

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 4th August, 2011
Judgment Delivered On: 11th August, 2011

+ W.P.(C) 5073/2010

WG.CDR. MANISHA KRISHNATRI (RETD.)
& ORS.

..... Petitioners

Through: Mrs.Rekha Palli, Mr.Punam Singh
and Mrs.Amrita Prakash, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr.A.S.Chandhiok, A.S.G. with
Mr.Ankur Chhibber, Mr.P.S.Parmar,
Mr.Jitender Kumar and Mr.Ritesh
Kumar, Advocates

W.P.(C) 5075/2010

SQN.LDR.MAMTA S YADAV & ORS.

..... Petitioners

Through: Mrs.Rekha Palli, Mr.Punam Singh
and Mrs.Amrita Prakash, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr.A.S.Chandhiok, A.S.G. with
Mr.Ankur Chhibber, Mr.P.S.Parmar,
Mr.Jitender Kumar and Mr.Ritesh
Kumar, Advocates

W.P.(C) 5077/2010

WG.CDR.BHAGYASHREE SHIVOLKAR
& ORS.

..... Petitioners

Through: Mrs.Rekha Palli, Mr.Punam Singh
and Mrs.Amrita Prakash, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr.A.S.Chandhiok, A.S.G. with
Mr.Ankur Chhibber, Mr.P.S.Parmar,
Mr.Jitender Kumar and Mr.Ritesh
Kumar, Advocates

W.P.(C) 5783/2010

SQN.LDR.MADHUR HANDA DUBEY
& ORS.

..... Petitioners

Through: Mrs.Rekha Palli, Mr.Punam Singh
and Mrs.Amrita Prakash, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr.A.S.Chandhiok, A.S.G. with
Mr.Ankur Chhibber, Mr.P.S.Parmar,
Mr.Jitender Kumar and Mr.Ritesh
Kumar, Advocates.

W.P.(C) 5798/2010

SQN.LDR.SOMA DHAR (RETD.)
& ORS.

..... Petitioners

Through: Mrs.Rekha Palli, Mr.Punam Singh
and Mrs.Amrita Prakash, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr.A.S.Chandhiok, A.S.G. with
Mr.Ankur Chhibber, Mr.P.S.Parmar,
Mr.Jitender Kumar and Mr.Ritesh
Kumar, Advocates

W.P.(C) 6830/2010

SQN.LDR.RINA ANGEL (RETD.)
& ANR.

..... Petitioners

Through: Mrs.Rekha Palli, Mr.Punam Singh
and Mrs.Amrita Prakash, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr.A.S.Chandhiok, A.S.G. with
Mr.Ankur Chhibber, Mr.P.S.Parmar,
Mr.Jitender Kumar and Mr.Ritesh
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Above captioned writ petitions filed after a Division Bench of this Court decided, vide its judgment and order dated 12.3.2010, on the issue of entitlement of women lady officers inducted in the Indian Air Force as Short Service Commissioned Officers for Permanent Commission. In that sense, it can be said that the captioned writ petitions are a sequel to the opinion dated 12.3.2010 deciding a batch of writ petitions, lead matter being W.P.(C) No.1597/2003 Babita Punia Vs. The Secretary & Anr.

2. The origin of the litigation could be traced to Section 12 of the Air Force Act 1950 which makes females ineligible for enrolment or employment in the Air Force, except in such corps, department, branch or body forming part of or attached to the Air Force as the Central Government may, by notification, specify in this behalf.

3. 25.11.1991 was the date when the Central Government made eligible by notifying the wings of the Air Force where females could be enrolled or employed. All of them were employed on short service commission and not on a permanent commission.

4. The Division Bench considered entitlement of women officers, granted short service commission in the Indian Air Force and the Army; pertaining to their claim of the commission being converted to a permanent commission. It was noted by the Division Bench that the women officers,

who were petitioners before it, had joined the Air Force and the Army as Short Service Commissioned Officers, initially for a period of 5 years, which was extended from time to time, to a maximum of 14 years.

5. Since in the instant writ petition, we are concerned with women officers who had served under the Indian Air Force, we note the relevant facts noted by the Division Bench pertaining to women officers who had worked or were working under the Indian Air Force for the reason the Division Bench also considered the claim of women officers taken on short service commission in the Indian Army.

6. In para 4 of the decision, the Division Bench noted that on 26.9.2008, the President of India had been pleased to sanction a policy to offer permanent commission '*prospectively*' to short service commissioned women officers in the Jag Department, Army Division Core of the Indian Army and their corresponding branches in the Indian Navy as also the Air Force and the Accounts Branch of the Air Force and Naval Constructor in the Indian Navy.

7. The Division Bench noted that the said step was undoubtedly a progressive one, but opined that the matter needed further consideration, as observed in para 4: '*we were of the view that the matter needed to be further examined as to why women personnel who are still in service could not get the benefit of the change of policy as also the women officers who had approached this Court by filing of petitions but retired during the pendency of those petitions.*' (Underlined emphasized).

8. The Division Bench traced the history of induction of women in the Indian Air Force, to the circular dated 25.11.1991 issued by the Ministry of Defence, Government of

India, in the Non-Technical Ground Duty Branches (as SSC Officers), which reads as under:-

“Sir,

1. I am directed to convey the sanction of the President for inducting women in the officer cadre of Non-Tech Ground Duty branches of IAF from 1992 on an experimental basis for 5 years which is to be reviewed thereafter.

2. The intake of women in the officer cadre would be restricted to 10% of the officer vacancies in respect of Adm, Log., Accts, Met, & Edn. Branches of the IAF.

3. The induction of trainee women officers would be forecast and planned well in time. The women officers would be initially granted SSC for a period of 5 years. At the end of the SSC tenure, PC would be offered to willing officers, subject to their suitability. However, women officers unwilling for PC, but seeking an extension, would be granted extension for six years.

4. The terms & conditions would be so given at the Appendix to this letter.

5. The expenditure involved is debitable to the relevant minor head of the major head 2079-F of the Defence Services Estimates.

This is issued with the concurrence of the Min. of Def. (Fin/Air) vide their u.o. No.1029/Org/S/AF dated 10.11.91.”

(Underlined emphasized)

9. The terms and conditions of engagement, referred to in para 4 of the policy circular dated 25.11.1991, read as under:-

“TERMS AND CONDITIONS FOR WOMEN IN THE
OFFICERS CADRE OF NON-TECH GROUND DUTY
BRANCHES

1. Age Limit: 22 to 26 years for Graduates and 20 to 25 years for non-Graduates, relaxable to 27 years for those possessing higher qualification like Ph.D., M.Ed., M. Tech.

2. Entry Qualification: 1st Class Graduation/2nd Class Post Graduation in subject as specified in the Advertisement for selection from time to time.

3. Mode of Selection: Applications would be called for directly by the Air Force through open advertisement, and the candidates selected through AFSU.

4. Commission: Candidates selected under this scheme will be granted provision Short Service Commission on successful completion of 52 weeks at the Air Force Academy. The SSC will be confirmed after a probationary period of one year. Failure to pass the requisite examination etc., during training may result in suspension from course. Also, if in the opinion of the Head of Institution or due to medical reasons, the trainee is unlikely to benefit by further training, she would be suspended from the course.

5. Tenure of Engagement: Initial engagement period would be for 5 years from the date of commissioning. On completion of this period, the officer may opt for PC or another SSC tenure of 6 years. The officers seeking such extension will not be considered for PC. Grant of extension or PC would be subject to suitability and requirement of the Air Force.

6. Permanent Commission: SSC Officers granted PC will be eligible for all benefits/privileges, which are admissible to the regular PC Officers.

7. Seniority: The seniority of SSC Officers will reckon from the date of grant of provisional SSC. So as to place them at par with their contemporary PC Officers. However, the SSC Officers' names will appear in the Air Force List immediately below that of their contemporary PC Officers. They would be eligible for promotion up

to the rank as applicable to permanent commissioned officers of Non-Tech GD\\branches.

8. Pay and Allowances: As applicable to permanent commissioned officers. However, SSC Officers will not be entitled to any advance for Car/Motor Cycle/Housing, etc.

Other perquisites: SSC Officers will be entitled to all the perquisites of housing, traveling, leave, medical facilities and ration, etc., as applicable to permanent commissioned officers. However, they will not be eligible for Service sponsored Post-Graduate studies or for study leave. Accumulation of leave for the purpose of entertainment will be as applicable to SSC Officers at that time. In addition, maternity leave will be granted as per the existing Government Rules applicable to the lady medical officers of Army Medical Corps.”

(Underlined emphasized)

10. The Division Bench noted the language of the advertisement which was issued pursuant to the policy circular dated 25.11.1991, which reads as under:-

“A UNIQUE OPPORTUNITY FOR DYNAMIC YOUNG GIRLS: MARCH TO A NEW HORIZON AS A COMMISSIONED OFFICER IN THE INDIAN AIR FORCE

TRAINING:

Successful candidates will undergo 52 weeks training at Air Force Academy.

COMMISSION:

Provisional Short Service Commission in the rank of Pilot Officer will be granted after successful completion of training at Air Force Academy. The Short Service Commission will be confirmed with retrospective effect after completion of probationary period of one year.

TENURE OF ENGAGEMENT:

Initial engagement period would be for five years from the date of commissioning with provision to opt for Permanent Commission or another tenure of six years. Grant of Permanent Commission depend upon vacancy and suitability of the officer.

CAREER PROSPECTS:

SSC Officers will be entitled for promotion under conditions as applicable to Permanent Commissioned officers of Non-Tech Ground Duties Branches."

(Underlined emphasized)

11. The Division Bench highlighted that as per the policy circular dated 25.11.1991, decision taken was to induct women officers initially on short service commission for a period of 5 years and that at the end of the SSC tenure, subject to suitability and availability, willing officers would be offered permanent commission. It was also noted that such women officers who were unwilling for a permanent commission, but sought extension, would be granted extension for 6 years. The Division Bench further noted that same was the ethos of the terms and conditions for engagement notified under the policy as per the appendix referred to in para 4 of the policy. The Division Bench further noted that the advertisement inviting applications from women to join as SSC Officers, held out to them a promise that initial engagement would be for 5 years with option of the ladies to opt for permanent commission or another tenure for 6 years and that grant of permanent commission would depend upon vacancy, position and suitability of the officer. The Division Bench, in

para 12 of its decision, noted a change of policy and its effect in following words:-

“12. A change of policy, however, took place as per circular of the Air Headquarters Human Resources Policy dated 25.5.2006. This is stated to be in the context of the larger question as to whether SSC officers male or female should be granted PC. This circular notes that SSC was first introduced in the AE Branch in the year 1985 and was subsequently made applicable to other branches and extended to women aspirants vide Government of India letter dated 23.4.2001. It notes that the IAF does not have a requirement to grant PC to SSC officers and guidelines are, therefore, laid down for extension of Commission to SSC officers.”

12. In para 15 of its decision, the Division Bench noted as under:-

“15. We may note at this stage itself that the policy decisions and the advertisements are not in dispute. The petitioners making an application for PC is not in dispute. The suitability of the petitioners is also not in dispute in view of the commendation certificates but in any case that aspect has not even been examined by the respondents. If the advertisement in pursuance where to the petitioners applied is taken into consideration then the grant of PC was dependent only upon two factors; viz. (i) vacancy; & (ii) suitability of the officers. The respondents, thus, seek to introduce new factors contrary to the advertisement to deny the women officers the PC since their suitability is not in issue and SSC male officers were inducted on PC basis which shows that vacancies had existed at the relevant stage of time.”

13. The Division Bench thereafter noted that a two-fold argument was advanced by the women officers. First was of gender discrimination, inasmuch as permanent commission was being offered to short service commissioned

male officers which was denied to the women officers and in the larger context the denial of permanent commission to women officers, was being urged to be discriminatory inasmuch as male officers were inducted in service at the inception of their service as permanent commissioned officers which right was denied to the women. The second ground of challenge was that the legitimate expectation held out to the women officers by way of a promise that after successful completion of short service commission tenure, those who opt for permanent commission would be granted a permanent commission subject to assessment of their suitability and availability of vacancy.

14. Noting various decisions pertaining to gender classification and legitimate expectation, the Division Bench observed in para 47 as under:-

“47. The advertisement in case of Air Force officers itself envisages absorption on PC. In our considered view, it is not open for the respondents to plead that even if a woman officer performs as well as a man officer, still whether to grant PC or not to such women officers would remain within the domain of policy matters not to be interfered by this Court. The initial advertisement itself envisaged grant of PC, of course subject to vacancy and suitability. The suitability has never been examined and is hardly in question because these are all meritorious officers as per the documents annexed. No comparison was made of performance of male and female officers. The fact that male officers were taken on PC itself means that there were vacancies.”

15. Thereafter, noting that male officers had been granted permanent commission, on the issue of vacancy and suitability, in paras 52 to 54, pertaining to the Air Force, the Division Bench observed as under:-

“52. As noticed above neither is the question of suitability nor the absence of requirement in doubt which was the twin condition even as per clause (v) of the appendix. Once male officers who had been granted PC, there could be no question of absence of requirement of officers for PC. The advertisement also held out a promise to the women Air Force officers of grant of PC depending upon two factors, which are:

- i. Vacancy
- ii. Suitability of the officers.

53. The officers thus joined the Air Force on the promise of these terms of their recruitment apart from other terms and conditions of service and the respondents cannot now introduce an alien element other than these two conditions.

54. Once these two conditions are satisfied, which is so in the present case, the women Air Force officers cannot be denied PC on the specious plea that the SSC was only on experimental basis and there was no entitlement to PC despite satisfaction of the two terms and conditions.”

16. Before terminating the decision by issuing directions, in para 60, the Division Bench observed as under:-

“60. A PC carries with it certain privileges of rank including pension. These women officers have served well the Armed Forces of the country in the areas of operation they were recruited for and have worked in this capacity for 14 to 15 years. They deserved better from the respondents. There is no reason why these persons who have knocked the door of the court should be deprived of their benefit and the benefit extended only in future for grant of PC to women. It is not as if a complete chapter can be opened by persons who have chosen to accept the SSC and on completion of period decided to go out of service. The benefit is only available to serving officers and the ones who knocked the court but during the period of consideration of the matter retired from service.

It would have been in the fitness of things if the respondents having taken the decision to offer PC prospectively should have favourably examined as a policy itself, the plea of the petitioners who were in service or retired from service during pendency of petition to grant them an equivalent benefit. In matters of gender discrimination a greater sensitivity is expected and required.”

17. Curtains were brought down by issuing 5 directions in para 61, the same read as under:-

“61. We are, thus, of the considered view that the following directions are required to be issued:

- i. The claim of absorption in areas of operation not open for recruitment of women officers cannot be sustained being a policy decision.
- ii. The policy decision not to offer PC to Short Service Commissioned officers across the board for men and women being on parity and as part of manpower management exercises is a policy decision which is not required to be interfered with.
- iii. The Short Service Commissioned women officers of the Air Force who had opted for PC and were not granted PC but granted extension of SSCs and of the Army are entitled to PC at par with male Short Service Commissioned officers with all consequential benefits. This benefit would be conferred to women officers recruited prior to change of policy as (ii) aforesaid. The Permanent Commission shall be offered to them after completion of five years. They would also be entitled to all consequential benefits such as promotion and other financial benefits. However, the aforesaid benefits are to be made available only to women officers in service or who have approached this Court by filing these petitions and have retired during the course of pendency of the petitions.

- iv. It is made clear that those women officers who have not attained the age of retirement available for the Permanent Commissioned officers shall, however, be reinstated in service and shall be granted all consequential benefits including promotion, etc. except for the pay and allowance for the period they have not been in service. The necessary steps including release of financial benefits shall be done by the authorities within two (2) months of passing of this order.”

18. Learned counsel for the petitioner would urge that the decision of the Division Bench would squarely cover the case pleaded by the writ petitioners who were inducted as short service commissioned officers by the Indian Air Force in various wings such as education, administration and engineering. Counsel urged that all writ petitioners had admittedly opted for permanent commission to be granted to them and thus it is claimed that since the issue stands settled against the Indian Air Force, the writ petitions have to be allowed.

19. Mr.A.S.Chandhiok, learned Additional Solicitor General urged that though the legal position has been settled against the Indian Air Force by the Division Bench, but prospectively and for the benefit of only those who were serving in the Indian Air Force when they filed the writ petitions and for which plea, learned Additional Solicitor General drew our attention to the statement by way of a preamble to the decision in para 4, contents whereof have been reproduced by us in para 7 hereinabove. Thus, it was urged that the writ petitions should be dismissed for the reason the writ petitioners before us had superannuated from service and had accepted their superannuation as short

service commissioned officers notwithstanding they having opted for a permanent commission which was denied to them.

20. A perusal of the decision upon which the petitioners rely would show that after noting that on 26.9.2008 the President of India have been pleased to sanction a policy for Permanent Commission of Short Service Commissioned Women Officers in the Armed Forces, but had made the policy prospective i.e. to be applicable to such women officers who were appointed after 26.9.2008, held, as per para 4, that the Court would examine the claim of those who were still in service or those who had approached the Court by filing petitions when they were in service but had retired during pendency of the writ petitions.

21. We would further highlight that in para 60 the Division Bench conveyed clearly that its decision was for the benefit of only such women officers who were either serving when the writ petition was decided or were serving when they had filed the writ petitions and the same can be gathered from the two sentences: *It is not as if a complete chapter can be opened by persons who have chosen to accept the SSC and on completion of period decided to go out of service. The benefit is only available to serving officers and the ones who knocked the court but during the period of consideration of the matter retired from service.* Further, while issuing the directions, vide direction No.3 the Court clearly held that its directions are to be made available *only to women officers in service or who have approached this Court by filing these petitions and have retired during the course of the pendency of the petition.*

22. If the directions issued by the Division Bench have to be treated as enuring to the benefit of all women who were inducted as short service commissioned officers, the very directions issued by the Division Bench would be liable to be recalled inasmuch as the Division Bench itself noted that the assurance held to women officers was to grant them a permanent commission subject to the twin requirements of (i) they being found suitable; and (ii) availability of vacancy. The Division Bench overlooked the second requirement of availability of vacancy for the obvious reason it had before it a hand full of officers, but if the benefit has to be extended to all women officers, the Indian Air Force cannot be saddled with excess women power and thus would require a direction that before implementing the directions issued by the Division Bench, suitable vacancy available be considered.

23. The plea that the first writ petition decided by the Division Bench i.e. the one filed by Babita Punia was a representative writ petition and thus the directions issued by the Division Bench, in their sweep encompass all lady officers, is noted and rejected as the same runs in the teeth of the repeated observations made by the Division Bench that it was considering the claim of only such women officers who were in service when they approached this Court and thereafter made it expressly clear that its directions were to apply to only these lady officers who were in service when they filed the writ petitions.

24. We would be failing not to highlight that short service commission is being resorted to by the 3 Armed Forces for the reason the pyramidal structure of the Armed Forces has a very narrow space at the top and at the lower rungs more human power is needed and if at the junior level

everybody is inducted on a permanent commission, there would be extreme frustration after a few years inasmuch as promotional avenues would be less and less as one moves up the pyramid. Thus, a core of the pyramid in the form of Permanent Commission is created and the remainder is left to be filled by Short Service Commission. If the decision of the Division Bench is made applicable to all retired women officers it would mean that irrespective of the availability of a vacancy they would be taken into service and the entire pyramid would collapse.

25. Regretfully not agreeing with the contentions urged by the petitioners and conscious of the fact that the young ladies have sacrificed the prime of their life to serve the nation and appear to be given a raw deal inasmuch as they leave service without any pension, we dismiss the writ petitions as our sympathies cannot replace the mandate of the law.

26. The writ petitions are dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

AUGUST 11, 2011
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