

(2021) 08 AFT CK 0028

In the Armed Forces Tribunal

Case No : OA 1668, 1699, 1700, 1701, 1718, 1719, 1720, 1721 Of 2021

Lt Col Kavita Gusain

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2021) 08 AFT CK 0028

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

Bench : Division Bench

Advocate : S.S. Pandey, Neeraj

Final Decision : Dismissed

Judgement

1. These eight serving Short Service Commissioned (SSC) women officers have filed their application under Section 14 of Armed Forces Tribunal Act

2007, being aggrieved by not having been granted Permanent Commission (PC) even after the reconsideration of their cases, consequent to the

judgment of Hon'ble Supreme Court dated 25.03.2021 $\hat{A}$ in Lt Col Nitisha & Ors. Vs Union of India & Ors. in W.P. (C) 1109 Of 2020. The

results of the reconsideration have been promulgated vide MS Branch letter No. 36094/Spl No 5 SB 2020/R-2/ MS-7B dated 14.07.2021. Of these

eight officers, WS00642 P- Lt Col Kirti Shintre (OA 1701/2021), though not granted permanent commission, has been permitted to serve till

02.03.2022 $\hat{A}$ to complete 20 years pensionable service. The other seven officers, having served for twenty years or more are to be released from

service on 12.09.2021 with pension. These officers have therefore made the following common prayers

(a) Quash the assessment pertaining to the period between 3 to 5 years of their

career, since consideration of these assessments has denied them permanent commission.

(b) Thereafter, set aside the impugned letter dated 14.07.2021 and the respective release orders.

(c) Respondents to then consider these officers for PC based on their complete overall profile, less the assessment in the 3 to 5 year period.

(d) In the interim, stay the release order.

2. Heard both parties on the interim prayer to stay the release order(s).

3. Shri S.S. Pandey, learned counsel representing five of the applicants (OA 1668/2021, OA 1699/2021, OA 1700/2021, OA 1720/2021 and OA

1721/2021), first took us through the genesis of grant of PC to women officers. He recapitulated the judgement of the Honhle Supreme Court in the

case of Babita Puniya Vs Union o f India & Ors. (2020) 7 SCC 46 9based on which the Special No 5 SB was held in September 2020. He then

elaborated, how many who were not granted PC by the Special No 5 SB of September 2020, and aggrieved by the manner in which it was held, again

took the matter to the Honhle Supreme Court. The Counsel then took us through the details of the Honhle Supreme Court judgement in the case of Lt

Col Nitisha (supra), in which a batch of petitions under Article 32 of the Constitution of India had questioned the manner in which the decision of the

Hon Tile Supreme Court in the case of Babita Puniya (supra) had been implemented. The Counsel then vehemently stated that the Hon hie Apex

Court had ruled on the arbitrary and discriminatory nature in which the Special No 5 SB of September 2020 was held and had issued appropriate

directions. The major operative direction being â??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 (Hi) below) and receiving disciplinary and vigilance clearanceâ??

4. The Counsel then went on to state that though the cases of the applicants for grant of PC had been reconsidered, they have not been found fit and

are, therefore, being released from service with pension as intimated by the respondents vide their letter of 14.07.2021. The Counsel then briefly took

us through the various policies on grant of extension, PC and assessment

criteria. He then stated that the applicants had not made the 60% cut-off only because their formative reports in the form of UAC (Unit Assessment Card - which was the prevalent assessment methodology from 1999 to 2005 for officers under 8 years of service) had been taken into consideration and not their entire service profile when all of them have had major professional achievements. The Counsel also elaborated on the fact that SSC officers were to be considered twice for PC, and that the applicants have not had their second consideration to which they were eligible in their seventh year. The Counsel vehemently stated that it was, therefore, imperative that the applicants were considered afresh with their complete service profile and CRs and that till this was done, their release be stayed as the balance of convenience was in their favour and that if they were released, they would suffer irreparable damage.

5. Shri Rakesh Kumar, learned counsel appearing for three of the applicants (OA 1701/2021, OA 1718/2021 and OA 1719/2021) then briefly summarised the issues covered earlier by Advocate SS Pandey and then elaborated on the implementation of UAC method of assessment in 1999 and the re-introduction of CR system in 2005. He vehemently argued that all officers whose CRs had been considered had been found fit for grant of permanent commission, whilst those whose UAC/ combination of UAC and CR were considered had not been found fit.

6. The Counsels for the Respondents stated that the judgement in the case of Lt Col Nitisha (supra) was explicit, that with reference to the results of Special No 5 SB held in September 2020, those who scored more than 60% and had not been granted PC were now to be granted PC subject to medical criteria and receiving disciplinary and vigilance clearance. The Counsel vehemently stated that though the judgement has examined various issues connected with the conduct of the Special No 5 SB, they have not directed that the Special No 5 SB be done afresh with different criteria. The Counsel then stated that the concept of UAC had been applied uniformly for all officers in the period 1999 to 2005. Thus, even in the case of SSC officers, both women and men, officers of that period were evaluated based on UAC and had been found fit for grant of PC. The current plea by the applicants amounts to a fresh determination of Special No 5 SB with different criteria, which is not what the judgement in Lt Col Nitisha (Supra) has

directed, and therefore needs to be rejected and their prayer for stay of release also merits no consideration. The Counsels also added that all the

applicants had approached the Hon hie Apex Court which had not entertained their applications and have rejected them.

7. The Counsel for the applicants then stated that the applications filed by the applicants in the Hon hie Supreme Court were not dismissed as

mentioned by the Counsel for the Respondents. He added that the Hon hie Supreme Court has directed the applicants to seek their remedy in the

Tribunal. He also added that unless the applicants are retained in service, they cannot be granted the second consideration for PC. Moreover, since

the release is to be affected by 12.09.2021, the applicants have not been given adequate time to complete their release formalities.

8. Having heard both parties at length, we find full force in the arguments of the Respondents that the major determination in the judgement in Lt Col

Nitisha (supra) is that the applicants and those similarly placed were to be reconsidered for grant of PC. In the reconsideration, those who had scored

above 60% in the original SB and had not been granted PC were to be granted PC subject to medical criteria and various clearances.

9. Â UAC assessment method adopted by the Respondents was applicable for the entire officer cadre for a particular time. Having found that the

UAC method did not meet the aspirations of the organisation, the Respondents reverted to the CR method of assessment for all officers. Thus, across

the entire officer cadre various selection boards have taken the UAC into consideration when it was in force. Even in the case of both men and

women SSC officers, UAC has been considered and many have been granted PC based on this. Thus, we find absolutely no force in the plea of the

applicants and the arguments of their Counsel, that they have any case for a special consideration by the SB without the UAC being part of the

reckonable profile.

10. Â Since the respondents have reconsidered those SSC officers not granted PC in the light of the judgement in Lt Col Nitisha (supra) and have

granted PC to those who met the criteria, and consequently have issued release order for those who did not meet the stipulated criteria, we find no

reason to stay the release of the applicants.

11. Â In a similar case before the Delhi High Court in Cdr. A. Swapna Vs. Union of

(for stay)], the Honhble Court has not granted interim stay and has worded the following :

â??6. We have enquired from the counsel for the petitioner, how, by an interim order, pending consideration of this petition, the petitioner can be granted stay

of her release from the respondents Indian Navy, as is sought by way of interim relief. It is further enquired, whether not the same would tantamount to this

Court, by an interim order, permitting the petitioner to occupy a public office, even before any right of the petitioner to occupy the same has been adjudicated by

this Court. It has yet further been enquired, whether not in the event of the petition being dismissed, the petitioner, by way of an interim order, would have

usurped a public office, without authorization of law. We may mention, that the respondents Indian Navy, on 24th May, 2021 when this petition had come up

first for admission, opposed even issuance of the notice of the petition, on the ground of the jurisdiction to entertain the same being of the Armed Forces

Tribunal (AFT). The said question is also still at large, for adjudication in this petition, and if it were to be held that this Court, in exercise of its discretionary

jurisdiction under Article 226 of the Constitution of India would not entertain this petition, owing to the statute having vested jurisdiction with respect thereto

in AFT, this Court would have by an interim order allowed the petitioner to continue in employment, when as per the terms of her employment, she was not

entitled to so continue after 5th August, 2021.

7. Attention of the counsel for the petitioner has been drawn to the decision of Supreme Court in State of Haryana Vs. Suman Dutta (2000) 10 SCC 311, wherein

it has been observed that by an interim order, if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would

tantamount to usurpation of public office without any right to the same. Similarly, in State of U.P. Vs. Sandeep Kumar Balmiki (2009) 17 SCC 555, it was held

that by an interim order, termination of employment could not be stayed, as giving such a relief amounted to allowing the writ petition itself. In Bhankra Byas

Managing Board Vs. Suresh (2009) 7 SCC 515 also, while setting aside an interim order of the High Court granting compassionate employment, the Supreme

Court observed that the High Court was not justified in granting such interim order at the admission stage and although a decree had been passed against the appellant directing the appellant to make compassionate appointment, but at the interim stage of the second appeal, the appellant could not be directed to

appoint the respondent, on the statement of the respondent that he was ready to forego the past benefit if he was taken in service. Reference in this regard may

also be made to the dicta of this Court in Rohit Sharma Vs. Union of India MANU/DE/0971/2021 (DB), Air India Ltd. Vs. Aditya Ben MANU/DE/2781/2012

(DB) and The Co- operative Store Ltd., Superbazar Vs. Superbazar Karamchari Hitesh Sangathan MANU/DE/5089/2012 (DB) [Special Leave Petition (Civil)

No. 33541/2012 preferred whereagainst was dismissed on 23rd October, 2012]. Notice may also be taken of the observations of the Supreme Court in U.P.

Junior Doctors' Action Committee Vs. B. Sheetal Nandwani 1992 Supp (1) SCC 680, though in different facts; it was held to be a well- known rule of practice

and procedure, that at interlocutory stage, a relief, which was asked for and was available at the disposal of the matter, is not granted. The writ petitioners in the

said case wanted admission into postgraduate course, as the main relief in the writ petition. Supreme Court observed, that unless there was any special reason to

be indicated in clear terms in an interlocutory order, as a rule, no provisional admission should be granted and more so into technical courses. It was further

held that grant of such a relief at the threshold, creates a lot of difficulties and in a case where the petitioner ultimately loses in a case of this type, a very

embarrassing situation crops up if he has by then read for two to three years, there is a claim of equity, on the plea that one cannot reverse the course of time.

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14. Grant of any interim relief to the petitioner in such a situation would be strictly in the teeth of the principles of law and judgments referred to in paragraph 7

hereinabove.

15. No case for grant of interim relief is made out.â??

12. In view of the above, the interim prayer made by the applicants is accordingly rejected.

Pronounced in open Court on this 27th day of August, 2021.