

**2026 LiveLaw (SC) 285**

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

***SURYA KANT; CJI., UJJAL BHUYAN; J., NONGMEIKAPAM KOTISWAR SINGH; J.***

**Civil Appeal No. 14681 / 2024; March 24, 2026**

**Yogendra Kumar Singh *versus* Union of India and others**

**Service Law – Indian Navy – Grant of Permanent Commission (PC) to Short Service Commission Officers (SSCOs) – Selection Process Fairness – Annual Confidential Reports (ACRs) – Appeal against Armed Forces Tribunal (AFT) order directing fresh Selection Boards for SSCOs who were denied PC in 2020 and 2022 – Appellants contended that ACRs were "casually graded" during periods when they were ineligible for PC, leading to an inherently skewed merit assessment - Held, the appraisal process was inevitably affected from its inception because Reporting Officers were conscious that these officers had no avenue for career progression – High gradings in a bell-curve system were reserved for those with future prospects, while ineligible officers received average marks serving no institutional purpose – The conversion of "Not Recommended for PC" endorsements (recorded when officers were ineligible as a matter of policy) into substantive disqualifications once they became eligible is arbitrary – This circularity, where past ineligibility was transformed into "deemed unsuitability," resulted in an uneven playing field. [Para 16-17]**

**Service Law – Vacancy Computation – Dynamic Vacancy Model – Validity of the methodology used in the December 2020 Selection Board – Held, the "Dynamic Vacancy Model" was a rational one-time mechanism to distribute vacancies across 24 batches while maintaining the Navy's pyramidal structure and operational agility – The use of '15' as a divisor is anchored in service realities, representing the approximate years of service accompanying a grant of PC – The methodology does not suffer from arbitrariness or discrimination - Held, unlike the Army and Air Force, the Navy's failure to disclose the evaluation framework and vacancy computation methodology prior to the 2020 and 2022 Boards violated basic norms of fairness and transparency. [Para 25, 38-48]**

**Relief – One-time Measure to Prevent Protracted Litigation – Supreme Court noted this was the third round of litigation and a fourth round (fresh Selection Board) would not yield equitable results due to inherently skewed ACRs – Supreme Court modified AFT directions to grant PC directly to specific categories: (a) SSCWOs inducted prior to January 2009; (b) SSCWOs inducted after January 2009 in branches other than Law, Education, and Naval Architecture; and (c) Male SSCOs barred by initial terms, subject to medical and disciplinary clearance – Released officers within these categories deemed to have completed 20 years of service for pensionary benefits. [Relied on *Union of India v. Annie Nagaraja* (2020) 13 SCC 1; *Lt. Col. Nitisha & Ors v. Union of India* (2021) 15 SCC 125; *Amit Kumar Sharma v. Union of India* (2023) 20 SCC 486; *Shankarsan Dash v. Union of India* (1991) 3 SCC 47; Para 54-56]**

**with, Civil Appeal No. 3769 / 2025, Civil Appeal Nos. 13062 - 13064 / 2024 Civil Appeal No. 14981 / 2024, Civil Appeal Nos. 14982 - 14988 / 2024, Civil Appeal No. 5425 / 2025, Civil Appeal No. 5433 / 2025, Civil Appeal No. 5450 / 2025, Civil Appeal Nos. 3492 - 3493 / 2025, Civil Appeal No. 9776 / 2025, Civil Appeal No. 9774 / 2025, Civil Appeal No. 9777 / 2025, Civil Appeal No. 12604 / 2025**

***For Appellant(s) Ms. Rekha Palli, Sr. Adv. Ms. Pooja Dhar, AOR Ms. S. Ambica, Adv. Ms. Maryam Junaid, Adv. Mr. Anish Venkatesh Bindlish, Adv. Ms. Bhavya Sharma, Adv. Mr. Vaidushya Parth, Adv. Ms. Rekha Palli, Sr. Adv. Mr. Anish Venkatesh Bindlish, Adv. Ms. Bhavya Sharma, Adv. Mr. Vaidushya Parth, Adv. Ms.***

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## **J U D G M E N T**

### **SURYA KANT, CJI.**

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

2. The instant batch of appeals arises from a long and unsettled chapter in the service jurisprudence of the Indian Navy. It has been instituted by a group of roughly 25 Short Service Commission Officers (**SSCOs**), the majority of whom are women seeking the grant of Permanent Commission (**PC**). At its core, this dispute does not concern mere instances of non-selection; rather, it calls for a detailed evaluation of the fairness and transparency of the process by which officers, after long years of service, were assessed for career permanence.

3. In brief, the Short Service Commission Women Officers (**SSCWOs**), together with certain similarly-placed male officers, approached the Armed Forces Tribunal, Principal Bench at New Delhi (**AFT**), seeking redressal after PC was not granted to them. By its judgement dated 27.09.2024 (**Impugned Judgement**) and orders dated 13.02.2025 and 06.03.2025 (**Impugned Orders**), the AFT allowed their Original Applications (**OAs**) and directed the Respondents to reconsider all SSCOs who had not been granted PC in the Selection Boards convened in December 2020 and September 2022. Such reconsideration was to be undertaken afresh, after duly notifying the assesseees of the criteria, methodology, and parameters governing the assessment.

4. Notwithstanding the apparent relief granted, the Appellants still felt aggrieved and have approached this Court contending that the direction effectively consigns them to yet another Selection Board, after two full rounds of litigation before multiple fora, and after more than fifteen years spent in pursuit of an equitable opportunity for consideration. According to them, the directions in the Impugned Judgement merely perpetuate the career uncertainty that has marked almost their entire service profile.

### **A. FACTS**

5. Given the chequered history of litigation, it is necessary, before turning to the legal questions that arise for determination, to trace the factual trajectory which has given rise to these appeals.

5.1. The Appellants and Intervenors before us, comprising both male and female officers, were inducted into various branches/cadres of the Navy between 1999 and 2011. Most of the Appellant-SSCWOs were inducted at a time when women officers were not eligible to be considered for the grant of PC in their respective branches/cadres. Some of their male counterparts, who are also before this Court, are aggrieved by their own non-selection for PC. Of the SSCOs involved in these proceedings, 7 have since retired from service, while the remaining continue in service pursuant to *interim* orders staying their

release. The Respondents comprise the Union of India through the Ministry of Defence, the Director of Personnel (OA&R) of the Navy, the Chief of the Naval Staff, and the Commander (Personnel)–Log of the Navy.

**5.2.** To appreciate the nature of the grievances raised, it is necessary to first understand the structural and regulatory framework within which the Navy operates, particularly in relation to the grant of PC.

**5.3.** Although the Army, Navy, and Air Force together constitute the Indian Armed Forces, each service functions through its own institutional architecture. The Navy, with a sanctioned strength of approximately 11,000 officers, is the smallest of the three. It follows a pyramidal hierarchical structure, characterised by a broad base of junior officers tapering sharply towards a limited number of senior command positions. Organisationally, the Navy is divided into four principal branches: (i) Executive; (ii) Electrical; (iii) Engineering; and (iv) Education.

**5.4.** The induction of officers on Short Service Commission (**SSC**) was originally conceived as a measure to address manpower shortages following the exodus of British personnel from the Indian Armed Forces. For several decades, only male officers were inducted as SSCOs, owing to the conditional statutory bar on the recruitment of women contained in Section 9(2) of the Navy Act, 1957.

**5.5.** The regulatory framework governing service conditions was subsequently elaborated through the Regulations for the Navy Part III (Naval Ceremonial, Conditions of Service and Miscellaneous Regulations 1963) (**1963 Regulations**), framed under Section 184 of the Navy Act, 1957. Regulations 122(14) and 203 expressly contemplate the grant of PC to suitable SSCOs, subject to the availability of vacancies and prevailing regulations. Before we tread any further, let us reproduce the text of the aforementioned Regulations:

***“Regulation 122: Short Service Commissions***

[xxxx]

***(14) Permanent Commissions*** - Suitable officers may be considered for the grant of Permanent Commission in the Indian Navy at any time after successful completion of the period of probation, subject to the existence of vacancies and regulations current at the time. [xxxx]

***Regulation 203: Grant of Permanent Commission***

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

***(2) Officers granted Permanent Commission may be transferred, with their existing rank and seniority. The retention of any acting rank held by an officer at the time of transfer to a Permanent Commission shall be governed by Regulation 202.***

***(3) Short Service Commission Officers selected for the grant of Permanent Commission in the Navy shall conform to the medical standard laid down by the Chief of the Naval Staff from time to time.”***

[Sic] [Emphasis Supplied]

**5.6.** Until 1991, SSCOs in all the technical branches, barring the Naval Constructor cadre, were considered for the grant of PC periodically, guided by service requirements rather than any uniform, annualised policy. The transition from SSC to PC was governed directly by Regulation 203, as reproduced above. Each eligible batch was ordinarily entitled to two opportunities for consideration: a ‘First Look’ in the sixth year of service

alongside the batch immediately senior to them, and a 'Second Look' in the seventh year alongside their immediate juniors.

**5.7.** A significant shift occurred with the notification dated 09.10.1991, issued under Section 9(2) of the Navy Act, 1957 and published on 26.10.1991, whereby women were permitted to be inducted as SSCOs in select branches/cadres, namely, Logistics, Law, and Education. Consequently, through two communications dated 20.12.1991, the specific service conditions for SSCOs in these three branches/cadres were prescribed. While the tenure of male SSCOs was fixed at seven years, SSCWOs were appointed for a five-year term, subject to review. Importantly, it was indicated that a policy for the grant of PC to SSCWOs would be promulgated in 1997. The scope of women's induction was further expanded by a notification dated 06.11.1998, permitting SSCWOs to enter all four branches of the Navy.

**5.8.** The Ministry of Defence issued a communication on 25.02.1999 to the Chief of Naval Staff, informing that the President of India, in reference to the guidelines laid down in the communications dated 20.12.1991, had sanctioned certain terms and conditions of service of SSCOs, including women. It was clarified that the grant of PC would be in accordance with Regulation 203 of the 1963 Regulations. Further, SSCWOs of all branches/cadres could be directed to serve onboard ships during training and subsequent employment, if the exigencies of service so required.

**5.9.** Prior to 2002, the tenure of SSCOs was fixed at seven years, with discretionary extensions up to ten years. This was later revised by a communication dated 27.02.2002 to ten years, with a maximum extension of up to fourteen years. Until 2008, however, SSCOs in several non-technical branches were not considered for PC, in accordance with their initial terms of entry.

**5.10.** A turning point emerged with the policy dated 26.09.2008, whereby the Union of India permitted prospective consideration for PC for SSCWOs in the Education, Law, and Naval Architecture branches/cadres. The Implementation Guidelines dated 03.12.2008, proposed to permit all SSCOs (male and female) from these branches/cadres, inducted after January 2009, to be eligible for consideration for PC. These 'Implementation Guidelines' laid down a structured choice in the sixth year of service between opting for PC or extension, and contemplated selection by a Selection Board based on *inter se* merit derived from the Annual Confidential Reports (**ACRs**), subject to the availability of vacancies. This policy decision concerning the prospective grant of PC to SSCWOs inducted after January 2009 in limited branches/cadres became the inflexion point for sustained litigation concerning consideration for PC on the basis of cadre, batch, and sex.

**5.11.** Shortly thereafter, on 28.10.2009, the Navy Headquarters amended the existing ACR format by including a column for formal endorsements for PC by the Initiating Officers (**IOs**). These endorsements could be 'B' i.e. recommended for PC or 'D' i.e. not recommended for PC. The purpose of this amendment was to obtain a clear opinion on the suitability of the assessee for PC during the period under review.

**5.12.** In the meantime and in the wake of the High Court of Delhi's (**High Court**) judgement dated 12.03.2010 in **Babita Puniya v. Secretary**,<sup>1</sup> which held that all SSCWOs serving in the Army and Air Force were entitled to be considered for PC, an SSCWO in the Navy, namely, Annie Nagaraja (who is also the Appellant before us in Civil Appeal No. 5425/2025) along with several others, approached the High Court by way of Writ Petitions under Article 226 of the Constitution. They sought to contest the 'prospective' nature of

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<sup>1</sup> 2010 SCC OnLine Del 1116

the policy dated 26.09.2008 and its confinement to only three branches/cadres. These Writ Petitioners, inducted between 1992 and 2001 into the Logistics, Air Traffic Controller (ATC), and Education branches/cadres in the Navy, highlighted the anomaly of being discharged after fourteen years of service without a single opportunity for PC consideration.

**5.13.** The High Court, *vide* judgement dated 04.09.2015 in **Annie Nagaraja v. Union of India**,<sup>2</sup> drew upon the reasoning of the coordinate Bench in its decision dated 12.03.2010 and took a serious view of the continued denial of PC to SSCWOs inducted prior to 2009. The High Court held that, in terms of the letter dated 20.12.1991, the SSCWOs had a legitimate expectation of being considered for PC from 1997 onwards, and the failure to operationalise this assurance had materially impeded their career progression. Upon finding the policy dated 26.09.2008 to be irrational and discriminatory, the High Court directed that those SSCOs who had opted for PC, but were granted only extension and had not retired by the time the Writ Petitions were filed, be granted PC with all consequential benefits. In respect of officers who had attained the age of superannuation prior to the filing of the Writ Petitions, reinstatement was directed, subject to the medical fitness of the officer and the outcome of the Special Leave Petitions preferred by the Union of India against the High Court's judgement dated 12.03.2010, which was then pending before this Court. Aggrieved by these directions, the Respondents chose to assail this judgement by way of Civil Appeal No. 2182/2020, before this Court.

**5.14.** The ripple effects of the High Court's decision dated 04.09.2015 soon reached the AFT. Citing the judgement dated 04.09.2015, six SSCWOs from the Logistics, ATC, and Education branches/cadres approached the AFT, seeking the grant of PC. In doing so, they challenged both the policy dated 26.09.2008 and the Implementation Guidelines dated 03.12.2008. These officers had been inducted pursuant to an advertisement issued in July 2002, which expressly provided that "*deserving officers*" from the ATC, Logistics, and Education branches/cadres "*may also be considered for PC.*" Consequently, in its judgement dated 11.08.2016 in **Priya Khurana and Ors. v. Union of India**,<sup>3</sup> the AFT opined that the policy dated 25.02.1999, whereby the Ministry of Defence had decided to grant PC to both men and women SSCOs in accordance with Regulation 203, continued to govern the field, and that the policy dated 26.09.2008 had been promulgated without due regard to the earlier policy. On this basis, the AFT directed the Respondents to consider the Applicants before it for the grant of PC, irrespective of gender and cadre, within a period of six months. These directions were challenged by both, the Respondents and the SSCOs, before this Court, and the matters were accordingly tagged with Civil Appeal No. 2182/2020.

**5.15.** While these challenges remained pending, this Court intervened to preserve the *status quo* of service. By an *interim* order dated 20.11.2015, it was directed that only those SSCWOs who were Petitioners before the High Court and were in service as on 26.09.2008 be reinstated and permitted to continue on the same terms as SSCOs until disposal of the cases. Subsequently, by an order dated 28.10.2016, this Court further permitted the SSCWOs who were Applicants before the AFT to continue in service until further orders.

**5.16.** The legal position was finally crystallized by this Court through its judgement dated 17.03.2020 in **Union of India v. Annie Nagaraja**.<sup>4</sup> Upholding the judgement of the High

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<sup>2</sup> 2015 SCC OnLine Del 11804

<sup>3</sup> 2016 SCC OnLine AFT 798

<sup>4</sup> (2020) 13 SCC 1.

Court, this Court quashed the Implementation Guidelines dated 03.12.2008 to the extent that they made the grant of PC prospective and confined it to specified branches/cadres. The Respondents were directed to consider all serving SSCOs in the Education, Law, and Logistics branches/cadres for the grant of PC in accordance with Regulation 203, subject to the availability of vacancies in the stabilised cadre at the relevant time and *inter se* merit derived from the ACRs. In addition, all SSCWOs who had been denied consideration for PC on account of their induction prior to 26.09.2008 and were no longer in service, as well as those who were before the High Court and the AFT but were not granted PC, were deemed, as a one-time measure, to have completed substantive qualifying service for the purpose of pension. It was categorically held that once the statutory bar on women's entry into the Navy was lifted, all SSCOs, irrespective of gender, were to be governed by Regulation 203 in matters concerning PC. Ultimately, the policy dated 26.09.2008 was found to be inconsistent with the notifications dated 09.10.1991 and 06.11.1998. This Court poignantly recorded that the Respondents had systematically failed to implement the judgements of the High Court and the AFT, despite no stay having been granted, leaving a large number of SSCOs serving for over two decades without the grant of PC.

**5.17.** To give effect to the directions issued in **Annie Nagaraja (supra)**, the Respondents issued a circular dated 29.10.2020, proposing to conduct a Selection Board in December 2020 to consider all SSCOs commissioned prior to 30.11.2013. Officers already considered for PC from the cadres of Law and Naval Constructor and the Electrical, Engineering, and Education branches, as also all SSCOs of ATC, Sports, and Information Technology (IT) cadres, were excluded from this exercise. Willingness to be considered for PC was accordingly sought from eligible officers. It is not in dispute that all the Appellants and Intervenors before this Court were considered by the Selection Board convened in December 2020.

**5.18.** For the purpose of this exercise, the Navy devised a specific method to identify vacancies. After identifying the stabilised strength of each branch/cadre, the ideal PC strength was calculated at 60% of the stabilised strength. Once the ideal PC strength was calculated, the number of existing PC officers was deducted from the ideal PC strength. The remaining figure signified the total deficiency and thereby, the existing vacancies. This deficiency was then divided by 15 and distributed among the batches under consideration as per the Dynamic Vacancy Model. While this methodology distributed the deficiency across batches, it simultaneously revealed that PC officers were overborne in the Law, Executive General Service, and Naval Armament Inspectorate (**NAI**) cadres, resulting in no vacancies therein. Further, only three vacancies were available in the Naval Constructor cadre across all batches.

**5.19.** The Selection Board assessed candidates on the basis of *inter se* merit for each nominal year of vacancy. Keeping in line with the established practice of affording each SSCO a First Look and a Second Look, the Selection Board, convened in December 2020, considered officers from two different years against each nominal year of vacancy, extending the First and Second Look consideration accordingly.

**5.20.** Apart from direct ineligibilities such as adverse medical categorisation or pending vigilance or disciplinary proceedings, the determinative criterion for selection was *inter se* merit. For this purpose, the last five ACR cycles of each officer were evaluated, and marks were apportioned in accordance with the Approach Paper, as follows:

“(a) CR Marking - 90%

(b) Slt Seniority - 4%

(c) *War Assessment - 2%*

*(Officer should not have been recommended G and below any time in the last five CR cycles held on record)*

(d) *Peer Assessment - 2%*

*(Officer should not have been recommended G and below any time in the last five CR cycles held on record)*

(e) *Recommendation for PC - 2%*

*(Officer should not have been graded **NO** in three or more times in the last five CR cycles held on records)*

(f) *Medical Category - The officers should be in Medical Category not below S2A2 (Pmt). Officers in Low medical category (LMC) for obesity would not be considered for PC, irrespective of*

*medical category*

(g) *Discipline and Vigilance - Officers should have no Disciplinary and Vigilance case pending against them”*

[Sic]

**5.21.** A computer-generated merit list was prepared by aggregating the marks awarded under these heads. Unlike the procedure employed by the Army in its selection process for the grant of PC, no marks were assigned for ‘value judgement’. Further, beyond the criteria specified in the Approach Paper, no additional weightage was accorded for Honours, Awards, or other achievements by the respective officers.

**5.22.** Through this process, from the cadres in which vacancies were available, the Selection Board considered a total of 306 SSCOs, both male and female, for the grant of PC. Of these, 80 officers were ultimately selected to be granted PC. Immediately thereafter, the Respondents issued a Signal Order releasing the remaining SSCOs from service on the ground that they had not been granted PC and had completed their tenure as an SSCO.

**5.23.** Aggrieved by their non-selection for PC, 20 SSCOs, including male and female officers, approached this Court under Article 32 of the Constitution, while 12 SSCOs filed OAs before the AFT. By an order dated 24.08.2021 in **T. Rajkumar v. Union of India**,<sup>5</sup> this Court transferred the said Writ Petitions to the AFT, with a direction that all such cases be considered together. Owing to this, the grievances raised before the AFT spanned several facets of the selection process, including the nondisclosure of criteria for consideration, reliance on ACRs lacking any endorsement regarding recommendation for PC, and alleged errors in the computation of available vacancies.

**5.24.** Upon consideration of the material on record, the AFT delivered its judgement dated 03.01.2022 in **Lt. Cdr. Tarun and Ors. v. Union of India**.<sup>6</sup> While broadly approving the Navy’s methodology for vacancy computation and its compliance with the directions in **Annie Nagaraja (supra)**, the AFT rejected most of the OAs on the ground that nonselection was attributable to comparative merit *vis-à-vis* limited vacancies. At the same time, the AFT identified specific lacunae in the process, especially when it came to the cadres in which no vacancy was available, and issued corrective directions. It directed, as a one-time measure, that officers from overborne or low-deficiency cadres, such as Law,

<sup>5</sup> 2021 SCC OnLine SC 3396

<sup>6</sup> 2022 SCC OnLine AFT 5345

Executive General Service, and NAI, be considered afresh by creating proportionate vacancies to ensure fair First and Second Look consideration. It further noted that due to low cadre strength and irregular induction in the Law cadre, the 2011 and 2014 batches, which ought to have been considered together in 2019, were left without vacancies, and directed their consideration alongside Cdr. Seema Chaudhary (2007 Batch). Finally, in respect of 8 vacancies left unfilled due to rigid distribution and absence of suitable candidates, the AFT directed that the next eligible officers in the merit list be granted PC.

**5.25.** In compliance with the AFT's directions in **Lt. Cdr. Tarun (supra)**, the Respondents created additional vacancies and convened a fresh Selection Board in September 2022, considering 263 SSCOs from the overborne cadres. As a result, 21 additional officers were granted PC. Some of the Appellants before this Court were considered by this Selection Board but were, once again, not granted PC.

**5.26.** In the *interregnum*, several SSCOs, including some of the instant Appellants, challenged the decision in **Lt. Cdr. Tarun (supra)** before this Court. They contended that all the information supplied to the AFT regarding the manner of conducting the Selection Boards, the criteria for preparing merit lists, and the ACRs relied upon for determining merit scores was never disclosed to them. Rather, all such information was furnished by the Respondents only to the AFT in a sealed cover. This, it was claimed, deprived the officers of any meaningful opportunity to contest the said material or defend their case.

**5.27.** This Court, *vide* judgement dated 07.11.2022 in **Amit Kumar Sharma v. Union of India**,<sup>7</sup> accepted the aforesaid contention. It was held that disclosure of material exclusively to the Adjudicating Authority in a sealed cover rendered the affected officers incapable of contesting the AFT's findings on the propriety of the Selection Boards and the alleged absence of gender bias. Such a procedure was found to constitute a breach of the principles of natural justice, besides setting a dangerous precedent. Accordingly, this Court allowed the appeals, set aside the judgement dated 03.01.2022, and remanded the matters to the AFT for fresh consideration.

**5.28.** The officers who were granted PC on the basis of nominal vacancies created as a result of the decision in **Lt. Cdr. Tarun (supra)** approached this Court in 2023 for early reinstatement. Their claim was accepted *vide* judgement dated 04.08.2023 in **Lt. Cdr. Manish Kumar Singh and Ors. v. Union of India**,<sup>8</sup> with directions to reinstate the said officers and grant them PC. However, this grant of PC would be subject to the proceedings pending before the AFT, which eventually led to the Impugned Judgement.

**5.29.** The AFT, after reconsidering the OAs that had earlier been disposed of in **Lt. Cdr. Tarun (supra)**, passed the Impugned Judgement, allowing all the OAs and directing the Respondents to convene a Special Selection Board to reconsider all SSCOs who had been considered by the Selection Boards of December 2020 and September 2022 but were not granted PC. Detailed instructions governing the conduct of the Special Selection Board were directed to be issued, including the criteria, marks assigned, overall assessment methodology, and other necessary particulars. Officers not granted PC but having completed the minimum pensionable service were directed to be released with full pensionary benefits. These directions were issued owing to the AFT's observation that crucial details relating to criteria, vacancy computation, and cadre-wise apportionment had not been disclosed to the officers under consideration, a practice found to be inconsistent

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<sup>7</sup> (2023) 20 SCC 486.

<sup>8</sup> Writ Petition (Civil) No. 425/2023.

with comparable Special Selection Boards conducted by the Army and Air Force pursuant to similar judicial directions.

**5.30.** In the case of two officers, namely, Cdr. Asha Sharma and Cdr. Priyanka Choudhary, their respective OAs were disposed of by the Impugned Orders dated 13.02.2025 and 06.03.2025, respectively, in terms of the Impugned Judgement. Some other officers have also filed Intervention Applications before this Court, claiming to be similarly aggrieved as the Appellant-SSCOs and seeking analogous relief.

**5.31.** It is against this factual and procedural backdrop that the instant appeals have arisen for our consideration. From 08.11.2024 onwards, this Court has passed several interlocutory orders, extending *interim* protection to some of the Appellants by permitting them to continue in service.

## **B. CONTENTIONS OF THE PARTIES**

**6.** Ms. Rekha Palli and Dr. Menaka Guruswamy, learned Senior Counsel; Ms. Pooja Dhar, Mr. Abhimanue Shrestha, and Mr. Anshuman Ashok, learned Advocates-on-Record; and Mr. Sudhanshu S. Pandey, learned Counsel, appearing on behalf of the Appellants advanced the following submissions in support of these appeals:

**(a)** The Navy historically declined to grant PC to officers serving in cadres where both male and female officers were inducted, restricting PC exclusively to all-male cadres. Even after this Court's judgement in **Annie Nagaraja (supra)**, pensionary benefits were extended only to SSCWOs, while their male counterparts were denied the same, resulting in unequal treatment within identical cadres.

**(b)** The ACRs of officers serving in cadres where PC was unavailable to those inducted prior to January 2009 were written under the prevailing assumption that such officers would never be eligible for PC. Special Navy Order 02/2015 expressly requires the creation of relative merit among officers of the same seniority while filling ACRs. Thus, in a bell-curve-based appraisal system intended to generate relative merit among officers of the same seniority, assessing officers naturally prioritised those with prospects of career progression by granting them better marks. The Appellants, both male and female SSCOs, faced the same structural disadvantage recognised and remedied by this Court in **Lt. Co. Nitisha & Ors v. Union of India & Ors.**<sup>9</sup> The adverse impact is more pronounced in the Navy, since 90% of the assessment is derived from ACRs, with no weightage for medals, awards, honours, or achievements, unlike in the Army. The entire evaluation, thus, rests on the discretion exercised by IOs or the Commanding Officers (**COs**). Despite this, the AFT has issued no directions to remedy this foundational defect while mandating a fresh Special Selection Board.

**(c)** Once the column relating to recommendation for PC was introduced in ACR format pursuant to Special Navy Order 05/05, the IOs/COs could record only one of two endorsements: "Recommended for PC" or "Not Recommended for PC." Since the Appellants were ineligible for PC as a class, this column was routinely filled with "Not Recommended for PC" as a matter of default, without any actual evaluation of their merit or suitability for promotion. The Appellants were consequently denied PC solely because they had been marked "Not Recommended for PC" in three or more of the last five ACR cycles, making the process inherently arbitrary.

**(d)** Regulation 203 requires that the grant of PC be considered subject to the availability of vacancies in the stabilised cadre at the "material time," namely, when the officer

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<sup>9</sup> (2021) 15 SCC 125.

becomes eligible for consideration. For the Appellants, the material time would ordinarily have been their sixth and seventh years of service, falling a few years before the Selection Board of December 2020 was actually conducted. No data has been disclosed by the Respondents regarding the availability of vacancies at this material time, thereby vitiating the process of consideration by requiring them to compete for a smaller number of available vacancies in 2020.

(e) In essence, vacancies available at the material time for each batch were not considered, contrary to Paragraph 96(vi) of **Annie Nagaraja (supra)**. Deficiencies ought to have been computed both at the material time and at the time of the Selection Board, with the higher figure being finally adopted. The discriminatory impact becomes evident when contrasted with the vacancies announced for junior batches whose material time fell between 2023 and 2025, during which 87, 191, and 149 vacancies were announced, respectively. Despite the Special Selection Board directed by the AFT remaining incomplete, a substantial number of officers have been granted PC through regular Selection Boards conducted from 2023 to 2025.

(f) In computing PC deficiency in a particular cadre, the total stabilised cadre was not taken as the baseline for applying the 60:40 ratio; instead, posts of Captain and higher ranks were excluded. Had the full stabilised cadre been taken as the base, the resultant PC strength and vacancies would have been significantly higher.

(g) In the Selection Board convened in December 2020, a 'Dynamic Vacancy Model' was adopted, under which progressively fewer vacancies were allotted to successively junior batches. This model is not traceable to any prior policy, guideline, or judicial direction and was arbitrarily devised for the December 2020 Board. Further, the total identified vacancies were not fully utilised. In the Logistics cadre, despite a deficiency of 28 officers, only 19 vacancies were actually offered. Similarly, in the Education branch, despite a deficiency ranging between 67 and 85 officers, only 34 vacancies were opened.

(h) Although each SSCO is entitled to two opportunities for consideration, i.e. a First Look and a Second Look, the conduct of a single Selection Board for both Looks deprived the Appellants of the opportunity to improve their ACRs and merit position between the two considerations. Ordinarily, different ACR cycles would apply at the First and Second Looks. However, in the Selection Board, the same five ACR cycles were used for both Looks, resulting in no substantive distinction between them. While the Appellants were formally considered twice, the consideration was effectively identical. It also remains unclear which specific ACR cycles were applied to individual officers at each stage.

(i) Material relating to the method of assessment adopted by the Selection Boards was initially supplied only to the AFT in a sealed cover during the proceedings in **Lt. Cdr. Tarun (supra)**. Even thereafter, the Appellants were not furnished with comparative documents, including their own ACRs. Despite specific directions to adjudicate the merits of the Appellants' grievances, the AFT merely relegated them to yet another Selection Board without addressing the foundational defects alleged to have tainted the entire process of selection. Furthermore, the directions in the Impugned Judgement contemplate retired or released SSCOs being considered alongside serving officers in the proposed Special Selection Board.

(j) While the objective of maintaining youth and agility in operational cadres is not disputed, its uniform application across cadres where experience and expertise are of greater relevance, such as Education and Logistics, is unwarranted. Only about 27% officers of the rank of Commander and above are required in operational billets, while the

remaining 72% serve in ground-based roles involving repair, maintenance, design, and education.

(k) Three Appellants, namely, Cdr. Annie Nagaraja, Cdr. Urmila Bhat, and Lt. Cdr. Barkha Rathore, have rendered over twenty years of continuous service. Given such length of service, they ought to have progressed to the Time-Scale rank of Captain, a purely time-bound advancement requiring completion of twenty-six years of commissioned service. Instead, they continue to serve only as SSCWOs.

(l) Despite long years of service in the Navy, SSCOs who are not granted PC are released from service after completion of their terms, without any pensionary benefits, medical coverage, or employment security. On par with the relief granted in **Annie Nagaraja (supra)**, the Appellants who are not granted PC seek pensionary benefits on deemed completion of the requisite qualifying service.

7. *Per contra*, Ms. Aishwarya Bhati, learned Additional Solicitor-General of India, appearing on behalf of the Respondents, submitted that the Navy's methodology for evaluation and vacancy allocation was transparent, neutral, and consistent with judicial directions. In this regard, the following submissions were adduced:

(a) The Respondents have not filed any appeal against the Impugned Judgement and the Impugned Orders, and are considering their implementation fairly and equitably. Although the Impugned Judgement has not been stayed, the Respondents have moved a Miscellaneous Application before the AFT, seeking more time to complete the process of holding a Special Board anew. The Respondents apprehend that moving forward to conduct another Special Board while this Court is seized of the matter would appear to be overreaching the orders of this Court.

(b) As per the directives of this Court in **Amit Kumar Sharma (supra)**, all the relevant details, including the Appellants' merit position, parameters for consideration, and their weightage, which were previously only disclosed to the AFT through a sealed cover, have been supplied to the Appellants. Thus, the Respondents have complied with this Court's directions in letter and spirit.

(c) The procedure adopted for the Selection Board held in December 2020 was a one-time exercise wherein a large number of batches were under consideration for PC. Therefore, mutually exclusive vacancies were distributed amongst various batches so that officers only compete amongst near peers with similar lengths of service. The methodology for the calculation of vacancies was formulated to grant equal opportunities to all SSCOs under consideration, to ensure equitable distribution of the vacancies, and to comply with this Court's directions in **Annie Nagaraja (supra)**. The reason officers from batches inducted prior to 2008 and after 2008 were considered jointly was that the material time for consideration of officers inducted from 2011 to 2013 had arisen at the same time, prompting this Court to direct the conduct of the Selection Board.

(d) Each officer was afforded two opportunities to be considered, whereby their First Look would take place with the immediate senior batch, and the Second Look would take place with their immediate juniors. Merit-cum-suitability was determined on the basis of the last five ACR cycles, subject only to vigilance and disciplinary clearance.

(e) The merit list was computer-generated on recorded parameters, leaving no scope for gender-based or subjective assessment. Further, the ACRs of the officers were assessed purely based on performance and accomplishments during the discharge of specific duties. The grading was not influenced in any manner by the mode of entry or

gender. Ultimately, the Appellants have not been selected for PC by the Selection Boards in 2020 and 2022 only because of low *inter se* merit.

(f) It is essential for the Navy to maintain a youthful and lean profile to remain operationally effective. A pyramidal force structure is optimally suited to meet the demands of armed combat and other technical requirements. Junior and middle leadership levels are directly involved in combat and operational roles and must, therefore, be staffed predominantly by younger officers. A higher average age within the Armed Forces diminishes cumulative combat capability and adversely affects national security. These considerations were also recognised and emphasised by the Ajay Vikram Singh Committee. Removing the SSC system or substantially increasing PC intake would, over time, have a significant and adverse impact on the average age profile of the Navy. A similar effect would follow from permitting all SSCOs to be retained until completion of minimum pensionable service.

(g) The rank of Captain (Time-Scale) exists to address stagnation arising from limited vacancies in the rank of Captain and above. Officers who are not empanelled for promotion to the rank of Captain are promoted to the rank of Captain (Time-Scale) upon completion of twenty-six years of commissioned service. No separate sanction exists for the rank of Captain (Time-Scale); such officers are counted within the sanctioned strength of the Commander rank and are traditionally assigned Commander billets. The grant of Captain (Time-Scale) is thus an administrative and human resource measure rather than a substantive service upgradation.

(h) There is no shortage of officers in higher or select ranks within the Navy. Deficiencies primarily exist at the rank of Lieutenant Commander and below, that is, among officers with less than six years of service. PC entries in the Navy are therefore optimally calibrated to the current service requirements.

(i) Upon termination of service, SSCOs are entitled to leave encashment for accumulated leave, terminal leave of up to 28 days, and terminal gratuity. In addition, resettlement courses are sponsored by the Directorate General Resettlement through employment-oriented training programmes in various fields, with only 40% of the course fee payable by the officer and the remaining amount sponsored by the Navy. A total of 29 such courses are scheduled for retirees between April 2025 and March 2026, with 230 vacancies reserved for Navy officers. SSCOs are also eligible for recruitment under the ex-servicemen quota in public sector undertakings, government services, and other government departments. Thus, SSCOs receive ample security and support once they are released from service.

### **C. ISSUES**

8. In light of the foregoing factual narrative and the competing claims advanced before us, the controversy in these appeals narrows down to the following issues:

- 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 'Dynamic Vacancy Model' created for the conduct of the Selection Board in December 2020 is arbitrary and violates the directions given in **Annie Nagaraja (supra)**?
- iii. Whether the Respondents erred in not disclosing the evaluation criteria and available vacancies prior to the conduct of the Selection Board in December 2020?

## **D. ANALYSIS**

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

9. At the threshold, it is necessary to delineate the scope of this issue. Broadly, the Appellants before us fall into two categories: male officers and female officers. From the inception of women's recruitment in the Navy in 1991, SSCWOs were excluded from consideration for PC, notwithstanding the assurance in the communication dated 20.12.1991 that a policy to that effect would be promulgated in 1997. Though SSCWOs were finally made eligible for PC by the letter dated 26.09.2008, such eligibility was confined to only three branches/cadres—Law, Education, and Naval Architecture—and was further restricted to officers inducted after January 2009. The cumulative effect of these policy decisions was that, although women had been part of the officer cadre of the Navy since 1991, and their entry into all branches/cadres was opened up in 1998, they remained, as a class, ineligible for consideration for PC until 2009. Even thereafter, eligibility was extended only to a subset of women officers, leaving those in other branches/cadres outside the zone of consideration as a matter of policy.

10. The position of male SSCOs is more nuanced. While male SSCOs, as a class, were never rendered ineligible for PC, officers serving in certain branches/cadres, i.e., predominantly non-technical branches, were, by the terms of their initial entry and prevailing policies, not eligible for PC until 2008. Consequently, a segment of male SSCOs stood on a footing substantially similar to that of the SSCWOs, in that they too had no real prospect of career progression during the relevant period of their service.

11. The Appellants, both male and female SSCOs, contend that ACRs were casually graded for officers who were ineligible for PC as a matter of practice. Resultantly, when they were eventually considered for PC pursuant to judicial intervention in **Annie Nagaraja (supra)**, their evaluation was burdened by years of middling grades and negative endorsements that were never intended to assess long-term suitability. The Respondents, in contrast, assert that the appraisal process has always been objective and gender-neutral, and that the Appellants were denied PC solely on account of their low *inter se* merit.

12. To assess these rival positions, it is necessary to appreciate the role and significance of ACRs within the service framework of the Navy. ACRs constitute the foundational instrument through which an officer's professional competence, employability, and long-term potential are assessed within the Navy. Accordingly, while being records of past performance, they are also intended to serve as evaluative tools that inform future decisions relating to career advancement, retention, and progression. In a pyramidal force structure such as the Navy's, ACRs thus play a determinative role in identifying officers suitable for sustained service and higher responsibility.

13. Against this backdrop, it becomes evident that where officers were understood to have no avenue for PC, and where IOs/COs were conscious that such officers would serve only for a finite tenure, the appraisal process was inevitably affected at its inception. Under a bellcurve-based system of assessment, which is designed to generate relative merit among officers of the same seniority, higher gradings tend to be reserved for those perceived to have a future in the service, as such gradings are instrumental in identifying suitability for promotion. Officers who lacked eligibility for long-term progression were, therefore, routinely awarded average or middling grades, not on account of inferior performance, but because higher grading was perceived to serve no institutional purpose. This practice has assumed decisive significance in the present case, as ACRs accounted

for 90% of the marks in the Selection Board convened in December 2020, rendering such historical gradings determinative of *inter se* merit.

**14.** An additional and closely allied source of prejudice arose from the manner in which endorsements regarding recommendations for PC were recorded in the ACRs of the Appellants. Following the introduction of formal endorsements for PC in October 2009, IOs/COs were required to record one of two endorsements, either “Recommended for PC” or “Not Recommended for PC,” reflecting their assessment of the officer’s suitability for PC during the period under review. In respect of officers who were, as a matter of policy, wholly ineligible for consideration for PC, this column was routinely marked as “Not Recommended for PC,” again, not as an evaluative conclusion drawn from performance, but as a mechanical consequence of their ineligibility. Such endorsements came to signify the prevailing policy positions rather than professional appraisal.

**15.** The long-term consequences of these endorsements became apparent only when, owing to the directions issued by this Court in **Annie Nagaraja (supra)**, the Appellants were suddenly rendered eligible for consideration for PC. Under the Approach Paper governing the Selection Board convened in December 2020, an officer who had been marked “Not Recommended for PC” on three or more occasions in the last five ACR cycles stood disentitled from being granted PC. These endorsements, though originally recorded when the respective officer was ineligible for PC as a matter of policy, were later converted into substantive disqualifications from the grant of PC, even once the officer had become eligible to be considered for the same.

**16.** In effect, the institutional assumption that these officers had no future in the Navy was embedded in their service records and later invoked against them at the decisive stage of consideration. A 3-Judge Bench of this Court, having the same composition, has in a judgement of even date titled, **Lt. Col. Pooja Pal and Ors. v. Union of India and Ors.**,<sup>10</sup> dealt with identical issues pertaining to the grant of PC to SSCWOs in the Army. Building upon the principles recognised in **Nitisha (supra)**, our judgement of even date has held that when officers are assessed under the prevailing assumption that they have no future in the service, the appraisal process is inevitably affected from its very inception. Much like their Army counterparts, the Appellants, too, have faced casual ACR gradings and endorsements authored during the period in which they were understood to be ineligible for PC and destined, at best, to serve only until the maximum permissible tenure for SSCOs. In such a context, the exercise of evaluating long-term potential for sustained service became largely otiose, and the absence of a career horizon inevitably influenced the manner in which relative merit was perceived and recorded. We are of the considered opinion that the reasoning adopted in the even-dated decision applies with equal force to the instant case, as the Appellants before us are similarly placed to the Appellants therein.

**17.** As a consequence, since the Appellants were graded in an environment where their suitability for PC was never meaningfully evaluated, the assessment of *inter se* merit is held to have been materially distorted. We, therefore, conclude that this circularity, where past ineligibility was belatedly transformed into ‘deemed unsuitability’ for career progression, has resulted in an uneven playing field for the Appellants.

## **D.2 Issue No. 2: The Arbitrariness of the ‘Dynamic Vacancy Model’ Created for the Selection Board of December 2020**

**18.** Quite apart from their challenge to the grading of ACRs, the Appellants have also assailed the legality and fairness of the Dynamic Vacancy Model adopted by the

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<sup>10</sup> Civil Appeal No(s). 9747 – 9757/2024.

Respondents to determine the number of vacancies made available for the grant of PC pursuant to the Selection Board convened in December 2020. It is contended that this model has no provenance in any pre-existing policy or settled practice, and that its application resulted in an unduly restrictive and arbitrary allocation of vacancies across branches/cadres, to the detriment of the Appellants.

19. The Respondents, on the other hand, have justified the adoption of this model by pointing to the exceptional situation that arose in the aftermath of the decision in **Annie Nagaraja (supra)**. By virtue of that judgement, multiple batches of SSCOs, who had been denied consideration for PC solely on account of the prospective operation of the policy dated 26.09.2008, were required to be considered together. The Dynamic Vacancy Model was thus devised as a one-time mechanism to distribute available vacancies across several batches, while simultaneously preserving cadre balance and operational viability within the Navy.

20. It is true that the AFT had, in its earlier decision in **Lt. Cdr. Tarun (supra)**, considered and approved the validity of the Dynamic Vacancy Model. However, that judgement was subsequently set aside by this Court in **Amit Kumar Sharma (supra)**, and the matter was remanded to the AFT for fresh consideration. Despite this, in the Impugned Judgement rendered after remand, the AFT did not meaningfully engage with the Appellants' specific challenges to the manner in which vacancies were computed and apportioned under the Dynamic Vacancy Model.

21. Be that as it may, given that the Appellants have already undergone multiple rounds of litigation in pursuit of PC, and that the controversy raised in this issue is purely one of law, we consider it appropriate to examine the merits of the challenge to the Dynamic Vacancy Model ourselves.

#### ***D.2.1 The Computation of Vacancies and the 'Dynamic Vacancy Model'***

22. The grant of PC to SSCOs is governed by Regulation 203 of the 1963 Regulations, which stipulates that PC may be granted "*subject to the availability of vacancies in the stabilised cadre of the Navy.*" The 'stabilised cadre' refers to the permanent strength of any branch/cadre, as per the stabilised positions sanctioned by the Government as well as the Training Draft and Leave Relief (TDLR) positions, which account for personnel temporarily unavailable due to training, postings, or leave. Ordinarily, this would mean that, in a given year, consideration for PC would be tied to the deficiency in sanctioned permanent posts within a particular branch/cadre at the relevant time.

23. In the normal course, SSCOs are considered for PC in their 6<sup>th</sup> year of service, being the First Look, and again in their 7<sup>th</sup> year of service, being the Second Look. These two years are commonly understood as constituting the officer's 'material time' for consideration. It follows that vacancies for PC are assessed with reference to the cadre position prevailing when the SSCOs are being considered for the same, i.e. in their 'material time'.

24. However, pursuant to the directions of this Court in **Annie Nagaraja (supra)**, a large number of officers across multiple batches came to be considered together by a Selection Board convened in December 2020. In respect of these officers, the Respondents treated the year 2020 as the 'material time' for the purpose of assessing vacancy availability under Regulation 203.

25. To operationalize this exercise, the Navy formulated an Approach Paper setting out the methodology for computing vacancies and evaluating *inter se* merit. The Approach Paper expressly acknowledged that it was intended as a one-time measure, crafted to

address the anomalous situation of simultaneously considering as many as 24 batches of SSCOs for PC, while maintaining the Navy's pyramidal structure and operational readiness.

**26.** Insofar as vacancy computation was concerned, the Approach Paper introduced what has been described as the Dynamic Vacancy Model. Under this framework, the total deficiency in the stabilised cadre of each branch/cadre was first determined by applying the ideal PC-SSC ratio to the total strength of the cadre, then subtracting the number of officers already holding PC. The Respondents have stated that, with a view to maximize the vacancies available for consideration, deficiencies in temporary sanction posts and TDLR were also factored into this computation.

**27.** The resultant deficiency was thereafter divided by 15 and distributed across batches in a dynamic manner. Unlike a static allocation, the number of vacancies available to each batch varied depending on the number of vacancies already filled in preceding rounds. Thus, while the first round involved dividing the total deficiency by 15, subsequent rounds recalibrated the divisor by reducing the deficiency to account for vacancies already allotted. To explicate, let us take the example of the Dynamic Vacancy Model applied by the Respondents to the SSCOs in the Executive-Logistics cadre:

Round	Batch	No of officers	Deficiency (A = C of previous round)	Vacancy (B = A/15)	Resultant Deficiency for Next Round (C = A - B)
1	1995/ 2001	01 (First look) 01 (First look)	27	2	25
2	1995/ 2001/ 2002	01 (Sec look) 01 (Sec look) 05 (First look)	25	2	23
3	2002/ 2003	05 (Sec look) 05 (First look)	23	2	21
4	2003/ 2004	05 (Sec look) 04 (First look)	21	2	19
5	2004/ 2005	04 (Sec look) 05 (First look)	19	2	17
6	2005/ 2006	05 (Sec look) 07 (First look)	17	2	15
7	2006/ 2007	07 (Sec look) 08 (First look)	15	1	14

8	2007/ 2008	08 (Sec look) 12 (First look)	14	1	13
9	2008/ 2009	12 (Sec look) 06 (First look)	13	1	12
10	2009/ 2010	06 (Sec look) 16 (First look)	12	1	11
11	2010/ 2011	06 (Sec look) 35 (First look)	11	1	10
12	2011/ 2012	35 (Sec look) 04 (First look)	10	1	9
13	2012/ 2013	04 (Sec look) 30 (First look)	9	1	8
<b>Total</b>	<b>14 Batches</b>	<b>139 Officers</b>		<b>19</b>	

**28.** As may be seen from the above illustration, the deficiency diminishes with each successive round as vacancies are allotted. At the same time, this method does not result in the exhaustion of the entire deficiency. In the Executive–Logistics cadre, for instance, out of an initial deficiency of 27, only 19 vacancies were ultimately allocated across 13 batches.

**29.** The above table also demonstrates that each batch was afforded both a First Look and a Second Look. Owing to the peculiar circumstances of this case, however, both Looks were conducted within the same Selection Board and the same calendar year. Nevertheless, each batch was assessed alongside a senior batch in the First Look and a junior batch in the Second Look, save for the earliest batch.

### ***D.2.2 Grievances of the Appellants-SSCOs***

**30.** Having outlined the mechanics of the Dynamic Vacancy Model, we now turn to the three principal objections raised by the Appellants to its adoption and implementation.

#### ***D.2.2.1 Deficiency wrongly computed as in 2020***

**31.** The Appellants have contended that, under ***Annie Nagaraja (supra)***, vacancies ought to have been assessed with reference to their 6<sup>th</sup> and 7<sup>th</sup> years of service, rather than with reference to the cadre position in 2020. This submission proceeds on the premise that the concept of ‘material time’ must remain fixed, irrespective of the exceptional circumstances in which consideration was eventually undertaken.

**32.** As discussed previously, this Court, in ***Annie Nagaraja (supra)***, directed that the Selection Board consider the officers for the grant of PC as per Regulation 203. This would involve the determination of vacancies at the ‘material time’. We have already observed that for the Appellants, who were considered for the grant of PC by the Selection Board in December 2020, the ‘material time’ arose in 2020.

**33.** The relevance of ‘material time’ lies in its nexus with the availability of vacancies capable of being filled when officers are actually considered for PC. A historical deficiency

that may have existed a decade earlier bears no rational connection to the cadre position prevailing at the time of actual consideration. In the instant case, the Selection Board was convened in December 2020 pursuant to judicial directions, and it was only at that point that vacancies could realistically be filled. The Respondents were therefore justified in treating 2020 as the relevant material time. On this count, thus, we find no infirmity with the actions of the Respondents.

**34.** Before moving to the next grievance, we may also allude to another argument made by some of the Appellants in relation to the material time being set in 2020. They contended that the framework implemented by the Respondents has unfairly resulted in them being considered on the basis of the same ACRs in their First Look as well as their Second Look. While this is factually correct, it is an inevitable consequence of the extraordinary situation created by delayed consideration across multiple batches. Importantly, the distinction between the two Looks was preserved through comparison with different adjacent batches. In these circumstances, we see no arbitrariness in relying on the most recent ACRs available, nor do we find any violation of fairness warranting interference.

#### D.2.2.2 Arbitrary division of the deficiency by 15

**35.** The Appellants have further argued that the division of the deficiency by 15 was arbitrary and engineered to artificially suppress the number of vacancies available for selection. The Respondents have, however, explained the basis of this methodology before the AFT, contending that vacancies for PC are always determined after taking a long-term perspective.

**36.** This is necessitated due to the fact that, upon being granted PC, the officer would continue to serve the Navy for at least 30 years, as compared to the maximum tenure of 14 years as an SSCO. This additional 15-16 years of service has an impact on the age composition and the overall agility of the forces, especially given the lean sanctioned strength of the Navy. The rationale advanced is that distributing vacancies over a fifteen-year horizon ensures a balanced age and experience profile within the officer cadre and prevents sudden distortions in the pyramidal structure of the Navy. This distribution is reflected in the division of the remaining deficiency by 15, before the vacancy is allotted for a particular round of selection.

**37.** We find strength in the submission of the Respondents. Taking the longterm requirements of the Navy as a lean military wing into account, a policy of distribution of vacancies across the present and future rounds of selection cannot be termed as an arbitrary exercise *per se*. That being so, it would not be appropriate for this Court to interfere in the policy decision when the means adopted bear a reasonable connection to the stated objective.

**38.** The specific challenge to the choice of the number '15' as the divisor also fails to persuade us. Far from being an arbitrary figure, it corresponds to the approximate years of service that accompany the grant of PC. Thus, in our considered view, the selection of this divisor is anchored in service realities rather than caprice.

#### D.2.2.3 Non-exhaustion of all vacancies

**39.** Lastly, the Appellants are also aggrieved by the fact that, notwithstanding the existence of a substantial deficiency in certain cadres, the Respondents failed to create and utilise all available vacancies, thereby denying PC to otherwise eligible officers such as the Appellants.

40. The Respondents have submitted before the AFT that limiting vacancies despite the existence of a larger deficiency is based on a multitude of policy considerations, from maintaining readiness for exigencies to ensuring adequate vacancies for the future batches.

41. In our considered opinion, this issue is no longer *res integra*. It is well settled, including through a judgement of a Constitution Bench of this Court in ***Shankarsan Dash v. Union of India***,<sup>11</sup> that a candidate does not have a right to be selected merely due to the existence of vacancy. It is open for the Competent Authority, for policy reasons, to leave such vacancies unfilled as are required, as long as such action is not plagued with the vice of arbitrariness, does not aim to undermine the merit of the candidates, or is not otherwise illegal.

42. We find that the above-stated principle is squarely applicable in the instant case, given that the Navy has, for well-explained reasons, chosen not to exhaust all the available vacancies instantaneously. Owing to this, we cannot fault the Respondents' decision to leave certain vacancies empty for future batches.

43. To reiterate, this Court finds that the modalities of conducting the 2020 Selection Board by the Respondents, with respect to the creation and distribution of vacancies, in compliance with ***Annie Nagaraja (supra)***, did not suffer from any infirmity of arbitrariness or discrimination. The decisions of the Navy regarding such a one-time exercise were guided by the terms of the said judgement, the extraordinary circumstances of the Selection Board, and demonstrable rationality. As such, there is no case made out for us to interfere with the same.

### **D.3 Issue No. 3: Non-disclosure of Evaluation Criteria and Available Vacancies Prior to the Conduct of the Selection Board**

44. Apart from the issues discussed above, the Appellants have also drawn our attention to a fundamental procedural deficiency that permeated the conduct of the Selection Boards held in December 2020 and September 2022, namely, the absence of any prior disclosure of the evaluation framework governing the process and the number of vacancies available. Unlike the Army and the Air Force, where the governing policies, vacancy computation methodologies, and assessment criteria were formally promulgated, the Navy did not place any document in the public domain outlining the approved method of determining vacancies, the parameters of evaluation, the moderative mechanisms employed (if any), or the manner in which merit lists were to be prepared. According to the Appellants, this opacity left officers aspiring for PC unaware of the standards against which they would be judged, thereby depriving them of a fair opportunity to address potential deficiencies in their service records.

45. The practical consequences of this non-disclosure, it is urged, were far from theoretical. The Appellants contend that they were never informed that their ACRs from the preceding five years would serve as the exclusive basis for evaluation. As a result, they did not seek redressal of adverse remarks or omissions therein within time. Equally, they remained unaware of whether, and if so how, the Respondents had sought to mitigate the structural deficiencies inherent in the ACR regime, which we have already adverted to while examining the first issue. Requiring the officers to participate in the process for the grant of PC without disclosing the material particulars of the selection procedure was akin to asking them to navigate uncharted waters without a compass.

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<sup>11</sup> (1991) 3 SCC 47.

46. This submission of the Appellants has carried force in the previous round of litigation before this Court. In ***Amit Kumar Sharma (supra)***, this Court took serious exception to the Respondents' failure to disclose the material governing the selection process. At that stage, the AFT had adjudicated the matter in ***Lt. Cdr. Tarun (supra)*** on the basis of documents furnished to it in a sealed cover, without any corresponding disclosure to the affected SSCOs. The Appellants had neither been supplied the instructions issued to reporting officers and Selection Boards, nor made privy to the rationale underlying the methodology adopted by the Respondents. This Court found such a procedure to be fundamentally flawed and, on that ground, remanded the matter to the AFT for fresh consideration.

47. Upon remand, the AFT, *vide* the Impugned Judgement, has accorded necessary impetus to this concern raised by the Appellants. It recognised that the absence of such information being disclosed to the assessee officers not only handicapped the Appellants in their attempts to litigate against the validity and results of the Selection Board, but it vitiated the selection process itself. It may be apposite to reproduce the relevant extract thereof below:

*“62. An analysis of the cases adjudicated by the AFT (PB) as given at Para 55 above, indicate that consequent to the judicial orders and consideration of the affected SSCOs, all three Services obtained requisite Govt. Sanction for implementing the judicial orders. In the case of the IAF, they issued a HRP defining the criteria and details of consideration. In the case of the IA, they obtained sanction for additional vacancies and issued the General Instruction for the conduct of the Special No 5 SB in which the criteria and the details of all the 615 eligible SSCOs was promulgated...*

*63. In the case of IN after obtaining the requisite Govt. sanction, they obtained the approval of the competent authority of an 'Approach Paper' on the modalities for the conduct of the Special Board and the environment was intimated only of the batches that were being considered. However, while they had the criteria, method for calculating vacancies, apportionment of vacancies to various Branches/Cadres on record duly approved, the details were not known to the SSCOs being considered, as these details were not promulgated...”*

[Sic] [Emphasis supplied]

48. There is, patently, a dissonance on the promulgation of policy documents on the conduct of the Selection Boards between the Navy and the other two wings of the Armed Forces. While the Army and the Air Force ensured that the affected officers were informed, in advance, of the criteria and modalities governing selection, the Navy confined such material to internal approval processes. This asymmetry in disclosure, as correctly noted by the AFT, undermined the transparency of the selection exercise. This dichotomy led the AFT to direct the Respondents to hold a renewed Special Board, after the public dissemination of the relevant material and policy considerations.

49. It would not be out of place to record that the Appellants, on this issue, are not necessarily aggrieved by the findings forwarded by the AFT. In line with the Appellants' arguments, the AFT has held that the selection process in the 2020 Selection Board, as well as the 2022 Selection Board, suffered from the infirmity of opaqueness in procedure and criteria.

50. Significantly, the learned Additional Solicitor General, appearing on behalf of the Respondents, has also fairly conceded that the Navy does not propose to challenge the Impugned Judgement or its findings on this aspect, and that the Respondents are prepared to abide by the AFT's directions for conducting a fresh Selection Board with full prior disclosure, subject to the outcome of the instant appeals.

51. In these circumstances, 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. We, therefore, find no reason to differ from the view taken by the AFT in this regard. The conclusion that the Navy was obligated to place the relevant policy material in the public domain, in a timely manner and before the commencement of the selection process, merits affirmation.

### **E. CONCLUSION AND DIRECTIONS**

52. Before concluding the judgement and passing consequential directions to the parties before us, it is necessary to recapitulate our findings on the various issues raised before us. They are summarised as follows:

(i) The ACRs of the Appellants, who were ineligible for PC consideration by virtue of their terms of entry and/or the prevailing policies at the time, were written keeping in mind their ineligibility for PC and with the assumption that they would never undergo any substantive career progression. This presumption undermined the assessment of their 'suitability' for such progression once it became available and thus, adversely affected their overall merit in the consideration for PC;

(ii) The Dynamic Vacancy Model adopted by the Respondents to create and distribute vacancies amongst the officers considered by the Selection Board held in December 2020 was rational, nonarbitrary, and implemented as a one-time measure owing to the directions issued by this Court in **Annie Nagaraja (supra)**; and

(iii) The failure of the Respondents to disclose the evaluation criteria, vacancy computation methodology, and allied policy considerations prior to the conduct of the Selection Boards has adversely impacted the officers considered in those Boards.

53. We may hasten to observe at this stage that in ordinary circumstances, having recorded our approval for the reasoning adopted by the AFT in respect of the non-disclosure of the selection procedure and criteria and without taking into consideration our analysis in the first issue, we would have upheld the decision of the AFT directing another Selection Board to consider the Appellants cases for grant of PC. There are, however, other factors which weigh on our conscience and prevent us from approving the said directions forthwith.

54. The first being that the instant appeals constitute the third round of litigation regarding the Appellants' claim for PC before this Court. After securing their entitlement to be considered for the grant of PC initially in 2015 and 2016, and affirmed by this Court in 2020, the Appellants were forced to approach the Courts afresh for a fair assessment. After their claim was initially rejected by the AFT in 2022, the Appellants again approached this Court, which remanded the matter to the AFT for fresh adjudication. Regardless of this, the AFT has considered it wise to direct a fresh consideration of the Appellants by a new Special Board. This ordeal being faced by the aggrieved SSCOs, in our opinion, ought not to be allowed to continue to a fourth round.

55. This is more so because of the second factor that the Appellants cannot be expected to obtain a fair assessment in the renewed Special Board due to the inherently skewed ACRs suffered by them, arising from being considered ineligible for the grant of PC for almost the entirety of their careers. Given the extensive non-consideration of any career progression at the time of filling of ACRs of the Appellants, the result of another consideration by a Selection Board would still not yield any equitable or non-discriminatory result. The third factor which persuades us to finally conclude these proceedings is that it

is not in the overall interest of the Navy and its officers to continue to indulge in a protracted litigation.

**56.** For the above-stated reasons, we consider it appropriate to allow these appeals and consequently, modify the directions issued by the AFT by way of the Impugned Judgement dated 27.09.2024, and the subsequent Impugned Orders dated 13.02.2025 and 06.03.2025, in the following terms:

**(i)** The grant of PC to the SSCOs who have already been granted PC by the Selection Boards convened in December 2020 and September 2022 as well as those granted relief by virtue of this Court's judgement in **Lt. Cdr. Manish Kumar Singh (supra)**, shall not be disturbed;

**(ii)** As a one-time measure, instead of convening a fresh Special Board for reconsideration of the SSCOs' cases for the grant of PC, the following categories of officers, who were considered for the grant of PC by the Selection Board convened in December 2020 and are presently still in service, shall be entitled to the grant of PC, subject to their meeting the prescribed medical criteria and on receiving disciplinary and vigilance clearance:

**a.** SSCWOs who were inducted into the Navy prior to January 2009;

**b.** SSCWOs who were inducted into the Navy after January 2009 in branches/cadres excluding Law, Education, and Naval Architecture; and

**c.** Male SSCOs who were barred from consideration for PC as per their initial terms of service/entry.

**(iii)** The Appellants and Intervenors before us, who have been released from service during the pendency of these proceedings, whether before the AFT, before the High Court, before this Court, or in the *interregnum*, but would otherwise fall within the categories of officers identified in sub-paragraph (ii) 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;

**(iv)** 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;

**(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/cadre 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, in line with the direction contained in Paragraph 66(b) of the Impugned Judgement dated 27.09.2024; and

**(vi)** The Respondents shall undertake the policy examination directed by the AFT in Paragraph 66(e) of the Impugned Judgement dated 27.09.2024 forthwith.

**57.** Ordered accordingly.

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