

**(2022) 01 AFT CK 0001**

**In the Armed Forces Tribunal**

**Case No :** OA 432, 433, 435, 437, 780 Of 2016, 1203 Of 2017, 838, 840, 1959, 2118 Of 2018, 816 Of 2019, 1361, 1454, 1964, 1965, 1966, 1972, 2008, 2019, 2064, 2065, 2066, 2067, 2068, 2069, 2168, 2169 Of 2021 With MA 767, 769, 2138, 2174, 2257, 2260, 2261, 2262, 2302,

Lt Cdr Tarun

APPELLANT

Vs

Union of India & Ors

RESPONDENT

**Date of Decision :** 03-01-2022

**Acts Referred:**

Constitution of India, 1950 — Article 14, 32, 142, 226  
Navy Act, 1957 — Section 9(2)  
Navy Regulations, 1963 — Regulation 203

**Citation :** (2022) 01 AFT CK 0001

**Hon'ble Judges :** Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

**Bench :** Division Bench

**Advocate :** Pooja Dhar, Anil Gautam, Abhimanue Shrestha, S. D. Windlesh, P D P Deo, Capt. Karan Singh Bhati, Dr. V. S. Mahndiyan, Manoj Kumar Gupta, V. S. Tomar, J. S. Yadav, S. S. Pandey, H. V. Shankar, J. S. Rawat, Ajai Bhalla, Satya Saharawat, Nikhil Palli, Aditi Laxman, K. K. Tyagi, Prabodh Kumar

**Final Decision :** Disposed Of

**Judgement**

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1. These 29 OAs have been filed by 32 Short Service Commission Indian Navy (IN) Officers who have been aggrieved by not being granted,////////

Permanent Commission (PC) by the Selection Board held by the IHQ of MoD (Navy) consequent to the judgment by the Honâ??ble Supreme Court,////////

in Union of India and others v. Annie Nagaraja and others (Civil Appeal Nos. 2182-87 of 2020 @ SLP (C) Nos. 30791-96 of 2015 dated,////////

17.03.2020). Of the 32 officers, 15 are retired; 14 whose release has been stayed and 03 who are still serving; and their release order has been issued."////////

20 out of the 32 officers had filed various writ petitions/special leave petitions in the Apex Court. The Apex Court has now directed that, they first",,,,,,,,,

seek their remedy in AFT and AFT (Principal Bench) had been directed to examine these cases and dispose of them by 31.10.2021, vide judgment in",,,,,,,,,

Cdr T Rajkumar and others v. Union of India and others (W.P(C) 1480 of 2020 dated 24.08.2021). All applicants have prayed that they be,,,,,,,,

granted PC and in the alternative be considered for pension.,,,,,,,,,

BRIEF FACTS OF THE CASE,,,,,,,,

2. The Ministry of Defence, vide their letter dated 26.09.2008, conveyed the sanction of the President to offer PC prospectively to SSC (WO) to be",,,,,,,,,

inducted into various Branches of the three Services in addition to the current provision of grant of PC to SSC (Male Officers), and suitable admin",,,,,,,,,

instructions were to be issued by the respective Service HQs. In the Navy, sanction was accorded to offer PC to SSC (including WO) inducted into",,,,,,,,,

JAG, Edn and Naval Constructors (NC) Branches/Cadres.",,,,,,,,,

3. Consequent to this, IHQ of MoD (Navy) issued implementation guidelines vide their letter dated 03.12.2008 for grant of PC prospectively from",,,,,,,,,

2009 to SSC officers (both men and women) of Edn, Law and NC cadres. This led to two sets of cases in this matter; one before the Delhi High",,,,,,,,,

Court, Lt Cdr Annie Nagaraja (supra) and the other before the AFT (PB) (Cdr Priya Khurana and others v. Union of India and others â?" OA",,,,,,,,,

143/2016). In both these cases, the Union of India appealed to the Honâ??ble Supreme Court.",,,,,,,,,

4. In the matter of Lt Cdr Annie Nagaraja (supra) before the Delhi High Court consisted of 06 writ petitions under Article 226 of the Constitution.,,,,,,,,,

There were a total of 17 petitioners; 6 from Lgs; 09 from Edn and 02 from ATC cadres. Their grievance was that despite having completed 14 years.,,,,,,,,,

of service as SSC officers, they were not considered for the grant of PC and were discharged from service. In the appeals arising out of the judgment",,,,,,,,,

of the Delhi High Court in Annie Nagaraja, an interim order was passed by the Honâ??ble Supreme Court on 20.11.2015, which directed:",,,,,,,,,

Pending further orders from this Court we direct that such of the respondents (petitions before the High Court) as were serving as short service commissioned.,,,,,,,,,

officers in the Navy as on 26th September 2008, shall be allowed to continue on the terms and conditions applicable to them in that capacity. We further direct" ,,,,,,,,,

that such of the officers out of the respondents (petitioners before the High Court) as may have been released from service after 26th September 2008, upon" ,,,,,,,,,

completion of the short service commission tenure, shall be permitted to join back in terms of the order passed by the High Court and continue in service in that" ,,,,,,,,,

capacity.,,,,,,,,,

5. The matter of Cdr Priya Khurana (supra) before AFT(PB) consisted of 6 OAs filed by 06 officers of the Lgs and NC cadres of 2002 batch.,,,,,,,,,

They sought grant of PCs and challenged the policy letter dated 26. 09.2008 as unconstitutional to the extent that it operated prospectively and,,,,,,,,

restricted the grant of PCs to a few cadres/branches; and also, their release from service on the completion of their tenure of SSC engagement. The" ,,,,,,,,,

Tribunal concluded that on 25.02.1999, the MoD had taken a policy decision for grant of PCs to both men and women officers in terms of Regulation" ,,,,,,,,,

203 of Chapter IX of the Naval Ceremonial, Conditions of Service and Miscellaneous Regulations 1963. The Tribunal held that the policy decision" ,,,,,,,,,

dated 25.02.1999 held the field and the subsequent policy decision of 26.09.2008 was arrived at without considering the earlier policy decision. The,,,,,,,,

subsequent decision making the grant of PCs only prospective and confining it to stipulated branches was held to be invalid. The Tribunal had placed a,,,,,,,,

considerable degree of reliance on the fact that the advertisements on the basis of which the SSC officers were inducted had held out a specific,,,,,,,,

representation that the officers would be considered for the grant of PCs. The Tribunal was of the view that the appropriate relief was to direct that,,,,,,,,

the applicants be considered by the authorities and to this extent it disagreed with the absolute relief granted by the Delhi High Court for the grant of,,,,,,,,

PCs.,,,,,,,,,

6. The judgment of the Armed Forces Tribunal was assailed by both, the Union Government and the applicants. The applicants before the Tribunal" ,,,,,,,,,

were in appeal to the extent that the wider relief which was granted by the Delhi High Court was denied to them by the Tribunal. In the appeals,,,,,,,,

arising out of the judgment of the Tribunal in Cdr Priya Khurana (supra), an interim order was passed by the Apex Court on 28. 10.2016 directing the" ,,,,,,,,, continuation in service of the SSC officers in that capacity until further orders.,,,,,,,,,

7. Having considered all aspects pertaining to the grant of PC to SSC WO, the appeals of the Union of India and the petitioners in both Annie" ,,,,,,,,,

Nagaraja and Priya Khurana case (supra), the Apex Court gave the following directions in its judgment dated 17.03.2020:" ,,,,,,,,,

96. We hold and direct that: ,,,,,,,,,

(i) The statutory bar on the engagement or enrolment of women in the Indian Navy has been lifted to the extent envisaged in the notifications issued by the Union, ,,,,,,,,,

Government on 9 October 1991 and 6 November 1998 under Section 9(2) of the 1957 Act; ,,,,,,,,,

(ii) By and as a result of the policy decision of the Union Government in the Ministry of Defence dated 25 February 1999, the terms and conditions of service of" ,,,,,,,,,

SSC officers, including women in regard to the grant of PCs are governed by Regulation 203, Chapter IX, Part III of the 1963 Regulations;" ,,,,,,,,,

(iii) The stipulation in the policy letter dated 26 September 2008 making it prospective and restricting its application to specified cadres/branches of the Indian, ,,,,,,,,,

Navy shall not be enforced; ,,,,,,,,,

(iv) The provisions of the implementation guidelines dated 3 December 2008, to the extent that they are made prospective and restricted to specified cadres are" ,,,,,,,,,

quashed and set aside; ,,,,,,,,,

(v) All SSC officers in the Education, Law and Logistics cadres who are presently in service shall be considered for the grant of PCs. The right to be considered" ,,,,,,,,,

for the grant of PCs arises from the policy letter dated 25 February 1999 read with Regulation 203 of Chapter IX Part III of the 1963 Regulations. SSC women, ,,,,,,,,,

officers in the batch of cases before the High Court and the AFT, who are presently in service shall be considered for the grant of PCs on the basis of the vacancy" ,,,,,,,,,

position as on the date of judgments of the Delhi High Court and the AFT or as it presently stands, whichever is higher;" ,,,,,,,,,

(vi) The period of service after which women SSC officers shall be entitled to submit applications for the grant of PCs shall be the same as their male counterparts;,,,,,,,,

(vii) The applications of the serving officers for the grant of PCs shall be considered on the basis of the norms contained in Regulation 203 namely: (i),,,,,,,,,

availability of vacancies in the stabilized cadre at the material time; (ii) determination of suitability; and (iii) recommendation of the Chief of the Naval Staff.,,,,,,,,,

Their empanelment shall be based on inter se merit evaluated on the ACRs of the officers under consideration, subject to the availability of vacancies;" ,,,,,,,,,

(viii) SSC officers who are found suitable for the grant of PC shall be entitled to all consequential benefits including arrears of pay, promotions and retiral" ,,,,,,,,, benefits as and when due;,,,,,,,,

(ix) Women SSC officers of the ATC cadre in Annie Nagaraja's case are not entitled to consideration for the grant of PCs since neither men nor women SSC,,,,,,,,

officers are considered for the grant of PCs and there is no direct induction of men officers to PCs. In exercise of the power conferred by Article 142 of the,,,,,,,,

Constitution, we direct that as a one-time measure, SSC officers in the ATC cadre in Annie Nagaraja's case shall be entitled to pensionary benefits. SSC" ,,,,,,,,,

officers in the ATC cadre in Priya Khurana's case, being inducted in pursuance of the specific representation contained in the advertisements pursuant to" ,,,,,,,,,

which they were inducted, shall be considered for the grant of PCs in accordance with directions (v) and (vi) above;" ,,,,,,,,,

(x) All SSC women officers who were denied consideration for the grant of PCs on the ground that they were inducted prior to the issuance of the letter dated 26,,,,,,,,

September 2008 and who are not presently in service shall be deemed, as a one-time measure, to have completed substantive pensionable service. Their" ,,,,,,,,,

pensionary benefits shall be computed and released on this basis. No arrears of salary shall be payable for the period after release from service;,,,,,,,,

(xi) As a one-time measure, all SSC women officers who were before the High Court and the AFT who are not granted PCs shall be deemed to have

completed",,,,,,,,,

substantive qualifying service for the grant of pension and shall be entitled to all consequential benefits; and,,,,,,,,

(xii) Respondents two to six in the Civil Appeals arising out of Special Leave Petition (C) Nos 30791-96 of 2015, namely Commander R Prasanna, Commander",,,,,,,,,

Puja Chhabra, Commander Saroj Kumar, Commander Sumita Balooni and Commander E Prasanna shall be entitled, in addition to the grant of pensionary",,,,,,,,,

Ser

No",WP,"No of

Officers",Remarks,,,,,,,,

(a),1480/2020,01,Cdr T Raj Kumar,,,,,,,,

(b),1269/2020,03,"Cdr AK Sharma

Cdr YK Singh

Cdr PS Soodan",,,,,,,,,

(c),1471/2020,07,"Cdr Annie Nagaraja

Cdr Shruti Dhawan

Cdr Urmila Bhat

Cdr Swati Bhatia

Cdr Barkha Rathore

Cdr Pooja Rajput

Cdr Saroj Singh",,,,,,,,,

(d),1478/2020,02,"Cdr Vijayeta

Cdr Mandeep Kaur",,,,,,,,,

(e),61/2021,01,Cdr Bhupesh Kumar,,,,,,,,

(f),91/2021,01,Cdr Seema Chaudhary,,,,,,,,

(g),507/2021,01,Cdr Puneet Pal Kaur,,,,,,,,

(h),703/2021,04,"Cdr Barsha Agarwal

Cdr Shweta Kapoor

Cdr Sapna C Lanjewar

Cdr SS Naik" ,,,,,,

Ser,OA,Applicants,"Branch/

Cadre","Relief

sought",Ser,OA,Applicants,"Branch/

Cadre","Relief

sought

1.,OA 432/16,Lt Cdr Tarun,Engg/NC,"PC &

Pension",17,OA 1966/21,Cdr Bhupesh Kumar,Exec/ GS,"PC &

Pension

2.,OA 433/16,"Lt Cdr Ravinder Pal

Singh",Engg/NC,"PC &

Pension",18,OA 1972/21,Cdr Seema Chaudhary,Exec/ Law,PC

3.,OA 435/16,"Lt Cdr

Amit Khajuria",Engg/NC,"PC &

Pension",19,OA 2008/21,Cdr Barsha Agarwal,Edn/ GS,"PC &

Pension

4.,OA 436/16,"Lt Cdr

Manish Kumar Singh",Engg/NC,"PC &

Pension",20,,Cdr Shweta Kapoor,Edn/ GS,"PC &

Pension

5.,OA 437/16,"Lt Cdr

Varun Duggal",Engg/NC,PC,21,,Cdr Sapna C Lanjewar,Edn/ GS,"PC &

Pension

6.,OA 780/16,"Lt Cdr Vaibhav

Sinha",Engg/NC,PC,22,,Cdr SS Naik,Edn/ GS,"PC &

Pension

7.,OA 1203/17,"Cdr

Saroj Singh",Exec/ Lgs,PC,23,OA 2019/21,Cdr T Rajkumar (Retd),Engg/ NC,"PC &

Pension

8.,OA 838/18,"Cdr

Swati Bhatia",Edn/ GS,PC,24,OA 2064/21,Cdr Annie Nagaraja,Edn/ GS,PC  
 9.,OA 840/18,Cdr Vijayeta,Edn/ GS,PC,25,OA 2065/21,"Lt Cdr  
 Barkha Rathore",Exec/ Lgs,PC  
 10,OA 1959/18,"Cdr  
 Kumar Dhiraj",Exec/ Hydro,PC,26,OA 2066/21,"Cdr  
 Urmilla Bhat",Edn/ Met,PC  
 11,OA 2118/18,"Cdr  
 Mandip Kaur",Exec/ Lgs,PC,27,OA 2067/21,"Cdr  
 Puneet Pal Kaur",Exec/ Lgs,"PC &  
 Pension  
 12,OA 816/19,"Cdr  
 YK Singh",Edn/ GS,"PC &  
 Pension",28,OA 2068/21,"Cdr  
 Shruti Dhawan",Edn/ GS,PC  
 13,OA 1361/21,"Cdr  
 Sarita Nagayach",Exec / Lgs,"PC &  
 Pension",29,OA 2069/21,"Cdr  
 Bhanu Pratap Singh",Exec/ Lgs,"PC &  
 Pension  
 14,OA 1454/21,"Cdr  
 Sandeep Singh",Exec/ Lgs,"PC &  
 Pension",30,"OA 2167/21 (Tfr  
 - RB MUMBAI)", "Cdr  
 Amit Kumar Sharma",Edn/ GS,"PC &  
 Pension  
 15,OA 1964/21,"Cdr  
 Pooja Rajput",Exec/ Lgs,"PC &  
 Pension",31,"OA 2168/21  
 (Tfr RB Mumbai)",Lt Cdr Yogita Rani,Edn/ GS,PC  
 Â 16,OA 1965/21,"Cdr

Raja Kanwar",Exec/ GS,"PC or Pro- rata

Pension",32,"OA 2169/21

(OA 105/17

RB Mumbai)", "Cdr

P S Soodan",Edn/ GS,"PC &

Pension

20. The Counsel then stated that while inter-se merit was to be evaluated based on ACRs, it did not specify which CRs were to be considered. And",,,,,,,,,

that in the consideration done in Dec 2020, the latest five CRs had been considered with its attendant peculiar limitations. In particular, since these",,,,,,,,,

officers were not to be considered for PC, the reporting officers have written their CRs casually and had invariably graded them without much thought",,,,,,,,,

to their actual performance since they were not to be given PC and retained in service. Moreover, certain CR forms did not even have appropriate",,,,,,,,,

column for recommending an officer for PC. Also, this resulted in the entire reckonable profile not being taken into consideration while assessing their",,,,,,,,,

suitability and inter-se merit.,,,,,,,,,

21. The Counsel then stated that many of the petitioners had done important courses in their span of service and had major achievements and,,,,,,,,

contributions in their career. However, their overall profile and achievements had been disregarded and that only the basic courses had been taken into",,,,,,,,,

consideration for assessing the suitability and drawing up the overall merit of the petitioners, thus putting them at a disadvantage.",,,,,,,,,

22. The Counsel then took us through the specific details of various applicants and highlighted the major grounds on why each of them should have,,,,,,,,

been granted PC. Referring to the five women applicants(03 Lgs, 02 Edn), the Counsel said that the release of all five had been stayed and that they",,,,,,,,,

had also been granted pension. However, the sole women applicant of Exec/law cadre had been released since she was not granted stay; and nor was",,,,,,,,,

she granted pension. Referring to the 2 male applicants of the Exec/GS cadre, the Counsel stated that they were specialists, with one of them being a",,,,,,,,,

RPA pilot; elaborated on their professional acumen and vehemently stated that they ought to have been granted PC. He further added that though this,,,,,,,,

cadre did not have women officers, none had been granted PC. The Counsel then

stated that both these male officers and Cdr Seema Chaudhary" ,,,,,,  
(Exec/law) were â??deemedâ?? to have been considered, even when their cadres as per the respondents were over borne and did not have any" ,,,,,,  
actual vacancy to grant PC. In reference to Cdr Seema Chaudhary, the Counsel elaborated in detail her service profile and the circumstances leading" ,,,,,,  
to her complaint and its subsequent disposal. The Counsel then said that in the consideration of officers governed by the directions of Para 96(v) of the ,,,,,,  
judgment, inter-se merit was not relevant and that only the policy of 1999 and Reg 203 were relevant to her and, therefore, CRs, inter-se merit cannot" ,,,,,,  
be brought into the consideration. Moreover, vacancies were available at the material time when this applicant ought to have been rightfully considered" ,,,,,,  
for PC. The Counsel also vehemently stated that this applicant was part of the main Annie Nagaraja case (supra) in the Apex Court and was still ,,,,,,  
denied pension on not being granted PC. The Counsel then stated that the pre-2008 officers were a dying cadre and, therefore, required a special" ,,,,,,  
consideration to ensure that they were all granted PC. ,,,,,,

23. The Counsel concluded by vehemently stating that the modalities of consideration and vacancy calculation requires a serious review by the ,,,,,,  
Tribunal and in view of the infirmities in the consideration elaborated earlier, the Counsel asserted that the ratio of judgment in Nitishaâ??s case" ,,,,,,  
(supra) will be entirely applicable in the current adjudication by the Tribunal. ,,,,,,

Arguments by Ms. Pooja Dhar ,,,,,,

24. Ms. Pooja Dhar representing 05 E/NC male officers and 07 Edn/ GS officers consisting of 04 women and 03 male officers, initially explained the" ,,,,,,  
profile of the applicants and elaborated that the male officers too had been discriminated. The Counsel further elaborated that while the Annie ,,,,,,  
Nagaraja case (supra) was predominantly oriented to granting PC to women officers on the grounds that they had been discriminated by the policy ,,,,,,  
of 2008, which was prospective in nature, and was limited to grant of PC in limited cadres/ Branches, male officers specially the Naval Constructors" ,,,,,,  
(E/NC) had also been discriminated. She further added that in Branches/ cadres, which had both male and women officers, male officers were denied" ,,,,,,  
PC in order to depict a gender-neutral policy. Referring to the service profile of these male officers, the Counsel further added that all of them had" ,,,,,,

more than 14 years of service and had only been granted extension all these years. The Counsel then stated that while women officers had been given,,,,,,,, pensionary benefits, identically placed male officers, who have been present before the Courts for several years, and were also victims of cadre",,,,,,,, saturation have been inadvertently excluded. The Counsel then took us through the vacancy pattern in E/NC and stated that the IN had inducted more,,,,,,,, officers against the temporary sanctions through Special Naval Architecture Entry Scheme, and saturated the cadre.",,,,,,,,

25. Referring to Nitisha case (supra), the Counsel stated that it was important that the number of vacancies available in each Branch/ cadre are",,,,,,,,

known to the officers, so that they can make an informed choice while opting for PC. The Counsel further stated that the respondents had not",,,,,,,,

disclosed these details prior to undertaking the selection for PC for many batches; from 1999 to 2013. In addition, the Counsel asserted that the",,,,,,,,

respondents had deliberately declared less vacancies thus depriving deserving SSCOs of PC. With reference to the Edn cadre, the Counsel stated that",,,,,,,,

there had been transfer of officers from other cadres into Edn, which clearly indicated availability of vacancies. Moreover, even the existing vacancies",,,,,,,,

had been used for junior batches, whereas these should have been exclusively utilized for the applicants who had obtained stay from various courts.",,,,,,,,

26. The Counsel then took us through the analysis of the Selection Board results and vehemently stated that overall, only 21.1% of those considered",,,,,,,,

were granted PC. In the case of the Edn cadre, this was as low as 17.43%, indicating that the Selection Board was a mere eye wash. The Counsel",,,,,,,,

then further added that due to non-implementation of the existing policy on time, 85 officers had left the Service and they cannot claim any right for",,,,,,,,

consideration of PC or any other benefits as they had not challenged the policy and had taken retirement.,",,,,,,,,

27. Referring to the Training Draft and Leave Relief (TDLR) and Civilian Education Instructors (CEI), the Counsel said that a false narrative had",,,,,,,,

been created that the applicants have been given the benefit of these vacancies. The Counsel strongly urged the Tribunal to examine how these have",,,,,,,,

been factored into generation and utilization of vacancies. Also referring to the fact that each officer had been considered twice by the Selection",,,,,,,,

Board, the Counsel strongly refuted this and stated that this was a mere afterthought by the respondents. Moreover, the Counsel stated that the

data",,,,,,,,,

provided by the respondents indicated that the officers who have been granted PC in their first look have again been clubbed in the second,,,,,,,,

consideration, thus reducing the chances of being granted PC to deserving officers. The Counsel then stated that a model of depleting running",,,,,,,,,

vacancies had been applied during the selection process which was violative of Para 96(v) of the judgment and that despite this model, in some",,,,,,,,,

batches no officer has been granted PC.,,,,,,,,,

28. The Counsel concluded by reiterating issues pertaining to injustice to pre-2008 officers and that by clubbing batches up to 2013, the senior batches",,,,,,,,,

which actually litigated the issue have been put at a great disadvantage. She further stressed on the inadequate details on the criteria for assessing,,,,,,,,

suitability and inter-se merit; inadequacy of the CR inputs and biased appraisal system; non issuance of NOC for civil employment and delayed release,,,,,,,,

resulting in inadequate opportunities for alternate career and the fact that all applicants though extremely meritorious, the selection system had not",,,,,,,,,

taken all their achievements into consideration.,,,,,,,,,

Arguments by Mr. Nikkil Palli, Mr. Abhimanue Shreshtha, Mr. Vivek Chhatre & Mr. Manoj Gupta",,,,,,,,,

29. Mr. Nikkil Palli, representing 05 applicants (03 Lgs and 02 Edn cadre) reiterated that major issues already canvassed by the other Counsels and",,,,,,,,,

then explained the specific details of his cases. He stated that applicants in his cases had been periodically granted extension and were now not,,,,,,,,

granted PC. Though they were considered in the Selection Board held in Dec 2020, none of them had been granted PC. While four of the applicants",,,,,,,,,

had been granted pension, Cdr Puneet Pal Kaur had not been granted pension." ,,,,,,,,,

30. Mr. Abhimanue Shreshtha, representing two male applicants from E/NC cadre, referred to the Nitisha case (supra) and reiterated the relevance",,,,,,,,,

of the Nitisha case and in particular, the issue regarding the rendition of CRs. He then stated that prior to 2001 SSC officers were granted PC, and",,,,,,,,,

Lgs,,Edn,,NC,,,,,

Petitioners in

AN & PK",Others,"Petitioners in AN

& PK",Others,"Petitioners in AN

& PK",Others,,,,,

Ser,,Weightage,Unsuitability Criteria,,,,,,

(a),ACR Merit,90 %,,,,,,

(b),SLt Seniority,04 %,,,,,,

(c),War,02 %,"Officer should not have been recommended

G andÂ below any timeÂ inÂ the last five CR cycles

held on record." ,,,,,,

(d),Peer,02 %,"Officer should not have been recommended G andÂ

below any timeÂ inÂ the last five CR

cycles held on record." ,,,,,,

(e),Recommendation for PC,02 %,"Officer should not have been graded â??  
Noâ?? in

recommendationÂ forÂ PCÂ thriceÂ orÂ moreÂ in

last five CRs." ,,,,,,

judgments in the Army cases were not applicable to the IN cases at hand. He further added that in the Army matter there had been a systemic,,,,,,

gender discrimination in denying PC to women officers while in the IN, there has been similar determination for both men and women SSCOs. The" ,,,,,,

Counsel then went on to elaborate that unlike the Army matter in Nitishaâ??s case, in IN, inter se merit was very relevant since IN considered more" ,,,,,,

officers than the vacancies available.,,,,,,

43. Referring to the grant of pension, the Counsel stated that the Apex Court had granted the one-time award of pension and other compensations" ,,,,,,

exclusively under the powers of Article 142 of the Constitution of India. He then elaborated the provisions of Article 142, its applicability, and the fact" ,,,,,,

that such judgments would become precedence for subordinate Courts, only if the judgment under Article 142 contained a principle of law. The" ,,,,,,

Counsel further asserted that in the IN matters, these awards under Article 142 did not attract any principle of law and, therefore, it was not within the" ,,,,,,

powers of the Tribunal to grant pension to applicants who are not granted PC. The Counsel further stated that the orders of the Apex Court in Cdr T ,,,,,,

Rajkumarâ??s case had clearly stated that it was only if the denial of PC was

upheld that the alternate plea for pension can be pressed and that this,,,,,,,,, had to be pursued after the decision of the AFT, by following the remedies available under the statute, and went on to read out Para 12 of the order,",,,,,,,, which is reproduced below.,,,,,,,,,

12. The petitioners who are considered for the grant of PC and were denied it would have to assail the decision not to grant them PC on the basis of the,,,,,,,, individual facts in each case. Bearing this in mind, it would be necessary for them to pursue their remedies before the AFT where the facts of each case can be" ,,,,,,,,,

scrutinized. If the petitioners were to succeed on their plea for the grant of PC, the alternative claim for invoking the jurisdiction under Article 142 would cease to" ,,,,,,,,,

have any practical significance. It is only if the denial of PC is upheld that the alternate plea can be pressed and this can be pursued after the decision of the,,,,,,,,

AFT, by following the remedies available under the statute. Hence, on a considered view of the matter we are inclined not to entertain the petitions under Article" ,,,,,,,,,

32 on merits.,,,,,,,,,

44. The Counsel then reiterated issues related to consideration of CRs in the last five years of service for all officers; marking of recommendation for,,,,,,,,

PC in CRs; specificity of vacancies to Branches/ Cadres; the application of material time and the three reference points given by Apex court to,,,,,,,,

decide the highest vacancy for the batch of officers before them. Elaborating on the vacancy issue, the Counsel asserted that the directions of the" ,,,,,,,,,

Apex Court was to consider the vacancy as obtained at the three reference times and there were no directions to create additional vacancies.,,,,,,,,,

Referring to the arguments advanced in the case of Cdr Seema Chaudhary, the Counsel vehemently stated that the officer had been a fence sitter and" ,,,,,,,,,

had joined the Annie Nagaraja case at the last minute. The Counsel further elaborated that this applicant had filed an interlocutory application I.A.,,,,,,,,,

No.20363 of 2020 in Feb 2020 and that her case had provided no major gain/ input to the main case. Considering the applicant's status as a SSCO,,,,,,,,

of 2007 batch, and the fact that she had sought the substantive relief of being considered for PC, she was entitled to her consideration for PC as per" ,,,,,,,,,

the direction in Para 96(v). However, did not qualify for pensionary benefits as

per the direction in Para 96 (xi) as she had not agitated for her rights" ,,,,,,  
either before any High Court or before any bench of the AFT at any point in time  
till she directly joined issue with her intervention application on ,,,,,,  
01.02.2020. Further referring to the arguments advanced in her case regarding  
the circumstances related to the "Letter of Displeasure (LOD)" ,,,,,,  
given to her, the Counsel vehemently stated that none of those issues were  
material to the case at hand and that the applicant had never challenged" ,,,,,,  
the LOD till date. The Counsel also vehemently stated that considering the CR  
reports of the applicant, she would not have been granted PC even if" ,,,,,,  
the Exec/Law cadre was not overborne and vacancy existed. ,,,,,,

Arguments by Dr Mahndhiyan: ,,,,,,

45. The Counsel appearing for the respondents in two cases pertaining to Edn/GS  
(one male, one women officer) stated that the respondents had" ,,,,,,  
adopted a uniform methodology of consideration, with no gender discrimination.  
Referring to an assertion by the applicants regarding the method of" ,,,,,,  
two considerations, the Counsel stated that each applicant had been grouped and  
compared only with his/her immediate and near peers; the first time" ,,,,,,  
with his/her immediate senior batch and the second time with the immediate  
junior batch. Referring to the argument that long courses done by the ,,,,,,  
applicants had not been considered, the Counsel reiterated that to maintain  
uniformity only the basic courses had been considered. He further added" ,,,,,,  
that based on the performance of the officers on these basic courses they could  
gain up to twelve months seniority and was thus a reflection of their ,,,,,,  
true performance. Referring to arguments of the applicants that the ratio of  
judgment of Nitisha needs to be adopted, the Counsel vehemently stated" ,,,,,,  
that the directions of the Apex Court was meant to be implemented in the way it  
was prescribed and it was not open to anyone to mould it further to ,,,,,,  
suit a certain class of applicants. ,,,,,,

46. Referring to the argument about the process of two considerations, the  
Counsel explained that the concept of two considerations was first" ,,,,,,  
implemented in the selection of Technical SSCOs for PC as it was important to  
retain the trained manpower. That the original policy of two ,,,,,,  
considerations pertaining to Technical Officers as enshrined in the 2002 policy  
letter. From the time PC was to be granted to other SSCOs consequent ,,,,,,  
to the policy of 26.09.2008, the same methodology had been adopted and the

Selection Boards conducted in 2017 and 2018 too followed this policy;" ,,,,,,,,,

and the same has been implemented in the Selection Board of Dec 2020. Referring to the arguments on utilizing vacancies from other Branches/ ,,,,,,,,,

Cadres, the Counsel emphasized that since the stabilized cadre was unique to each Branch/ Cadre, the vacancies for induction and grant of PC too" ,,,,,,,,,

were unique to each specific Branch/ Cadre and, therefore, cannot be swapped and utilized. The Counsel concluded by explaining the merit position of" ,,,,,,,,,

the applicants and emphatically stating that the Selection Board has been implemented uniformly for all applicants and those who have not been ,,,,,,,,,

granted PC was only because of inter-se merit and limited vacancies. ,,,,,,,,,

47. The Counsel relied on the following judgments in support of the various arguments: ,,,,,,,,,

(a) Union of India and others v. Pushpa Rani and others (2008) 9 SCC 243; ,,,,,,,,,

(b) M Krishna Preetha v. Jayan Moorkkanatt (2010) 2 KLT 459; ,,,,,,,,,

(c) Yeshwant v. State of Maharashtra (1996 (5) Bom CR 358); and ,,,,,,,,,

(d) State of Gujarat v. Shankerji Chaturji and others (1996) 3 GLR 755. ,,,,,,,,,

Arguments by Mr. V.S Tomar, Mr. Anil Gautam and Mr. J.S Yadav:" ,,,,,,,,,

50. Mr. V.S Tomar, representing the respondents in 03 cases (02 Lgs and 01 Edn) gave a brief overview of the applicant's service profile. He" ,,,,,,,,,

then gave out the details of their merit position in each of the two considerations and stated that the applicants had not been granted PC due to their ,,,,,,,,,

merit and thus not having been found fit. The Counsel then said that the release of Cdr Mandip Kaur and Cdr PS Soodan had been stayed while Cdr ,,,,,,,,,

Sarita Nagych had retired. The Counsel also said that while Cdr Mandip Kaur had been granted pension, the other two had not been granted pension." ,,,,,,,,,

51. Mr. Anil Gautam representing the respondents in 03 cases (One each of Lgs, Edn and Exec/GS) stated that the fundamental right of the applicants" ,,,,,,,,,

was for a fair consideration for grant of PC and that none can claim PC as a matter of right. The Counsel vehemently stated that a uniform process ,,,,,,,,,

had been followed and 80 officer had been granted PC. He further stated that even if a different methodology had been followed, still there would" ,,,,,,,,,

always remain those who are not granted PC as the vacancies were finite. The Counsel then gave out the merit position of the applicants in his cases. ,,,,,,,,,

52. Mr. J.S Yadav, representing the respondents in 05 cases (04Edn and 01 E/

NC) also briefly covered the profile of the applicants and gave out the" ,,,,,,,,,  
details of their consideration.,,,,,,,,,

#### CONSIDERATION OF THE CASE,,,,,,,,

53. Having heard both sides at very great length, the issues that require to be adjudicated are:" ,,,,,,,,,

(a) Have the applicants been given a fair and just consideration for grant of PC by the Selection Board Dec 2020? ,,,,,,,,,

(b) Should those not granted PC be granted pension? ,,,,,,,,,

54. The respondents have submitted all the files connected with the Selection Board Dec 2020; the previous Selection Boards held for grant of PC; ,,,,,,,,,

relevant files related to SSC officersâ?? management and the CR dossiers of the 32 applicants. To answer both these questions, the following issues" ,,,,,,,,,

have been examined and wherever necessary, documents submitted to the Tribunal by the respondents have also been examined." ,,,,,,,,,

(i) The implications of the Apex Court judgment in the Annie Nagaraja case.,,,,,,,,,

(ii) Relevance of the Apex Court judgment in Lt Col Nitisha pertaining to the grant of PC to SSC Women officers in the Indian Army, in the matters pertaining to IN" ,,,,,,,,,

SSC officers.,,,,,,,,,

(iii) Selection Board Dec 2020 for grant of PC.,,,,,,,,,

(iv) Analysis.,,,,,,,,,

#### IMPLICATIONS - ANNIE NAGARAJA CASE.,,,,,,,,,

55. It is our opinion that the foundation of the judgment is enshrined in the contents of Para 90 and 91 of the judgment. As seen from these ,,,,,,,,,

paragraphs, the statutory notifications dated 09.10.1991 and 06.11.1998 under Section 9(2) of the Navy Act, 1957; and policy letter dated 25.02.1999" ,,,,,,,,,

ought to have been considered by the Central Government in as much as the authorities were bound to consider the claims of the SSC officers for the ,,,,,,,,,

grant of PC in terms of Regulation 203, immediately after the policy letter dated 25.02.1999 was issued. The failure to do so deprived SSC officers" ,,,,,,,,,

from opportunity to be granted PC and the ensuing promotions and pensionable service. These paragraphs also establish that these SSC officers ,,,,,,,,,

cannot be left in the lurch and the injustice meted to them by lost years of service and the deprivation of retiral entitlements must be rectified. In the ,,,,,,,,,

light of this, it was the duty of the Court to remedy the situation and to rectify the injustice met out to the concerned officers, to the extent possible." ,,,,,,,,,

Thus, the judgment contains a resolve to compensate the officers concerned for the years lost and the deprivation caused to them. It is, therefore," ,,,,,,,,,

imperative that the directions given in Para 96 are interpreted with the above as the guiding principle.,,,,,,,,,

Para 96 (i) to (iv),,,,,,,,,

56. The directions contained in Para 96 (i) to (iv) require no further elaboration as they are explicit and unambiguous. In that: ,,,,,,,,,

(a) Para 96(i) has held that the statutory bar on the engagement of enrolment of women in Indian Navy has been lifted, to the extent envisaged in the Notification" ,,,,,,,,,

issued by the Union Government on 9.10.1991 and 6.11.1998 under Section 9(2) of the Navy Act, 1957." ,,,,,,,,,

(b) Para 96(ii), clarifies that the governance of grant of PC shall be in accordance with Regulations 203 of the Navy Regulations, 1963." ,,,,,,,,,

(c) Para 96(iii) has quashed the stipulations restricting the consideration of women officers to specific branches/ cadres only.,,,,,,,,,

(d) In 96(iv) it has further quashed the implementation guidelines dated 03.12.2008 only to the extent they are made prospective and restrictive.,,,,,,,,,

Para 96(v),,,,,,,,,

57. Para 96 (v) reads as under:- ,,,,,,,,,

All SSC officers in the Education, Law and Logistics cadres who are presently in service shall be considered for the grant of PCs. The right to be considered for" ,,,,,,,,,

the grant of PCs arises from the policy letter dated 25 February 1999 read with Regulation 203 of Chapter IX Part III of the 1963 Regulations. SSC women ,,,,,,,,,

officers in the batch of cases before the High Court and the AFT, who are presently in service shall be considered for the grant of PCs on the basis of the vacancy" ,,,,,,,,,

position as on the date of judgments of the Delhi High Court and the AFT or as it presently stands, whichever is higher." ,,,,,,,,,

58. Education, Law and Logistics cadres have been opened for consideration for grant of PC to all SCC officers and the expression "All SSC" ,,,,,,,,,

officers in the Education, Law and Logistics cadres", implies that it includes both women and men officers. Also, that grant of PC would be in" ,,,,,,,,,

accordance with Regulation 203 of the 1963 Regulations, which essentially means that all eligible SSC officers, if found suitable and confirming to the" ,,,,,,, medical standards, upon being recommended by CNS, may be granted PC, subject to the availability of vacancy in the stabilized cadres. However," ,,,,,,,

such a grant is not a matter of right. Rather the right is of consideration only on the above parameters. It then deals specifically with women SSC ,,,,,,,

officers and states that such officers, who had challenged the 2008 policy, in the batch of cases before the High Court (Annie Nagaraja) and AFT" ,,,,,,,

(Priya Khurana) and who were still in service, are required to be considered for grant of PC subject to the availability of vacancy either as on the date" ,,,,,,,

of the judgment passed by the High Court of Delhi or Armed Forces Tribunal. However, if the vacancies are higher, as on the date of judgment of the" ,,,,,,,

Supreme Court, it will be the higher number that will be taken into account." ,,,,,,,

Para 96(vi), (vii) and (viii)" ,,,,,,,

59. Para 96(vi) directs that the period of service after which women SCC officers shall be entitled to submit applications for the grant of PC shall be ,,,,,,,

the same as their male counterparts, and Para 96(vii) merely reiterates the intent of Regulation 203 of Navy Regulations. Para 96(viii) directs that the" ,,,,,,,

SSC officers (men and women) who, upon being evaluated are found suitable for grant of PC, would then be entitled to grant of consequential" ,,,,,,,

benefits. ,,,,,,,

60. Para 96(ix) upholds the contention of the Central Government that there can be no grant of PC in ATC Cadre. However, at the same time, the" ,,,,,,,

Honâ??ble Court, in exercise of its inherent power under Article 142 of the Constitution, and keeping the spirit of paragraphs 90 and 91 intact, has" ,,,,,,,

carved out two exceptions. ,,,,,,,

(a) As a one-time measure, SCC officers of the ATC Cadre, who were the petitioners in the Annie Nagaraja batch of petitions, would be entitled to pensionary" ,,,,,,,

benefits notwithstanding the fact that they, on account of the peculiarities attached to the cadre, cannot be transmigrated to PC, nor is any PC is available for this" ,,,,,,,

cadre. Evidently, this one-time benefit has been granted only to the SSC officers of the ATC Cadre." ,,,,,,,

(b) Such SSC officers in ATC Cadre, who were applicants in Priya Khurana case before the AFT, notwithstanding the fact that they were admitted to ATC cadre in" ,,,,,,,,,

the SSC for which PC is neither available nor permissible, are deemed to have acquired a legitimate expectation to be considered for grant of PC. Accordingly, such" ,,,,,,,,,

officers, albeit as a one-time measure, shall also have to be considered for grant of PC in accordance with Regulation 203 of the Navy Regulations 1963. In other" ,,,,,,,,,

words, no other SSC officer in ATC cadre, past, present or future, will be eligible for a similar consideration." ,,,,,,,,,

Para 96(x),,,,,,,,,

61. Para 96(x) reads as under:,,,,,,,,

All SSC women officers who were denied consideration for the grant of PCs on the ground that they were inducted prior to the issuance of the letter dated 26,,,,,,,,

September 2008 and who are not presently in service shall be deemed, as a one-time measure, to have completed substantive pensionable service. Their" ,,,,,,,,,

pensionary benefits shall be computed and released on this basis. No arrears of salary shall be payable for the period after release from service.,,,,,,,,,

62. The above direction has also been passed by the Honâ??ble Supreme Court, in exercise of its powers under Article 142 of the Constitution of" ,,,,,,,,,

India. It is trite law that if the Honâ??ble Court exercises its powers under Article 142 and grants a special relief to a person, such observations" ,,,,,,,,,

granting the benefit do not amount to a precedent and no other party can claim parity, inclusivity and applicability qua such directions. This direction" ,,,,,,,,,

therefore, applies only to such SSC women officers, who have since completed their respective tenure as SSC officers; who were denied" ,,,,,,,,,

consideration for the grant of PC on the ground that they were inducted prior to 26.09.2008 as SSC officers and that as such they could not avail the,,,,,,,,

benefit of being considered for grant of PC, which as per the contemporaneous stand of Central Government was an option available only to such" ,,,,,,,,,

SSC officers who were inducted as SSC after 26.09.2008.,,,,,,,,,

63. It is important to note that currently Naval SSC officers except those who are invalidated out, having suffered disability in the course of service," ,,,,,,,,,

are not eligible for pension. Even PC service becomes pensionable only after a

duration of 20 years. Thus, with this direction all such women SSC" ,,,,,,,  
officers, as mentioned in Para above, without being eligible for any arrears of  
salary, shall be deemed to be in service of Navy till attaining the" ,,,,,,,  
minimum 20 years period from their respective induction as an SSC officer, so as  
to be eligible for pensionary benefits. This has been done only to" ,,,,,,,  
ensure that SSC women officers mentioned at Para 62 above become eligible to  
receive pensionary benefits. Moreover, this one time measure has" ,,,,,,,  
been adopted to symbolically compensate all such SSC women officers for having  
been denied the opportunity of being considered for grant of PC," ,,,,,,,  
particularly keep in in view that the Honâ??ble Supreme Court has also set aside  
the contention of the Central Government to the effect that the,,,,,,  
letter dated 26.09.2008 was to be prospectively applied only for the newly  
commissioned SSCOs.,,,,,,,

In consideration of the above issues, we are of the opinion that the benefit of  
Para 96(x) would not cover any male officers, even if similarly placed," ,,,,,,,  
and is available only to such SSC women officers, mentioned in Para above who  
fulfil all of the four following conditions:" ,,,,,,,

- (a) The officer was in SSC service on or before or immediately after the date of  
the said letter dated 26.09.2008;,,,,,,
- (b) While still in service at that time as an SSC officer, she had applied to be  
considered for grant of PC;" ,,,,,,,
- (c) The application made by such officer was rejected on the ground that she was  
inducted as an SSC officer, prior to issuance of letter dated 26.09.2008;  
and" ,,,,,,,
- (d) After being rejected on the ground mentioned above, her tenure as an SSC  
officer got completed and she was released from SSC service." ,,,,,,,

Para 96(xi),,,,,,,

64. Para 96(xi) reads as under:,,,,,,

As a one-time measure, all SSC women officers who were before the High Court  
and the AFT who are not granted PC shall be deemed to have completed" ,,,,,,,  
substantive qualifying service for the grant of pension and shall be entitled to all  
consequential benefits.,,,,,,,

65. The essence of Para 96(xi) is that all such SSC women officers, who, upon  
being considered on merits for the grant of PC, as per the direction of" ,,,,,,,

Para96(v), and may not eventually succeed in being granted PC, ought not to be

left high and dry, and the injustice meted to them by lost years of" ,,,,,,,,,

service and the deprivation of retiral entitlements, as observed in Paragraphs 90 and 91 of the judgment, must be rectified. It thus emerges that the" ,,,,,,,,,

Honâ??ble Supreme Court has decided to compensate/reward all such SSC women officers, who were before the High Court or the AFT agitating" ,,,,,,,,,

their rights for grant of PC and eventually do not succeed in being granted PC. Thus, all such SSC women officers, who fail to get PC despite being" ,,,,,,,,,

considered as per the said direction in Para 96(v), shall be taken as eligible for grant of pension besides being entitled to all consequential benefits. It is," ,,,,,,,,,

therefore, evident that this direction is based on the recognition of the injustice suffered by these officers and proceeds on the assumption that they" ,,,,,,,,,

have completed qualifying service for the grant of pension and consequential qualifying service for the grant of pension and consequential benefits. It,,,,,,,,

is a reward for all such SCC women officers who were resolute enough to fight for their rights before the High Court or the AFT and were therefore,,,,,,,,

entitled to the fruits of their labour, as a measure of reparation." ,,,,,,,,,

66. It is also our opinion that since the expression used in Para 96(x) is â??who were before the High Court and the AFTâ?, the benefit of Para" ,,,,,,,,,

96(xi) granting pensionary and other consequential benefits as a one-time measure, is not restricted only to the women officers (appellants/" ,,,,,,,,,

respondents) in the Honâ??ble Supreme Court. Since all such officers who were not brought as respondents before the Honâ??ble Supreme Court,,,,,,,,

were nonetheless agitating for grant of their rights before the AFT, it is the intent of the Apex Court to compensate those officers who had agitated" ,,,,,,,,,

for their rights before a judicial fora of competence, and thus the standard of the AFT and the High Court as the lowest denominators, appears to have" ,,,,,,,,,

been adopted as the benchmark for such compensation. Had the Honâ??ble Supreme Court intended to confine the benefit of 96(x) only to those,,,,,,,,

who were before the Supreme Court, nothing prevented it to state so in the said paragraph. Furthermore, ordinarily in all cases where Article 142 is" ,,,,,,,,,

exercised and a special category of people are conferred some benefit as a one-time measure, the category of beneficiaries is clearly described and if" ,,,,,,,,,

any exclusions are intended, the same are clearly described and if any exclusions are intended, the same are clearly stated. It, therefore, necessarily" ,,,,,,,,,

follows, that the benefit would accrue to all those women SSC officers who were

litigants before the High Court or one of the benches of the AFT as" ,,,,,,  
on the date of the judgment.,,,,,,

67. It is important to remember that Para 96(xi) is a one-time measure granted in exercise of Article 142 of the Constitution of India. Therefore, it" ,,,,,,

cannot be available as a benefit to those, who were not before the High Court or the AFT, as on the date of the judgment. Therefore, officers who" ,,,,,,

may have approached the High Court/ AFT on or after 17.03.2020 are excluded from this benefit. In this context, it is pertinent to also state that all" ,,,,,,

such SSC women officers, who are unprotected under the umbrella of paragraph 96(xi) are in any event eligible to be considered for grant of PC" ,,,,,,

under Paragraph 96(v). The only difference is that if they fail to qualify for PC, they are not eligible for pensionary and other consequential benefits," ,,,,,,

as contemplated in Paragraph 96(xi).,,,,,

Para 97,,,,,

68. Para 97 reads as under:,,,,,

97. We affirm the clarification which has been issued in sub-para (a) of paragraph 50 of the impugned judgment and order of the Delhi High Court.,,,,,,

69. This Para has affirmed the clarification that was issued in paragraph 50(a) of the judgment dated 04.09.2015 passed by the Honâ??ble High,,,,,

Court of Delhi in Annie Nagraja in W.P(C) No.7336 of 2010 which is to the effect that any claim by any women officer for absorption in such areas,,,,,

of operation, which are not open for recruitment of women officers, is not liable to be sustained, being a matter of a policy decision. While a plain" ,,,,,,

reading of this may appear to be in conflict with paragraph 96(v) where the Apex Court has directed to include Logistics cadre as well, for grant of" ,,,,,,

PC, a deeper analysis indicates that the Logistics cadre was open for women in the SSC. That being the case, the clarification in paragraph 50(a) of" ,,,,,,

the High Court judgment would not eclipse the direction given in paragraph 96(v) of the judgment of the Honâ??ble Supreme Court. This also,,,,,

vindicates the stand of the Indian Navy that it should have a discretion to restrict the recruitment of women officers in such areas of operation, which" ,,,,,,

cannot be opened for recruitment of women on account of operational reasons.,,,,,,

70. Consequent to this judgment, there is an impression that the direction on pensionary benefits would have wider ramifications and that the same" ,,,,,,

would lead to possible demand for pensionary benefits from other SSC Women officers (retired/in service) of the Indian Navy, and similarly situated" ,,,,,,,,,

officers of the Indian Army and Indian Air Force. In our opinion, the directions in the judgment dated 17.03.2020 are only in respect of the Indian" ,,,,,,,,,

Navy. No benefit of the directions can be taken by an officer (retired or otherwise) who has not served in the Indian Navy. The directions in,,,,,,,,,

Paragraph 96(i) to (viii) are specific to the Navy only, while the directions contained in paragraph 96(ix) to (xii) have been passed in exercise of the" ,,,,,,,,,

powers under Article 142 of the Constitution of India. Therefore, the same cannot be claimed as an entitlement on any ground, including parity by an" ,,,,,,,,,

officer of the Army or Air Force. It is also relevant to state that the issues arising in the context of the other two Services were subject matter of,,,,,,,,

distinct petitions, independent of the present batch of petitions and have been dealt with by the Honâ??ble Supreme Court separately." ,,,,,,,,,

#### IMPLICATIONS OF LT COL NITISHA CASE,,,,,,,,,

71. During the course of hearing the present batch of cases, the Counsels for the applicant have argued at length with reference to the Apex Court" ,,,,,,,,,

judgment in Lt Col Nitisha (supra) and stated that issues examined in the conduct of selection board as done in the case of grant of PC to Army SSC,,,,,,,,

women officers by the Special SB No 5 has not been done in the case of the Naval cases. And that since the Tribunal was now examining the grant,,,,,,,,

of PC to those who had been considered and not granted PC by the Navy, the following issues need to be examined and taken into consideration, as" ,,,,,,,,,

given in the judgment in Lt Col Nitisha (supra):,,,,,,,,

(a) That since the applicants were SSC officers who were not to be granted PC, their CRs may have been rendered casually by reporting officers." ,,,,,,,,,

(b) CRs of certain period did not have a column for recommendation for grant of PC and yet the selection process has utilized recommendations made for grant of re- ,,,,,,,,,

employment for consideration of grant of PC.,,,,,,,,,

(c) The Selection process has taken only the last five years into consideration.,,,,,,,,,

(d) The overall profile and contribution of the officer over the complete length of their service has not been taken into consideration.,,,,,,,,,

(e) In certain cases, major important and advance courses done by the officers

have not been taken into consideration." ,,,,,,,,,

72. In the Cdr T Rajkumar case (supra), on not being granted PC in the Selection Board Dec 20, 16 Naval officers had filed WP in the Apex Court" ,,,,,,,,,

under Article 32 of the Constitution challenging the rejection of the petitioners claim for the grant of PC. In the alternative, if not granted PC, the" ,,,,,,,,,

petitioners sought directions for grant of pension. The petitions were instituted based on the decision of the Apex Court in the case of Annie ,,,,,,,,,

Nagaraja (supra) and reliance was also placed on the decision of the Apex Court in the case of Lt Col Nitisha (supra), which was in the context of" ,,,,,,,,,

grant of PC to women officers in the Indian Army ,,,,,,,,,

73. Therefore, before considering the issues raised in the arguments, it is important to examine the relevance of the Lt Col Nitisha case pertaining to" ,,,,,,,,,

grant of PC to Army Officers, to the cases at hand pertaining to Naval SSC officers, both men and women. The judgment in Lt Col Nitisha (supra), " ,,,,,,,,,

flowed from the implementation of the judgment of the Apex Court in the matter of Babita Puniya (supra), regarding grant of PC to women SSC" ,,,,,,,,,

officers of the Indian Army. Consequent to judgment in Babita Puniya (supra), Army held a Special No 5 SB in Sep 2020 to consider SSC women" ,,,,,,,,,

officers for grant of PC based on the directions in the judgment. A total of 529 officers who opted for PC were considered and 277 were granted PC ,,,,,,,,,

A batch of women officers who were aggrieved by the way the Special No 5 SB was held and on not being granted PC, again took the matter to the" ,,,,,,,,,

Supreme Court under Article 32 and questioned the manner in which the decision of the Supreme Court in Babita Puniya (supra) case had been ,,,,,,,,,

implemented. Honâ??ble Supreme Court then directed the following in the case of Lt Col Nitisha (supra):- ,,,,,,,,,

(i) The administrative requirement imposed by the Army authorities while considering the case of the women SSCOs for the grant of PC, of benchmarking these" ,,,,,,,,,

officers with the officers lowest in merit in the corresponding male batch is held to be arbitrary and irrational and shall not be enforced while implementing the ,,,,,,,,,

decision of this Court in Babita Puniya (supra); ,,,,,,,,,

(ii) All women officers who have fulfilled the cut-off grade of 60 per cent in the Special No 5 Selection Board held in September 2020 shall be entitled to the grant ,,,,,,,,,

of PC, subject to their meeting the medical criteria prescribed by the General Instructions dated 1 August 2020 (as explained in (iii) below) and receiving",,,,,,,,,

disciplinary and vigilance clearance;,,,,,,,,

(iii) For the purpose of determining the fulfilment of direction (ii), the medical criteria stipulated in the General Instructions dated 1 August 2020 shall be",,,,,,,,,

applied at the following points of time:,,,,,,,,

(a) At the time of the 5th year of service; or,,,,,,,,

(b) At the time of the 10th year of service, as the case maybe.",,,,,,,,,

In case the officer has failed to meet the medical criterion for the grant of PC at any of these points in time, the WSSCO will not be entitled to the grant of PC. We",,,,,,,,,

clarify that a WSSCO who was in the TLMC in the 5th/10th year of service and subsequently met the SHAPE-1 criterion after the one year period of stabilization,",,,,,,,,

would also be eligible for grant of PC. Other than officers who are â??non-opteesâ?, the cases of all WSSCOs, including the petitioners who have been rejected",,,,,,,,

on medical grounds, shall be reconsidered within a period of one month and orders for the grant of PC shall in terms of the above directions be issued within a",,,,,,,,,

period of two months;,,,,,,,,

(iv) The grant of PC to the WSSCOs who have already been granted PC shall not be disturbed;,,,,,,,,

(v) The WSSCOs belonging to WSES(O) - 27 to 31 and SSCW(T&NT) 1 to 3 who are not considered to be eligible for grant of PC after the above exercise, will be",,,,,,,,,

extended the one-time benefit of direction (c) and (d) in Babita Puniya (supra);,,,,,,,,

(vi) All consequential benefits including the grant of time scale promotions shall necessarily follow as a result of the directions contained in the judgment in,,,,,,,,

Babita Puniya (supra) and the present judgment and steps to do so shall be completed within a period of three months from the date of the judgment;,,,,,,,,

(vii) The candidature of Lt. Col. Navneet Lobana, Petitioner No. 3 in Writ Petition (C) 1109 of 2020, will be reconsidered for grant of PC in terms of the above",,,,,,,,,

directions. In case the officer is not granted PC, she will be allowed to complete her M.Tech degree course for which she has been enrolled at the College of" ,,,,,,,,,

Military Engineering, Pune and shall not be required to pay or reimburse any amount towards the course;" ,,,,,,,,,

(viii) In accordance with pre-existing policies of the respondents, the method of evaluation of ACRs and the cut-off must be reviewed for future batches, to examine" ,,,,,,,,,

for a disproportionate impact on WSSCOs who became eligible for the grant of PC in the subsequent years of their service; and ,,,,,,,,,

(ix) During the pendency of the proceedings, the ASG had assured the Court that all the serving WSSCOs would be continued in service, since the Court was in" ,,,,,,,,,

seisin of the proceedings. There shall be a direction that this position shall continue until the above directions of the Court are implemented and hence the ,,,,,,,,,

serving WSSCOs shall be entitled to the payment of their salaries and to all other service benefits. ,,,,,,,,,

74. As a consequence of Lt Col Nitisha (supra), the Army reconsidered the case of those not granted PC in the Special No 5 SB and the results of" ,,,,,,,,,

the reconsideration were promulgated vide MS Branch letter no 36004/Spl No 5 SB 2020/ R-2/ MS-7B dated 14.07.2021. Eight officers who were still ,,,,,,,,,

not granted PC filed OAs in this Tribunal. The Tribunal had declined to stay the release order. The matter travelled to Delhi High Court where the ,,,,,,,,,

WP filed by three of the petitioners was dismissed, and these petitioners then filed a SLP in the Supreme Court. The Supreme Court vide its judgment" ,,,,,,,,,

dated 06.12.2021 has granted PC to these petitioners amongst others. ,,,,,,,,,

75. In the Nitisha case (supra), while the Apex Court examined the conduct of the Selection Board for grant of PC , identified and placed on record in" ,,,,,,,,,

its consideration certain infirmities in the conduct of the Board, the major operative direction was "All women officers who have fulfilled the cut-" ,,,,,,,,,

off grade of 60 per cent in the Special No 5 SB held in September 2020 shall be entitled to the grant of PC, subject to their meeting the" ,,,,,,,,,

medical criteria prescribed by the General Instructions dated 1 August 2020 (as explained in (iii) below) and receiving disciplinary and ,,,,,,,,,

vigilance clearance ". Thus, while the Apex Court took notice of issues relating

to ACR, major contribution of certain officers, medical criteria," ,,,,,,,,,

judgment did not envisage a change in type of CRs to be utilized in the reconsideration or change of any other parameters already utilized.,,,,,,,,,

76. Nitisha's case (supra) is an aftermath of the Babita Puniya case (supra), in which the Apex court has held that there is a flaw in the" ,,,,,,,,,

implementation of the judgment qua the methodology employed for consideration of the officers. The Apex Court therefore passed the directions after,,,,,,,,

examining the methodology utilized and held that the discrimination that was direct was now being perpetrated on an indirect basis. On the other hand," ,,,,,,,,,

in the matter of Cdr T Rajkumar (supra), it is a case where SSC officers have challenged the PC selection board in the Navy. Since there are major" ,,,,,,,,,

differences in the Selection procedure of SSC to PC between the Army and Navy, it heard the matters and decided two distinct paths. While in the" ,,,,,,,,,

case of the Army, it decided to hear the matters, in the case of the Navy it relegated the matters to this Tribunal." ,,,,,,,,,

77. A fine reading of the above direction of the Apex Court indicates that AFT is required to adjudicate on the prayer of these and any other petitioner,,,,,,,,

with similar grievances. The primary grievance being that since the petitioners were not granted PC by the Selection Board held in Dec 2020, and" ,,,,,,,,,

therefore, they be granted PC. And in the alternative, if they are not granted PC, they be granted pension. The Apex court has maintained that the" ,,,,,,,,,

principles for grant of PC have already been decided by it; and these principles are enshrined in the directions issued in Annie Nagaraja (supra).,,,,,,,,

While the assertions of the counsels for the applicants have referred to issues emanating from Lt Col Nitisha case (supra), the Apex court has not" ,,,,,,,,,

passed any directions that the grant of PC needs to be considered with the ratio of judgment in Lt Col Nitisha case (supra). Thus, the scope of the" ,,,,,,,,,

matter for consideration by this Tribunal is limited to examining the "individual facts" of each officer and to decide whether the Selection Board,,,,,,,,

was justified in not granting PC, and accordingly to decide each case. In the eventuality of these officers not being granted PC by the Tribunal, they" ,,,,,,,,,

are required to take up their respective case for grant of pension as per law.,,,,,,,,,

78. We are, therefore, of the opinion that the judgment in Lt Col Nitisha (supra) is not relevant to the cases pertaining to grant of PC to Naval SSC" ,,,,,,,,,

officers. In the case of Babita Puniya (supra) followed by Lt Col Nitisha (supra), the core issue is of gender discrimination that women officers were" ,,,,,,,,,

never considered for grant of PC. However, that is not the case in the Navy, which has uniformly either granted, or not granted PC to male and" ,,,,,,,,,

women SSC officers alike. In the Naval case, the core issue is that despite existing statutory provisions for induction of women and grant of PC to" ,,,,,,,,,

suitable SSC officers including women, the Department had not acted on it resulting in the situation as described at Para 90 and 91 of the judgment in" ,,,,,,,,,

the Annie Nagaraja case (supra). While the Counsel for the applicants have found it convenient to seek directions on rendition of CR and" ,,,,,,,,,

consideration of overall profile, it must be noted that even in the judgment in Lt Col Nitisha (supra), the Honâ??ble Supreme Court, though having" ,,,,,,,,,

brought these issues into discussion, did not give any direction to change the criteria in the selection process." ,,,,,,,,,

79. In summary, it is pertinent to mention that though both Babita Puniya and Annie Nagaraja (supra) examined the issue of grant of PC to SSC" ,,,,,,,,,

officers, the facts of both the cases are entirely different. It is not intended to discuss the difference in detail here though. In the Babita Puniya matter," ,,,,,,,,,

the Apex Court has held that there was direct gender discrimination in that, women officers were not considered while male officers were regularly" ,,,,,,,,,

considered and granted PC. In Annie Nagaraja, the Apex Court has upheld the policy dated 2008 except the retrospective and restrictive application" ,,,,,,,,,

to three cadres and has essentially lifted the ban on grant of PC to both men and women SSC officers in all Branches. It has also granted pension and" ,,,,,,,,,

other compensation under the powers of Article 142 of the Constitution of India. In essence, the Apex Court, therefore, adjudicated the matters by" ,,,,,,,,,

passing two separate judgments in the matter viz. Babita Puniya (supra) for SSC women officers in the Army and Annie Nagaraja (supra) for all" ,,,,,,,,,

SSC officers in the Indian Navy, except ATC. Further, certain cases of SSC women officers in the Air Force and SSC men officers of the Navy are" ,,,,,,,,,

still pending adjudication." ,,,,,,,,,

80. However, the relevant records pertaining to the consideration for grant of permanent commission to both male and female SSC officers have been" ,,,,,,,,,

perused. It is observed that the respondents have complied with the direction passed in Annie Nagaraja (Supra) and have redressed the issue of" ,,,,,,,,,

selective consideration of SSC officers observed by Apex court at Paragraphs 91 and 92 of Annie Nagaraja (supra). From the perusal of record, we",,,,,,,,,

find no evidence of discrimination between male and female SSCOs, and that the parameters for consideration have been uniformly applied. It is also",,,,,,,,,

relevant to reiterate that the issues arising in the context of the other two Services were subject matter of distinct petitions, independent of the present",,,,,,,,,

batch of petitions and have been dealt with by the Honâ??ble Supreme Court separately.,,,,,,,,,

SELECTION BOARD DEC 2020 FOR GRANT OF PC,,,,,,,,

81. The grant of PC is subject to availability of vacancies in the stabilized cadre, suitability of the officer, inter-se merit and the recommendation of the",,,,,,,,,

CNS. Based on the Apex Court judgment dated 17. 03.2020, Respondents were required to examine and decide the modalities for the Selection",,,,,,,,,

Board. On examination of the various records and files submitted by the Respondents to the Tribunal, it is seen that the IHQ of MoD (Navy) had",,,,,,,,,

considered the following issues:,,,,,,,,

(a) Selection Boards held prior to 2020.,,,,,,,,,

(b) Baseline for consideration and batches to be considered.,,,,,,,,,

(c) Categorization of officers for consideration.,,,,,,,,,

(d) Determination of vacancies.,,,,,,,,,

(e) Suitability criteria.,,,,,,,,,

(f) Inter-se merit criteria.,,,,,,,,,

(g) Conduct of Board and results.,,,,,,,,,

(h) Analysis of the Selection Board Proceedings.,,,,,,,,,

Selection Boards Held Prior to 2020.,,,,,,,,,

82. Consequent to the prospective and restrictive policy issued in 2008, in 2015, IHQ of MoD (Navy) vide their letter dated 19.03.2015 sought",,,,,,,,,

willingness of SSC officers of JAG/ Edn/ NC commissioned between 26.09.2008 and 31.12.2009. Officers desirous of seeking PC were to submit,,,,,,,,

their willingness by 15.05.2015. This letter also mentioned that SSC officers commissioned in 2010 would be similarly considered in 2016 and that this,,,,,,,,

cycle would then continue thereafter. Based on the letter dated 19.03.2015, the first set of officers of eligible SSC officers were granted PC vide",,,,,,,,,

Naval HQ their letter No RS/1109/SSC/PC(2009)/OA&R II/5 dated 07.04.2016 . PC was granted to 8 officers from Edn and 06 officers from E/NC.,,,,,,,,,

83. In 2017, once again a similar process was carried out to grant PC to SSC officers from Edn and Law cadre from those commissioned between",,,,,,,,,

26.09.2008 and 31.12.2010. The initial list of eligible officers consisted of a total of 17 officers; 02 officers of Edn of 2009 batch in their second look.,,,,,,,,,

and 15 officers of Edn of 2010 batch in their first look. Subsequently, since 04 officers were ineligible for various reasons, 13 were considered in the",,,,,,,,,

order of merit and 03 officers were granted PC. No offr of Law was considered as there were no vacancies. Similarly, in Jun 2018 the process of",,,,,,,,,

consideration of granting PC to Edn and Law cadre for the following batches commenced and willingness certificates were called for from 38 officers.,,,,,,,,,

of Edn and 07 officers of Law cadre vide IHQ of MoD (Navy) letter No RS/1109/SSC/PC(2010-11)/OA&R II/18 dated 08.06.2018. Based on the.,,,,,,,,,

inter-se overall merit, 3 officers from Edn and 02 officers from Law were selected for grant of PC and orders were promulgated vide Naval HQ",,,,,,,,,

Letter No RS/1109/SSC/PC(2011)/OA&R II/18 dated 21.06.2019.,,,,,,,,,

84. In Oct 2019 the process of considering the next batch of officers for grant of PC commenced. The consideration was of officers of 2012 and 2011.,,,,,,,,,

batches in Edn cadre and officers of 2011 and 2014 batches of Law cadre. The calculation of vacancies and parameters for consideration were the.,,,,,,,,,

same as done earlier for the previous batches. In this consideration, 49 officers (25 first look, 24 sec look) of Edn Cadre and 04 officers of Law cadre",,,,,,,,,

were to be considered. However, in Feb 2020 in view of the impending judgment in the Annie Nagaraja case (supra), it was decided to hold this",,,,,,,,,

consideration in abeyance. The judgment in Annie Nagaraja case (supra) was promulgated on 17.03.2020.,,,,,,,,,

85. Thus, it is seen that since the time those commissioned in 2009 came into their sixth year and were due for their first consideration, the IN had",,,,,,,,,

commenced the process of holding selection boards for granting PC and had worked out the modalities for calculating vacancies and had drawn up the.,,,,,,,,,

parameters to be considered in assessing suitability and inter-se merit. Therefore, as seen from the files and documents, in response to implementation",,,,,,,,,

of Directions in Annie Nagaraja case (supra), the IN utilized the same basic parameters and procedures, suitably modified to meet the overall",,,,,,,,,

directions in the judgment.,,,,,,,,,

Baseline for Consideration.,,,,,,,,,

86. Judgment was delivered on 17.03.2020 with the stipulation that the considerations should be completed within 3 months. However, due to the",,,,,,,,,

Covid pandemic and offices being closed, permission of the Supreme Court was taken to complete the considerations by Dec 20. For the purpose of",,,,,,,,,

SSC to PC consideration, a batch is defined as SSC officers commissioned between 01 Dec of previous year and 30 Nov of the relevant year. For eg.",,,,,,,,,

Ser,"Branch/

Cadre",As on,"Total

Stabilized

Cadre","GS

(Capt and

above)","Stabilized

CadreÂ Â Â Â Â

for consideration","Ideal PC

@60%","BorneÂ StrÂ of

PCÂ Â Â Â Â Â Â

upto Capt (TS)","Total Deficiency,"VacancyÂ Â Â for

PC

(roundedÂ Â off

to next higher

digit)

,,(A),(B),(C = A-B),(D),(E),(F = D-E),F/15

(a),Edn,"Aug

15",391,18,373,224,124+18CEI,82/ 100,6/ 7

(b),,Sep 16,391,18,373,224,130+18CEI,76/ 94,6/ 7

(c),,"Mar

20",404,18,386,232,147+18CEI,67/ 85,5/ 6

(d),Lgs,"Aug

15",546,45,501,301,325,Overborne,-

(e),,Sep 16,545,45,500,300,313,Overborne,  
(f),,"Mar  
20",617,46,572,344,316,28,2  
(g),NC,"Aug  
15",420,31,389,234,201,31,2  
(h),,Sep 16,420,31,389,234,213,21,2  
(i),,"Mar  
20",459,32,427,257,254,3,1  
(j),X/ GS,,3342,357,2985,1791,2909,Overborne,-  
(k),X/Obsr,,475,06,469,282,239,43,3  
(l),X/Hydro,,111,16,95,57,51,06,1  
(m),X/Pilot,,784,27,757,455,449,06,1  
(n),X/NAI,,291,28,263,158,169,Overborne,  
(o),X/Law,,44,05,39,24,31,Overborne,  
Ser,"Branch/ Cadre/  
Specialization", "No of  
BatchesÂ Â Â Under  
Consideration", "TotalÂ No  
of  
Officers", "NoÂ Â Â Â Â Â Â Â  
of  
Officers  
Unwilling", "FinalÂ Â Â  
NoÂ Â Â of officers  
considered", "Max vacanciesÂ Â  
to  
be utilized",,,  
(a),Education,11,108,11,97,40,,,  
(b),NC,07,17,01,16,03,,,  
(c),Logistics,14,139,14,125,19,,,

(d),Observer,07,49,14,35,17,,,

(e),Pilot,06,49,31,18,05,,,

(f),Hydro,05,19,04,15,04,,,

,Total,50,381,75,306,88,,,

(b),NC,07,16,03,03,"Due to limited

vacancies

Batches upto only 2005

(First Look) considered.

Subsequent batches

are deemed considered and

not granted PC due to

lack of

vacancies",,,

(c),Logistics,14,125,19,19,"All batches upto 2013

First look considered",,,

(d),Observer,07,35,17,15,"Batches upto 2013 First look

considered.

Only 15 vacancies utilized as

inadequate

number of

officers meeting

requisite criteria.",,,

(e),Pilot,06,18,05,05,"Batches upto 2013 First look

considered.",,,

(f),Hydro,05,15,04,04,"All batches upto 2013

First look considered",,,

,Total,,306,88,80,,,,,

petitioner SSC women officers who had desired PC whilst in Service and were denied PC on grounds of being commissioned prior to 2008 have been granted,,,,,,,,,

pensionary benefits. In addition, 21 serving women SSC officers who were before the Apex Court/HC/AFT as on date of the Apex Court judgment who were" ,,,,,,,,, considered and not granted PC have been also been granted pensionary benefits.,,,,,,,,,

109. Grant of Special Monetary Benefit to Select Officers [Para 96 (xii)] .Five officers in the CA arising out of SLP Nos. 30791-30796 of 2015 were,,,,,,,, to be paid a one-time compensation in addition to being granted pensionary benefits. As per the records, these five officers have been paid the" ,,,,,,,,, pensionary benefits and one-time compensation in Nov 2020 itself.,,,,,,,,, Conduct of Selection Board,,,,,,,,

110. Having heard all parties and examined various records, it is well established that the IN had formulated a proper procedure with suitable" ,,,,,,,,, parameters, and has applied it uniformly to all eligible SSCOs, both men and women, of all affected Branches/ Cadres in their consideration for grant" ,,,,,,,,, of PC. We find no mala fide in the parameters laid down or the procedure adopted. No gender discrimination has been observed in the Selection,,,,,,,, Board held in Dec 2020 and those held prior to the decision of the Honâ??ble Supreme Court in Annie Nagaraja (supra).,,,,,,,,

111. Since the Selection Board was held in Dec 2020 and since the prospective and restrictive aspect of the 2008 policy had been quashed, IN was" ,,,,,,,,, then required to examine all affected officers and not restrict it to pre 2008 officers. Since the 2011 (second look) and 2012 (first look) were originally,,,,,,,, scheduled in 2019 and was then held in abeyance pending judgment in Annie Nagaraja case (supra), they had to be considered now in 2020. In" ,,,,,,,,, addition, 2013 batch which was due for its first look in the normal course also had to be included. Thus, the IN was justified in considering all batches" ,,,,,,,,, prior to and including 2013 batch in the Selection Board of Dec 2020.The date of 30 Nov 2013 is applicable to the extent that it defines the SSCO,,,,,,,, batch date.,,,,,,,,,

112. Each batch has been given two considerations; first time with the immediate senior batch and the second one with the junior batch. From the,,,,,,,, proceedings it is seen that the officers found fit for grant of PC in the first look have been included in the second look with a remark that they have,,,,,,,, already been found fit earlier. Therefore, in each look, physically, those found fit earlier in their first look did had no effect the merit of the other" ,,,,,,,,,

officers.,,,,,,,,,

113. In order to generate maximum vacancies, the vacancy for individual Cadres/ Branches has been worked out based on its complete stabilized" ,,,,,,,,,

cadre to include stabilized sanctions, temporary sanctions and TDLR. The aspect of providing maximum vacancy to the petitioners in bothA nnie" ,,,,,,,,,

Nagaraja and Priya Khurana has been done by physically calculating the vacancy pattern for all the three reference dates and then utilising the.,,,,,,,,,

highest vacancy. Since this was the direction of the Apex Court, the plea of the applicants that the vacancy as it would have obtained in their 6th/7th" ,,,,,,,,,

year does not hold ground.,,,,,,,,,

114. Although there existed requisite statutory provisions for inducting women into IN and also granting PC to SSC officers, for a variety of reasons" ,,,,,,,,,

the process remained restrictive, based on the organization and operational needs. It is seen from the details on file that, over a period of time because" ,,,,,,,,,

of the legacy induction policy and execution, while SSC was open to many cadres, where the intake did not meet the requirement, IN had to induct PC" ,,,,,,,,,

officers resulting in excessive PC strength. The existing deficiency is vital for ensuring generation of vacancies for subsequent batches from 2021.,,,,,,,,,

onwards. Thus, the IN is justified and prudent not to fully liquidate existing deficiency entirely in the Selection Board Dec 2020." ,,,,,,,,,

115. Utilization of CEI vacancies was also argued at length by the Counsels for the applicants. It is seen from the Records that CEI are akin to PC.,,,,,,,,,

Officers as they serve till the retirement age of 60 years. Along the way, IN decided to abolish CEI and replace them with uniformed personnel." ,,,,,,,,,

However, those with residual service were retained to permit them superannuate. Hence, in Dec 2020, there were 18 CEIs. Since the total sanction of" ,,,,,,,,,

Education was inclusive of 10% CEI, they too have been included in the borne strength and accounted for. If indeed they were not to be counted in" ,,,,,,,,,

the â??Borne Strengthâ?? for the calculation of vacancies for the Selection Board, then they would have had to be reduced from the sanctioned" ,,,,,,,,,

cadre too. In the present calculation, it is seen that the inclusion of only 18 CEI has specifically benefited in calculating the strength as in 2015 and" ,,,,,,,,,

2016. While actually in 2015 and 2016 though there were 33 CEI held, and a fig of 33 should have been factored into the calculations, however, only" ,,,,,,,,,



Dept should have worked out a methodology of apportioning commensurate vacancy based on the No of Officers who are eligible for consideration. In the,,,,,,,,

Selection Board 2020, the following applicants have been deemed to have been considered and not granted PC for want of vacancy.",,,,,,,,

(i) Cdr Seema Chaudhary, Exec/Law in OA 1972/2021.",,,,,,,,

(ii) Cdr Raja Kanwar, Exec/GS, in OA 1965/2021.",,,,,,,,

(iii) Cdr Bhupesh Kumar, Exec/GS, OA 1966/2021.",,,,,,,,

(b) In a similar manner, NC have been assigned only three vacancies and therefore batches upto 2005 (First Look) could only be considered; 2005 was not given",,,,,,,,

itâ??s mandatory second look. Thus, 10 officers belonging to 2006 to 2008 batch had no vacancy and were yet deemed to have been considered and not granted PC",,,,,,,,

for want of vacancy. Here again, the Dept should have worked out a methodology of apportioning additional vacancies. Thus, the following applicants have been",,,,,,,,

deemed to have been considered and not granted PC for want of vacancy. ....

(i) 2006 -Cdr T Rajkumar in OA 2019/2021. ....

(ii) 2007 -Lt Cdr Tarun in OA 432/2016. ....

(iii) 2008 -Lt Cdr Varun Duggal in OA 437/2016. Lt Cdr Vaibhav Sinha in OA 780/2016. ....

(c) We find much force in the arguments of the Counsels for the applicants that consideration without any actual vacancy is indeed a travesty of justice. While all, .....

affected officers have a right to fair consideration for grant of PC, a consideration without any vacancy is against the principles of natural justice, since there is no" .....

fruit of the consideration that any of the officers under consideration can aspire for. While the Respondents have argued that as per Regulations 203, grant of PC is" .....

subject to availability of vacancies and therefore since there were no vacancies in these cadres, they could not be granted PC. Since the Supreme Court has now" .....

directed that all SSC officers (with the exceptions as mentioned) will be considered for PC, the interpretation of Regulation 203 must be suitably

harmonized with these" ,,,,,,,,,,  
 Ser,"OA  
 Case Ref",Applicants,"Current  
 Status","Relief  
 sought","Merit 1st  
 Consideration","Merit 2nd  
 Consideration",Disposal,,  
 1,"OA 433/2016  
 SLP(C) 834-36 /  
 2021","Lt Cdr  
 Ravinder Pal Singh  
 Engineering/ NC Batch -  
 2005  
 Service - 16","Retired  
 Released  
 31.12.2020",PC/ Pension,"5/6  
 Low merit",No vacancy,"Was considered only for first  
 look. To be given second look",,  
 2,"OA 435/2016  
 SLP(C) 834-36 /  
 2021","Lt Cdr  
 Amit Khajuria  
 Engineering/ NC Batch -  
 2005  
 Service - 16","Retired  
 Released  
 31.12.2020",PC/ Pension,"6/6  
 Low merit",No vacancy,"Was considered only for first  
 look. To be given second look",,  
 3,"OA 436/2016

SLP(C) 834-36 /  
2021","Lt Cdr  
Manish Kumar Singh  
Engineering/ NC Batch -  
2005  
Service - 16","Retired  
Released  
31.12.2020",PC/ Pension,"3/6  
Low merit",No vacancy,"Was considered only for first  
look. To be given second look",,  
4,"OA 1203/2017  
WP 1471/2020  
(Tfr - Rajkumar)","Cdr Saroj Singh Exec/ Lgs  
Batch -2003  
Service - 18","Released  
31.12.2020  
Rel stayed In  
service",PC,"5/10  
Low merit",4/9  
Low merit","Not eligible for PC  
AlreadyÂ Â Â Â Â Granted  
Pension",,  
5,"OA 838/2018  
WP 1471/2020  
(Tfr-Â Rajkumar)","Cdr Swati Bhatia  
Education/ GS Batch -  
2004  
Service - 17","Released  
31.12.2020  
Rel stayed In

service",PC,"12/14  
Low merit","18/20  
Low merit","Not eligible for PC  
AlreadyÂ Â Â Â Â Granted  
Pension",,  
6,"OA 840/2018  
WP 1478/2020  
(Tfr - Rajkumar)","Cdr Vijayeta Education/  
GS Batch -2004  
Service - 17","Released  
31.12.2020  
Rel stayed In  
service",PC,"8/14  
Low merit","14/20  
Low merit","Not eligible for PC  
AlreadyÂ Â Â Â Â Granted  
Pension",,  
7,"OA 1959/2018  
Old matter","Cdr Kumar Dhiraj Batch -  
2007  
Service - 14","Released  
09.01.2019  
Retired",PC,"Not considered since  
not in service on date of  
judgment","Not considered since  
not in service on date of  
judgment","Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and

(xi) of the judgment",,  
8,"OA 2118/2018  
WP 1478/2020  
(Tfr - Rajkumar)","Cdr Mandip Kaur Exec/  
Lgs  
Batch -2005  
Service - 16","Released  
31.12.2020  
Rel stayed In  
service",PC,"7/9  
Low merit NR for PC in  
ACR","10/12  
Low merit NR for PC in  
ACR","Not eligible for PC  
AlreadyÂ Â Â Â Â Granted  
Pension",,  
9,"OA 816/2019  
WP 1269/2020  
(Tfr - Rajkumar)","Cdr YK Singh Education/  
GS Batch -2005  
Service - 16","Released  
31.12.2020  
Rel stayed In  
service",PC/ Pension,"15/20  
Low Merit","10/13  
Low merit","Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and  
(xi) of the judgment",,

10,"OA 1361/2021  
Fresh case","Cdr Sarita Nagayach Exec/  
Lgs  
Batch -2007  
Service - 14","Released  
05.08.2021  
Retired",PC/ Pension,"07/15  
Low merit NR for PC in  
ACR","13/20  
Low merit NR for PC in  
ACR","Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and  
(xi) of the judgment",,  
11,"OA 1454/2021  
WP 646/2021  
Dismissed as  
withdrawn by  
applicant.", "Cdr Sandeep Singh Exec/  
Lgs  
Batch -2007  
Service - 14","Rel Order  
24.03.2021  
Released  
06.08.2021",PC/ Pension,"4/15  
Low merit", "8/20  
Low merit", "Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)

and  
(xi) of the judgment",,  
12,"OA 1964/2021  
WP 1471/2020  
(Tfr - Rajkumar)","Cdr Pooja Rajput Exec/  
Lgs  
Batch -2002  
Service - 19","Released  
31.12.2020  
Rel stayed In  
service",PC,"5/7  
Low merit","7/10  
Low merit","Not eligible for PC  
Already granted pension",,  
13,"OA 2008/2021  
WP 703/2021  
(Tfr - Rajkumar)","Cdr Barsha Agarwal & 03  
Ors Education/ GS Batch -  
2007  
Service - 14","Rel Order  
05.08.2020  
Released  
05.08.2021","PC/ Pension  
/  
Permit to  
serve till 20  
yrs (Ref BP/  
N  
case)","9/11  
Low merit","7/9

Low merit","Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and  
(xi) of the judgment",,  
14,Joint with Ser 13,"Cdr  
Shweta Kapoor Education/  
GS Batch -2007  
Service - 14","Rel Order  
05.08.2020  
Released  
05.08.2021","PC/ Pension  
/  
Permit to  
serve till 20  
yrs (Ref BP/  
N  
case)","11/11  
Low merit","09/09  
Low merit","Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and  
(xi) of the judgment",,  
15,Joint with Ser 13,"Cdr  
Sapna C Lanjewar  
Education/ GS Batch -  
2007  
Service - 14","Rel Order  
05.08.2020

Released

05.08.2021","PC/ Pension

/

Permit to

serve till 20

yrs (Ref BP/

N

case)","7/11

Low merit","05/09

Low merit","Not eligible for PC and not

granted pension being

inadmissible under Para 96(x)

and

(xi) of the judgment",,

16,Joint with Ser 13,"Cdr

SS Naik Education/ GS

Batch -2007

Service - 14","Rel Order

05.08.2020

Released

05.08.2021","PC/ Pension

/

Permit to

serve till 20

yrs (Ref BP/

N

case)","8/11

Low merit","06/09

Low merit","Not eligible for PC and not

granted pension being

inadmissible under Para 96(x)

and

(xi) of the judgment",,

17,"OA 2064/2021

WP 1471/2020

(Tfr - Rajkumar)","Cdr

Annie Nagaraja

Education/ GS Batch -

1999

Service - 22","Released

31.12.2020

Rel stayed -

SCÂ Â Â Â Â

order 24.08.2020

In service","PC

Reframe

guidelin es

of 15.10.2

020?","5/8

NR for PC in ACR","6/9

NR for PC in ACR","Not eligible for PC

Already granted pension",,

18,"OA 2065/2021

WP 1471/2020

(Tfr - Rajkumar)","Lt Cdr

Barkha Rathore Exec/ Lgs

Batch -2003

Service - 18","Released

31.12.2020

Rel stayed In

service","PC

Reframe

guidelin es

of 15.10.2

020 ?","10/10

Low merit NR for PC in

ACR","9/9

Low merit NR for PC in

ACR","Not eligible for PC

Already granted pension",,

19,"OA 2066/2021

WP 1471/2020

(Tfr - Rajkumar)","Cdr

Urmilla Bhat Education/

Met Batch -1999

Service - 22","Released

31.12.2020

Rel stayed In

service",PC,"7/8

Low merit NR for PC in

ACR","8/9

Low merit NR for PC in

ACR","Not eligible for PC

Already granted pension",,

20,"OA 2067/2021

WP 507/2021

(Tfr - Rajkumar)","Cdr

Puneet Pal Kaur Exec/

LgsÂ Batch -2006

Service - 14","Released

12.05.2021

Rel stayed In

service",PC/ Pension,"5/12

Low merit","6/15

Low merit","Not eligible for PC and not  
granted pension being

inadmissible under Para 96(x)

and

(xi) of the judgment",,

21,"OA 2068/2021

WP 1471/2020

(Tfr - Rajkumar)","Cdr

Shruti Dhawan Education/

GS Batch -1999

Service - 22","Released

31.12.2020

Rel stayed In

service",PC,"6/8

NR for PC in ACR","7/9

NR for PC in ACR","Not eligible for PC

Already granted pension",,

22,"OA 2069/2021

Fresh case","Cdr

Bhanu Pratap Singh Exec/

Lgs

Batch -2007

Service - 14","Released

31.12.2020

Retired",PC/ Pension,"10/15

Low merit NR for PC in

ACR", "15/20  
Low merit NR for PC in  
ACR", "Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and  
(xi) of the judgment",,  
23, "OA 2167/2021 (Tfr -  
RB MUMBAI) WP  
No. 1269/2020  
(Tfr - Rajkumar)", "Cdr  
Amit Kumar Sharma  
Education/ GS Batch -  
2003  
Service - 18", "Released  
31.12.2020  
Rel stayed In  
service", PC/ Pension, "2/3  
NR for PC in ACR", "9/14  
Low merit NR for PC in  
ACR", "Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and  
(xi) of the judgment",,  
24, "OA 2168/2021  
(Tfr RB Mummbai)  
Old matter, transferred  
from AFT(RB),  
Mumbai", "Lt Cdr Yogita Rani

Education/ GS Batch -  
2003  
Service - 18", "Released  
31.12.2020", "PC/ Pension, "3/3  
Low merit", "14/14  
Low merit", "Not eligible for PC  
Already granted pension",,,  
25, "OA 2169/2021 (OA  
105/2017 RB  
MUMBAI)  
WP 1269/2020  
(Tfr - Rajkumar)", "Cdr  
P S Soodan Education/ GS  
Batch -2004  
Service - 17", "Released  
31.12.2020  
Rel stayed In  
service", "PC/ Pension  
Permit to  
serve till 20  
yrs (Ref BP/  
N  
case)", "13/14  
Low merit NR for PC in  
ACR", "19/20  
Low merit NR for PC in  
ACR", "Not eligible for PC and not  
granted pension being  
inadmissible under Para 96(x)  
and

(xi) of the judgment",,

Ser

No",O.A,Applicants,"Ser

No",O.A,Applicants,,,,

1,OA 1203/17,Cdr Saroj Singh Exec/Lgs,10,OA 2008/21,"CdrÂ BarshaÂ AgarwalÂ &Â 03

ors

Edn/GS",,,,

2,OA 838/18,Cdr Swati Bhatia Edn/GS,11,,Cdr Shweta Kapoor Edn/GS,,,,

3,OA 840/18,CdrVijayeta Edn/GS,12,,Cdr Sapna C Lanjewar Edn/GS,,,,

4,OA 1959/18,"Cdr Kumar Dhiraj

Exec/Hydro",13,,Cdr SS Naik Edn/GS,,,,

5,OA 2118/18,Cdr Mandip Kaur Exec/Lgs,14,OA 2064/21,Cdr Annie Nagaraja Edn/GS,,,,

6,OA 816/19,Cdr YK Singh Edn/GS,15,OA 2065/21,Lt Cdr Barkha Rathore Exec/Lgs,,,,

7,OA 1361/21,"Cdr Sarita Nagayach

Exec/Lgs",16,OA 2066/21,Cdr Urmilla Bhat Edn/Met,,,,

8,OA 1454/21,"Cdr Sandeep Singh

Exec/Lgs",17,OA 2067/21,Cdr Puneet Pal Kaur Exec/Lgs,,,,

9,OA 1964/21,Cdr Pooja Rajput Exec/Lgs,18,OA 2068/21,Cdr Shruti Dhawan Edn/GS,,,,

,,,19,OA 2069/21,Cdr Bhanu Pratap Singh Exec/Lgs,,,,

,,,20,OA 2167/21,Cdr Amit Kumar Sharma Edn/GS,,,,

,,,21,OA 2168/21,Lt Cdr Yogita Rani Edn/GS,,,,

,,,22,OA 2169/21,Cdr P S Soodan Edn/GS,,,,