

DE JURE NEXUS LAW JOURNAL

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UNION OF INDIA VS CDR. ANNIE NAGARAJA

Bench: Hon'ble Dr. Justice D.Y. Chandrachud, Hon'ble Mr. Justice Ajay Rastogi.

Ratio: Women short service commission officers in Indian navy entitled to Permanent Commission.

Facts of the Case:

The appeal reached the Supreme Court from a Delhi High Court decision and a decision of the Armed Forces Tribunal.

The Delhi High Court case, *Annie Nagaraja v. Union of India* involved six writ petitioners under Article 226 of the Constitution. The petitioners had joined the Indian Navy as SSC officers. However despite having served fourteen years in the Navy, they were denied PC and discharged from service. An interim order granting protection to women officers in service on 26 September 2008 was passed and the case was decided to be considered subsequent to the decision on *Babita Puniya v. Union of India*.

The case before the AFT, *Priya Khurana v. Union of India* involved seven officers recruited as SSC officers. They wanted grant of PC and challenged the 2008 policy document. They argued that the policy document was unconstitutional as it operated prospectively and restricted grant of PC to certain cadres and branches, the policy had also not considered the 1999 policy dealing with the granting of PCs. The AFT held that an alteration was to be on a reasonable exercise of power. It held that the subsequent policy making the granting of PC prospective and confining it to certain branches was invalid. The tribunal noted that the

advertisements based on which the SSC officers were inducted had held out a specific representation that the officers would be considered for the grant of PCs. This case was subsequent to the Annie Nagaraja case so the AFT said it will reconsider the case subject to the decision of the SC in the case. It felt that the appropriate relief was to direct the applicants to be considered by the authorities, it disagreed with the absolute relief granted by the Delhi High Court. So it directed reconsideration of the request for grant of PCs on the basis of Regulation 203 and the policy decision dated 25 February 1999 within six months.

The statute dealing with enrolment in the India Navy is The Navy Act, 1957. Section 9(2) of the Act says that a woman cannot be appointed or enrolled unless there is a notification by the Central Government. So it is up to the Central Government to appoint or enrol women into the navy based on conditions it specifies. Initially in 1991, women were inducted into the education branch, logistics and law cadre of the executive branch for five years. Later women were inducted as Air Traffic Controller (ATC) in 1993, Naval Constructor Cadre in 2001, Observers in 2008, Pilot and Naval Armament Inspectorate (NAI) Cadre in 2017, Sports and Musician Cadres and lateral induction into Provost Specialisation in 2019. In 2008, the Ministry of Defence granted sanction for PC for women in law, education and naval architecture. However this was done without reference to a policy communication by the Ministry dated February 25th, 1999 which outlined the grant of PC to women officers. Also the 2008 order was prospective in nature, not allowing those who have already served fourteen years to get PC and was limited to certain cadres and branches.

The Delhi High Court in the case of *Babita Puniya v. Union of India* granted PC to SSC women officers in the army and air force. However in the case of air force, the government filed an appeal in the Supreme Court. The Supreme Court on February 17th, 2020 held that the government should not discriminate on gender and dismissed the appeal. The Supreme Court thus upheld the decision taken by the Delhi High Court. The Delhi High Court in the case had observed that women undergo same kind of training as male officers and are still denied PC. The court held that the fact the male counterparts are given PC only on the basis of their gender is undoubtedly gender discrimination.

Thus, this case is based on two civil appeals, one from the Delhi High Court (*Annie Nagaraja v. Union of India*) and the other from the AFT (*Priya Khurana v. Union of India*).

Explanation:

Mr Sanjay Jain, Additional Solicitor General submitted that the Indian Navy does not discriminate between men and women and that the size of the Indian Navy does not permit it to grant PCs. He held that the Indian Navy is much smaller than the other Armed Forces because of which the pyramid structure is saturated comparatively. The centre's argument that sea sailing duties cannot be given to women as their Russian vessels do not have washrooms for them and immediate returns were not possible was denied.

Ms Haripriya Padmanabhan, learned counsel appearing for the respondents in Annie Nagaraja's however argued that male SSC officers have been granted PCs in various departments of the Navy. She held the PCs being granted to the male officers need to be extended to the women officers inducted on SSCs also.

Mr CU Singh pointed out that the AFT had rendered one common judgment in six OAs. However the Union of India had filed an appeal only in one of the cases. He argued that the common judgment binds the Union Government and operates as res judicata in the other five OAs so it is not open to the Union of India to file an appeal in only one of the six cases where a common judgment has been delivered on similar facts.

It was pointed out that the exercise of power under Section 21 of the 1950 Act must conform to the restrictions inherent in Article 33 of Constitution. The requirement to conform to these restrictions was upheld by the SC in *Union of India v. LD Balam Singh and Mohd. Yunus Khan v. State of UP*.

The Court held that once the statutory notifications dated 9 October 1991 and 6 November 1998 permitted the appointment of women officers in the Indian Navy, the statutory bar under Section 9(2) was lifted and women officers inducted on SSCs would also be entitled to be governed by Regulation 203 as a result of the policy decision dated 25 February 1999.

It held that the stipulation in the policy letter dated 26 September 2008 making it prospective shall not be enforced and the provisions of the implementation guidelines dated 3 December 2008 are quashed and set aside as they were prospective and restricted to specified cadres. It held that all SSC officers in the education, law and logistics cadres presently in service shall be considered for the grant of PCs and 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. However women SSC officers of the ATC cadre in Annie Nagaraja's case were

not entitled to consideration since neither men nor women are considered for the grant of PCs.

The court held that the SSC officers lost out on the opportunity to be granted PCs and all the associated responsibilities and benefits, including promotions and pensionable service because of the authorities' failure to consider the SSC officers for PCs in terms of the 1999 policy. So the court asked to rectify the injustice done to them in terms of lost years of service and deprivation of retiral entitlement. It asked to ensure that the officers who were released prior to 2008 after completing their engagement to be deemed to have completed substantive pensionable service. It asked as a one-time measure, all SCC women officers who were before the Delhi HC and the AFT not granted PCs to be deemed to have completed substantive qualifying service for the grant of pension and be entitled to all consequential benefits. The Court also directed in exercise of its power under Article 142 to entitle SSC officers in the ATC cadre in Annie Nagaraja's case to pensionary benefits. In Priya Khurana's case, the SSC officers in the ATC cadre were inducted in pursuance of the specific representation contained in the advertisements, so shall be considered for the grant of PCs in accordance with directions. Respondent two to six in the Civil Appeals arising out of Special Leave Petition (C) Nos 30791-96 of 2015 were entitled to compensation quantified at ₹ 25 lakhs each as a one-time measure in addition to the grant of pensionary benefits.

The division bench asked the government to treat men and women equally. Justice D.Y. Chandrachud held that the government cannot discriminate based on gender. The Court held that every person is entitled to dignity and to fair and equal conditions of work irrespective of their gender and added that a level playing field is required for women to overcome the histories of discrimination they have faced.

So the Supreme Court asked the centre to ensure that PC is granted to women and added that the officers are now eligible for command posting.

Comments:

The judgement would ensure that women are granted PC in the armed forces and have looked into all the statutory and legal hindrances preventing them from getting it. This verdict is a huge step towards gender equality by the Supreme Court. It is in fact surprising that it took this long to grant PC to women and treat them equal to their counterparts when women have time and again showed that they are equally, if not more capable in all fields including the

armed forces. The case has in a way brought forward and addressed the issue of gender disparities in India.

In the case, given that women can sail with the same efficiency as male officer, there was no excuse to deny them PCs. The contentions made by the State about certain avocations women will face on being aboard ships are absurd. The state which is supposed to ensure that there is a level playing field and is supposed to take the necessary steps to ensure this making such contentions shows how behind the country is in gender equality.

The judgment shows the equal worth of the women officers who have dedicated their lives to serve the nation and is a huge booster for girls in the country to come forward to serve the nation. The Court has rightfully ruled in favour of the women officers and this ruling is a huge step towards women empowerment.

However, despite the judgment very few women have been granted PCs. Data shows that though 70 per cent women were deemed fit, only 45 per cent were commissioned.¹ Initially after the judgment, there were delays in enforcing the sentence. The army also bought four additional provisions that woman officers have to clear in order to get PC. The provisions introduced post-judgment to clear PC are the Junior Command Course (JCC), SHAPE-1 category demand, Battle Physical Efficiency Test (BPET), AE (Adequately Exercised) tenure for a minimum of two years. Except the JCC, all others are physical test. This was problematic as it would deny PC to a considerable number of women given that most of those awaiting their PCs are over 40 years of age. Also this criterion was not applied to the male officers. So the Supreme Court on 25 March 2021 directed the Army to make a course correction in its selection criteria.

Anyhow now women are selected as officers only in ten arms/services which have fixed vacancies. They aren't admitted in fighting arms, artillery and the Special Forces. They are also not granted direct permanent commission into the armed forces through National Defence Academy after 10+2 or through respective Service academies after graduation. Their service on ships/submarines in the Navy is subject to gender-specific facilities being created. They are not enrolled as soldiers, sailors and air warriors, anyhow now experimental token enrolment are done. To overcome the gender discrimination and ensure equal opportunities

¹ Riya Singh Rathore, *Women officers: The long road to permanent commission*, BUSINESSLINE, Feb. 27, 2021, <https://www.thehindubusinessline.com/blink/know/gender-barriers-in-the-road-to-permanent-commission-for-women-in-the-armed-forces/article33942023.ece>.

for women in the armed forces, it is necessary to have an open, non-gender-specific competitive merit in all ranks of the armed forces as opposed to limited fixed vacancies.

So it can be observed that women still have a long way to go to get equal status and opportunities like their male counterparts and break down the institutionalised sexism in the armed forces.



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