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LIEUTENANT COLONEL NITISHA & OTHERS (VS) UNION OF INDIA & OTHERS

- *Yuvraj Pandey*

ABSTRACT

The landmark case of Lt. Col. Nitisha and Ors v. Union of India and Ors. by the Supreme Court of India transformed the discussion on the topic of gender equality and substantive justice in the Indian armed forces. The court in the case of *Secretary, Ministry of Defence v. Babita Puniya (2020)* held that Women in Short Service Commission (SSC) to be granted Permanent Commission (PC). The implementation procedures however bring forward the structural barriers and systematic disadvantages against the women officers. Lt. Col. Nitisha and Others challenged the procedure used by the selection board of the armed forces, arguing that ostensibly gender-neutral standards like the medical evaluation criteria at present age and biased cut-off in the Annual Confidential Reports (ACRs) leads to indirect discrimination against the women officers.

The court recognised the concept of indirect discrimination under Article 14, 15 & 16 of the constitution of India. It held that prima facie neutral policies can be unconstitutional as they proved to be disadvantageous in disproportion to a protected group. Justice D.Y. Chandrachud stressed that equality mentioned in the constitution is formal as well as substantive. The judgement put forward the requirement for a detailed guidelines in recruitment of women officers with mandatory transparency to be followed in the selection process along with time bound implementation of permanent commission with consequential benefits.

CASE DETAILS

- JUDGMENT CAUSE TITLE: *Lieutenant Colonel Nitisha & Others v. Union of India & Others*

- CASE NUMBER: *SCC online SC 261/ Civil Appeal No. 1039 of 2020*
- JUDGMENT DATE: *25 March 2021*
- COURT: *SUPREME COURT OF INDIA*
- QUORUM: *Justice D.Y. Chandrachud & M.R. Shah*
- AUTHOR: *D.Y. Chandrachud*
- CITATION: *SCC Online SC 261, 2021 INSC 210*
- LEGAL PROVISIONS INVOLVED:
 - a) *Article 14 (Equality before Law) & 15(1) (Prohibition of gender discrimination) of the Constitution of India.*
 - b) *Article 16 (Equality of opportunity in public employment)*
 - c) *Article 142 (passing direction necessary for completion of justice)*
- LAW SUBJECTS: *Constitutional Law, Gender Equality, Indirect Discrimination, Women's Rights in Armed Forces.*

BACKGROUND OF THE CASE

In the Indian armed forces the women Short Service Selection (SSC) officers were not eligible for Permanent Commission (PC) which led to their service in the army for 10-14 years and then compulsory retirement irrespective of performance and merit. The supreme court through its judgement in the historic case of Secretary, Ministry of Defence v. Babita Puniya (2020) made women officers eligible to apply for PC across 10 streams of the armed forces. Despite this opportunity the women officers alleged that they faced outward neutral criteria such as medical fitness tests conducted at their present age (rather than a fixed tenure) and dependency of ACR cutoffs tied with the male benchmarks by the Selection boards constituted for this purpose. This led to the filing of petition by Lt Col. Nitisha along with her colleagues under Article 32 before the Hon'ble Supreme Court challenging the indirect discrimination against them and for the implementation of the guidelines given in Babita Puniya case.

FACTS OF THE CASE

The Supreme Court in the Babita Puniya case mandated that Women Short Service Commission Officers (WSSCOs) to be considered for Permanent Commission (PC) across 10 streams of the armed forces irrespective of 20 years of their service tenure criteria and offered

them one time service (extended) if PC was declined. Despite this, the government delayed the process of implementation of this guideline. When women participated, then selection criteria included medical testes based on current age of women officer unlike male officers who were judged on 10/14 years of working. The Annual Confidential Report (ACR) cutoff dates for women officers were aligned with their male counterparts, although, the women officers had longer service and additional records that were ignored. The announcement of the vacancy lacked transparency and overall process was biased, bugged with unfavourable outcomes for the women officers participating in the selection process.

LEGAL ISSUES RAISED

1. Whether application of same medical fitness test and ACR cutoff criteria for women without looking towards their entire service tenure amounts to indirect discrimination against the women officers under Article 14 and 15(1)?
2. Whether the Army's reliance on the male benchmark for the evaluation of women officer's ACR plus performance is arbitrary and irrational thus violating their Article 14?
3. Whether the selection process deny women officers the equality of opportunity in public employment under Article 16?
4. Whether the governments' procedure and failure to implement the guidelines of the Babita Puniya case is a breach of constitutional mandate justifying SC's intervention under Article 32?

PETITIONERS' ARGUMENT

The petitioner argued that although the selection criteria was gender neutral but it indirect discriminates against the women officers with a desperate impact on them. They contested that medical examination conducted at their present age discriminates against women whose performance had improved over longer service tenures. They also said that ACRs beyond a cutoff were ignored, depriving women against their merit-based criteria. This structural biased lead to indirect discrimination violating their Article 14 of the constitution. They argued that as women were denied fair opportunity as men to be selected in Permanent Commission (PC) in service and promotion is violative of their Article 16 of the constitution. They further contested that the delay from the government in implementing and lack of transparency of selection is against the Court's order. The petitioners urged the court that Selection process of women

officers in PC must be revised along with recognition given to their entire service records and fair medical evaluation limit should be set ahead.

RESPONDENTS' ARGUMENT

The armed force argued that all the criteria set for the selection process of PC were gender neutral (medical, ACR, vigilance, disciplinary checks) and were necessary for the smooth and fair operation in the armed forces. The respondent further argued that armed forces demand high physical fitness which is essential for the effective working of the armed forces and its soldiers. The respondents contested that Women's ACRs were aligned with their male counterparts to check whether they match their comparative standards. The government from the respondent's side argued that there were limited number of PC vacancies available in each batch and hence limiting the number for women officers will degrade the quality as well as naturally required selection criteria of the army. The army contested that it complied with the selection criteria in PC with the policy framework and internal regulations of the armed forces in matters dealing with administration.

JUDGEMENT

The Supreme Court in this case delivered the verdict in the favour of petitioner on 25 March 2021.

- a) **Ratio Decidendi**: The Court recognised a prima facie neutral policy can violate Article 14 & 15(1) if it has a disproportionate adverse impact on a specific protected group, here in this case the women officers, not justified by a legitimate aim. Evaluating the area of fitness on the basis of present age of women unlike for men at fixed tenure was disadvantageous to women officers failing rationality with the objective. Excluding the record of women (working for over the years in the army) in services makes their selection assessment unfair and irrational and hence ACR cut-offs are arbitrary and discriminatory. Women must be evaluated on their full commissioned service and there is a clear need for re-evaluation of entire women candidate profile. The court held that operational and administrative selection evaluation process is unjustified and unequal. By denying substantive equality, the selection process is an infringement of constitutional fundamental right under article 14, 15 and 16.
- b) **Obiter Dicta**: The court highlighted the concept of equality on substantive and formal lines and adopted the Recognition-Redistribution-Participation theme, to reach at the conclusion of why indirect discrimination must be corrected in the constitution law of

India. The court observed that the intent behind the process is irrelevant, what actually matters is the outcome of the process followed & hence although prima facie the process is neutral but a cause of indirect discrimination. The court further directed the policy makers to conduct an impactful assessment for ostensibly neutral rule to avoid any kind of systematic disadvantage.

- c) **Guidelines:** The court ordered for the reformation of the selection board and reiterated that all the cases of women WSSCOs should be re-examined by fresh Special No. 3 Board with the incorporation of entire calculated services and medical records. The court ordered for medical reassessment of women officers with rational fitness norms who failed on medical criteria at current age. Further it held that no arbitrary exclusion of ACR beyond male batch cut-off should be considered instead all performance records up to calculated service must be considered. It held that transparent, gender neutral and adequate vacancy notification procedures must be released. The court also established the fixed timeline of one month for re-evaluation and of two months for promotion & PC grant from the date of delivery of judgement. It also guided on the time scale promotions, salaries, pension, and other benefits to be awarded timely under Article 142 of the Constitution. In the final lines it ordered army to revise internal policy criteria to extinguish structural bias and ensure equality among the candidates in any further upcoming selections in future.

CONCLUSION

Lieutenant Colonel Nitisha & Ors. v. Union of India & Ors. is a watershed judgement in Indian constitutional jurisprudence for two main reasons (a) The court for the first time recognised that the neutral looking norms can be constitutionally disallowed if they had an adverse effect on a protected group, here women officers, without proper justifications. The court formally recognised the indirect discrimination. This calculated the constitutional equality beyond formal parity to substantial equity; (b) The ruling delivered a strong guideline ensuring women officers to receive fair and transparent treatment not just in principle but also in operational implementation. This judgement led to operationalization of gender justice in armed forces. It pushed the army to review its policies, re-evaluate selections, and construct gender equality-based processes.

Through this judgement, the court enlightened the topic of substantive equality in India, emphasizing that procedural aspect of it being insufficient. The judgement led to the creation

of a landmark case which established women's right to equal opportunity in public employment.¹²³⁴⁵⁶⁷

¹ **“Permanent commission in Army: SC allows pleas of women officers, says ACR evaluation process flawed”**, *CNBC TV 18*, 24 Sept 2025 <https://www.cnbctv18.com/india/permanent-commission-in-army-sc-allows-pleas-of-women-officers-says-acr-evaluation-process-flawed-8719501.htm>

² **“Structures Of Our Society Created By Males For Males: Supreme Court Holds Army's Evaluation Criteria To Grant Permanent Commission For Women Officers Arbitrary”**, *Live Law*, 24 Sept 2025 <https://www.livelaw.in/top-stories/supreme-court-armys-evaluation-criteria-permanent-commission-women-officers-arbitrary-171703>

³ **“SC frowns upon 'arbitrariness' in criteria appointment of women Army officers”**, *The Economic Times*, 24 Sept 2025 <http://economictimes.indiatimes.com/news/defence/sc-frowns-upon-arbitrariness-in-criteria-appointment-of-women-army-officers/articleshow/123950888.cms>

⁴ **“Lt Col Nitisha v Union of India: Landmark case”**, *testbook*, 25 Sept 2025

⁵ **Secr., Ministry of Defence vs Babita Puniya on 17 February, 2020**, *Indian Kanoon*, 25 Sept 2025

⁶ **“SCO Explains: Indirect Discrimination in the Army”**, *Supreme Court Observer*, 26 Sept 2025 <https://www.scobserver.in/journal/sco-explains-indirect-discrimination-in-the-army/>

⁷ **“Lt. Col. Nitisha and Others v. Union of India and Others”**, *Supreme Court Cases*, 26 Sept 2025