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

\+ W.P.(C) 11999/2024

MS. ARCHANA .....Petitioner

Through: Mr. Sahil Mongia, Mr. Yash Yadav and Ms. Sanjana Samor, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi, Mr. Varun Pratap Singh, Mr. Yogya Bhatia, Mr. Amit Gupta, Mr. Naman and Mr. Shubham Sharma, Advs.
Mr. Ravinder Agarwal, Mr. Manish Kumar Singh and Mr. Vasu Agarwal, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 25.08.2025

C. HARI SHANKAR, J.

The Dispute

1. On 17 May 2023, the Union Public Service Commission[1] issued Examination Notice 10/2023-NDA-II for conducting the National Defence Academy and Naval Academy Examination[2] for recruitment to various posts in the Armed Forces. We are concerned, here, with the post "Air Force (i) Flying" for which the notification notified the

[1] "UPSC" hereinafter
[2] "NDA Examination, 2023" hereinafter

number of vacancies as "92 (including 02 for female candidates)".

2. The petitioner applied for undertaking the NDA. She was issued an admit card on 11 August 2023. The examination was held on 3 September 2023. The results of the written examination, forming part of the overall NDA examination were announced on 26 September 2023. The petitioner's name figured in the result, thereby confirming that she had passed the written examination. On 2 April 2024, the Ministry of Defence issued a merit list of 699 candidates who had qualified for recruitment on the basis of the NDA, following the written examination and interview.

3. It is an admitted position that (i) the two vacancies earmarked for female candidates were filled, (ii) of the 90 remaining vacancies, only 70 vacancies were filled by male candidates, thereby leaving 20 vacancies unfilled and (iii) the petitioner was 7th in the merit list of women candidates after the two candidates who had been appointed against the two earmarked vacancies.

4. It may also be noted, here, that one of the requirements for being eligible for appointment to the post of "Air Force (i) Flying" was a "Fit to Fly" certificate. The petitioner was admittedly in possession of such a certificate, issued by the Appeal Medical Board on 11 March 2024.

5. Aggrieved by the fact that, despite 20 of the 90 vacancies which were not earmarked for female candidates remaining vacant, the

petitioner was not offered appointment.

6. Aggrieved at this, the petitioner has approached this Court by means of the present writ petition, for a direction to the respondents to fill up the 20 unfilled vacancies out of the 90 vacancies which were not earmarked for female candidates and, in the process, appoint the petitioner.

7. Pleadings have been completed. Written submissions have been exchanged. Learned Counsel have been heard.

8. The petitioner was represented by Mr. Sahil Mongia, whereas Mr. Varun Pratap Singh appeared for the respondents.

Rival Submissions

Submissions of Mr. Mongia

9. Mr. Mongia submits that the stipulation, in the notification dated 17 May 2023, to the effect that there were total of 92 "Air Force (i) Flying" vacancies, of which 2 were reserved for female candidates did not mean that the remaining 90 vacancies were reserved for male candidates. It meant that women, as well as men, were eligible for the remaining 90 vacancies. Inasmuch as no male candidate, beyond the 70 who were appointed against the said 90 vacancies had cleared the selection, and 20 vacancies were remaining unfilled, Mr. Mongia submits that it was incumbent on the respondents to fill the said

vacancies by eligible women candidates. As the petitioner was 7th in the merit list of women candidates after the two who had been selected against the two earmarked vacancies, he submits that she was entitled to be appointed.

10. Mr. Mongia places reliance on the recent decision of the Supreme Court in ***Arshnoor Kaur v UOI.***[3]

Submissions of Mr. Varun Pratap Singh

11. Seriously contesting the petitioner's case, Mr. Varun Pratap Singh, learned Counsel for the respondents submits that there were only two vacancies earmarked for women candidates in the notification 17 May 2023. In fact, he submits that selections were being conducted not only for entry through the NDA, but also through the Air Force Common Admission Test[4]. Admitting more women candidates consequent to the NDA, than were reserved for them, he submits, would reduce the number of women candidates who were entitled to be appointed consequent to the AFCAT.

12. He further submits that the petitioner, having participated in the selection in full knowledge of the fact that there were only two seats reserved for women candidates, and having failed to qualify on merit for appointment against the said two vacancies, could not seek to challenge the allocation of vacancies in the advertisement. No challenge, in fact, to the said allocation of vacancies has even been

[3] **2025 SCC OnLine SC 1668**

laid by her. He submits that the 20 unfilled vacancies would not go waste, as any shortfall in induction of officers through one mode of recruitment to the IAF is compensated through other modes such as the AFCAT and the Combined Defence Services Examination[5]. He submits further that the petitioner is seeking to make out a case of gender discrimination, where none exists.

Analysis

13. Having heard learned Counsel for both sides, we are of the opinion that the case is capable of an easy resolution. The construction being placed by the respondents on the stipulation in the Examination Notice, regarding the 90 vacancies which were not earmarked for female candidates is, in our view, untenable. The Notice does not state that 90 vacancies were reserved for male candidates and two were reserved for female candidates. Indeed, were it to so state, the stipulation might have been vulnerable to challenge on the ground of being gender skewed.

14. We are, mercifully, no longer in those times in which discrimination could be made between male and female candidates so far as entry into the Armed Forces – or, for that matter, anywhere else – is concerned. It is open to the respondents, while advertising the posts for recruitment, to incorporate terms and conditions as well as qualifications and other stipulations which are necessary and which have to be satisfied for a candidate to be qualified for admission.

[4] "AFCAT" hereinafter

Once such stipulations are prescribed, candidates who fulfil the stipulations have necessarily to be treated equally.

15. The only requirement for candidates who desired to be appointed as "Air Force (i) Flying" was the possession of a Fit to Fly certificate. The petitioner unquestionably is in possession of such a certificate.

16. In such circumstances, the only ground on which the petitioner could be denied appointment is if there are no vacancies available to accommodate her.

17. We have already expressed our inability to agree with Mr. Varun Pratap Singh's contention that 90 vacancies in the Notification dated 17 May 2023 were reserved for male candidates. Indeed, such a stipulation would also be contrary to the following recital in the notification which has been boldly emphasised in the notification itself:

> **"Government strives to have a workforce which reflects gender balance and women candidates are encouraged to apply."**

18. The stand canvassed by Mr. Varun Pratap Singh is in the teeth of the aforesaid stipulation. It discourages women candidates to apply, even though vacancies are available. Expressed otherwise, it seeks to interpret the stipulation in the Examination Notice regarding the number of vacancies in a manner which would be prejudicial to women candidates who desired to apply. Such an interpretation can, in

[5] "CDSE" hereinafter

our view, not be countenanced at all.

19. Once we have held that 90 vacancies which were not earmarked for female candidates were open to all candidates, female as well as male, the sequitur is obvious. Only 70 male candidates qualified. 20 vacancies are, therefore, going abegging.

20. We are completely unimpressed by the argument that there were parallel modes of selection such as AFCAT and CDSE, also being followed for recruitment to the IAF. We are concerned with recruitment through the NDA, and the Examination Notice dated 17 May 2023 issued in that regard. If the petitioner is entitled to be recruited under the said Examination Notice, we cannot deny relief to her on the ground that, even if she does not qualify through the NDA, she may qualify through some other mode.

21. Equally, the submission of the respondents that the vacancies would not go abegging, as they would be compensated through other modes of recruitment, is also tangential to the issue at hand. That argument would have any meaning if we were to hold that the unfilled vacancies could not be filled up by women candidates. There being no dispute about the fact that 20 of the 90 vacancies which were not earmarked for female candidates are remaining unfilled, and the petitioner being 7th in the merit list of women candidates after the two candidates who had been selected against the two earmarked vacancies, there is no basis whatsoever not to appoint petitioner against one of the remaining 20 vacancies.

22. If, after appointing the successful women candidates against the remaining 20 vacancies, any vacancy still remains unfilled, it would be open to the respondents to fill up those vacancies by any other mode of recruitment. That, however, is not an issue with which we are concerned.

23. The reliance, by Mr. Mongia, on ***Arshnoor Kaur*** is also, in our view, well taken. ***Arshnoor Kaur*** is the latest in a long line of decisions of the Supreme Court which emphasise the principle of gender neutrality. The primary issue that arose for consideration in that case, as identified in para 38 of the report, was "whether after allowing induction of women in a particular corp or branch under Section 12 of the Army Act, 1950, can the Respondents by way of a policy and/or administrative instruction restrict the number of women candidates joining the said branch". We may note, here, that Section 12 of the Air Force Act 1950 is, to all intents and purposes, parallel to Section 12 of the Army Act.

24. Addressing the issue, the Supreme Court noted that the general principle of equality enshrined in Articles 14 to 16 of the Constitution of India found an exception in Article 33, which empowers Parliament to modify the fundamental rights in their application to members of the Armed Forces. Being, by its very nature, a limitation on the fundamental rights guaranteed by Part III of the Constitution of India, the Supreme Court held that the power to do so would have to be strictly interpreted. Accordingly, the restrictions on the fundamental

rights would have to be found in the Army Act/Air Force Act itself. In this context, the following principle, from the said decision, is of significant importance in the light of the debate at hand:

> "47. Consequently, this Court is of the view that once the Army permits women officers to join any corps, department or branch forming a part of the regular Army, it cannot impose an additional restriction with regard to '*extent of induction*' of women officers in the said corps, department or branch—as Section 12 of the Army Act, 1950 does not empower it do so."

This principle was re-emphasized in para 50:

> "50. Consequently, this Court is of the view that once the Service Headquarters decides to induct women officers in a particular branch or corp by way of a Notification under Section 12 of the Army Act, 1950, it cannot restrict their numbers and/or make a reservation for male officers by way of a policy or administrative instruction under the guise of '*extent of induction*'. Accepting the submission of the Respondents would amount to '*setting at naught*' the Notification issued under Section 12 of the Army Act, 1950."

Paras 72 to 82 of the report in ***Arshnoor Kaur*** contain an illuminating discussion on the constitutional obligation to achieving absolute gender neutrality, concluding with the following observation:

> "82. Consequently, the constitutional mandate and the national as well as international policy of the Government of India is to ensure that women are not discriminated in any manner and a more inclusive society is created by enhancing representation of women in all spheres of life."

The Supreme Court concluded, following the above discussion, in para 83 of the report, that the notification under challenge before it, "to the extent that it provides for only three (03) vacancies for female candidates, whereas six (06) vacancies have been notified for male

candidates (was) violative of Articles 14, 15 and 16 as well as Section 12 of the Army Act, 1950." Para 89 went on to clarify that the principle of gender neutrality requires an employer to "(hire) the best candidate for the job regardless of gender/sex". In para 91, it is noted that, in one of the SLPs before it[6], the UOI had itself given an undertaking "to make the selection by applying 'gender neutral formula' and by not restricting the entry of women candidates to fifty per cent (50%) vacancies".

25. Interestingly, in para 109 of the report, the Supreme Court also took note of the fact that, in the entrance examinations for judicial services, women have been outperforming men. We may carry the example further by recording, with a sense of satisfaction, that, even in our daily experience in the court, the number of young women lawyers entering the profession and practising before us exceeds the number of young men and we presage, in a large majority of such youngsters, a bright future for the legal profession.

26. In the light of the law as it has developed from the decisions handed down by the Supreme Court on the aspect of gender neutrality, it is not permissible for anyone to interpret or administer any stipulation, advertisement or notification in a manner which would be gender skewed. The distinction between male and female has, in the present time, been reduced to nothing more than a chance chromosomal circumstance, and ascribing, to it, any greater relevance would be illogical as well as anachronistic. It is time, to adopt a

[6] **Gopika Nair v UOI, 2023 SCC OnLine SC 1522**

somewhat pedestrian adage, that one woke up and smelt the coffee.

The sequitur

27. We, therefore, hold as under:

(i) The 90 vacancies notified by the Notification dated 17 May 2023 issued by the UPSC, apart from the 2 vacancies earmarked for female candidates, cannot be regarded as earmarked for male candidates. They were vacancies which were open to female as well as male candidates. In other words, out of a total number of 92 vacancies, 2 vacancies were earmarked for female candidates. The remaining vacancies were not earmarked either for female or male candidates but were open to everyone.

(ii) The petitioner being in possession of a "fit to fly" certificate and having cleared all rounds of examinations, was eligible for appointment.

(iii) In view of the fact that there were eligible female candidates who had cleared the examination, the respondents were not justified in keeping 20 vacancies unfilled. They were required to fill up the said 20 vacancies from the female candidates who were lower in merit to the two candidates who had been selected against the two earmarked vacancies.

(iv) Inasmuch as the petitioner is 7th in the said merit list, she is entitled to be appointed against one of the 20 unfilled vacancies.

Conclusion

28. Resultantly, the respondents are directed to appoint the petitioner, forthwith, against one of the unfilled 20 Air Force (i) Flying vacancies relating to the Examination Notification dated 17 May 2023. She would be entitled to be treated at par, for all service benefits including seniority and other associated benefits, with the 70 male and 2 female candidates who have been selected and appointed.

29. The writ petition is allowed in the aforesaid terms, with no order as to costs.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

AUGUST 25, 2025/AR