise transgender identity, is inconsistent with Articles 14, 15, 16, 19 and 21 of the Constitution and ought to be so declared and/or struck down.

B. Because discrimination on the ground of gender identity amounts to discrimination on the ground of 'sex' under Articles 15 and 16 of the Constitution

- i. It is well-settled that Articles 15 and 16 of the Constitution prohibit all forms of gender bias and gender-based discrimination. It is further well-established that discrimination on the ground of 'sex' under Articles 15 and 16 includes discrimination on the ground of gender identity.

- ii. In *NALSA*, the Hon'ble Supreme Court explicitly held that the expression "sex" used in Articles 15 and 16 is not just limited to biological sex of male and female, but intended to include people who consider themselves to be neither male nor female. In effect, no transgender person can be discriminated against by the State on the basis of gender identity, particularly in the area of public employment, as in the instant case.

- iii. This Hon'ble Court has repeatedly frowned upon gender discrimination perpetrated by the Respondent Nos. 1 and 2, with regard to grant of permanent commission to women naval officers, and upheld the constitutional guarantee of fairness and equality before law, when it comes to the Armed Forces (*Babita Punia vs. The Secretary & Anr.*, Writ Petition (Civil) No. 1597 of 2003, date of order: 12.03.2010 and *Annie Nagaraja & Ors. vs. Union of India*, Writ Petition (Civil) No. 7336/2010, date of order: 04.09.2015). The same principle of gender non-discrimination is applicable in the present case.

- iv. The Petitioner was issued show cause notice for SNLR dated 19.04.2017, and finally discharged on 04.10.2017 on account that she appeared and presented as a woman while on duty, by having long hair, wearing nail polish, and with trimmed eyebrows. The Petitioner has, in fact, only been discharged from service, on account of her presenting herself as a female person due to her transgender identity, and her transition

from male to female. This is pure and simple discrimination on the ground of gender identity.

- v. Discharging the Petitioner from naval service only on account of her transgender identity constitutes discrimination on the ground of 'sex', which is prohibited under Articles 15 and 16 of the Constitution.

C. Because compelling a transgender woman to appear in a male identity is against her inherent personality, and violates her fundamental freedom of gender expression guaranteed under Article 19 of the Constitution

- i. It is a settled principle of law that Article 19(1)(a) of the Constitution includes the freedom to express one's chosen gender identity, through varied ways and means by way of expression, speech, mannerism, clothing, etc. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.
- ii. In *NALSA*, the Hon'ble Supreme Court categorically held that *"gender identity lies at the core of one's personal identity, gender expression and presentation, and is protected under Article 19(1)(a) of the Constitution. State cannot prohibit, restrict or interfere with a transgender person's expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or*

otherwise fail to digest the innate character and identity of such persons. We therefore hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution, and the State is bound to protect and recognise those rights.” [para 72]

- iii. The Petitioner, being a transgender woman, has a fundamental right to express her gender identity, through her dress, speech and mannerism. The Respondents cannot prevent her expressing her inherent personality. Section 19 of the Navy Act, which provides for restrictions on the fundamental freedoms, is limited to restrictions on the freedom of speech, but does not apply to the freedom of expression, inclusive of gender expression.
- iv. Be that as it may, the service regulations of the Indian Navy are gender specific and gender congruent, i.e., male persons are expected to comply with service norms meant for males, and female persons are expected to comply with service norms meant for females. A transgender woman cannot be expected to follow service norms meant for males. Thus, even per the Respondents’ own practices, the Petitioner has been treated in an arbitrary manner.
- v. In the instant case, the Petitioner was issued show cause notice for SNLR dated 19.04.2017, and finally discharged on 04.10.2017 on account that she appeared and presented as a

woman while on duty, by having long hair, wearing nail polish, and with trimmed eyebrows. In effect, the Petitioner is being penalized for expressing her inherent personality of a transgender woman, which is violative of Article 19(1)(a) of the Constitution.

D. Because the denial of the Petitioner's transgender identity and to diagnose it as a medical disorder is violative of the fundamental right to autonomy, privacy, dignity and health guaranteed under Article 21 of the Constitution

- i. It is well-settled that dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy ensures the fulfilment of dignity and is a core value, which the protection of life and liberty is intended to achieve.
- ii. The Hon'ble Supreme Court in *K.S. Puttuswamy* (supra), while reaffirming *NALSA*, held that "*privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity.*"

- iii. The Hon'ble Supreme Court in *NALSA* categorically held that *"the recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of the right to dignity and freedom guaranteed under our Constitution."*
- iv. It is further well-settled that Article 21 protects one's right of self-determination of the gender to which a person belongs. Gender identity is integral to the dignity of an individual and is at the core of 'personal autonomy' and 'self-determination'. In *NALSA*, the Apex Court held that *"self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution."* [para 75]
- v. Thus, it is submitted that gender identity lies at the heart of personhood and personal self of the individual, and one cannot be detained against one's will in complete violation of privacy, dignity, autonomy and self-determination of the person.
- vi. In the present case, it is on record that the Petitioner informed the Navy Authorities in February, 2015, after the issuance of the first show cause notice for SNLR dated 18.02.2015 that she was suffering from gender dysphoria. The Petitioner, owing to her lack of awareness, may have termed it as a medical condition, but it was incumbent upon the Navy

authorities, especially the medical personnel, to assure her that being a transgender person is not a medical condition. The Petitioner was clearly in distress, owing to the gender incongruity, and the Navy authorities should have alleviated that distress by having gender affirming counseling and intervention. Instead, the Petitioner was counseled at INHS Kalyani in 2015, and when she informed the doctor there, he, while understanding her concern, could not do anything, being in active service.

vii. The Respondents have acted with complete apathy, and, in fact, pathologised the Petitioner's condition by repeatedly diagnosing her with psychiatric disorders, as is evident from the records. To do so amounted to gross medical negligence. Not once did they acknowledge her gender identity, let alone recognizing the same.

viii. The repeated counseling that the Petitioner ought to live in accordance with the service norms is a gross violation of her rights, in as much as the counseling had the effect of denying her identity and were only applicable to men.

ix. It is well-established that non-recognition of gender identity of a transgender person violates her fundamental rights to dignity and personal autonomy under Article 21 of the Constitution. After *NALSA*, it was the bounden obligation of the Respondents to align their laws and policies with the legal

declaration of the Hon'ble Supreme Court, as well as its directions.

- x. Besides failing to comply with *NALSA's* directions, the Respondents did not do anything for more than 2 years when the Petitioner informed them that she was suffering from gender dysphoria. After the Petitioner was forced to undergo SRS in a private clinic in Delhi in October, 2016, the Respondent Nos. 1-5 detained her in a psychiatric ward for 5 months for no reason, whatsoever.
- xi. In effect, the Respondent Nos. 1-5 did not recognise her transgender identity for a long time, and then punished her for undergoing SRS to align her body with her gender identity by detaining her in a psychiatric ward for 5 months, and then finally discharged her on the exact same ground on 04.10.2017. All these constitute a violation of the fundamental rights to privacy, dignity, autonomy and self-determination guaranteed under Article 21 of the Constitution.
- xii. It is further submitted that detaining the Petitioner in a psychiatric ward on the ground of her gender identity was in complete violation of her fundamental right to health under Article 21. The Petitioner went through severe mental trauma and harassment, owing to her detention for no possible illness. The Respondents, instead of providing gender affirming medical services to the Petitioner as part of their obligation under Article 21, acted in complete disregard to the

Petitioner's physical and mental well-being, thereby violating her fundamental right to health.

- xiii. It is noted that the Navy failed to follow the current medical practices and protocol regarding gender dysphoria, and was following outdated practices with regard to transgender identity. It ought to upgrade its medical categorization, and ought to follow the current medical best practices. Also, there is no provision for gender affirming medical services, including SRS, in Navy, which ought to be there.

E. Because detaining the Petitioner in a psychiatric ward for 5 months without any legal basis constitutes cruel, inhuman and degrading treatment, which is prohibited under Article 21 of the Constitution.

- i. It is well-settled that Article 21 prohibits cruel, inhuman and degrading treatment of individuals by the State. It is an affront to the fundamental principles of dignity, and basic humanity of persons. The State must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency.
- ii. It is further well-established that notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.

- iii. The Hon'ble Supreme Court in *NALSA* also reaffirmed the Principle 18 of the Yogyakarta Principles (Protection from Medical Abuses), which provided that "*no person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity.*" This is exactly what has happened in the present case.
- iv. It is on record in the instant case that the Petitioner was kept at INHS Kalyani for 6 months from 7th November, 2016 to 12th April, 2017, and kept in a psychiatric ward for 5 months, only due to the fact that she had undergone SRS and the Navy Authorities did not know how to deal with the situation. She was kept under constant watch, and was not allowed to meet anyone or move out, on her own. She was followed by three escorts wherever she went.
- v. It is evident from records that the Petitioner was admitted at INHS Kalyani for wound management, which was done quite quickly, but she was kept detained there for 6 whole months solely on the basis that she had undergone SRS.
- vi. In fact, the psychologist's report dated 09.12.2016, i.e., Annexure 8, clearly shows that the Petitioner was clearly in her cognitive senses and there was nothing wrong with her mental health, which required detention in a psychiatric ward. Despite that report, she was kept in the psychiatric ward for four more months, only for the reason that she had

transitioned from male to female. Medical evidence on record explicitly suggests that the Petitioner's physical and mental health was under full control, and did not require any detention for anytime, let alone for 6 months. It was the detention that caused severe distress to the Petitioner, along with the ill-treatment at the hands of the medical staff (male staff) who treated her as a 'freak'. The humiliation and degradation that the Petitioner felt during those six months is unimaginable, and had a huge impact on her mental health.

vii. Be that as it may, there is no provision in the Navy Act and Regulations that allow detention in a psychiatric ward, on account of gender dysphoria.

viii. Thus, the Petitioner's detention in a psychiatric ward for 5 months, only because she had undergone SRS, constitutes cruel, inhuman and degrading treatment prohibited under Article 21 as well as violates the fundamental right to health, privacy and dignity under Article 21. It was also done without authority in law, and was illegal, and unlawful and in violation of Articles 19(1)(a), 21 and 22 of the Constitution. The Respondents ought to be directed to pay compensation and damages to the Petitioner for causing her such mental trauma and humiliation.

F. Section 9, Navy Act, 1957 and the corresponding regulations contemplating naval officers and sailors

only in the binary of male and female have become unreasonable due to passage of time

- i. It is well-established that in assessing constitutional validity, the Courts may take into consideration subsequent events and circumstances, which were non-existent at the time that the law was enacted. The law, although may be constitutional, when enacted but with passage of time, the same may be held to be unconstitutional, in view of the changed conditions.

- ii. It is submitted that the Navy Act, 1957 did not envisage either the concept of transgender identity, or was cognizant of the rights of transgender persons. Even women got entry into Navy only around two decades ago, and are still fighting for entry in all spheres of naval service. But in 2017, the Navy cannot hold on to outdated norms and values, and not act in accordance with constitutional values of dignity, equality and non-discrimination towards all, including transgender persons.

- iii. It is well-settled that as society evolves, so must the legislations. The Constitution must adapt flexibly to meet the challenges in a rapidly growing society. Above all, constitutional interpretation is but a process in achieving justice, liberty and dignity to every citizen. Laws, which were enacted keeping the male/female binary in mind, have to be amended/struck down, in order to include transgender persons.

- iv. After *NALSA*, transgender persons have been recruited as police inspectors, school principals, Lok Adalat judges, etc and more and more transgender persons are joining the workforce everyday. The Navy establishment cannot exclude an entire community of the Indian citizens, merely on the ground of their gender identity. The only assessment should be whether they are otherwise qualified and fit to do the job at hand.

- v. In the instant case, there is nothing on record to show that the Petitioner was unable to do her job as a sailor or was not fit enough. The only reason the Petitioner was discharged was because the Respondent Nos. 1-5 had no policy or regulation dealing with transgender persons or issues.

- vi. It is further submitted that the Indian Navy is based on the Royal Navy of United Kingdom, and most of the laws and rules/regulations can trace their origins to the UK Navy law. Now, the Royal Navy of UK has included transgender persons in its midst, and there is a categorical prohibition against discrimination on the ground of gender identity, as part of the general anti-discrimination law. It is emphatic in its assertion that *"we will ensure each individual is treated fairly, with dignity and respect and that the diversity of our workforce increases operational effectiveness."*

- vii. In other countries too like Canada, Australia, New Zealand, and Israel, amongst others, transgender persons can openly serve in the armed forces, and discrimination on the ground of gender identity is totally prohibited. Thus, other countries have found a way to integrate transgender individuals into the military, and there is no reason why India cannot do the same.
- viii. This Hon'ble Court's decisions in *Babita Punia* (supra) and *Annie Nagaraja* (supra) have shown that gender discriminatory service policies cannot be tolerated in a constitutional democracy like ours vis-à-vis women, and the same zeal is required in case of transgender persons.
- ix. It is thus clear that the exclusion of transgender persons from the Indian Navy is unreasonable, owing to passage of time, change of policy in the country of origin like United Kingdom, etc, and ought to be struck down.

G. Because discharging a sailor only on the ground of her gender identity is arbitrary, illegal and discriminatory, thereby violating Article 14, 15, 16, 19(1)(a) and 21 of the Constitution, and the discharge order dated 04.10.2017 ought to be quashed

- i. It is well-settled that discrimination on the ground of gender identity impairs equality before law, and equal protection of law and violates Article 14. The Hon'ble Supreme Court in *NALSA* categorically held that "*discrimination on the basis of gender identity includes any discrimination, exclusion,*

restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution”.

- ii. Following *NALSA*, the Hon’ble Madras High Court in *K. Prithika Yashini vs. Chairman, Tamil Nadu Uniformed Services Recruitment Board* (2015)8MLJ734 upheld the right of a transgender woman to compete in women’s category in the recruitment of Sub-Inspectors in Tamil Nadu Police.
- iii. This Hon’ble Court in *Faizan Siddiqui* (supra) deemed the SSB’s action in rejecting an inter-sex person’s candidature as “*violation of the Petitioner’s right to fair procedure as prescript by their regulations and guidelines as well as judicial precedent for evaluation and consideration of a candidature when she has been deprived of service for which she was otherwise qualified.*”
- iv. This Hon’ble Court in *Shivani Bhat* (supra) held that *there is, thus, no gainsaying the fact that transgenders enjoy basic human rights including protection from violence and discrimination. They have the right to dignity and self-determination.*
- v. There is no doubt that at the time of recruitment, the Petitioner was qualified for the job and continuous to be so. She was fully fit to perform the services of a sailor, that she was appointed to do, and she continued to be fit to perform

the job of a sailor today, even after her transition. The Petitioner has, in fact, only been discharged from service, on account of her presenting herself as a female person due to her transgender identity, and her transition from male to female, as is evident from Annexure P-25. This is discrimination on the ground of gender identity, which is unlawful and violative of Articles 14, 15, 16, 19(1)(a) and 21 of the Constitution. The Petitioner cannot be terminated from her service, merely because it is a 'rarest of rare' case or the Indian Navy has no provision for transgender persons. Articles 14, 14 15, 16, 19(1)(a) and 21 raises a reasonable or legitimate expectation in every citizen to be treated fairly in its interaction with the State and its instrumentalities.

- vi. It is further submitted that owing to lack of any policy or regulations for transgender persons, the Respondent Nos. 1-5 have exercised uncontrolled and uncanalised discretion by discharging the Petitioner without any basis, which is thoroughly arbitrary, and therefore in violation of Articles 14, and 21 of the Constitution.
- vii. A person, who is otherwise fit at the time of recruitment, cannot lose their fitness on account of their gender identity. To allow such a presumption to hold the field would place an impermissible burden on transgender persons and would be entirely arbitrary and discriminatory, and thus in violation of

the rights of a transgender person under Articles 14, 15 and 16 of the Constitution.

- viii. In any event, in actual fact the Petitioner is fully fit to perform the duties assigned to and/or required for her to perform.
- ix. Thus, the impugned discharge order dated 04.10.2017 issued to the Petitioner for SLNR on the ground of presenting herself as a woman in terms of appearance, which is only on the basis that she has transitioned from male to female is illegal, arbitrary, and constitutes discrimination, thereby violating the mandate of Articles 14, 15, 16, 19(1)(a) and 21 of the Constitution, and ought to be set aside.

H. Because the discharge order dated 04.10.2017 is illegal and arbitrary on account of being unreasoned and suffering from non-application of mind and ought to be quashed

- i. It is well-settled that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, since it would be subject to the appellate jurisdiction. It excludes the chances of arbitrariness, and ensures a degree of fairness in the process of decision-making.
- ii. In the present case, the discharge order dated 04.10.2017 does not state even one reason for the said decision, except that the Competent Authority has given approval for

discharge, vide CABS FAX ADM/0101/224845-N/DIS dated 03 OCT 17, which was not made available to the Petitioner.

iii. Section 17(4) of the Navy Act, 1957 provides that every sailor who is discharged shall be given a certificate mentioning the authority terminating her service, cause of such termination, and full period of service. It is submitted that the Petitioner has not been given any such certificate and there has been a complete violation of Section 17(4)(b) of the Navy Act.

iv. Assuming without admitting that the discharge order is based on the charges levelled in the show cause notice dated 04.10.2017, it is submitted that the discharge order ought to be quashed with immediate effect, since it was based on an otherwise illegal show cause notice. The show cause notice dated 19.04.2017 cited all past incidents of absent without leave, which were already dealt with, and punished each time. More importantly, all these incidents were part of the earlier show cause notice dated 18.02.2015, to which the Petitioner had given a reply informing the authorities of her gender dysphoria, and the Respondents had chosen not to act on the said show cause notice. The Respondents cannot possibly bring up the same cases two years later in a fresh show cause notice.

v. It is clear from the records that there was a divergence of opinion amongst the Navy medical personnel about recommending invalidment of the Petitioner on the ground of

gender dysphoria, and no consensus emerged. Since no medical reason could be found for discharging the Petitioner for SLNR, the Respondent Nos. 1-5 sought to rehash the allegations made in the show cause notice dated 18.02.2015 in the fresh show cause notice, which is completely arbitrary and impermissible in law.

vi. Be that as it may, Regulation 279(1)(b) is not meant to cover gender identity, and therefore cannot be used against the Petitioner for her discharge. Regulation 279(b) does not envisage any medical ground for discharge, but contemplates disciplinary and conduct issues, which is absent in the Petitioner's case. All the instances cited in the show cause notice dated 19.04.2017 were stale and dated and had been dealt with and addressed before in 2015. No new instance of conduct arose, which warranted a show cause for SNLR, except the Petitioner's act of undergoing SRS in a civil hospital. The Petitioner had no option, but to go to civil hospital, since the Navy authorities refused to assist in dealing with gender dysphoria. The Petitioner cannot be penalized for acting in the interest of her health and well-being, both physical and mental. In effect, the discharge order dated 04.10.2017 is outside the scope of Regulation 279, and ought to be set aside.

vii. Thus, the discharge order dated 04.10.2017 ought to be quashed, for not being a reasoned order, thereby being

arbitrary and thereby violating the principles of natural justice. It suffers from non-application of mind, since it fails to note that there existed divergent medical opinion on the Petitioner's invalidment, and thus violates the constitutional guarantee of equal protection of laws, and a just, fair, and reasonable procedure guaranteed under Articles 14 and 21 of the Constitution.

I. Because Article 33 of the Constitution is of limited application in the present case, as it does not allow for the entire of Part III of the Constitution be made inapplicable to a section of persons.

- i. Article 33 of the Constitution confers power on the Parliament to determine to what extent any of the rights guaranteed under Part III shall, in their application to the members of the Armed Forces, be restricted or abrogated so as to ensure the proper discharge of duties and maintenance of discipline amongst them.
- ii. It is submitted that Article 33 only seeks to restrict the fundamental rights of the armed forces personnel, but it does not seek to obliterate the entire Part III of the Constitution, with respect to armed forces. But the Respondent Nos 1-5's action in not recognizing transgender identity, and to discharge a transgender person from active service, only on the basis of gender identity, does precisely that. It makes the fundamental rights guaranteed under Part III of the

Constitution meaningless for transgender persons wanting to serve in the Indian Navy, or wanting to continue in service.

iii. It is well-settled that a person by joining Armed Forces does not cease to be a citizen of India so as to wholly deprive them of their rights under the Constitution. Article 33 does not denude the armed forces personnel of their fundamental rights; it merely restricts them, and that too by law. To construe otherwise would create a parallel world of armed forces where the rule of law does not exist. One cannot create a class of citizens not entitled to the fundamental rights under Part III or to deny a whole community of transgender persons opportunity to serve in the armed forces.

iv. The Constitution makers were very clear that no more restrictions should be placed than are absolutely necessary for ensuring proper discharge of duties and the maintenance of discipline amongst the armed force personnel under Article 33. Further, these restrictions have to be enacted by a law. In the present case, the Navy Act and the Regulations do not mention a word about transgender persons. There is no restriction enacted by the Parliament excluding transgender persons in the Navy Act. The Regulations framed by the Respondent No. 1, by implication, excludes transgender persons, which is impermissible under Article 33 of the Constitution.

- v. It may further be pointed out that the only restrictions permissible in light of Article 33 are for the proper discharge of duties and the maintenance of discipline. The non-recognition of transgender persons is not in furtherance of either of these two objections. Nor is forcing a person to present in the gender other than the gender they identify in. Thus, Article 33 has no application in the present case.
- vi. Be that as it may, it is well-established that fundamental rights are primordial and natural rights, which are inalienable and inviolable. The fundamental rights and freedoms guaranteed in Part III of the Constitution form the core of the Constitution, i.e., basic structure of the Constitution, and cannot be abrogated or destroyed.
- vii. Further, it may be pointed out that only Section 19 of the Navy Act relates to restrictions of the fundamental rights guaranteed under Chapter III of the Constitution, in as much as it restricts the freedom of speech and freedom to form associations. Thus, it is Section 19 of the Navy Act, which is in furtherance of Article 33 of the Constitution.
- viii. Article 33 has no application to Section 9 of the Act, as Section 9 is not a restriction, which pertains either to the proper discharge of duties and maintenance of discipline amongst members of the armed forces, but applied at an *anterior* stage, that is to persons seeking appointment or enrollment in

the Navy. Section 9 of the Navy Act thus, has no protection of Article 33 of the Constitution.

J. Because the Petitioner was wrongly and illegally categorised in a lower medical category on account of her transgender identity which is illegal, arbitrary and ought to be quashed

- i. The Petitioner was purportedly diagnosed as a case of 'Adjustment Disorder', and put in low medical category in April 2013, when she disclosed to the Navy medical personnel that she was a transgender person.
- ii. She was further wrongly diagnosed as having '*mal-adjustment in service*', and arbitrarily placed in S2A2 (S) [Perm] without medication, i.e., under permanent low medical category. This was, despite the fact that she was functionally fully fit to do the job that she was recruited for.
- iii. In effect, solely on account of her transgender identity, the Petitioner was placed in low medical category under the garb of being diagnosed with 'adjustment disorder' and 'mal-adjustment' in service. In doing so, the Respondent Naval Authorities have treated the Petitioner's transgender identity as an illness and disability, without any rational basis, scientific, medical or otherwise. The categorisation of the Petitioner in a low medical category on account of her transgender identity is thus illegal and ought to be quashed.

K. Because the Petitioner is entitled to compensation for the indignity and inhuman treatment suffered by her at the hands of the Respondents

- iv. It is well-settled that protection of human dignity lies at the heart of the Constitution. The Hon'ble Supreme Court in *Shabnam vs. Union of India* [(2015) 6 SCC 702 held that *"This right to human dignity has many elements. First and foremost, human dignity is the dignity of each human being 'as a human being'. Another element, which needs to be highlighted, in the context of the present case, is that human dignity is infringed if a person's life, physical or mental welfare is alarmed. It is in this sense torture, humiliation, forced labour, etc. all infringe on human dignity."*
- v. It is further well-settled that the State is obligated to pay compensation if its actions contravene the human rights and fundamental freedoms of a citizen, the protection of which is guaranteed in the Constitution.
- vi. The Petitioner has suffered some harrowing experiences at the Navy, which have left her scarred for life. In one of the punishments meted out to the Petitioner for being absent without leave in January, 2014, the Petitioner was detained in a cell for two months, and made to wear only her undergarments for the entire duration. She was so traumatized that she had frequent anxiety attacks after that.

In the name of military discipline, horrific violations of dignity and bodily integrity goes on in the Navy, as has happened with the Petitioner.

vii. In the same vein, as stated before, her detention in a psychiatric ward for 5 months for no medical reason is shocking beyond belief. She was subjected to repeated medical tests and assessments, including psychiatric assessment, for no possible medical reason, except she had undergone SRS. They further detained her for 6 months because they had no policy/regulation to deal with transgender persons, and they did not know what to do! This is clearly violating all constitutional and legal norms, and the Respondents should be made strictly liable for their complete illegal and arbitrary actions.

64. The Petitioner has no alternative efficacious remedy but to approach this Hon'ble Court under Article 226 of the Constitution of India for the reliefs prayed for herein. In light of the fact that the Petitioner has challenged the constitutional validity of Section 9 of the Navy Act, she had no other remedy but to approach this Hon'ble Court.

65. That no such similar Petition has been filed earlier before this Hon'ble Court or before any other Court, including the Supreme Court of India.

66. That this Hon'ble Court has the jurisdiction to entertain this petition. The headquarters of the Respondents are situated within the jurisdiction of this Hon'ble Court. Further, the cause of action has arisen in the jurisdiction of this Hon'ble Court. The Petitioner was discharged vide CABS FAX ADM/0101/224845N/DIS DATED 03.10.2017, informed to her via discharge order 04.10.2017. The final order dated 03.10.2017 was issued in Delhi by the Respondent Nos. 1 and 2. The Petitioner had undergone SRS at a private clinic in Delhi, which became the reason for her discharge. Thus, a substantial part of the cause of action has arisen within the jurisdiction of this Hon'ble Court. This Hon'ble Court is the most appropriate forum to hear the present matter. The Petitioner has been discharged and has no reason to remain in Vizag, where she was serving. She further requires to be in Delhi for substantial periods of time, as she will undergo further steps in the SRS procedure. Being situated in New Delhi, and it would be convenient to the Respondents as well, to defend the present petition in this Hon'ble Court.

67. That the Petitioner craves leave to alter, amend or add to this petition.

68. That the Petitioner seeks leave to rely on documents, a list of which, along with true copies, has been annexed to this petition.

69. The Petitioner has paid the requisite court fees.

70. That this Petition is made *bona fide* and in the interest of justice.

PRAYERS

In light of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court be pleased to call for records of the present case, and after going through the same

- a. For a declaration that Section 9 of the Navy Act, 1957 and Regulations 261, 268, 269, 278, 279 of Navy Regulations (Part III), and all other regulations of a like nature, are void and unconstitutional to the extent that they do not recognise the identity of transgender persons;
- b. For an appropriate writ/order/direction quashing and setting aside the discharge order CABS FAX ADM/0101/224845-N/DIS dated 03 OCT 17, issued against the Petitioner, as communicated by the order dated 04.10.2017, **Annexure 22** herein;
- c. For an appropriate writ/order/direction reinstating the Petitioner in the same rank and pay, with full back wages and consequent benefits;
- d. For an appropriate writ/order/direction to the Respondent Nos. 1 to 5 quashing the decision of the placement of the Petitioner in a low medical category;
- e. For an appropriate writ/order/direction to the Respondent Nos. 1-5 to pay compensation and damages to the Petitioner

for detaining her in a psychiatric ward for 5 months only on the ground of her gender identity;

- f. For an appropriate writ, direction or order to direct the Respondent Nos. 1-5 to produce the entire Service Record of the Petitioner and to serve a copy to the Petitioner;
- g. For an appropriate writ, direction or order to direct an enquiry or investigation into the wrongful and *malafide* conduct of the officials of the Respondent Nos. 1-5 in detaining the Petitioner in a psychiatric ward for 5 months and to ascertain and fix the responsibility and liability and punish the wrongdoers found guilty;
- h. For an appropriate writ, direction or order to direct the Respondents to incorporate an appropriate provision for gender affirming medical services for transgender persons as part of their medical facilities provided to armed forces;
- i. For an appropriate writ, direction or order to direct the Respondents to frame a policy for the recruitment, enrolment and conditions of service of transgender persons, after due consultation with the transgender community;

j. For costs of this Petition

k. Pass such further and other orders as the Court may deem fit in the interest of justice and in the facts and circumstances of the present case.

AND FOR THIS KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

PETITIONER

THROUGH

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Place: New Delhi

Date: 20.10.2017

VERIFICATION:

I, Manish Kumar Giri @ Sabi Giri, the Petitioner, do hereby verify that the facts stated in paragraph No. 1 to of the Writ Petition are true and correct to my knowledge. The legal submissions set out in paragraph Nos. to of the Writ Petition

are true to the information received by me and believed to be correct. Last paragraph is by way of prayer before this Hon'ble Court.

Verified at Hyderabad, Telangana on this 20th day of October, 2017.

PETITIONER

