
(2015) 09 DEL CK 0132

In the Delhi High Court

Case No : Writ Petition (C) 7336/2010, CM Nos. 9348/2012, 6859/2014, W.P. (C) 7056/2012, CM Nos. 18274-75 /2012, W.P. (C) 5714/2012, CM No. 11706/2012, W.P. (C) 7419/2012, CM No. 18980/2012, W.P. (C) 6818/2013, CM No. 14777 /2013 and W.P. (C) 7727/2014 & CM No.

Annie Nagaraja and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16
Navy Act, 1957 — Section 9(2)

Citation : (2015) 4 SCT 642

Hon'ble Judges : Kailash Gambhir, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Rekha Palli, Senior Advocate, Poonam Singh, Ankita Patnaik, Nikhil Palli, Shruti Munjal and Garima Sachdeva, for the Appellant; Sanjay Jain, ASG, Ankur Chhibber and Pallavi Shali, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J—By this common order, we propose to decide a batch of six Writ Petitions filed by seventeen women officers who had joined the Indian Navy as Short Service Commissioned Officers in different branches which includes Education, Logistics and ATC. At the time of their commissioning, these officers had undergone four months training at the Naval Academy, Goa alongwith their male counter parts, some of whom were commissioned as SSC Officers while others were as Permanent Commissioned Officers.

2. It would be appropriate to reproduce below, Petition wise details of the said seventeen Petitioners indicating their category, date of commission, date of completion of 14 years of service and their present status. The same is as under:

3. The grievance raised by these seventeen Petitioners in these Writ Petitions is

that after having completed 14 years of service as SSC Officers they were not granted Permanent Commission and instead were released from service unlike in the case of Women SSC Officers of Indian Army and Air Force who have been given Permanent Commission in the same very branches where they were granted Short Service Commission on the implementation of the directions given by the Division Bench of this Court in a batch of Writ Petitions in the case of Babita Punia & Ors. decided on 12th March, 2010. It is the case of the Petitioners that while Air Force has fully implemented the said judgment of the Division Bench, the Indian Army has challenged the same before the Hon''ble Supreme Court but no stay has been granted by the Hon''ble Supreme Court.

4. Another grievance of these seventeen Petitioners is predicated on the ground that during the pendency of the said batch of Writ Petitions before the Division Bench of this Court in the case of Babita Punia & Ors. case (supra), the Government of India, Ministry of Defence by a Policy decision vide their Order No. 12(1) /2004- Defendant (AG). PT.II Govt. of India, Ministry of Defence dated 26th September, 2008 for the first time took a decision to grant Permanent Commission to SSC women Officers in all the three Forces but this offer was restricted to certain categories and was also to operate prospectively to the benefit of future batches commencing from January, 2009 and this decision of the respondents caused a serious heart burn amongst these seventeen Petitioners because of two reasons; firstly, the same being prospective in nature giving no benefit to these seventeen Petitioners who had already completed 14 years of service and secondly, permanent commission would be offered to SSC women officers in education branch, law and naval architecture cadres of the Navy. It may be mentioned here that in terms of the said policy decision of the respondents, the offer of Permanent Commission in so far as women officers of Short Service Commission in Navy is concerned, the same restricted to branches of Education, Law and Naval Architect. Representing the case of these seventeen Petitioners, Mrs. Rekha Palli, the learned Senior Advocate and Ms. Meenakshi Lekhi, Advocate vehemently contended that women officers of all the three Forces have always been treated at par and this as per the learned counsel is manifest from the fact that earlier there was a bar for induction of women in all the three Forces and lately the sanction was granted by the Government for the grant of Permanent Commission to Short Service Commissioned Officers of all the three Forces. Placing reliance on the judgment of this Court in the case Babita Punia & Ors. (supra), the learned counsel referred to the observations of the Division Bench wherein the Division Bench took a view that it was reasonable for the women officers of the Army to expect that they would be treated at par with the women officers in the Air Force and legitimately expect a fair treatment at the hands of the Government.

5. Placing reliance on another judgment of this Court reported in Lt. Col SPS Rekhi v. UOI and Ors., 1999 (2002) DLT 238, the learned counsel submitted that in this case the Court also noticed that all the three Forces come under the same Ministry and thus there could not be any discrepancy in the three Forces which

were equal in all aspects and therefore, there can be no reason as to why the Government should deprive one of the Forces of the benefit being granted to the other Armed Forces. It is also the case of these seventeen Petitioners that at the time of joining the Indian Navy and thereafter at the time of being granted extension of tenure they had a legitimate expectation that the Government would frame a policy to offer Permanent Commission to all these officers of Short Service Commission on account of their successful completion of 14 years of service. As per the learned counsel this aspect of legitimate expectation has also been considered by the Division Bench in Babita Punia & Ors. case (supra) wherein it observed that women officers of the Army can be treated no differently from the Air Force women officers even though there is no specific policy decision in their case as they are at par with the women Air Force officers. In this regard the learned counsel submitted that women officers of the Navy also deserve the same treatment and fair play from the Government.

6. It is also the case of the petitioners that judgment of Division Bench dated 12th March, 2010 has been fully implemented in the case of women SSC officers of the Air Force in all the branches wherein women officers were granted SSC which includes ATC, administration, education etc, but in so far as women SSC officers of Army are concerned though an appeal has been filed by the Government before Hon''ble Supreme Court to challenge the said judgment of the Division Bench dated 12.3.2010 but the Hon''ble Supreme Court has not stayed the operation of the said judgment and consequently all women SSC officers of Indian Army are continuing to serve and have not been released from the service after 14 years. It is also the case of the petitioners that the respondents have granted permanent commission to one Lt. Cdr. J Mendez, who was a SSC officer in the law branch; nevertheless they are denying permanent commission to the women SSC officers in certain branches due to service exigencies. The petitioners also canvassed that the Respondents had tried to contend that grant of permanent commission to women in logistics branch would compel them to serve on board ships for which they do not have appropriate facilities but while taking this plea the respondents have deliberately not disclosed the fact that in February, 1999 a decision was taken that women of all branches / cadres may also be directed to serve on board ships, during training period and subsequent employment and there cannot be any denial of the fact that many women officers like the petitioners had already served to the complete satisfaction of their superiors on various ships under extreme conditions where even male officers were finding it difficult. Counsel for the petitioners thus submitted that there can be no justification on the part of the respondents to contend that though women officers can serve for 14 years in different branches including education, logistics and ATC at par with their male counterparts but still they cannot be granted permanent commission in the same very branches.

7. Ms. Rekha Palli further submitted that some of the petitioners in W.P.(C) 7336/2010 had been released from service after completion of 14 years of service before filing of the present Writ Petitions but the Hon''ble Supreme Court

has in the case of a number of similarly situated women officers of the Indian Air Force, who had also served for the maximum number of permissible years as SSC officers, directed their reinstatement in the cases of Cdr. A.U. Tayyaba & Ors. v. Union of India & Ors, and Priyamvada Mardikar & Ors. v. Union of India & Ors. being Civil Appeal Nos. 79-82/2012 and W.P (C) No. 8630/2009 respectively. Counsel thus submitted that the petitioners are identically placed as women SSC officers of Indian Air Force and Army and, therefore, they are entitled to be granted permanent commission in the Navy as they have also served for 14 years or more with utmost dedication and their performance has been highly appreciated.

8. Counsel for the petitioners also submitted that in a catena of judgments the Hon"ble Supreme Court has taken a view that equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. Counsel also submitted that instead of prohibiting women employment in the forces altogether, the State should focus in factoring in ways through which unequal consequences of sex differences can be eliminated. Counsel thus contended that action of the respondents to consider women officers only for the grant of SSC while granting permanent commission to similarly placed male officers shows a clear case of gender bias on the part of the respondents.

9. In answer to the preliminary objection raised by the respondents regarding jurisdiction of this Court in view of Section 3(O) of the Armed Force Tribunal Act, the counsel submitted that the present case relates to an issue of gender bias and violation of fundamental rights of women being commissioned in the Indian Navy which has already been considered by this Court in the judgment dated 12.3.2010 and, therefore, the preliminary objection raised by the respondents has no force.

10. Based on the above submissions counsel for the petitioners strongly urged that this Court may be pleased to allow these bunch of writ petitions with the directions to the respondents to grant permanent commission to all these SSC officers in the same branches wherein they had served as a Short Service Commission Officer. In support of their arguments counsel for the petitioners placed reliance on the following judgments:-

a) T.K. Rangarajan Vs. Government of Tamil Nadu and Others, AIR 2003 SC 3032 : (2003) 3 CTC 557 : (2003) 3 LLJ 275 : (2003) 6 SCALE 84 : (2003) 6 SCC 581 : (2003) SCC(L&S) 970 : (2003) 2 SCR 251 Supp : (2004) 1 SLJ 457 : (2004) 1 UJ 53 : (2003) AIRSCW 3807 : (2003) 5 Supreme 256 ,

b) M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, AIR 2007 SC 3153 : (2007) 10 JT 571 : (2007) 10 SCALE 602 : (2007) 10 SCC 88 : (2008) 1 SCC(L&S) 9 : (2007) 9 SCR 715 : (2007) AIRSCW 5712 : (2007) 6 Supreme 172 ,

c) Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another, (2007) 1 CTLJ 137 : (2007) 4 JT 70 : (2007) 3 SCALE 465 : (2007) 9 SCC 593 : (2007) 3 SCR 17 .

11. Representing the case of the Respondents, Mr. Sanjay Jain, Additional Solicitor General of India submitted that the petitioners have an efficacious remedy to approach the Armed Forces Tribunal for redressal of any grievance as per Section 3(O) of the Armed Force Tribunal Act, therefore, this Court has no jurisdiction to try and entertain the present petition. Counsel further submitted that neither do the petitioners have any legal right and nor do the respondents have any corresponding obligation to grant permanent commission to these petitioners who had consciously accepted Short Service Commission for a limited period of service. Counsel further argued that the petitioners cannot seek to enforce their assumed right based on the doctrine of legitimate expectation as this doctrine has certain identified and legally decided ingredients albeit regular, consistent, predictable and certain conduct, process or action by the decision making authority and none of which are existed or even pleaded by the petitioners in these writ petitions and, therefore, the petitioners cannot take any shelter under the said doctrine. Counsel also argued that the petitioners cannot be allowed to form the decision of Division Bench of this Court as the basis to file the present writ petitions.

12. That under the Navy Act, 1957 the mandate of the Statute was that no women shall be eligible for appointment unless the Government in its policy decision notifies department or branch including conditions of service in which they could be recruited and it is in the year 1991 the Government of India decided to lift the bar on appointment in Navy. Counsel further submitted that Government of India identified such departments and branches where women as SSC officers along with male officers could be appointed on experimental basis to see if women would be suitable and compete with men and these select branches as approved by the cabinet were education, logistics and law branches/cadres. Accordingly, invoking the powers under Section 9(2) of the Navy Act, 1957 a scheme for grant of direct entry Short Service Commission (SSC) in the Indian Navy for both men and women was granted for a period of 7 years, extendable to 10 years, which was subsequently extended upto 14 years based on the willingness of the officer and requirement of service. Counsel thus submitted that a Short Service Commission as it exists today, is essentially tenure based contractual appointment for a fixed initial term of 10 years with provision of extension of service to maximum to 14 years and at no stage during this period any of these petitioners were given assurance for grant of permanent commission. Counsel further argued that exhaustive terms and conditions of service for SSC officers (both men and women) have been promulgated and as per these terms there is complete ban on the deployment of these officers on board ships for the time being. Counsel further submitted that the terms and conditions further stated that as per Regulation 122 of Regulations Navy Part III (Statutory), these officers shall be placed on Emergency List for a period of 5

years after completion of the contractual period and in the teeth of these clear provisions there is no scope to offer permanent commission to any of these SSC officers. Counsel further argued that the respondents finally promulgated a policy for grant of permanent commission prospectively to SSC women officers in the Armed Forces vide Government of India letter dated 26.9.2008 and as per this policy permanent commission would be offered prospectively to SSC women officers in education branch, law and naval architecture cadres of the Navy. Counsel further submitted that detailed procedure guidelines were issued for grant of PC prospectively vide letter dated 3.12.2008 and in terms of the said policy the case of none of the petitioners fall within the ambit of policy because their date of commission is prior to the date of issue of said policy. In answer to the contention of petitioners with regard to the grant of permanent commission to Lt. Cdr. Mendez in the law cadre of executive branch counsel for the respondents submitted that considering the exigencies of service the competent authority has approved grant of PC to Lt. Cdr. Mendez who is otherwise from the law cadre of the executive branch and there was no gender discrimination in so far as his appointment was concerned. Counsel further argued that male officers have been inducted regularly as SSC officers in certain cadres and their terms and conditions of service have always been at variance with that of male PC officers. Counsel also submitted that male officers who were inducted as SSC officers in a few cadres under the 10+4 scheme were also released after the completion of their contractual period without granting them permanent commission as in the case of the women SSC officers. Counsel also pointed out that cadres in which only male SSC officers are inducted and not granted permanent commission are

- (a) SSC (Hydro)
- (b) SSC (X/General Service)
- (c) SSC (Pilot)
- (d) SSC (NAI)
- (e) SSC (Musician)

13. Mr. Jain further canvassed that the case of these SSC officers cannot be compared either with the SSC officers of Army or Air Force as in the Navy no distinction has been made between male and female SSC officers. Counsel also submitted that in the case of SSC officers of Air Force, the advertisement, itself mentions that on the completion of their initial period of 5 years the officers may opt for permanent commission or another SSC tenure of 6 years unlike there is no such stipulation made in the advertisement to recruit SSC officers in the Navy. Counsel also pointed that in the case of Army SSC officers also there was a gender discrimination while in the case of SSC officer of Navy no case of gender discrimination has been made out by the petitioners. Counsel also argued that it is a settled legal position that the Courts normally do not interfere in the policy decision taken by the Government unless a clear case of mala fide or

arbitrariness is made out. Based on these submissions counsel for the respondents strongly urged for outright dismissal of these writ petitions. In support of his arguments counsel placed reliance on the following judgments:-

a) Union of India and others Vs. S.L. Dutta and another, AIR 1991 SC 363 : (1991) 62 FLR 90 : (1990) 4 JT 741 : (1991) LabIC 290 : (1990) 2 SCALE 1051 : (1991) 1 SCC 505 : (1990) 3 SCR 173 Supp : (1991) 2 SLJ 246

b) Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, AIR 2008 SC 5 : (2007) 11 SCALE 257 : (2007) 8 SCC 100 : (2007) 2 SCC(L&S) 792 : (2007) 11 SCR 41 : (2008) 1 SLJ 407 : (2007) AIRSCW 5989 : (2007) 6 Supreme 410

c) Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, AIR 2009 SC 904 : (2008) 11 JT 520 : (2008) 13 SCALE 783 : (2009) 1 SCC 180

d) Punjab Communications Ltd. Vs. Union of India and Others, AIR 1999 SC 1801 : (1999) 3 JT 331 : (1999) 3 SCALE 149 : (1999) 4 SCC 727 : (1999) 2 SCR 1033 : (1999) AIRSCW 1394 : (1999) 4 Supreme 454

14. We have heard learned counsel for the parties at considerable length and given our anxious consideration to the arguments raised by the learned counsel for the parties.

15. This batch of writ petitions was preferred by the petitioners after a Division Bench of this Court gave a decision with regard to the Short Service Commissioned Officers of Indian Air Force and Army vide judgment dated 12th March, 2010. This batch of writ petitions was preferred by the writ petitioners in the month of October, 2010. The petitioners are right in stating that after the pronouncement of the judgment dated 12th March, 2010, the respondents ought to have themselves taken steps to reinstate and grant Permanent Commission (hereinafter referred to as "PC" for brevity) to all the Short Service Commissioned Officers (hereinafter referred to as "SSC Officers" for brevity) of Indian Navy but they failed to do so despite the fact that the Indian Air Force had already implemented the directions given by this Court in the said judgment.

16. It is, therefore, quite manifest that the genesis of laying a claim for the grant of permanent commission to these petitioners is the said judgment of the Division Bench dated 12th March, 2010 and some interim orders passed by the Hon"ble Supreme Court. It will, therefore, be necessary to reproduce the relevant paragraphs of the said judgment before we embark upon to deal with the controversy in the factual matrix of these writ petitions. The relevant paragraph of the said judgment is reproduced as under:-

"61. We are, thus, of the considered view that the following directions are required to be issued:

i. The claim of absorption in areas of operation not open for recruitment of

women officers cannot be sustained being a policy decision.

ii. The policy decision not to offer PC to Short Service Commissioned officers across the board for men and women being on parity and as part of manpower management exercises is a policy decision which is not required to be interfered with.

iii. The Short Service Commissioned women officers of the Air Force who had opted for PC and were not granted PC but granted extension of SSCs and of the Army are entitled to PC at par with male Short Service Commissioned officers with all consequential benefits. This benefit would be conferred to women officers recruited prior to change of policy as (ii) aforesaid. The Permanent Commission shall be offered to them after completion of five years. They would also be entitled to all consequential benefits such as promotion and other financial benefits. However, the aforesaid benefits are to be made available only to women officers in service or who have approached this Court by filing these petitions and have retired during the course of pendency of the petitions.

iv. It is made clear that those women officers who have not attained the age of retirement available for the Permanent Commissioned officers shall, however, be reinstated in service and shall be granted all consequential benefits including promotion, etc. except for the pay and allowance for the period they have not been in service.

v. The necessary steps including release of financial benefits shall be done by the authorities within two (2) months of passing of this order."

17. Another indisputable and a significant fact is that during the pendency of the said batch of writ petitions before the Division Bench, the respondents had introduced a policy dated 26th September, 2008 and as per this policy decision, the President of India had been pleased to accord sanction to offer permanent commission to Short Service Commissioned Women Officers to be inducted in few selected branches i.e. Judge Advocate General (JAG) Department and Army Education Corps. (AEC) of Army and their corresponding Branch/Cadre in Navy and Air Force, Accounts Branch of the Air Force and Naval Constructor of the Navy in addition to current provisions for grant of permanent commission to SSC (Men) Officers.

18. Taking note of the said policy decision introduced by the Government, the Division Bench observed that such a step taken by the Government, undoubtedly, was a progressive one. Having commented on the said decision, the Court further held that the matter needed to be further examined as to why women personnel who are still in service, could not get the benefit of change of policy as also the women officers who had approached this Court by filing petitions but retired during the pendency of those petitions.

19. The Division Bench in the said case also took a view that where male SSC Officers can be granted PC while performing the same task as are being

performed by the women SSC Officers then there is no reason as to why equally capable women officers cannot be granted permanent commission. The Bench further went on to observe that it is not a charity being sought by the women officers but enforcement of their Constitutional right. The Court also observed that the women officers of the Army can be treated no differently from the Women Officers of the Armed Forces even though there is no specific policy decision in their case as they are at par with the Women Armed Force Officers.

20. It further held that there is no reason why these persons who have knocked the door of the Court, should be deprived of their benefit and the benefit is merely conferred prospectively for the grant of permanent commission to women. The Court thus extended the benefit to all the serving officers and also the ones who had knocked the Court but during the period of consideration of the matter, retired from service.

21. The Court further observed that it could have been in the fitness of things if the respondents having taken the decision to offer permanent commission prospectively, should have favourably examined the policy itself and the plea of the petitioners who were in service or retired from service during the pendency of petitions, to grant them an equivalent benefit as in the matters of gender discrimination, a greater sensitivity is expected and required.

22. The Indian Navy Act was enacted in the year 1957. Women were not commissioned in the Navy till the issuance of notification dated 9th October, 1991 (published on 26th October, 1991) whereby for the first time, the power under the enabling provision under Section 9(2) of the Navy Act, was exercised and it was laid down by the respondent no.1 that women would also be eligible for appointment as officers in the Indian Navy confining to three branches namely Logistics, Law Branches/Cadres and Education Branch. Similar such notification was also issued by the other two Armed Forces i.e. the Indian Army and the Indian Air Force. In the said notification dated 9th October, 1991, the respondent no.1 notified that with regard to grant of permanent commission to SSC Officers, the policy will be promulgated in the year 1997.

23. It is a matter on record that no such policy was announced by the respondent no.1 till the said notification dated 26th September, 2008 was issued by the respondent no.1 during the pendency of the earlier batch of writ petitions. It is also an indisputable fact that these petitioners who had entered the Short Service Commission initially for a period of seven years, were given extension to complete the service of 14 years but took no legal step to claim their right for the grant of permanent commission. In the case of SSC Officers of the Air Force, the terms and conditions as were notified in the advertisement, clearly stipulated that the initial engagement period would be for five years from the date of commissioning with provision to opt for permanent commission or another tenure of six years. It also added that grant of permanent commission would depend on vacancy and suitability of officers. It is the said clause in the advertisement which was sought to be enforced by the SSC Officers of the Air Force. There was

no such direct assurance for grant of permanent commission with regard to the case of the Army women officers, extended by the Government and based on the doctrine of legitimate expectation the Division Bench took a view that Women Officers of the Army can be treated no differently from the Air Force Women Officers even though there is no specific policy decision in their case as they are at par with the Women Officers of the Air Force.

24. In the case of Women Short Service Commissioned Officers in the Navy, the policy guidelines of 20th December, 1991 stipulates that the policy in regard to the grant of permanent commission will be promulgated in 1997. No such policy was promulgated by the Government and it is only in the year 2008 by an order dated 26th September, 2008, that decision was taken by the Government to grant permanent commission to SSC Women Officers.

25. The grievance of the petitioners with regard to this new policy of 26th September, 2008 firstly is that the same has been made effective prospectively to Short Service Commissioned Women Officers and secondly, the policy has been confined to certain limited categories. Regulation 203 of Chapter IX of the Indian Navy Act, 1957 puts no restriction to the grant of permanent commission either gender wise or category wise

Regulation 203 of Chapter IX is reproduced hereunder:-

"CHAPTER IX GRANT OF PERMANENT COMMISSION TO SHORT SERVICE COMMISSION OFFICERS"

203. Grant of Permanent Commission - (1) subject to the availability of vacancies in the stabilized cadre of the Navy, Permanent Commission may be granted from time to time to Short Service Commission Officers of the rank of Sub-Lieutenant and above who are considered suitable and are recommended by the Chief of the Naval Staff.

(2) Officers granted Permanent Commission may be transferred with their existing rank and seniority. The retention of any acting rank held by an officer at the time of transfer to a Permanent Commission shall be governed by Regulation 202.

(3) Short Service Commission Officers selected for the grant of Permanent Commission in the Navy shall conform to the medical standard laid down by the Chief of the Naval Staff from time to time.

26. The Indian Air Force has already implemented the directions given by the Division Bench of this Court vide orders dated 12th March, 2010 in the case of women SSC officers of the Air Force in all the branches wherein women officers were granted SSC which includes ATC, administration, education etc.

27. On perusal of the annexure attached with the letter dated 2nd August, 2010, it is quite manifest that some of the petitioners who were in the logistics and some other branches not covered by the policy guidelines dated 26th September,

2008 but yet were granted permanent commission in compliance of the directions given by the Division Bench vide their judgment dated 12th March, 2010.

28. The Hon''ble Supreme Court in Civil Appeal Nos. 79-82/2012 has given the direction for reinstatement of even those SSC Women Officers who retired after having completed 14 years of their service as SSC officers. Similarly, this Court in the case of Priyamvada Madrikar & Ors. V. Union of India & Ors. in WP (C) No. 8630/2009 dated 1st December, 2014 has given the direction for the reinstatement of the petitioners on their respective posts subject to the final outcome of the SLP preferred by the Government of India challenging the decision of the Division Bench dated 12th March, 2010. The following directions were given by this Court in the order dated 1st December, 2014:

"1. The respondents shall reinstate these petitioners within a period of four weeks from today on their respective posts;

2. such reinstatement shall be subject to the final outcome of the said SLP i.e. CC No. 10437/2010 titled Secr., Ministry of Defence vs. Babita Puniya & Anr. pending consideration before the Hon''ble Supreme Court;

3. the petitioners shall not claim any benefit of the period between the date of their retirement and their reinstatement regarding their pay, seniority, scale and promotion; and

4. the reinstatement of the petitioners shall be subject to their medical fitness."

29. On the last Republic Day parade, the Indian Government was proud to showcase "women power" but in reality, the picture is entirely different. Firstly, the women officers are still not allowed to join combat units unlike in the countries like Israel and United States. In the United States, women were allowed in combat roles as recently as in 2013 after it lifted the 1994 Ban on women in direct combat roles. In 1995, Norway became the first country to allow women to serve on submarines. Russian women have been fighting in combat since World War 1 and in fact no role in the Soviet military was closed for women including sniper duties, machine gunners, tanks and fighter pilots etc.

30. No doubt, India took a major step in allowing women to apply for the Armed Forces but the country is still lagging behind from many other countries in having women in command of military units.

31. We are here not dealing with the issue of women being denied combat roles, but here the more disturbing question is that in the three separate branches of Executive where the women had served as Short Service Commissioned Officers for a period of 14 years but not granted permanent commission and the ground taken by the respondent to deny permanent commission in these categories is that it is a matter of policy decision taken to grant permanent commission to SSC Women Officers prospectively restricting the same to only JAG Department, Education Branch and Naval Architecture.

32. We fail to comprehend that when these petitioners along with the male officers had undertaken the same kind of training but nevertheless were denied permanent commission although the men were granted the permanent commission with no special merit except for the fact that they belong to the male sex. If this does not tantamount to gender discrimination then what else does?

33. It is a matter of record that all these petitioners had successfully completed their tenure of 14 years as SSC Officers and the cases of all these petitioners were recommended for permanent commission by their superiors yet they were not considered for the grant of permanent commission. The consequences of denial of the permanent commission to these officers has an agonising affect on these officers as after having put in 14 years of service, they are deprived of the pension and other monetary benefits. The respondents have indisputably carved an exception in the case of Lieutenant Cdr. J. Mendez who was given a permanent commission in Law Branch but insofar as the cases of these petitioners are concerned, the same has been denied to them on the ground that the policy issued by the respondent no.1 is prospective in nature and also the Logistic and ATC Branches are not covered by the said policy.

34. Under Article 14 of the Constitution of India, every citizen has the right to equality of law and equal protection before law. The concept of an arbitrary action being in violation of Article 14 was first introduced in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, AIR 1974 SC 555 : (1974) LabIC 427 : (1974) 1 LLJ 172 : (1974) 4 SCC 3 : (1974) 2 SCR 348 , wherein it was observed that "equality is antithetic to arbitrariness"..Thus Article 14 has a very wide ambit and encompasses within it equality, the principles of natural justice and is a mandate against arbitrary state actions. This imposes a duty on the state to act fairly. Good governance in conformity with the mandate of Article 14, "raises a reasonable or legitimate expectation in every citizen to be treated fairly in its interaction with the state and its instrumentalities." (Ref: Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601 : (1992) 6 JT 259 : (1992) 3 SCALE 85 : (1993) 1 SCC 71 : (1992) 2 SCR 322 Supp ;)

35. The petitioners were assured vide letter dated 20.12.1991, that a policy for permanent commission would be promulgated in the year 1997 and these petitioners had high hopes attached to it, but they were shattered when no such policy was promulgated. And it was only in the year 2008, that by an order dated 26th September, 2008, a decision was taken by the Government to grant permanent commission to SSC Women Officers, but this was made effective prospectively.

36. There was nothing wrong on the part of these officers to have legitimately expected grant of PC once the PC was offered to their male counterparts based on the same kind of training. After having worked for 14 long years there was no reason to deny PC to them, if for 14 years we can allow a lady to work as an officer on a particular post, earn her pay and promotions in the non combat area (logistics), or for that matter in any other wing, why send her home after 14

years when her male counterparts can carry on up to 60 years of service.

37. However, what needs to be borne in mind is that "legitimate expectation" is not equivalent to a legal right. The concept is more of an equitable rather than of legalistic nature. It is an expectation of benefit, relief or remedy that may ordinarily flow from a promise or established practice. The expectation should be legitimate, i.e., reasonable, logical and valid

38. Explaining the nature and scope of the doctrine of legitimate expectation, the Hon"ble Supreme Court in Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries case (Supra), observed thus:

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

39. The Hon"ble Supreme Court whilst explaining the concept of Legitimate Expectation in the case of Union of India and others Vs. Hindustan Development Corpn. and others, AIR 1994 SC 988 : (1993) 3 JT 15 : (1993) 2 SCALE 506 : (1993) 1 SCALE 56 : (1993) 3 SCC 499 observed as under:

"If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury

of natural justice and it ought not unlock the gate which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept."

40. In *Jitendra Kumar and Others Vs. State of Haryana and Another*, (2007) 14 SCALE 125 : (2008) 2 SCC 161 : (2008) 1 SCC(L&S) 428 , it has been reiterated that a legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters.

41. In the instant batch of Writ Petitions we have no hesitation in taking a view that no provision of PC has been made in the policy of 26th September, 2008 to Short Service Commissioned Women Officers in Education, Logistics and ATC, whereas male officers had the option of PC right from the inception. These petitioners along with the male officers had undertaken the same kind of training and served for a good fourteen year or so, but were denied permanent commission while their male colleagues and batchmates were granted the permanent commission, with no special merit in the latter's favour except for the fact that they belong to the male sex. If this isn't gender discrimination then what else could possibly be?

42. One of the most memorable images from this year's Republic Day parade, that played host to US President, was that of the all-women contingent of the three armed forces marching smartly down the Rajpath in Delhi for the first time ever. However the one worry that loomed large in the minds of these women officers was the fact that the display of Nari Shakti was limited to the parade day and that they will be soon shown the door by the Armed Forces after the completion of 14 years of SSC, denying them even pensionary benefits. For a long time women in India have remained within the four walls of their household. Their reliance on men folk was absolute. It is high time we change our attitude towards women. India being a developing country in order to develop needs the tool of women empowerment more than anything. Conferment of equal status on women apart from being a constitutional right has been recognized as a human right. In the words of Kofi Annan - "There is no tool more effective than the empowerment of women for development of a country."

43. Inequalities between the two sexes and discrimination against women have also been long-standing issues all over the world. Thus, women's pursuit of equality with man is a universal phenomenon.

44. Reliance in this regard can be placed on the judgment of the Hon'ble Supreme Court in the case of *Anuj Garg and Others Vs. Hotel Association of India and Others*, AIR 2008 SC 663 : (2008) 2 CLT 33 : (2007) 13 JT 320 : (2008) 3 SCC 1 : (2007) 12 SCR 991 observed as under:

"When the original Act was enacted, the concept of equality between two sexes

was unknown. The makers of the Constitution intended to apply equality amongst men and women in all spheres of life. In framing Articles 14 and 15 of the Constitution, the constitutional goal in that behalf was sought to be achieved. Although the same would not mean that under no circumstance, classification, inter alia, on the ground of sex would be wholly impermissible but it is trite that when the validity of a legislation is tested on the anvil of equality clauses contained in Articles 14 and 15, the burden thereof would be on the State. While considering validity of a legislation of this nature, the court was to take notice of the other provisions of the Constitution including those contained in Part IV A of the Constitution.

.....

..... Right of employment itself may not be a fundamental right but in terms of both Articles 14 and 16 of the Constitution of India, each person similarly situated has a fundamental right to be considered thereof.....

Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the state as well as law modelling done in this behalf.

Also with the advent of modern state, new models of security must be developed. There can be a setting where the cost of security in the establishment can be distributed between the state and the employer.

Gender equality today is recognized by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe.

.....

Instead of prohibiting women employment in the bars altogether the state should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is state's duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance to the requirements of the profession they choose to follow. Any other policy inference (such as the one embodied under section 30) from societal conditions would be oppressive on the women and against the privacy rights."

45. Reverting back to the facts of the instant case the policy of 2008 is irrational, arbitrary and is a clear case of discrimination. To our surprise this policy was formulated by the Government during the pendency of the earlier Writ Petitions but no care was taken to offer PC in the branches where the SSC Women Officers had worked for 14 years.

46. In the branches where the Short Service Commission Officers had worked for 14 years no convincing or cogent material has been placed on record by the respondent to apprise the Court as to for what reasons the petitioners who have been performing their duties including duties on the seas cannot be offered

permanent commission in the same very branches.

47. Before we part with this judgment we want to say that women are here to stay and they are going to take an active part in every sphere of life and walk shoulder to shoulder with men. Sexist bias and stereotypes seem to have dogged the service conditions of women serving in the Forces. However, the travel of women in this regard has not always been an easy one. The Courts would frown upon any endeavour which restrains the progress of women for equitable space. The march of time has proven that gender does not define ability and or calibre.

Over about seven decades ago, the famous and progressive Urdu poet Asrar ul Haq "Majaz" [Majaz Lakhnavi - (1911-1955)] has so beautifully exhorted women to contest for their equitable space in the world in the following words:

"tere mathe pe ye anchal to bahut hi khuub hai lekin tu is anchal se ik parcham bana leti to achchha tha."

(Meaning: While the raiment covering your head is good, it would be better if you made a banner of it.)

48. We are, thus, of the considered opinion that so far as the petitioners in the Logistics and ATC branches are concerned they are equally entitled to the grant of PC for they have worked hard for 14 long years as SSC Officers and there is no reason to deny them the said relief.

49. PC having already been offered prospectively to SSC (Women) Officers in the Education branch vide policy guideline of 2008, therefore, we are of the view that these petitioners deserve to be granted PC

50. In the light of the aforesaid, we consider it fit to give the following directions:

a) The claim of absorption in areas of operation not open for recruitment of women officers cannot be sustained being a policy decision.

b) The Short Service Commissioned Officers of the Navy who had opted for PC and were not granted PC but instead were granted extension of SSC and were not retired at the time of filing of these Writ Petitions and had attained the age of retirement during the pendency of the present petitions, they shall be offered PC within a period of 6 weeks from the date of this order. They shall be entitled to all consequential benefits such as promotion and other financial benefits subject to their medical fitness. However, their appointment to the post of PC shall be subject to the final outcome of the said SLP i.e. CC No. 10437/2010 titled *Secr., Ministry of Defence v. Babita Puniya & Anr.* pending consideration before the Hon"ble Supreme Court;

c) With respect to the petitioners who had attained the age of superannuation prior to the filing of the Writ Petitions by them the following directions are required to be issued:

1. The respondents shall reinstate these petitioners within a period of six weeks

from today on their respective posts;

2. such reinstatement shall be subject to the final outcome of the said SLP i.e. CC No. 10437/2010 titled Secr., Ministry of Defence vs. Babita Puniya & Anr. pending consideration before the Hon''ble Supreme Court;

3. the petitioners are entitled to no benefits.

4. the reinstatement of the petitioners shall be subject to their medical fitness.

51. The petitions are accordingly allowed in the aforesaid terms. No orders as to costs.