

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

4.

OA 1320/2020

Lt Col Vibhuti Mishra

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Arun Kumar Vashishta, Advocate

For Respondents

:

Mr. Rajeev Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER
17.10.2023

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant 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 matter 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

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

OA 1320/2020

**Lt Col Vibhuti Mishra
Versus
Union of India & Ors.**

... Applicant

... Respondents

For Applicant	:	Mr. Arun Kumar Vashishta, Advocate
For Respondents	:	Mr. Rajeev Kumar, Advocate

Dated- 17 October, 2023

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal, applicant has filed application and the prayer made in Para 8 reads as under:

**“ (i) Direct the respondents to grant the benefit of direction (c) and (d) as mentioned in para 69 (i) of the judgment dated 17.02.2020 passed by the Hon'ble Supreme Court in C.A. No. 9367-9369/2011 to the Applicants,
(ii) Accept the applicant for permanent commission in her present medical category.”**

2. Facts in nutshell indicate that the applicant was commissioned on 16th September, 2006 as a Short Service Commissioned Officer in the Corps of Signals with ante-date seniority of two years and initial date of seniority fixed on 18th September, 2004 and subsequently adjusted to 18th September, 2005. The applicant claimed that when she joined the Army, she was examined by the Selection Medical Board

which assessed her medical category as S1H1A1P1E1. According to the applicant, during the period of service she developed Primary Hypothyroidism which started aggravating and eventually she was placed in medical category P2 (Permanent). It is her grievance that at the time of her consideration for grant of PC, her case was rejected on the grounds that she is placed in medical category P2 (Permanent) and therefore did not meet the medical standard which was contemplated in the General Instructions dated 1st August, 2020 as is applicable at 10 years of service instead of considering her case as per criteria applicable after completing 14 years of service. Inter alia, contending that she fulfils all criteria for grant of Permanent Commission, her CRs have not been properly evaluated and referring to the judgments rendered by the Hon'ble Supreme Court in the case of *The Secretary, Ministry of Defence Vs. Babita Puniya and Ors.* decided on 17th February, 2020 in Civil Appeal No. 9367-9369/2011 and various other legal principles curled out by the Hon'ble Supreme Court in the case *Union of India Vs. Lt Cdr Annie Nagaraja* decided on 17th March, 2020 in Civil Appeal No. 2182-87 of 2020 etc., the applicant claims the aforesaid relief. It is the grievance of the applicant that she has been denied PC in an illegal manner based on her medical status and stipulation as contained in the General Instructions dated 1st August, 2020.

3. Respondents have filed a short counter affidavit and point out that the applicant's case was considered in the backdrop of law laid down by the Hon'ble Supreme Court on 25th March, 2021 in the case of **Lt Col Nitisha & Ors. Vs. Union of India** WP Civil Appeal No. 1109/2020. They referred to Para 120 (ii) and (iii) of the aforesaid directions contained in the case of Lt Col Nitisha (Supra) and point out that since the applicant failed to meet the medical criteria for grant of Permanent Commission in her 10th year of service in terms of Para 120 (iii) of the directions issued in the case of Lt Col Nitisha (supra), she was not eligible. The respondents further contended that finding the applicant ineligible for grant of Permanent Commission, she has been granted the benefit of directions (c) and (d) as contained in Para 69 (i) of the judgment rendered by the Supreme Court on 17th February, 2020 in the case of **The Secretary, Ministry of Defence Vs. Babita Puniya and Ors.** (Civil Appeal Nos 9367-9369 of 2011) and **Union of India Vs. Lt Cdr Annie Nagaraja** (Civil Appeal No 2182-87 of 2020) dated 17th March, 2020. Accordingly, it is the case of the respondents that now no benefit can be granted to the applicant.

4. As only a very short question is involved in the matter, we have bestowed our anxious consideration to the prayer made and it is evident from the prayer that the applicant seeks grant of benefit as per directions (c) and (d) of the Para 69 (i) of the judgment

rendered by the Supreme Court on 17th February, 2020 in the case of *The Secretary, Ministry of Defence* Vs. *Babita Puniya and Ors.* The directions contained in Para 69 (i) in the case of Babita Puniya (supra) reads as under:

“ 69. We accordingly take on record the statement of policy placed on the record in these proceedings by the Union Government in the form of the letter dated 25 February 2019 and issue the following directions:

(i) The policy decision which has been taken by the Union Government allowing for the grant of PCs to SSC women officers in all the ten streams where women have been granted SSC in the Indian Army is accepted subject to the following:

XXXX XXXX XXXX

XXXX XXXX XXXX

(c) Women officers on SSC with more than fourteen years of service who do not opt for being considered for the grant of the PCs will be entitled to continue in service until they attain twenty years of pensionable service;

(d) As a one-time measure, the benefit of continuing in service until the attainment of pensionable service shall also apply to all the existing SSC officers with more than fourteen years of service who are not appointed on PC;

XXXX XXXX XXXX

XXXX XXXX XXXX

XXXX XXXX XXXX”

5. The applicant wants the benefit of Para (c) and (d) of the aforesaid judgment. As far as the benefit contained in Para (c) is concerned, it is the admitted position that the applicant has been permitted to work for 20 years so as to earn pension. As far as the

question of considering the applicant for grant of Permanent Commission is concerned, after the judgment in the case of Babita Puniya (supra), the issue was considered by the Hon'ble Supreme Court in the case of Lt Col Nitisha (supra) and in the order passed on 25th March, 2021 in the aforesaid case in Para 120, the following directions were issued by the Hon'ble Supreme Court:-

- " 120 (ii) All women Officers who have fulfilled the cut-off grade of 60 percent in the Special No 5 Selection Board held in September 2020 shall be entitled to the grant of PC, subject to their meeting the medical criteria prescribed by the General Instructions dated 01 August 2020 (as explained in (iii) below) and receiving disciplinary and vigilance clearance;**
- (iii) For the purpose of determining the fulfillment of direction (ii), the medical criteria stipulated in the General Instructions dated 01 August 2020 shall be applied at the following points of time;**
- (a) At the time of the 5th Year of service; or**
 - (b) At the time of the 10th year of service, as the case may be."**

6. Applicant was also one of the Women Officer, whose case was considered in the Special Selection Board held in September, 2020 and therefore, her case for Permanent Commission was evaluated in the backdrop of the medical criteria prescribed by General Instructions dated 1st August, 2020 and on evaluating the same in the backdrop of clause (iii) Para 120 as detailed hereinabove, it was found that the applicant failed to meet the medical criteria for grant of Permanent Commission as she was

found to be in Low Medical Category in the 5th and 10th year of service.

7. From the aforesaid, it is clear that the case of the applicant has been considered for grant of Permanent Commission but as she did not meet medical criteria as directed by the Hon'ble Supreme Court itself in the case of Lt Col Nitisha (supra), she has not been granted Permanent Commission but the benefit of the Supreme Court judgment in the case of Babita Puniya (supra) that is clause (c) of Para 69 (i) has been granted to the applicant and she was permitted to continue for a period of 20 years for pensionable service.

8. In the backdrop of the action taken by the respondents which we find to be in conformity with the law laid down by the Hon'ble Supreme Court as detailed hereinabove, we see no further indulgence warranted in the facts and circumstances of the case.

9. Accordingly, the application is dismissed.

Pronounced in open Court on this 17th day of October, 2023.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

Priya