



Reportable

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION**

Review Petition (Civil) No 1036 of 2023

In

Civil Appeal No 2216 of 2022

Cdr Seema Chaudhary

...Petitioner

Versus

Union of India and Others

...Respondents

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

1 A batch of petitions pertaining to the grant of Permanent Commission¹ to Short Service Commission² Officers in the Indian Navy was disposed of by

1 “PC”

2 “SSC”

this Court by its judgment in ***Union of India vs Lieutenant Commander Annie Nagaraja***³. The review petitioner was one of the officers before this Court. The submissions which were urged on her behalf were set out in paragraph 52 of the judgment.

- 2 In order to appreciate the grievance in the review petition, a reference to some of the salient facts would be in order. The petitioner was commissioned in the Indian Navy as a Short Service Commissioned Officer⁴ in the Judge Advocate Generals'⁵ Branch of the Indian Navy on 6 August 2007. She was promoted on 6 August 2009 as a Lieutenant and, thereafter, on 6 August 2012 as a Lieutenant Commander. During the course of her service, she was granted an extension in November 2016 for a period of two years and, thereafter, for an equivalent duration in August 2018. On 5 August 2020, the petitioner was informed that she would stand released from service on 5 August 2021.
- 3 The judgment of this Court in ***Lieutenant Commander Annie Nagaraja case (supra)*** was rendered by this Court on 17 March 2020. The directions which were issued by this Court would be of relevance to the present case and are hence set out below:

“109.1. The statutory bar on the engagement or enrolment of women in the Indian Navy has been lifted to the extent

3 (2020) 13 SCC 1

4 “SSCO”

5 “JAG”

envisaged in the Notifications issued by the Union Government on 9-10-1991 and 6-11-1998 under Section 9(2) of the 1957 Act.

109.2. By and as a result of the policy decision of the Union Government in the Ministry of Defence dated 25-2-1999, 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.

109.3. The stipulation in the Policy Letter dated 26-9-2008 making it prospective and restricting its application to specified cadres/branches of the Indian Navy shall not be enforced.

109.4. The provisions of the implementation guidelines dated 3-12-2008, to the extent that they are made prospective and restricted to specified cadres are quashed and set aside.

109.5. 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 25-2-1999 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 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 AFT or as it presently stands, whichever is higher.

109.6. 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.

109.7. 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 stabilised 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.

109.8. 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.

109.9. Women SSC officers of the ATC cadre in *Annie Nagaraja case* [*Annie Nagaraja v. Union of India*, 2015 SCC OnLine Del 11804] 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 case* [*Annie Nagaraja v. Union of India*, 2015 SCC OnLine Del 11804] shall be entitled to pensionary benefits. SSC officers in the ATC cadre in *Priya Khurana case* [*Priya Khurana v. Union of India*, 2016 SCC OnLine AFT 798] , 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 109.5 and 109.6 above.

109.10. 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 26-9-2008 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.

109.11. As a one-time measure, all SSC women officers who were before the High Court and 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.”

- 4 The petitioner was an officer who was recruited before the Policy Letter⁶ of 26 September 2008 was issued. The PL stipulated that while women SSCOs would be considered for grant of PC in stipulated branches (JAG, Education and Naval Architecture), the letter would have prospective effect. It was as a result of the application of the PL dated 26 September 2008 that the

6 “PL”

petitioner was initially not considered to be eligible for the grant of PC. In the directions contained in paragraph 109.1 and 109.2, extracted above, this Court noted that the statutory bar on the enrolment of women in the Indian Navy was lifted in terms of the notifications issued by the Union Government on 9 October 1991 and 6 November 1998 under Section 9(2) of the Navy Act. Moreover, this Court held that the policy decision of the Union Government dated 25 February 1999 would govern the conditions of service of SSCOs including women officers in regard to the grant of PCs in terms of Regulation 203 Chapter IX Part III of the 1963 Regulations.

- 5 Having come to the above conclusion, this Court specifically directed that the PL dated 26 September 2008, making it prospective and restricting it to specified cadres, would stand quashed and set aside. This Court directed that all SSCOs in the Education, Law and Logistic Cadres who were “presently in service”, shall be considered for the grant of PC. This entitlement arose from the PL dated 25 February 1999 read with Regulation 203 of Chapter IX of the Naval Regulations 1963.
- 6 It is not in dispute that the case of the petitioner for being considered for the grant of PC squarely arose in terms of the directions contained in paragraph 109.5 of the judgment. The petitioner was considered for the grant of PC after the judgment of this Court, but has been denied PC on the ground that there were no vacancies.

7 The petitioner had earlier moved this Court under Article 32 of the Constitution, but was relegated to the Armed Forces Tribunal⁷ by an order dated 24 August 2021. When the petitioner moved the AFT, the Tribunal issued certain directions in its judgment dated 3 January 2022. The AFT, *inter alia*, issued the following directions:

“122(a) Respondents to identify and generate a proportional number of vacancies as a onetime measure to give a fair and viable consideration to the overborne cadres including Exec/Law, Exec/GS, Exec/NAI which required vacancies for fair consideration in Dec 2020. The following applicants in this batch of cases be then considered afresh in their own batches, along with those who were in service on 17.03.2020:

- (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, in OA 1966/2021.

122(d) Considering the peculiarities of Law cadre, eligible SSC Law cadre officers of 2011 and 2014 batches who also ought to have been considered in Selection Board Dec 2020, be now considered along with Cdr Seema Chaudhary (applicant in OA 1972/2021) in the fresh consideration directed to be undertaken.”

8 The above directions formed the subject matter of challenge before this Court in Civil Appeal No 2216 of 2022.

9 The batch of civil appeals including the above civil appeal by the petitioner came to be disposed of by this Court by its order dated 20 October 2022.

7 “AFT”

From the judgment of this Court, it has emerged that the principal submission before this Court was that the AFT had relied on certain information which had been placed in a sealed cover to which the officers before it were not privy. Based on the submission, this Court restored the proceedings back to the AFT.

- 10 Mr Devadatt Kamat, senior counsel appearing on behalf of the petitioner submits that inadvertently the specific facts of the case of the petitioner were not drawn to the attention of the Court. It has been submitted that the issue pertaining to the breach of the principles of natural justice did not arise in the case of the review petitioner since her case stood on a distinct foundation.
- 11 During the course of the hearing, Mr R Balasubramanian, senior counsel appearing on behalf of the Naval authorities and the Union of India does not dispute the factual position that the issue which was dealt with in the judgment of this Court dated 20 October 2022 did not arise in the appeal which was filed by the petitioner against the judgment of the AFT.
- 12 That being the position, we are of the view that the ends of justice would require that the order which was passed by this Court on 20 October 2022 in Civil Appeal No 2216 of 2022 pertaining to the petitioner, should be recalled. We order accordingly. We have accordingly heard the civil appeal on merits in order to ensure that a final resolution is brought to the matter.

- 13 The facts as they have been set out in the earlier part of this judgment indicate that the petitioner is a JAG Branch officer recruited on Short Service Commission in 2007. Clearly, therefore, she was recruited at a time when the PL dated 25 February 1999 held the field. The subsequent PL dated 26 September 2008 which was prospective in nature was specifically dealt with in the judgment of this Court in **Lieutenant Commander Annie Nagaraja** case. The Court directed that the PL which made it prospective and confined to certain specific branches would not be enforced. In other words, the case of the petitioner for being considered for the grant of PC was squarely required to be dealt with in terms of the position as it stood independent of the PL dated 26 September 2008.
- 14 The submission which has been urged on behalf of the petitioner is that the directions which have been issued by the AFT in its impugned order dated 3 January 2022 are contrary to the binding directions of this Court in its judgment in **Lieutenant Commander Annie Nagaraja**. This submission has been advanced on the ground that the petitioner who was an in-service officer on the date of the judgment in **Lieutenant Commander Annie Nagaraja** was required to be considered in terms of the directions issued by this Court. However, the AFT in its impugned judgment dated 3 January 2022, directed that the petitioner should be considered together with officers drawn from the 2011 and 2014 batches on the ground that they ought to have been also considered in the Selection Board in December 2020. It has

been submitted that this direction for the petitioner to be considered together with the officers of later batches, namely, 2011 and 2014 has caused serious prejudice to her.

- 15 Mr R Balasubramanian, senior counsel appearing on behalf of the Union of India, on the other hand, submits that such a consideration with subsequent batches was made in order to ensure that a fair opportunity was granted to all concerned officers and to widen the field of consideration.
- 16 There is merit in the challenge to the direction which has been issued by the AFT requiring that the candidature of the petitioner for the grant of PC should be dealt with the batches of 2011 and 2014. To do so would amount to introducing a condition which was not a part of the judgment of this Court in **Lieutenant Commander Annie Nagaraja**. The binding judgment, which has to be enforced is the decision of this Court in **Lieutenant Commander Annie Nagaraja**. Any directions de-hors the judgment of the Court could not obviously be issued. Though the case of the petitioner has been considered after the decision in **Lieutenant Commander Annie Nagaraja**, there is a serious element of prejudice which has been caused to the petitioner which must be rectified so as to enforce the final directions of this Court.
- 17 We accordingly order and direct that in the peculiar facts and circumstances of this case, the case of the petitioner for the grant of PC shall be considered afresh by reconvening a Selection Board. The Selection Board shall consider

the case of the petitioner on a stand alone basis since it is common ground that she was the only serving JAG Branch officer of the 2007 batch whose case for the grant of PC was required to be considered. The consideration by the Selection Board shall take place uninfluenced by any previous consideration of her case for PC and uninfluenced by any observations contained in the order of the AFT.

- 18 We however clarify that in the event that pursuant to the directions of the AFT, if a proportional increase in the vacancies is required to be created to accommodate the petitioner, this shall be carried out without creating any precedent for the future. We have issued this direction under Article 142 of the Constitution so as to ensure that while no other officer is displaced, a long standing injustice to the petitioner is duly rectified.
- 19 Any Annual Confidential Report which has not been communicated to the petitioner shall not be considered for the purpose of the grant of PC.
- 20 The exercise of considering the petitioner afresh for PC shall be carried out on or before 15 April 2024.
- 21 Should the petitioner be aggrieved by any further decision that is taken, she shall be at liberty to pursue her remedies in accordance with law. It is understood by both the petitioner, who is personally present before the Court, as well as the counsel for the Naval authorities that all pending proceedings before the AFT relating to the petitioner shall stand disposed of

in view of the present directions.

22 The Review Petition is accordingly disposed of.

23 Pending applications, if any, stand disposed of.

.....CJ.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hima Kohli]

New Delhi;
February 26, 2024
CKB