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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SURYA KANT; CJI., UJJAL BHUYAN; J., NONGMEIKAPAM KOTISWAR SINGH; J.
Civil Appeal No. / 2026 (Arising out of Diary No. 28412 / 2024) March 24, 2026
Wg. Cdr. Sucheta EDN versus Union of India and others

Short Service Commission — Grant of Permanent Commission (PC) — Indian Air Force — Retrospective evaluation based on Annual Confidential Reports (ACRs) — Validity of Minimum Performance Criteria — Pregnancy and Medical Category - The Supreme Court has held that evaluating Short Service Commission Officers (SSCOs) for Permanent Commission based on ACRs authored during a period when they were ineligible for PC is inherently unfair and arbitrary - Supreme Court held that the evaluative lens applied by assessing officers is conditioned by the available career trajectory; thus, reports intended only to assess suitability for short-term extension cannot be retrospectively treated as reliable indicators for long-term retention or advanced leadership potential - While declining reinstatement for released officers due to operational effectiveness, Supreme Court directed that SSCOs considered in the 2019–2021 Boards be deemed to have completed 20 years of substantive qualifying service for pensionary benefits as a one-time measure - For future Boards, the Air Force must disclose vacancies and detailed evaluation criteria prior to the selection process.

Key Findings - i. Structural Distortion in Evaluation: ACRs authored in an environment where SSCOs had no future in the service are "structurally distorted" and cannot be deployed to their disadvantage when they are suddenly placed in a competitive fray for PC; ii. Arbitrary Implementation of Policy: The hurried implementation of Human Resource Policy (HRP) 01/2019, which introduced new criteria like "Categorisation" and "Mandatory In-Service Courses" (MISCs) without providing a reasonable gestation period, deprived officers of a meaningful opportunity to meet eligibility requirements; iii. Pregnancy and Gender Equality: The failure to accommodate officers who lost a round of consideration due to a temporary lowering of medical category on account of pregnancy amounts to arbitrariness - The choice to become a parent cannot be equated with an unwillingness to pursue professional advancement. [Relied on *Yogendra Kumar Singh v. Union of India and Ors* (Civil Appeal No. 14681/2024); *AU Tayyaba v. Union of India* (2023) 5 SCC 688; *Lt. Col. Nitisha & Ors v. Union of India & Ors* (2021) 15 SCC 125; Paras 14-17, 26-32, 35-39]

with, Civil Appeal No. / 2026, (Arising out of Special Leave Petition (Civil) No. 16548/2024),
Civil Appeal No. / 2026, (Arising out of Diary No. 28420 / 2024), Civil Appeal No.
/ 2026, (Arising out of Diary No. 28428 / 2024), Civil Appeal No. / 2026,
(Arising out of Diary No. 28432 / 2024), Civil Appeal No. / 2026, (Arising out of Diary No.
47092 / 2024)

For Petitioner(s) Dr.(Mrs.) Menka Guruswamy, Sr. Adv. Ms. Garima Sachdeva, Adv. Mr. Hansdeep Singh, Adv. Ms. Shaswati Parhi, Adv. Mr. Bhumika Yadav, Adv. Ms. Divyanshi Maurya, Adv. Mr. Anmol Gupta, Adv. Mr. Rohit Kumar, AOR Mr. Atharva Khanapurkar, Adv. Mr. Lalit Nagar, Adv. Mr. Amrish Ranjan Pandey, Adv. Mr. Sudhanshu, Adv. Mr. Naveen Kumar, Adv. Ms. Pooja Dhar, AOR Ms. S. Ambica, Adv. Mr. Atul Kumar, Adv. Mr. Abhimanyu Sharma, Adv. Ms. Deepali Atreja, Adv. Mr. Arun Gaur, Adv. Mr. Tarun Gupta, AOR Mr. Rakesh Kumar, AOR Mr. Huzefa A Ahmadi, Sr. Adv. Mr. Rahul Krishna, AOR Ms. Rashmi Singh, Adv. Mr. Alekh Apoorva, Adv. Mr. Deva Vrat Anand, Adv. Mr. Rajesh Kumar, Adv.

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Mr. Akshay Amritanshu, Adv. Mr. Madhav Sinhal, Adv. Mr. Chandra Prakash, Adv. Mr. Madhav Singhal, Adv. Mr. Jagdish Chandra, Adv. Mr. Bhuvan Kapoor, Adv. Mr. Digvijay Dham, Adv. Mr. Sahil Kalia, Adv. Mr. Siddharth Gill, Adv. Mr. Chandan Kumar, Adv. Mr. Sahil Chandra, AOR Mr. Akshay Bhandari, AOR Dr. Menaka Guruswamy, Sr. Adv. Ms. Astha Sharma, AOR Ms. Anju Thomas, Adv. Mr. Sanjeev Kaushik, Adv. Mr. Simranjeet Singh Rekhi, Adv. Ms. Shaswati Parhi, Adv. Ms. Bhumika Yadav, Adv. Mr. Arjun Moha, Adv. Mr. Anmol Gupta, Adv.

J U D G M E N T

SURYA KANT, CJI.

Delay condoned. Leave granted.

2. Applications for intervention are allowed, and the Applicants therein are directed to be impleaded as Intervenors.

3. The instant batch of appeals has been instituted by 6 Short Service Commission Women Officers (**SSCWOs**) in the Indian Air Force, seeking the grant of Permanent Commission (**PC**) after being denied such relief through successive selection processes. At stake is the manner in which performance, eligibility, and merit were assessed for all Short Service Commission Officers (**SSCOs**) after years of service on a time-bound commission.

4. The Appellant-SSCWOs approached the Armed Forces Tribunal, Principal Bench at New Delhi (**AFT**) as well as the High Court of Delhi (**High Court**), seeking redressal after being denied the grant of PC on three separate occasions. The AFT, *vide* its judgement dated 26.09.2023, and the High Court, *vide* its judgement dated 19.02.2024 (**Impugned Judgements**), dismissed their Original Applications (**OAs**) and Writ Petition on the ground that the Appellants either failed to meet the Minimum Performance Criteria or that they were placed low in the order of comparative merit.

A. FACTS

5. The catalyst giving rise to these cases is an extended policy embargo on the grant of PC to all SSCOs commissioned after 25.05.2006 in the Air Force. This embargo was lifted suddenly, in the final years of their tenure, so that all the SSCOs commissioned after 25.05.2006 could be afforded an opportunity to compete for PC under a newly-introduced framework. In order to appreciate the issues that fall for our determination, it is necessary to trace the relevant factual and institutional developments leading to the initiation of these appeals.

5.1. The Air Force is broadly organised into two principal branches, i.e. the Flying Branch and the Ground Duty Branch, each comprising multiple specialised streams. As in the Army and the Navy, commissioned service in the Air Force is of two kinds, namely, PC and Short Service Commission (**SSC**). The SSC Scheme was conceived as a short-term mechanism to induct SSCOs for a limited tenure, primarily to address officer shortages at the junior levels. The first SSC entry was introduced in 1985 only for men in the Technical Ground Duty Branch [Aeronautical Engineering (**AE**)], followed by the induction of male SSCOs into 6 streams of the Flying Branch in 1990.

5.2. The Government of India decided, in 1992, to open certain branches/streams of the Air Force to women on an experimental basis, in order to “*assess their effective utilisation*”. Women were accordingly inducted into the Air Force for the first time in 1993, initially for a tenure of 5 years. During this period, male SSCOs were also inducted into additional Ground Duty branches/streams. Under the prevailing induction schemes, such officers were to be considered for the grant of PC upon completion of their initial tenure. Initially, SSCWOs were commissioned only in the Administration, Education, and AE

branches/streams, but in subsequent years, SSC entry for women was extended to all streams of the Flying Branch, except for the Fighter stream, which was opened to women only in 2015.

5.3. In 1998, the tenure of SSCWOs was extended by an additional 5 years, thereby deferring their pending consideration for the grant of PC. Prior to 2001, SSC Schemes were governed by differing terms and conditions, depending on the respective branch/stream, resulting in tenure structures such as '5 + 6 + 4' years and '6 + 5 + 4' years.

5.4. Following a comprehensive review of the prevailing SSC Schemes, these disparate schemes were consolidated under a 'Rationalised SSC Scheme with Uniform Terms and Conditions of Service' (**Rationalised Scheme**), which came to be implemented with effect from 23.04.2001. The Rationalised Scheme stipulated a term of '10 + 5' years for SSCOs in both the Flying and Ground Duty Branches. This framework was subsequently amended in 2005 and 2007, whereby the tenure for SSCOs in the Ground Duty Branch was revised to '10 + 4' years, while that for the Flying Branch was fixed at 14 years, with no provision for further extension. This Rationalised Scheme, as amended, continues to govern SSC tenure.

5.5. In the aftermath of the Kargil War, the Government of India constituted the Ajay Vikram Singh Committee to undertake cadre restructuring of the Armed Forces. As part of a cadre management exercise, the Air Force issued Human Resource Policy (**HRP**) 21/2006 dated 25.05.2006, which purported to suspend the grant of PC to all SSCOs inducted after that date, irrespective of gender. Prior to this policy, only male SSCOs had been offered and considered eligible for PC.

5.6. Meanwhile, several SSCWOs of the Army and the Air Force approached the High Court seeking the grant of PC. The SSCWOs in the Air Force contended that they were not considered for PC, notwithstanding that the induction advertisements indicated that PC would be offered to willing officers subject to suitability. Furthermore, their male counterparts had been considered for the same. Subsequently, by its judgement dated 12.03.2010 in **Babita Puniya v. Secretary**,¹ the High Court ruled that SSCWOs in the Air Force could not be denied PC on the ground that their induction was merely experimental. It was accordingly held that SSCWOs who had opted for PC but were instead granted extension were entitled to PC at par with their male counterparts. However, these benefits were confined to SSCWOs recruited prior to 25.05.2006.

5.7. In order to implement the judgement dated 12.03.2010 and to lay down guidelines governing the grant of PC and extension to SSCWOs, the Air Force formulated HRP 04/2010. This policy prescribed certain Qualitative Requirements (**QRs**) as eligibility criteria in order to be considered for PC by the Board. These QRs included: (i) A minimum average grading of 6.5 on the Annual Confidential Reports (**ACRs**) [also known as, Appraisal Reports (**ARs**)] for the preceding 3 years; (ii) A minimum grading of 6 in the ACRs under consideration in each of the professional and behavioural factors listed; and (iii) Medical category of A2G2(P/T)/A4G2(P/T) or above. Pursuant to this framework, in 2010, PC was granted to 42 willing SSCWOs, who satisfied the prescribed criteria.

5.8. Thereafter, 13 male SSCOs of the Air Force approached the AFT, aggrieved by the continued suspension of the grant of PC, despite their women counterparts being considered for the same pursuant to the judgement dated 12.03.2010. The AFT delivered its decision dated 22.02.2011 in **Sqn. Ldr. Lalit Kumar Tandon and Ors. v. Union of**

¹ 2010 SCC OnLine Del 1116

India and Ors.,² allowing the petitions and holding that all SSCOs commissioned prior to 25.05.2006 were entitled to equal consideration for PC.

5.9. With a view to implement the aforesaid decision, as well as to ensure continued compliance with the judgement dated 12.03.2010, the Air Force issued HRP 03/2011, providing for consideration for PC to all SSCOs of the Ground Duty Branch commissioned prior to 25.05.2006, irrespective of gender. HRP 03/2011 stipulated that the grant of PC would depend on: (i) Written willingness of the officer to be considered for the grant of PC; (ii) Suitability on the basis of QRs, medical category, and disciplinary and vigilance clearances; (iii) Availability of vacancies in their respective branches; (iv) Position in merit; and (v) The decision of the Board of Officers (**BoO**) constituted for this purpose. The QRs laid down were similar to those of the earlier stated policy, with some variations owing to the date of induction and the course governing induction. Pursuant to HRP 03/2011, between 2011 and 2015, 71 male SSCOs and 294 SSCWOs were granted PC.

5.10. The Appellant-SSCWOs were commissioned into various branches/streams of the Air Force in 2007. Merely a year later, by a letter dated 26.09.2008, the Ministry of Defence conveyed the President's sanction to offer PC prospectively to the SSCWOs to be inducted in Judge Advocate General (**JAG**) Department and Army Education Corps (**AEC**) of the Army and their corresponding branch/cadre in the Navy and Air Force, Accounts Branch of the Air Force, and Naval Constructor of the Navy, in addition to the existing provisions for grant of PC to male SSCOs.

5.11. This was followed by a communication dated 11.11.2011 issued by the Ministry of Defence, regarding the policy on induction and employment of women in the Armed Forces. It conveyed the sanction for consideration of SSCWOs for the grant of PC, along with the male SSCOs, in the branches as specified in the letter dated 26.09.2008. In addition, in the Air Force, SSCWOs would be eligible for consideration for PC in the Technical, Administration, Logistics, and Meteorology branches. At the same time, it was emphasised that uniform QRs would apply to male and female SSCOs, and that the grant of PC would remain subject to service requirements, vacancies, suitability, merit, and willingness as decided by each service. Notwithstanding the above-mentioned communications, the Air Force stood firm on HRP 21/2006 and declined to consider any SSCOs commissioned after 25.05.2006 for the grant of PC.

5.12. However, a significant shift occurred in 2018 and 2019, when the Air Force undertook a further revision of its PC policy. By virtue of HRP 06/2018 and HRP 01/2019, all SSCOs of the Flying Branch and the Ground Duty Branch (excluding medical and dental officers), respectively, were entitled to be considered for PC. HRP 01/2019, in particular, was introduced with a view to address the aspirations of SSCOs commissioned after 25.05.2006 in all the Ground Duty branches, who had earlier been excluded due to the suspension effected by HRP 21/2006.

5.13. It was specified that all serving SSCOs, commissioned after 25.05.2006, would be eligible for consideration for the grant of PC in the last three years of their service, subject to the conditions laid down in HRP 01/2019. The policy expressly clarified that mere eligibility for consideration would not automatically translate into the grant of PC.

5.14. Under this framework, each SSCO was to be considered thrice, upon completion of their 11th, 12th, and 13th years of SSC tenure. Such consideration was subject to: (i) Service requirement; (ii) Cadre vacancy; (iii) Willingness of the SSCO; (iv) Suitability of the SSCO on the basis of the QRs/medical category laid down in this HRP; (v) Position of the SSCO

² 2011 SCCOnLine AFT 191

in the order of merit; (vi) Recommendation by the BoO duly constituted for the purpose; and (vii) Grant of approval by the Competent Authority. Appendix A of this policy laid down the 'Minimum Performance Criteria for Consideration,' also known as the QRs. It is elaborated as follows:

“2. Assessment Criteria

(a) **No. of ARs**: ARs covering a period of last five years preceding the BoO would be considered for grant of PC.

(b) **Minimum AR Aggregate**: SSCOs should have minimum average of 7.00 in the last five years available ARs (AR avg is not to be rounded off).

(c) **Mandatory Qualities**: A minimum grading of 6.00 (in ARs under consideration) in Mandatory Qualities (MQs) in the ARs under consideration as listed in AFO 06 of 2012 on “Appraisal Report: IAF Officers” for Sqn. Ldrs. and Wg. Cdrs. and as amended from time to time. In case, the grading is below 6.00 in any MQ, the officer would become ineligible for consideration for grant of PC.

3. **Mandatory In-Service Courses (MISC)**: The officer should have scored a minimum average CGPA of 6.00 in the applicable MISCs (BASCO, BPKC, ISCO, & APKC). 4. **Categorisation**: For being considered by the BoO, the officer should hold a valid Category of at least Cat ‘C’.

5. **Medical Category**: Current medical category at the time of consideration required for grant of PC would be as follows: -

(a) A4G2(P/T) or higher.

(b) A serving SSCO in temporary low medical category below A4D2, who in all likelihood is expected to regain his/her medical category in accordance with the opinion of DGMS (Air), would be considered in the BoO. In such a case, if he/she is selected for grant of PC, he/she would require to upgrade his/her medical category to A4G2(P/T) or higher for grant of PC by the end of SSC tenure. In case of failure to regain requisite medical category by the end of SSC tenure, the officer would be released from service on completion of the SSC tenure.”

[Sic]

5.15. Further, Appendix C prescribed the method of preparation of the merit list, allocating marks primarily on the basis of AR aggregates, with limited weightage for in-service courses, categorisation, and honours. The marks were apportioned in the following manner:

<u>S. No.</u>	<u>Factors</u>	<u>Max Marks</u>
(a)	AR Aggregate {5 ARs x 18 (9+9)}	90.00
(b)	CGPA of Mandatory In-Service Courses (BASCO, BPKC, ISCO, & APKC)	2.00
(c)	Categorisation/Professional Courses	2.00
(d)	Decorations/Awards/Commendations	3.00
	Total	97”

5.16. Pursuant to the release of this policy, a Board was convened in March 2019. Although all the Appellant-SSCWOs submitted their willingness to be considered for PC, some of them were not considered owing to their failure to meet the Minimum Performance Criteria. Thereafter, upon improving their eligibility parameters, they were considered in the 2020 and 2021 Boards but were not granted PC due to the limited number of vacancies and lower comparative merit. They were subsequently released from service following the declaration of the results of the 2021 Board on 24.05.2021.

5.17. The aggrieved Appellants in Diary Nos. 28412, 28420, 28428, 28432, and 47092 of 2024 filed their Original Applications (OAs) before the AFT, seeking, *inter alia*: (i) to set

aside HRP 01/2019 to the extent of its alleged arbitrariness; (ii) to direct the Respondents to grant PC to the Applicants; and (iii) to direct the Respondents to produce signals/documents related to the declassification of vacancies with respect to the SSCOs for the Boards of 2019, 2020, and 2021. Besides this, they sought an *interim* stay on their release from service. However, such *interim* relief was denied by the AFT on 04.06.2021 and subsequently by the High Court on 11.06.2021.

5.18. The AFT, *vide* its Impugned Judgement dated 26.09.2023, dismissed the OAs as bereft of any merit, holding that the Appellants, having participated in the process with knowledge of the governing HRP, could not subsequently challenge its terms. Furthermore, the Appellants were denied PC on account of their failure to meet the Minimum Performance Criteria or low placement in the order of comparative merit.

5.19. The remaining Appellant, i.e. the Petitioner in SLP (C) No. 16548/2024, was commissioned in January 2007 and was proposed to be released from service on 01.01.2021, i.e. prior to the Selection Board of 2021. She was not considered by the 2019 Board as she did not meet the Minimum Performance Criteria and was not granted PC in the 2020 Board owing to *inter se* low merit. Challenging the fairness of HRP 01/2019 and submitting that her right to be considered thrice under the policy would be taken away if she were discharged in January 2021, she approached the AFT. The AFT, on 16.03.2021, declined to interfere with the policy merely because it applied harshly to the Appellant, but permitted her to continue in service till she was considered a third time by the Selection Board. When the Appellant was not granted PC in the 2021 Board, she approached the High Court by way of a Writ Petition, challenging the AFT's order dated 16.03.2021 and claiming that she ought to have been considered as per the eligibility conditions laid down in HRP 21/2006. *Vide* the Impugned Judgement dated 19.02.2024, the High Court has dismissed her challenge on the ground that the assessment undertaken by the Boards in 2020 and 2021 had not been assailed.

5.20. What emerges is that some of the Appellant-SSCWOs before us have been held ineligible for PC owing to their failure to meet the Minimum Performance Criteria in at least one Board and being classified as low in comparative merit in successive Boards, while others have been denied PC because of their low comparative merit in all three Boards. It is against this factual and procedural backdrop that the instant appeals have been instituted.

5.21. It may also be noticed that three SSCWOs who were commissioned in 2011, have assailed the Boards conducted in 2023, 2024, and 2025, owing to which they were not granted PC. Such a challenge has been made, at this stage, by filing applications for impleadment and directions in the Civil Appeal arising out of Diary No. 28412/2024. This Court has, during the pendency of these applications, passed interlocutory orders permitting the Intervenor-SSCWOs to continue in service.

B. CONTENTIONS OF THE PARTIES

6. Dr. Menaka Guruswamy, learned Senior Counsel and Ms. Garima Sachdeva, learned Counsel, appearing on behalf of the Appellants, assailed the Impugned Judgements and mounted a substantive challenge to the fairness and method of implementation of HRP 01/2019. They advanced the following submissions:

(a) HRP 01/2019 was implemented impulsively, in undue haste, depriving several meritorious and otherwise qualified SSCOs of a reasonable gestation period to prepare for the Board and to meet the newly-prescribed Minimum Performance Criteria. Although the policy contemplated that the Board would ordinarily be convened in May each year,

the first Board in 2019 was held in March, barely one and a half months after the policy came into force. This stood in stark contrast to the extended transition period afforded under the revised Promotion Policy from Wing Commander to Group Captain, which was implemented only after sufficient advance notice.

(b) Furthermore, the Appellant in Diary No. 28412/2024 and the Intervenor in I.A. No. 127999/2025 were on maternity leave immediately prior to or during the 2019 Board proceedings. Their most recent ACRs, therefore, reflected comparatively lower gradings, which did not accurately capture their overall competence or performance across their service tenure.

(c) At the time of the Appellants' induction, the grant of PC to SSCOs had been suspended across the board. This suspension remained operative until 2019, by which time the Appellants had completed a substantial portion of their tenure. Their ACRs were thus authored in an environment where it was presumed that they would be released upon completion of 14 years of service, without any prospect of long-term retention. Such grading was necessarily casual and not oriented towards evaluating suitability for career progression. This phenomenon mirrored the concerns recognised by this Court in **Lt. Co. Nitisha & Ors v. Union of India & Ors.**³, where officers assessed without any perceived career horizon were held to have been disadvantaged in subsequent selection processes. Moreover, the very same set of ACRs that had been utilised in the 9th year of service to determine suitability for extension was later reused in the 11th, 12th, and 13th years to assess suitability for PC, despite having been recorded without any intention of evaluating long-term potential. Finally, the Appellants were never informed of their ACR gradings or relative merit position.

(d) The Air Force introduced a new policy in 2017 whereby Initiating Officers (**IOs**) were required to separately justify any grading of 7.5 or above in the ACRs, at least 3 months in advance. This requirement operated as a structural impediment for SSCOs who were, at that time, still ineligible for PC and therefore, unlikely to be nominated for such enhanced gradings. In contrast, officers with prospects of career advancement continued to receive higher scores.

(e) Women could be commissioned in the Air Force only through the SSC Scheme, whereas men could enter either through the SSC Scheme or the PC Scheme, which effectively provided a near-direct pathway to PC. Male SSCOs were also afforded an opportunity, after 10 years of service, to convert to the PC Scheme, whereas SSCWOs could become PC officers only upon selection through the PC Board. Officers inducted through the PC Scheme were eligible to appear before their first promotion board for the rank of Group Captain after 15 years of service and, even if not selected, could attain the select rank of Group Captain (Time Scale) in their 26th year without further scrutiny. Such officers were also not required to satisfy the QRs prescribed under HRP 01/2019. Consequently, higher ACR gradings were naturally reserved for officers with avenues for longterm career progression.

(f) Categorisation courses, introduced from 2008 onwards in various branches/streams, were voluntary courses undertaken to enhance professional competence. The category grading obtained through such courses remained valid only for one year. Further, eligibility for higher-level courses depended upon the existing grading. For instance, to avail a Categorisation A course (the highest course), the respective SSCO had to have successfully completed a Categorisation B course. HRP 01/2019 introduced,

³ (2021) 15 SCC 125.

for the first time, the grades obtained in these courses as a Minimum Performance Criteria and as an Evaluation Criterion for the grant of PC. SSCOs lacking the minimum Category C qualification were rendered ineligible for consideration, while those possessing a valid Categorisation were assigned marks depending upon the level attained. Due to the abrupt implementation of this policy, the Appellants were unable to obtain the requisite grades in these courses in time and were consequently declared ineligible. Even after obtaining the minimum Categorisation, there was insufficient time to improve it further before the next Board, particularly since such courses were conducted only twice a year.

(g) Similarly, the Respondents introduced, for the first time, as an eligibility criterion for consideration for PC, a minimum CGPA of 6 in the Mandatory In-Service Courses (**MISCs**). These courses had been completed by the Appellants during the early years of their service, without any indication that such scores would later determine their eligibility for PC. The retrospective reliance on such scores thus operated unfairly against the Appellants.

(h) The Respondents failed to disclose the number of vacancies against which the SSCOs were being considered prior to the commencement of the respective Boards. Such vacancies were declassified only at the stage of declaring the results. During the Boards held in 2019, 2020, and 2021, the number of available vacancies was extremely limited. However, in 2025, as many as 115 SSCOs were granted PC, including some who allegedly did not possess valid Categorisation, indicating inconsistency in approach to the detriment of the Appellants.

(i) An SSCO released from service receives substantially fewer pensionary and terminal benefits than an Airman. An Airman becomes eligible for pension upon completion of 15 years of service and may even opt for discharge with pension after 12 years at certain ranks. This disparity compounds the hardship faced by the SSCOs denied PC.

7. Per contra, Ms. Aishwarya Bhati, learned Additional Solicitor General of India, appearing on behalf of the Respondents, supported the findings returned by the AFT and the High Court as well as the policy regime governing the consideration for PC, and forcefully urged that:

(a) The prescription of Minimum Performance Criteria for the grant of PC falls squarely within the administrative domain of the Air Force, as an employer, tasked with maintaining operational readiness and organisational efficiency. The Air Force is entitled to revise eligibility conditions in response to evolving organisational requirements. Thus, judicial review of such policies and frameworks must remain confined to examining whether a policy is implemented lawfully and in a reasonable manner. The Courts cannot substitute their views for those of the Executive in matters concerning the country's Armed Forces and their combat readiness.

(b) By seeking sympathetic consideration on the ground of being on maternity leave during one of the Boards, some of the Appellants and Intervenors were attempting to raise new issues before this Court, which were not agitated previously before the AFT. New factual grounds, not previously urged before the AFT, cannot be introduced in appellate proceedings for the first time.

(c) The Air Force's policies have always been gender-neutral, as all officers have been treated equally in terms of postings, promotions, and pay. From 2010 to 2023, 631 SSCOs were granted PC, of which 441 were SSCWOs, signifying that gender has never been the determining factor when granting PC. Furthermore, unlike the Army, where SSCWOs were

historically ineligible for PC, the Air Force suspended the grant of PC to all SSCOs commissioned after 25.05.2006, irrespective of gender.

(d) Furthermore, successive HRPs governing the grant of PC namely, HRP 04/2004, HRP 04/2010, and HRP 03/2011, consistently prescribed minimum ACR averages as eligibility criteria for consideration for PC or extension. For example, HRP 04/2004 and HRP 04/2010 required a minimum average ACR grading of 6.5 over the preceding three years, along with a minimum score of 6 in each professional and behavioural factor. HRP 03/2011 raised the minimum average to 7 while retaining the other requirements. These standards applied equally to the Appellant-SSCWs when being considered for extension of service. HRP 01/2019 carried forward substantially similar ACR requirements. Since these criteria remained consistent across policies, all SSCOs were fully aware of them and could not claim prejudice from the sudden introduction of new standards.

(e) Officers inducted through the PC Scheme and those inducted through the SSC Scheme could not be treated as similarly situated, as they are governed by fundamentally different terms and conditions of service. PC officers are inducted with the objective of serving until superannuation, whereas SSCOs are inducted for a limited tenure to maintain a youthful and combat-ready force, particularly given the demanding operational conditions in which Air Force personnel function.

(f) Pursuant to the recommendations of the Ajay Vikram Singh Committee, the Air Force has been endeavouring to increase intake through the SSC Scheme, while reducing the strength of the permanent cadre. This policy ensures a lower average age profile in the Air Force and improved promotional prospects for officers in the regular cadre. At present, the bulk of shortages exists in the nonselect ranks. Increasing the number of officers granted PC, despite a negligible deficiency in the select ranks, would adversely affect the morale, aspirations, and career progression of other officers.

(g) The Categorisation scheme, introduced in 1989 initially for one branch and later extended across most streams, aims to enhance professional competence, standardise evaluation of expertise, and distinguish officers based on professional calibre. It has long been used as a criterion to select officers for key field appointments, diplomatic assignments, postings abroad, as well as crossstreaming of officers in the AE branch.

(h) Along the same lines, the MISCs were introduced in 2008 along with a CGPA-based system of grading to encourage sustained performance during the formative stages of an officer's career. The CGPA was intended to serve as an objective numerical measure of merit in addition to ACRs for evaluating officers at various stages in their careers.

(i) In an organization such as the Air Force, where competition is stiff and vacancies have always been limited, granting PC to the Appellants and the Interveners, without regard to their merit position and the available vacancies, would unfairly disadvantage other deserving SSCOs who ranked higher in merit but did not seek to challenge the results of the Boards. Merit-based selection is essential to maintain fairness, discipline, and organizational integrity.

C. ISSUES

8. Viewed in the context of the regulatory regime applicable to the Air Force and the submissions advanced on either side, the questions that fall for our adjudication in these appeals may be formulated as follows:

i. Whether the ACRs of the Appellants were graded casually without adjudging their suitability for promotion and thus, adversely impacted their *inter se* merit?

- ii. Whether the prescription of Minimum Performance Criteria based on CGPA in MISCs and Categorisation arbitrarily excluded SSCOs from consideration for PC?
- iii. Whether the assessment undertaken in HRP 01/2019 is vitiated for any other reasons?

D. ANALYSIS

D.1 Issue No. 1: Alleged Casual Grading of the Appellants' ACRs

9. This issue pertains to the manner in which the Appellants' ACRs were finalized and the extent to which those assessments affected their consideration for the grant of PC. Since ACRs constitute the principal material on the basis of which suitability and *inter se* merit are determined, it becomes necessary to examine whether the ACRs relied upon by the BoO faithfully reflected the Appellants' professional performance and long-term potential within the Air Force.

10. To this end, the Appellants contend that the ACRs, forming the foundation of their assessment for the grant of PC, do not represent a fair or reliable measure of their suitability for career advancement or long-term retention. According to them, these ACRs were authored in a policy environment in which they were never eligible for PC and were expected to serve only a finite tenure before being discharged. The Respondents, on the other hand, maintain that the ACRs were assessed objectively and uniformly and that the Appellants' non-selection resulted solely from their comparatively lower merit.

11. That being so, and in order to appreciate the nature of the controversy, it is necessary to examine the role played by ACRs within the Air Force. An ACR is a structured evaluative document prepared by the IO, Reviewing Officer (**RO**), and Senior Reviewing Officer (**SRO**) to assess an officer's competence, performance, and suitability for particular kinds of future employment within the service. Crucially, the nature of this assessment is shaped by the objective for which the ACR is written, i.e., whether it is for the extension of service, promotion, or long-term retention. The evaluative lens applied by the chain of assessing officers is therefore conditioned by their understanding of the career trajectory available to the officer concerned.

12. In the case of the Appellants, since they were commissioned after 25.05.2006, the governing policy throughout the bulk of their service tenure was that they were ineligible for PC. This position is not in dispute. The recruitment advertisements and HRPs governing the terms of induction and service made it abundantly clear that their engagement was for a limited duration, ordinarily culminating in release upon completion of the prescribed tenure, subject only to the possibility of a 4-year extension. Even subsequent policies concerning the grant of PC consistently confined such consideration to all SSCOs commissioned prior to 25.05.2006. Thus, from 2006 until 2019, there existed no institutional expectation that any SSCOs commissioned after 25.05.2006 would be retained on a permanent basis.

13. It is against this policy backdrop that the ACRs of the Appellants were authored. The IOs, ROs, and SROs assessing their performance were necessarily concerned with determining suitability for continuation within a short-term framework, particularly for the purpose of granting extension after completion of the initial tenure. Even after such extensions were granted in 2017, the underlying premise remained unchanged: the Appellants had no pathway to long-term career progression or advancement to higher command positions within the Air Force. The appraisal process, therefore, operated within clearly circumscribed limits.

14. The position altered only with the introduction of HRP 01/2019, which, for the first time, opened a window for all serving SSCOs commissioned after 25.05.2006 to be considered for PC. While the policy sought to broaden opportunities for serving SSCOs, it simultaneously required them to compete for PC on the basis of ACRs that had been written for an entirely different purpose. The reports, originally intended to assess eligibility only for extension, were retrospectively treated as reliable indicators of suitability for long-term retention, higher responsibility, and advanced leadership potential. In essence, the assessments grounded in a particular context were transplanted into another without accounting for the diverging objectives of assessment. This methodological mismatch in evaluation permeated all ACRs graded until the implementation of HRP 01/2019. Although ACRs written after 2019 may have reflected the revised policy environment, they constituted a minority portion of the material considered to determine the grant of PC, and as such, were insufficient to offset the weight of earlier reports authored under a contrary assumption.

15. Viewed in this light, the Respondents' submission that the minimum average ACR grading required for extension and for PC remained broadly consistent does not adequately address the real substance of the issue before us. The controversy does not lie in the numerical thresholds prescribed by policy, but in the qualitative context in which those gradings were awarded. An assessment undertaken to evaluate performance within a limited service horizon cannot be treated as an assessment of suitability for permanent absorption. To do so would be to overlook the basic premise upon which the appraisal was originally conducted.

16. The same principle has been recognised in two judgements of even date, being *Lt. Col. Pooja Pal and Ors. v. Union of India and Ors.*,⁴ and *Yogendra Kumar Singh v. Union of India and Ors.*,⁵ whereby we have laid down that when officers in the Army and Navy are evaluated under the prevailing assumption that they have no future in the service, the appraisal process itself becomes structurally distorted. Years of assessment conducted without reference to long-term career progression cannot later be deployed to the disadvantage of such officers when they are suddenly placed in the competitive fray for PC. Ultimately, the fairness of the selection process cannot be assessed in isolation from the conditions under which the underlying evaluative material was generated.

17. In such circumstances, we have no option but to conclude that the ACRs of the Appellants were authored in an environment where their suitability for PC was never meaningfully contemplated. The subsequent use of such reports, which are not truly indicative of their suitability for longterm career progression, to determine their eligibility for PC is thus inherently unfair and arbitrary. In effect, such use has materially prejudiced their consideration for the grant of PC.

D.2 Issue No. 2: The Abrupt Introduction of New Eligibility Criteria

18. Apart from the concerns regarding the subjective distortion in the assessment of SSCOs through ACR gradings, the Appellants have also questioned the sudden introduction of new Minimum Performance Criteria for eligibility to be considered for the grant of PC under HRP 01/2019. In particular, the requirement of possessing a Categorisation of at least Category 'C', is said to have resulted in a substantial number of SSCOs being declared ineligible during the Boards conducted in 2019 and even in 2020.

⁴ Civil Appeal Nos. 9747 – 9757/2024. ⁵ Civil Appeal No. 14681/2024.

19. On the other hand, the Respondents have defended these eligibility prescriptions as operationally necessary and uniformly applicable to all SSCOs covered by HRP 01/2019.

20. The Minimum Performance Criteria for the grant of PC under HRP 01/2019 is set out in Appendix A thereto, an extract of which has already been reproduced in Paragraph 5.14 above. While we have adverted, in the preceding issue, to the lack of objectivity in ACR gradings, the instant issue raises an additional and independent concern, namely, the manner in which these newly-introduced Minimum Performance Criteria were applied to the Appellants during the Boards convened under HRP 01/2019.

21. For the purposes of this issue, it is sufficient to refer to two specific requirements prescribed in Appendix A. First, the concerned SSCO must secure a minimum average CGPA of 6.0 in the MISCs, i.e. the Basic Air Staff Course: Officers, the Intermediate Air Staff Course: Officers, the Basic Professional Knowledge Course: Officers, and the Advanced Professional Knowledge Course: Officers. Second, the concerned SSCO must possess a Categorisation of at least Category 'C'.

22. Learned Senior Counsel/Counsel appearing for the Appellants have fairly acknowledged that the imposition of minimum performance thresholds for the purpose of service progression is not *per se* the ground of challenge, as such matters lie primarily within the policy domain of the Air Force and must necessarily take into account technical considerations, operational requirements, and leadership experience. There is no assertion that the criteria themselves are intrinsically unlawful. The gravamen of the Appellants' grievance lies in the manner and timing of their introduction and implementation.

23. The Appellants belong to the first batches of SSCOs considered under HRP 01/2019. At the time of their induction in 2007, HRP 21/2006 had already suspended the grant of PC to all SSCOs commissioned after 25.05.2006. As such, they were borne into the service where neither the Authorities nor the Senior Officers envisaged any prospect of long-term career progression for such SSCOs.

24. It is not disputed that MISCs and Categorisation were available to the Appellants during their service. MISCs formed part of the normal progression of SSCOs, while Categorisation could be pursued voluntarily through training and evaluation. However, there was never any indication that performance in MISCs or the acquisition of Categorisation would later determine eligibility for PC. Indeed, earlier policies governing the grant of PC, including HRP 03/2011, did not prescribe any minimum requirement relating to MISC performance or Categorisation. It is, therefore, reasonable to infer that, prior to HRP 01/2019, there existed no tangible career incentive for SSCOs to excel in MISCs or to seek Categorisation proactively.

25. The position altered fundamentally with the issuance of HRP 01/2019 on 16.01.2019, by which MISCs and Categorisation suddenly assumed decisive importance in determining eligibility to even be considered for the grant of PC. Once such criteria were introduced, it would be natural for the SSCOs to attempt to achieve the requisite Categorisation at the very least, even if they could not improve their performance in the MISCs belatedly.

26. However, the Respondents, seemingly in a hurry to implement the new policy for the grant of PC, issued directions to conduct the first Board for all eligible SSCOs as early as March 2019, though HRP 01/2019 had only been introduced in January 2019 and itself stipulated that the ordinary timeline for the conduct of the annual Board would be in May

of that year. This accelerated timeline effectively deprived many SSCOs of any meaningful opportunity to comply with the newly-introduced requirements, particularly the acquisition of Categorisation. As a result, a significant number of SSCOs were rendered ineligible at the threshold without any realistic chance to remedy the deficiency.

27. It has been submitted before us that, ordinarily, Categorisation sought to be achieved in any given year becomes available only in the month of November. Consequently, even after becoming aware in January 2019 that Categorisation had been made mandatory, none of the SSCOs could realistically obtain the requisite qualification before November 2019, if they did not already possess it. The convening of the Board in March 2019, therefore, left them without any feasible avenue to become eligible for consideration for PC in that cycle.

28. This anomaly assumed greater significance when viewed in the broader context of the initial Boards conducted under HRP 01/2019. Those Boards involved a large pool of SSCOs competing for a relatively smaller number of vacancies, especially when compared to subsequent Boards. Moreover, in each 'look', a varied combination of positive and negative factors, including applicable ACRs, enhanced qualifications, and newer honours and awards, would come into play to determine the position of each SSCO within the order of *inter se* merit.

29. Since HRP 01/2019 limits the opportunity to be considered for PC to merely three chances, and since the circumstances surrounding each round may materially affect the evaluation of merit, the ability to participate meaningfully in every 'look' assumes considerable importance. Each round of consideration thus represents a valuable opportunity for an eligible SSCO to be assessed for the grant of PC.

30. Viewed from this angle, the precipitous conduct of the first Board in March 2019 deprived the Appellants of one of the three promised and evidently, precious, opportunities for consideration for PC. Acceptance of the Respondents' argument would, in effect, legitimise a situation where eligibility hinged on prior voluntary actions taken at a time when such actions bore no relevance to future career prospects.

31. A related grievance has also been raised by certain SSCWOs who were unable to be effectively considered during one of the years due to pregnancy, resulting in a temporary lowering of medical category and fitness grading. It is a well-settled principle of law and social equality that the choice to become a parent cannot be equated with an unwillingness to pursue professional advancement. The Respondents have not placed before us any material to suggest that such officers, who lost a round of consideration due to an intervening pregnancy, were accommodated and assured the three opportunities for consideration envisaged under HRP 01/2019.

32. In light of the foregoing circumstances, we are constrained to hold that the hurried implementation of HRP 01/2019, without affording any opportunity to the SSCOs to meet the newly-prescribed Minimum Performance Criteria, and without making adequate provision for officers who were unable to be considered for PC due to lower medical category and lesser average ACR scores on account of an intervening pregnancy, amounts to arbitrariness in the effect of the policy and is liable to invite interference from this Court.

D.3 Issue No. 3: Other Contentions Proffered by the Appellants

33. For the sake of completeness, it is necessary to advert to certain additional grievances raised by the Appellants. They have, *inter alia*, assailed the manner in which vacancies were computed for the Boards conducted in 2019, 2020, and 2021 under HRP

01/2019. It has also been urged that the Respondents did not publish any clear policy or framework stipulating how the vacancies would be identified, calculated, and apportioned amongst the eligible SSCOs.

34. However, in view of the findings already recorded in the preceding portions of this judgement and the directions we propose to issue hereinafter, we do not deem it necessary to undertake an exhaustive examination of the challenges relating to the determination of vacancies. It would suffice to note that, *vide* a judgement of even date rendered by us, namely, **Yogendra Kumar Singh (supra)**, concerning the Indian Navy, we have held that “*the failure to disclose the evaluation criteria, vacancy computation methodology, and allied policy considerations prior to the conduct of the Selection Boards in 2020 and 2022 must be held to have violated basic norms of fairness and transparency.*” While the decision in the instant appeals does not turn on this issue, the principle articulated therein is of general application. The same reasoning shall, therefore, govern the selection processes undertaken by the Air Force as well, both in the past and in future exercises of a similar nature.

E. CONCLUSION AND DIRECTIONS

35. In the backdrop of the policy reversal governing the grant of PC to SSCOs commissioned after 25.05.2006 in the Air Force and the challenges mounted thereto, it is appropriate, before parting with this judgement, to recapitulate the conclusions on the issues that have arisen for our determination. They are summarised as follows:

(i) The ACRs of the Appellants, having never been authored to assess their suitability for career progression, could not have been considered as indicative thereof, and utilized to deny them the grant of PC later on; and

(ii) The Minimum Performance Criteria, introduced for the first time in HRP 01/2019, was implemented in haste without affording the Appellants a reasonable opportunity to meet such criteria prior to the conduct of the first Board in 2019.

36. At this stage, we may advert to the current status of the Appellants before us.

37. The original Appellants, who were inducted on SSC in 2007 and were considered for the grant of PC in 2019, 2020, and 2021, were released from service in 2021 itself. Notwithstanding the arbitrariness in certain aspects of the assessment process, it would not be prudent or in the interest of the operational effectiveness of the Air Force to direct reinstatement and/or reconsideration of the Appellants for the grant of PC. However, that alone cannot be a sufficient reason to deny any benefits to such deserving officers. In our opinion, the approach taken by us, albeit in a slightly different context, in **Yogendra Kumar Singh (supra)** would serve the interests of the Appellants as well as the larger structural requirements of the Air Force.

38. On the other hand, the Intervenors were commissioned only in 2011 and were not considered for the grant of PC till 2023. Presently, they continue to remain in service, protected by the *interim* orders passed by this Court. It seems to us that their grievances with the evaluation process applicable to them emanate from a different factual context than that which we have had occasion to examine in these appeals.

39. In this light, we consider it appropriate to allow these appeals and set aside the Impugned Judgement dated 26.09.2023 passed by the AFT and the Impugned Judgement dated 19.02.2024 passed by the High Court, with the following directions:

(i) The grant of PC to the SSCOs who have already been granted PC by the Boards convened in 2019, 2020, and 2021 shall not be disturbed;

(ii) As a one-time measure, all the SSCOs who were considered for the grant of PC in all three Boards convened in 2019, 2020, and 2021, shall be deemed to have completed substantive qualifying service of 20 years and shall be entitled to pension and all consequential benefits, except arrears of pay, on the basis that they have completed such minimum service. As a matter of abundant caution, we clarify that even those SSCOs whose three chances were to take place sequentially in 2019, 2020, and 2021 but were declared 'ineligible' in one or more of the Boards, shall also benefit from this direction;

(iii) The pension shall be fixed on the basis of the date of completion of the deemed service of 20 years, but arrears thereof, if any, shall be paid to the SSCOs only with effect from 01.01.2025;

(iv) The Intervenor-SSCWs, who have been granted stay on release from service by this Court and who are aggrieved by the results of the Boards convened after 2021 in which they have been denied PC, may pursue their remedies in accordance with the law. If their challenges are already pending before the AFT or the High Court, they may continue to pursue such claims. While pursuing such remedies, the stay granted on their release from service shall remain in operation, subject to the modification, if any, that may be made by the AFT or the High Court, as the case may be; and

(v) For all future Selection Boards, the Respondents shall issue appropriate General Instructions, prior to the conduct of such Board, laying down: the vacancies available in each branch/stream for each batch; the detailed criteria for evaluation along with the apportionment of marks for each criterion; and any other information that may be necessary to supply to the officers under consideration for that purpose.

40. Ordered accordingly.

41. Pending applications, if any, also stand disposed of in the above terms.

Miscellaneous Application Nos. 1799 - 1803 / 2023 in Civil Appeal Nos. 192 - 196 / 2012 with Miscellaneous Application Nos. 1804 - 1808 / 2023 in Civil Appeal Nos. 192 - 196 / 2012

Sqn. Ldr. Nitu Thapliyal and others versus Union of India and others

ORDER

SURYA KANT, CJI.

1. Permission to file the Miscellaneous Applications is granted.

2. The instant Applications have been filed by 10 Short Service Commission

Women Officers (**SSCWs**), who were Appellants and IntervenorApplicants before this Court in Civil Appeal Nos. 192 – 196/2012. They seek specific directions regarding the implementation of the judgement of this Court in **AU Tayyaba v. Union of India**,⁵ by which the said Civil Appeals were disposed of.

3. To adduce the facts in a nutshell, the Applicants were inducted into the Indian Air Force on Short Service Commission (**SSC**) between 1993 and 1998. However, due to the erstwhile policies of the RespondentAuthorities, whereby SSCWOs were not considered eligible for the grant of Permanent Commission (**PC**), they were consequently released from service without being considered for the same.

4. Meanwhile, in a Public Interest Litigation (**PIL**) instituted before it, the High Court of Delhi (**High Court**), by its judgement dated 12.03.2010 in **Babita Puniya v. Secretary**,⁶

⁵ (2023) 5 SCC 688

⁶ 2010 SCC OnLine Del 1116

struck down such policies as being unfair and directed reinstatement of the affected SSCWOs, along with reconsideration of their cases for the grant of PC. Significantly, Paragraph 61(iii) of the said judgement limited this benefit to those SSCWOs who were: (i) either still in service; or (ii) had filed independent petitions before the High Court and had retired or been released from service during the pendency of such proceedings.

5. Admittedly, the Applicants did not fall within the ambit of the said categories. Thus, in an effort to challenge their removal from service, the Applicants lodged fresh Writ Petitions before the High Court, seeking relief *pari materia* to that granted in **Babita Puniya (supra)**. The High Court, however, declined such relief as the Applicants did not fall within any of the specific categories of officers entitled to the relief identified in **Babita Puniya (supra)**. Aggrieved by the denial of similar relief, the Applicants filed Civil Appeal Nos. 192 – 196/2012 before this Court.

6. A 3-Judge Bench of this Court, *vide* judgement dated 16.11.2022 in **AU Tayyaba (supra)**, allowed the Civil Appeals and held the Applicants, along with other Appellants, eligible to be considered in accordance with the Air Force's Human Resource Policy 04/10 dated 19.11.2010 (**HRP 04/10**). It was further directed that if they were found eligible for the grant of PC, such SSCWOs would be entitled to "*pensionary benefits on the basis that they have completed the minimum qualifying service required for pension.*" A material consideration which weighed with this Court was that the original proceedings before the High Court in **Babita Puniya (supra)** arose from a PIL filed by an advocate, and the Applicants had moved the High Court for appropriate reliefs within a reasonable period of time following the pronouncement of that judgement.

7. Pursuant thereto, the Respondent-Authorities considered the cases of the Applicants, as well as other Appellants, to determine their eligibility for the pensionary benefits granted by this Court to other such SSCWOs.

8. Out of the ten Applicants before us, three Applicants, namely, Appellant Nos. 9, 13, and 15 in Civil Appeal Nos. 192 – 196/2012, were found ineligible for the grant of PC under HRP 04/10 on the ground that they did not meet the minimum eligibility criterion of an average Annual Confidential Report (**ACR**) grading of 6.5 or above for each of the preceding three years. Consequently, they were denied the benefit of the deemed fiction created by **AU Tayyaba (supra)** and the attendant pensionary benefits.

9. However, the remaining seven Applicants, i.e. Appellant Nos. 1, 2, 4, 5, 6, and 16 as well as Respondent No. 6 in Civil Appeal Nos. 192 – 196/2012, were found eligible as per HRP 04/10 and were accordingly granted pension computed on the basis of their actual last drawn salary.

10. On account of this, the instant Applications have been filed seeking different reliefs. The former set of Applicants seek directions that their cases be considered sympathetically and that they, too, be extended the benefits of the deemed fiction of completion of minimum pensionable service.

11. The latter set of Applicants is aggrieved by the manner of implementation of **AU Tayyaba (supra)** and seeks clarification that the pension payable, being founded upon a deemed completion of minimum pensionable service, ought to be computed on the basis of a notional last-drawn salary as if they had continued in service for that period and obtained a Time-Scale promotion to the rank of Wing Commander. They further seek consequential status and privileges commensurate with such an enhanced, notional rank.

12. We have heard Mr. Huzefa A. Ahmadi, learned Senior Counsel, on behalf of the Applicants, as well as Ms. Aishwarya Bhati, learned Additional Solicitor General of India, on behalf of the Respondents, and have minutely perused the record.

13. The two distinct issues arising for consideration in these Applications are addressed separately hereafter.

A. NON-GRANT OF PENSION TO APPELLANT NOS. 9, 13, AND 15

14. One of the minimum qualifying criteria for the grant of PC under HRP 04/10 is that the officer under consideration must have secured an average ACR grading of not less than 6.5, without rounding off, in each of the ACRs for the preceding 3 years. In the case of Appellant Nos. 9, 13, and 15, who have been held to be ineligible for the grant of pension and ancillary benefits, it is undisputed that they have been unable to achieve this prescribed benchmark as they have obtained average ACR gradings of 5.7, 6.24, and 6.49, respectively.

15. This concern of the SSCWOs was also noted by this Court in *AU Tayyaba (supra)* at Paragraph 34(v). While directing that eligible SSCWOs be considered for a notional grant of PC, which would in turn entail pensionary benefits, this Court observed that some SSCWOs had average ACR gradings below 6.5 and directed the Respondent-Authorities to consider their cases sympathetically.

16. It emerges from the record that, upon reconsideration, the Air Force declined to extend pensionary benefits to these Applicants solely on the ground that they did not meet the minimum benchmark prescribed under HRP 04/10.

17. The Applicants have firstly canvassed an argument that two Short Service Commission Officers (**SSCOs**) having average ACR gradings lower than their own were nevertheless granted pensionary benefits. However, the Respondents have clarified that all cases, including the Applicants', were assessed on the basis of the three ACRs preceding the year 2006 and that, in this framework, the said two SSCOs had, in fact, obtained higher average gradings than the Applicants herein. It further appears that only four SSCWOs, including the three Applicants, failed to achieve the requisite average of 6.5.

18. The Applicants have not been able to demonstrate any specific mitigating circumstances explaining their inability to meet the prescribed threshold. On the contrary, 28 other similarly-placed SSCWOs successfully satisfied the same criteria. Moreover, the entire assessment relied upon ACRs from a period prior to the imposition of any bar on the grant of PC, and thus, did not suffer from the same concerns as those identified in the judgement of even date, being *Wg. Cdr. Sucheta EDN v. Union of India and Ors.*⁷ In these circumstances, we find no infirmity in the decision of the Air Force to deny pensionary benefits to the SSCWOs who did not meet the minimum qualifying benchmark for the grant of PC.

19. Accordingly, the prayers made herein *qua* Appellant Nos. 9, 13, and 15 are liable to be rejected.

B. NOTIONAL TIME-SCALE PROMOTION(S) TO APPELLANT NOS. 1, 2, 4, 5, 6, AND 16 AND RESPONDENT NO. 6

20. Turning to the second issue concerning the computation of pension payable and ancillary privileges, it is pertinent to note at the outset that a similar claim had been

⁷ Civil Appeal Diary No. 28412/2024.

considered by this Court in Miscellaneous Application Nos. 781 – 784/2024 in Civil Appeal Nos. 79 – 82/2012. In those proceedings, other SSCWOs who were also covered by the judgement in **AU Tayyaba (supra)** had challenged the decision of the Respondents to compute pension solely on the basis of the last-drawn salary at the time of their premature release from service.

21. *Vide* an order dated 15.04.2024,⁸ a 3-Judge Bench of this Court clarified the directions in **AU Tayyaba (supra)** and directed that pension shall be computed on the basis of the notional salary payable upon completion of the minimum pensionable service of 20 years. This necessarily entitled such SSCWOs to increments that would have accrued during the period between their release from service and the completion of minimum pensionable service.

22. Apart from the above clarification, it was also ordered that: (i) commutation of pension would be governed by the policy prevailing at the time of notional completion of 20 years of service; (ii) the SSCWOs shall be entitled to encashment of all their leaves, subject to the statutory ceiling of 300 days; (iii) the SSCWOs shall be entitled to the same Ex-Servicemen Contributory Health Scheme benefits on par with retired officers; and (iv) the Pension Payment Orders shall be revised to reflect 'retired' instead of 'released'.

23. The present Application, which only seeks directions for notional timescale promotion and corresponding revision of pension and other privileges, was filed prior to the pronouncement of the aforesaid clarificatory order dated 15.04.2024. By way of their Rejoinder Affidavit, the Applicants have brought the said order on record and seek directions in parity therewith.

24. There can be no doubt that the order dated 15.04.2024, being in the nature of an elucidation of the operative directions in **AU Tayyaba (supra)**, applies equally to all the SSCWOs covered by it. To that extent, we accept the prayers of the Applicants and direct that the various clarifications made by this Court in Paragraphs 8, 12, 13, 14, and 15 of the order dated 15.04.2024 shall apply to the instant Applicants as well as all other Appellants/Intervenors who are covered by Paragraph 34(i) of **AU Tayyaba (supra)**.

25. However, we are unable to accede to the further contention that the Applicants are entitled to notional time-scale promotion to the higher rank of Wing Commander.

26. This is primarily for the reason that the SSCWOs, admittedly, did not serve in that rank at any stage during their tenure. Apart from the financial benefits, a promotion in the Armed Forces carries a level of prestige and recognition within itself, even if the same is a result of a prescribed period of service. Furthermore, promotions in the Armed Forces are accompanied by their own set of privileges and other benefits. Service in a particular rank is a matter of honour for the officer, their friends and family, and for the institution itself.

27. Granting notional promotion would create an artificial equivalence between those officers who actually served as Wing Commanders in the Air Force and those who, notwithstanding their curtailed tenure of service, never held that rank. Such recourse would not only be conceptually untenable but may also have adverse implications for the hierarchical structure of the service.

28. This limb of the Applicants' claim must therefore fail. The Applicants shall only be entitled to the pension on the basis of the pay applicable to their own rank at the notional date of completion of minimum pensionable service.

⁸ A.U. Tayyaba v. Union of India, (2024) 15 SCC 338.

29. Ordered accordingly. The instant Miscellaneous Applications are disposed of in the above terms.

30. It is further directed that the clarifications issued in this order, as also through the order dated 15.04.2024 passed in Miscellaneous Application(s) No. 781 – 784/2024, shall apply to the pension and other consequential benefits granted by us through even dated judgements in **Lt. Col. Pooja Pal and Ors. v. Union of India and Ors.**,⁹ **Yogendra Kumar Singh v. Union of India and Ors.**,¹⁰ and **Wg. Cdr. Sucheta EDN (supra)**.

Civil Appeal No. 640 / 2025

Neeraj Kumar and another versus Union of India and others

ORDER

SURYA KANT, CJI.

1. The instant appeal has been filed by two former male Short Service Commission Officers (**SSCOs**) of the Indian Air Force, challenging the order dated 15.05.2024 passed by the Armed Forces Tribunal, Principal Bench at New Delhi (**AFT**) in Original Application (**OA**) No. 379/2011, whereby the Appellants' prayer for reinstatement into service in the Indian Air Force and for consequential consideration for the grant of Permanent Commission (**PC**) has been dismissed.

2. The claim of the Appellants traces its genesis to the decision of the AFT in **Sqn. Ldr. Lalit Kumar Tandon and Ors. v. Union of India and Ors.**¹¹ Subsequently, during the pendency of the OA, this Court delivered its judgement in **AU Tayyaba v. Union of India**.¹² Relying upon the said decision, the Appellants have further sought parity with those SSCO's who were released from service but were directed to be considered for the grant of PC alongwith the consequential pensionary benefits.

3. We have heard Ms. Vibha Datta Makhija, learned Senior Counsel, and Ms. Pooja Dhar, learned Advocate-on-Record, on behalf of the Appellants, as well as Ms. Aishwarya Bhati, learned Additional Solicitor General of India, for the Respondents and have carefully perused the records.

4. Having gone through the judgements relied upon by the Appellants, it becomes amply clear that the discretionary reliefs granted in **Lalit Kumar Tandon (supra)** and **AU Tayyaba (supra)** were premised upon the fact that the SSCO's concerned had acted promptly in challenging their release from service and had approached the relevant forum for relief within reasonable time after the High Court of Delhi (**High Court**) pronounced its judgement dated 12.03.2010 in **Babita Puniya v. Secretary**¹³.

5. In the instant case, however, the Appellants have not demonstrated comparable diligence. They were initially inducted into the Air Force on Short Service Commission in 1998. Although they were considered for the grant of PC in 2002, i.e. in their 5th year of service, the same was declined at that stage, and they were instead granted an extension of service for 6 years. They were again expected to be considered for the grant of PC in 2009, i.e. in their 11th year of service. However, such consideration did not materialise owing to the introduction of Human Resource Policy 21/2006 dated 25.05.2006, which purported to discontinue the grant of PC from 2006 onwards.

⁹ Civil Appeal Nos. 9747 – 9757/2024.

¹⁰ Civil Appeal No. 14681/2024

¹¹ 2011 SCC OnLine AFT 191

¹² (2023) 5 SCC 688

¹³ 2010 SCC OnLine Del 1116

6. At that juncture, instead of seeking a further extension of 4 years, as would have been available to them, the Appellants themselves sought to be released from service. Their request was accepted, and they were formally released on 25.06.2009. It is stated that they have since secured gainful employment in the private sector.

7. Owing to the High Court's decision in ***Babita Puniya (supra)***, the Appellants sought to assail their release from service and their nonconsideration for PC by filing OA No. 379/2011 before the AFT on 06.09.2011. This application was moved approximately 18 months after the pronouncement of ***Babita Puniya (supra)***, 7 months after the decision in ***Lalit Kumar Tandon (supra)***, and more than two years after their release from service, which had been effected at their own request.

8. This Court has, on previous occasions, dismissed similar cases wherein released and employed officers approached judicial fora belatedly, particularly in situations where they voluntarily left service and secured alternate employment. We find no reason to depart from that approach in the instant case.

9. For the foregoing reasons, the instant appeal is hereby dismissed.

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