

CASE COMMENT: THE SECRETARY, MINISTRY OF DEFENCE V
BABITA PUNIYA & ORS

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SYNOPSIS

Gender equality has been always a controversial topic in India since ages. Equality for women in armed forces is clearly shown in Babita puniya v ors. This case is concerned about the women officers admitted through Short Service Commission for permanent commission started on 30th Jan 1992. The permanent commission provides a career to the officers till the retirement in army. It also provides advantages like pension and other facilities. Only ten or fourteen years' appointment is given to the SSC officers. A group of women officers and advocates raised their voice against it. So this case law revolves around this issue which was taken by the apex court in the year of 2011.

BACKGROUND

Sec 9(2) of Navy act, 1957¹ speaks about Indian naval reserve does not enroll any women. This was given raise by article 33 of Indian constitution². And also sec 12 of army act, 1950³ is about no women is eligible to enroll in army except departments that official gazette notifies. Even today women in armed forces are not appointed in combative service or as front line warriors.

1992: Now the women candidates were granted Short service commission by a notice from union government. They can work in departments like engineering, army postal services, judge advocate general, regiment of artillery, corps of signal, intelligence department for 5 years. From the narrow role now the role was bit widened. Women appointed in these departments started seeking for equality in obtaining permanent commission as male officers.

2003: A writ petition on nature of public interest litigation was filed by a practicing advocate, Babita puniya in order to get permanent commission for women officers as their counterpart male officer who was appointed by Short service commission. Petition was also filed by various women officers who were later tagged with the petition of Babita.

2005 and 2006: The validity of appointment schemes was extended for women officers who were issued by ministry of defense. Later on 2006, it was issued those women officers can serve a period of 14 years. But again few petitions was filed asking for permanent commission by Lt col Seema singh and Major Leena Gaurav and also to challenge the circular which was issued previously that year.

2008: Departments like Army education corps and Judge Advocate general were provided with permanent commission to SSC officers. Again it was challenged as the PC was only provided to two departments.

2010: SSC women officers who served for 5 or more years should be provided with PC with the other benefits like pension was what held in Delhi High court. Later this order was challenged by Army on July and was moved to Supreme Court.

¹ Section 9 (2) of Navy Act, 1957.

² Article 33 of the Indian Constitution.

³ Section 12 of Army Act, 1950.

2018: Granting of PC to SSC women officers was considered which was said by central government to Supreme Court.

2019: The Supreme Court granted PC for SSC recruited women officers but only those women officers will be eligible who were commenced after this order.

ISSUES

1. Whether PC should be given to women officers in Indian Army?
2. Is the guidelines given on 15th Feb 2019 by government of India are implemented?
3. Is the condition of women officer in Army proper?

ARGUMENTS

Appellant:

Appellant i.e the secretary and ministry of defense's argument was carried forward by Union of India who kept various points which also included the challenging of Delhi high court's decision on granting of PC to women officers.

1. It was argued that Sec 10 and Sec 12 of Indian army act⁴ was not considered by High Court of Delhi including the instruction by government of India.
2. They also had put forward that the border areas do not have proper facilities or they have minimal hygiene and basic facilities so taking this as a major criteria the women officers were not appointed as a front line combat in the services.

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3. The structure of Army will collapse if women officers are provided with the PC.
4. As the lower court and government of India ordered about the pension and other beneficiary that were already bestowed to the women officers by SSC.

⁴ Section 10 & 12 of Army Act, 1950.

5. They mentioned that male officer legitimate dues are been compromised due to the long leave by women officers for some essential reasons like maternity leave, child care leave which leads to a vast problem.

Respondent:

1. They cited that beneficiaries were not provided even after receiving the order from High court of Delhi.

2. As the Union of India stated that the presence of women officers is a great collapse. The respondent objected this by saying that equal opportunities should be offered to women as well.

3. Army does have a particular set or mandatory course for both men and women. After undergoing such rigorous training process women are also eligible and deserving for promotion and PC.

4. The retired male officers of colonel rank were been filled in vacant place due to shortage of officers. Even after having the capabilities the women officers are not given chance. There are only 4% of women officers in Indian army.

5. About 30% of women officers are already appointed in sensitive and border areas without any proper facilities so this will not new to the women officers.

FINDINGS

Basic outline of this case is about gender equality i.e, the women officers and advocates in army fought for their equality to get PC who were recruited from SSC commission. According to the rules in Army act women were not allowed to get PC, or to work as a front line combat. Now after a particular point the women officers came up with an issue that even after being competitive enough and having the capacity they are discriminated on the basis of sex and were not provided with the equal opportunities and PC.

The judgment of this case was passed on 15th Feb 2019. Before the case arrived in SC, the HC ordered the army to provide PC for particular group but the Army did not follow it. But once the case was in apex court and judgment was given in February.

The Army training would be rigorous in nature and they are trained in such a manner that they can survive in a harsh condition and climate. As one of the argument raised by appellant that they are not supposed to be transferred to a warfare area or border area due to lack of basic facility and proper hygiene which would affect their motherhood.

REASONING

Justice Dr Dhananjaya Y Chandrachud J and Hemant Gupta J. came up with justice who was fair enough and supportive to women officers for providing PC to them after a long fight for it. The judgment that was passed by SC on Feb as the final decision for providing with PC, the army subsequently followed these instruction and supplied the women officers the necessary beneficiary and PC in following years. Women officers in their argument stated that even in existing case there is lot of women officers who are transferred to border areas without any proper facilities and hygiene so now it would not a big deal to handle such situation by them.

DISPOSTION

The Justice stated that there was a violation of Article 14 of Indian constitution⁵. Also included that article 33⁶ has allowed some kind of restriction on Fundamental rights but also only to an extent that it was necessary to ensure proper discharge of duty and maintenance of discipline.

There is some condition with the direction of Article 69 of Indian constitution⁷ imposed on women officers in PC through SSC by the union for policy decision:

1. If the women officer have crossed fourteen years of service or may be 20 they are eligible to get PC.

2. With the PC the women officer will also be entitled with beneficiary of promotion, pension and financial incentives.

3. They can continue their service until pensionable service.

⁵ Article 14 of the Indian Constitution.

⁶ Supra 2

⁷ Article 69 of the Indian Constitution.

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4. The clause 'various staff appointment only' shall not be enforced.

PROVISIONS INVOLVED

1. **Sec 10 of Army act, 1950**: The president has all the power to appoint an officer whom he thinks is fit.

2. **Sec 12 of Army act, 1950**: No women are eligible in regular army rather they can be appointed as a staff member.

3. **Article 14 of Indian Constitution**: Equality before law
Everyone is equal before law within the territory of India.

4. **Article 15 of Indian Constitution**: Prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

5. **Article 16 of Indian Constitution**: Public employment should be on the basis of equal opportunity.

6. **Article 33 of Indian Constitution**: Power of parliament to modify the rights conferred by this part in their application etc.

CRITICAL ANALYSIS

Even after 73 years of Independence the real question that arises is "whether the women are provided with equal rights and opportunity in all the fields? This time the court took a stand and supported for the gender equality in armed force. Although the women have the capacity and eligibility they are not provided with the equal opportunity due to which they face a lot of difficulty in their career growth. We have a bunch of articles in Indian constitution relating to the rights and equality like article 14 to 18, specifically article 15 (3) etc. On March 2021, the SC expressed anguish as the judgment allowing PC for women officers were not implemented by Indian Army. SC also stated that "there is a different story about the service condition of women officers, so it is not enough to proudly say that Indian Army allow women officers."

In terms of gender inequality the landmark cases like *Air India v Nergesh Meerza*⁸ which revolves around the equality for airhostess which included restriction from marriage and termination from job in case of pregnancy which also violates articles like article 14, 15(1), and 16(2). The major myth in our society is women are of weaker sex and it is assumed that women are the one who should solely take all the domestic responsibilities. The submission by Union of India was considered as sex stereotype and gender inequality by the Supreme Court as this judgment was carried by Dr Dhanunjaya, J and Hemant Gupta. Holding back or restricting their period of service even after having the capacity is not a fair decision by Army act.

CONCLUSION

The judgment provided PC to women officers with the beneficiary of pension and promotion which is appreciable. It removed the restriction that was imposed on women officers. But it left us with a question, in this case the rights are been provided to women officers but what about the gender discrimination and lack of opportunities in each and every house of India. Women are discriminated in various ways like politically, economically, socially, educationally, which are not even bought in light in many cases. In this case the advocate like Babita puniya and other women officers raised their voice against their issue and got justice finally after years and also the court took a stand with the women and provided justice. This judgment will always remain as a best judgment for gender equality in defence service includes Army, Air Force and Navy.

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⁸ Air India v. Nergesh Meerza, 1981.