

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**ORIGINAL APPLICATION NO. 74 OF 2018****With****MA 64/2021 (for vacating interim order)****CA 01/2021****(Through Video-Conferencing)**

Commander Mohammed Navas Chokli)
 Age 38 yrs (No.52084-Y), Indian Navy,)
 Residing at ORA-519, Indian Naval)
 Academy, Ezhimala, Kannur-670 310,)
 Kerala.).. Applicant

Versus

1. Union of India)
 (Through Secretary, Ministry of)
 Defence), New Delhi-110011.)
2. The Chief of the Naval Staff,)
 Ministry of Defence (Navy))
 Integrated Headquarters,)
 Sena Bhgawan,)
 New Delhi-110 011.)
3. The Officer-in-Charge)
 Naval Pay Office)
 C/O INS Angre)
 Shahid Bhagat Singh Marg)
 Mumbai-400 023.)
4. The Principal Controller of)
 Defence Accounts (Navy))
 No.1 Cooperage Road)
 Mumbai-400 039.).. Respondents

For Applicant : Mr. A. Ojha, Advocate.**For Respondents** : Mr. Harish V. Shankar
Senior Panel Counsel.

CORAM:**HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE VICE ADMIRAL P.MURUGESAN (RETD), MEMBER (A)****ORDER****RELIEFS SOUGHT:**

1. By this Application, filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for the following reliefs :-

A. Granting of Permanent Commission to SSC Officers “prospectively” in accordance with GOI Policy letter of 25th February, 1999 and permit Applicant to be considered and be Granted Permanent Commission, and declare the “prospective” provision of Respondents 26th September 2008 letter as “ultra vires” being in violation of Navy Act 1957 and Article 14 of the Constitution.

B. Alternative to Prayer (A), permit the Applicant to continue in service upto “superannuation”, as per the provisions of the Section 47, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as GOI/DOPT Order dated 25th 2015.

C. Alternate to prayer (A) & (B) above, direct the respondents to release disability pension assessed for disabilities of “Primary Hypertension”, at the rate of 30%, rounded off to 50%, as well as for “Recurrent Dislocation (Lt) Shoulder”, at the rate of 30%, rounded off to 50%

being “attributed/aggravated due to service condition”, along with arrears if any and 12% interest on arrears, and also consequential benefits.”

FACTS OF THE CASE :

2. The applicant was commissioned in the Indian Navy as a Direct Entry Short Service Commission (Submarine) Officer on 11.2.2005.

3. The applicant has stated that a Policy decision was taken by the Government of India, Ministry of Defence, which had the sanction of the President, and was issued on 25th February, 1999 conveying the sanction of the President for grant of “Permanent Commission” to the SSC Officers, both men and women, irrespective of any Branch/Cadre.

4. The applicant has further stated that in August 2006, while serving on board INS Sindhughosh, suffered an injury on left shoulder, which was operated at INHS Asvini at Mumbai. Subsequently, the applicant was downgraded to Permanent Low Medical Category S2A2(Pmt) and thus rendered permanently unfit for submarine. Consequently, he was converted to General Service (Electrical) Branch in August 2008. The applicant was posted in various Naval Units and was also selected to undergo M.Tech at IIT (Roorkee) from July 2011 to July 2013. Thereafter, the applicant applied for Permanent Commission. As stated by the respondents that the applicant was considered on two occasions i.e. in 2012 (First look) and 2013 (Second

Look). However, on both the occasions, he was not granted permanent commission due to low inter-se merit. The applicant has further stated that during his tenure onboard INS Jamuna as Electrical Officer, he was detected with Primary Hypertension and has been placed in low medical category S2A2(P&A) PMT.

5. Being aggrieved by denial of "Permanent Commission", the applicant made a Statutory Grievance vide letter dated 15th January 2018 under Section 23 of the Navy Act (Annexure-A-2); but the same has been rejected. The applicant has also sent through his lawyer a Legal Notice dated 25th May, 2018 under Section 80 of the Code of Civil Procedure, 1973. The respondents stated that the applicant's case was referred to a neutral Committee, namely, Redressal and Complaint Advisory Board (RACAB) for de-novo examination of the representation made by the applicant. The RACAB also came to the conclusion that no injustice has been done to the applicant. RACAB also observed that non-grant of PC to the applicant was due to the applicant's low merit vis-à-vis availability of limited number of vacancies. The applicant was informed accordingly about the non-selection for Permanent Commission. It is against the above impugned order that the applicant has approached this Tribunal praying for the reliefs set out hereinabove.

6. The applicant was due for his release from service w.e.f. 10.02.2019 after expiry of the current extension granted to him.

7. This Tribunal, vide Order dated 22.11.2018, giving due regard to the cases – **SLP 30791-30796/2015 Union of India & Ors. Vs. Lt. Cdr. Annie Nagaraja & Ors.** pending before Hon'ble Supreme Court and OA 143/2016 **Cdr. Priya Khurana vs. Union of India & Ors.** vide order dated 11.8.2016 decided by AFT (PB), ordered the Respondents to maintain status quo and to allow the applicant to continue in service as well as to continue to stay in the Government accommodation presently allotted to him, until next hearing date of the case by this Tribunal.

8. Subsequently, on 17.3.2020 the final Judgment of Hon'ble Supreme Court was delivered in **Union of India & Ors. Vs. Lt.Cdr Annie Nagaraja & Ors** in Civil Appeal Nos.2182-87 of 2020 @ SLP (C) Nos.30791-96 of 2015.

9. Respondents filed MA 64/2021 in OA 74/2018 dated 14th June 2021 requesting for vacation of the interim stay order passed by this Tribunal on 22.11.2018.

10. The case was listed for Daily Hearing on 17.06.2021. The applicant also filed a copy of the Circular dated 30.10.2020 (315 IG) issued by the respondents stating that the applicant's name was found included in it for giving another consideration towards grant of Permanent Commission. During the hearing, the applicant also submitted that he would not be pressing for his third prayer, namely, grant of disability pension, at this

stage. The respondents were directed to file an affidavit in reply to the Circular dated 30.10.2020 filed by the applicant.

11. The respondents filed an affidavit dated 14.7.2021 explaining the contents of the Circular dated 30.10.2020.

12. CA 01/2021 in OA 74/2018 was filed by the applicant on 10.08.2021 against the filing of MA 64/2021 and the affidavit dated 14.7.2021 by the Respondents wherein they prayed for vacation of the interim stay order granted by this Tribunal.

HEARING OF APPLICANT:

13. The learned counsel for the applicant submitted that the respondents are continuously changing their position on the applicant's case through different affidavits filed before this Tribunal. The respondents have not placed on record any Rule or Policy letter supported by Regulations and relevant section of Navy Act regarding procedure for grant of PC. To support the non-transparent and casual process adopted by the respondents in considering the applicant for the grant of Permanent Commission, the learned counsel for the applicant highlighted that in the respondents' impugned order dated 29.5.2018, it was just stated that the applicant was not granted Permanent Commission due to his low inter-se merit and the availability of limited number of vacancies. Whereas the respondents in their counter-affidavit dated 29.11.2018 filed in OA 74/2018 stated that the grant of PC to SSC officers was as per IHQ MoD (Navy)/DOP letter NA/0301/70/07 dated 18th

June 2010 and based on service exigencies like number of vacancies in branch/specialization etc. The respondents stated in the affidavit that the applicant was considered for grant of PC in 2012 and 2013, respectively, as per IHQ MoD (Navy)/DOP letter NA/0301/70/07 dated 18th June 2010. The counter-affidavit of the respondents further stated that during the applicant's first consideration for PC in 2012, his position as per merit list was 45 out of 47 officers of his batch against a cut-off mark of 33. In a second consideration for PC in 2013, the applicant's merit position was 27 out of 28 officers of his batch against the cut-off mark of 15. The learned counsel for the applicant submitted that these details were not communicated to the applicant by the respondents.

14. The learned counsel for the applicant further stated that the Hon'ble Supreme Court has decided the SLP (C) Nos.30791-96/2015 and Civil Appeal Nos.2182-87/2020 vide order dated 17.03.2020, wherein the respondents were directed to consider SSC officers for grant of PC. The respondents considered the officers for grant of Permanent Commission from all branches but except ATC, Sports, IT Specializations and those already considered before for PC from Law, Naval Constructor, Electrical, Engineering and Education Branch. The learned counsel for the applicant submitted that consideration for PC of only such a composition of officers for grant of Permanent Commission was not stated anywhere in the

Hon'ble Supreme Court's Judgment in **Union of India & Ors. vs. Annie Nagaraja & Ors.** dated 17.3.2020.

15. The learned counsel for the applicant submitted that the respondents brought out a Circular, namely, 315 IG dated 30.10.2020 for consideration of officers for the grant of PC in compliance with the Hon'ble Supreme Court Judgment. The name of the applicant was also found included in the Circular at Sr. No.(AK). Therefore, the applicant needs to be accorded consideration for the grant of PC. The learned counsel for the applicant contested the respondents' reply in their affidavit that the inclusion of the applicant's name in the Circular dated 30.10.2020 was due to an inadvertent software system generated list of all SSC officers granted interim relief by the different Benches of Armed Forces Tribunal. The learned counsel for the applicant also stated that this very Circular had also been filed and pending before the Hon'ble Supreme Court in response to appeals filed by similarly placed petitioners seeking remedy of granting PC to SSC officers.

16. The learned counsel for the applicant further cited the Judgment of the Hon'ble Supreme Court dated 24.8.2021 in **Writ Petition (C) No.1480/2020 Cdr T Rajkumar vs. Union of India & Anr.** and prayed for grant of interim stay as per the directions of the Hon'ble Supreme Court in the above judgment. The learned counsel also stated that this was the reason why Contempt Application was filed by the applicant

against the respondents for filing MA 64/2021 and affidavit dated 14.07.2021 seeking vacation of interim stay granted by this Tribunal, when such a protection was granted by the Hon'ble Supreme Court.

17. The learned counsel for the applicant also submitted that his client filed the OA under class action principle since a large group of SSC officers were affected by the non-grant of Permanent Commission by the respondents. He further prayed that therefore the benefit of the Hon'ble Supreme Court judgment in **Union of India & Ors. vs. Annie Nagaraja & Ors. (supra)** should accrue to the applicant also by way of granting consideration for grant of Permanent Commission.

18. The learned counsel for the applicant then prayed for consideration of the applicant's alternative prayer, namely, continuation in service till superannuation in accordance with the **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** (To be called as "Disabilities Act 1995", hereinafter). In support of his alternative prayer, he cited the Allahabad High Court Judgment in **Union of India & Ors. vs. Mohd. Yasin Ansari in Special Appeal No.515 of 2006** dated 21.9.2006. The learned counsel for the applicant in support of the applicant's alternative prayer, also cited Hon'ble Allahabad High Court Full Bench Judgment in **Special Appeal No.515/2006 titled Union of India & Ors.**

vs. Mohd. Yasin Ansari from the compilation of judgements filed by the respondents.

19. At the end, even though the learned counsel for the applicant during a daily hearing held on 17.06.2021, agreed not to press the applicant's 3rd prayer, namely, grant of disability pension, now, at the final hearing once again prayed before the Bench to consider the 3rd prayer also for grant of relief.

20. The applicant relied upon the Judgment of the Hon'ble Supreme Court in **Lt.Col.Nitisha & Ors. vs. Union of India & Ors. Writ Petition (Civil) No.1109 of 2020** and also cited the following in his compilation:-

- (i) Order dated 24.8.2021 passed by the Hon'ble Supreme Court in the matter of Cdr T Rajkumar vs. Union of India & Ors. Writ Petition (C) No.1480 of 2020.
- (ii) Hon'ble High Court of Allahabad order dated 06.2.2006 in Mohd. Yasin vs. Union of India.

HEARING OF RESPONDENTS:

21. The learned counsel for the respondents, at the outset, submitted that the arguments of the learned counsel for the applicant today were in variance with the grounds taken in OA 74/2018. The learned counsel pointed out paragraph 6 – Grounds A, F, G, J and M in the Paper Book. The learned counsel for the respondents pointed out that by Ground D, the applicant had also sought grant of service pension for 15 years of qualifying service by condonation of 12 months of service as per provisions of Navy Pension Regulations 1964. Another

Ground F taken by the applicant was that there was a catena of judgments of the Hon'ble Supreme Court which had taken a view that equality cannot be achieved unless there are equal opportunities. Thus, the action of the respondents to selectively consider certain category of SSC officers for grant of PC and deny the same to similarly placed SSC officers shows a clear case of bias on the part of the respondents. In Ground G, the applicant stated that "the Navy Act 1957 puts no restriction to the grant of PC either gender-wise or category-wise. Hence, the respondents' action to deny consideration for Permanent Commission and consequentially pension to the applicant is in violation of principles of natural justice under Articles 14, 15 and 21 of the Constitution. Thus, in the OA, the applicant was talking about the denial of considerations for grant of PC.

22. The learned counsel for the respondents further submitted that the contention of the applicant that he did not know about the two considerations given to him for grant of Permanent Commission in 2012 and 2013, was surprising. The applicant himself vide his representation No.242/MNC dated 15.1.2018 (Annexure A-2 of the OA) accepted that he could not get selected for PC in 2012 and 2013. In his representation, the applicant requested for a third chance of consideration by granting a one-time waiver. The applicant's representation was duly examined at Integrated Head Quarters, Ministry of Defence

(Navy) and a reply was also sent vide letter No.NA/0301/52084-Y/18 dated 29.5.2018 (Annexure A-1).

23. The learned counsel for the respondents further submitted that grant of PC to SSC officers is governed by the Policy letter of IHQ MoD (Navy)/DOP/NA/0301/70/07 dated 18th June 2010. Therefore, the contention of the learned counsel for the applicant regarding non-existence of rules and regulations towards grant of PC to SSC officers was not valid.

24. The learned counsel for the respondents further submitted that there is no other directions of Hon'ble Supreme Court regarding the number of chances to be accorded to the SSC candidates for grant of PC. In the absence of any such directive, the Policy of the Respondents (dated 18.6.2010) stipulating two chances for grant of PC becomes legally valid.

25. The learned counsel for the respondents further stated that the applicant now seeks to avail two more considerations under the judgment in **Union of India vs. Annie Nagaraja (supra)** for which he was not entitled, as he had already been granted two considerations for grant of PC as per the Policy letter dated 18.6.2010.

26. With regard to the Contempt Application No.01/2021 filed by the applicant, the learned counsel for the respondents stated that MA 64/2021 seeking vacation of the interim stay was filed before the Tribunal so that the directive of

the Hon'ble Supreme Court in **Annie Nagaraja's case (supra)** can be implemented as applicable to the applicant.

27. Further, when MA 64/2021 was listed for hearing by the Tribunal for adjudication on 17.6.2021, the applicant filed a Circular (315 IG) dated 30.10.2010 issued by the respondents before the Bench. The Tribunal directed the respondents to file a reply affidavit for the Circular (IG 315 dated 30.10.2020) filed by the applicant. Accordingly, the respondents filed the affidavit dated 14.7.2021. The learned counsel for the respondents submitted that in these two actions, the respondents have not committed any contempt of the Court as alleged by the learned counsel for the applicant.

28. As far as the alternative prayer is concerned, the learned counsel for the respondents submitted that personnel of armed forces were exempted from the provisions of Disabilities Act 1995 vide notification of the **Ministry of Social Justice and Empowerment, New Delhi dated 28.3.2002**. Though a neutral position was taken by the Full Bench of the Allahabad High Court subsequently, in their judgment dated 22.5.2013 about the applicability of this 1995 Act to armed forces, the Hon'ble Supreme Court in **Sgt Chamanlal vs. Union of India & Ors. in Civil Appeal No. 8834 of 2015** decided on 25 July 2017, upheld the applicability of the **Notification of Ministry of Social Justice and Empowerment, New Delhi dated 28.3.2002** exempting the personnel of armed forces from

the purview of the Disabilities Act 1995. The learned counsel for the respondents further stated that notwithstanding the exemption, the respondents had adhered to the object of the Disabilities Act 1995. In this spirit, when the applicant became low medical category while serving in Submarine Arm, which was attributable to Military service, he was transferred to comparatively less strenuous Electrical Branch, with the same rank and salary for continuation in service as per initial terms of engagement.

29. The learned counsel for the respondents, with regard to the third prayer of the applicant, namely, the grant of disability pension stated that appropriate cause of action had not yet arisen to consider the request of the applicant along with OA 74/2018.

30. The respondents have relied upon the Judgments of the Hon'ble Supreme Court to highlight their point regarding usurpation of public occupation by way of interim order:-

- (i) State of Haryana vs. Suman Datta (2000) 10 SCC 311;
- (ii) Public Services Tribunal Bar Association vs. State of U.P. and Another (2003) 4 SCC 104.
- (iii) Judgment of Delhi High Court in Rohit Sharma vs. Union of India & Anr. Dated 25.5.2021 in WP(C) 5503/2021.
- (iv) Judgment of Delhi High Court in Wg Cdr Nidhi Badhani vs. Union of India & Ors. dated 4.6.2021 passed in WP(C) 5871/2021;

- (v) Judgment of Delhi High Court in Cdr. A. Swapna vs. Union of India & Ors. dated 22.7.2021 passed in WP(C) 5455/2021.

ANALYSIS OF THE COURT:

31. We heard the learned counsel for both parties and carefully examined the documents placed before us.

32. Now the question before us is whether the applicant, a Short Service Commissioned Officer in the Navy who had been considered for grant of Permanent Commission on two occasions in 2012 and 2013, but could not be empanelled, is he now eligible for grant of Permanent Commission under the provisions of the Hon'ble Supreme Court Judgment in the case of **Union of India & Ors. vs. Annie Nagaraja & Ors?**

33. Before we answer this question, we first take up for adjudication, the Contempt Application No. 01/2021 filed by the applicant against the respondents for filing MA 64/2021 dated 14.6.2021 as well as the affidavit dated 14.7.2021.

34. It has been observed from the records that the respondents filed an application before the Armed Forces Tribunal, Principal Bench, New Delhi, on the Administrative Side, to transfer OA No.74/2018 from the Regional Bench, Mumbai to the Armed Forces Tribunal, P.B., New Delhi. After hearing, the following order was passed by the Principal Bench :-

“Even though this application has been filed under Section 27 of the Armed Forces Tribunal Act, 2007 for transfer of the matter from the Regional Bench at Mumbai to the Principal Bench at New Delhi for urgent hearing of T.A. No.74 of 2018 on the

ground that the interim order passed is causing various administrative problems for the department, we find as cases of Regional Bench at Mumbai are being taken up through video-conferencing, it is not necessary to transfer the TA from the Regional Bench at Mumbai to this Bench.

On the contrary, the applicant may move an application for early hearing of the matter or an application for vacation of stay before the Regional Bench at Mumbai. The Registrar of the Regional Bench at Mumbai is directed to place the matter before the Chairperson through the Administrative Member of the Regional Bench, Mumbai for orders immediately on its filing.

With the aforesaid, AT 13 of 2021 stands disposed of.”

35. In compliance with the above order, the respondents filed MA 64/2021 dated 14.6.2021 at the Armed Forces Tribunal, Regional Bench, Mumbai. When the case was listed for daily hearing, through video-conferencing on 17.6.2021, the learned counsel for the applicant filed an affidavit by e-mail on the late evening of 16.6.2021, in which the learned counsel submitted the respondents' Circular (315 IG) dated 30.10.2020 for consideration by the Bench. At the hearing held on 17.6.2021, the respondents were directed by the Bench to file an affidavit to explain their position on the Circular (315 IG) dated 30.10.2020.

36. Accordingly, the respondents filed the second affidavit dated 14.7.2021 giving explanation regarding the Circular (315 IG) dated 30.10.2020. Therefore, it could be seen that filing of the MA 64/2021 dated 14.6.2021 and the affidavit dated 14.7.2021 were in compliance with the order passed by this Tribunal. As Such, it is pertinent to mention that in the interim order passed by the Armed Forces Tribunal, Regional Bench, Mumbai, vide order dated

22.11.2018, the interim stay was granted only until the next hearing date of this case. Para 9 of the said order reads as follows :-

“9. In the result, it is ordered that the Respondents shall maintain the status quo and allow the applicant to continue in service as well as to stay in the Government accommodation presently allotted to him until next hearing date of this case by this Tribunal.”

37. After the case was heard by this Tribunal on 17.6.2021, further extension of interim stay was not included in the order of AFT, Regional Bench, Mumbai, dated 17.6.2021. Therefore, we are of the opinion that there was no contempt of Court committed by the respondents by filing the affidavits. Accordingly, the Contempt Application No.01/2021 is considered not maintainable and hence declared as dismissed.

38. Then we adverted to consider the case of the applicant for grant of Permanent Commission in the light of the Hon'ble Supreme Court Judgment in the case of **Union of India & Ors. vs. Annie Nagaraja** dated 17.3.2020. The directions of the Hon'ble Supreme Court for grant of PC to SSC officers contained in the above Judgment read as follows :-

“H Directions

96. We hold and direct that:

(i) The statutory bar on the engagement or enrolment of women in the Indian Navy has been lifted to the extent envisaged in the notifications issued by the Union Government on 9 October 1991 and 6 November 1998 under Section 9(2) of the 1957 Act;

(ii) By and as a result of the policy decision of the Union Government in the Ministry of Defence dated 25 February 1999, the terms and conditions of service of SSC officers, including women in regard to the grant of PCs are governed by Regulation 203, Chapter IX, Part III of the 1963 Regulations;

(iii) The stipulation in the policy letter dated 26 September 2008 making it prospective and restricting its application to specified cadres/branches of the Indian Navy shall not be enforced;

(iv) The provisions of the implementation guidelines dated 3 December 2008, to the extent that they are made prospective and restricted to specified cadres are quashed and set aside;

(v) All SSC officers in the Education, Law and Logistics cadres who are presently in service shall be considered for the grant of PCs. The right to be considered for the grant of PCs arises from the policy letter dated 25 February 1999 read with Regulation 203 of Chapter IX Part III of the 1963 Regulations. SSC women officers in the batch of cases before the High Court and the AFT, who are presently in service shall be considered for the grant of PCs on the basis of the vacancy position as on the date of judgments of the Delhi High Court and the AFT or as it presently stands, whichever is higher;

(vi) The period of service after which women SSC officers shall be entitled to submit applications for the grant of PCs shall be the same as their male counterparts;

(vii) The applications of the serving officers for the grant of PCs shall be considered on the basis of the norms contained in Regulation 203 namely: (i) availability of vacancies in the stabilised cadre at the material time; (ii) determination of suitability; and (iii) recommendation of the Chief of the Naval Staff. Their empanelment shall be based on inter se merit evaluated on the ACRs of the officers under consideration, subject to the availability of vacancies;

(viii) SSC officers who are found suitable for the grant of PC shall be entitled to all consequential benefits including arrears of pay, promotions and retiral benefits as and when due;

(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 Ngaraja'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;

(x) All SSC women officers who were denied consideration for the grant of PCs on the ground that they were inducted prior to the issuance of the letter dated 26 September 2008 and who are not presently in service shall be deemed, as one-time measure, to have completed substantive pensionable service. Their pensionary benefits shall be computed and released on this basis. No arrears of salary shall be payable for the period after release from service.

(xi) As a one-time measure, all SSC women officers who were before the High Court and the AFT who are not granted PCs shall be deemed to have completed substantive qualifying service for the grant of pension and shall be entitled to all consequential benefits; and

(xii) Respondents two to six in the Civil Appeals arising out of Special Leave Petition (C) Nos 30791-96 of 2015, namely Commander R Prasanna, Commander Puja Chhabra, Commander Saroj Kumar, Commander Sumita Balooni and Commander E Prasanna shall be entitled, in addition to the grant of pensionary benefits, as a one-time measure, to compensation quantified at Rs.25 lakhs each."

39. In compliance with the above Judgment of the Hon'ble Supreme Court, the Central Government has issued guidelines to

the Chiefs of the three Services towards implementation of the said Judgment. The guidelines read as follows :-

**“No.NA/0426/187/Director (Navy-1)/1858/2020
Government of India
Ministry of Defence
Department of Military Affairs**

**South Block, New Delhi
Dated the 15th October 2020**

To

**The Chief of the Naval Staff
New Delhi**

IMPLEMENTATION OF HON'BLE SUPREME COURT ORDER DATED 17 MAR 2020 IN CIVIL APPEALS NOS 2182-87 OF 2020 @ SLP (C) Nos. 30791-96 of 2015 TITLED UNION OF INDIA & Ors VERSUS LT CER ANNIE NAGARAJA & Ors AND CONNECTED MATTERS THEREOF.

Sir,

I am directed to refer the above-mentioned Court order and to convey the sanction of the Competent Authority to implement the order as per directions enumerated in succeeding paragraphs.

- (i) Engagement or enrolment of women in the Indian Navy is allowed to the extent envisaged in the Notification No. HF/NL/0201 dated 9th October 1991 and No MF/MP/0417/GN dated 06th November 1998 under Section 9(2) of the Navy Act, 1957.**
- (ii) The claim of absorption in areas of operation not open for recruitment of women officers cannot be sustained being a policy decision as affirmed by the Hon'ble Supreme Court in para 97 of the said Order.**
- (iii) The terms and conditions of service of SSC officers, including women in regard to grant of PCs shall be governed by Regulation 203, Chapter IX Part III of Navy Regulations, 1963 as per MoD letter No. MP/0417/1/NHQ/425/D (N-II) dated 26 February 1999.**
- (iv) The stipulations contained in MoD Policy letter No. 12(1)/2004-D(AG) Pt III dated 26th September 2008 making it prospective and restricting its application to specified cadres/branches of the Indian Navy shall not be enforced. All SSC officers (men and women) will be considered for grant of Permanent Commission wherever applicable in accordance with the Hon'ble Supreme Court Judgment dated 17 Mar 2020 (Civil Appeals No 2182-87 of 2020 @ SLP (C) Nos.30791-96 of 2015);**
- (v) The provisions of the IHQ MoD (Navy) Implementation Guidance No. NA/0248/9 dated 03 December 2008 to the extent that they are made prospective and restricted to specified cares are quashed and set aside by the Hon'ble Supreme Court, Indian Navy, shall therefore issue fresh Implementation Guidelines in accordance with the orders of the Hon'ble Supreme Court.**

- (vi) **All SSC officers in the Education, Law and Logistics cadres who are presently in service shall be considered for the grant of PCs. The right to be considered for grant of PCs arises from the policy letter dated 26th February 1999 read with Regulation 203 of Chapter IX Part III of the 1963 Regulations. SSC women officers in the batch of cases before the High Court and the AFT, who are presently in service shall be considered for the grant of PCs on the basis of the vacancy position as on the date of judgements of the Delhi High Court and the AFT or as on the date of judgement of the Hon'ble Supreme Court, whichever is higher.**
- (vii) **The period of service after which women SSC officers shall be entitled to submit applications for the grant of PCs shall be the same as their male counterparts.**
- (viii) **The applications of the serving officers for the grant of PCs shall be considered on the basis of the norms contained in Regulation 203 namely (i) availability of vacancies in the stabilized cadre at the material time, (ii) determination of suitability; and (iii) recommendation of the Chief of the Naval Staff. Their empanelment shall be based on inter se merit evaluated on the ACRs of the officers under consideration, subject to be availability of vacancies.**
- (ix) **SSC officers who are found suitable for the grant of PC shall be entitled to all consequential benefits including arrears of pay, promotions and retiral benefits as and when due.**
- (x) **Women SSC officers of the ATC cadre in Annie Nagaraja's case (Case No.2182/2187 of 2020 @ SLP (C) Nos. 30791-96 of 2015) 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 compliance with Orders of the Hon'ble Supreme Court issued in exercise of the power conferred by Article 142 of the Constitution as a one time measure SSC officers in the ATC cadre in Annie Nagaraj's case shall be entitled to pensionary benefits SSC officers in the ATC cadre in Priya Khurana's case (Case No. 10225-10230 of 2015), 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 (vi) and (vii) above.**
- (xi) **All SSC women officers who were denied consideration for the grant of PCs on the ground that they were inducted prior to the issuance of the MoD letter No. MP/0417/1/NHQ/425/D(N-II) dated 26th September 2008 and who are not presently in service shall be deemed, as a one-time measure to have completed substantive pensionable service. Their pensionary benefits shall be computed and released on this basis. No arrears of salary shall be payable for the period after release from service.**
- (xii) **As a one-time measure, all SSC women officers who were before the High Court and the AFT who are not granted PCs shall be deemed to have completed substantive qualifying service for the grant of pension and shall be entitled to all consequential benefits; and**

- (xiii) **Respondents two to six in the Civil Appeals arising out of Special Leave Petition (C) Nos.30791-96 of 2015 namely Commander R Prasanna, Commander Puja Chhabra, Commander Saroj Kumar, Commander Sumita Balooni and Commander E Prasanna shall be entitled in addition to the grant of Pensionary benefits as a one-time measure to compensation quantified at Rs.25 lakhs each.**
2. **Navy shall issue appropriate administrative orders for implementation of the above directions.**
3. **This issues with the approval of competent authority and in concurrence of MoD/Finance vide their Dy No 05(5)/NA/2020 dated 21st September 2020.**

**Sd/-
(D.Praveen)
Director (Navy-I).”**

40. The Central Government in their guidelines letter dated 15.10.2020, cited above, vide para 2, has directed the individual services (Navy) to issue appropriate administrative orders for implementation of the above directions. However, these administrative orders issued by the Navy have not been brought on record before us either by the applicant or the respondents. Therefore, the Bench at this stage is not having a complete know of the details of the implementation process of the judgment of the Hon’ble Supreme Court in **Union of India & Ors. vs. Lt.Cdr. Annie Nagaraja (supra)** adopted by the respondents.

41. But, the important fact emerges for our consideration is that after the judgment of the Hon’ble Supreme Court in **Union of India & Ors. vs. Lt Cdr Annie Nagaraja & Ors. (supra)**, and in the light of issuance of guidelines vide letter “No.NA/0426/187/Director (Navy-1)/1858/2020 dated 15th October 2020 by the Central

Government towards the implementation of the Hon'ble Supreme Court Judgment, the applicant's case has not been examined by the respondents for final disposal. The respondents cited the interim-stay granted by this Tribunal as the reason for not finally deciding the applicant's case as follows:-

(A) In MA 64/2021 dated 14.6.2021:

"7. Though, the interim order dated 22.11.2018 of this Hon'ble Tribunal in the above matter was based on the interim order of the Honourable Supreme Court in the case of Annie Nagaraja and with the final decision and disposal of Annie Nagaraja's case by the Honourable Supreme Court, the interim order passed by this Hon'ble Tribunal in view of the issue before this Hon'ble Tribunal being res integra in the Petitions before Hon'ble Supreme Court and with the final decision by the Apex Court, since the issue in the above OA is not any more res integra, both the above OA and MA have become infructuous; in view of the propriety, it is humbly submitted that in the interest of justice, it is necessary and expedient that the above OA alongwith the IA be placed on the board of this Honourable Tribunal for expeditious hearing and both the OA and IA be dismissed and/or the Interim Order dated 22.11.2018 be vacated forthwith so as to enable the Respondents to implement the directions given by the Honourable Supreme Court in respect of the issue in issue in th above OA. The interim Order dated 22.11.2018 since not vacated makes it difficult for the Respondents to adhere to the directions of the Honourable Supreme Court."

(B) In respondents' affidavit dated 14.7.2021 :

"11. It is submitted that the Respondent in compliance of Hon'ble AFT Mumbai order dated 2.11.2018 the applicant continue in service. Therefore, the officer was allowed to continue in the service. In the letter issued by IHQ MoD(N)/DOP letter RS/1109/Court Case/OA&R 11/21 dated 11 Feb 21, regarding release of officers not granted PC, the officer's name was not included due to pending vacation of the stay order issued by Hon'ble AFT (Regional Bench), Mumbai."

42. Thus, the respondents themselves have made averments in the affidavits as well as orally during the hearings that they would decide the case of the applicant once the interim-stay granted by this Tribunal is vacated. Accordingly, we considered that the way-ahead proposed by the respondents would be appropriate and meets the ends of justice. In this way, the full details in this matter would be available when the respondents issue a departmental order, as

to how the provisions of the judgments have been applied to the applicant's case and the outcome thereof. The subject of interim-stay granted in this case has been dealt with in this order, in paras 36 and 37 above.

43. Now, as the matter pertaining to the interim-stay granted to the applicant by AFT RB(M) vide order dated 22.11.2018 has been decided by us as not in operation after the AFT, Regional Bench, Mumbai order dated 17.6.2021, wherein there was no extension of stay granted on 22.11.2018 we direct the respondents to examine the applicant's case of consideration for grant of PC in the light of the Hon'ble Supreme Court Judgment dated 17.3.2020 in **Union of India vs. Lt Cdr Annie Nagaraja & Ors.** and the Guidelines issued by the Central Government towards its implementation. The respondents are also directed to issue a Speaking Order to the applicant on the outcome of such examination, in accordance with AFT (PB) order dated 11.8.2016 in **Cdr.Priya Khurana vs. Union of India.**

44. We have also considered the rival contentions of the applicant and the respondents regarding non-existence/existence of rules/policy on the procedure towards consideration of SSC officers for grant of PC. The respondents pointed out IHQ MOD(Navy) letter No.RS/1109/Court Case/OA&R II/20 (iv) dated 18th December 2020 (Annexure

AR-4) as the policy on the procedure for grant of PC to SSC officers. We are satisfied with the existence of a framework promulgated by the respondents for grant of PC to SSC officers and we find it not necessary to interfere with the laid down procedure in the policy letter.

45. Next, we took up the matter of the Circular (315 IG) dated 30.10.2020 issued by the respondents, which contained list of officers including the name of the applicant at Serial `AK' to be considered for grant of Permanent Commission. The respondents submitted an affidavit that the applicant's name was included inadvertently in the Circular (315 IG) dated 30.10.2020 by a software system generated list of SSC officers granted with interim-stay by various Benches of the Armed Forces Tribunal. Respondents, stressed on para 2 of the Circular 315 IG) which reads as: "**2(.) SSC Officers commissioned prior 30 Nov 13 being considered for permanent commission by a Board exempt (A) Those already considered for PC from Law Naval constructor electrical engineering and Education Branch (B) ATC Sports and IT Specialisations**"

and highlighted that the applicant had already been considered twice for grant of PC in 2012 and 2013. However, the applicant demanded grant of PC as per the Circular 315 IG) wherein his name had been included. However, we have no reason on record to disbelieve and disallow the averment of the respondents made in the affidavit that the name of the applicant was included in the Circular (315 IG), inadvertently.

46. Further, during daily hearing on 17.6.2021, the Bench directed the respondents to submit the records showing number of chances for PC given to each of the officers whose names were included in the Circular 315 IG) and also details of the SSC officers who had been granted PC from the list included in the Circular 315 IG) at the time of the next hearing date. On the date of the final hearing of the case, namely 31 August 2021, the respondents placed the records before the Bench as directed earlier. The Bench observed that all the 73 officers, including the applicant, had been considered twice for grant of PC. Further, the respondents explained from the records that except the applicant, all other SSC officers in the list were not considered for grant of PC at all, as on the date of issuance of the Circular, namely, 30.10.2020. We also noted from the records that out of the 73 officers, including the applicant, 37 officers have been granted PC. The balance of 36 officers including the applicant have not been granted PC after granting two considerations to each one of them.

47. In the merit list placed before us by the respondents, we observed that the applicant's name was at Serial 45 out of 47 officers against the cut-off mark of 33 in the year 2012 and at 27 out of 28 officers against the cut-off mark of 15 in the year 2013. These facts are in accordance with the respondents' averment in their reply affidavit dated 09.11.2018 and filed in the Registry on 22.11.2018.

48. At this juncture, we also would like to consider the contention of the applicant that his OA was filed as a Class Action case and therefore should be granted PC in accordance with the judgement of Hon'ble Supreme Court in **Union of India & Ors. vs. Lt. Cdr Annie Nagaraja & Ors. (supra)**. However, after the perusal of the records, we noted that the applicant had been granted two considerations for grant of PC in 2012 and 2013, well before the judgment dated 17.3.2020 of Hon'ble Supreme Court in **Union of India & Ors. vs. Lt. Cdr Annie Nagaraja & Ors. (supra)**. Further, the list of 72 other SSC officers in the Circular (315 IG) other than the applicant, were not considered at all for grant of PC. As a result, it is evident that the legal injuries sustained by the other 72 SSC officers and the applicant are not the same. Therefore, we hold that the contention of the applicant that OA 74/2018 was filed under the principle of Class Action Case claiming the benefit of Hon'ble Supreme Court's judgment dated 17.3.2020 is not maintainable.

49. Then we adverted to consider the alternative prayer of the applicant to retain him in service till superannuation in accordance with the provisions of the Disabilities Act 1995. The applicant cited the Judgment dated 21.9.2006 of Hon'ble High Court of Allahabad in **Union of India & Ors. vs. Mohd. Yasin Ansari** against the contention of the respondents that the Armed Forces have been exempted from the provisions of

the Disabilities Act 1995. The respondents cited two judgments, first being the Larger Bench order dated 22.5.2013 of the Hon'ble High Court of Allahabad modifying the earlier judgment and holding a neutral position towards the applicability of the Disabilities Act 1995 for the Armed Forces personnel. The second judgment cited by the respondents is that of Hon'ble Supreme Court vide Judgment dated 25th July, 2017 in **Sgt. Chaman Lal vs. Union of India & Ors.**, which upheld the validity of the Notification of the Ministry of Social Justice & Empowerment, New Delhi order dated 28th March, 2002 exempting the Armed Forces from the purview of the Disabilities Act 1995. Therefore, the non-applicability of the Disabilities Act 1995 to Armed Forces has been legally well settled.

50. We also took cognizance of the submission of the respondents that notwithstanding the non-applicability of the Disabilities Act 1995 to the applicant, when the applicant became low medical category while serving in the Submarine Arm, the respondents transferred the applicant out of the Submarine Arm to a comparatively less strenuous general service electrical branch in the same rank, salary and other benefits. The applicant was also given two promotions to the rank of Lt Cdr and Cdr while under low medical category, thereby meeting the object of the Disabilities Act 1995. As a result, we are of the considered opinion that the alternative

prayer of the applicant to retain him in service till the superannuation is not maintainable and as a result, rejected.

51. And then, we considered the applicant's third prayer for grant of disability pension. Though during the daily hearings of the case, the learned counsel for the applicant submitted that he was not pressing for the third prayer; but, on the day of the final hearing, the learned counsel prayed to consider the third prayer in the interest of his client. However, the respondents in the reply affidavit stated that the cause of action had not yet arisen for grant of disability pension since the applicant was still in service. We are conscious of the fact that for consideration of the disability pension, a Release Medical Board has to be conducted to assess the disabilities along with percentage of disability, duration of disability and its attributability or non-attributability to military service. Since the applicant is still in service, the above medical parameters have not yet been assessed and also not brought before the Bench for our consideration. Hence, we agree with the respondents' contention that the cause of action to consider grant of disability pension to the applicant has not yet arisen.

FINDINGS OF THE COURT:

52. Accordingly, the summary of the decisions of the Bench in this case are as follows:-

(A) MA 64/2021 and the affidavits dated 14.6.2021 and 14.7.2021 were filed by the respondents in compliance with the orders passed by this Tribunal. Therefore, the Contempt Petition CA 01/2021 filed by the applicant against the respondents for filing MA 64/2021 and affidavit dated 14.7.2021 praying for vacation of the interim-stay has been declared as not maintainable and dismissed.

(B) The applicant had been considered for grant of PC in 2012 and 2013 and not granted as being low in the inter se merit list against the available number of vacancies. Whereas, the other officers who went before the Hon'ble Supreme Court were not at all considered for grant of PC. Therefore, the applicant's contention during the final hearing that OA 74/2018 has been filed as a Class Action Case claiming the benefits of Hon'ble Supreme Court's Judgment in **Union of India & Ors. vs. Lt.Cdr Annie Nagaraja & Ors. (supra)** has been held as not maintainable at this stage.

(C) Since the applicant had filed OA 74/2018 under Section 14 of the AFT Act 2007 as a service matter before the case of Lt Cdr Annie Nagaraja's case was considered by the Hon'ble Supreme Court, the respondents are directed to examine the case, in the

light of the Judgment dated 17.3.2020 of the Hon'ble Supreme Court in **Union of India & Ors. vs. Lt.Cdr Annie Nagaraja & Ors. (supra)** and the Central Government Guidelines dated 15th October 2020 issued towards implementation of the above judgment. Further, we have held that the interim-stay granted by AFT, Regional Bench, Mumbai vide order dated 22.11.2018 till the next date of hearing is no longer in operation after the daily hearing held on 17.06.2021, which has been cited as the reason by the respondents as the reason for not finally deciding the applicant's case. We further direct the respondents to issue a Speaking Order to the applicant on the outcome of the examination, within six weeks from the date of receipt of a copy of this order. The applicant, if still aggrieved after the Speaking Order, has the liberty to approach this Tribunal seeking remedy.

(D) The notification dated 28.03.2002 of the Government exempting Armed Forces from the purview of the provisions of the Disabilities Act 1995 has been upheld by Hon'ble Supreme Court vide its order dated 25th July, 2017 in **Sgt Chamanlal vs. Union of India**. Therefore, the alternative prayer of the applicant praying for him to be retained in service till the superannuation

under the provisions of the Disabilities Act 1995 has been held as not maintainable and as a result, rejected.

(E) The third prayer of the applicant, namely, grant of disability pension has been held as premature to be considered along with this application, as the cause of action for the applicant's grievance has not yet arisen and hence, disallowed.

53. Accordingly, the Original Application, OA 74/2018 is partially allowed, in above terms.

54. No order as to costs.

Pronounced on this the 17th day of September 2021.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[VICE ADMIRAL P. MURUGESAN]
MEMBER (A)**

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