



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

Civil Appeal Nos. 9747 - 9757 / 2024

Lt. Col. Pooja Pal and others

...Appellant(s)

versus

Union of India and others

...Respondent(s)

With

Civil Appeal Nos. 9745 - 9746 / 2024

Civil Appeal Nos. 10713 - 10714 / 2024

Civil Appeal Nos. 14090 - 14093 / 2024

Civil Appeal No. 14099 / 2024

Civil Appeal Nos. 13496 - 13511 / 2024

Civil Appeal Nos. 5327 - 5331 / 2025

**Civil Appeal No. _____ / 2025
(Arising out of Diary No. 57908 / 2024)**

**Civil Appeal No. _____ / 2025
(Arising out of Diary No. 33090 / 2025)**

**Civil Appeal No. _____ / 2025
(Arising out of Diary No. 33222 / 2025)**

JUDGEMENT

SURYA KANT, CJI.

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

2. The instant batch of appeals has been preferred by a group of roughly 73 Short Service Commission Officers (**SSCOs**) of the Indian Army, the vast majority of whom are women seeking the grant of Permanent Commission (**PC**). Their grievances centre on the fairness and reasonableness of the method adopted for their consideration, an issue that has repeatedly engaged Constitutional Courts and the relevant Tribunals over the last two decades.
3. To succinctly summarise the instant appeals, the Short Service Commission Women Officers (**SSCWOs**) approached the Armed Forces Tribunal, Principal Bench at New Delhi (**AFT**), praying for the grant of PC. However, *vide* judgements dated 03.07.2024 and 04.09.2024 (**Impugned Judgements**), the AFT dismissed their Original Applications (**OAs**), holding that there was no discrimination or bias against the SSCWOs and that the denial of PC was solely attributable to lower comparative merit. Notably, a few of their male counterparts, who were commissioned alongside them in September 2010 and March 2011, have also assailed the Impugned Judgements, aligning themselves with the women officers on certain common issues.

A. FACTS

- 4.** Before examining the legal aspects involved in dissecting the Appellants' claims, it is incumbent upon us to trace the factual background that has culminated in the instant set of appeals.

4.1. The Appellant-SSCWOs belong to:

- (i) Course No. 4 (**SSCWOs-4**) commissioned in September 2010;
- (ii) Course No. 5 (**SSCWOs-5**) commissioned in March 2011;
- (iii) Course No. 6 (**SSCWOs-6**) commissioned in September 2011; and
- (iv) Course No. 7 (**SSCWOs-7**) commissioned in March 2012.

Two of the Intervenor-Appellants belong to Course Nos. 9 and 10, respectively. The male SSCOs commissioned in September 2010 (**SSC-90**) are the counterparts of SSCWOs-4, while those commissioned in March 2011 (**SSC-91**) correspond to SSCWOs-5. Some of the male SSCOs come from the September 2011 and March 2012 batches. On the other hand, the Respondents before us comprise the Union of India represented through the Ministry of Defence, the Chief of Army Staff, and the Military Secretary.

- 4.2.** The Appellant-SSCWOs mentioned above form part of the earliest batches to be considered for the grant of PC alongside their male counterparts by the bi-annual regular No. 5 Selection Board. At the time, their joint consideration was intended to represent a watershed moment in the evolution of gender parity within the Armed Forces. Yet, as

contended by the Appellant-SSCWOs, this formal parity often operated against the backdrop of service records shaped by varying evaluation regimes, much like asking runners, trained for years on different tracks, to compete suddenly on the same finishing stretch.

- 4.3.** To appreciate the nature of their grievances and to understand why they have chosen to approach this Court, it is essential to first note the structure of the officer cadre in the Army. Broadly, it is divided into two categories: *(i)* the regular cadre, comprising Permanent Commission officers (**PC officers**); and *(ii)* the support cadre, which includes Permanent Commission (Special List) Officers, Service Commission Officers, and SSCOs.
- 4.4.** The distinction between these cadres lies principally in tenure, career progression, and post-retirement benefits. While PC officers serve until the age of superannuation, SSCOs serve for a fixed tenure and are thereafter released from service. The scheme for the induction of SSCOs was introduced in 1964 and, at its inception, was open only to men. Initially, such officers were appointed for a tenure of five years, which was later extended to a '5 + 5' model, with consideration for PC in the fifth year of service. Furthermore, in the Army, officers of two courses are commissioned in one calendar year, i.e. the officers of the 1st course are commissioned in March, while officers of the 2nd course are commissioned in September of the same year. The officers of both courses, together, are referred to as the batch of a particular year.

4.5. The policy governing the grant of PC was modified by a policy circular dated 15.01.1991 issued by the Government of India. This policy prescribed, *inter alia*, an annual cap of 250 vacancies for the grant of PC, a minimum cut-off score of 60%, and competitive selection on merit in circumstances where the number of eligible officers exceeded the prescribed ceiling. All SSCOs other than non-optees and those found unfit for retention were to be granted a five-year extension. The policy was implemented with immediate effect. Its relevant part reads as follows:

*“(a) A maximum of 250 SSCOs will be granted Permanent Commission per year. **The number of vacancies for the batches within the year will be allotted in proportion to their inter se strength.***

“(b) Minimum acceptable cut-off grant for grant of Permanent Commission to SSCOs will be 60%. This may, however, be reviewed by the Army HQs, every two years, keeping in view the rating tendencies as at that time.

*“(c) **In case more than the specified number of officers make the grade from the batches considered in a year,** the requisite number only, i.e., 250 will be granted Permanent Commission on competitive merit.*

“(d) All SSCOs, other than non-optees and those considered unfit for retention by the Selection Board, will be granted five year extension.”

[Sic] [Emphasis supplied]

4.6. This policy circular was supplemented by a File Noting dated 22.01.1991, which elaborated the mechanism for distributing PC vacancies across batches in proportion to their respective strengths and illustrated the method of calculation. It, *inter alia*, provides the following:

“2. The modalities for the implementation of the Govt. order ibid will be as under:-

*a. **The grant of PRC to the total No of SSCOs in a batch will be based on the Inter se batch strengths in one calendar year.***

b. The No of PRC vacancies allotted to a batch, which are arrived of by applying the above ratio, would not be transferrable to the next batch even within the same calendar year:

c. In the calculation of the vacancies per batch, fractions would be rounded off to the next higher for the batch having a greater strength and, neglected for the smaller batch of the some calendar year.

3. The above is illustrated with the following example –

X Year

- (a) Let 1 course intake be -240 GC's*
- (b) Let 2 course intake be -80 GC's*
- (c) Total intake for the year -320 GC's*
- (d) Nos to be selected from the 1st course $-240 \times 250/320$
= 187.5, say 188*
- (e) Nos to be selected from the 2nd course $-80 \times 250/320$
= 62.5, say 62*
- (f) Total Nos to be selected in the year $-188+62=250$
[Sic] [Emphasis supplied]*

4.7. It is pertinent to note at this juncture that the above-extracted policy circular and File Noting were issued at a time when women were altogether excluded from induction into the Army. This position changed the following year, when, on 15.02.1992, the Government of India issued a notification under Section 12 of the Army Act, 1950, making women eligible for appointment as officers in limited cadres. Women were inducted through the Women Special Entry Scheme (**WSES**) as SSCOs

for an initial tenure of five years, with an express stipulation that they would not be eligible for PC and would be released upon completion of their service.

- 4.8.** Over time, the tenure of women officers was extended through notifications dated 12.12.1996 and 28.10.2005, resulting in a total permissible tenure of fourteen years, structured as '5 + 5 + 4' years. Despite these extensions, women officers continued to remain ineligible for consideration for PC.
- 4.9.** Dissatisfaction with this arrangement culminated in the filing of a public interest litigation by Adv. Babita Puniya, before the High Court of Delhi (**High Court**), seeking parity for women officers in the consideration for PC. This marked the beginning of a prolonged series of interconnected litigation that eventually reshaped the service conditions of women officers in the Army for the better.
- 4.10.** During the pendency of those proceedings, the Union Government issued two circulars dated 20.07.2006, discontinuing the WSES and introducing a new framework for commissioning women officers in technical and non-technical cadres within the Army. While these circulars modified training, tenure, and seniority provisions, they reiterated that women officers would not be eligible for PC, though they could seek a four-year extension after their initial term of ten years of service. The scheme of engagement was accordingly altered to '10 + 4' years, which continues to hold the field. The first batch of women officers

under the new scheme, i.e. Course No. 1 (**SSCWOs-1**), was commissioned shortly thereafter.

4.11. The High Court, in the meantime, passed the landmark judgement in ***Babita Puniya v. Secretary***¹ on 12.03.2010, holding that once women were inducted into certain cadres, there could be no discrimination in the opportunities available to them within those cadres. By virtue of this finding, the High Court directed that in cadres where both men and women were recruited as SSCOs and where men were granted PC, the women officers were entitled to be considered for PC at par with their male counterparts. The Respondents assailed this decision before this Court through Civil Appeal No. 9367-9369/2011. During the pendency of the appeal, this Court *vide* an order dated 02.09.2011, declined to stay the operation of the High Court's judgement and clarified that the same had remained in force from the date of its pronouncement since no order of stay had ever been passed against it. It is pertinent to note that all the instant Appellant-SSCWOs were commissioned after the pronouncement of the High Court's decision and thus, at the time of their induction into the Army, they were entitled to consideration for the grant of PC.

4.12. Parallely, by virtue of a letter dated 26.09.2008, later implemented through another letter dated 04.10.2010, women officers of the Judge Advocate General (**JAG**) and Army Education Corps. (**AEC**) cadres were made eligible for consideration and grant of PC alongside their male counterparts. The effect of these letters was that, though women were

¹ 2010 SCC OnLine Del 1116.

being commissioned in ten Arms and Services in the Army and despite the authoritative pronouncement by the High Court, eligibility for PC was confined to JAG and AEC cadres for women officers.

4.13. Shortly thereafter, a comprehensive policy dated 24.02.2012 was issued, detailing a structured methodology for the grant of PC to all the eligible SSCOs through a combination of objective and subjective criteria. To do so, the marks were apportioned between 'computerised evaluation' and 'value judgement' in a way whereby the former was assigned a weightage of 95%, while 5% weightage was reserved for the latter. The value judgement marking was to be rendered by the members of the No. 5 Selection Board.

4.14. Under this policy, a computerised Member Data Sheet (**MDS**) was generated, capturing the year-wise performance of each officer in their respective Courses, Special Achievements, Weak Points, Disciplinary Awards, and Honours and Awards. This would be accompanied by the recommendations of the Initiating Officer (**IO**) and Reporting Officer (**RO**) for the grant of PC or extension. The value judgement exercised by the members of the No. 5 Selection Board was required to take into account all the material reflected in the MDS, including liberal/strict reporting inconsistency in performance, nature and seriousness of disciplinary award(s), technical assessment, performance on courses, strong and weak points reflected in the pen picture, and appointments held by the officer under consideration.

4.15. To arrive at the computerised evaluation in the MDS, the Military Secretary's Branch (**MS Branch**) would compute the relevant information, allot marks, and work out averages for the following parameters:

- i. OAP:** This is the overall performance of the officer, evaluated by taking the average of the figurative assessment of all ROs in the Annual Confidential Reports (**ACRs**), to be converted into a proportion of 75 marks.
- ii. Honours and Awards:** Marks allotted differ as per the honour/award received and are added, subject to the condition that the maximum marks granted in this category will not exceed 5 marks.
- iii. Games and Sports/Special Achievements:** Similarly, the marks are awarded as per the level represented, wherein marks for each achievement will be added, subject to the condition that the maximum will not exceed 5 marks.
- iv. Performance on Courses:** Here, the grading obtained on each course will be quantified out of 10 marks, and the average shall be taken of all courses attended.
- v. Recommendation for PC and Extension of Service:** In this, the recommendation of each RO in every ACR will be awarded with 0 marks for 'YES' and minus 2 marks for 'NO'. However, if any officer

has mentioned 'Not Applicable' (**NA**), it will be indicated in the evaluation chest by code 'C'.

vi. Weak Points: Minus 5 marks are awarded for reflection of any of the weaknesses listed.

For the conduct of the No. 5 Selection Board, the quantified marks for the overall performance of the officer would be obtained by adding the marks assigned for value judgement to the computerised evaluation. Finally, the members of the No. 5 Selection Board were also required to award a letter-grading to each of the officers under consideration, the options for which included: 'B' (recommended for PC); 'BE' (recommended for extension only); 'Z' (rejected for PC and extension); 'W' (withdrawn); and 'D' (deferred).

4.16. Against this backdrop, the process for convening the regular No. 5 Selection Board commenced with the issuance of instructions to the officers of SSCWOs-4 and SSC-90 on 17.01.2020. At that point in time, as a matter of policy, only SSCWOs in JAG and AEC cadres were eligible for PC, while all the others were to be considered only for a four-year extension.

4.17. Exactly a month later, on 17.02.2020, this Court pronounced its decision in *Ministry of Defence v. Babita Puniya*,² affirming the earlier judgement of the High Court and directing the Respondents to consider all serving SSCWOs for the grant of PC, irrespective of whether any of

² (2020) 7 SCC 469.

them had completed fourteen years of service. To give effect to these directions, the Respondents convened a Special No. 5 Selection Board for SSCWOs commissioned between 1992 and 2009, who had not been considered for PC at the relevant time alongside their male counterparts.

4.18. As this decision coincided with the consideration cycle of the instant Appellants of SSCWOs-4 and SSC-90, their regular No. 5 Selection Board was rescheduled, and the officers were granted extensions in the meantime. Consequently, two parallel Selection Boards were held in 2020: **(i)** a Special Board for earlier batches of SSCWOs, as per the directions of this Court in ***Babita Puniya (supra)***; and **(ii)** a regular Board for SSCWOs-4, SSCWOs-5, SSC-90, and SSC-91, who had just become eligible for consideration for PC, having completed 10 years of service. The Respondents also issued further instructions, calling for fresh applications from SSCWOs-4 and 5 so that they could opt for PC and be considered accordingly.

4.19. The Respondents accordingly issued General Instructions dated 01.08.2020 to conduct the Special No. 5 Selection Board between 14.09.2020 and 25.09.2020, whereby 615 women officers commissioned from 1992 to 2009 would be considered for PC, excluding the officers from JAG and AEC cadres. Such officers were excluded from this Board as they had previously been deemed eligible to be considered for PC and had been duly considered at the relevant time with their male counterparts. As such, they fell beyond the scope of this Court's directions and did not require to be considered a second time.

4.20. Simultaneously, the Respondents issued General Instructions dated 14.08.2020 to conduct the regular No. 5 Selection Board to consider the officers of SSCWOs-4, SSCWOs-5, SSC-90, and SSC-91 for the grant of PC.

4.21. In the meantime, the MS Branch instructed all IOs and ROs *vide* a letter dated 23.10.2020 to fill the ACRs of the women officers ‘carefully’, as they had become eligible to be considered for PC. This clarification was prompted by the fact that ROs were still erroneously endorsing ‘NA’ in the column regarding ‘recommendation for PC’ for the SSCWOs.

4.22. The results of the Special No. 5 Selection Board were declared on 19.11.2020, whereby the women officers were considered “*on the same terms and criteria as their male counterparts*” and were benchmarked against the last selected male officer. Aggrieved by this benchmarking, the manner in which the Special No. 5 Selection Board was conducted, and the steps taken by the Union to implement this Court’s decision in ***Babita Puniya (supra)***, multiple SSCWOs approached this Court once again, by virtue of Writ Petitions filed under Article 32 of the Constitution. The lead matter in this batch of petitions was Writ Petition (C) No. 1109/2020, titled ***Lt. Col. Nitisha and Ors. v. Union of India and Ors.***

4.23. While this Court was seized of the above-stated batch of Writ Petitions, the regular No. 5 Selection Board for the 4 courses previously stated was conducted in December 2020. The results were promptly posted on

11.01.2021, revealing a low success rate for women officers, with only 34.4% of the officers in SSCWOs-4 and 27.27% of the officers in SSCWOs-5 being granted PC.

4.24. Shortly after the results of the regular No. 5 Selection Board were declared, this Court pronounced its judgement dated 25.03.2021 in ***Nitisha v. Indian Army***,³ directing the Respondents to grant PC to all the SSCWOs who fulfilled the cut-off grade of 60% in the Special No. 5 Selection Board, subject to their meeting the medical criteria prescribed by the General Instructions dated 01.08.2020. The effect of this judgement was that, out of 615 SSCWOs considered for the grant of PC through the Special No. 5 Selection Board, 507 were granted PC, while 108 others were allowed to continue in service till completion of 20 years' pensionable service. Such a decision was rendered based on this Court's finding that the pattern of evaluation employed by the Army to implement the decision of ***Babita Puniya (supra)***, namely, the benchmarking against the last selected male officer, disproportionately affected women due to years of casual grading and skewed incentive structures.

4.25. Dissatisfied with the results dated 11.01.2021 and the outcome of their respective statutory complaints, as well as in a bid to seek similar relief as was granted in ***Lt. Col. Nitisha (supra)***, the instant Appellant-SSCWOs approached the AFT with their individually-filed OAs. Through these OAs, they prayed for: (i) A direction to call for the records based on which the Respondents issued the letter dated 14.08.2020 and the policy

³ (2021) 15 SCC 125.

circular dated 15.01.1991; **(ii)** A direction to the Respondents to conduct a Special No. 5 Selection Board to consider the Appellants for the grant of PC, and to be granted PC if they crossed the 60% cut-off without any upper limit on vacancies; and **(iii)** Alternatively, to be permitted to serve till completion of 20 years' service to enable them to earn pension. On some similar grounds, the male officers of SSC-90 and SSC-91 also approached the AFT, praying for identical relief.

4.26. While these OAs were pending before the AFT, the Respondents proceeded to conduct the regular No. 5 Selection Board for the next batches, i.e. SSCWOs-6 with their male counterparts, and SSCWOs-7 alongside their male counterparts. Both these No. 5 Selection Boards were convened in 2021, and the results were declassified on 02.07.2021 and 06.12.2021, respectively. It seems that in these Selection Boards, the women officers did not fare substantially better than their seniors, leading to further challenges before the AFT, praying for identical reliefs as the batches preceding them.

4.27. The AFT, in the Impugned Judgements, considered whether the Appellant-SSCWOs were entitled to be considered as per the parameters of the Special No. 5 Selection Board, with modifications, as directed in ***Lt. Col. Nitisha (supra)*** and whether the Respondents were justified in considering the Appellant-SSCWOs in the regular No. 5 Selection Board alongside their male counterparts. Upon answering the first issue in the negative and the latter issue in the affirmative, the AFT dismissed the

Appellants' applications and rejected their prayer for leave to appeal to this Court. Ultimately, the AFT opined that:

- i. ***Babita Puniya (supra)*** and ***Lt. Col. Nitisha (supra)*** applied to the Appellant-SSCWOs only to the limited extent of considering them for PC based on the existing policies. The decisive distinction lay in the fact that SSCWOs considered by the Special No. 5 Selection Board had never been considered for PC at the relevant time, despite their male counterparts having been evaluated. Whereas the Appellant-SSCWOs were considered contemporaneously with their male counterparts and thus suffered no prejudice from delayed consideration. On this basis alone, they were not entitled to the benefit of the directions in ***Lt. Col. Nitisha (supra)***. Further, as the reliefs in the earlier judgements were granted under the *aegis* of Article 142 of the Constitution, the AFT opined that it lacked the authority to extend similar relief to subsequent batches.
- ii. The policy circular dated 15.01.1991 continued to govern all PC considerations, having never been amended or withdrawn. Since SSCWOs of the JAG and AEC cadres were granted PC within the ceiling of 250 vacancies, the policy was effectively gender-neutral in operation.
- iii. Breach of the 250-vacancy cap occurred solely during exigencies such as the Kargil War or Operation Parakram and only with the prior approval of the MS Branch. Similarly, special sanction had

been obtained for additional vacancies created for the Special No. 5 Selection Board. As cadre strength, intake, and vacancies fell within the exclusive domain of Cadre Controlling Authorities guided by operational requirements, occasional deviations from the cap did not justify the creation of further vacancies to accommodate officers not selected on comparative merit.

- iv.** The No. 5 Selection Board is convened twice in a calendar year to consider two consecutive batches commissioned in September of one year and in March of the subsequent year, respectively, and not the two courses commissioned within the same calendar year. The annual ceiling of 250 vacancies is accordingly apportioned between the two batches considered by the Boards conducted in the same year, a practice consistently followed since the inception of the scheme in 1991.
- v.** The Appellant-SSCWOs suffered no prejudice due to the absence of 'positive' or 'negative' recommendations for PC in their ACRs, as such endorsements were excluded from the MDS placed before the Board. In any event, an analysis of 590 ACRs pertaining to 53 Appellant-SSCWOs revealed that 1,640 endorsements (90.75%) recommended PC, while 1,797 endorsements (98.08%) recommended extension. Only 79 endorsements were negative, while 123 were marked 'NA'.

- vi.** An analysis of box grading obtained by the Appellant-SSCWOs on a scale of 1 to 9 indicated that 11.71% of the box grading earned was outstanding (9), while 87.21% of the box grading was above average (8). The balance of 1.07% was (7). Even those Appellants who earned '7' as their box grading in some ACRs had been granted box gradings of '8' and '9' in most others. Since the substantial majority of the box grading earned by the Appellants was 'outstanding' and 'above average,' the ACRs could not be stated to have been casually initiated and without due diligence by the various assessing officers.
- vii.** Under Paragraph 3(d) of the policy dated 24.02.2012, 10 marks were assigned for performance on courses, calculated as the average of scores obtained. Accordingly, the number or nature of courses completed did not impact the overall score. In that respect, the Appellants had completed a total of 158 courses, wherein only 17.72% obtained 'A' grading, with the majority obtaining 'B' (51.25%) and 'C' (26.58%) gradings.
- viii.** The requirement of being 'Adequately Exercised' through criteria appointments was not mandatory for PC consideration, but only for promotion by the No. 3 Selection Board to the select rank of Colonel. The Appellants would become eligible for such consideration only in 2027 or 2028 and would, by then, have held the requisite appointments. Thus, the Appellant-SSCWOs' contention that criteria appointments would have resulted in

better evaluations was misplaced, as the No. 5 Selection Board assessed performance in the appointment held, not the nature of the appointment itself.

ix. With the promulgation of the policy dated 26.09.2008; the pronouncement of the High Court's judgement dated 12.03.2010; and the decision of this Court in ***Babita Puniya (supra)***, all SSCWOs became eligible for consideration for PC. Thus, consideration for PC was no longer exclusively male, and it was expected that all SSCOs would be considered as per their batch strengths for 250 vacancies per year.

4.28. It is against this backdrop that the instant appeals have been instituted.

It may be noted here that from 20.08.2024 onwards, this Court has passed multiple interlocutory orders, the most important being the order dated 09.05.2025, which was further clarified on 19.05.2025, directing that all the officers presently in service, whose matters were pending before this Court, the High Court, or the AFT, including Lt. Col. Geeta Sharma, would not be released from service.

B. CONTENTIONS OF THE PARTIES

5. Ms. V. Mohana, Ms. Rekha Palli, Dr. Menaka Guruswamy, and Mr. Abhinav Mukherji, learned Senior Counsel; Ms. Pooja Dhar, learned Advocate-on-Record; and Mr. Sudhanshu S. Pandey, learned Counsel, appearing on behalf of the Appellants, vociferously assailed the decisions of the AFT and advanced the following submissions:

- (a) The ACRs play a pivotal role in the evaluation of a candidate for PC, as they account for 75 marks out of a total of 100 marks, rendering them determinative of an officer's comparative merit. The Army follows a relative grading system based on a bell-curve, wherein the highest numerical grading of 9 (outstanding) is reserved for a small fraction of officers. Consequently, such a system of grading reflects the assessee's position amongst their peers. Since the Appellant-SSCWs were commissioned between September 2010 and March 2012, the cut-off dates for the ACRs were between 2019 and 2020, i.e., prior to the pronouncement of **Babita Puniya (supra)**. This indicates that all their ACRs were graded during the period when women, as a whole, were considered ineligible for PC as a matter of policy. Owing to this entrenched idea that there was limited career progression for women officers, the ACRs were graded casually, with the assumption that they would have little to no bearing on long-term career prospects. In turn, this led to routine, middling gradings for SSCWs, while higher grades were disproportionately concentrated amongst the male officers, who were in the running for PC. This phenomenon is judicially acknowledged in **Lt. Col. Nitisha (supra)**.
- (b) The letter dated 23.10.2020, issued by the MS Branch well after the decision in **Babita Puniya (supra)** was pronounced, instructing all IOs and ROs to exercise care while filling the ACRs of SSCWs tacitly acknowledges that several of them were still incorrectly

endorsing 'NA' in the column pertaining to recommendation for PC. Since most of the Appellants fell short of the respective cadre-wise cut-offs by a narrow margin of one or two marks, a fair appraisal of their service owing to their newfound eligibility for PC would likely have altered the outcome in their favour.

(c) From the 8th year of service, SSCOs are ordinarily detailed for criteria appointments in order to be classified as 'Adequately Exercised' for consideration by the No. 3 Selection Board for promotion to the select rank of Colonel. Such appointments entail higher responsibility, such as serving as an Officer Commanding or Company Commander in a certain project. Accordingly, the ACRs rendered during the tenure of such appointments are categorized as 'criteria reports.' Though criteria appointments are not assigned a distinct numerical weightage, they significantly influence the value judgement component of the assessment. However, since SSCWOs were not envisaged as future PC officers, the Appellant-SSCWOs were routinely denied such postings. Even in the few instances where the Appellant-SSCWOs were deployed in sensitive operational or counter-insurgency areas, the same was not reflected in their ACRs. Thus, the exclusion from holding criteria appointments and the omission to state such postings when held, in their ACRs, depressed their overall merit position.

(d) In the same vein, the Appellant-SSCWOs, being ineligible for PC prior to 17.02.2020, were never detailed systematically for the same,

especially during the relevant time for the Junior Command Course. In contrast, their male counterparts were detailed for this course after their 6th year of service. Furthermore, while certain courses were not open to women officers at the relevant time in their careers, they were also not incentivised to partake in and complete other optional courses. Although performance in such courses attracts only 10 marks in the overall assessment and the score is arrived at by averaging the scores in all the courses completed, exposure to certain courses and the performance therein materially influences the 'value judgement'. Thus, this differential access to career-advancing opportunities further skewed the comparative assessment against the SSCWOs.

- (e) The policy dated 15.01.1991, capping the number of vacancies at 250 per year, has historically been breached on multiple occasions and has never been treated as an inflexible norm. This ceiling was breached in 1999, 2000, 2001, 2004, 2005, 2006, and 2007, resulting in more than 250 SSCOs being granted PC for each year. This Court, in **Lt. Col. Nitisha (supra)**, itself noted that the policy circular dated 15.01.1991 was “*not applied as a rigid norm.*” Instead of being viewed as sacrosanct, this cap on vacancies was interpreted more as a guideline, which could be departed from as and when deemed necessary. Though cadre management and the release of additional vacancies remain a matter of policy, such discretion

cannot be exercised arbitrarily in a manner that perpetuates discrimination.

(f) The cap on vacancies is outdated as it was premised on a strictly all-male induction model. Owing to this, a thumping majority of the male SSCOs who opted for PC were subsequently granted PC at the time of consideration for the same. This cap proved adequate to accommodate the optees even after women officers in JAG and AEC cadres were considered eligible for the grant of PC, since the strength of women officers in the two cadres was very low. In comparison, when the Army started considering male and female officers together for PC, the proportion of male SSCOs granted PC varied between 42% and 75%, whereas the proportion of SSCWOs granted PC varied only between 30% and 60%. The consistent gap of approximately 10 percentage points in satisfaction levels between male and female officers across multiple Boards warrants a recalibration of the annual number of vacancies for PC.

(g) The Respondents' reliance on the A. V. Singh Committee Report's recommendation that a ratio of 1:1.1 be maintained between PC officers and SSCOs was unsustainable, as those recommendations had never been fully implemented by the Respondents. Such recommendations were being invoked selectively to insulate cadre management decisions from judicial scrutiny. Furthermore, the reliance on the A. V. Singh Committee Report was undermined by the Respondents themselves as they promulgated a policy dated

25.01.2018 to re-employ retired PC officers of the rank of Brigadier or below, who were not above the age of 55 years, for a period of 2 years at a time, extendable on recommendation. This was statedly done to make up for existing deficiencies in the officer cadre, as also noted by this Court in **Babita Puniya (supra)**. Owing to this policy, over 1,800 male officers had been re-employed. While retired PC officers were being re-employed, trained and experienced SSCWOs were being released from service. Any deficiency in personnel could have easily been overcome by granting PC to the SSCWOs at the relevant time.

- (h) The Appellants, both men and women officers, are *ad idem* on the claim of incorrect calculation of vacancies for the courses of SSCWOs-4, SSC-90, SSCWOs-5, and SSC-91. As per the policy dated 15.01.1991 and the File Noting dated 22.01.1991, 250 vacancies were to be allotted to the courses commissioned in a single calendar year, based on their *inter se* batch strength. However, the Respondents computed vacancies based on the batch strength of the courses considered for PC in a given year, effectively converting a batch-based calculation into a Board-centric one. By virtue of this altered methodology, SSCWOs-4 and SSC-90, commissioned in September 2010, were allotted 131 vacancies. However, the course of officers commissioned in March 2010 was allotted 77 vacancies, as noticed by this Court in **Lt. Col. Nitisha (supra)**. Since the vacancies were to be apportioned between the

courses commissioned in the same calendar year, the correct number of vacancies available to the Appellants commissioned in September 2010 was (250 – 77), i.e. 173 vacancies. Owing to this miscalculation, 42 vacancies for the officers commissioned in September 2010 had been withheld.

- (i) The Appellant-male SSCOs, at the time of being commissioned, had anticipated consideration for PC against a vacancy pool exclusively meant for male officers. Thus, the sudden expansion of the pool of competition eroded their legitimate expectation of being granted PC.
- (j) The situation of the Appellant-SSCWOs is materially indistinguishable from the SSCWOs who approached this Court in ***Lt. Col. Nitisha (supra)***. Much like the officers in ***Lt. Col. Nitisha (supra)***, the instant Appellants could not have been made to compete with their male counterparts for PC, as the playing field was never equal, owing to casual grading of their ACRs and their lack of consideration for criteria appointments. Additionally, since the Union failed to undertake any meaningful course-correction to review the method of evaluation of ACRs and the cut-offs for future batches, as directed in ***Lt. Col. Nitisha (supra)***, the instant Appellants have been left in the lurch and are entitled to similar relief as granted in ***Lt. Col. Nitisha (supra)***.
- (k) The SSCOs, both male and female, have dedicated the prime of their lives to serving in the Army. They have nevertheless been released

from service with no pension and few benefits. In contrast, PC officers are granted a pension on completion of 20 years of service. Similarly, the Jawans in the Army are entitled to pension after completion of 15 years' service. Such differentiation places the SSCOs at a highly disadvantaged position for no justifiable reason.

- (1) A juxtaposition has arisen whereby some of the Appellants have been released from service during the pendency of the instant appeals, despite their batchmates and juniors being allowed to continue in service or being permitted to rejoin shortly after being released from service.

6. *Per contra*, Ms. Aishwarya Bhati, learned Additional Solicitor-General of India, appearing on behalf of the Respondents, vehemently defended the Impugned Judgements and refuted the allegations of unfair evaluation with the aid of the following submissions:

- (a) The entire assessment in the No. 5 Selection Board is anonymized by redacting the names of the officers, their unique identification numbers, and all other data that could reveal their identities. The only information available to the members of the Selection Board in the MDS consists of the course profile, gradings, honours and awards, and details of appointments. Since a large number of Appellant-SSCWOs had been endorsed with positive recommendations for PC, it could not be said that the Appellants were placed at a disadvantage by any means. In any event, the

details of such recommendations were removed from the MDS prepared for the members of the No. 5 Selection Board. Consequently, no discernible prejudice was caused to the Appellant-SSCWOs.

- (b)** There are no separate marks allotted for criteria appointments in the assessment for consideration for PC, indicating that it is not a mandatory criterion for the grant of PC and, as such, has no bearing on the overall scores. Furthermore, since criteria appointments are necessitated only when being considered for promotion by the No. 3 Selection Board to the first select rank of Colonel, such officers would be granted the required criteria appointments in due course of time.
- (c)** The 10 marks assigned for performance in the courses as per the policy dated 24.02.2012 are to be computed by simply averaging the scores received in all the completed courses. Thus, the number or nature of the courses completed has no bearing on the overall score or merit position.
- (d)** The decision to cap the total number of vacancies for PC in a given year at 250 is purely a cadre management issue, left to the discretion of the Army to decide as per the organisational need to maintain operational efficiency. Since the Armed Forces provide vital capabilities for defence, crisis response, deterrence, and power projection as and when required, they play an indispensable role in

ensuring the safety, stability, and prosperity of the nation in an increasingly complex geopolitical landscape. Thus, sustaining and modernizing the Armed Forces remains a paramount priority for safeguarding national interests and promoting global security.

- (e)** The cap on vacancies, as explicated in the policy circular dated 15.01.1991, was not contemplated to apply only to male SSCOs because once women officers in JAG and AEC cadres became eligible for the grant of PC, the existing cap on vacancies was maintained. The grant of PC to women officers of those two cadres thus fell within the specified cap, emphasizing the gender-neutrality of the policy.
- (f)** The cap on vacancies had been breached between 1999 and 2008 for two reasons: **(i)** the older, now extinct policies led to some officers being considered for PC twice; and **(ii)** the operational requirements and exigencies of service at the time of the Kargil War and during Operation Parakram. Past breaches of the ceiling on vacancies were exceptional responses to policy transitions or national security urgencies, none of which apply to the Appellants' cases. Regardless, the cap of 250 vacancies had not been breached since 2008, indicating the Respondents' intention to abide by it strictly.
- (g)** As per the recommendations of the A. V. Singh Committee Report, the Army was trying to achieve the optimum officer ratio of 1:1.1 between the regular and the support cadres. This ratio was derived

to lower the overall age profile of officers, especially those in junior and middle leadership levels, who are closely engaged in combat and are posted in harsh operational environments. This Report also noted that a higher age profile impinges on the performance of officers as the risk-taking capability diminishes, physical fitness standards required for high altitude and glaciated terrain become difficult to maintain, and alertness at night is adversely affected. Maintaining the ideal ratio of 1:1.1 is necessary to sustain the pyramidal structure of the Army, wherein it requires a much larger base of junior officers to be commanded by a much narrower pool of regular officers. The ceiling on vacancies acts as the key to achieve this level of structural efficiency, and accordingly, since June 2022, the Competent Authority declined to release additional vacancies for the grant of PC.

- (h)** In a similar vein, the shortfall of officers in the Army is largely between the ranks of Lieutenant to Lt. Colonel, i.e. the non-select ranks, and currently, there is a negligible deficiency in the select ranks. Increasing the cap on vacancies or granting PC to more officers would compromise the optimum officer ratio, thus creating a 'bulge' in the pyramid. This bulge would reduce the number of PC slots available to junior officers, while simultaneously expanding the competitive pool for promotion to the higher select ranks. This would lead to a devastating situation, resulting in huge non-employment, cadre stagnation, and poor cadre aspirations,

ultimately impacting the career progression of future batches and the senior officers alike.

(i) Owing to the COVID-19 pandemic, the No. 5 Selection Board for the course commissioned in September 2010 could not be held in May-June 2020, as per the original schedule. Accordingly, a provisional extension was granted to the SSCOs of this course till March 2021. In December 2020, the regular No. 5 Selection Board was held, which considered two batches, i.e., the September 2010 courses and the March 2011 courses, for the grant of PC, based on the apportioned vacancies. In compliance with ***Babita Puniya (supra)***, male and female officers in those batches were considered jointly. All future No. 5 Selection Boards have been conducted in the same manner to the extent of considering men and women officers jointly. Thus, the instant Appellants have been duly considered as per the existing policies and have not been granted PC simply due to their lower overall comparative merit.

(j) Two regular No. 5 Selection Boards are conducted in a year, i.e. in May/June and November/December of the calendar year. The regular No. 5 Selection Board for the SSCO course passing out in August or September of any year is scheduled in May or June of the same year, and the Board for the course passing out in March is conducted in November or December of the preceding year. While implementing the policy circular dated 15.01.1991, vacancies were calculated by apportioning the same between the SSCOs of the

August 1986 (SSC-42) and March 1987 (SSC-43) batches, as both had entered their fifth year of service and were due for consideration for PC. Since then, the Respondents have followed the policy circular strictly and have been considering the batch of August/September of a given year with the batch of March of the subsequent year for the No. 5 Selection Boards being held in a single calendar year. In 2019, two No. 5 Selection Boards were conducted, i.e. in June and November for the courses that were commissioned in September 2009 and March 2010, respectively. Thus, it was clear that the vacancies available to the course commissioned in March 2010 had been calculated at the beginning of 2019, by apportioning them with the course commissioned in September 2009. By this reasoning, the Appellants' contention that the September 2010 course was entitled to 173 vacancies, as only 77 vacancies had been granted to the March 2010 course, is entirely misconceived.

- (k) The officers who were granted relief by this Court in ***Babita Puniya (supra)*** and ***Lt. Col. Nitisha (supra)*** were uniquely placed and formed a category distinct from the instant Appellants, as their male counterparts had already been considered for PC. In contrast, the instant Appellant-SSCWOs became eligible for consideration for PC at the same time as their male counterparts, through the regular course of service and hence, they were considered jointly *vide* a common merit list. Once they were eligible for consideration, they

became subject to overall comparative merit amongst their fellow optees, as envisioned in multiple policy letters.

- (1) Finally, after SSCOs are released from service, they are granted terminal gratuity, group insurance maturity amount, leave encashment, ex-servicemen status, terminal leave, ECHS health benefits, canteen facilities, age relaxation of 5 years for direct enrolment in Group A and B posts, and resettlement courses at prestigious institutions. Thus, the service provided by the SSCOs is adequately recognised and duly appreciated through various post-release benefits.

C. ISSUES

7. Against the backdrop of the facts set out above, and upon close scrutiny of the rival positions taken by the parties, we find that the following issues crystallise for determination in this set of appeals:
 - i. Whether the ACRs of the Appellant-SSCWOs were graded casually without adjudging their suitability for career progression? If so, has such grading adversely affected their overall comparative merit?
 - ii. Whether the disparate treatment of Appellant-SSCWOs in respect of criteria appointments and additional/optional courses adversely impacted their overall scores in the No. 5 Selection Board?
 - iii. Whether the cap on vacancies has led to 'indirect discrimination' against SSCWOs, and whether such vacancies have been calculated incorrectly?

- iv.** Whether the Appellant-male SSCOs were right to have a legitimate expectation to be considered only against other male officers for the grant of PC?

D. ANALYSIS

D.1 Issue No. 1: Alleged Casual Grading of the ACRs of the Appellant-SSCWOs and the Effect Thereof

- 8.** At the outset, and before addressing the merits of the challenge, it is necessary to briefly outline the nature and method of assessment of ACRs in the Army. As per the Army Order 45/2001, an ACR aims to provide an objective assessment of an officer's competence, employability, and potential as observed during the period covered by the report, primarily for organizational requirements. The ACRs are filled in by the IO, the RO, and the Senior Reporting Officer so as to ensure a comprehensive evaluation of the officer's profile.
- 9.** Each ACR comprises several graded components, in addition to a distinct section for 'Box Grading' as well as 'Recommendation for PC or Extension.' Grading in the various components, including box grading, is awarded on a scale of 1 to 9, with 9 denoting outstanding. In essence, box grading represents the assessing officer's holistic evaluation of the ratee's profile, duly accompanied by supporting reasons in the pen picture. The recommendation for PC or extension, however, is confined to a binary endorsement of 'Yes' or 'No'.
- 10.** In the race for consideration for PC, ACRs carry determinative weight, accounting for 75 out of the total 100 marks. As stipulated in the policy

dated 24.02.2012, marks under this head are computed by averaging the figurative assessments recorded by the ROs across all ACRs, both annually and cumulatively, and converting the aggregate score into a proportion of 75 marks. Negative recommendations for PC further affect the overall score, as it results in the deduction of two marks. In contrast, a positive recommendation has no effect on the total score. However, if any RO has endorsed a candidate with 'NA' in the column for recommendation for PC, the same will be indicated in the MDS by code 'C'. Regardless, the column of 'Recommendation for PC/Extension' has been removed entirely from the MDS, so the members of the No. 5 Selection Board do not have this information available to them at the time of evaluating the ratees and assigning marks for value judgement.

- 11.** It is pertinent to note at this stage that grading in ACRs follows a bell-curve distribution. This means that only a limited number of 9's can be handed out, as not all officers in the Army can be marked as 'outstanding' for the purpose of assessment. Consequently, the bulk of the officers under consideration receive a score of 7 or 8.
- 12.** Against this institutional backdrop, it will be easier to understand the parties' opposing contentions. The Appellant-SSCWOs contend that during their entire 10-year stint in the Army, women in cadres other than JAG and AEC were ineligible for PC. Consequently, their ACRs were written with the foreknowledge that they would serve only for a limited tenure and would not be considered for substantive career progression. Since they had no scope for career progression, the assessing officers

graded their ACRs casually and gave them lower scores. It is alleged that this assumption resulted in a casual approach towards assessment, with higher grades being informally reserved for male SSCOs who were eligible for PC and for whom such grades would materially affect their future prospects. Resultantly, women officers were routinely assigned average or middling scores, as a lower score would not impede their career progression in the Army in any shape or form. The Appellants further pointed out that even after women officers became eligible for consideration for PC on 17.02.2020, assessing officers continued to erroneously record 'NA' in the column relating to recommendation for PC.

- 13.** On the other hand, the Respondents contended that the entire process of assessment in the No. 5 Selection Board was anonymised and that the members of the No. 5 Selection Board were not provided with any details about the candidates that would help identify them. As a consequence, it could not be asserted that women officers were treated unfairly merely owing to their gender. Furthermore, the column of recommendations for PC was eliminated entirely from the MDS before presenting it to the members of the Board. They could not thus be prejudiced against those who had received negative endorsements or no endorsements for PC.
- 14.** Having considered the rival submissions, we are constrained to observe that the Respondents' submissions concerning the anonymization of the identifying data and the removal of the column of 'Recommendation for PC' do not deal with the substance of the issue at hand and, as such, do not come to their aid in any manner.

15. We say so for the reason that though the members of the No. 5 Selection Board, equipped with the MDS to assign marks in the value judgement section, may not be aware of the identities of the officers before them, the various assessing officers who filled the ACRs each year were well aware of whom they were evaluating. It is at this foundational stage that differential treatment takes root between those perceived to have a future in the Army and those regarded as serving only a transient role.
16. All ACRs relied upon for consideration of PC were authored prior to 17.02.2020, i.e. the date of pronouncement of ***Babita Puniya (supra)***, when SSCWOs outside JAG and AEC cadres were presumed to be ineligible for PC. At that time, it was a matter of policy that such officers would serve a maximum of fourteen years. Assessing officers were thus conscious that meaningful career progression was effectively unavailable to these women, particularly when compared to their male counterparts, for whom PC opened the pathway to higher ranks and prolonged service.
17. In such a context, the practice of assigning lower or average grades to women officers seems to have become normalised, as there was no real consequence or benefit to receiving higher grades. Under a bell-curve system, where only a few officers could receive top grades, those grades were inevitably reserved for officers whose future progression depended upon them. This institutional mindset, earlier recognised by this Court in ***Lt. Col. Nitisha (supra)***, fundamentally shaped the manner in which the ACRs of SSCWOs were written. Having never been evaluated for suitability for long-term career progression, since none existed, their

ACRs could not realistically reflect such potential or be held to be indicative of such capacity.

- 18.** The cumulative consequence was a systemic pattern in which women officers outside the JAG and AEC cadres consistently received lower gradings, not due to lack of merit, but due to the absence of any perceived career horizon. This phenomenon has come back to haunt those very SSCWOs as they were subsequently and quite abruptly placed in a competition for PC with their male counterparts, who did not undergo such hindrances in grading over the course of their decade-long service. It is, therefore, not surprising to us that the differential treatment meted out to officers 'with a future' in the Army and those deemed to be without one has resulted in an unequal playing field.
- 19.** When considered together at the relevant time for the grant of PC, years of middling grades in ACRs have taken a toll on the Appellant-SSCWOs' positions in the overall list of comparative merit. Given that ACRs account for 75% of the total marks, the long-term effects of such grading practices cannot be neutralised by procedural safeguards introduced at the final stage of evaluation. Attempting to remedy such a structural disadvantage embedded in years of service assessments by mere anonymisation of the MDS and removal of the recommendation column is akin to adjusting the lens of a camera to alter the quality of an image captured much earlier. The damage had been done years before the No. 5 Selection Board was even convened.

20. In light of this, we are unable to accept the contentions advanced by the Respondents in this regard. We observe that the Appellant-SSCWOs' ineligibility for substantive career progression at the time of writing the ACRs has adversely impacted the grading of such ACRs as well as their overall comparative merit when being considered for PC in the regular No. 5 Selection Board alongside their male counterparts. Thus, we cannot hope to agree with the view taken by the AFT in the Impugned Judgements that the ACRs of the Appellant-SSCWOs were graded with due diligence and fairness to determine their suitability for PC.

D.2 Issue No. 2: Alleged Unfair Assessment of SSCWOs due to Disparity in Appointments and Courses

21. Apart from the differential treatment meted out to them in grading of their ACRs, the Appellant-SSCWOs contend that systemic disparity in access to appointments and career-enhancing courses compounded the disadvantage they faced during consideration for PC. It is asserted that SSCWOs were not granted the opportunity to be 'Adequately Exercised' as compared to the male SSCOs. Further, even in cases where the appointment would ordinarily be a criteria appointment, it is not reflected accurately in the ACRs or the MDS. Similarly, the SSCWOs allege that they were neither incentivised nor recommended for various career-enhancing courses during their service. The result, according to the Appellant-SSCWOs, was a diminished service profile when assessed by the No. 5 Selection Board, adversely affecting their *inter se* merit.

- 22.** Significantly, neither the Army nor the AFT have rebutted the factual existence of such a disparity. While individual experiences may vary, the material placed on record establishes a consistent pattern of limited access to criteria appointments and career-enhancing courses for SSCWOs. One illustration provided by the Appellants is that of the Junior Command Course, from which SSCWOs were excluded on the premise that they were ineligible for PC, while male SSCOs were permitted to attend it after completing six years of service.
- 23.** The impact of such like discrepancy on the assessment of the Appellant-SSCWOs in the No. 5 Selection Board has, instead, been the focus of the Respondents' submissions. They contend that these purported differences in the service progression of male and female officers did not affect the assessment of merit by the No. 5 Selection Board. Criteria appointments, they maintain, are not prerequisites for consideration by the Board and are not assigned any specific value for marking. Additionally, while the performance on the courses is assigned 10 marks under the policy dated 24.02.2012, the said score is obtained by averaging the scores received in the specific courses undertaken by the officer. By this logic, there is no impact of the officer having undergone a greater or lesser number of courses, a position also accepted by the AFT in the Impugned Judgements.
- 24.** When it comes to the computerised evaluation, we have already held that the Appellant-SSCWOs were burdened with casually graded ACRs, accounting for 75 marks. The Appellant-SSCWOs, through the instant

contention, have also attempted to establish that the 10 marks to be determined by the performance on the courses undergone by an officer were negatively affected due to inadequate opportunities to undergo important courses and the lack of incentive to do exceedingly well in the courses available to them.

- 25.** In our considered opinion, this line of argument merits rejection for the reason that, as per Paragraph 3(d) of the policy dated 24.02.2012, the marks awarded for 'Courses' are purely based on the average of the marks obtained in each course. There is no measure of the number of courses undertaken by a particular officer, nor are the qualitative differences in the courses taken into account. That being the case, the assertion that discrimination in assignment for courses has affected the 10 marks awarded for 'Courses' cannot be accepted. Similarly, no other aspect of the computerised evaluation is affected by the disparity in the number and nature of appointments, as no numerical value is assigned to them.
- 26.** There is, however, another area of marking where such nuances, like the number and qualitative aspects of courses and appointments, are given weightage: the value judgement of 5 marks, which involves a holistic and subjective assessment by the members of the No. 5 Selection Board.
- 27.** Paragraph 2 of the policy dated 24.02.2012 delineates what shall be considered by the Selection Board while awarding the marks for value judgement. For reference, it is reproduced hereinbelow:

*“2. The members of the Selection Board **will scrutinize the MDS to take into account liberal/strict reporting, inconsistency in performance, nature and seriousness of disciplinary award, technical assessment, performance on courses, strong/weak points reflected in the pen-picture and appointments held by the officer**, and award the Value Judgement marks out of 5. They will also award the following gradings besides awarding Value Judgement:-*

- | | | |
|---|---|-------------|
| <i>(a) Recommended for Permanent Commission</i> | - | <i>‘B’</i> |
| <i>(b) Recommended for Extension only</i> | - | <i>‘BE’</i> |
| <i>(c) Rejected for Permanent Commission and Extension</i> | - | <i>‘Z’</i> |
| <i>(d) Withdraw (for want of sufficient material/ administrative reasons)</i> | - | <i>‘W’</i> |
| <i>(e) Deferred (in case the members feel that the fitness or otherwise of the officer can only be decided after observing the performance of the officer further)”</i> | - | <i>‘D’</i> |

[Sic] [Emphasis supplied]

- 28.** What is readily apparent from the above stipulation is that the Selection Board, while awarding the marks for value judgement, is obligated to undertake a subjective assessment of the entire service profile of the officer under consideration. This is in contrast to the mechanical determination of 95 marks from the computerised evaluation.
- 29.** We can view the entire process as a race, where all participants are made to compete on the same track, but only a few are provided access to professional training facilities beforehand. When such runners are judged together solely on their final timings, the disparity embedded in the preparation itself is rendered invisible, though its effects are decisively felt. As has been expressly provided in Paragraph 2 of the policy dated 24.02.2012, the subjective evaluation involves consideration of the courses undertaken and the appointments served by the officer.

In this context, reduced exposure to courses and exclusion from criteria appointments will inevitably influence the Board's assessment. Since the Board evaluates officers based solely on the anonymised MDS, any discrepancies in recorded appointments or course exposure are carried forward into the value judgment process.

- 30.** In the case of the immediate seniors of the instant Appellants, this Court returned a similar finding in ***Lt. Col. Nitisha (supra)***, recording that the discrepancy in offering additional courses to male and female SSCOs, arising from systemic issues related to the non-grant of PC to SSCWOs, would have caused a reduction in the marks granted upon value judgement by the Special No. 5 Selection Board.
- 31.** In the absence of any rebuttal from the Respondents, and given the subjective nature of the evaluation, in which two of the express criteria have been marred by inequality in opportunity, we have no hesitation in concluding that the differential treatment meted out to the SSCWOs has translated into reduced marks under the value judgment component of the assessment.
- 32.** At this stage, one may question whether such a discrepancy would substantively affect the *inter se* merit list, especially when the value judgement accounts for only 5 out of 100 marks awarded in the No. 5 Selection Board. The data supplied by the Respondents themselves, however, is sufficient to dispel this doubt.

- 33.** The Appellant-SSCWOs, who did not meet the merit-wise cut-offs in their respective assessments, can be seen to have lost out on the grant of PC by small margins. In some cases, the Appellants have scored less than 0.5 marks below the cut-off marks applicable to them. In such circumstances, even a minor distortion in value judgement therefore becomes determinative of the outcome. Hence, it can be inferred that had the Appellant-SSCWOs not faced this kind of inequality in opportunity during the course of their service, the final result of the No. 5 Selection Board would undoubtedly have yielded better outcomes for the SSCWOs. That is more so when considered in light of the similar findings recorded by us in the preceding issue concerning the marks awarded for Overall Average Performance derived from the ACRs.
- 34.** As a result, the finding of the AFT to the effect that the differential treatment of the SSCWOs on aspects of optional courses and criteria appointments had no impact on the results of the No. 5 Selection Boards is patently erroneous and untenable. The merit list, to this extent, reflects the consequences of unequal opportunity structures, thus fortifying the arguments proffered by the Appellant-SSCWOs.

D.3 Issue No. 3: The Cap on Vacancies and their Calculation

- 35.** Having held that the Appellant-SSCWOs were subjected to structural disadvantages both in the grading of their ACRs and in access to career-enhancing opportunities, we now turn to the institutional constraint relied upon by the Respondents to justify the denial of relief, namely, the annual ceiling of 250 vacancies for the grant of PC and the manner in

which those vacancies were computed. This is the issue on which all the Appellants seem to join hands.

- 36.** To properly appreciate and ascertain the validity of the Appellants' claims, we must comprehensively evaluate: **(i)** The sanctity of the annual cap of 250 vacancies for the grant of PC; and **(ii)** The correctness of the calculation of vacancies for the regular No. 5 Selection Board held in December 2020.

D.3.1 The sanctity of the annual cap of 250 vacancies for the grant of PC

- 37.** Before we proceed, we find it apposite to observe that this Court has not entertained a challenge to the very existence of a ceiling on the number of SSCOs who may be granted PC each year. Furthermore, we are also not inclined to evaluate the merits of the contention raised by the Appellants that there is a general need to increase the cap on vacancies from the current sanctioned number of 250. We believe that such a decision essentially falls within the policy domain, and it is better to leave it to the competent authority, which is most suited to assess the operational requirements of the Army, given that such an exercise requires a nuanced understanding of the ideal structure and composition of the Armed Forces, the consequential financial implications, etc. It is thus not appropriate at all for this Court to substitute the decision of policymakers with its own.

- 38.** We are nevertheless conscious of this Court's power and duty to judicially review such a policy within the framework of constitutional standards. Suffice it to say that in the instant appeals, the Appellants have, rather, only sought to strike at the suitability of the number, given that the intake of SSCOs in the Army has substantially increased over the years and the fact that the limit on vacancies has been breached several times before. This, however, as stated above, would entail significant policy analysis and thus, it may not be appropriate for this Court to undertake such an exercise in the instant proceedings. The limited question that arises for our consideration is whether, in the peculiar facts of the instant case, where the method of assessment itself has been found to be unfair, the ceiling of 250 vacancies can operate as an absolute bar to corrective relief?
- 39.** The Respondents have, before the AFT as well as this Court, entrenched themselves in the position that, considering the ceiling on vacancies, no additional vacancies could be created to accommodate a larger number of SSCOs being granted PC. The reason assigned for this stance is that the maximum limit is essential for cadre management and to prevent an increase in the average age of the force. Essentially, the Respondents submit that the policy reasons behind the limit of 250 on vacancies for the grant of PC are so critical that the limit ought not to be breached even in the current conditions.
- 40.** This submission, however, is not borne out by the Respondents' historical practice. The record placed before the AFT, particularly the

table extracted in Paragraph 111 of the Impugned Judgment dated 03.07.2024, reveals that the ceiling of 250 vacancies has been repeatedly breached in 2002, 2003, 2004, 2005, 2006, 2009, 2010, 2011, and 2012. As per the Respondents, apart from the supernumerary grant of PC through the Special No. 5 Selection Board in 2020, no subsequent batch of SSCOs has been granted PC beyond the limit of 250 vacancies. The Respondents have justified the ceiling being crossed in the above-mentioned years for two reasons: (i) exigencies arising out of the circumstances of the Kargil War and Operation Parakram; and (ii) the changes in policy regarding the consideration for PC, which necessitated transitional measures. For the latter, it is clarified that the SSCOs were originally to be considered for PC in their 5th year of service, but from 2000-2001, they became eligible to be considered anew in their 8th year also. Subsequently, with another policy change in 2006, some of the SSCOs, who had previously not opted for consideration for PC, could choose to be considered for PC for the first time in their 10th year of service.

- 41.** A closer examination of these instances discloses a particular pattern where, for some of the batches where the total number of officers who were granted PC has gone beyond the ceiling, originally only 250 vacancies were filled during the first consideration in the 5th year of service of the officers. However, when they were reconsidered in their 8th year of service, additional vacancies on the basis of the total cadre strength were created to accommodate a larger number of SSCOs being

granted PC. A similar exercise appears to have been undertaken for the separate consideration in the 10th year of service as well.

42. It is, however, pertinent to note that, apart from the batches for which the limit of 250 vacancies has been breached, none of the batches has recorded that PC has been granted to an exact total of 250 SSCOs. In fact, the closest number of officers to be granted PC in a particular cycle was in the 2003-04 batches, 222 officers wherefrom were granted PC. What is, thus, revealed is that the Respondents have granted PC to more than 250 officers in the years in which the number of eligible optees for PC was greater than 250. While these vacancies may have been derived from the overall cadre strength, it is the Respondents' own admission that each instance was accompanied by the requisite approvals from the Competent Authority in the MS Branch.

43. All these facts and circumstances reveal the Respondents' concessionary conduct towards the 250-cap on the grant of PC. They have not presented a single instance between 1998 and 2019 where there were more than 250 eligible SSCOs opting for the grant of PC, but only 250 were ultimately granted PC; rather, the Respondents have offered PC to a greater number of officers in each such batch. The Respondents, similarly, undertook to grant PC beyond the cap of 250 vacancies to the SSCWOs covered by ***Babita Puniya (supra)***.

44. The inescapable inference, therefore, is that the ceiling of 250 vacancies is neither sacrosanct nor immutable. As already observed by this Court

in ***Lt. Col. Nitisha (supra)***, it is amenable to relaxation where adherence to it would perpetuate constitutional inequality. The Respondents have time and again disregarded it on various grounds, including the directions previously issued by this Court in light of the discrimination faced by SSCWOs in their assessment for PC. In the instant case, where the Appellant-SSCWOs have been found to suffer the cumulative effects of an unfair evaluative regime, the invocation of the vacancy cap as a shield against remedial action would be unfair to sustain. Owing to this, the Respondents' plea regarding the sanctity of the ceiling on vacancies falls flat, and the view taken by the AFT, maintaining such a cap in the instant set of appeals, therefore, has to be disapproved.

D.3.2 The incorrect calculation of vacancies

45. Ordinarily, if this Court reaches a finding that the maximum limit of 250 vacancies is not an unbreakable norm and issues directions for disregarding it in the instant case, no occasion would arise for us to consider how such a limit should be applied. However, in light of the fact that the results of the No. 5 Selection Boards have been challenged by the male SSCOs and SSCWOs alike, we must address the subsidiary issue raised concerning the correctness of the computation of vacancies for the regular No. 5 Selection Board.

46. The Respondents, in their Counter Affidavit, have laid out the basis of apportionment of vacancies among different batches. The process is governed by the policy circular dated 15.01.1991, reproduced earlier, which clearly stipulates in Clause (a) that “*a maximum of **250 SSCOs***”

will be granted Permanent Commission per year.” Further, Clause (c) of the same policy circular clarifies that “*in case more than the specified number of officers make the grade **from the batches considered in a year**, the requisite number only, i.e. 250 will be granted Permanent Commission on competitive merit.*”

47. This decision was complemented by a File Noting dated 22.01.1991, also reproduced earlier, guiding the implementation of the policy circular dated 15.01.1991. Paragraph 2(a) of this File Noting categorically states that “*The grant of PRC to the total number of SSCOs in a batch will be based on the **inter se batch strengths in one calendar year**.*” Although the policies governing the consideration of PC have changed over the years, the policy circular dated 15.01.1991 and the File Noting dated 22.01.1991 have remained in force, unamended.

48. It is the Appellants’ submission that the expression ‘per year’ must be read as referring to the calendar year of commissioning, such that the March and September batches of the same calendar year are entitled to share the 250 vacancies, even if they are considered by different Selection Boards in different years.

49. *Per contra*, the Respondents contend that as per the policy circular dated 15.01.1991, which has been implemented uniformly since its date of issue, the total number of vacancies is apportioned between the batches being considered for PC in a given year. Thus, the division of vacancies

is based on the year of conduct of the No. 5 Selection Board, not the year of commission.

50. It therefore emerges that the dispute between the parties essentially boils down to the interpretation of the policy circular dated 15.01.1991 and the complementary File Noting dated 22.01.1991.

51. This controversy need not detain us for long, since a bare perusal of the expression “*will be granted Permanent Commission per year*” in Clause (a) of the policy circular dated 15.01.1991 indicates that the limit of 250 vacancies applies to all the SSCOs being granted PC in a particular year. Furthermore, the term “*calendar year*” bears no mention in the policy circular dated 15.01.1991, connecting it with the calendar year in which the SSCOs are originally commissioned. Rather, the interpretation forwarded by the Respondents is strengthened by the use of the phrase “*from the batches considered in a year*” in Clause (c) of the same policy letter. The deliberate and concurrent use of these phrases leaves no room for doubt in our minds that the cap on vacancies is supposed to be shared by the two different batches of SSCOs who are considered and granted PC by the No. 5 Selection Board convened within the same calendar year.

52. With regard to the File Noting dated 22.01.1991, it only serves as a clarificatory document for the policy circular dated 15.01.1991, providing the manner of proportional division of the vacancies among the batches and barring the roll-over of unfilled vacancies. The Appellants

have heavily relied on the noting, especially Paragraph 2(a) therein, which stipulates, “*The grant of PRC to the total No of SSCOs in a batch will be based on **the Inter se batch strengths in one calendar year,***” to contend that the entire scheme revolves around the courses which are commissioned in a particular calendar year.

53. This argument is recorded only to be negated. The text of the File Noting does not point to an *inter se* comparison between the two courses commissioned in a particular calendar year. The expression ‘*Inter se batch strengths in one calendar year*’ is, on the contrary, silent on whether it connotes the courses being commissioned in one year or the courses/batches being considered for grant of PC in one year. As such, the phrase cannot be taken, by itself, to support either version. Moreover, it is trite law that a clarificatory document is only meant to supplement the original stipulation, not supplant it. When the intent of the policy circular dated 15.01.1991 lucidly emerges from its own text, a contrary meaning cannot be imposed on the policy based on an unqualified expression in the File Noting. Rather, the File Noting must be implemented in a manner which is commensurate with the express provisions of the policy circular dated 15.01.1991.

54. Owing to this, we must accept the Respondents’ submission that the policy circular dated 15.01.1991 dictates that all the batches of SSCOs who are considered for and granted PC in a particular calendar year shall be entitled to a total of 250 vacancies, divided among the batches in proportion to their respective strengths.

- 55.** As a natural corollary to their opinion, the Respondents have pointed out that the process for assessment and grant of PC culminates a few months prior to completion of the SSCOs' initial tenure of 10 years. Thus, the two regular No. 5 Selection Boards convened in a year are for the batches passing out in September of that year and March of the following year.
- 56.** There is no dispute that the above practice has been consistently followed since 1991, when the first batch of SSCOs became eligible for the grant of PC. The only exception to this arrangement arose in 2020, when the batches commissioned in September 2010 and March 2011 were considered together by a singular No. 5 Selection Board in December 2020, solely due to the COVID-19 pandemic and the conduct of the Special No. 5 Selection Board as per the directions issued in ***Babita Puniya (supra)***. To drive home this argument, the Respondents have also presented the internal documents of the Army, reflecting the computation of the vacancies available for each batch as per the system delineated above.
- 57.** Given what we have held herein, it leads us to a definite conclusion that in the ordinary course of proceedings, 250 vacancies would be liable to be apportioned between the course commissioned in September of one year and the course commissioned in March of the following year. Since this apportionment of vacancies is in line with the provisions of the policy circular dated 15.01.1991 and the sustained standard practice of the Army, we find no merit in the Appellants' claim that the vacancies available for their batches were computed incorrectly or arbitrarily. To

this extent, we find ourselves in agreement with the findings returned by the AFT.

D.4 Issue No. 4: The Purported Legitimate Expectations of the Appellant-Male SSCOs

- 58.** The final issue that needs determination flows naturally from the foregoing discussions. In some of the appeals before us, especially those agitated on behalf of the Appellant-male SSCOs, it has been asserted that the male officers had a legitimate expectation that the PC vacancies for their batches would be filled only by male officers, with an exception carved out for the SSCWOs in JAG and AEC cadres. The Appellant-male SSCOs thus claim that their consideration alongside their female counterparts in all cadres/arms for the same number of vacancies was an arbitrary consequence of policy change, causing a substantial enlargement of the pool of SSCOs competing for the same number of PC slots.
- 59.** At its core, this submission is merely a restatement of the argument that the vacancy cap ought to have been recalibrated once SSCWOs also became eligible for PC in all cadres. It seems that an attempt is being made to regurgitate the same submission by branding it as 'legitimate expectation,' so as to assert a legal right for abdication or revision of the policy circular dated 15.01.1991.
- 60.** It is well settled that to seek legal remedy for the breach of a legitimate expectation, there must be: (i) a reasonable expectation arising from past

practice, express promise, or statutory policy of a public authority that a certain course of action would be followed; and **(ii)** arbitrariness, patent unfairness, or a violation of the principles of natural justice resulting from the denial of such expectation. Since the former, in itself, only creates a claim in equity, it is the latter which causes the Court to invoke its powers in favour of the aggrieved party. This Court can be inclined to offer some form of protection or redress to the Appellant-male SSCOs only when this twin test is met. The record, however, indicates that the first requirement itself is not fulfilled.

- 61.** Only a short overview of the history of these appeals is needed for one to note that the High Court, in its judgement dated 12.03.2010, held SSCWOs to be entitled to be considered for PC in all branches/cadres in which they were being inducted. This judgement continued to remain in force, from the moment of its pronouncement, despite it being challenged before this Court in ***Babita Puniya (supra)***. While admitting the appeal(s), this Court categorically declined to stay the effect of the High Court's judgement *vide* its order dated 02.09.2011. Considering that all the Appellants before us were commissioned as SSCOs in September 2010 or thereafter, i.e. after the pronouncement of the High Court's judgement dated 12.03.2010, the Appellant-male SSCOs cannot claim to be under any reasonable belief that SSCWOs would not be competing with them for the grant of PC. Moreover, there is no material to suggest that the Respondents ever represented that the vacancy cap would be expanded to offset the enlarged pool of eligible officers. In the absence of

such a representation, no enforceable expectation could arise in favour of the Appellant-male SSCOs.

- 62.** Given the existence of an express direction in the judgement of the High Court and in the absence of any material to the contrary, we do not find any reason to believe that the Appellant-male officers had the legitimate expectation to be considered only against other male SSCOs for the grant of PC. For this reason alone, the argument of the Appellant-male SSCOs is liable to fail.
- 63.** Having said so, we must also observe that no impetus must be given to any perceived expectation if it would run contrary to the Constitutional mandate. This aspect of the doctrine of ‘legitimate expectation’ has been succinctly laid out by a decision passed by a two-Judge Bench of this Court in ***K. Purushottam Reddy v. Union of India and others***⁴ where one of us (Surya Kant, J., as he then was) held as follows:

*“42. However, it is equally well-settled that the doctrine of legitimate expectation cannot override an express provision of law or the Constitution. **It must be borne in mind that the expectation must be legitimate, in the sense that it is not only reasonable but also legally sustainable within the structure of the governing statute or constitutional scheme.** In the event of any conflict between an expectation and the existing legal framework, the expectation has to run hand in hand with the legal intent and not against it. **The doctrine of legitimate expectation is not a rigid rule and must be conceded where a superseding public interest or a statutory or constitutional bar exists.** Thus, while legitimate expectation may guide how discretionary powers are exercised, it cannot be invoked to compel an authority to act contrary to a binding legal or constitutional command.”*

[Emphasis supplied]

⁴ (2025) 9 SCC 722.

64. This Court, through a series of decisions, has worked to address the unfair manner in which women officers have been treated due to certain systematic traits in the functioning of the Armed Forces. The inclusion of SSCWOs in the zone of consideration for PC is not a matter of discretion, but of constitutional obligation. Any expectation to the contrary is inherently illegitimate. The claim made by the Appellant-male SSCOs that they ought not to be considered alongside SSCWOs is therefore liable to be outrightly and decisively rejected.

E. CONCLUSION AND DIRECTIONS

65. Before concluding the judgement, it is necessary to recapitulate our findings on the various issues raised before us. They are summed up as follows:

- (i)** The ACRs of the Appellant-SSCWOs were authored with the assumption that they would never undergo any substantive career progression, owing to their ineligibility for PC for the initial ten years of service. Since the avenue for PC was opened to them much later, this presumption undermined the entire assessment of their 'suitability' for any career progression undertaken prior to that and thus, adversely affected their overall merit in the consideration for PC;
- (ii)** The inequalities in opportunities afforded to the Appellant-SSCWOs to hold criteria appointments have adversely affected

their *inter se* merit, placing them at a disadvantage with their male counterparts;

- (iii) Performance in career-enhancing courses influenced the marks awarded by the members of the No. 5 Selection Board in the value judgement component of the assessment. Since the Appellant-SSCWOs were never systematically detailed for such courses, their overall comparative merit at the time of consideration for PC was disproportionately impacted;
- (iv) The ceiling on vacancies, fixed at 250 per year, is neither rigid nor sacrosanct and may be breached when the method of consideration for PC is unfair and unequal;
- (v) The Respondents have correctly calculated the vacancies by apportioning them between the batches being considered for PC within the same calendar year; and
- (vi) The Appellant-male SSCOs could not reasonably expect that vacancies would remain exclusively male, particularly once the exclusion of SSCWOs from consideration for PC was held to be unconstitutional and impermissible by the High Court in its judgement dated 12.03.2010.

66. In view of the foregoing analysis and conclusions, we find that the denial of PC to SSCWOs was not merely the outcome of individual assessments, but the consequence of a systemic framework rooted in assumptions that entrenched disadvantages in career progression. Where the evaluative

framework applied to assess their performance under various parameters lacked the depth and rigour applied to their male counterparts, these assessments have inevitably influenced their service records, comparative merit, and career progression. Thus, we deem it appropriate to invoke our powers under Article 142 of the Constitution to grant such relief which is moulded towards doing complete justice between the parties.

67. In light of this, we allow the appeals preferred by the Appellant-SSCWOs and dismiss those filed by the Appellant-male SSCOs. Accordingly, we modify the directions issued in the Impugned Judgements of the AFT dated 03.07.2024 and 04.09.2024 to the following extent:

- (i)** The grant of PC to the SSCOs who have already been granted PC by the No. 5 Selection Boards convened in 2020 and 2021 and by the AFT *vide* the Impugned Judgements shall not be disturbed;
- (ii)** As a one-time measure, the Appellants-SSCWOs and the Intervenor-SSCWOs in IAs for impleadment/intervention, 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*, 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;

- (iii)** The pension shall be fixed on the basis of the date of completion of the deemed service of 20 years, but arrears thereof, if any, shall be paid to the SSCWOs only with effect from 01.01.2025. As a matter of abundant caution, we clarify that this direction does not apply to the Appellant-SSCWOs and Intervenor-SSCWOs who form part of the JAG and AEC cadres, as they have been eligible for consideration for PC since 2010;
- (iv)** All SSCWOs who are continuing in service by virtue of our orders dated 09.05.2025 and 19.05.2025, and who have fulfilled the minimum cut-off grade of 60% in the regular No. 5 Selection Boards held in 2020 and 2021, shall be entitled to the grant of permanent commission, subject to their meeting the medical criteria prescribed in the respective General Instructions and on receiving disciplinary and vigilance clearance. We reiterate that this direction does not apply to the Appellant-SSCWOs and Intervenor-SSCWOs who form part of the JAG and AEC cadres;
- (v)** The Appellant-SSCWOs and Intervenor-SSCWOs who have been considered for PC by No. 5 Selection Boards convened after 2021 and are aggrieved by such results may pursue their remedies in accordance with the law. If their challenges are already pending before the AFT or the High Court, they may continue to pursue such claims and may avail the remedy available in law, if aggrieved by the outcome; and

(vi) As a follow-up to the direction issued in Paragraph 120(viii) of **Lt. Col. Nitisha (supra)**, the method of evaluation of ACRs and the cut-off must be reviewed for future batches, in order to examine the disproportionate impact on SSCWOs who became eligible for the grant of permanent commission in the subsequent years of their service.

68. Ordered accordingly.

69. Pending applications, if any, are also to be disposed of in the above terms.

.....**CJI**
(**SURYA KANT**)

.....**J.**
(**UJJAL BHUYAN**)

.....**J.**
(**NONGMEIKAPAM KOTISWAR SINGH**)

NEW DELHI;
MARCH 24, 2026