

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos 9367-9369 of 2011

The Secretary, Ministry of Defence

...Appellant

Versus

Babita Puniya & Ors.

...Respondents

With

Civil Appeal Nos 1127-1128 of 2013

And With

Civil Appeal No. 1210 of 2020

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

Index

- A Background of the dispute
- B Proposal of the Union of India
- C Submissions
- D Consequence of the policy letter dated 25 February 2019
- E Stereotypes and women in the Armed Forces
- F Consequence of non-compliance
- G Blanket restriction on criteria appointments
- H Directions

A Background of the dispute

1. A quest for equality of opportunity for women seeking Permanent Commissions¹ in the Indian Army forms the basis of these appeals. The lead appeal originated in a batch of Writ Petitions which were instituted before the High Court of Delhi in 2003 and 2006.

2. A decade and more spent in litigation, women engaged on Short Service Commissions² in the Army seek parity with their male counterparts in obtaining PCs. The entry of women in the Army has a chequered history. Section 12 of the Army Act 1950³ contains, in so far as it is material, the following provisions:

“12. Ineligibility of females for enrolment or employment.- No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

3. Pursuant to the power conferred by Section 12, the Union Government issued a notification⁴ dated 30 January 1992 making women eligible for appointment as officers in the specific branches/cadres of the Army. These were:

- “(i) Army Postal Service;
- (ii) Judge Advocate General’s Department;
- (iii) Army Education Corps;
- (iv) Army Ordnance Corps (Central Ammunition Depots and Material Management); and
- (v) Army Service Corps (Food Scientists and Catering Officers).”

¹ “PC”

² “SSCs”

³ “1950 Act”

⁴ SRO-11

- (vi) Further career progression in selected ranks will be within the existing authorised strength of officers in the Army and no additional select rank vacancies will be created;
- (vii) Women officers who fail to exercise the option for PC will be governed by the terms and conditions under which they were commissioned; and
- (viii) The policy would come into effect prospectively from the date of the issuance of the letter.

The communication dated 25 February 2019 is reproduced below:

“Policy letter dated 25 February 2019

F. No. 14(01)/2018-D(AG)
Government of India
Ministry of Defence

New Delhi,

Dated the 25th February, 2019

To
The Chief of Army Staff,
New Delhi

Subject: Permanent Commission to Short Service Commission (SSC) Women Officers in Indian Army.

This is in continuation of MoD letter No. 12(01)/2004-D(AG) Pt. II dated 26.09.2008 and letter No. 671/2009-(AG) dated 11.11.2011 regarding induction of women in Armed Forces and grant of Permanent Commission (PC) to Short Service Commission (SSC) Women Officers.

2. The sanction of the President is hereby conveyed for consideration of grant of Permanent Commission to SSC Women Officers in the eight arms/services in Indian Army viz. Signals, Engineers, Army Aviation, Army Air Defence, Electronics and Mechanical Engineers (EME), Army Service Corps, Army Ordnance Corps and Intelligence in addition to the existing two streams of Judge Advocate General (JAG) and Army Education Corps (AEC). Thus women will be considered for grant of PC in all the ten streams in which they are currently being commissioned as SSC Officers.

3. Women Officers will continue to be commissioned into the above mentioned ten Arms and Services hither-to-force, with no change in their tenure of Short Service engagement.

dangers of a woman officer being captured by the enemy and becoming a prisoner of war.

Submissions of the respondents

37. Assailing the above submissions, and in a serious critique of the submissions adopted by Union of India and the MoD in their perception of women officers, Ms Meenakshi Lekhi, learned Counsel and Ms Aishwarya Bhati, learned Senior Counsel have joined issue. The attention of the Court has been drawn to the total strength of and shortage of officers in the Army on date, as reflected in the following table:

<u>DETAILS OF OFFICERS IN INDIAN ARMY</u>		
<u>Auth Officers</u>	<u>Held Officers</u>	<u>Shortage</u>
50266	40825 including 1653 Women Officers	9441

Besides, 157 male officers between the age group of fifty-four and fifty-eight years have been re-employed after their retirement. The cadre structure of women officers serving in the Indian Army is indicated in the following table:

<u>DETAILS OF WOMEN OFFICERS IN INDIAN ARMY</u>			
<u>Present Holding</u>	<u>Above 20 Yrs</u>	<u>Between 14-20 Yrs</u>	<u>Fate Undecided</u>
1653	77	255	332

38. Women officers form a miniscule four per cent of the total strength of commissioned officers in the Army. Ms Lekhi submitted that the Union

			Scheme		
PC Male Officers	Pensionable after 20 years	Yes	Yes	Yes	Paid for 300 days encashed leave
Jawan/ JCO	Pensionable after 15 years	Yes	Yes	Yes	Paid for 300 days encashed leave
SSC Women Officers	No pension	No ESM status	No ECHS facility	No provision of re-employment	Paid only for 90 days encashed leave
SSC Male Officers	SSC Gentlemen officers are all together in a different category, as they are allowed to opt for permanent commission after 5/10 years of service and once they get permanent commission, they are authorised for all benefits of permanent commission officers.				

”

43. The rival submissions fall for consideration.

D Consequence of the policy letter dated 25 February 2019

44. Article 33 of the Constitution empowers Parliament to determine by law the extent to which the rights conferred by Part III of the Constitution shall be restricted/abrogated in their application *inter alia* to the members of the Armed Forces so as to ensure the proper discharge of their duties and the maintenance of discipline among them. The impact of Article 33 is to enable Parliament to limit or abrogate the fundamental rights in their application to the members of the Armed forces. But such a restriction or abrogation **must be** by law. Moreover, the restriction or abrogation must be enacted to ensure the proper discharge of duties and the maintenance of discipline.