

ITEM NO.2

COURT NO.3

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application D.No.23843/2023 in C.A. Nos.2182-2187/2020

UNION OF INDIA

Petitioner(s)

VERSUS

LT. CDR. ANNIE NAGARAJA, EXECUTIVE OFFICER

Respondent(s)

IA No. 115099/2023 - APPLICATION FOR PERMISSION
 IA No. 115098/2023 - CLARIFICATION/DIRECTION
 IA No. 143694/2023 - CONDONATION OF DELAY IN FILING
 IA No. 238224/2023 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 115100/2023 - INTERVENTION/IMPLEADMENT

Date : 04-12-2024 These MAs were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
 HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. R Venkataramani, Attorney General for India
 Mr. Mukesh Kumar Maroria, AOR
 Mrs. Seema Bengani, Adv.
 Mrs. Shraddha Deshmukh, Adv.
 Mr. Aman Shukla, Adv.
 Mr. Subodh Patil, Adv.
 Mr. Annirudh Sharma Ii, Adv.
 Mr. Chitvan Singhal, Adv.
 Mr. Kartikay Aggarwal, Adv.
 Mr. Abhishek Kumar Pandey, Adv.
 Mr. Raman Yadav, Adv.
 Ms. Ameyavikrama Thanvi, Adv.
 Mr. Mukesh Kumar Singh, Adv.

Dr. N. Visakamurthy, AOR

For Respondent(s) Ms. Pooja Dhar, AOR

Mr. Harish Pandey, AOR

Mr. Mohit D. Ram, AOR

Mr. Deepak Goel, AOR
 Ms. Archana Preeti Gupta, Adv.
 Ms. Alka Goyal, Adv.
 Mr. Rubi Kumari, Adv.

Ms. Sunayna Agarwal, Adv.

Mr. Rakesh Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

M.A.....D.No.23843/2023 In C.A.Nos.2182-87/2020

1. Delay condoned.
2. The application seeking exemption from filing attested rejoinder affidavit is allowed.
3. A batch of Writ Petitions, filed by the women officers serving under Short Service Commission (SSC) in the Indian Navy/Indian Army, who were denied consideration for the grant of Permanent Commission and were later on discharged from service, were allowed by the Delhi High Court on 12.03.2010 in W.P. (C)No.1597/2013 (lead case Babita Puniya vs. Union of India). Thereafter, C.A.Nos.2182-87/2020 (Union of India & Ors. vs. Lt. Cdr. Annie Nagaraja & ors.) and connected matters, challenging the decision of the High Court, were disposed of by a two-Judge Bench of this Court vide judgment dated 17.03.2020, thereby issuing series of directions, including the following, with which we are concerned:

“(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;

(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 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;

(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;"

4. Cdr. G. Sowjanya Sree and co-applicants, whose claim for grant of Permanent Commission, was required to be considered in terms of the directions reproduced above, were found suitable and have been granted Permanent Commission.

5. Thereafter, they submitted representations seeking consequential benefits, including promotions, in terms of direction (viii), as reproduced above.

6. Illustratively, one of such representation dated 29.11.2021, submitted by Cdr. G. Sowjanya Sree, has been placed on record.

7. The Competent Authority, on consideration of such representation and claim for promotion, passed the order dated 06.01.2023 (Annexure A-7), whereby the promotional claim has been turned down after observing that no anomaly was found in her

appraisals and that the officer was accorded a fair and just consideration in all respects by the Promotion Board. The order further recites that the Redressal and Complaint Advisory Board, having carefully and independently examined the representation, was of the opinion that the statutory complaint was devoid of merit. It is in this backdrop that the instant Miscellaneous Application has been moved by the applicants, *inter alia*, questioning the above-mentioned order and seeking re-enforcement of direction No.(viii), reproduced above, for the purpose of grant of promotion to them.

8. We have heard learned counsel for the applicants/respondents as well as learned Attorney General for India in this regard.

9. It seems to us that the order dated 06.01.2023 categorically states that the claim of the applicants for promotion has been duly considered or that no anomaly was found in the appraisal of record. This order essentially gives rise to a fresh cause of action for which there is an efficacious alternate remedy to approach the Armed Forces Tribunal (for short, 'the Tribunal').

10. It goes without saying that the questions like (a) the bench-mark for promotion; (b) the cut-off date for such a bench-mark; (c) the mode of evaluation of service record; (d) evaluation of overall suitability; (e) inter-se placement in seniority; and (f) disparity, if any, between male and female officers etc. are various factors/issues/grounds that would require in-depth consideration by the Tribunal. There are, thus, mix questions of law and fact involved and for effective determination thereof, the appropriate remedy would be to approach the Tribunal.

11. Consequently, we dispose of this application with liberty to the applicants/respondents to approach the Armed Forces Tribunal. In case, the Original Application is filed within four weeks, no objection regarding expiry of limitation shall be entertained, and the Original Application shall be considered and decided on merits.

12. The Tribunal may requisition the original records to determine all the issues that may be raised by the parties before

it.

13. It is clarified that we have not expressed any opinion on the merits of the applicant's claim.

14. Having regard to the fact that the applicants are asserting their claims, especially towards parity with their male counterparts for the last more than two decades, we request the Tribunal to accord out of turn hearing and make an endeavour to decide the Original Application as early as possible, and preferably within four months from the date of filing of the same.

15. As a sequel to the above, all the pending interlocutory applications, including the application for intervention/impleadment, stand disposed of.

(SATISH KUMAR YADAV)
ADDITIONAL REGISTRAR

(PREETHI T.C.)
ASSISTANT REGISTRAR