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## Case Comment: Secretary, Ministry of Defence vs Babita Puniya

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### INTRODUCTION

The woman across the globe has been fighting for equal rights even for various day-to-day privileges given only to men in society. This battle for equality has been fought for centuries now and is expected to go ahead for many years.<sup>1</sup> The women's community has got many rights times and again which can be rightly said as the fuel to the fire of getting more and more rights.<sup>2</sup> One such privilege was to serve their country on the battlefields. Many countries such as the United States, Israel, Germany, Austria, and Norway have had women on the battlefield since mid 19s. Many have also contributed to wars against their nations.<sup>3</sup>

When it comes to India, India is a developing nation which means the women of our country too are in the developing phase.<sup>4</sup> The percentage of women's employability in India has been

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<sup>1</sup> United Nations, 'Goal 5: Achieve gender equality and empower all women and girls' (*United Nations*, 2022) <<https://www.un.org/sustainabledevelopment/gender-equality/>> accessed 03 August 2022

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> Annette Dixon, 'Women in India's Economic Growth' (*World Bank*, 16 March 2018) <<https://www.worldbank.org/en/news/speech/2018/03/17/women-indias-economic-growth>> accessed 03 August 2022

increasing with time, when women have proved themselves competent enough in almost all the fields then why not battlegrounds? Indian women's battle for equal opportunity to serve the country has been quite long.<sup>5</sup> This battle eventually came to an end with the miraculously given judgment of the Babita Puniya case,<sup>6</sup> where amidst many other opportunities women are given equal opportunities in the Indian Army.<sup>7</sup>

## FACTUAL BACKGROUND

- The battle for justice dated back to 2003,<sup>8</sup> when Adv. Babita Puniya filed a PIL in the High Court of Delhi for the grant of the PC (permanent commission) of woman officers recruited through the (SSC) short service commission.
- The notification stating the grant of the SSC of female officers in certain roles in the army such as in the Intelligence department, Corps of Signals, Regiment of Artillery, Army Service Corps, Education department, the JAG, etc. came back in the year 1992.<sup>9</sup>
- Many female offices both from the army and air force too filed different petitions demanding equal roles as their male counterparts, all these petitions were clubbed together with that Babita's.<sup>10</sup>
- Another notification popped up in the year 2005, to extend the appointment scheme's validity for female officer recruitment in the Indian Army. Followed by another notification in 2006, according to which female officers recruited through SSC have a maximum of 14 years to serve the army.
- In the following days of 2006 and 2007 major Leena Gaurav and Lt. Col Seema Singh respectively filed two different petitions separately.<sup>11</sup> In their petitions, both the officers

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<sup>5</sup> *Ibid*

<sup>6</sup> *Secretary, Ministry of Defence v Babita Puniya & Ors* Civil Appeal Nos 9367-9369 of 2011

<sup>7</sup> *Ibid*

<sup>8</sup> Jasmine Kaur, 'Victory in a long battle for equal opportunities' (*The Hindu*, 3 September 2020) <<https://www.thehindu.com/opinion/lead/victory-in-a-long-battle-for-equal-opportunities/article32508226.ece>> accessed 03 August 2022

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> India News, 'Petitioners hail Supreme Court's 'watershed' order for women in Army' (*Hindustan Times*, 18 February 2020) <<https://www.hindustantimes.com/india-news/petitioners-hail-supreme-court-s-watershed-order-for-women-in-army/story-rd4BSv9NLC2Z5vOTi95TAI.html>> accessed 03 August 2022

challenged the conditions of the services and the demanding permanent commission for the woman.<sup>12</sup>

- In the year 2008, the central government came up with the decision to grant a permanent commission for women in the educational department, JAG, and the corresponding branches of the Air Force and Navy.<sup>13</sup> This decision resulted in many more petitions being filed.<sup>14</sup>
- Taking the intensity of the matter into the picture, the High Court of Delhi clubbed all the PIL into one and with its decision, the Honorable Court directed the centre to provide a permanent commission for the woman.<sup>15</sup>
- This decision was taken by the army; hence it was challenged in the Apex Court.<sup>16</sup>
- The Union in, 2018 expressed its desire to grant permanent commission to women who were recruited through SSC.<sup>17</sup>
- In February 2019 the union issued guidelines that a permanent commission will be granted to the women officers but will be given prospectively and it was also stated that only those female officers recruited after this notification will be considered eligible.<sup>18</sup> This will keep the presently serving female officers out of the scope of receiving the permanent commission.<sup>19</sup> The guideline granted a permanent commission to new SSC officers in eight combat roles.<sup>20</sup>

## LEGAL ISSUES

The main legal issues concerned with this case are as follows:

1. Whether female should be granted Permanent Commission in the Army?

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<sup>12</sup> *Ibid*

<sup>13</sup> Jasmine Kaur (n 8)

<sup>14</sup> *Ibid*

<sup>15</sup> Jasmine Kaur (n 8)

<sup>16</sup> India News (n 11)

<sup>17</sup> *Ibid*

<sup>18</sup> Smruti Ravi Iyer, 'Permanent Commission to women in the Armed Forces' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-6060-permanent-commission-to-women-in-the-armed-forces.html>> accessed 03 August 2022

<sup>19</sup> *Ibid*

<sup>20</sup> India News (n 11)

2. Whether the guidelines issued by the Union on 15th February 2019 should be executed?<sup>21</sup>

## ARGUMENTS

Arguments presented before the court by the centre were as follows<sup>22</sup>:

- The decision of the High Court of Delhi for granting PC to women is a violation of Sections 10<sup>23</sup> and 12<sup>24</sup> of the Army Act, 1950.<sup>25</sup> Wherein, section 10 clearly states that it is the president who will appoint any officer in the regular army as he considers fit.<sup>26</sup> And no mandamus can claim contradictory orders from the court.<sup>27</sup> Section 12 states, No females should be employed in the regular army, except for those positions as specified by the official gazette.<sup>28</sup>
- The provisions of the 1950 act were said to be protected by article 33.<sup>29</sup> As article 33 of the Indian Constitution says that only the Parliament according to the law, is competent to determine to what extent any of the rights conferred by Part 3<sup>30</sup> shall, in their application to, the Armed Forces members or those who are charged with the maintenance of public order, can be abrogated or restricted.<sup>31</sup>
- Secondly,<sup>32</sup> the issue of war privacy, maternity issues, and war insurgency was argued. According to the union government,<sup>33</sup> they have to take into account the posting of woman soldiers,<sup>34</sup> their privacy during wartime, and the various inherent dangers when

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<sup>21</sup> Smruti Iyer (n 18)

<sup>22</sup> *Ibid*

<sup>23</sup> Army act 1950, s 10

<sup>24</sup> Army act 1950, s 12

<sup>25</sup> Smruti Iyer (n 18)

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*

<sup>28</sup> Special Correspondent, 'Women officers can now get permanent commission in Indian Army' (*The Hindu*, 23 July 2020) <<https://www.thehindu.com/news/national/women-officers-can-now-get-permanent-commission-in-indian-army/article32171210.ece>> accessed 03 August 2022

<sup>29</sup> Constitution of India, art 33

<sup>30</sup> Constitution of India, part III

<sup>31</sup> Special Correspondent (n 28)

<sup>32</sup> *Ibid*

<sup>33</sup> Smruti Iyer (n 18)

<sup>34</sup> *Ibid*

it comes to the real battleground.<sup>35</sup> And these considerations as stated in *Union of India v P K Chaudhary*,<sup>36</sup> are not subject to any judicial review or scrutiny.<sup>37</sup>

- It was also argued that the army has been facing huge management challenges when it comes to the soft posting of women officers considering the infrastructure, non-hazardous duties, etc.<sup>38</sup> The army also has to cater to spouse posting, loss happened absence due to pregnancy, and various other reasons.<sup>39</sup>
- The union government argued about the structural organization of the army. According to "The Ajay Vikram Singh" the committee constituted by the union to enquire into cadre issues in the armed forces suggested a ratio of 1:1.1 between permanent cadre to support cadre.<sup>40</sup> However, the ratio is distorted at 3.98:1. Hence, further placement into the PC through SSC will upset the structure.<sup>41</sup>
- The Union in a written note, added to the above submissions by referring – once again – to "pregnancy, motherhood, and domestic obligations", differences in the physical capacities, the "peculiar dynamics" of all-male units, and the issues of hygiene.<sup>42</sup>

Arguments presented before the court by, learned counsel, Ms. Meenakshi Lekhi, and learned senior counsel, Ms. Aishwarya Bhati were as follows:

- In response to the claim of the possibility of women being exposed to an environment of grave danger,<sup>43</sup> it was argued that the posting of female officers has been to all the possible combat field units at par with the male officers without any discrimination.<sup>44</sup> The counsel argued that when there is no discrimination policy when it comes to posting, why should there be discrimination in granting permanent commission?<sup>45</sup>

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<sup>35</sup> *Ibid*

<sup>36</sup> *Union of India v P K Chaudhary* Civil Appeal No 3208 of 2015

<sup>37</sup> *Secretary, Ministry of Defence* (n 6)

<sup>38</sup> *Smruti Iyer* (n 18)

<sup>39</sup> *Ibid*

<sup>40</sup> *India News* (n 11)

<sup>41</sup> *Secretary, Ministry of Defence* (n 6)

<sup>42</sup> *Special Correspondent* (n 28)

<sup>43</sup> *Ibid*

<sup>44</sup> *Smruti Iyer* (n 18)

<sup>45</sup> *Ibid*

- Secondly, Article 33 of the Indian constitution<sup>46</sup> makes parliament competent to determine the extent to which the applications of the rights under Part 3<sup>47</sup> shall be abrogated or restricted.<sup>48</sup> However, the restriction is to ensure that there is proper maintenance of discipline in the force and the duties are been discharged effectively.<sup>49</sup>
- Next, the argument placed is that the Indian Army never compulsorily prescribes that officers seeking Permanent commission shall be given command troops.<sup>50</sup> Officers deemed fit would be promoted to the rank of Colonel, be they male or female officers. There is no discrimination when it comes to both genders.<sup>51</sup>
- On, 16 August 2010,<sup>52</sup> a question was raised before the Lok Sabha that 11,500 officers in the Indian Army are falling short, out of which there was a requirement of 5,115 officers in support services, where women were commissioned.<sup>53</sup> Despite this shortage, the trained female officers are not given the service they deserve.<sup>54</sup>
- The total strength of women officers in the Indian Army was highlighted, which forms 4% of the total strength of the commissioned officers in the army.<sup>55</sup> The learned counsel stated that in spite of there being no stay on the Delhi High Court judgment,<sup>56</sup> no steps have been taken to grant Permanent commission to women in the army.<sup>57</sup>

## JUDGEMENT

Justice D.Y Chandrachud headed the Supreme Court bench, which challenged the notions given by the Union and ridiculed the hackneyed assumptions of imputed gender roles for females put

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<sup>46</sup> Constitution of India art 33

<sup>47</sup> Constitution of India, part III

<sup>48</sup> Smruti Iyer (n 18)

<sup>49</sup> *Ibid*

<sup>50</sup> Ajai Shukla, 'SC grants women right to permanent commission and command in Indian Army' (Business Standard, 17 February 2020) < [https://www.business-standard.com/article/current-affairs/supreme-court-allows-women-permanent-commission-in-military-120021700845\\_1.html](https://www.business-standard.com/article/current-affairs/supreme-court-allows-women-permanent-commission-in-military-120021700845_1.html) > accessed 03 August 2022

<sup>51</sup> *Ibid*

<sup>52</sup> Special Correspondent (n 28)

<sup>53</sup> India News (n 11)

<sup>54</sup> *Ibid*

<sup>55</sup> Ajai Shukla (n 50)

<sup>56</sup> *Secretary, Ministry of Defence* (n 6)

<sup>57</sup> *Ibid*

forth in almost every argument.<sup>58</sup> He was of the view that, the statement which argued it is a challenge for female officers to meet the services owing to their domestic obligations is a strong assumption that such duties lie solely on the woman.<sup>59</sup> Such arguments have no legal basis for denying equal opportunities.<sup>60</sup> The written notes which rely on unhygienic circumstances have been correctly opposed by stating that 30% of the total woman officers are appointed to the areas of conflict.<sup>61</sup> Moreover, the bench stated that not treating officers equally only on the basis of their gender is a gross violation of the right to equality which is guaranteed under Article 14<sup>62</sup> of the Indian Constitution.

Article 33<sup>63</sup> of the Indian Constitution did allow for restrictions to the extent which was necessary to ensure the maintenance of discipline in the force and proper discharge of duty.<sup>64</sup> The court clarified the meaning of the word perspective application' of the policy decision dated 25th February<sup>65</sup>; it will be applied to all the women SSC officers currently serving irrespective of the service they have rendered.<sup>66</sup>

The Honorable Supreme Court held the following in Para 69 of the judgment.<sup>67</sup> The following conditions have been placed:

- a) All-female officers serving in SSC currently are to be considered for granting of PCs It is immaterial if anyone has crossed fourteen or twenty years of their service.<sup>68</sup>
- b) All the female officers presently serving on Short Service Commissions shall be granted the option.<sup>69</sup>

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<sup>58</sup> *Secretary, Ministry of Defence* (n 6)

<sup>59</sup> *Ibid*

<sup>60</sup> *Special Correspondent* (n 28)

<sup>61</sup> *Ibid*

<sup>62</sup> Constitution of India, art 14

<sup>63</sup> Constitution of India, art 33

<sup>64</sup> *Ajai Shukla* (n 50)

<sup>65</sup> *Ibid*

<sup>66</sup> *Smruti Iyer* (n 18)

<sup>67</sup> *Secretary, Ministry of Defence* (n 6)

<sup>68</sup> *Ibid*

<sup>69</sup> *Ibid*

- c) Female officers on SSC, not opting for PC will continue to serve until the attainment of twenty years of pensionable service.<sup>70</sup>
- d) All the existing SSC officers with more than fourteen years of service,<sup>71</sup> not appointed to the Permanent Commission shall also get the benefit of continuing in service until the attainment of pensionable service,<sup>72</sup>
- e) SSC female officers with more than twenty years of service and who are not granted PC shall retire with a pension.<sup>73</sup>
- f) All the choices for specialization will be available to female officers at the stage of opting for the grant of PC as their male counterparts get.<sup>74</sup> Women SSC officers shall also get the privilege to exercise their options for being considered for the grant of PC or not.<sup>75</sup>

## ANALYSIS & CONCLUSIONS

When it comes to getting equal opportunities, women were always the ones who suffered injustice. And the sad part is, all this discrimination has been made only for the stupid reason of them being of a different gender. Be it getting an education or a chance to serve the country not a single right came without long years of fight from our people. This battle too took a long time, ever since 2003 various women officers wanted to serve the nation on equal footing, but was denied. The argument presented by the Centre for not giving permanent commission to women solely revolved around one point which is gender. The stereotypical thinking is that a woman is the only single one taking care of the household and that a male officer might not be able to take orders from a female. Why can't the Indian Army train male officers to take orders from a senior irrespective of their gender? Shouldn't the male population now realize that household responsibility is no longer only a women's job? However this step should have been taken long ago, apparently, the ninety-six percent of male officers feared the four percent of females would give them tough competition which now they will.

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<sup>70</sup> India News (n 11)

<sup>71</sup> Smruti Iyer (n 18)

<sup>72</sup> *Ibid*

<sup>73</sup> Special Correspondent (n 28)

<sup>74</sup> Ajai Shukla (n 50)

<sup>75</sup> *Secretary, Ministry of defence* (n 6)



The judgment is a step towards changing the stereotypical mindset of not only the public in general but also the men officers serving in the army. It has paved way for a just and equal India. Even after Seventy-five years of independence, the capabilities of a woman were judged on their physical difference from their male counterparts and their societal, and marital obligations. It is an irony that the Indian Army considers females as an asset in the workforce until they complete 14 years of their service selflessly, however, they are no longer considered fit to serve further for a stupid reason of them being female. The much-needed judgment has broken all such stereotypical reasoned rules and bars. Justice Chandrachud rightly observed that reliance on the physiological difference between the two sexes and automatically considering the other one weaker is a stereotypical and flawed argument to make and a baseless point for denying equal opportunities. The bench completely ridiculed the argument of domestic obligations, societal obligations, and biological differences of a female being a hindrance in the service.

The verdict will now ensure greater gender justice as well as neutrality in all the services. The learned counsel also pointed out that females have been serving the Army since 1992, so to deny PC and command positions to them will be to betray them as well as the constitutional provisions. After this landmark verdict, female officers not only in Army but also in the Air Force and other streams will benefit immensely. This judgment will always be regarded as the most logically and beautifully given judgment and will be an indication