



Secretary, Ministry of Defence v. Babita Puniya; (2020) 7 SCC 469

Muskaan Dalal^{a,*} 

^a Pursuing B.B.A.LL.B.(Hons.), Bennett University, Greater, Noida.

KEYWORDS

Permanent Commission, Gender Equality, Interpretation of Article-14, Army Act, 1950, the Constitution of India.

ABSTRACT

The research article titled “Permanent Commission and Gender Equality- a Step Forward” is a case commentary on the case of Secretary, Ministry of Defence v. Babita Puniya; (2020) 7 SCC 469 which is a recent judgment granting Permanent Commission to the women officers in the Indian Armed Forces. The article provides a background of the case which basically involves the discussion about the main issue i.e., permanent commission and why it is important for the women officers and how the non-granting of the same led to gender inequality. Then, it moves onto the main facts, issues and judgment of the case in brief along with a detailed analysis of the opinions of the judges and how it is a landmark and a progressive judgment in terms of gender equality. The conclusion provides the suggestions and the author’s take on the issue.

Background of the Case

The case of **Secretary, Ministry of defence v. Babita Puniya**¹ it is one of the landmark cases relating to the grant of permanent commission to the women in the Indian Army which they previously did not enjoy. It granted the Permanent Commission to women who are inducted by way of Short Service Commission. Short Service Commission, in simple words implies being inducted for a definite short period of time and not permanently whereas in the Permanent Commission, the tenure continues till the retirement of the individual. There are several other advantages also for the Permanent Commissioned officers that are not available to the officers inducted through the Short Service Commission and one of these many benefits is pension. However, the male officers at end of the tenure of the short service are given an option to apply for permanent commission and the same was not the case for the women officers who had no option to apply for the permanent commission. With this landmark judgment came the grant of Permanent Commission to the female officers in ten non-combat services on par with the male officers. In addition to this, they are also eligible to hold command posts in the Indian Army. This judgment thus gave a very vital decision with respect to the gender equality in the Indian Armed Forces as now both the genders are treated on par with each other and are given the same amount of employment benefits and social security. However, this came with a long battle that was ultimately won by the women officers who had raised a voice against the inequalities with respect to gender prevailing in one of the most critical and significant areas of work in the country that is the Indian Armed Forces. The various aspects of the case along with the main issues and the arguments advanced from both the sides and the decision as well as the reasoning of the court accompanied by a brief analysis has been provided in this case commentary.

The main issue in the instant case was the ineligibility of women for enrolment in the Army. The relevant section for this contention is Section 12 of The Army Act, 1950. This section basically lays down that women shall not be employed in the Indian Army except for by way of notification in the Official Gazette by the Central Government. The section states the following-

Ineligibility of females for enrolment or employment

“No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army, or any branch thereof in which females

are eligible for enrolment or employment.”²

So, according to the section, women are not eligible for enrolment in the Indian Army however, the same can be done by the Central Government for different branches of the Army by way of a notification in the Official Gazette as provided by the proviso to the section. In furtherance of this, the Central Government issued a notification for the Short Service Commission for women on 30th January, 1992 in five specific branches including Judge Advocate General Department, Army Postal Services, Army Education Corps, Army Service Corps and Army Ordnance Corps³ and on 31st December, 1992, some other branches were also included under this. Section 12 was the main section challenged in the case as it was alleged that it curtails the right to equality guaranteed by the Article 14 of the Constitution of India. Another Article that came into consideration in this case is the Article 33 of the Constitution of India which gives the power to the parliament to limit the fundamental rights of the members of the Army in order to ensure that they discharge their duties efficiently and discipline is maintained. So, in February 2003, a writ petition in the form of a Public Interest Litigation was filed by Babita Puniya, an advocate in the Delhi High Court for the grant of Permanent Commission to the women officers who have been enrolled in the Indian Army by way of Short Service Commission. The focus in this case was only the Indian Army and not the other armed forces like the Air Force.

Facts of the Case

The main facts of the case include the filing of the writ petition in 2003 by Babita Puniya who is a practising advocate and the petition seek granting of Permanent Commission to the women officers enrolled by way of Short Service Commission. Some other petitions of the same nature were also filed by other women officers which were ultimately clubbed into one petition. In 2005, the validity of the previous notification that was issued in 1992 for the Short Service Commission for women which included service only in certain departments of the Army like artillery, intelligence, postal departments, etc was extended and then a notification issued in 2006 allowed the women officers to serve for a maximum period of 14 years. In addition to this, there were certain other circulars that imposed expressed conditions of service which were again challenged by the women officers namely Lt Col Seema Singh and Major Leena Gaurav and then finally in 2008, the permanent commission was granted to women officers, however this was done only in some departments of the Indian Army, not all of them. The branches under which the Permanent Commission was given included the Army Education Corps and the Judge Advocate General and similar branches of the Indian Air Force. In 2010, the Delhi High Court ruled that Permanent Commission should be granted to all of the Short Service Commission women officers

* Corresponding author

E-mail: L19BLB077@bennett.edu.in (Muskaan Dalal).

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 <https://orcid.org/0000-0001-6215-4126>



who have served the Indian Army for five years or more and this order of the High Court was challenged by the Army in July of the same year and eventually the case moved to the Supreme Court however, the Apex Court upheld the previous order of the High Court. Ultimately, in 2019, the permanent commission was granted to the women officers prospectively in eight arms of the Army via a notification issued by the Ministry of Defence. However, the circular mentioned the employment of women officers “in various staff appointments only.”

Issues Raised

The main issues that were raised in the present case include: -

Whether the women officers in the Indian Army should be granted with Permanent Commission?

Whether the guidelines issued in the notification of the government dated February 15, 2019 are implemented?

Arguments Advanced

The arguments advanced from both sides were as follows: -

Appellant

- The arguments from the side of the Army challenged the decision of the Delhi High Court that granted the Permanent Commission to the women officers. The main contention was that the provisions under Section 10 and Section 12 of the Army Act, 1950 which restrict the enrolment of women officers into the Armed Forces and the Article 33 of the Constitution of India which limits the judicial review for the same were not followed while delivering the above decision. The case of **Union of India v. P K Chaudhary**⁴ was cited for the same.
- The next argument majorly focused on the women not being capable of handling the adverse situations in which the Army functions in general. It was stated that the women officers cannot handle the adverse places and conditions like the male officers. They were somewhat considered inferior to the masculine gender in terms of physical capabilities and thus it was argued that all the physiological differences between a male and a female need to be kept in mind.
- It was also argued that management of the officers becomes somewhat difficult if women are granted with Permanent Commission as a lot of factors need to be fulfilled for their postings and leaves such as spouse postings, maternity leaves, considering postings with respect to other women officers in the station, child care leaves, proper infrastructure needs to be there and because of all this, the male officers may face inconvenience as their dues are compromised.
- Also, the border areas where postings take place from time to time are very remote in nature lacking the basic hygiene and sanitary conditions which are vital for the convenience of women in general.
- Then the next argument revolved around the structure of the Army and how it may get affected if Short Service Commission officers are given a Permanent Commission.
- Then, it was said that the notification dated 15th February, 2019 already provides the pensionable benefits to the women officers who have served the Army for fourteen years or more and thus a Permanent Commission is not required for the same. Also, with respect to discrimination, the same is not practiced in the procedure for appointment through the Short Service Commission.
- Again, the domestic obligations such as pregnancy and motherhood were emphasised by the Army in their arguments and how they should be considered while granting the Permanent Commission to the women officers.

Respondent

- The women officers majorly argued that the order of the Delhi High Court was not implemented by the Army as no steps were taken for the same.
- It was argued that the situation with respect to border postings and remote areas is not new and 30% of the women officers are already deployed in such areas. Hence, women have already been posted in these places for a very long time and have been able to handle the adverse conditions just like their male counterparts.
- Also, the policy of the government lowers the status of the women officers to that of a jawan.
- With respect to the application of Article 33 of the Constitution of India, the same is only applied where there is a requirement of

maintenance of discipline and proper discharge of the duties of the officers and so it should not be used for any other purpose.

- Then the next argument focused on gender discrimination prevailing in the Indian Army wherein the men and women undergo the same training and the same selection process for the Short Service Commission however, inequalities exist as the latter are not given the option for Permanent Commission like the male officers. They should be given the same option and also other incentives that come with it like pension, promotion, etc.
- Thus, equal opportunities should be provided to both the male and the female officers and the females should be considered on par with the males and it's high time that Army realizes this.

Judgment

The judgment in the instant case was delivered by a division bench of the Supreme Court comprising of Justice Dr Dhananjaya Y Chandrachud and Justice Hemant Gupta. The judgment came in the favour of the women officers and it was held that all the women officers commissioned through the short service commission should be considered for the grant of permanent commission irrespective of the number of years served i.e., whether fourteen or twenty years. They should be given equal opportunities as their male counterparts and the same number of benefits will be provided. The facts involved a clear violation of the fundamental right to equality guaranteed under Article 14 of the Constitution of India.⁵ Also, Article 33 which empowers the Parliament to restrict the fundamental rights of the members of the Armed Forces cannot be invoked in this case as this Article can only be applied to ensure discipline and the proper discharge of the duties and not in any other scenario. This case is neither concerned with the proper discharge of duties nor discipline, it only throws light on the gender inequality prevailing in the Armed Forces in general and hence, this Article will not have an application in this case. The Supreme Court imposed certain conditions for the notification that was issued on February 15th, 2019 by the Ministry of Defence. The decision of the Delhi High Court was upheld and the conditions imposed on the notifications included:

- Certain terms of the notification under para 5 and 6 i.e., ‘in various staff appointments only’, and ‘on staff appointments only’ were made ineffective by the Supreme Court.
- All women officers irrespective of the years of service (14 or 20) were made eligible for Permanent Commission
- The options of specialization were made available to the women officers as well.
- All the incentives like salary, promotion, pension, etc. applicable to the male officers were also made applicable to the women officers.
- The women short service commission officers should have an option to continue till the attainment of pensionable service just like the male officers.
- All the necessary steps for the implementation of the order of the Supreme Court shall be made by the Army within a three-month period from the date of the judgment.

Analysis

The decision of the Supreme Court is a huge step towards establishing gender justice in a very significant employment sphere i.e., the Indian Armed Forces and it also signifies the intolerance of the Indian judiciary towards stereotypical gender norms that prevail in the country even after seventy-four years of Independence. Women still have to fight for their rights even though the right to equality is guaranteed by the Indian Constitution under Article 14. The Constitution also prohibits discrimination on the basis of sex under Article 15 and Article 16 provides for equal employment opportunities. The contentions of the Union of India were based on deep-rooted patriarchal norms which show that they still prevail in the Indian society. The union argued about the inherent dangers of working in adverse situations and how it is difficult for the women officers to handle them even though both the genders undergo the same amount of training and the same selection process and even then, it is being said that women are not capable of handling these adverse situations. It shows that how they are considered physically inferior to men. The union failed to recognize that women have proved their capabilities in almost all fields be it sports, education, employment, medicine, science, you name it. They have proved themselves again and again and it is still being said that they are not capable. The irony is that this

discriminating attitude is not shown during the training period when both the male and the female cadets go through the same training process and are treated on par with each other. No special treatment or bias is shown towards them nor do they get some sort of excuse that they cannot undergo the same training by virtue of being women and being physically incapable for the same. Another contention was regarding pregnancy and motherhood which again deepens the strong stereotypes when this should have been taken as just an example of how strong the women are to bring another life into this world but here, they are being prejudiced against as not being able to handle their work life due to this. In the case of **Air India v. Nergesh Meerza**⁶ also, the same was done when the provisions for termination of air hostesses on marriage and pregnancy were challenged. This is a 1981 case and the instant case shows that the situation had not changed much as the women are still prejudiced on this basis and it is still presumed that all the domestic obligations in addition to motherhood are meant to be fulfilled by them, why can't the men have a role to play in this, don't they have an equal responsibility towards these obligations and taking care of their wives? The decision of the court in this case is commendable, Justice D.Y Chandrachud expressed his views on this aspect and said that the contentions are stereotypical and violate the fundamental right to equality under Article 14. A person cannot be denied equality on the basis of their gender. It was also stated that it should not be affirmed that the women have employment opportunities in the Indian Army when the same is not the case and the true picture tells a completely different story. The court even condemned the government for not implementing the previous order of the Delhi High Court and as this has led to injustice for the women officers as they have lost the benefit of promotions and higher ranks. With respect to Article 33 which provides for restricting the fundamental rights of the members of the Armed Forces by the Parliament, it was stated by the Apex Court that this Article can only be applied for ensuring discipline and discharge of the duties of the members and not in any other situation and therefore with respect to the inequalities in employment in the Armed Forces, this Article cannot be invoked. It is pertinent to note that the court used the literal rule of statutory interpretation in this case as Article 33(d) specifically states that the clauses (a) to (c) can only be used in the above-mentioned situations. Thus, the court

relied on the strict literal interpretation as it created no ambiguity and absurdity and also led to ensuring justice. Also, gender inequality can never be the intention of the legislature and so the court stuck to the plain meaning of the words. A noteworthy thing stated by the court was that the Indian Constitution is feminist in nature as it aims to distort social hierarchies. It is a very significant and remarkable thing to say and shows the progressive nature of the decision of the court in this case and how it aims to break the shackles of deep-rooted patriarchy and further ensuring gender justice. Also, the court's decision is to be applied prospectively i.e., women officers commissioned after the date 25th February, 2019 will fall under the ambit of this order.

Conclusion

We are living in the twenty first century and women in our country and all over the world still have to fight for equal rights and opportunities in different spheres of life. One of these spheres is employment and equal opportunities on par with men in the same area of work. When we talk about India, it has come a long way but still a lot needs to be done in order to achieve that pinnacle of equality in terms of gender. Equality is enumerated in the Indian Constitution under Article 14, however, when the practical outlook is considered, the same is not practiced in totality and certain gender stereotypes and societal attitudes still prevail. However, more recently, the courts have tried to look into it with a broader point of view which is liberal and progressive. One of the examples of such cases is **Secretary, Ministry of Defence v. Babita Puniya** as it aided in removing the blanket ban restrictions that were imposed on women in the Indian Armed Forces- Army, Navy and Air Force, the women in all three forces will be benefited. However, this case is only a small step towards achieving a much larger goal.

References:

¹ (2020) 7 SCC 469.

² Section 12, The Indian Army Act, 1950.

³ Government of India Notification dated 30th January, 1992, S.O. 988(E).

⁴ Civil Appeal No 3208 of 2015, Delhi HC, Decided on August 05, 2020.

⁵ 'Equality before law and equal protection of law', Indian Constitution.

⁶ 1981 AIR 1829; 1982 SCR (1) 438
