

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

50.(Supplementary)

OA 2171/2021 with MA 4085/2022
TA 05/2018 AFT (RB, Mumbai)

Lt Cdr Sadhana Giri Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Ms. Pooja Dhar, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER
27.09.2024

Vide our orders of even date, we have dismissed the application. 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.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P. M. HARIZ]
MEMBER (A)

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(TA 05/2017)**

Lt Cdr Sadhana Giri **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Ms Pooja Dhar, Advocate
For Respondents : Lt Cdr. V.S. Guleria , OIC, Navy

CORAM

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by a SSC(WO) of the Indian Navy, Air Traffic Controller (ATC) Cadre, who is aggrieved on not being granted Permanent Commission (PC), nor being granted pension and has since been released from service despite the Hon'ble Supreme Court's order dated 17.03.2020 in the case of **Union of India & Ors.** Vs. **Lt Cdr Annie Nagaraja & Ors.** [(2020) 13 SCC 1]. The applicant has made the following prayers:

(a) That the Hon'ble Tribunal may be pleased to issue order/direction in and upon examining the legality, propriety and validity of the impugned order dated 28.05.2016 (Annexure- A-1), be pleased to set aside the same.

(b) That the Hon'ble Tribunal may be pleased to issue any other order/direction and upon examining the legality, propriety and validity of the relevant orders/Regulations as well as Respondent's policy letter 25.02.1999 granting Permanent Commission to SSC Women Officers and be pleased to direct the respondents to permit the applicant to be considered for grant of Permanent Commission and thereafter be granted Permanent Commission, and declare the "prospective" provision of respondents 26th September 2008 letter as "ultra vires" being in violation of Article 14 and 16 of The Constitution.

(c) Cost of this application.

(d) Such other and further reliefs/directions as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of this complaint/representation.

(e) In the interim, direct the respondents to maintain the status quo and not take any coercive action against the applicant and allow the applicant to continue in service as well as stay on government accommodation until the disposal of the application.

Brief Facts of the Case

2. The brief facts of the case are that a PIL **Babita Puniya** Vs. **Union of India** [WP (C) 1597/2003] was filed in Hon'ble Delhi High Court. This PIL was joined by similar women officers of the Army and Air Force. During the pendency of this PIL, GoI promulgated letter dated 26.09.2008 granting PC prospectively to SSC(WO) of JAG and AEC and corresponding Branches in the Indian Navy and Indian Air Force. In addition to JAG and AEC, the SSC(WO) of Accounts Branch of Indian Air Force and Naval Constructor of Indian Navy were also to be considered for grant of PC. Hon'ble Delhi High Court's judgment dated 12.03.2010, in the case of **Babita Puniya** (supra) finally directed the Army and Air Force to grant PC to women officers.

3. The Indian Navy, however, continued to not grant PC to SSC(WO)s except those who were eligible as per letter dated 26.09.2008. Thus, 17 SSC(WO)s of Indian Navy, both serving and

retired, including ATC Cadre filed six WPs in Delhi High Court. Hon'ble Delhi High Court disposed of these WPs vide their order dated 04.09.2015 in the case of **Annie Nagaraja** Vs. **Union of India**, WP(C) No.7336/2010. Union of India appealed against the Delhi High Court's judgment in the case of ***Lt Cdr Annie Nagaraja*** (supra) and the Apex Court while issuing notice specifically directed that SSCOs who were in service as on 26.09.2008 be allowed to continue in service and those released after 26.09.2008 on completion of the tenure be permitted to join back. The ***Lt Cdr Annie Nagaraja's*** case was finally disposed of by the Apex Court vide its judgement dated 17.03.2020.

4. The applicant, an SSC(WO) of ATC Cadre was commissioned into the Indian Navy on 08.08.2005 for an initial tenure of ten years. The applicant was posted at Visakhapatnam from Dec 2007 and subsequently transferred to INS Shikra, Mumbai on 17.07.2012, following her request for posting on compassionate grounds. The applicant's tenure was extended by two years, in accordance with extant regulations. This extension allowed her to serve beyond her initial term, until 07.08.2017, bringing her total commissioned service to 12 years. Since the applicant was not granted the second leg of

extension, she was released on 07.08.2017. In May 2014, when the applicant was transferred to INS Hansa at Goa, she requested cancellation of the transfer due to her child's medical condition and domestic issues. However, the IHQ of MoD (Navy) declined the request, citing the availability of adequate facilities in Goa. Shortly thereafter, the applicant was diagnosed with a "severe depressive episode without psychotic symptoms," and her medical category was downgraded to S3A2. After her discharge from INHS Asvini and a period of sick leave, the applicant again requested cancellation of her transfer in Jan 2015. Due to her medical condition, the previously ordered transfer was amended to an ATC staff billet at HQGNA. However, the applicant continued to pursue the cancellation of her transfer due to health reasons. A re-examination at IHQ MoD (N) confirmed that adequate medical facilities were available at Goa, but considering her compassionate circumstances, the transfer was ultimately cancelled in Dec 2015, allowing her to remain in Mumbai. The applicant was informed vide letter dated 02.05.2016 that in event of not receiving any willingness by 31.05.2016, the officer will be released from service. The applicant, during her extended tenure,

submitted a letter dated 06.11.2016 to IHQ MoD (N), seeking approval to continue in service and consideration for PC, which was further denied vide letter dated 21.11.2016. Further she submitted a grievance letter dated 27.04.2017, which was also replied to vide letter dated 22.09.2017.

5. The applicant's case rests on the policy for granting PC to SSC officers, in view of the Hon'ble Supreme Court's interim order in **Lt Cdr Annie Nagaraja and Ors. vs Union of India** (SLP(C) Nos. 30791-30796/2015) and the Hon'ble Principal Bench (PB), New Delhi, order dated 11.08.2016 in OA Nos. 143-146/2016 and 148-149/2016. The applicant is aggrieved by the selective denial of PC, despite SSC(WO) officers in the Army, Air Force, and some branches of the Navy having been granted PC under similar circumstances. This selective treatment is alleged to be arbitrary and contrary to the decisions in **Annie Nagaraja (Supra)** and related judgments. The applicant submits that her case mirrors the cases of women officers reinstated after 14 years of commissioned service as per the Hon'ble Delhi High Court's order dated 04.09.2015.

6. The matter related to the grant of PC to SSCOs of Indian Navy (IN) consequent to the Apex Court judgment dated 17.03.2020 in the case of Lt Cdr Annie Nagaraja has been examined in detail in our order dated 03.01.2022 in OA 432/2016 **Lt Cdr Tarun and Ors. Vs. Union of India and Ors.** However, based on various appeals filed by petitioners who were not granted PC, the Apex Court vide its judgment dated 20.10.2022 in **Cdr Amit Kumar Sharma Vs. Union of India** (Civil Appeal No.841-843 of 2022) set aside this order and remanded the matter back to the AFT(PB). This has since been disposed of vide AFT(PB) Order dated 27.09.2024 in OA 433/2016 in **Lt Cdr. Ravinder Pal Singh Vs. Union of India.** The Order in OA 433/2016 dated 22.09.2024 examined the case of those who were considered by the Special Board in Dec 2020 and Sep 2022. However, the applicant was not considered by the Special Board of Dec 2020 as she was not covered by the Apex Court judgement in the case of **Annie Nagaraja** (supra).

7. The issues related to SSC (WO) of the ATC Cadre has been examined in detail in our Order dated 01.04.2024 in OA 824/2019 **Cdr.**

Umesh Ridhi & Anr. Vs. Union of India. Relevant portion of this order are reproduced below:

"49. The counsel for the applicants had elaborated at length regarding the consideration of the ATC Cadre in the case of **Lt Cdr Annie Nagaraja** (supra) and concluded that the Hon'ble Supreme Court had per se, never declined or directed that ATC officers were barred from being considered for PC. He had also extensively argued that the direction at paragraph 109.9, that ATC officer were not entitled to PC consideration was only with reference to the two ATC officers who were before the Court and thus, it was not a blanket order in respect of all ATC officers. The direction of the Hon'ble Supreme Court at Para 96 (ix) in its judgement pertaining to the ATC cadre is reproduced below:

"96.

(ix) Women SSC officers of the ATC cadre in Annie Nagaraja's case are not entitled to consideration for the grant of PCs since neither men nor women SSC officers are considered for the grant of PCs and there is no direct induction of men officers to PCs. In exercise of the power conferred by Article 142 of the Constitution, we direct that as a one-time measure, SSC officers in the ATC cadre in Annie Nagaraja's case shall be entitled to pensionary benefits. SSC officers in the ATC cadre in Priya Khurana's case, being inducted in pursuance of the specific representation contained in the advertisements pursuant to which they were inducted, shall be considered for the grant of PCs in accordance with directions (v) and (vi) above;"

50. Thus, the Hon'ble Supreme Court held that the two ATC officers were not entitled to consideration for PC as neither men nor women SSCOs were considered for PC and also because no male officer had been inducted directly as a PC officer. At the same time the court directed that the ATC cadre officers in **Priya Khurana's** case were eligible for PC consideration as these officers were appointed based on an advertisement which clearly held that the deserving officers would be granted PC. Thus, the import of these directions is that, where ATC officers have been appointed without any firm provisions for PC consideration, they were clearly not eligible for such consideration.

Xxxxxx

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53. Advertisements. The applicants here were commissioned on 11.08.2003 and 08.08.2005 respectively and, therefore, are covered by the policy dated 24.02.2000 and 14.01.2005, both of which does not have any provision for grant of PC. In addition, the Cdr Manisha Gehlaut and Cdr Umesh Ridhi were appointed and commissioned based on the advertisements for the August 2003 and August 2005 Course, both of which

also did not have any conditionality that there would be PC consideration. Thus, we have no hesitation in concluding that the induction of the applicants was based on a firm conditionality that there will be no provision for PC. Therefore, the applicants do not have any vested right to seek consideration for PC now, especially where the Service requirement does not cater for PC officers in the ATC Cadre. The extracts of the two advertisements are reproduced below.

(a) Advertisement for Aug 2003 Course

THE INDIAN NAVY
INVITES OUTSTANDING UNMARRIED MEN & WOMEN
TO JOIN AS SHORT SERVICE COMMISSIONED OFFICERS
IN AIR TRAFFIC CONTROL CADRE, LOGISTICS CADRE & EDUCATION BRANCH
AUG 2003 COURSE

1. Applications are invited from unmarried male & female Indian citizens for Short Service Commission on (SSC) in the Educational Branch and Air Traffic Control & Logistics Cadre of Executive Branch of the Indian Navy for Aug 2003 Course.

ELIGIBILITY CONDITIONS

2. **AGE:** xxxxx
3. **Educational Qualifications :** xxxxxxx
4. **Physical Standards :** xxxxxxx

SHORT SERVICE COMMISSION

5. Short Service Commission is granted for a term of 10 years extendable to 14 years. On completion of tenure of SSC, officers are released with gratuity as admissible under the rules.

(b) Advertisement for Aug 2005 Course

THE INDIAN NAVY
INVITES UNMARRIED MEN & WOMEN
TO JOIN AS SHORT SERVICE COMMISSIONED OFFICERS IN
AIR TRAFFIC CONTROL CADRE OF
AUG 2005 COURSE

1. Applications are invited from unmarried male & female Indian citizens for Short Service Commission (SSC) in the AIR TRAFFIC CONTROL Cadre of Executive Branch of the Indian Navy for Aug 2005 Course.

ELIGIBILITY CONDITIONS

2. **AGE.** xxxxx
3. **Educational Qualifications :** xxxxxxx
4. **Physical Standards** xxxxx

SHORT SERVICE COMMISSION

5. Short Service Commission is granted for a period of 10 years, extendable to 14 years, subject to service requirement and performance/willingness of the candidate. On completion of these tenures, officers are released with gratuity as admissible under the rules.

Grant of Pension

54. The Hon'ble Supreme Court in its judgement dated 17.03.2020 in the case of **Lt Cdr Annie Nagaraja** (supra), at Para 96(ix) directed that the women in SSCO of ATC Cadre in the **Annie Nagaraja's** case were not entitled to PC consideration. However, in exercise of power under Article 142 of the Constitution, it directed that as a onetime measure, the ATC Cadre officers in **Annie Nagaraja's** case be granted pension. Para 96(ix) upholds the contention of the Central Government that there can be no grant of PC in ATC Cadre. However, at the same time, the Hon'ble Court, in exercise of its inherent power under Article 142 of the Constitution, and keeping the spirit of paragraphs 90 and 91 intact, has carved out two exceptions.

(a) As a one-time measure, SCC officers of the ATC Cadre, who were the petitioners in the **Annie Nagaraja** batch of petitions, would be entitled to pensionary benefits notwithstanding the fact that they, on account of the peculiarities attached to the cadre, cannot be transmigrated to PC, nor is any PC available for this cadre. Evidently, this one-time benefit has been granted only to the SSC officers of the ATC Cadre.

(b) Such SSC officers in ATC Cadre, who were applicants in **Priya Khurana's** case before the AFT, notwithstanding the fact that they were admitted to ATC cadre in the SSC for which PC is neither available nor permissible, are deemed to have acquired a legitimate expectation to be considered for grant of PC. Accordingly, such officers, albeit as a one-time measure, shall also have to be considered for grant of PC in accordance with Regulation 203 of the Navy Regulations 1963. In other words, no other SSC officer in ATC cadre, past, present or future, will be eligible for a similar consideration.

55. Cdr Manisha Gehlaut, the applicant in OA 1334/2017 was commissioned on 11.08.2003 and as on date has completed 20 years and 07 months of service. **Thus, under the current pension rules, having completed 20 years she is automatically eligible for complete pensionary benefits.** Cdr Umesh Ridhi, the applicant in OA 814/2019 was commissioned on 08.08.2005 and will complete 20 year only on 08.08.2025. **Considering the peculiarities and special circumstances of the case, wherein ATC Cadre officers are held not eligible for PC consideration, we are of the opinion that the ends of justice will be met if this applicant is permitted to continue in service till she completes 20 years of pensionable service.**

Conclusion

56. Section 9(2) of the Navy Act, 1957, stipulates that "no women shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such Department, Branch or other body forming part thereof and attached thereto and subject to such conditions as the Govt. may notify in the official Gazette, specify in this behalf". Thus, making women eligible for appointment into the Navy will be subject to conditions as specified by the Govt through Gazette Notifications. Therefore, with the Gazette Notification dated 09.10.1991, followed by the Notification dated 06.11.1998, women became eligible for appointment as officers in all the four Branches of the Navy. However, the specific terms and conditions of this eligibility were then issued by the Govt. through various policy letters. Currently there are a total of four Cadres and 18 Specialties which are nested under the four main Branches. Based on the operational necessity, Indian Navy has regulated the induction of women officers only as SSCOs. The specific terms and conditions for each Branch/Cadre into which SSCOs (including women) are to be inducted have been promulgated through specific policy letters.

57. In the case of Education Branch and Law and Logistic Cadre, it has been promulgated by the two letters, both dated 20.12.1991. This letter also specifies that policy on grant of PC would be promulgated later in 1997, a clear indication that in the Education Branch, and the Law and Logistic Cadres it was intended to grant consideration for PC for which a policy would be promulgated later. In a similar manner, the specific terms and conditions for induction of SSCOs (including women) into the ATC Cadre has been promulgated vide letter dated 01.07.1992 applicable for a period of five years; further extended for a period of another five years vide letter dated 24.02.2000, then extended for a further period of 10 years vide letter dated 14.01.2005, and finally vide letter dated 27.05.2016, the induction of SSCOs into ATC Cadre has been made a regular feature, commencing from 2016. It is pertinent to note, that unlike the policy for Education Branch/Law and Logistic cadres for whom PC consideration was intended and a policy was to be promulgated in 1997, the policy on induction of SSCOs into the ATC Cadre specifically mentions that will be **NO PROVISION FOR GRANT OF PC**. In the case of ATC Cadre, since the induction of SSCOs including women is governed by the criteria as formulated and notified through the letters dated 01.07.1991, 24.02.2000, 14.01.2005 and 27.05.2016, **the SSCOs of ATC Cadre remain ineligible for PC consideration**. Even though the Hon'ble Supreme Court in its judgment dated 17.03.2020 in the case of **Lt Cdr Annie Nagaraja** (supra) has struck down the Naval HQ letter dated 31.12.2008, thus, making PC consideration applicable to all Branches, it is limited by the specific condition as stipulated

by the Govt. under the statutory provisions of Section 9(2) of the Navy Act. Thus, the directions of the Apex Court do not abrogate the statutory provisions. Therefore, in our considered opinion the SSCOs of ATC Cadre continue to remain ineligible for PC consideration.

58. With the above consideration we conclude the following:-

(a) Section 9(2) of the Indian Navy Act stipulated that women were not eligible for appointment in the Indian Navy or Indian Navy Reserve Forces except to those which were notified by the Central Government through gazette notification.

(b) Thus, it was only through the Gazette Notification dated 09.10.1991 that women first became eligible for appointment in the Education Branch and Law and Logistic Cadres.

(c) Subsequently vide Gazette Notification dated 28.11.1998, women became eligible for appointment as officers in all the four branches of the Indian Navy; Executive, Engineering, Electrical and Education.

(d) In exercise of powers under Section 9(2) of the Navy Act, the Central Government was required to issue notification and was subject to the conditions as the government may specify.

(e) Though both the Gazette notifications did not specifically stipulate whether the appointment would be by PC or SSC, the Govt by the letters dated 20.12.1991 laid down the terms and conditions of service of appointment into the Education Branch and Law and Logistic Cadres as SSC. Through these letters it is also stipulated that the policy on grant on PC would be promulgated in 1997.

(f) MoD vide its letter dated 25.02.1999 promulgated that the grant of PC will be in accordance with Regulation 203 and that women officers may be directed to serve on board ships based on exigencies of service. And Regulation 203 stipulates that SSCOs may be granted PC, subject to availability of vacancies in the stabilised cadre, suitability of the officer and the recommendations of the CNS.

(g) As per the initial directions the service period of SCO was to be 07 years extendable to 10 years. This was subsequently enhanced to an initial engagement of 10 years extendable by 04 years.

(h) The notification for induction of SSCOs in the ATC Cadre was first issued wide letter dated 01.07.1992. This sanction was for inducting 35 SSCOs over a period of five years. This was extended for a further period of five years vide letter dated 25.02.2000, further extended for a period of 10 years vide letter dated 14.01.2005, and finally made a regular feature from 2016 vide letter dated 27.05.2016. All these notifications categorically mentioned that ATC Cadre will have no provision for grant of PC.

(i) The Govt vide letter dated 25.02.1999 in pursuance of the directions in the letter dated 20.12.1991 stated that the grant of PC would be in accordance with Regulation 203 of the Navy Regulations and that women officers may be directed to serve on-board ships as per the exigencies of service.

(j) The appointment of both the applicants here is governed by the MoD notification dated 25.02.2000 and 14.01.2005 respectively, which specifically stipulates that there would be no provision for PC in the ATC Cadre. Moreover, the advertisements based on which they were appointed and commissioned also do not offer any opportunity for grant of PC.

(k) Thus, based on the ratio of Para 96 (ix) of the Hon'ble Supreme Court's judgement dated 17.03.2020 in the case of **Lt Cdr Annie Nagaraja** (supra) and the fact that the applicants were appointed based on the sanction letter dated 24.02.2000 and 14.01.2005 which expressly stipulated that there will be no provision for grant of PC, the applicant here are not entitled for consideration for PC.

(l) The Hon'ble Supreme Court granted pension/ financial relief to the concerned officers based on the powers vested in the Supreme Court under Article 142 of the Constitution. Since, the AFT does not enjoy such powers, it is not possible to grant pension in the ratio of the judgement of the Hon'ble Supreme Court in the case of **Lt Cdr Annie Nagaraja** (supra), even though they were already before the AFT since 2017/2019.

(m) However, considering the special circumstances of the case wherein the two applicants are not entitled for PC consideration, being from the ATC Cadre, as a onetime measure, they be granted pension. Since Cdr Manisha Gehlaut, the applicant in OA 1334/2017 had already completed the requisite pensionable service of 20 years, she may be released from service with full pensionary benefits admissible

under the current pension policy, with adequate notice. And since Cdr Umesh Ridhi, the applicant in OA 824/2019 will complete the mandatory pensionable service of 20 years only in 2025, she be permitted to complete 20 years of service and then be released with full pensionary benefits.

(n) Through Gazette Notification dated 26.11.1998, women became eligible for appointment in all Branches of the Indian Navy, implying that they are now eligible for appointment in all the Cadres/Specialities under the four Branches of Indian Navy. Moreover, the Hon'ble Apex Court through its judgement dated 17.03.2020 in the case of **Lt Cdr Annie Nagaraja** (supra) has stated that the MoD letter of 26.09.2008 will not be enforced and also set aside the 'Implementation Guidelines', issued vide Naval HQ letter dated 03.12.2008, thus making PC consideration applicable for all Branches. In view of this, there is a requirement for the respondents to review the status of SSCOs in those cadres which do not presently permit PC consideration and promulgate necessary provisions which will provide equitable PC consideration for SSCOs in all Branches/ Cadres/ Specialities, thus ensuring equality under Article 14 of the Constitution.

59. In view of the above, the OAs are partially allowed and the following directions are issued:-

(a) Cdr Manisha Gehlaut, the applicant in OA 1334/2017 be released from service with full pensionary benefits, having already completed the requisite pensionable service of 20 years. The stay on release granted vide our order dated 20.11.2020 is hereby vacated.

(b) Considering the special circumstances of the case in that SSCOs of the ACT Cadre are not eligible for PC consideration, Cdr Umesh Ridhi, the applicant in OA 824/2019 be permitted to continue in service till completion of the mandatory pensionable service of 20 years in 2025, and then be released with full pensionary benefits. Release order dated 04.11.2020 qua the applicant is hereby quashed.

(c) Respondents to review the status of SSCOs in those cadres which do not presently permit PC consideration and examine the feasibility of granting PC consideration for SSCOs in all Branches/Cadres/Specialities, thereby ensuring equality under Article 14 of the Constitution, within the constraints of retaining the requisite full operational capability of the force."

8. In this case, since the applicant had been released on 07.08.2017, she was not in service on 17.03.2020 for her to be eligible for any consideration based on the judgment of **Annie Nagaraja** (supra). Also, being part of ATC Cadre, the applicant is not entitled for any consideration for PC. Further, since the applicant had been released with 12 years of service, she is not eligible for any pensionary benefits either. The applicant is, however, at liberty to seek judicial remedy for pension in the appropriate judicial forum.

9. Accordingly the OA is being dismissed, being bereft of any merit.

10. No order to costs.

Pronounced in open Court on^{27th}.....day of September, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

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