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

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### INTRODUCTION

Women are almost always the ones who experience unfair treatment due to the age-old phenomenon of gender bias. The same thing is happening in India, which makes one wonder what the largest democracy in the world is doing to combat such social dangers. Along with the government, the judiciary has a major responsibility to bring about social reforms by rendering decisions that have a positive impact. One such case that deserves special recognition and is considered one of the most progressive judgements in recent times given by the Supreme Court is *The Secretary, Ministry of Defence v Babita Puniya & Ors.*<sup>1</sup> In this landmark judgement, the Supreme Court bench, led by Justice D.Y Chandrachud gave the verdict that a permanent commission is set up in 10 non-combat service units be set up and held women to be eligible to hold command posts. Apart from passing a just judgement,<sup>2</sup> the Supreme Court also provided an impetus towards gender equality and equal opportunity for women in the armed forces

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<sup>1</sup> *The Secretary, Ministry of Defence v Babita Puniya & Ors* Civil Appeal Nos 9367-9369 of 2011

<sup>2</sup> *Ibid*

sector. The verdict is regarded as a turning point in the Indian army's history. These positions were previously granted in various countries, such as Norway, which allowed women to participate in all combat battles in 1985, Pakistan, which inducted its first female fighter pilot in 2013, and the United States, which allowed women to participate in all ground combat roles in 2016. In addition, we will go through the important events, facts, questions presented, and decisions in depth in order to reach a logical conclusion regarding this notable case.

## **BACKGROUND OF THE CASE**

Article 12 of the Army Act, 1950<sup>3</sup> stated that females are ineligible to either enroll into the Army except if it was specifically stipulated by the Central Government. In the year 1992, the Central government issued a guideline that permitted female officials to be recruited into the army for short durations and it was called Short Service Commission (SSC), Intelligence Corps, Corps of Signals, Regiment of Artillery, etc.<sup>4</sup> Prior to this, the roles of females were only limited to the medical unit of the Army like medicine, dental and military nursing services. However, all of the aforementioned services were only valid for a limited period of time, and females were deprived of permanent commission, even if they were still physically fit for duty. This was not the case for male officers as they had no such restrictions, thus clearly creating a disparity between the men and women in the Army. In 2003, Babita Puniya, a practising advocate, filed a writ petition in form of public interest litigation at the Delhi High Court, seeking permanent commission for the female officers in the army that were recruited through the Short Service Commission without having to face the disparity with the male officers. With that, several other female officers from the Air Force and the Army had separately filed petitions revolving around the same issue. Hence all these were clubbed into the Babita Puniya Case. In the coming years between 2005 and 2008, the Ministry of Defence put out various notifications regarding the extension of the term of service for female officers, however, it was challenged at every level by female officers in the court because the brave officers refused to back down from age-old discrimination. Finally, in the year 2010, the Delhi High Court responded to decades of pleas

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<sup>3</sup> Army Act 1950, s 12

<sup>4</sup> *Ibid*

from the female officers and gave its verdict in their favour by granting permanent commission to the Short Service Commission (SSC) officers of the Air Force and the Army. The Army challenged this decision in the Supreme Court, but the apex court refused to stay the order and asked them to dutifully follow and implement the same. In 2019, the Central Government issued a guideline which stated that permanent commission to women recruited through SSC will be granted, however, the female officers still serving at that particular time will have their tenure fixed and will not be included in for granting permanent commission. It will only be made valid for the new officers that join the army through the SSC in eight combat roles.

## ISSUES

*The following were the major arguments that were raised in the Supreme Court:*

1. Whether women should be granted a permanent commission in the Army?
2. Whether the guidelines issued by the Supreme Court on 15<sup>th</sup> February 2019 be implemented?
3. What are the conditions ruling the women officers of the Indian Army?

## ARGUMENTS

The Arguments that were made are majorly divided into two parts - the Union Government's arguments and the respondent's case.

### *The Union Government*

- The Union Government argued that the notifications about SSC service and the tenure system including the exclusion of the permanent commission itself were never challenged before the High Court.
- The judgement delivered by the Delhi High Court had failed to take into consideration the relevant statutory provision namely Section 10 and Section 12 of the Army Act, 1950, and guidelines by the Government of India.
- It was challenged that before considering the permanent commission of women, the government has to take into account inherent dangers involved in the service of army

officers, there are problematic conditions that they ought to face, also there might arise issues of hygiene and sanitation that might not always be available to women. As stated in the case of *Union of India v PK Chaudhary*,<sup>5</sup> these issues are not subjected to judicial review.<sup>6</sup>

- Women were also allowed to benefit from the pensionable services, provided they completed the SSC tenure and then work up to a period of twenty years, after which they are immediately discharged and thus, enjoy the pension benefits.
- The Union Government asserted that there is no discrimination between male and female SSC officers by giving the example, “male SSC officers are not eligible to opt for an M.Tech course whereas women SSC officers in the JAG branch may avail 180 days of child care leave, while PC women officers are entitled to avail 360 days owing to the long period of service expected from them.”
- In a written memo, the Union Government added by emphasising again – “pregnancy, motherhood, and domestic obligations”, variations in physical capabilities, and the “peculiar dynamics” of all-male units. It also talked about the minimal facilities in the border areas where there are very few provisions for hygiene.

### *The Respondents*

The respondents submitted their arguments and asserted serious concerns about the points that the Union and the Ministry of Defence had furnished the court with, regarding their perceptions about female officers.

- Evidence of blatant discrimination between male and female officers is shown by pointing out the discrepancy in the total strength and shortage of both male and female officers.
- It was argued that women officers of all ages are still posted to places that are perilous, less than habitable, and sensitive in nature like the warzones, despite the concerns related to privacy, hygiene, or sanitation.

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<sup>5</sup> *Union of India v PK Chaudhary* Civil Appeal No 3208 OF 2015

<sup>6</sup> *Ibid*

- It was alleged by the Union that the presence of women among the higher ranks creates a negative influence on unit cohesion. However, what is essential to note here is that women should also be given the same opportunity as received by their male counterparts.
- It was contended that women also undergo the same training and routines that their male counterparts go through in the SSC, and it is only right that women should be promoted to the higher ranks if found eligible and deserving of the post. Women officers are deserted without incentives even when they are providing service in equal proportion as their male counterparts do. Further, besides not providing a PC, it also lowers their status to a jawan.

## JUDGEMENT

The Supreme Court bench was headed by Justice Dr. D.Y Chandrachud. The bench challenged the arguments submitted by the Union and stated that they are firmly rooted in presumptions of prescribed gender roles for women. Additionally, the Indian Constitution clearly stipulates in Article 14 that no individual shall be discriminated against on grounds of its gender. Justice Chandrachud further added that though Article 33 of the Indian Constitution<sup>7</sup> allows restrictions on Fundamental Rights in the armed forces, it is also evidently stated that it could only be limited only to an extent that was required to ensure proper discharge of duty and maintenance of discipline.<sup>8</sup> It was undertaken that the decision made by the Union allowing the women officers to undergo permanent commission through SSC is subject to some conditions: -

- All the female officers presently employed through SSC, who have completed the fourteen years tenure or not are eligible for permanent commission in the Armed Forces.
- The Delhi High Court's order stands affirmed at this point.
- All the choices will be available to women that are present for their male counterparts during the course of granting of permanent commission.

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<sup>7</sup> Constitution of India, art 33

<sup>8</sup> *Ibid*

- Women who are granted permanent commission through SSC are entitled to all the perks that come with it, like promotion, pension, and financial benefits.
- Women officers under SSC will be given the choice to serve the nation until they attain the age of retirement.

Finally, it is held that necessary steps should be followed for compliance with the court's decision within three months' time.

### **CONCLUSION AND ANALYSIS**

The decision delivered by the Supreme Court is progressive and truly commendable. It is visionary and lays out in an exceptional manner that nobody is above the law, which includes organisations and executive bodies at the topmost level of the country. It is high time that grievances of women working in important job roles like the one in defence be taken with utmost seriousness and acute steps be taken to solve them. It is not only the job of the judiciary or the government, the organisations like Army should collectively take precautionary steps to not only address the concerns of women officers but take fix the issues at hand so that the officers do not have to take matters up to the court. The judgement delivered by the Supreme Court bench shows the ray of light on the correct path. It not only sets an example for the armed forces but also for society which compels it to re-think its values and traditions. Any small step taken in the direction of women empowerment is a major breakthrough for the entire nation because once we start treating all genders with equal prospects, then and only then, will India achieve true greatness.