

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (C) No 1480 of 2020

Cdr T Rajkumar

Petitioner(s)

Versus

Union of India and Another

Respondent(s)

W I T H

Writ Petition (C) No 1269 of 2020

Writ Petition (C) No 1471 of 2020

Writ Petition (C) No 1478 of 2020

Writ Petition (C) No 61 of 2021

Writ Petition (C) No 91 of 2021

Writ Petition (C) No 507 of 2021

Writ Petition (C) No 703 of 2021

O R D E R

- 1 In this batch of eight writ petitions under Article 32 of the Constitution, the petitioners challenge the rejection of their claims for the grant of Permanent Commission (“**PC**”) in the Indian Navy. In the alternative, if

their claims are not allowed they seek directions for the grant of pension. Counsel appearing on behalf of the petitioners stated that the eight writ petitions cover sixteen officers, both men and women, who were inducted on Short Service Commissions.

2 The petitions have been instituted on the basis of the decision of this Court in **Union of India v. Lieutenant Commander Annie Nagaraja**¹. Reliance has also been placed on the decision of this Court in **Lt. Col. Nitisha v. Union of India**². The subsequent decision was in the context of the grant of PC for women Short Service Commissioned officers in the Indian Army.

3 Mr CU Singh, learned Senior Counsel appearing on behalf of three officers in WP 1269 of 2020 urged that:

(i) The judgment in **Lt. Col. Nitisha (supra)** has taken notice of the fact that the ACRs of women officers who were not eligible for PC were written in a casual manner;

(ii) In the Navy, the Education Cadre was opened for the grant of PC prospectively from 2009 and hence the ACRs of all SSC officers,

1 (2020) 13 SCC 1

2 (2021) SCCOnLine SC 261

men and women, who were appointed before that date were not graded properly, which seriously impinged on their prospects for PC;

- (iii) The number of vacancies has been under-estimated: since the vacancies exceed the number of officers under consideration for the grant of PC, *inter se* merit ceases to be of relevance and the suitability of officers alone is to be adjudged;
- (iv) The grant of PC in the Navy was governed by Navy Order (Special) 05/05 which was modified on 28 October 2009 and the modified instructions of 28 October 2009 set out the manner in which recommendations for PC are to be endorsed by the initiating officer;
- (v) Since the petitioners were appointed between 2003 and 2005 (before the above modification brought about in 2009) they have suffered from the same discrimination which was highlighted by the Court in its decision in **Lt. Col. Nitisha**, albeit context of women officers. Consequently, even those men officers who were inducted between 2003 and 2009 have suffered invidious

discrimination and, having completed about 18 years of service, they should be granted pension on parity;

- 4 Mr Huzefa Ahmadi, learned Senior Counsel appearing on behalf of another set of petitioners submitted that:
 - (a) Men like women have suffered from the discriminatory policy of the Indian Navy in regard to the grant of pension;
 - (b) The directions which have been issued by this Court under Article 142 should be extended to these officers as well; and
 - (c) This Court being entrusted with the constitutional power under Article 142, such a direction is necessary to protect the interests of officers who have been appointed prior to 2009.
- 5 Mr P S Patwalia, learned Senior Counsel submitted that the petitioner whom he represents was an intervener in the earlier proceedings before this Court and has been denied the benefit of pension at par with others in **Annie Nagaraj** (supra) on the ground that she was not either a party before the High Court or before this Court.
- 6 Similar submissions, with nuances based on individual facts, have

been urged by Mr Anant Vijay Palli, Ms Pooja Dhar, Ms Preetika Dwivedi and other Counsel.

- 7 Some of the petitioners before this Court have instituted O.As before the Armed Forces Tribunal (“**AFT**”)which are pending before its Benches, including the Principal Bench at Delhi. Others have moved this Court directly under Article 32 of the Constitution without taking recourse to the remedies before the AFT.
- 8 This Court has laid down the principles in the decisions which have been noted above while examining the plea of women SSC officers for the grant of PC.
- 9 The claims of the petitioners for the grant of PC have been rejected, after they have been assessed for PC. Hence, the petitioners ought to pursue the remedies which are available before the AFT. The attention of this Court has been drawn to an order of this Court dated 12 March 2021 in Writ Petition 167 of 2021 where a similar course of action was followed. Quite apart from the above order (which is sought to be distinguished by Counsel for the petitioners), since this Court has laid down the governing principles in the judgments noted above, there is

no reason why the avenue of taking recourse to the remedies before the AFT should be obviated.

10 Counsel for the petitioners submitted that since the equitable directions which have been issued by this Court governing the grant of one-time pension in the earlier decisions emanate from the jurisdiction under Article 142 of the Constitution to do complete justice for the petitioners have moved this court under Article 32 to pursue the claims for pension.

11 During the course of the hearing, it has emerged that the petitioners

(i) Challenge the denial PC; and

(ii) Seek the grant of pension, if the claim for PC is not allowed.

12 The petitioners who are considered for the grant of PC and were denied it would have to assail the decision not to grant them PC on the basis of the individual facts in each case. Bearing this in mind, it would be necessary for them to pursue their remedies before the AFT where the facts of each case can be scrutinized. If the petitioners were to succeed on their plea for the grant of PC, the alternative claim for

invoking the jurisdiction under Article 142 would cease to have any practical significance. It is only if the denial of PC is upheld that the alternate plea can be pressed and this can be pursued after the decision of the AFT, by following the remedies available under the statute. Hence, on a considered view of the matter we are inclined not to entertain the petitions under Article 32 on merits.

- 13 During the pendency of the petitions, interim orders were passed in some cases as a result of which those petitioners are continuing in service. Others have ceased to be in service. The AFT should consolidate all pending OAs on the above subject before the Principal Bench at Delhi so that they can be disposed of expeditiously by 31 October 2020. The petitioners who have not filed O.As before the AFT are at liberty to do so. The petitioners who have filed O.As before the AFT may amend them to raise appropriate grounds of challenge, including those which have been raised before this Court.

- 14 We accordingly issue the following directions:

- (i)** Liberty is granted to all the petitioners in these proceedings under

Article 32 of the Constitution to move the AFT for seeking appropriate reliefs;

- (ii)** Petitioners who have already instituted O.As before the AFT are permitted to amend their O.As within a period of two weeks;
- (iii)** The President of the AFT is requested to issue administrative directions for the transfer of the O.As pending before different Benches to the Principal Bench at Delhi so that O.As raising similar issues can be heard and disposed of at the Principal Bench expeditiously;
- (iv)** Where interim orders have been passed during the pendency of the proceedings under Article 32 in any petition, these orders shall continue until the disposal of the proceedings by the AFT;
- (v)** The Principal Bench at Delhi shall dispose of the O.As by 31 October 2021; and
- (vi)** Those of the petitioners who have not filed O.As would be at liberty to do so before the Principal Bench of the AFT at Delhi so

that they can be heard and disposed of together with the batch of similar O.As .

15 The writ petitions are disposed of in the above terms.

16 Pending applications, if any, stand disposed of.

Chandrachud]

.....
.....J.
[Dr Dhananjaya Y

.....
.....J.
[M R Shah]

New Delhi;
August 24, 2021
CKB

ITEM NO.1

Court 4 (Video Conferencing)

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.1480/2020

CDR. T. RAJKUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for IA No.136552/2020 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT, IA No.49013/2021 - APPLICATION FOR PERMISSION and IA No.49017/2021 - EXEMPTION FROM FILING AFFIDAVIT)

WITH W.P.(C) No.1269/2020 (X)

(With appln.(s) for EXEMPTION FROM FILING AFFIDAVIT ON IA 113640/2020, APPROPRIATE ORDERS/DIRECTIONS ON IA 129920/2020, APPROPRIATE ORDERS/DIRECTIONS ON IA 134881/2020, EXEMPTION FROM FILING AFFIDAVIT ON IA 134883/2020 and EXEMPTION FROM FILING AFFIDAVIT ON IA 3950/2021)

W.P.(C) No.1471/2020 (X)

(With appln.(s) for APPROPRIATE ORDERS/DIRECTIONS ON IA 135565/2020, EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT ON IA 135566/2020, VACATING STAY ON IA 330/2021 and WITHDRAWAL OF CASE/ APPLICATION ON IA 6001/2021)

W.P.(C) No.1478/2020 (X)

(With appln.(s) for APPROPRIATE ORDERS/DIRECTIONS ON IA 136470/2020 and EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT ON IA 136471/2020)

W.P.(C) No.61/2021 (X)

(FOR I.R.)

W.P.(C) No.91/2021 (X)

(With appln.(s) for IA No. 78651/2021 - CLARIFICATION/DIRECTION and IA No.9774/2021 - STAY APPLICATION)

W.P.(C) No.507/2021 (X)

(With appln.(s) for CLARIFICATION/DIRECTION ON IA 59009/2021)

W.P.(C) No.703/2021 (X)

(With appln.(s) for IA No.73297/2021-APPROPRIATE ORDERS/DIRECTIONS)

Date : 24-08-2021 These matters were called on for hearing today.

CORAM :

**HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH**

**For Petitioner(s)
WP 1269/2020**

**Mr. C.U. Singh, Sr. Adv.
Ms. Pooja Dhar, AOR
Mr. Amjad, Adv.**

WP 1480/2020

**Mr. Huzefa Ahmadi, Sr. Adv.
Ms. Pooja Dhar, AOR
Mr. Sharukh Aalam, Adv.**

**WP 1471/2020, 1478/
2020, 507/2021 &
703/2021**

**Mr. Anant Vijay Palli, Adv.
Mr. Deepak Goel, AOR**

WP 61/2021

Ms. Preetika Dwivedi, AOR

WP 91/2021

**Mr. P.S. Patwalia, Sr. Adv.
Mr. Gauravjit Singh Patwalia, Adv.
Ms. Harshika Verma, Adv.
Mr. Tushar Bakshi, AOR**

For Respondent(s)

**Mr. R.S. Suri, ASG
Mr. R. Balasubramaniam, Sr. Adv.
Mr. Arvind Kumar Sharma, AOR
Mrs. Neela Kedar Gokhale, Adv.
Ms. Vimla Sinha, Adv.
Mr. Sharath Nambiar, Adv.**

Mr. Gurmeet Singh Makker, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The writ petitions are disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

**(CHETAN KUMAR)
A.R. -cum-P.S.**

**(SAROJ KUMARI GAUR)
COURT MASTER
(Signed order is placed on the file)**