



2025:DHC:3686-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13425/2024

COL. SONY SHARMA AND ORSPetitioners

Through: Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Rakesh Kumar, Adv.

versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Ruchir Mishra, CGSC with
Mr. Mukesh Kumar Tiwari, Mr. Sanjiv
Kumar Saxena and Ms Reba Jena Mishra
Advocates
Major Anish Muralidhar Army

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **08.05.2025**

C. HARI SHANKAR, J.

1. On 3 October 2024, a Coordinate Bench of this Court noted the objection of learned Counsel who appeared on behalf of the respondents in this writ petition to the effect that the petitioners had, with them, an equally alternate efficacious remedy by way of an original application before the learned Armed Forces Tribunal¹. The matter was re-notified for considering this preliminary objection.

¹ "the learned AFT" hereinafter



2. We have, today, heard Mr. Sudhir Nandrajog, learned Senior Counsel for the petitioners and Mr. Mishra, learned CGSC for the respondents, at length on this issue.

3. The synopsis filed with the present writ petition, in its opening paragraphs, encapsulates the grievance of the petitioners. We deem it appropriate to reproduce the said paragraphs thus:

“That being aggrieved and dissatisfied with policy letter dated 23.11.2021 and policy letter dated 29.03.2024 and with liberty from Hon’ble Supreme Court vide order dated 15.04.2024 in Misc. Application No. 2395/2023 in MA No. 1913 in W.P. No. 1913/2022, to pursue such substantive remedies as are available in law, before appropriate forum, the petitioners have filed the present writ petition before this Hon’ble Court challenging the validity of policy dated 23.11.2021 and policy dated 29.03.2024 as provisions of the these policies grossly violate the principle of equality and contemplate two highly unequal and distinct classes i.e. Women Officers and gentleman officers, in Indian Army, as equal and contemplate to treat unequals equally and thereby infringe the fundamental rights of the petitioners(women officers) guaranteed under Article 14 and 16 of the constitution of India. It is submitted that such provisions of the aforesaid policies are liable to be quashed and the respondents may be commanded by this Hon’ble Court to reformulate the policies and accordingly Special No. 2 Selection Board may be conducted for exclusive consideration of women officers for their promotion to Brigadier Rank, instead of wrongly, arbitrarily and unconstitutionally conducting Regular Selection Board No. 2 for considering the women officers with gentlemen officers, on the basis of impugned policy letter dated 23.11.2021 & 29.03.2024.

It is submitted that from the judgment dated 25.03.2021 in *Nitisha v Union of India*² it is well established that since short service commissioned women officers in Indian Army, before the judgment dated 17.02.2020 in *Ministry of Defence v Babita Puniya*³ passed by Hon’ble Supreme Court, were only eligible for extension of service and they were denied consideration for permanent commission, hence they were treated differently in

² (2021) 15 SCC 125

³ (2020) 7 SCC 469



comparison to Gentlemen Officers and women officers were subjected to Gender discrimination as well as systematic and indirect discrimination and resultantly before the judgment dated 17.02.2020:-

- i. Annual Confidential Reports (ACRs) of women officers, in the Rank of Major and Lt. Colonel, which carries 89 marks out of total 100 in promotion to Colonel Rank and 37.5 marks in promotion to Brigadier Rank, were written in highly casual manner, because careful grading of ACRs of women officers W.P.(C)-13425/2024 10 were not of much use, in absence of provision of permanent commission for women officers were not of much use, in absence of provision of permanent commission for women officers.
- ii. The women officers were not given any opportunity to earn criteria ACR in the Rank of Major and Lt. Colonel, which carries 54 marks in promotion to Colonel Rank and 16.5 marks in promotion to Brigadier Rank”

4. The prayer clause in this writ petition reads as under:

“It is therefore, in view of the fact and circumstances mentioned above, this Hon’ble Court may graciously be pleased to:-

- i. Issue an order, direction or writ in the nature of certiorari whereby quashing the second part of para no. 15 of Policy Letter dated 23.11.2021 and quashing the policy letter dated 29.03.2024 completely as the same are not only arbitrary and discriminatory but the same are also violative to fundamental rights guaranteed to the petitioners under Article 14 & 16 of the Constitution, and/or
- ii. issue an order, direction or writ in the nature of Mandamus whereby directing Respondent to conduct Special No. 2 Selection Board corp-wise and batch-wise with equitable PRV, for promotion to Brigadier Rank to those eligible women Officers who have been promoted to Colonel Rank by Special No. 3 Selection Board,
- iii. issue an order, direction or writ in the nature of Mandamus whereby directing Respondents to conduct special No. 2 Selection Board for those senior women officers, whose male-counter-parts have already been



considered for promotion to Brigadier Rank, And /or

iv. Issue an order, direction or writ in the nature of mandamus whereby commanding the Respondents to not conduct any Selection Board No. 2 for junior gentlemen officers till the Special No. 2 selection Board is not conducted for senior women officers, whose male-counterparts have already been considered for promotion to Brigadier Rank

v. issue an order, direction or writ in the nature of Mandamus whereby directing the respondents to nominate the eligible women officers for Higher Command Course and equivalent Courses, immediately after their completion of AE Appointment, in the batch starting in year 2025 And/or

vi. direct the respondents to pay Cost of litigation as well compensation to the petitioner for causing greave mental harassment and agony, and/or

vii. pass any other order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.”

5. Sections 14(1) and (2) of the Armed Forces Tribunal Act, 2007⁴ read thus:

“14. Jurisdiction, powers and authority in service matters.—

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on

⁴ “the AFT Act”, hereinafter



payment of such fee as may be prescribed.”

6. The expression “service matters” is defined in Clause 3(o) of the AFT Act thus:

“3. Definitions. – In this Act, unless the context otherwise requires, -

(o) “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters *relating to the conditions of their service* and shall include—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever,

but shall not include matters relating to—

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);

(iii) leave of any kind;



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(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months;”

7. The definition “service matters” as contained in Section 3(o) of the AFT Act may be divided into three parts. The opening part of the clause generally includes, within the ambit of the expression “service matters”, all matters relating to the *conditions of service* of persons who are subject to the Army Act, Navy Act or the Air Force Act.

8. There is no dispute about the fact that the petitioners in this writ petition are subject to the provisions of the Army Act. The expression “conditions of service” stands defined by the Supreme Court in *State of M.P. v Shardul Singh*⁵, as encompassing “all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension, etc.”

9. Viewed thus, it is clear that the reliefs sought in this writ petition are eminently amenable to being granted by the learned AFT.

10. Though Mr. Nandrajog sought to contend that the petitioners are in essence seeking framing of a policy and that the learned AFT does not have the jurisdiction or authority to issue any such direction, no prayer for framing of any policy is contained in the writ petition.

11. Mr. Nandrajog sought to contend that prayer (ii) of the writ

⁵ (1970) 1 SCC 108



petition seeks framing of a policy.

12. We do not read it as seeking any such relief.

13. Prayer (i) in the writ petition seeks quashing of a policy which is already framed, which is well within the jurisdiction of the learned AFT.

14. Prayer (ii) seeks a direction to the respondents to conduct a Special Selection Board to consider the cases of eligible women officers for promotion to the rank of Brigadier, who already stands promoted to the post of Colonel by Special Selection Board. This prayer cannot be read, in our view, as seeking framing of any kind of policy.

15. The relief of a direction to the respondents to conduct the Special Selection Board, if at all such a direction can be granted on merits, falls well within the jurisdiction of the learned AFT, as envisaged by Section 14 read with Section 3 (o) of the AFT Act.

16. Prayers (iii) and (iv), similarly, deal with conducting and a direction not to conduct, Special Selection Boards, which again fall within the jurisdiction of the learned AFT.

17. Prayer (v) seeks a direction to nominate eligible women officers for Higher Command Course or equivalent courses on their completion of AE Appointment, which again falls within the



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jurisdiction of the learned AFT.

18. None of the prayers in the writ petition, therefore, in our view, are outside the envisaged statutory jurisdiction of the learned AFT in terms of Section 14 read with Section 3 (o) of the AFT Act.

19. In case the petitioners desire a policy to be framed, they should have specifically so stated in their prayers. They cannot call upon the Court to read between the lines of the prayer clause and infer that the prayers require the framing of a policy.

20. Indeed, if the prayers in the writ petition were actually seeking framing of a policy, the issue would stand covered by the following paragraphs from the judgment of the Supreme Court in *UOI v Air Commodore NK Sharma*⁶, paras 12, 12.1, 16 to 22 of which read thus:

“12. In this backdrop, the questions that we are required to consider are: –

12.1 Whether the Tribunal could have issued a direction to the Government to frame a policy for filling up the post of JAG (Air)?

16. It is in consideration of this statutory scheme that we must look for an answer to the question as to whether the Tribunal could have directed the formation of a policy, albeit in regard to a matter affecting the service of armed forces personnel, to adjudicate which, it otherwise possesses the jurisdiction?

17. *Making policy, as is well recognised, is not in the domain*

⁶ Judgment dated 14 December 2023 in Civil Appeal No. 14524/2015



of the Judiciary. The Tribunal is also a quasi-judicial body, functioning within the parameters set out in the governing legislation. Although, it cannot be questioned that disputes in respect of promotions and/or filling up of vacancies is within the jurisdiction of the Tribunal, it cannot direct those responsible for making policy, to make a policy in a particular manner.

18. *It has been observed time and again that a court cannot direct for a legislation or a policy to be made.* Reference may be made to a recent judgement of this Court in ***Union of India v K. Pushpavanam***⁷ where while adjudicating a challenge to an Order passed by a High Court directing the State to decide the status of the Law Commission as a Statutory or Constitutional body and also to consider the introduction of a bill in respect of torts and State liability, observed as under: –

“..As far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by Courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation. A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame. Therefore, the first direction issued under the impugned judgment was unwarranted.”

(Emphasis Supplied)

19. We may further refer to ***Union of India & Ors v Ilmo Devi & Anr***⁸ wherein the Court, while considering with the case concerning regularisation/absorption of part-time sweepers at a post office in Chandigarh observed:-

“The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and 17 create the posts. *The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government.* Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the

⁷ 2023 SCC OnLine SC 987

⁸ 2021 SCC OnLine SC 899



power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.”

(Emphasis Supplied)

20. The above being the settled position of law, it only stands to reason that a Tribunal functioning within the strict boundaries of the governing legislation, would not have the power to direct the formation of a policy. *After all, a court in Writ jurisdiction is often faced with situations that allegedly fly in the face of fundamental rights, and yet, has not been entrusted with the power to direct such formation of policy.”*

21. Thus, no direction to frame any policy can be issued by the learned AFT, *or by this Court*. The petitioners cannot, therefore, be heard to contend that the filing of the present writ petition, instead of approaching the learned AFT, is justified as they seek issuance of directions to the executive to frame a policy.

22. Be that as it may, we reiterate that the prayers in the writ petition do not, in fact, seek framing of any policy by the Court.

23. Mr. Mishra, learned Central Government Standing Counsel appearing for the UOI, has drawn our attention to an order dated 27 September 2024 passed by the Supreme Court in WP(C) Diary No. 26647/2024⁹, which reads thus:

“O R D E R

1 The petitioner invokes the jurisdiction under Article 32 of the Constitution to claim two reliefs:

- (i) A writ commanding the second respondent to grant a waiver of the requisite AE (Adequately Exercised) period

⁹ Col. Anju Dalal v Union of India



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to the petitioner as envisaged in Clause 16(a) of the Adequately Exercised Policy for consideration of officers by Number 2, Number 1 and Special Selection Boards dated 20 March 2013; and

(ii) A direction to the second respondent to constitute a Special Selection Board No 2 for the considering the petitioner for promotion to the rank of Brigadier.

2 Though an earnest effort has been made on behalf of the petitioner to demonstrate that the petitioner was unable to fulfill the requirements of the AE Policy because of the delays on the part of the Army authorities and reliance has been placed on Clause 16(a) of the Future Progression Policy, we are of the considered view that it would be inappropriate for this Court to entertain a petition directly under Article 32 of the Constitution. The petitioner has an efficacious alternative remedy of moving the Armed Forces Tribunal.

3 Though the petitioner was in service when the petition was moved, she has since retired from service. However, this will not stand in the way of the petitioner taking recourse to her remedies under the Armed Forces Tribunal Act.

4 In the event that the petitioner moves the Armed Forces Tribunal expeditiously, the Tribunal may consider expediting the proceedings.

5 Subject to the grant of the above liberty, the Writ Petition is disposed of.

6 Pending applications, if any, stand disposed of.”

24. Though Mr. Nandrajog sought to distinguish the case of *Anju Dalal* from the case at hand, it is clear that, even in that case, the petitioner was seeking constitution of a Special Selection Board for considering the petitioner for promotion to the rank of Brigadier. The Supreme Court declined to exercise jurisdiction under Article 32 of the Constitution of India *as the petitioner had an equally efficacious remedy before the learned AFT.*



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25. *Mutatis mutandis*, we are of the opinion that the same principle would apply in the present case.

26. Mr. Mishra has also drawn our attention to the judgment of a Full Bench of this Court in *Squadron Leader Neelam Chahar v UOI*¹⁰, para 15 of which specifically holds that a challenge to a policy of the Armed Forces can be raised before the learned AFT.

27. On the basis of this decision, the Full Bench has transferred the writ petitions filed before this Court to the learned AFT.

28. In that view of the matter, we are of the opinion that the petitioners have an equally efficacious alternate remedy before the learned AFT, to prosecute the prayers in this writ petition.

29. We queried of Mr Nandrajog as to whether he would desire this writ petition to be transferred to the learned AFT for decision. He, on instructions, declines the request, and exhorts the Court to pass an order on merits.

30. We, therefore, decline to interfere in this matter, as the petitioners have, with them, an equally efficacious remedy to approach the learned AFT, and, applying the law laid down in *L. Chandrakumar v UOI*¹¹, this Court cannot act as a Court of first

¹⁰ Judgment dated 26 May 2023 in WP(C) 9139/2019

¹¹ (1997) 3 SCC 261



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instance in such matters.

31. The writ petition is, accordingly, disposed of with liberty to the petitioners to prefer an appropriate Original Application before the AFT.

32. Needless to say, should such an application be preferred, the learned AFT would decide the application in accordance with law.

33. We clarify that any observations contained in this judgment are only intended to examine whether we should exercise extraordinary jurisdiction under Article 226 of the Constitution of India in the present case.

34. In the event of the petitioners moving to the learned AFT, therefore, the learned AFT would proceed with the matter uninfluenced by any observation contained in this judgment.

35. The writ petition is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 8, 2025

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[Click here to check corrigendum, if any](#)