

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

**O.A. No. 2145 of 2021**

**In the matter of :**

**Lt Cdr Pawan Kumar (Retd) & Ors.                      ... Applicants**

**Versus**

**Union of India & Ors.    ... Respondents**

**For Applicants        : Ms. Ankita Patnaik, Advocate**

**For Respondents    : Shri Anil Kumar Gautam, Sr. CGSC**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act,2007, the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

- "A. Issue an Order or Direction to Set Aside the Impugned order 02/08/2018: "RS/1109/SSC/2007/OA&R II/18: passed by Respondents Navy to the effect that release of the petitioners is set aside.***
- B. To pass an Order, or Direction on parity with women officers in Annie Nagaraja,***

***consideration for extension of service and permanent commission to the petitioners being of the same cadre and similarly placed, but never been considered by Navy.***

***C. In the alternative, direct Navy to provide pro rata pension for the years served by the petitioners.***

***D. Pass any other order in the interests of justice, equity and good conscience.”***

2. Concisely, the applicants were commissioned as Short Service Commission (SSC) Officers in the Logistics Branch of the Indian Navy on 06.08.2007. Although the women officers had been commissioned in certain branches of the Indian Navy, Army, and Air Force since 1992, they were being released from service after completion of 14 years without being considered for grant of Permanent Commission (PC). In response to this policy, several women officers of the Indian Army and Indian Air Force approached the Hon'ble Delhi High Court, seeking directions for the grant of PC on par with their male

counterparts. Based on the observations and directions of the Hon'ble High Court, the respondents issued an order dated 26.09.2008, offering PC prospectively to SSC (Women) officers in specific branches, namely, the Judge Advocate General (JAG) and Army Education Corps (AEC) of the Army, the Accounts Branch of the Indian Air Force, and the Naval Architecture cadre of the Indian Navy. This was in addition to the existing provisions for grant of PC to SSC (Male) officers.

3. It is submitted that the aforesaid writ petition was allowed by the Hon'ble High Court of Delhi vide judgment dated 12.03.2010 in **Babita Puniya Vs. Union of India & Ors. [W.P. (C) No.1597/2013]** wherein it was observed that the *ibid* order dated 26.09.2008 lacked justification for restricting the grant of PC only to women officers commissioned on or after 26.09.2008 and only in the three specified branches, as referred to in the order. Subsequently, 17 women SSC officers, both serving and retired from various branches, approached the Hon'ble High Court of Delhi through six writ petitions, seeking similar relief. Vide judgment dated 04.09.2015, the

Hon'ble High Court allowed those petitions in the matter of **Annie Nagaraja and Ors. vs. UOI and Ors. [WP (C) No.7336/2010]** and other connected Writ Petitions, holding that once a policy for grant of PC had been framed, there was no valid reason to deny its benefit to women officers, who were already in service or had been released after completing 14 years of SSC tenure.

4. Aggrieved by the said judgment, the respondents filed Special Leave Petitions (SLP (C) Nos. 30791-30796/2015) before the Hon'ble Supreme Court titled **Union of India & Ors. Vs. Lt Cdr Annie Nagaraj & Ors.**

While issuing notice in the said SLPs, the Hon'ble Apex Court, vide order dated 20.11.2015, directed that SSC women officers, who were in service as on 26.09.2008, shall be allowed to continue in service on the terms and conditions applicable to them at that time. The Apex Court further directed that women officers, who had been released after 26.09.2008 upon completion of their SSC tenure, should be permitted to rejoin service, in accordance with the directions of the Hon'ble High Court, and continue in that capacity. Pursuant to the said directions, the

Directorate of Personnel (DOP)/Naval HQ extended the tenure of the applicants from 10 years to 12 years. Thereafter, the applicants submitted their willingness to the respondents for further extension of their service from 12 years to 14 years.

5. It is further submitted that three course mates/officers from the same 2007 batch and Logistics Branch were granted an extension of two additional years of service, whereas the applicants were denied such extension beyond their 12-year tenure, despite having submitted their willingness for the same. Initially, the denial was communicated vide letter dated 13.02.2019, citing that the cadre was overborne. However, when the applicants submitted a representation dated 29.06.2020 seeking reconsideration for PC, the respondents rejected the same vide its letter dated 28.09.2020, this time on the ground that the matter was *sub judice* as it is pending in the Hon'ble Supreme Court. Consequently, the applicants were released from Naval service on 06.08.2019 upon completion of 12 years of service. Notably, during this period, the respondents, Indian Navy continued to create

and fill vacancies in the Logistics Branch in the years 2017, 2018, and 2019, and kept inducting more officers, instead of considering the applicants for extension of service and grant of PC, despite their eligibility and expressed willingness.

6. It is further argued that being aggrieved by the action of the respondents in not granting the 2<sup>nd</sup> extension for a period of another two years, few seniors of the applicants approached this Tribunal by way of **OA No.1030/2018, OA No.1017/2018, OA No.1026/2018 and OA No.1029/2018**, which was dismissed by this Tribunal vide common order dated 06.08.2018. It is submitted that **Lt. Cdr. Rashmi Shergill** (Applicant in **OA No.1026/2018**) approached the Hon'ble Supreme Court by way of Civil Appeal No.832-833/2019 titled **Lt. Cdr Rashmi Shergill Vs. UOI** against the order dated 06.08.2018 of the Tribunal, wherein the appeal filed by her was disposed of by the Hon'ble Supreme Court vide order dated 29.04.2019 directing the grant of further extension of service for a period of two years to Lt Cdr Rashmi Shergill since she had given her willingness for extension. It is

argued that the applicants are similarly situated officers and once Lt Cdr Rashmi Shergill had been granted extension by the respondents, the same benefit ought to have been granted to the applicants herein, who had also submitted their willingness for grant of extension.

7. The learned counsel for the applicants submitted that the Hon'ble Supreme Court in the order dated 17.03.2020 in the case of ***Lt Cdr Annie Nagaraja (supra)*** has adversely commented upon the Indian Navy to create the situation of overborne cadre in the Logistics branch and Para 89 of the judgment reads as under :

***“89. While considering the defence of the Union of India, urged by the ASG, that the cadres are overborne and saturated, the assessment of this Court must be based on the following position:***

***(i) Neither the judgment of the Delhi High Court nor the judgment of the AFT was stayed during the pendency of these appeals. The Union Government and the Naval authorities could not have proceeded on the misconceived basis that the mere pendency of the present appeals was a license to not comply with the directions contained in the judgments of the High Court and the AFT. As a result of the failure of the authorities to consider the SSC officers for the grant of PCs, their status continued in a state of uncertainty, effectively depriving them not only of the benefits which would accrue to them in terms of career advancement but also the ability***

*to occupy progressively higher positions in the hierarchy upon the grant of PCs;*

*(ii) While the Union Government and the Naval authorities did not consider any SSC women officers for the grant of PCs, it has now claimed that the cadre is saturated. This position has transpired precisely as a result of the failure to implement the directions of the Delhi High Court and of the AFT, while at the same time continuing to make recruitments which is now held up as a ground for the cadres being saturated;*

*(iii) The right to be considered for the grant of PCs arose under the policy dated 25 February 1999. The policy letter dated 26 September 2008 was issued oblivious to the earlier policy document and had the effect of denying benefits to SSC officers who were in saddle, besides PART G restricting the cadres/branches in which SSC officers could be granted PCs. Though the policy letter dated 26 September 2008 was declared to be invalid by the High Court and by the AFT, the authorities have relied upon either the absence of vacancies or the prospective application of the policy letter dated 26 September 2008 to deny relief to SSC officers; and*

*(iv) If the Naval authorities had considered SSC officers for the grant of PCs in terms of the policy letter dated 25 February 1999, that would have obviated a situation of saturation of cadres with which the SSC officers are now sought to be confronted as a ground to deny them relief to which they were legitimately entitled in terms of the policy dated 25 February 1999.”*

8. It is also submitted that the applicants were discharged from service at the age of 39/40 years, without being allowed to complete the qualifying service required for earning pension. The denial of an opportunity to attain pensionable service, without even proper consideration of their case, is arbitrary and unjust. Such action on the part of the respondents is contrary to the law laid down by the Hon'ble Supreme Court in **D.S. Nakara Vs. Union of India, [(1983) 1 SCC 305]**, wherein it was held that pension is not a bounty or a matter of discretion, but a vested right accruing from the past service rendered by an employee. The Apex Court further recognized pension as an incidence of service under Article 309 of the Constitution. Hence, the respondents' failure to provide a fair opportunity to the applicants to qualify for pension is violative of both legal and constitutional principles.

9. *Per contra*, the respondents have filed a detailed counter affidavit, contending that the SSC in the Navy has existed since independence to address the shortage of officers caused by the departure of British officers. SSC officers were inducted into the Navy based on service

requirements. From time to time, SSC officers were granted PC in view of service exigencies. However, no formal policy for SSC officers existed until 1992 due to their negligible numbers in the Navy. As the number of SSC officers grew from a few hundred to approximately 2700 by 1992, formal terms and conditions were gradually introduced across various branches, cadres, and specializations of the Navy. As part of this formalization process, a policy dated 26.09.2008 was introduced, under which SSC officers became eligible for consideration for PC. This policy applied initially to three specific cadres/branches/specializations viz. Law, Education, and Naval Construction. It was to be applied prospectively to batches inducted after the date of policy promulgation. Hence, it is important to aver that when the aforesaid policy was promulgated, the male only branch, i.e., Executive Branch of the Navy, was kept out of the purview of the policy, whereas another male only branch, i.e., Electrical Branch of the Navy, already had such a policy since 2000, which was equally applicable to SSC male officers.

10. Despite the policy's prospective application and its limitation to only three specific cadres/branches, this issue was challenged by both serving and retired SSC officers (men and women). Several petitions were filed before this Tribunal and the Hon'ble Delhi High Court, many of which remain pending adjudication. It is pertinent to submit that the applicants herein did not challenge the said policy before the Naval Authorities or any legal forum until after the Hon'ble Supreme Court's judgment dated 17.03.2020 in Civil Appeal Nos. 2182-87/2020. This is despite the fact that several other retired male and female officers had already approached legal *fora* challenging the policy dated 26.09.2008. In September 2015, the Hon'ble Delhi High Court delivered a judgment directing the Indian Navy to grant PC to all petitioners therein without consideration of merit, vacancy, etc., subject only to medical fitness i.e. in WP(C) 7336/2010- **Lt. Cdr. Annie Nagaraja and Others Vs. Union of India and Ors.** The Union of India challenged this judgment before the Hon'ble Supreme Court. Furthermore, this Tribunal had also passed an order in August 2016, directing the Navy to

consider all applicants therein for PC as per the prevailing policy in the matter of **Priya Khurana and Others Vs. Union of India and Others** in OA 1430/2016, and subject to final outcome in the matters pending before the Apex Court in ***Lt. Cdr. Annie Nagaraja's case (supra)***.

11. According to the respondents, the applicants were commissioned as SSC Officers in the Logistics Branch of the Indian Navy on 06.08.2007. Upon completion of 10 years of initial engagement, they sought and were granted further extension of service for 02 years. They once again sought extension of service for 02 years, which was denied due to cadre saturation. They claimed parity with officers of the same batch, namely, Cdr Mukesh Bhandari, Cdr Sarita Nagayach, and Cdr Sandeep Singh, who were granted extensions up to 14 years, while the applicants were released after 12 years of service. However, this comparison is factually incorrect. The officers cited by the applicants received extensions in 2020 under different circumstances, i.e., cadre strength was not saturated, and interim orders were issued due to the COVID-19 situation. Additionally, those officers cited by the applicants had

completed the Long Logistics Management Course in 2014-15 and their services were mandatorily extended until 2020 under the provisions of the Navy Order 30/2015 (these officers were not similarly situated like the applicant in 2018). Aggrieved by this, they approached this Tribunal by filing different O.As. against the denial of second extension of 2 years, which, through a common order, were dismissed on 06.08.2018. Cdr Rashmi Shergil and Cdr Puneet Pal Kaur, applicants before this Tribunal, approached the Apex court by filing Civil Appeal Nos.832-833 of 2019, wherein it was directed that since the appellants therein had actually submitted their willingness certificate to their immediately superiors on time, they should have been granted two years' extension, which was not granted to them. In compliance, both the aforesaid officers were considered for PC in Selection Board held on 18.12.2020. Cdr Rashmi Shergil rendered unwillingness for PC, whereas Cdr Puneet Pal Kaur did not merit selection for PC due to *inter se* merit. In view of the aforesaid directions of the Apex Court, the applicants herein approached the respondents for grant of pensionary

benefits. Since the directions of the Apex Court in the aforesaid matter was restricted to the appellants therein only in terms of Article 142 of the Constitution, the applicants herein are estopped from raising any claim.

12. It is further also contended that grant of PC is covered by Regulation 203 of the Regulations for the Navy (Part III), which states as follows:-

**“203. Grant of Permanent Commission – (1)  
Subject to the availability of vacancies in the stabilized cadre of the Navy, Permanent Commission may be granted from time to time to Short Service Commission Officers of the rank of Sub Lt and above who are considered suitable and are recommended by the Chief of the Naval Staff.”**

13. As submitted earlier by the respondents, the Hon'ble Supreme Court judgment has benefitted only those serving and retired women officers, who prayed for PC and not extension/re-employment before various Naval authorities and/or legal forums. The learned counsel for the respondents argued that as **Lt. Cdr Pawan Kumar (Retd) and Ors.** (the applicants herein) had never agitated their right for PC, therefore, they are not covered by any directions contained in the Hon'ble Supreme Court

judgment dated 17.03.2020 in CA No.2182-87/2020, the applicants herein are neither eligible for grant of PC nor for grant of pension and, therefore, the learned counsel prayed that OA be dismissed.

### **CONSIDERATION**

15. We have heard the learned counsel for the parties and have perused the records available on record.

16. The applicants were commissioned as Short Service Commission Officers in the Logistics Branch of the Indian Navy on 06.08.2007. Their grievance relates to the denial of a second extension of service and the consequential non-consideration for grant of Permanent Commission (PC), along with associated pensionary benefits. The issues involved herein are to be examined in the light of the various judicial pronouncements on the grant of PC.

17. Earlier, in reply to the representation made by one of the applicants in response to the request made by him for grant of PC vide communication dated 28.09.2020, the respondents intimated that the cases for grant of PC to SSC

male officers are *sub judice* before the Hon'ble Supreme Court.

18. Without entering into the merits of the rival contentions of the parties and in the interest of justice, we deem it appropriate to dispose of the present matter with liberty to the applicants to submit a detailed representation afresh to the competent authority raising all such grounds that are available to them in accordance with law. Upon submitting such representation by the applicants within four weeks from the date of receipt of a copy of this order, the respondents are directed to consider the same in accordance with law and consider the case of the applicants within a period of three months thereafter. It is, however, made clear that this Tribunal has not expressed any opinion on the merits of the case and all issues are left open to be decided by the competent authority.

19. With the aforesaid directions, O.A. No. 2145 of 2021 stands disposed of. Accordingly, pending miscellaneous applications, if any, also stand closed.

20. There is no order as to costs.

Pronounced in open Court on 11<sup>th</sup> day of  
March, 2026.

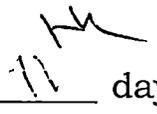
**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)**

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20. There is no order as to costs.

Pronounced in open Court on this 11 day of  
March, 2026.

  
  
**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

  
**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

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