

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

7.

OA 2138/2021

Maj Anju Bala (Retd) ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Indra Sen Singh, 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  
09.08.2024

Vide our detailed order of even date, we have dismissed the main OA No. 2138/2021. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON~~

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

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<b>Maj Anju Bala (Retd)</b>	.....	<b>Applicant</b>
<b>Versus</b>		
<b>Union of India and Ors.</b>	.....	<b>Respondents</b>

<b>For Applicant</b>	:	Mr. I.S. Singh, Advocate
<b>For Respondents</b>	:	Mr. Neeraj, Sr. CGSC

**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 the applicant who is a retired Short Service Commission Women Officer (SSCWO) and is aggrieved on not being considered for grant of Permanent Commission (PC) by the Special No 5 Selection Board (SB) held in Sep 2020. The applicant has made the following prayers:

- (a) Call for the relevant record pertaining to Special No 5 Selection Board held in Sept 2020 and, after perusal thereof, direct the Respondents to consider Applicant's case for grant of Permanent Commission through Special No. 5 SB in accordance with the direction of the Hon'ble Supreme Court passed in the

case of "**Secretary, Ministry of Defence v. Babita Puniya**",  
**2020 7 SCC 467**",

(b) Direct the Respondents to re-instate the applicant in service with her original seniority and allow her to serve her full tenure in case she is found 'fit' for grant of Permanent Commission in the consideration by Special No. 5 SB as prayed for above;

(c) Direct the Respondents to grant her service pension and other terminal benefits in accordance with the judgement of the Hon'ble Supreme Court in the case of "**Lt Col Nitisha & Ors v. UOI & Ors**" **2021 SCC OnLine SC 261** in case she is not found fit for grant of Permanent Commission in the abovementioned consideration by Special No. 5 SB

(d) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.

### **Brief Facts of the Case**

2. The applicant was commissioned as a SSCWO into the Army Ordnance Corps (AOC) on 20.03.2010 as part of SSCW(NT)-3 Course. As the applicant was governed by the policy dated 20.07.2006 of 10+4 years with PC consideration in

the 10<sup>th</sup> year, her batch of Mar 2010 including male SSCOs were considered for grant of PC/Extension/Release by No 5 SB in 2019. As an SSCWO in AOC, the applicant was then not eligible for PC consideration and, therefore, could only opt for Extension/Release. The applicant had initially opted for extension of service vide her Option Certificate dated 29.08.2019. However, due to certain domestic compulsion vide her application dated 01.10.2019, she had changed her option and opted to be released. Accordingly, after the No 5 SB results were promulgated, Release Order dated 09.01.2020 was issued by which, the applicant was to be released from service on 19.03.2020 on completion of her initial period of contract of 10 years.

3. It is the applicant's case that consequent to the Apex Court's judgement dated 17.02.2020 in the case of **Secretary, Ministry of Defence Vs. Babita Puniya and Others** (2020 7 SCC 469), she too should have been considered for grant of PC by the Special No 5 SB held in Sept 2020 as part of implementing the directions in the case of **Babita Puniya** (supra).

4. It is again the applicant's case that since the SSCWOs of her batch (other than AEC and JAG) were not entitled to grant of PC and therefore, even if she had taken four years extension there would

be no pensionary benefits at the end of 14 years. Therefore, since it was her intention to seek an alternate job at the earliest, she had chosen not to seek extension of service.

5. Consequent to the judgement in the case of ***Babita Puniya*** (supra), the applicant submitted an application dated 13.04.2020 (Annexure A-9) and also approached the MS Branch (Respondent No.4) and Comdt COD, Mumbai, her last unit (Respondent No.5) to be permitted to rejoin service and to have her included for the PC consideration. However, this effort was futile, and no action was taken by either Respondents. Consequent to the conduct of the Special No 5 SB in Sept 2020 and since she was not considered for grant of PC, she submitted an application dated 19.10.2020 addressed to the Chief of Army Staff (COAS) with a prayer that she be considered for grant of PC by the Special No 5 SB.

6. It is also the applicant's case that the Apex Court in its judgement dated 25.03.2021 in the case of ***Lt Col Nitisha and Others*** Vs. ***Union of India and Others*** (2021 SCC OnLine SC 261) had directed that women officers with more than 14 years of service who did not opt for PC or were not grant PC will be entitled to continue in service till pensionable service. Hence, this

OA has been filed by the applicant seeking consideration for PC or being granted pension.

**Argument by the Counsel for the Applicants**

7. The counsel reiterated the service profile of the applicant and stated that she was commissioned on 20.03.2010 on a 10+4 years tenure. He then emphasised that, based on the Hon'ble Supreme Court's judgement dated 17.02.2020 in the case of **Babita Puniya** (supra), the applicant was entitled to be considered for PC. The counsel then drew our attention to the directions in the judgement at Para 87.1.2 which stated that the option for PC would be granted to all SSCWOs presently in service and emphasised that the applicant as on the date of judgement on 17.02.2020, was in service. The counsel further emphasised that the applicant was clearly covered by this judgement and should have been included in consideration for grant of PC.

8. The counsel then stated that the applicant had been granted terminal leave and annual leave, and that the applicant was finally struck off strength only on 14.06.2020. The counsel emphasised that therefore the applicant had to be considered as being in service at the relevant time and, therefore, was clearly entitled for consideration for PC. He further added that the applicant learnt

about the judgement of the Hon'ble Supreme Court in the case of **Babita Puniya** (supra) on 11.04.2020 whilst on leave and had immediately contacted the MS Branch and had submitted an application dated 13.04.2020 (Annexure A-9) stating that the leave be revoked immediately and that she be permitted to re-join duty and be considered for grant of PC. The applicant had also stated that she wished to withdraw her name from the re-settlement course too.

9. The counsel reiterated that in 2019, the applicant had initially exercised the option to be granted extension and had later changed the option, opting to be released. The counsel emphatically stated that in 2019 when the choice for the extension was being made, the applicant clearly was not eligible for PC consideration, since there was no policy then to grant PC to SSCWOs, except to those from AEC and JAG. The counsel then emphasised that the conditions and circumstances had drastically changed in Feb 2020 with the judgement in the case of **Babita Puniya** (supra), whereby all serving SSCWOs became eligible for consideration for grant of PC. Thus, under the changed circumstances when all SSCWOs became eligible, the applicant ought to have been granted consideration

without prejudice to her earlier decision, when she was clearly not eligible for PC itself.

**Argument by the Counsel for the Respondents**

10. The counsel stated that since the applicant was commissioned in Mar 2010, she was governed by the policy dated 20.07.2006, under which the tenure was for 10+4 years with PC consideration for eligible SSCOs in the 10<sup>th</sup> year. Accordingly, the Mar 2010 batch was considered by No 5 SB in Dec 2019 for grant of PC/ Extension/ Release as applicable. The counsel further added that since only SSCWO of AEC and JAG were eligible for PC consideration at that point of time, and all other SSCWOs of Mar 2010 Batch could only opt for extension/ release. He then stated that the applicant had initially opted for grant of extension vide Option Certificate dated 29.08.2019 and that she subsequently changed her option and opted to be released vide her application dated 04.10.2019 (Annexure R-2). He then stated that the applicant was accordingly released from service w.e.f. 19.03.2020 vide Release Order dated 09.01.2020.

11. The counsel then emphasised that though the applicant had been released in Mar 2020, the applicant had not availed the alternate remedies available to her under the Army Act and

emphasised that it was mandatory to avail the statutory remedies before approaching the Tribunal. He further added that though the applicant had been released in Mar 2020, she filed the OA only in Sept 2021 without availing any alternate remedies and had not advanced adequate reasons for the delay. The counsel thus emphasised that the OA should be dismissed being barred by limitation. He further emphasised that neither had she got herself impleaded as party in Nitisha's case pending before Hon'ble Supreme Court nor did she approach this forum prior to Sept 2021.

12. Further referring to the applicant's assertion that she was governed by the judgement in the case of **Babita Puniya** (supra), the counsel elaborated that, as part of the process of implementing the directions in this judgement, the AG's Branch issued a necessary Administrative Instructions (Adm Instrs) on 30.07.2020. He then drew our attention to Para 4(c) of these instructions and emphasised that the directions in the Adm Instrs clearly stipulated that only SSCWOs who had less than 14 years and who were on extended service would be considered for grant of PC. He further added that on the date of issue of administrative instructions for the conduct of No 5 SB, the applicant was not in service. He

further added that even prior to her release in Mar 2020, the applicant was evidently aware of the judgement dated 17.02.2020 and yet had not represented against her release and re-consideration of her case nor she got impleaded in litigation pending before Hon'ble Supreme Court.

13. Referring to the argument that since the applicant was on terminal leave and that she was actually in service and, therefore, was entitled to be considered for PC by Special No 5 SB, the counsel stated that the period of annual leave and terminal leave beyond the release date was not part of the service, and that it was only meant to assist the SSCOs in re-settlement and financial benefits. The counsel then drew our attention to Rule 51 of the Leave Rules and stated that this was a statutory provision that conferred the legal right to avail the permitted leave. He further emphasised that Rule 51 clearly states that only a SSCO on termination of his/her terms and engagement was entitled to these benefits. Thus, the fact that the applicant had been granted annual leave and terminal leave was based on the fact that she had been released after her contractual period.

## Consideration

14. Having heard both parties at length, the only issue that requires consideration is whether the applicant was entitled to be considered by the Special No 5 SB, having sought release from service on her own volition.

15. Since the time this case was heard, this Tribunal has examined other similar cases regarding consideration of PC to SSCWOs. The chronology of events and judicial judgements in the case of ***Babita Puniya*** (supra) leading to the conduct of the Special No 5 SB and the consideration of the 615 eligible SSCWOs by the Special No 5 SB and the subsequent reconsideration of those not granted PC by the Special No 5 SB based on the judgement in the case of Nitisha has been examined in detail in our recent order dated 03.07.2024 in OA No.28/2022, ***Maj Suvalakhmi Borgohain & Ors. Vs. Union of India & Ors.*** The judgement of the Hon'ble Supreme Court in the case of ***Babita Puniya*** (supra), established that it was mandatory to consider SSCWOs of all Arms/Service for grant of PC, also to consider all the ***then serving SSCWOs and those who were before the Delhi High Court and had since retired during the pendency of the case, for grant of PC.*** To this end it directed that the option for PC will be granted to all women

officers still in service at that point of time, irrespective of whether they had completed 14 years of service or more. Relevant extracts are reproduced below:-

81. The writ petitions filed by the SSCWOs were heard together with writ petition filed by Babita Puniya by the Division Bench of the Hon'ble Delhi High Court and in their judgement dated 12.03.2010 in the case of **Babita Puniya** (WP (C) No.1597/2003) adjudicated on the issue of gender discrimination in granting PC in the armed forces and directed that PC be granted to SSCWOs of both IA and IAF, as they were the petitioners in this case. While IAF implemented this judgement, in the case of the IA, the UoI appealed against it. No interim stay was granted in this appeal, though the effected SSCWOs were permitted to continue in service. Subsequently, the Hon'ble Supreme Court disposed of this case vide their judgement dated 17.02.2020. Prior to this, GoI/MoD issued letter dated 25.02.2019 sanctioning the grant of PC to SSCWOs of the remaining eight Arms/Services. The Hon'ble Supreme Court in its judgement dated 17.02.2020 accepted the policy dated 25.02.2019 granting PC to SSCWOs in all the Arms/Services with certain conditions and issued necessary directions as given at Para 69 of the judgement. Thus, from 2020, SSCWOs of all Arms/Services in the IA became eligible for consideration and grant of PC. Based on this judgement, necessary sanction was issued by the MoD and requisite Adm and Gen Instrs were issued by the Army HQ for the conduct of a Special No 5 SB to consider those SSCWOs who were now eligible for PC consideration based on the judgement in the case of **Babita Puniya** (supra).

82. In the meanwhile, **Lt Col Nitisha** filed WP No.1109/2020 in the Hon'ble Supreme Court challenging the criteria and modalities of conduct of the Special No 5 SB, issued vide Army HQ/MS Branch letter 01.08.2020. However, the Special No 5 SB was held from 14.09.2020 to 25.09.2020 and the results were promulgated on 19.11.2020. The Special No 5 SB considered a total of 615 women SSCOs belonging to all the WSES courses and those from SSC(W) 1, 2 and 3 courses for grant of PC, and 277 were granted PC. These were the batches where the male SSCOs had already been considered by No 5 SB and had been granted PC/Extension.

83. The Special No 5 SB was held specifically to consider all the SSCWOs who were affected and governed by the Hon'ble Supreme Court judgement in the case of **Babita Puniya** (supra). The Apex Court concluded that though the government had a policy, based on which it had conducted the Special No 5 SB, there were certain flaws and infirmities in the policy adopted. The case of **Nitisha** (supra) thus pertains to the execution of the judgement in the case of **Babita Puniya** (supra), in particular, to the directions in relation to the conduct of Special No 5 SB. The conclusion and directions are at Para 119 and 120 of the judgement, based on which, those of the 615 SSCWOs who were considered by the Special No 5 SB and were not granted PC, were **reconsidered** as per the directions in the judgement of **Nitisha** (supra).

84 to 87 xxxxx

88. The Delhi High Court judgement dated 17.03.2010 in essence highlighted the issue of gender discrimination in the armed forces and stated that SSCWOs of IAF and IA who were not granted PC but were granted extension were entitled to PC at par with their male counterparts with all consequential benefits, and certain other benefits to those who had since been released. While the IAF implemented the judgement, in the

case of the IA, the UoI filed an appeal in the Apex Court. Whilst the **Babita Puniya** case was under consideration in the Apex Court, the Army HQ issued a policy letter dated 15.02.2019 sanctioning PC consideration for all SSCWOs in all Arms/Services. The Apex Court examined this at Para 22 of its judgement dated 17.02.2020 in the case of **Babita Puniya** (supra) and at Para 69 took the policy on record and accepted it subject to certain conditions. The complete directions at Para 69 are reproduced below:

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:

(a) All serving women officers on SSC shall be considered for the grant of PCs irrespective of any of them having crossed fourteen years or, as the case may be, twenty years of service;

(b) The option shall be granted to all women presently in service as SSC officers;

(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;

(e) The expression "in various staff appointments only" in para 5 and "on staff appointments only" in para 6 shall not be enforced;

(f) SSC women officers with over twenty years of service who are not granted PC shall retire on pension in terms of the policy decision; and

(g) At the stage of opting for the grant of PC, all the choices for specialisation shall be available to women officers on the same terms as for the male SSC officers. Women SSC officers shall be entitled to exercise their options for being considered for the grant of PCs on the same terms as their male counterparts.

(ii) We affirm the clarification which has been issued in sub-para (i) of paragraph 61 of the impugned judgement and order of the Delhi High Court; and

(iii) SSC women officers who are granted PC in pursuance of the above directions will be entitled to all consequential benefits including promotion and financial benefits. However, these benefits would be made available to those officers in service or those who had moved the Delhi

High Court by filing the Writ Petitions and those who had retired during the course of the pendency of the proceedings.

89. Thus, with the judgement in the case of **Babita Puniya** (supra), the Hon'ble Supreme Court accepted the policy dated 25.02.2019 granting PC to SSCWOs in all the Arms/Services with certain conditions. **It thus established that it was mandatory to consider SSCWOs of all Arms/ Service for grant of PC, also to consider all the then serving SSCWOs and those who were before the Delhi High Court and had since retired during the pendency of the case, for grant of PC.** To this end it directed that the option for PC will be granted to all women officers still in service at that point of time, irrespective of whether they had completed 14 years of service or more. It also directed that SSCWOs with more than 14 years of services who did not opt for PC/ were not granted PC, would be entitled to serve till 20 years of pensionable service. SSCWOs with more than 20 years of service who were not granted PC were to be released with pension. It further directed those restrictive directions in Para 5 of the policy letter dated 25.02.2019 would not be enforced and that SSCWOs will be governed by the same terms and conditions as their male counterpart for exercising option and choice of specialization. And that SSCWOs granted PC in pursuance of the above directions will be entitled to all consequential benefits including promotion and financial benefits, and that these benefits would be made available to those officers in service or those who had moved the Delhi High Court by filing the Writ Petitions and those who had retired during the course of the pendency of the proceedings.

90. The MoD vide its letter dated 16.07.2020 then issued the necessary sanction for implementing the judgement, based on which the Army HQ/ AG's Branch issued Adm Instrs dated 30.07.2020 for conduct of a Special No 5 SB, and the MS Branch then issued the requisite Gen Instrs dated 01.08.2020 seeking documents and outlining the conduct of the SB. The Gen Instrs set out that SSCWOs of WSES(O) 3 to 31 Courses and SSCW(T&NT) 1 to 3 Courses who were governed by the judgement in the case of **Babita Puniya** (supra) were to be considered by the Special No 5 SB. These were the batches where the male SSCOs had already been considered by No 5 SB and had been granted PC/Extension/Released. Appx G of the letter listed the names of the 615 SSCWOs who were to be considered. Para 17 of this letter is reproduced below:

17. List of Agenda (Command wise) to be considered by the Spl No 5 SB 2020 is given at Appx G. The same is also available on Army Intranet at MS Branch Web link {MS7/MS 7B (SS\_WS\_OFFRS) /NO\_5\_SB/GEN\_INSTRS}. In case name of any officer has been left out, the same should be intimated to MS Branch (MS 7B) imdtly. These instructions are being issued to the concerned Command (MS) and Corps (MS) to disseminate to units concerned. In case any officer does not receive the instructions, she can obtain a copy from Army Intranet or Command (MS) / Corps (MS) website. Delay on the pretext of CO / OC being on leave / course will not be accepted. In case the officer has been posted out of her unit / formation after receipt of these instructions and prior to the submission of documents, the new unit / formation may please be instructed to process the same.

91. Thus, it is amply clear that as per the judgement dated 17.02.2020 in the case of **Babita Puniya** (supra) **ONLY 615 SSCWOs** as identified and promulgated by the Army HQ were eligible to be considered by the Special No 5 SB. In the meanwhile, **Lt Col Nitisha** filed WP No.1109/2020 in the Hon'ble Supreme Court challenging the criteria and modalities of conduct of the Special No 5 SB, issued vide Army HQ/MS Branch letter 01.08.2020. However, since the Apex Court did not stay the conduct of the Special No 5

SB, it was held from 14.09.2020 to 25.09.2020 and the results were promulgated on 19.11.2020. The Special No 5 SB considered 615 SSCWOs for grant of PC, of which 277 were granted PC. In adjudicating the case of **Nitisha** (supra), the Hon'ble Supreme Court identified certain flaws and infirmities in the policy adopted. The case of **Nitisha** (supra) thus pertains to the execution of the judgement in the case of **Babita Puniya** (supra). It pertains to the directions in relation to the conduct of Special No 5 SB as a consequence of judgement in the case of **Babita Puniya** (supra). Consequent to the judgement in the case of **Nitisha** (supra), those of the 615 SSCWOs who were considered by the Special No 5 SB and were not granted PC, were **reconsidered** as per the directions in the judgement of **Nitisha** (supra). Finally, of the 615 SSCWOs originally considered by the Special No 5 SB, a total of 507 were granted PC. The directions of the Hon'ble Supreme Court in its judgement dated 25.03.2021 in the case of **Nitisha** (supra) is reproduced below ....

92 to 169 xxxx

#### Conclusion

170 to 173 xxxxxxx

174. Though GoI had sanctioned the grant of PC to SSCWOs of AEC and JAG Branches in 2008, the final sanction for grant of PC to AEC and JAG Branches in the Army was issued only in 2010 vide MoD letter dated 04.10.2010 in response to the interim order of the Supreme Court dated 02.08.2020 in the appeal filed by UoI against the Delhi High Court order in Babita Puniya (supra).

175. Meanwhile, sanction was accorded for grant of PC to SSCWOs in the remaining eight Arms/ Service vide MoD letter dated 25.02.2019. However, this sanction had certain restrictive clauses.

176. The Hon'ble Supreme Court in its judgement dated 17.02.2020 in the case of Babita Puniya accepted the MoD policy dated 25.02.2019 granting PC to SSCWOs in all the Arms/Services with certain conditions and issued necessary directions as given at Para 69 of the judgement. **The judgement thus established that it is mandatory to consider SSCWOs of all Arms/Services for grant of PC, and also to consider all the then serving SSCWOs, and those who were before the Delhi High Court and had since retired during the pendency of the case, for grant of PC.**

177. Thus, from 2020, SSCWOs of all Arms/Services in the IA became eligible for consideration and grant of PC. Based on this judgement necessary sanction was issued by MoD and requisite Adm and Gen Instrs were issued by the Army HQ for the conduct of a Special No 5 SB to consider those SSCWOs who were now eligible for PC consideration based on the judgement in the case of Babita Puniya (supra). 615 SSCWOs were required to be considered by the Special No 5 SB.

178. In the meanwhile, Lt Col Nitisha filed WP No.1109/2020 in the Hon'ble Supreme Court challenging the criteria and modalities of conduct of the Special No 5 SB, issued vide Army HQ/MS Branch letter 01.08.2020. However, since the Apex Court did not stay the conduct of the Special No 5 SB, it was held from 14.09.2020 to 25.09.2020 and the results were promulgated on 19.11.2020. The Special No 5 SB considered 615 SSCWOs for grant of PC, of which 277 were initially granted PC.

179. In adjudicating the case of Nitisha, the Hon'ble Supreme Court identified certain flaws and infirmities in the way the policy was adopted and issued necessary directions for reconsideration by the Special SB. Consequent to the judgement in the case of Nitisha

*(supra), those of the 615 SSCWOs who were considered by the Special No 5 SB and were not granted PC, were reconsidered and finally, of the 615 SSCWOs originally considered by the Special No 5 SB, a total of 507 were granted PC.*

16. It is undisputed that the applicant was commissioned on 20.03.2010 into AOC as part of SSCW-3 (NT) course. She completed her initial contractual period of 10 yrs on 19.03.2020. The applicant was therefore considered by No 5 SB held in Nov 2019 for extension/release only, as provision of opting for PC was not available to SSCWOs at that time, other than those belonging to AEC and JAG. The applicant had initially opted for grant of extension vide Option Certificate dated 29.08.2019 and had subsequently changed her option and, opted to be released vide her application dated 04.10.2019 (Annexure R-2). Since the applicant had opted for release from service on her own volition, she was granted release w.e.f. 19.03.2020 vide MS Br letter No.05540/Rel/10Y/MS-7B dated 09.01.2020. It is seen from the records that the respondents did not relieve any SSCWO from 2012 till the judgement of the Hon'ble Supreme Court in the case of **Babita Puniya** (supra), irrespective of completion of contractual pd, except those SSCWOs who had opted for release on their own volition.

17. In compliance of Hon'ble Supreme Court's judgement, the MoD vide its letter dated 16.07.2020 issued the necessary sanction for

implementing the judgement, based on which the Army HQ/AG's Branch issued Adm Instrs dated 30.07.2020 for conduct of a Special No 5 SB, and the MS Branch then issued the requisite Gen Instrs dated 01.08.2020 seeking documents and outlining the conduct of the SB. The Gen Instrs set out that SSCWOs of WSES(O) 3 to 31 Courses and SSCW(T&NT) 1 to 3 Courses who were governed by the judgement in the case of **Babita Puniya** (supra) were to be considered by the Special No 5 SB. Appx G of the letter listed the names of the 615 SSCWOs who were to be considered. Para 4 AG's Branch letter dated 30.07.2020 lays down the category of SSCWOs who are to be considered. The letter is reproduced below:

*PC-32313/PC to WOs/Adm Instrs/AG/PS-2(a)*

*30 Jul 2020*

*ADM INSTRS - PERMT COMMISSION (PC) TO SHORT SERVICE COMMISSION WOMEN OFFICERS (SSCWOS) IN ENGRS, SIGS, ASC, AOC, EME, INT CORPS, AAD AND ARMY AVN*

*Refs*

1. (a) *MoD letter No F.No. 14(01)/2018-D(AG) dt 25 Feb 2019 (copy encl)*
- (b) *Hon'ble Supreme Court common judgment dt 17 Feb 20 in Civil Appeal Nos 9367-9369 of 2011 titled 'Secy, Min of Def Vs Babita Punia' and connecter appeals.*
- (c) *MOD/ DMA Letter No F.No. 14(01)/2020-D(AG) dt 16 Jul 2020 (copy encl)*

*Background*

2. *Govt sanction has been recd vide MoD letter ref at Para 1 (a) above for consideration for grant of permt commission (PC) to Short Service Commission Women Offrs (SSCWOS) in ENGRS, SIGS, ASC, AOC, EME, INT CORPS, AAD, an ARMY AVN, in add to AEC and JAG where such a provn already exists. Also, vid Govt sanction letter ref at Para 1 (c) above, the common judgment of Hon'ble Supreme Court dt 17 Feb 20 ibid is to be implemented. Adm Instrs as contained in the succeeding paras are hereby issued to implement the Govt sanction as ref above.*

*Consideration for Grant of PC*

3. *SSCWOs would continue to be eligible for consideration for grant of PG in AEC and JAG as per current instrs in vogue. In addn, SSCWOs presently in service or who would be commissioned in the future in ENGRS, SIGS, ASC, AOC, EME, INT CORPS, AAD and ARMY AVN would now also be eligible for consideration for grant of PC in the a/m Corps as per the instrs applicable for grant of PC to male SSCOs of their respective Corps*

Options For PC/ Rel Available to SSCWOs 4.

4. *Consequent to the Hon'ble Supreme Court common judgment dt 17 Feb 2020 ref to at Para 1(b) above, SSCWOs who are in service, will be considered for grant of PC as follows*

(a) *SSCWs in Service With Over 20 Yrs of Commissioned Service SSCWOs with over 20 yrs of commissioned service on the day of the judgment i.e. 17 Feb 2020, may opt for consideration for grant of PC or may seek rel from service, if they so desire. SSCWOs who opt for consideration for grant of PC but are not granted PC will be rel from service with pension as applicable. SSCWOs who do not opt for grant of PC will be rel from service with pension as applicable.*

(b) *SSCWOs in Service With Over 14 Yrs of Service But Less Than 20 Yrs of Commissioned Service SSCWOs with over 14 yrs of commissioned service but less than 20 yrs of commissioned service on the day of the judgment i.e. 17 Feb 2020, may opt for consideration for grant of PC or to continue in service till completion of 20 yrs of pensionable service and seek rel with pension as applicable. SSCWOs, who opt for consideration for grant of PC but are not granted PC, would if willing, be also permitted to continue in service till completion of 20 yrs of pensionable service as applicable. SSCWOs who do not wish to be considered for grant of PC but wish to proceed on rel before completion of 20 yrs of service would be rel from service as per existing orders on the subject. Such offr will not be eligible for any pensionary benefits.*

(c) *SSCWOs in Service With Less Than 14 Yrs of Commissioned Service SSCWOs who had less than 14 yrs of commissioned service on the day of the judgment i.e. 17 Feb 2020 but are on extended service, would also be considered for grant of PC. Such offr, who are considered, but are not granted PC would have the option to either continue to complete ext pd already granted to them or may seek rel if they so desire.*

Conduct of Spl No 5 SB

5. *Spl No 5 SB. MS Br would conduct Spl No 5 SB is r/o/all eligible SSCWOs in accordance with Para 4 above for which MS Br would issue gen instrs.*

Career Mgt Post Grant of PC

6. *On grant of PC, SSCWOs while continuing to be part of their respective Corps. will be emp as decided by the competent auth from time to time having regard to all the exigencies of service, performance and organisational reamts.*

Ages of Superannuation

7. *SSCWOs granted PC would be governed by age of superannuation as applicable to male offr of corresponding rk of their respective Corps.*

Misc Aspects

8. *Based on these Adm Instrs respective Dtes/ Brs of IHQ of MoD (Army) may issue their own instrs to give effect to these Adm Instrs on aspects pertaining to their charter.*

9. *These Adm Instrs be disseminated down till unit level.*

18. Para 4(C) of the Adm Instrs clearly mentions the various category of SSCWOs who are eligible to be considered by the Special No 5 SB, in that it was to consider SSWOs in service with more than 20 years of service; SSCWOs in service between 14 and 20 years; and SSCWOs in service with less than 14 years of service and were on extension. The main criteria in the Apex Court judgement in the case of **Babita Puniya** (supra), was that, it was mandatory to consider SSCWOs of all Arms/Service for grant of PC, also to consider all the then serving SSCWOs and those who were before the Delhi High Court and had since retired during the pendency of the case, for grant of PC. To this end it directed that the option for PC will be granted to all women officers still in service at that point of time, irrespective of whether they had completed 14 years of service or more. It also directed that SSCWOs with more than 14 years of services, who did not opt for PC/were not granted PC, would be entitled to serve till 20 years of pensionable service. SSCWOs with more than 20 years of service who were not granted PC were to be released with pension. So the critical criteria was that the SSCWO had to be in service to be considered by the Special No 5 SB.

19. SSCWOs who had less than 14 years of commissioned service on the day of the judgment and were on extension were considered for grant of PC. ***The applicant was however not on extended period of service either on the date of the SC judgement (17 Feb 2020) or on the date the Adm Instrs were issued,*** having already opted out of extension and having sought her release on her own volition and necessary release orders having been issued, based on which the applicant was finally released on 19.03.2020, on completion of her initial tenure of 10 years. Moreover, there was no correspondence from the applicant from date of Hon'ble SC judgement of 17.02.2020 till her release from service on 19.03.2020. Neither did she get herself impleaded even when Nitisha litigation was pending and was decided only in Mar 2021.

20. Her contention that she was in service as she was granted 60 days of annual leave and 28 days of terminal leave and was thus struck off strength only on 14.06.2020 does not help her, as the grant of terminal leave is governed by Para 51 of the Leave Regulations for the Army, under the provisions of which such leave is only admissible to a SSCWO who has been released. Para 51 is reproduced below:

"TERMINAL LEAVE

51. Officers granted Short Service Commission including the Army Medical Corps (AMC), Army Dental Corps (ADC) and Veterinary Officers of the Remount and Veterinary Corps (RVC) are NOT entitled to 'Study Leave' under Rules 27 -29."

21. This issue has already been examined in AFT (PB) order dated 28.02.2020 in OA 900/2019, **Lt Col Brahm Shakti Hooda (Retd)** Vs. **Union of India & Ors.** This case pertains to a SSCWO of ASC who was commissioned on 02.09.2000 and was to be relieved on completing her tenure of 14 years, was however retained in service on account of the pendency of case of ***Babita Puniya*** (supra) before the Hon'ble Supreme Court and her services were extended till the decision of the Hon'ble Supreme Court in the case of ***Babita Puniya*** (supra). In 2016, she applied for a NOC to seek civil employment and also sought release from service vide her application dated 30.03.2016, which was approved and she was to be released from 30.06.2016. The SSCWO then availed 60 days annual leave and 28 days of terminal leave and was to be struck off strength on 05.09.2016. However, due to changed circumstances, she sought revocation of her release order and permission to rejoin. The SSCWO was informed that since she had already been released from service on 30.06.2016, her request to rejoin cannot be acceded to. It was the stance of the applicant that since she was to be finally struck off strength only

on 05.09.2016, her contract of employment subsisted and, therefore, she had the right to seek withdrawal of her premature release. The relevant extracts are reproduced below:

10. *The submission of the applicant is that even though she had submitted her application seeking premature release from service with effect from 30.06.2016 and she was relieved on 30.06.2016, her contract of appointment continued up to 05.09.2016, which was the date of release from service and till her name was not struck off from the roll, she had the right to seek withdrawal of her discharge and the very fact that she was granted annual leave and terminal leave as per Para 51 of the Leave Rules would further prove the fact that her employment continued till conclusion of the leave period and, therefore, the action of the respondents in treating her to have been released or relieved on 30.06.2016 is unsustainable. Learned counsel tried to argue that the words 'release' and 'relieve' are two different connotations having different meaning. Merely because the applicant was relieved of her duties on 30.06.2016 does not mean that she was released or discharged from service. Learned counsel for the applicant as indicated herein above, referred to the provisions of the Army Rules statutory in nature to say that the words 'release' and 'relieve' from service have different meaning under the Army Rules and, therefore, the contention of the respondents are not correct.*

11. *Even though no statutory rule, regulation or provision in the matter of seeking premature discharge of a SSC officer from service is brought on record, it is clear that SSC officers are initially appointed for five years and the maximum period they can continue in service is 14 years. The learned counsel concluded that in view of the pendency of the case in Babita Puniya (supra), the applicant was allowed to continue and it was during this extended period, the applicant sought premature discharge, which was granted.*

12. *Before us, the only questions that fall for our consideration are:*

(i) *Whether the applicant continued to be in service after she was relieved on 30.06.2016 or it was only on 05.09.2016 her services came to an end?*

(ii) *Whether the grant of annual leave or terminal leave would amount to continuation of the contract of employment, as canvassed by the learned counsel for the applicant?*

13. *For evaluating these aspects of the matter, it would be appropriate to take note of the rules governing the grant of terminal leave to SSC officers. Rules 45 to 55 of Chapter IV Section I of the annual leave, sick leave, study leave, etc. Rule 51 deals with 'terminal leave' and the same is reproduced as under:*

*51. Officers granted Short Service Commission for an initial period of three years or more will, on the termination of their engagement, be entitled to 28 days leave on full pay in addition to the annual leave or the balance thereof to which they may be entitled in the year in which their engagements terminate. (emphasis supplied)*

*A perusal of the aforesaid rule would make it clear that officers who have been granted SSC, on termination of their engagement, are entitled to 28 days leave on full pay in addition to the annual leave as may be available to them at the time of termination of*

*their engagement. The rule is clear and there cannot be any doubt or ambiguity in its understanding or its interpretation. Terminal leave under Rule 51 can be availed of by a SSC officer only after termination of engagement and not before that and as pointed out by the learned counsel for the respondents and the averments made in the reply affidavit, this benefit is granted to SSC officers to earn salary or some monetary benefit after termination of their term of engagement to enable them to settle down. In fact, the additional facility extended to a SSC officer to avail the facility of terminal leave and annual leave after termination of the engagement is a special provision applicable only to such category of officers and not to regular officers. From the records, we can safely conclude that the provision is to facilitate post release settling down in the civil world after release from Army while still getting salary for 28 days, terminal leave and the balance of annual leave. If the contention of the applicant is accepted, and the annual leave and the terminal leave are considered to be part of service, then the contractual period of service of a SSC officer, which is normally 10 years extendable up to 14 years would become 10 years+ 04 years the period of annual leave or 14 years+28 days+ the period of annual leave. This could never be the intention of the rule makers. That apart, the stipulations contained in the Ministry of Defence letter dated 12.04.2020 clearly indicate that SSC officers on release would continue to be granted terminal leave is a factor that goes to indicate that the additional benefit can be availed of only after the contract period is over, it is available only after the contract of engagement comes to an end. Therefore, we do not have any doubt that terminal leave is a requirement of the Leave Rules and the same is available to SSC Officers only after the termination of their engagement and once there is termination of engagement, in the absence of there being any statutory provision, rule or regulation, which permits withdrawal of the offer of discontinuation, we cannot issue any direction permitting such withdrawal. Once the contract of service or engagement as SSC Officer comes to an end, the incumbent has no right to seek withdrawal. Once we have come to such a conclusion, which is apparent from a bare reading of the statutory provision, there is no need for us to go further and this itself insufficient to reject the claim of the applicant. However, as various submissions were made before us, we will consider those submissions.*

15. *The applicant, even if deemed to have been relieved only on 30.06.2016, in our view, in the facts and circumstances of the instant case, she is deemed to have been released also from that date, and as per the dictionary meaning, there is no difference between the words 'release' and 'relieve, in the matter of their application in this case. It is a case where the applicant had submitted her offer to be discharged prematurely with effect from 30.06.2016. This offer was accepted. She was released/relieved on 30.06.2016 and once her offer was accepted and relieved, she has no right to seek withdrawal of the same. The benefit of terminal or annual leave granted to the applicant as per Rule 51 is only a right which accrued to her after termination of her engagement and once there is termination of engagement, the right to withdraw the offer for termination ceases to have effect under law.*

18. *The statutory provisions and the rules refer to release of regular permanent commissioned officers. So far as SSC officers are concerned, no specific rules, as indicated herein above, have been brought to our notice and it is the case of the applicant that when she is availing of annual leave and terminal leave with salary, she is deemed to be in service, the relationship of 'employer' and 'employee' (jural relationship) subsists and it has not come to an end. It comes to an end only after the release becomes effective, on exhausting the annual leave and the terminal leave. This aspect, in our considered view, has to be taken note of with specific reference to various facts, which we have discussed herein above and the legal position that emerges on a reading*

*of Rule 51 of the Leave Rules, which is the statutory provision that confers a legal right on the applicant to avail of the permitted leave. The applicant has stated that while an employee is on leave and when he is earning salary for the period, the relationship of employer-employee subsists. If we analyse this submission in the backdrop of Rule 51, which is the provision conferring legal right on the applicant to avail of the 28 days' terminal leave with full pay, in addition to annual leave, it is crystal clear that only an SSC officer, on termination of his or her engagement, is entitled to these benefits. The words 'termination of engagement' used in this Rule, with specific reference to SSC officers has to be given effect to in its letter and spirit and the only way it can be given effect to is that the benefits which were granted to the employee in the matter of availing terminal leave and annual leave is a statutory right available, which matures on termination of engagement and once there is termination of engagement, the benefit granted by virtue of Rule 51 is nothing but an additional benefit after the engagement has come to an end and in the case of SSC officers, as indicted herein above, it is nothing but an additional benefit granted to them in the matter of rehabilitation or re-settlement on termination of the short service commission. We have bestowed our consideration on various aspects of the matter and find no reason to make any indulgence in the matter.*

*20. Considering the totality of the facts and circumstances, we find no reason to interfere in the matter. Accordingly, we dismiss the O.A. No order as to costs.*

22. In view of the above consideration, we conclude that since the applicant chose not to opt for extension and took voluntary release on termination of 10 years of service, and her release having been granted and necessary orders already issued, she was no longer in service with effect from 19.03.2020. Therefore, she was not in the category of SSCWOs who had less than 14 years of service and were on extension. Since she was not in service, she was, therefore, not governed by the judgement in the case of **Babita Puniya** (supra), and was thus not entitled for consideration for grant of PC by the Special No 5 SB. Also, the benefit of annual leave and terminal leave granted to the applicant as per Leave Rule 51 is only a right which accrues to her after termination of her engagement, and once there is termination of engagement,

the right to withdraw the offer on termination ceases to have effect under law.

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

24. No order as to costs.

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

Pronounced in open Court on this 9<sup>th</sup> day of August, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

Neha