

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL Nos.9367-9369/2011

**IN THE MATTER OF:**

Secr., Ministry of Defence ... Appellant

VERSUS

Babita Puniya & Ors ... Respondents

Written Submissions by Ms. Aishwarya Bhati, Senior Advocate,  
appearing for Impleaded-Respondents/Serving Women Officers,  
similarly placed as Respondents

1. The present set of Appeals have been preferred by the Union of India against judgment and order dated 12.03.2010 passed by the Hon'ble High Court of Delhi *inter alia* holding that Short Service Commissioned Women Officers (SSCWOs) of the Army are entitled to Permanent Commission at par with Gentlemen SSCOs with all consequential benefits. The Hon'ble High Court also directed that the benefit would be conferred to the serving Women Officers as on 12.03.2010 (date of the impugned order) and Women Officers, who retired during the pendency of their Writ Petition, with all consequential benefits, including promotion, at par with Gentlemen SSCOs.
2. This Hon'ble Court vide its order dated 02.09.2011 specifically noted that only contempt proceedings had been stayed by this Hon'ble Court and the operation of the impugned order had not been stayed at all.
3. It is submitted that on 26.09.2008, the President of India had been pleased to sanction the Policy for grant of Permanent Commission prospectively to SSCWOs in two streams viz., Advocate General (JAG) and Army Educational Core (AEC),

as noted by the Hon'ble High Court itself in para 4 of the impugned judgment at page 9. After a delay of 11 years, the Ministry of Defence, Union of India issued a notification dated 25.02.2019 granting Permanent Commission to SSCWOs in 8 streams of the Indian Army (i.e. Signals, Engineers, Army Aviation, Army Air Defence, Electronics and Mechanicals Engineers (EME), Army Service Corps, Army Ordnance Corps and Intelligence), in addition to the existing 2 streams of JAG & AEC.

4. It is submitted that in this policy decision of 25.02.2019, there are three points of arbitrariness & hostile discrimination qua the SSCWOs which need the indulgence of this Hon'ble Court, being in the teeth of sacrosanct constitutional principles of equality, liberty and dignity enshrined Articles 14, 15, 19 & 21 of the Constitution of India. Additionally, they are also in the teeth of clear directions of the Hon'ble High Court to grant Permanent Commission at par with Gentlemen SSCOs with all consequential benefits, which ostensibly has been complied with by the Army by way of Notification dated 25.02.2019. The three points of arbitrariness and hostile discrimination are following:-

**I. Prospectivity of the Policy :-**

- a) Para 9 of the Policy clarifies that the policy will come into effect prospectively, from the date of issue of this letter. However, it has been argued by the Union of India and also submitted in a Note on behalf of the Union of India, at the time of hearing, that the proposal of Union of India is to consider all serving Women Officers upto 14 years of service for Permanent Commission, in terms of the Notification dated 25.02.2019. It is further proposed by the Union of India

that Women Officers, serving between 14 to 20 years, would be permitted to continue till 20 years of service, so as to entitle them to pensionary benefits, however they will not be given any option of Permanent Commission and Women Officers above 20 years of service would be relived with pensionary benefits immediately.

- b) In other words, the proposal of the Union of India is to deny the option of permanent commission to all serving Women Officers, who have been serving for more than 14 years. A consolation prize of completing pensionary service is proposed for these extraordinary and experienced Women Officers, in lieu of denying them the constitutional guarantees as also the fruits of their litigation.
- c) This proposal of the Union of India smacks off arbitrariness & hostile discrimination qua the Women Officers who have pioneered the battle for grant of Permanent Commission to Women Officers and have been pursuing their remedies before the Hon'ble Court since 2003, when the lead Writ Petition No.1597/2003 was filed before the Hon'ble High Court.
- d) It is submitted that the impugned judgment dated 12.03.2010 was never stayed by this Hon'ble Court even when the Appeals were listed before this Hon'ble Court, only the contempt proceedings were stayed clarifying that there is no stay of the impugned judgment.
- e) It is the respectfully submission of the Impleaded-Respondents that having delayed grant of Permanent Commission to Women Officers at par with Gentlemen

Officers of the Indian Army for 10 years, even after the judgment of the Hon'ble High Court makes it writ large that the cause of the Women Officers has been treated with callousness, apathy, negligence at the hands of the policy makers and even after the policy was made, the administrators managed to take away substantial benefits from the deserving Women Officers, who have now proven themselves in the Army itself for the last 27-28 years.

- f) Allowing the proposal of the Union of India would allow premium to this callousness & apathy of Union of India and would cause grave injustice and severe prejudice to the Women Officers, who despite having succeeded before the Hon'ble High Court, despite the Government of the day coming with the policy decision to grant Permanent Commission, would still be denied any option for grant of Permanent Commission.
- g) It is the submission of the Women Officers that all serving Women Officers above 14 years of service be also equitably granted the option of Permanent Commission and they may be assessed on the basis of their suitability, as reflected in the ACRs and medical fitness, and be granted Permanent Commission.
- h) It is respectfully submitted that as a onetime measure, the proposal of Union of India be accepted with a caveat to allow the Women Officers above 14 years of service, who are not found suitable/ fit for grant of Permanent Commission, to continue till completion of pensionary service and be granted pensionary benefits alongwith consequential benefits.

- i) The submissions made on behalf of the Union of India in the written Note with regard to national security, discrimination against males, non-trainable, exigencies of service, battle scenario, physical capabilities, composition of rank and file, environmental and psychological realities, capture by enemies, employment of Women Officers, infrastructure, different physical standards, exposures, retrospective implementation etc., need to be rejected with the contempt that it deserves.
- j) It is unfortunate that such grounds have been raised, which are completely contrary to the demonstrated records of the case, where Women Officers have been working to the best of their capacities and capabilities since they were first inducted in 1992 for the last 27-28 years. The Women Officers have demonstrated that they do not lack in any manner in the roles that have been assigned to them. These purported grounds of Union of India, which in the submission of the Impleaded-Respondents are nothing but misconceived and false boogies, to deny Women Officers of their rightful entitlements and it even runs contrary to the letter, spirit and purport of the policy decision of the Union of India dated 25.02.2019 by which Permanent Commission has been granted to SSCWOs, in all the 10 arms that they have been serving as SSCOs.
- k) It is submitted that the ground of discrimination against male officers, in case Women Officers above 14 years of service are considered for permanent commission, is another fallacy or false alarm being cited on behalf of the Union of India. To a specific question, by the Hon'ble Bench, at the time of arguments, as to whether

there are any SSC Gentlemen Officers above 14 years of service, the answer in negative was given by the learned Senior Counsel appearing for the Union of India. Therefore, the discrimination is only perceived discrimination or imaginary discrimination.

**II. “Staff Appointments only”:-**

- a) The second point of discrimination is contained in paras 5 & 6 of the policy letter dated 25.02.2019, by which Permanent Commission to Women Officers is being confined to ‘staff appointments only’, as against ‘criteria appointments/command appointments’. This discrimination will essentially bar Women Officers in Permanent Commission to hold all posts which are designated as ‘criteria appointments’/‘command appointments’. The ‘criteria appointments’ are important appointments in the Army organizational setup and to confine Women Officers to ‘staff appointments only’, would effectively render the Women Officers as second grade officers in the Indian Army.
- b) It is submitted that no such confinement of Women Officers to staff appointments only, has ever been contemplated or notified in any of the advertisements or policy decisions since 1992, when women were first inducted in the Indian Army. As SSCWOs, women have been entitled to ‘staff appointments’ as also ‘criteria appointments’ all along. Further, in 2008 when Permanent Commission was granted to Women Officers in the streams of Judge Advocate General (JAG) and Army Educational Core (AEC), they were not confined to staff appointments only. It is pertinent to mention here the oral submission made on behalf of

Union of India, at the time of arguments, that there are no criteria appointments in JAG and AEC, is completely erroneous and contrary to record. Some examples of criteria appointments i.e. non-staff appointments being held currently by Women Officers are Officer-in-Charge (Legal Cell), Delhi High Court and Officer-in-Charge (Legal Cell), Armed Forces Tribunal Principal Bench, New Delhi. Further, the following posts in JAG and AEC are currently designated as criteria appointments:-

For JAG Branch

- i). Assistant/Deputy Judge Advocate General of Corps, Command and Army HQs
- ii). Assistant MII Service (AMS) Legal
- iii). Col MS Legal Officer
- iv). Incharge legal cells of all High Courts, Supreme Court and Armed Forces Tribunal
- v). Assistant Adjutant General (Legal) of all the HQs.
- vi). Col litigation /DJAG litigation
- vii). Brig/Maj Gen on Joint and Addl. JAG and JAG

For AEC

- i). Brigade Education Officer
- ii). Division Education Officer
- iii). Col Education
- iv). Brig Education at Station, Corps and Command Level

- c) It is also pertinent to mention here that SSC Gentlemen Officers of Indian Army, who are granted Permanent Commission are also not confined to staff appointments only and therefore, such a confinement of Women Officers to staff appointments only, as contemplated in the Policy letter dated 25.02.2019 is out rightly discriminatory, arbitrary and deserves to be interfered with by this Hon'ble Court.
- d) Even currently, the service Women Officers are holding important criteria appointments in their respective streams and discharging their duties as per the mandate and requirement of the Army Regulations and ethos. It is also important to highlight that 'staff appointments' and 'criteria appointments' are not static and assigned to specific post as per the organizational requirement and the nomination of any post as a 'staff appointment' or 'non-staff appointment' changes, whenever it is deemed appropriate by the MS Branch.
- e) It is submitted that the justification/reasons stated in the Note handed over on behalf of the Union of India with regard to denying Women Officers command appointments is not highly regressive but also completely contrary to the demonstrated record and statistics. The demonstrated fact is that the Women Officers have been serving in the 10 Combat Support Arms, for the last 27-28 years and have proven their metal and courage under fire. They have been found suitable by the organization itself and have led platoons and companies of soldiers and men, both in peace locations as also hostile locations/operations, in the 10 Combat Support Arms. There has never been any occasion of soldiers/men having refused or not

accepted the command of women on account of their perceived 'rural background, with prevailing societal norms'.

- f) It is submitted that the Union of India having taken the policy decision in line and compliance of the impugned judgment of the Hon'ble High Court of Delhi dated 12.03.2010 and having adopted the policy of permanent commission for Women Officers in the Army in combat support stream. Further, the Indian Air Force and Indian Navy, also having adopted the policy of complete equality for grant of permanent commission to Women Officers, it is extremely unfortunate that reasons of women lacking on various counts, prevailing societal norms and lack of combat exposure etc., are being cited as a lame excuses. It is submitted that Women Officers have been working shoulder to shoulder, with their colleagues in the Indian Army. Even as SSCWOs, they have been working as company commander and leading the soldiers from the front as per the ethos of the Indian Army. As young officers in the rank of Captain and Major, they have been in hostile and combat zone and have displayed exemplary courage and bravery, acting exactly in the manner commensurate with the respect that Indian Army commands, world over. To deny them command appointments would be an extremely retrograde step and will inflict irreparable injury to the dignity of these brave women.
- g) It is also the humbly submission of the Women Officers that the stand of Union of India, as submitted in the Note, with regard to national security and operational effectiveness, battle field scenario, capture by enemy,

command appointments and infrastructure are misconceived and based on misleading and erroneous basis. The issue before this Hon'ble Court is not whether to allow Women Officers to work in the combat role in the Indian Army. It is a matter of record that Indian Army has so far not commissioned women in any of the combat streams and their appointment even as SSCOs since 1992 has been confined to the 10 support arms, in which they are being granted permanent commission. Therefore, the issue before this Hon'ble Court is not grant of command appointment in combat role or grant of permanent commission in combat arms of the India Army. The issue is denial of command appointments and criteria appointments i.e. non-staff appointment to Women Officers who are found suitable and fit to be granted permanent commission, in the 10 combat support arms that they are working in for almost last 3 decades.

- h) The argument that Women Officers are not trainable in specialization envisaged for permanent commission of Women Officers, skewed cadre structure, lower physical capabilities etc. are grounds/excuses that follow the pattern of regressive mindset, rather than being based on experience or statistics. Infact, the competent Women Officers serving the Indian Army, which is one of the most respected Army in the world, for almost 3 decades have also provided enough and more experiential understanding, statistics of ground functioning and feats of exemplary Women Officers in the face of grave adversity. The demonstrated record, experience and quantifiable statistics do not support the regressive and obstinate reasoning given in the Note of

the Union of India and actually runs counter to Union of India's own policy decision to grant permanent commission to Women Officers.

**III. Exercise of option on completion of 3 years and before completion of 4 years commissioned service:-**

- a) The stipulation in para 4 of the policy letter dated 25.02.2019, which contemplates that Women Officers would be required to exercise option for grant of Permanent Commission and their choices of specialization, on completion of 3 years and before completion of 4 years commissioned service, is also discriminatory qua the options given to Gentlemen Officers, to opt from SSC to Permanent Commission and also in the teeth of the directions of the Hon'ble High Court directing that SSCWOs of the Army are entitled to Permanent Commission at par with Gentlemen SSCOs with all consequential benefits.

5. The Women Officers of the Indian Defence Forces have displayed exemplary courage in the exercise of their duties and responsibilities and have been awarded with exemplary service distinctions. Some examples of such distinctions and exemplary recognitions are noted here for ready reference:

**a. Major Mitali Madhumita**

In February 2011, Major Mitali Madhumita, Army Education Corps (AEC), became India's first lady officer to receive the Sena Medal gallantry, a decoration given to soldiers for exemplary courage during operations. Her citation, which is appended herewith as Appendix A, reads as under:-

“26 February 2010 suicide bombers and terrorists attacked the residential compound of the Indian Embassy complex at Kabul, Afghanistan. Major Mitali Madhumita, who was the leader of English language training team, quickly rushed to the attack site. When her vehicle was stopped by Afghan security, she proceeded on foot with utter disregard to personal safety. On reaching the site she not only searched for her trapped and wounded colleagues but also personally directed speedy rescue efforts and evacuation to the nearest hospital. Her swift action saved the lives of many. Thereafter she attended to the critically injured officers till their evacuation to India, which lifted their morale considerably.

For this exemplary act of courage and determination in the face of a terrorist attack, Major Mitali Madhumita was awarded the SENA MEDAL (GALLANTRY).

**b. Squadron Leader Minty Agarwal**

She is a Fighter Controller with the [Indian Air Force](#). She was part of the team that guided Wing Commander [Abhinandan Varthaman](#) during the [2019 Balakot airstrike](#) carried out by the IAF. In August 2019, she was awarded the [Yudh Seva Medal](#) by [President of India](#), becoming the first woman to receive it.

**c. Divya Ajith Kumar**

At the age of 21, Divya Ajith Kumar beat 244 fellow cadets (both men and women) to win the Best All-Round Cadet award and get the coveted “Sword of Honour,” the highest award given to a cadet of the

Officers Training Academy. To achieve the “Sword of Honour,” one must triumph the merit list, which comprises of P.T. tests, higher P.T. tests, swimming tests, field training, service subjects, obstacle training, drill tests, cross-country enclosures, among other things. The first woman to win this honour in the history of Indian Army, Captain Divya Ajith Kumar led an all-women contingent of 154 Women Officers and cadets during the Republic Day parade in 2015.

**d. Gunjan Saxena**

During the Kargil War, Flight Officer Gunjan Saxena made history by becoming the first woman IAF officer to fly in a combat zone. In 1994, Gunjan Saxena was one of 25 young women who formed the first batch of women IAF trainee pilots. During Kargil, Saxena flew dozens of helicopter sorties through the war zone to air-drop supplies to troops and evacuate injured Indian Army soldiers. Later, she became the first woman recipient of the Shaurya Vir Award, a gallantry award presented for valour, courageous action or self-sacrifice while not engaged in direct action with the enemy.

**e. Naval officers of Indian Naval Sailing Vessel (INSV) Tarini**

The President of India awarded Nao Sena (Gallantry) medal to the six women crew members of Indian Naval Sailing Vessel (INSV) Tarini, who circumnavigated the globe, braving treacherous seas and displaying "raw courage".

Lt Cdr Vartika Joshi skippered the 194-day mission, traversing through the Indian, the Pacific and the Atlantic oceans, along with Lt Cdr Pratibha Jamwal, and

Lts P Swathi, Vijaya Devi, B Aishwarya and Payal Gupta.

6. The Constitution of India envisages gender parity, gender justice and gender dignity in equal measure to the women citizens of the Country and this Hon'ble Court is duty bound to uphold the sacrosanct principles of gender equality as enshrined and interpreted by this Hon'ble Court in a catena of judgments. Some observations encompassing the constitutional principles of gender parity, gender justice and gender dignity are quoted herewith for ready reference:

a. In *Charu Khurana vs. Union of India (2015) 1 SCC 192*, this Hon'ble Court pronounced that -

*“41. .... The 73<sup>rd</sup> and 74<sup>th</sup> amendment of the Constitution which deals with the reservation of women has the avowed purpose, that is, the women should become parties in the decision making process in a democracy that is governed by rule of law. Their active participation in the decision making process has been accentuated upon and the secondary rule which was historically given to women has been sought to be metamorphosed to the primary one. The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity.”*

- b. In *Joseph Shine vs. Union of India* (2019) 3 SCC 39, this Hon'ble Court authoritatively held :

*“87. Our Constitution is a repository of rights, a celebration of myriad freedoms and liberties. It envisages the creation of a society where the ideals of equality, dignity and freedom triumph over entrenched prejudices and injustices. The creation of a just, egalitarian society is a process. It often involves the questioning and obliteration of parochial social mores which are antithetical to constitutional morality. The case at hand enjoins this constitutional court to make an enquiry into the insidious permeation of patriarchal values into the legal order and its role in perpetuating gender injustices.*

*138. In remedying injustices, the Court cannot shy away from delving into the 'personal', and as a consequence, the 'public'. It becomes imperative for us to intervene when structures of injustice and persecution deeply entrenched in patriarchy are destructive of constitutional freedom. But, in adjudicating on the rights of women, the Court is not taking on a paternalistic role and "granting" rights. The Court is merely interpreting the text of the Constitution to re-state what is already set in ink-women are equal citizens of this nation, entitled to the protections of the Constitution. Any legislation which results in the denial of these Constitutional guarantees to women, cannot pass the test of constitutionality.”*

- c. In *Indian Young Lawyers Association & Ors. v The State of Kerala & Ors.* 2018 (8) SCJ 609, this Hon'ble Court declared:

*“17. Our conversations with the Constitution must be restructured to evolve both with the broadening of the content of liberty and dignity and the role of the Court as an enforcer of constitutional doctrine.....*

*To treat women as children of a lesser god is to blink at the Constitution itself. Among the fundamental duties of every citizen recognized by the Constitution is “to renounce practices derogatory to the dignity of women”.<sup>5</sup> In speaking to the equality between individuals in matters of livelihood, health and remuneration for work, the Directive Principles speak to the conscience of the Constitution. To allow practices derogatory to the dignity of a woman in matters of faith and worship would permit a conscious breach of the fundamental duties of every citizen. We cannot adopt an interpretation of the Constitution which has such an effect.*

*If we are truly to emerge out of the grim shadows of a society which has subjugated groups of our citizens under the weight of discrimination for centuries, it is time that the Constitution is allowed to speak as it can only do: in a forthright manner as a compact of governance, for today and the future.”*

- d. In *Richa Mishra vs. State of Chhattisgarh and Ors.* (2016) 4 SCC 179, **this** Hon’ble Court highlighted that:

*“Women in this world, and particularly in India, face various kinds of gender disabilities and discriminations. It is notwithstanding the fact that under the Constitution of India, women enjoy a unique status of equality with men. In reality, however, they have yet to go a long way to achieve this Constitutional status. It is now realised*

*that real empowerment would be achieved by women, which would lead to their well-being facilitating enjoyment of rights guaranteed to them, only if there is an economic empowerment of women as well. Till sometime back, the focus was to achieve better treatment for women and for this reason, the concentration was mainly on the well-being of women. Now the focus is shifted to economic empowerment. Such objectives have gradually evolved or broadened to include the active role of women when it comes to development as well. No longer the passive recipients of welfare-enhancing help, women are increasingly seen, by men as well as women as active agents of change: the dynamic promoters of social transformation that can alter the lives of both women and men. It is now realised that there is a bidirectional relationship between economic development and women's empowerment defined as improving the ability of women to access the constituents of development-in-particular health, education, earning opportunities, rights, and political participation."*

7. It is submitted that the Gentlemen SSCOs of Indian Army are given two options to opt for permanent commission, after 5 years of service and 10 years of service, respectively. The number/data of Gentlemen officers who are granted permanent commission from SSC, demonstrates that a huge percentage of SSC Gentlemen officers are granted permanent commission. It is submitted that majority of the serving Women Officers were not given any option, after 5 years and 10 years of service, at par with Gentlemen officers, simply because they have been in service for 5, 10, 15, 20 and even 25 years of service.

8. It is also pertinent to note here that these Women Officers have gone through the rigors of the same Selection Board, which screens SSCOs for grant of permanent commission at the time of their extension, after 5 and 10 years of services. It is only after having cleared the rigors and yardsticks of the Selection Board, which they faced after 5 and 10 years of service, that they were granted further extension of service. Therefore, the Union of India must be directed and obligated by this Hon'ble Court to have a mechanism of screening, which is just, reasonable and equitable, for the existing Women Officers. One possible yardstick of screening could be the Annual Confidential Records (ACR) which are generated for every officer annually, alongwith medical fitness, commensurate with the age of the officer.
9. In any case, the Union of India must be mandated to carry out an equitable screening exercise, if at all, for the purpose of grant of permanent commission to the serving Women Officers of Indian Army whose demonstrated career graph can be reckoned for the same purpose. This exercise must be inclusionary, rather than exclusionary.
10. It is also imperative to point out that it is the Union of India, which has delayed bringing the policy for grant of permanent commission to Women Officers. Even from the impugned order dated 12.03.2010 of the Hon'ble High Court of Delhi, it has been full 10 years and the policy for grant of permanent commission in Army is yet to be made functional and operative. The Union of India alone is responsible for this excessive and avoidable delay and Women Officers must not face the brunt for this delay.

New Delhi

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Filed BY:

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