

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Q.

OA 1040/2021 WITH MA 551/2022

Wg Cdr Reena

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Ms. Garima Sachdeva, Advocate

For Respondents

:

Mr. Satya Ranjan Swain, Advocate

WITH

R.

OA 1041/2021 WITH MA 552/2022

Wg Cdr Kusum Thakuri

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Ms. Garima Sachdeva, Advocate

For Respondents

:

Mr. Satya Ranjan Swain, Advocate

WITH

S.

OA 1043/2021 WITH MA 1670/2022

Wg Cdr Darshana Sonkar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Ms. Garima Sachdeva, Advocate

For Respondents

:

Mr. Harish V Shankar, Advocate

WITH

T.

OA 1044/2021 WITH MA 553/2022

Wg Cdr Sucheta Edn

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Ms. Garima Sachdeva, Advocate

For Respondents

:

Mr. Satya Ranjan Swain, Advocate

WITH

U.

OA 1582/2021 WITH MA 1671/2022

Wg Cdr Khushboo Gupta

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Ms. Garima Sachdeva, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
26.09.2023

Vide our orders of even date, we have dismissed the OAs. Faced with the situation, learned counsel for the applicants makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matters to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

Neha
OA 1040/2021

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**OA 1040/2021 with MA 551/2022
WITH
OA 1041/2021 with MA 552/2022
WITH
OA 1043/2021 with MA 1670/2022
WITH
OA 1044/2021 with MA 553/2022
WITH
OA 1582/2021 with MA 1671/2022**

Wg Cdr Reena **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Ms. Garima Sachdeva, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

WITH

Wg Cdr Kusum Thakuri **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Ms. Garima Sachdeva, Advocate
For Respondents : Mr. Satya Rajan Swain, Advocate

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Wg Cdr Darshana Sonkar **Applicant**
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Wg Cdr Sucheta Edn **Applicant**
Versus
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For Applicant : Ms. Garima Sachdeva, Advocate
For Respondents : Mr. Satya Rajan Swain, Advocate

WITH

*OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021*

**Wg Cdr Khusboo Gupta
Versus
Union of India and Ors.**

**..... Applicant
..... Respondents**

**For Applicant : Ms. Garima Sachdeva, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC**

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

ORDER

These five OAs have been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by Short Service Commission Women Officers of the Air Force who are aggrieved on not being granted Permanent Commission (PC) in the IAF. The applicants have made the following prayers:-

- (a) Set aside the policy dated 16.01.2019 to the extent that it is unfair and arbitrary in terms of the implementation.
- (b) Direct respondents to grant PC to the applicant.
- (c) Direct the respondents to produce signal/documents related to the declassification of vacancies with respect to the SSC officers for the Board of Officers (BOO) of 2019, 2020 and 2021.
- (d) Issue such other order/ direction as may be deemed appropriate in the facts and circumstances of the case.

Brief Facts of the Case

2. The details of the five applicants are tabulated below:

*OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021*

Serial No	Details of Officer	OA No	Scheme	Date of Commission	Date of release
(a)	Wg Cdr Reena (Education)	OA 1040/21	10+4	16.06.2007	15.06.2021
(b)	Wg Cdr Kusum Thakuri (Education)	OA 1041/21	10+4	16.06.2007	15.06.2021
(c)	Wg Cdr Darshana Sonkar (Adm/ATC)	OA 1043/21	10+4	16.06.2007	15.06.2021
(d)	Wg Cdr Sucheta (Education)	OA 1044/21	10+4	16.06.2007	15.06.2021
(e)	Wg Cdr Khushboo Gupta (Technical)	OA 1582/21	10+4	02.07.2007	15.06.2021

3. The applicants in OA 1040/2021, OA 1041/2021, OA 1043/2021 and OA 1044/2021 were all commissioned in the Air Force on 16.06.2007 and applicant in OA 1582/2021 was commissioned in the Air Force on 02.07.2007 as SSCOs. At that relevant time, grant of PC for SSCOs, both men and women, had been stopped since 25.05.2006. In terms and conditions point 7 of the advertisement in Employment News dated 12-18 Nov 2005 which was applicable to the applicants stated that:

"7. The initial tenure for Short Service Commission will be for a period of ten years. An extension of four years may be granted subject to service requirement and availability of vacancies."

4. Thereafter, in pursuance of the Hon'ble Delhi High Court judgement dated 12.03.2010 in the case of **Babita Puniya Vs. Union of India and another**, WP(C) 1597 of 2003, Human Resource Policy

OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021

(HRP) 04/2010 dated 19.11.2010 was promulgated for grant of PC to Women SSCOs and HRP 03/2011 dated 02.08.2011 was promulgated for grant of PC to SSCOs both men and women. The judgement in **Babita Puniya** (supra), HRP 04/2010 and HRP 03/2011 were applicable to SSCO(W) who were commissioned before the issuance of the policy dated 25.05.2006 and were in service as on 12.03.2010. Subsequently, HRP 01/2019 for grant of PC to all serving SSCO's of Ground Duty Branch was promulgated.

5. The applicant in OA 1040/2021 was commissioned in the Education Branch of the Air Force on 16.06.2007 and is a recipient of Commendation Card by AOC-in-C, Eastern Air Command in 2011. The applicant, after the initial term of 10 years, was considered and duly granted extension w.e.f 15.06.2017 to 15.06.2021. The applicant, while on maternity leave, gave her willingness for grant of PC under the provisions of HRP 01/2019 vide application dated 08.02.2019 and was considered for grant of PC by the BOO in March 2019. However, the applicant was not considered for PC as she did not meet the MPC. In the meantime, the applicant received her categorisation of Cat-B in Nov 2019 (Cat-C being the minimum pre-requisite for consideration of grant of PC as per HRP 01/2019). Thereafter, the applicant again submitted her willingness for grant of PC under HRP 01/2019 vide application

OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021

dated 10.12.2019 and 09.11.2020 and was considered for grant of PC by BOO held in May 2020 and May 2021, but was not granted PC based on comparative merit.

6. The applicant in OA 1041/2021 was commissioned in the Education Branch of the Air Force on 16.06.2007 and is a recipient of Commendation Card by AOC-in-C, Maintenance Command in 2016. The applicant, after the initial term of 10 years, was considered and duly granted extension w.e.f 15.06.2017 to 15.06.2021. The applicant gave her willingness for grant of PC under HRP 01/2019 vide application dated 21.01.2019. In the meantime, the applicant received her categorisation of Cat-C in Feb 2019. The applicant was considered for grant of PC by the BOO in March 2019. However, she was not granted PC based on comparative merit. Thereafter, the applicant again submitted her willingness for grant of PC under HRP 01/2019 vide application dated 12.12.2019 and 11.12.202 and was considered for grant of PC by BOO held in May 2020 and May 2021 but was not granted by BOO based on comparative merit.

7. The applicant in OA 1043/2021 was commissioned in the Adm/ATC Branch of the Air Force on 16.06.2007. The applicant received her categorisation of Cat-C in 2008 and Cat-B in 2011. In the year 2017, the applicant was due for extension of her service on

*OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021*

completion of the initial tenure of 10 years. However, the extension was denied by the respondents as the applicant did not meet the requisite medical requirement as per the policy in vogue then. Aggrieved by the same, the applicant approached the Hon'ble High Court of Delhi, which granted her an interim stay on her release from service. Thereafter, the applicant approached the Hon'ble AFT, PB for extension of service. In the meantime, the applicant was granted extension by the respondents on meeting the requisite medical category. Thus, the OA before the AFT, PB was disposed of vide order dated 02.06.2017.

8. Subsequently, the applicant submitted her willingness for grant of PC as per HRP 01/2019 on three occasions viz. on 21.01.2019, 15.12.2019 and 10.12.2020. The applicant was considered for grant of PC by the BOO held in March 2019, May 2020 and May 2021 but was not granted PC based on comparative merit.

9. The applicant in OA 1044/2021 was commissioned in the Education Branch of the Air Force on 16.06.2007. The applicant, after the initial term of 10 years, was considered and duly granted extension w.e.f 15.06.2017 to 15.06.2021. The applicant, while on maternity leave, gave her willingness under HRP 01/2019 vide application dated 23.01.2019 and was considered for grant of PC by the BOO in March 2019. However, the applicant was not recommended for PC as

she did not meet the MPC. In the meantime, the applicant received her categorisation of Cat-C in Nov 2019 and Cat-B in Dec 2020. Thereafter, the applicant again submitted her willingness for grant of PC under the provisions of HRP 01/2019 vide application dated 30.12.2019 and 15.12.2020 and was considered for grant of PC by BOO held in May 2020 and May 2021 but was not granted PC based on comparative merit.

10. The applicant in OA 1582/2021 was commissioned in the AE (L) Branch of the Air Force on 02.07.2007 and is a recipient of Commendation Card by Chief of Air Staff in Jan 2019. The applicant received her categorisation of Cat-C in 2015. The applicant, gave her willingness under HRP 01/2019 vide application dated 21.01.2019 and was considered for grant of PC by the BOO in March 2019. However, the applicant was not granted PC based on comparative merit. Thereafter, the applicant again submitted her willingness for grant of PC under HRP 01/2019 vide application dated 29.11.2019 and was considered for grant of PC by BOO held in May 2020 but was not again not granted PC based on comparative merit. In the meantime, the applicant received her categorisation of Cat-B in 2020. Thereafter, the applicant again submitted her willingness for grant of PC vide application dated 16.11.2020 and was

considered by the BOO held in May 2021 but was not granted PC based on comparative merit.

11. All the five applicants then approached the AFT (PB) aggrieved on not being granted PC in IAF. The applicants in OA 1040/2021, OA 1041/2021, OA 1043/2021 and OA 1044/2021 were heard on their prayer for interim stay on their release. The Tribunal vide its order dated 04.06.2021 dismissed the said application. Thereafter, the applicants approached the Hon'ble High Court of Delhi against the order of the Tribunal. However, the Hon'ble High Court of Delhi too vide its order dated 11.06.2021 dismissed the WPs filed by the four applicants.

Arguments by Counsel for the Applicants

12. The counsel briefly explained the service profile of the five applicants, their achievements and emphasised that all of them had given their willingness for consideration for PC, and that the respondents had arbitrarily denied PC by applying HRP 01/2019 dated 16.01.2019. The counsel submitted that the addition of new minimum performance criteria in the impugned policy were in complete violation of the rules which were existing at the time of commissioning of the applicants. That HRP 01/2019 was issued with a view to provide fair opportunities to the SSCOs commissioned in the IAF post May 2006, but the policy had failed to take into account the disparities that the women SSC Officers suffered

*OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021*

in comparison to male SSC Officers, PC Officers and airmen. The counsel further asserted that the respondents in an arbitrary and illegal manner had made amendments to HRP 01/2019, after it had been implemented and that the BOO had been convened on the basis of the impugned policy which was unfair to the SSCOs.

13. The counsel further submitted that the HRP 01/2019 was applicable from 16.01.2019 and the first BOO was conducted in the month of March 2019 itself. She further added that unlike the promotion policy, which was issued with adequate gestation period, HRP 01/2019 did not have the benefit of a lead time being assigned for its implementation. She further elaborated that since new criterion had been included in the MPC index, it was imperative that adequate time was provided to the SSCOs to give them an opportunity to gain the minimum performance qualification where necessary. The counsel added that the applicants were not provided sufficient time period to exhaust their legal remedies or complete their release formalities on time.

14. The counsel also asserted that initially the ACRs of women officers were not initiated seriously as there was no provision of consideration for PC. In this connection, the counsel placed heavy reliance on the judgement of the Hon'ble Supreme Court dated 25.03.2021 in WP (Civil)

wherein, the Hon'ble Supreme Court held that –

"Reliance placed on Annual Confidential Reports:

Xxx

Xxx

(xiv) The process of filling out ACRS for women officers was not conducted seriously and good grades were not awarded as the officers were not being considered for PC at the time. Thus, the manner of judging and grading of ACRS for women officers was different from that of male officers and the two cannot be placed on an equal footing"

15. The counsel then stated that no reasons had been given as to why the applicants were not granted PC. She further added that even the vacancies were not declared prior to the conduct the Boards, and the applicants remained ignorant of the vacancies till the results were declared. The counsel further added that the ratio of SSCOs granted PC, against the total number considered was low and therefore, the continued increase in the intake of SSCOs was detrimental to the aspiration of the SSCOs for grant of PC.

16. The counsel concluded that the addition of new criterion, the lack of adequate gestation period and the fact that HRP was applied retrospectively had caused major prejudice to the applicants resulting in them not being granted PC. The Counsel vehemently asserted that in view of the case made out, the OAs be allowed.

Arguments by the Counsel of the Respondents

17. The counsel for the respondents took us through the details pertaining to the introduction of the SSCO scheme and grant of PC. He then took us through the genesis of the **Babita Puniya** (supra) case, the salient directions enshrined in the judgment dated 12.03.2010 of the Hon'ble Delhi High Court and various HRPs. The counsel drew our attention to HRP 01/2019 dated 16.01.2019 and emphasised that consequent to HRP 3/2011 being no longer valid after 2015, HRP 01/2019 was a comprehensive policy on grant of PC to all serving SSCOs (less medical and dental officers) of the Ground Duty Branch. As per this policy, an officer was entitled to three considerations and it was mandatory for officers to submit a willingness/unwillingness certificate, failing which, it would still be considered as a chance availed. He further added that only those officers would be considered who met the laid down QR and that PC would be granted as per merit, as vacancies were limited. Further referring to Note 1 of Para 4 of HRP 01/2019, the counsel emphasised that as per the policy officers who were not granted PC till completion of the applicable SSC tenure would be released from service, and that as per Note 2, for the year 2019, the Board of Officers (BOO) would be held in Mar 2019.

18. The counsel then took us through Appendix 'A' of HRP 01/2019 which lays down the MPC. He elaborated on the assessment criterion pertaining to CRs, categorisation and Mandatory In-Service Course (MISC). He further added that categorisation had been introduced in HRP 01/2019 was an organisational/professional requirement. Elaborating the concept of categorisation, the counsel stated that categorisation was in vogue for the Flying Branch for long and that it was first introduced for officers of Engineering Branch in 2011. In 2013, it was introduced for the Logistic Branch and later on for the other Branches/Cadres. Referring to medical category, the counsel emphasised that those who were otherwise found fit and were temporarily in low medical category, were granted two tranches of extension, during which if the SSCO was upgraded to acceptable medical category, they were then granted PC.

19. The counsel then emphasised that in the present set of cases, all the applicants had submitted their willingness for consideration for PC under HRP 01/2019 for all their three considerations in 2019, 2020 and 2021. He then asserted that when the applicants were not granted PC in 2019, they neither challenged the HRP or non-grant of PC when the list of successful candidates was published on 09.04.2019 after the first Board under HRP 01/2019 was conducted. And that after 2019, the applicants willingly participated in the subsequent two considerations too

and that they have challenged HRP 01/2019 only when did not finally succeed in being granted PC. In this regard, the counsel for the respondents relied on the Hon'ble Apex Court judgement in the case of **Naveen Jain Vs. Union of India**, [(2019) 10 SCC 34], wherein, the Hon'ble Court held that-

"it is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome."

20. The counsel for the respondents also relied on the AFT (PB) order dated 28.09.2015 in OA No.02/2014, **Wg Cdr V Saxena Vs. Union of India**, wherein, the Tribunal held that-

*"Para 4(a) - such issues pertains to the domain of policy making which are exclusively within the purview of the Executive power of the Union and hence, same is beyond the scope and purview of judicial review under section 14 of the AFT Act.
Para 4(a) (ii) - the employer is free to change the eligibility/qualification/criteria for promotion of its employees and policy so framed is not expected to remain so for ever."*

21. The counsel for the respondents heavily relied on the AFT, (PB) order dated 11.03.2020 in OA 2299/2019, **Wg Cdr Suprita Kaur Vs. Union of India and Ors.**, wherein, the applicant commissioned on 18.12.2004, was initially declined PC and opted for extension in 2014. Subsequently, gave willingness for PC under HRP 01/2019 and was, however, not granted PC. It was the prayer of the applicant in this case that she ought to have been considered for PC in accordance with the policy that existed prior to 25.05.2006. However, the OA was dismissed

and the case travelled to Hon'ble Supreme Court in CA 15954/2020. The appeal, however, was dismissed by the Apex Court vide their judgment dated 01.10.2020 and thus, the case attained finality.

22. The counsel for the respondent vehemently argued that the contention of the applicants that they were not considered as per the parameters applicable at the time of commissioning was incorrect and entirely misplaced. The counsel reiterated that at the relevant point of time, when the applicants were commissioned in 2007, there was no policy for grant of PC to SSCOs, as it had been stopped vide policy dated 25.05.2006. Hence, there was no question of any pre-requisites for grant of PC which was applicable at the time of their being commissioned. Further referring to the reliance on the case of **Lt Col Nitisha** (supra), the counsel asserted that this was not relevant here as since May 2006, SSCOs, both men and women were no longer being granted PC and thus, since then the CRs of all SSCOs were being initiated equitably, and that only the CRs of women SSCOs were initiated in a casual manner was grossly misplaced.

23. The counsel also explained that the applicants were given 21 days to complete their release formalities as per policy in vogue, as was given all those being released/discharged/superannuated. In addition, the applicants were also granted 28 days termination leave, and that

therefore, it cannot be said that the applicants were not given sufficient time prior to their release. He also emphasised that the applicants were always aware of their terms of service of 10+4 years, and when they were due for release if they were not granted PC. He further added that Note 1 to Para 4 of HRP 01/2019 stated that SSCOs who are not granted PC till completion of the applicable SSC tenure would be released from service, an issue clearly known to the applicants since 2019. The counsel then stated that the applicants had directly approached the AFT without seeking service remedies available to them. He concluded by reiterating the fact that since HRP 04/2010 and HRP 03/2011 were no longer operative after 2015, the operative policy for grant of PC for all serving SSCOs of Ground Duty Branch was HRP 01/2019. That since 2019, this HRP had been uniformly applied to all SSCOs of Ground Duty Branch who were eligible for consideration for PC, and eligible SSCOs were granted PC as per Branch wise vacancies on each Board. Hence, prayed that the OAs be dismissed, being devoid of any merit.

Consideration of the Case

24. Having heard both parties at length the only issue that requires our consideration is whether the respondents are justified in considering the applicants for grant of PC under HRP 01/2019 in 2019, 2020 and 2021.

*OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021*

25. This Tribunal in its order dated 04.09.2023 in OA No.814/2020, **Wg Cdr Shalini Upadhyia & Ors** Vs. **Union of India & Ors.,** has elaborately examined the necessity of policy changes; evolution of HRPs; applicability of HRP 04/2010, HRP 03/2011 and HRP 01/2019; criterion in HRP 01/2019; considerations by the Boards, scope of judicial review of executive policies and concluded the following as given in Para 71, the relevant parts of which are extracted below:

71. Based on the above consideration we conclude the following: -

(a) SSCO scheme for male officers commenced in 1985 and the induction of women in the IAF under the SSCO scheme has been a progressive process from 1992 to 2015.

(b) While men SSCOs were considered and granted PC (initially as per AOP Directives and subsequently as per HRP 04/2004), women SSCOs though eligible for consideration for grant of PC, were never considered for grant of PC.

(c) Based on the organisational requirements, vide HRP 21/2006 dated 25.05.2006, it was decided to stop grant of PC and only grant extension. Accordingly, even male SSCOs who hitherto fore were being considered for grant of PC were thereafter only considered for extension.

(d) In Sep 2008, MoD sanctioned grant of PC to women officers in specific Branches of the three Services, and respective Service HQs were to issue necessary administrative instructions.

(e) The Delhi High Court judgement dated 12.03.2010 in the case of **Babita Puniya** (supra) entitled consideration for grant of PC to women SSCOs of both Army and Air Force. In the Air Force, all women SSCOs, commissioned prior to 25.05.2006, in service as on 12.03.2010 and had opted for grant of PC were to be considered for grant of PC as was done for male SSCOs prior to 2006.

(f) The AFT, (PB) order dated 22.02.2011 in the case of **Sqn Ldr Lalit Kumar Tandon** (supra), granted parity to male SSCOs who were similarly placed as the women SSCOs under the ambit of **Babita Puniya** (supra) case for consideration for grant of PC.

(g) Though IAF had issued HRP 04/2010 exclusively to consider only women SSCOs under the ambit of **Babita Puniya** (supra) case, the AFT (PB) order dated 22.02.2011 and the Delhi High Court judgement dated 23.05.2011 necessitated the issue of a common policy for grant of PC to SSCOs, both men and women. Accordingly, HRP 03/2011 was promulgated.

(h) Boards for grant of PC were conducted from 2010 to 2015. In 2010, it was conducted as per HRP 04/2010 while from 2011 to 2015 it was conducted as per HRP 03/2011. The last batch of SSCOs who were eligible to be considered in the light of the judgement in **Babita Puniya** (supra) were those who were commissioned in Dec 2005, since the next batch commissioned in Jun 2006 were outside the purview of **Babita Puniya** (supra) judgement, as the applicability of the judgement was restricted to those commissioned prior to 25.05.2006, apart from other criteria.

(i) In 2011, MoD vide 11.11.2011 issued 'Policy on induction and employment of Women in Armed Forces' and directed that respective Service Headquarters will issue appropriate administrative instructions on induction of women officers including the extent of induction, so as to ensure that fighting efficiency, combat effectiveness and functionality of the Armed Forces are maintained.

(j) xxxx

(k) After 2015, no SSCO was entitled for consideration for PC under the ambit of **Babita Puniya's** (supra) case since it was only applicable to those commissioned prior to May 2006.

(l) Meanwhile in 2015, MoD accorded sanction for induction of women as SSCOs into the Fighter Stream of Flying Branch.

(m) Subsequently MoD vide its letter dated 25.08.2018 sanctioned grant of PC prospectively to serving SSCOs (both men and women) of Flying Branch, and Air HQ was directed to issue necessary administrative instructions.

(n) With the sanction accorded vide letter dated 25.08.2018, serving SSC Officers (both men and women) of all Branches in the IAF now became eligible for consideration of grant of PC prospectively, depending upon availability of vacancies, willingness, suitability, merit and subject to medical fitness.

(o) Based on the directions in MoD letter dated 25.08.2018, IAF issued HRP 06/2018 for the Flying Branch and HRP 01/2019 for Ground Duty Branch. The aim of HRP 01/2019 is to lay down guidelines for consideration for grant of PC in respect of serving Ground Duty Branch SSCOs (excluding Medical and Dental officers) of the IAF.

(p) Air HQ is authorised and entitled to make changes in their HRP from time to time, based on changing circumstances and organisational needs, as has been done from AOP Directives to HRP 04/2004, and to HRP 01/2019.

(q) The Air HQ is justified in introducing MISC and categorisation as part of MCP in HRP 01/2019 as this enhances the quality of those now being selected to be granted PC.

(r) Since the last batch covered by the judgement in **Babita Puniya** (supra) case was considered for grant of PC in 2015, no Boards were held in 2016, 2017 and 2018 to consider SSCOs of Ground Duty Branch for grant of PC.

(s) As per HRP 01/2019, all eligible SSCOs who have been granted extension as per HRP 11/2007 beyond the initial term of engagement are to be given three considerations. Thus, it is only with the promulgation of HRP 01/2019 that the applicants became entitled for further consideration for PC. Thus, this HRP is squarely applicable to all the three applicants here.

(t) xxxxx

(u) The fact that the applicants here were considered in 2015 and were then considered in 2019 and 2020 stems from the judgement in **Babita Puniya** (supra) case which removed the gender inequality and entitled women SSCOs for PC consideration and the fact that the IAF introduced a comprehensive prospective policy for grant of PC to SSCOs of all Branches through HRP 06/2018 and 01/2019.

(v) xxx

(w) Their plea that they have been prejudiced by the introduction of categorisation and inclusion of MISC also has no merit since these are professional indicators and all officers who choose the profession of arms as a career and in particular the IAF, would be expected to always strive for excellence in all their professional activities.

(x) Having willingly participated in the consideration process for grant of PC under HRP 01/2019, the applicants are estopped from challenging the policy. The case of the applicants here is squarely covered by **Wg Cdr Suprita Kaur** (supra). We also do not find any mala fide in the process of consideration for grant of PC based on the HRP 01/2019, there is no scope for any judicial review.

26. With the above consideration, the AFT in **Wg Cdr Shalini Upadhya** (supra) concluded the following:-

72. In view of the above consideration, we conclude that the Respondents are justified in considering the applicants for grant of PC under HRP 01/2019 in 2019 and 2020, and that the applicants have been granted fair consideration for grant of PC, and that they have not been granted PC due to their inability to qualify in the Minimum Performance Criteria laid down in HRP 01/2019. And where they qualified the MCP, they were not granted based on their overall comparative merit amongst those considered.

27. Since the last batch covered by the judgement of **Babita Puniya** (supra) were considered in 2015, SSCOs commissioned after May 2006, were no longer eligible for consideration for grant of PC under HRP 04/2010 and HRP 03/2011. Therefore, a fresh HRP was now required to consider such officers. Thus, no boards were held in 2016, 2017 and 2018 till the formulation of HRP 06/2018 for the Flying Branch and HRP 01/2019 for Ground Duty Branch.

28. As far as amendments to HRP 01/2019 are concerned, the addendum to HRP 06/2018 and 01/2019 was brought as additional policy guidelines to ensure that officers who excel in the field of sports at international level are retained in service. Further the amendment to HRP 01/2019 vide letter dated 21.05.2011 was a beneficial change. The amendment eliminated the award of negative marks and its consideration in calculating marks for preparing merit list. Moreover, these changes did not have any material impact on the overall merit of the applicants here.

29. Board-2019. The Board was held in Mar 2019, which considered eligible SSCOs of both Flying and Ground Duty Branches for grant of PC as per HRP 06/2018 and HRP 01/2019 respectively. In the Ground Duty Branch, the Board considered both men and women SSCOs from 41-44 SSC(T), women SSCOs from 24-30 SSC(W) and men SSCOs from 12-14 SSC(M) courses. There were a total of 118 eligible SSCOs, of whom 07 were unwilling, so the Board considered 111 SSCOs, of whom 26 were found to be not eligible since they did not meet the Minimum Performance Criteria (MPC). Thus, finally 85 were considered on merit for a total of 31 vacancies in various Branches, and 30 were granted PC. Out of the five applicants, Wg Cdr Reena and Wg Cdr Sucheta, both officers of Edn Branch, had the requisite CGPA. However, since they were not categorised, they did not meet the MPC and were thus not considered for PC. Notwithstanding this, the two officers were positioned at 10/11 and 11/11 respectively in the overall comparative merit for 05 vacancies in the Edn Branch. The remaining three applicants who met the MPC requirement, Wg Cdr Kusum (Edn Branch) was positioned at 06/11 in merit for 05 vacancies; Wg Cdr D Sonkar (Adm Branch) was positioned at 21/35 in merit for 04 vacancies in the Adm Branch and Wg Cdr Khusboo (AE (L) Branch) was positioned at 15/28 in merit for 09 vacancies in that Branch. They were, therefore, not granted PC due to

their position in overall comparative merit. In the Flying Branch a total of 20 SSCOs were considered of whom 07 were unwilling. Out of the 13 willing officers, 10 were found to be suitable for grant of PC, of which 05 were granted PC, based on a total stream wise vacancy of 06. Thus, in 2019, a total of 36 SSCOs were granted PC; 30 of Ground Duty Branch, 05 of Flying Branch and one reinstated and granted PC.

30. Board-2020. The Board was held in May 2020 and considered eligible SSCOs of both Flying and Ground Duty Branches for grant of PC. In the Ground Duty Branch out of 142 eligible SSCOs, 19 were unwilling, so the Board considered 123 SSCOs, of whom 18 were found to be not eligible since they did not meet the MPC. Thus, finally 105 were eligible for consideration on merit for a total of 39 vacancies in various Branches, and PC was granted to 26 SSCOs, as 13 out of the 14 vacancies in MET stream went unutilised for want of eligible officers. Of the applicants here, Wg Cdr Reena, Wg Cdr Sucheta and Wg Cdr Kusum (all of Edn Branch) were positioned at 5/8, 6/8 and 8/8 for 03 vacancies and were, therefore, not granted PC due to overall comparative merit. Of the remaining two officers, Wg Cdr D Sonkar (Adm Branch) was positioned at 23/37 in merit for 04 vacancies and Wg Cdr Khusboo (AE (L) Branch) was positioned at 25/47 in merit for 08 vacancies and were, therefore, not granted PC due to their position in the overall comparative merit. In the Flying

Branch a total of 16 SSCOs were considered of whom 05 were unwilling and two did not opt. Out of the 09 officers, 08 were granted PC, based on suitability and a total stream wise vacancy of 43. Thus, in 2019, a total of 36 SSCOs were granted PC, which includes 26 of Ground Duty Branch, 08 of Flying Branch and 02 who were reinstated and granted PC.

31. Board-2021. The Board was held in May 2021 and considered eligible SSCOs of both Flying and Ground Duty Branches for grant of PC. In the Ground Duty Branch out of 224 eligible SSCOs, 24 were unwilling, so the Board considered 200 SSCOs eligible for consideration on merit for a total of 23 vacancies in various Branches, and PC was granted to 23 SSCOs. Of the applicants here, Wg Cdr Reena, Wg Cdr Sucheta and Wg Cdr Kusum (Edn Branch) were positioned at 3/7, 2/7 and 6/7 for 01 vacancy and were, therefore, not granted PC due to their position in overall comparative merit. Of the remaining two officers, Wg Cdr D Sonkar (Adm Branch) was positioned at 32/45 in merit for 05 vacancies and Wg Cdr Khusboo (AE (L) Branch) was positioned at 27/97 in merit for 09 vacancies and were, therefore, not granted PC due to their position in the overall comparative merit. In the Flying Branch a total of 67 SSCOs were considered of whom 21 were unwilling. Out of the 46 officers, 08 were granted PC, based on suitability and a total stream wise vacancy of 08. Thus, in 2021, a total of 31 SSCOs were

granted PC, which includes 23 of Ground Duty Branch, 08 of Flying Branch.

32. From the records it is seen that from 2010 to 2023, a total of 631 SSCOs have been granted PC. Since 2018/2019 all considerations have been as per HRP 06/2018 and HRP 01/2019 for SSCOs of Flying and Ground Duty Branches respectively. The year wise summary of SSCOs granted PC, as seen from the records is given below:

Ser	Year	Granted PC		Total
		SSCO Men	SSCO Women	
(a)	2010	00	42	42
(b)	2011	29	74	103
(c)	2012	17	50	67
(d)	2013	11	54	65
(e)	2014	00	48	48
(f)	2015	14	68	82
(g)	2016	00	02	02
(h)	2017	00	02	02
(i)	2018	00	01	01
(j)	2019	10	26	36
(k)	2020	12	24	36
(l)	2021	16	15	31
(m)	2022	54	18	72
(n)	2023	27	17	44
Total				631

33. It is pertinent to note that the applicants here gave their willingness to be considered for PC under HRP 01/2019 in 2019, 2020 and 2021. However, they were not granted PC since they did not meet the MPC or were low in order of merit. It is also pertinent to note that the

applicants gave their willingness under the HRP 01/2019, being fully aware of the contents of the said HRP and through their willingness have accepted to be governed by HRP 01/2019 for consideration for grant of PC. Thus, the applicants cannot now question the merit of the policy having availed the benefits laid out in its HRP and having participated in the selection process. The Hon'ble Supreme Court in its judgment in the case of **Air Commodore Naveen Jain Vs. Union of India** [(2019) 10 SCC 34] dated 03.10.2019 held that:-

"24. In a judgment reported as Ashok Kumar v. State of Bihar, a three Judge Bench held that the appellants were estopped from turning around and challenging the selection once they were declared unsuccessful. The Court held as under:- "17. In Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that - "18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome."

18. In Chandigarh Admn. v. Jasmine Kaur [Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521 : 6 SCEC 745] , it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey [Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274], this Court held that: (SCC p. 500, para 17) "17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in

the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted." This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454]."

34. This Tribunal has examined similar cases in the past where, applicants having given their willingness for consideration for grant of PC under HRP 01/2019 and having been given a fair consideration had then challenged the applicability of the policy. All such cases have been dismissed, as in order dated 29.04.2019 in OA 1154/2016, **Sqn Ldr Pooja Khanna Vs. Union of India & Ors** ; order dated 11.03.2020 in OA 2299/2019, **Wg Cdr Suprita Kaur Vs. Union of India & Ors** and order dated 04.09.2023 in OA 814/2020, **Wg Cdr Shalini Upadhya & Ors Vs. Union of India & Ors.**

35. In view of the above consideration, we conclude that the respondents are justified in considering the applicants for grant of PC under HRP 01/2019 in 2019, 2020 and 2021, and that the applicants have all been granted fair consideration for PC, and that they have not been granted PC due to their inability to qualify in the Minimum Performance Criteria laid down in HRP 01/2019, and where they qualified the MPC, they were not granted PC based on their overall comparative merit amongst those considered.

36. Thus, the five OAs are dismissed being bereft of any merit.

OA 1040/2021 with OA 1041/2021,
OA 1043/2021, OA 1044/2021 and
OA 1582/2021

37. No order to costs.

38. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 26 day of September, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

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