

**THE SECRETARY, MINISTRY OF DEFENCE V. BABITA
PUNIYA & ORS.**

COURT: Supreme Court of India

CITATION: (2020) 7 SCC 469

DECIDED ON: 17.02.2020

BENCH: Dr Dhananjaya Y Chandrachud, J

LAW APPLIED: [Army Act, 1950](#); [Indian Constitution](#)

FACTS OF THE CASE:

Before moving directly to the facts, it is pertinent to know the provision under [Section 12 of the Army Act, 1950](#) that prohibited the recruitment of “females” into the army except- and to the extent that- the Central Government allows.

For the first time in 1992, the Central government issued a notification allowing females to join certain cadres of the army like induction in Short Service Commission (hereinafter SSC), Intelligence Corps, Corps of Signals, Regiment of Artillery, Army Service Corps, Education Corps, the Judge Advocate General’s Department, etc before that the roles were limited to medical, dental, and military nursing service. Women engaged in these services seek parity with the male officers in obtaining permanent commissions.

So in *February 2003*, *Babita Puniya*, a practising advocate, filed a writ petition in the nature of public interest litigation at Delhi High Court, seeking permanent commission for female officers recruited through SSC in the army, at par with their male counterparts. Many other women officers (both air and army officers) separately filed a petition for the same. Their petitions were tagged with Babita’s petition.

Later, in the ending months of 2005, the Ministry of Defence issued a notification extending the validity of the appointment scheme of the Indian Army for the women officers. In 2006 a further notification was issued allowing the SCC women officers to serve for a maximum of 14 years. *Major Leena Gaurav* again filed a writ petition on *16th October 2006* primarily to challenge the conditions of service imposed by the circulars previously in that year and also seeking for the permanent commission for the women officers. In 2007 *Lt Col Seema Singh* for the same issue moved to the court.

Then in 2008, the centre decided to grant permanent commission to SSC women officers in some departments such as the Army Education Corps, Judge Advocate General, and the corresponding branches in the Air Force and Navy. Many more petitions were filed challenging the circular issued in 2006 and 2008.

Finally, in 2010, the Delhi High Court decided to club all the petitions and directed Centre and defence ministry to provide the permanent commission to SSC women officers of the Air Force and Army who had opted for it and not yet granted. After the order of the Delhi High Court, Army challenged the order in the Supreme Court but it very rightly refused to uphold the order and said to implement the orders given by the Supreme Court. In 2018, the Central Government told the Supreme Court that it is considering granting permanent commission to women recruited through SSC in the army. In *February 2019* the government issued guidelines that permanent commission will be granted to the women officers but prospectively and commissioned that only those women will be eligible who commissioned after this order is notified keeping the serving officers out of the ambit of the permanent commission. It granted a permanent commission to new SSC officers in eight combat roles.

ISSUES RAISED:

1. Whether women should be granted Permanent Commission in the Indian Army?
2. Whether the guidelines issued by the Government of India dated 15th February 2019 should be implemented?
3. What are the conditions governing the Women Officers in the Indian Army?

RULE

The Supreme Court bench led by *Justice D.Y Chandrachud* challenged the notions given by the Union and stated that they are entrenched in stereotypical assumptions of ascribed gender roles for women. Moreover, it is a clear violation of their fundamental rights guaranteed under [Article 14 of the Indian Constitution](#). He said that although [Article 33 of the Indian Constitution](#) did allow for restrictions on Fundamental Rights in armed forces it is also clearly mentioned that it could be restricted only to the extent that it was necessary to ensure the proper discharge of duty and maintenance of discipline. It was decided that policy decision taken by the union allowing the women officers in PCs through SSC are subject to some conditions:

1. All the women officers presently on SSC service are eligible to PCs irrespective of any of them crossed fourteen years of service or, as the case may be, twenty years of service.
2. The order given by the Delhi High Court is affirmed.
3. All the choices of specialization shall be available to the women officers at the time of opting for the grant in PCs, on the same terms as their male counterparts.
4. There are some expressions like in various staff appointments only, and on staff appointments only in the policy by the Government, these should not be enforced with respect to the PC of women.
5. All the women officers who are eligible and granted PCs through SSC should be entitled to all consequential perks including pension, promotion, and financial incentives.
6. The benefits of continuing in the service until the attainment of the pensionable service shall also apply to all the SSC women officers.

Finally, it is held that the necessary steps should be taken for the compliance of the court's decision within three months of the judgment.

APPLICATION

This judgment of Supreme Court granting permanent Commission to women officers is a progressive judgment Indian Court has always stand up for the rights of women and this time

again Quote has upheld the right of women which were not given to them by the legislature now a by the custom then. It is truly protected its place as a Guardian of the constitution.

[Art 14 to 18](#) provides or guarantees right to equality. [Article 14](#) provides that "state shall provide equality before law and equal protection of law." [Article 15](#) provides that "state shall not discriminate on the grounds of religion, race, caste, sex, or any of them."

[Article 15\(3\)](#) Provide state can make special provision for the advancement of women and children.

[Article 16](#) state shall not discriminate on the basis of religion, race, caste, place of birth, sex , resident or any of them.

These fundamental rights would be only let us if not followed by the quotes in letter and spirit. There have been plethora of cases in which courts have extended these rights like in the case of *CB Muthamma¹ to Anuj Garg²* –Allowing right to work two women equally to their counterpart.

In *Chandrima Das³* case, Court has reiterated that "Article 14 is for all weather citizen and or not."

This case has been decided by a bench of epic squad headed by honorable **JUSTICE DY CHANDRACHUD** who has earlier said that "Constitution is itself feminist, as the main function off feminism is to distort social Hierarchies and so is of constitution."

Not providing permanent Commission to women Officer Court has held violates article 14, 15 and 16. Coourt has remarked that " in spite of undergoing the same training as their counterpart undergo, still they do not have the books are the length of time which the counterpart enjoys. Why do they have the limit to serve the nation in spite of having all the capacities to do so."

CONCLUSION

This decision by the Supreme court no doubt is appreciable and commendable and should be admired by all of us. It ensures the women's position in the Indian Army and also prevails in gender justice in the Army also. It removed the blanket restrictions imposed on the women

¹ C.B. Muthamma v. Union of India, A.I.R. 1979 SC 1886

² Anuj Garg v. Hotel Association of India (2008) 3 SCC 1

³ Chairman, Railway Board and others v. Chandrima Das (Mrs) and others, (2000) 2 S. C. C. 465

officers for holding higher rank posts. It is rightly observed by the decision given by the bench headed by **Justice Chandrachud** that *"it is an insult to women officers and to the Indian Army also when aspersion is cast on women, their potential, ability, and achievements in the army."*

After this landmark order, the path to gender equality has certainly been remarkably heralded which shall ensure that women are no longer denied permanent commission or denied command posts! Even women officers in the Air Force and other streams shall benefit immensely from it as from now onwards they cannot be denied command posts nor be denied the highest post of Chief also. This judgment shall always be remembered as one of the best judgments which heralded gender equality in defence services also which includes all the services – Army, Navy, and Air Force.

Implicit in the guarantee of equality is that where the action of the State does differentiate between two classes of persons, it does not differentiate them in an unreasonable or irrational manner. In this sense, even at its bare minimum, the right to equality is a right to rationality. Where the State, and in this case the Army as an instrumentality of the State, differentiates between women and men, the burden falls squarely on the Army to justify such differentiation with reason. An absolute prohibition of women SSC officers to obtain anything but staff appointments evidently do not fulfill the purpose of granting PCs as a means of career advancement in the Army. Whether a particular candidate should or should not be granted a criteria or command assignment is a matter for the competent authority to consider having regard to all the exigencies of service, performance and organizational requirements. In the present case the Army has provided no justification in discharging its burden as to why women across the board should not be considered for any criteria or command appointments. Command assignments are not automatic for men SSC officers who are granted PC and would not be automatic for women either. The absolute exclusion of women from all others except staff assignments is indefensible. If the army has cogent reasons for excluding women from a particular criteria or command appointment, it may provide them to the relevant authorities and if necessary, to future courts. However, such a justification must take place on a case-to-case basis, in light of the requirements and exigencies of a particular appointment. The blanket non-consideration of women for criteria or command appointments absent an individuated justification by the Army cannot be sustained in law.