$~VC-18 to 21

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

% **Date of Decision: 8th December, 2020**

\+ W.P. (C) 10007/2020
OM PRAKASH YADAV ..... Petitioner
Through: Mr. Ankur Chhibber, Advocate.
Versus
UNION OF INDIA & ORS ..... Respondents
Through: Mr. Bhagvan Swarup Shukla, CGSC with Mr. Sarvan Kumar Shukla, Adv.

\+ W.P. (C) 10008/2020
SUBHASH CHANDRA TIWARI ..... Petitioner
Through: Mr. Ankur Chhibber, Advocate.
Versus
UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Amit Mahajan, CGSC with Mr. Kritagya Kumar Kait, Adv.

\+ W.P. (C) 10009/2020
SWAMI NATH PRASAD ..... Petitioner
Through: Mr. Ankur Chhibber, Advocate.
Versus
UNION OF INDIA & ORS ..... Respondents
Through: Ms. Nidhi Raman, CGSC with Mr. Viren Kapur, Mr. Syed Husain Adil Taqvi & Mr. Hussain Taqvi G.P. for R-1 to R-5.

\+ W.P. (C) 10010/2020
ASHIT KUMAR MISHRA ..... Petitioner
Through: Mr. Ankur Chhibber, Advocate.
Versus
UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Akshay Makhija, CGSC with
Mr. Ankit Tyagi, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM APPLN. No.31795/2020 (Exemption from filing the fair typed copies of dim annexures and the documents which have less left and right side margin and documents which have small font size) in W.P (C) 10007/2020

CM APPLN. No.31798/2020 (Exemption from filing the fair typed copies of dim annexures and the documents which have less left and right side margin and documents which have small font size) in W.P (C) 10008/2020

CM APPLN. No.31801/2020 (Exemption from filing the fair typed copies of dim annexures and the documents which have less left and right side margin and documents which have small font size) in W.P (C) 10009/2020

CM APPLN. No.31804/2020 (Exemption from filing the fair typed copies of dim annexures and the documents which have less left and right side margin and documents which have small font size) in W.P (C) 10010/2020

1. Allowed, subject to just exceptions and as per extant rules.

2. The applications are disposed of.

W.P. (C) 10007/2020, W.P. (C) 10008/2020, W.P. (C) 10009/2020, W.P. (C) 10010/2020

3. These petitions impugn the order dated 29th September, 2020 of the Armed Forces Tribunal (AFT) in T.A. Nos.02/2017,

06/2017, 05/2017 and 03/2017 preferred by the petitioners, originally in this court and decided by judgment dated 26th May, 2017 in W.P.(C) 7219/2016 titled ***Ashit Kumar Mishra Vs. Union of India*** and other connected petitions MANU/DE/3584/2017, seeking the relief of pro rata pension.

4. The counsel for the respondents in W.P. (C) 10010/2020 appearing on advance notice states that though this court in ***Brijlal Kumar Vs. Union of India*** 2020 SCC OnLine Del 1477 and other connected petitions, granted the relief of pro rata pension but these petitions are against the order of the AFT. It is argued that the counsel for the petitioners herein, on 15th June, 2020, withdrew W.P. (C) 3517/2020 to approach the Supreme Court, on this court putting a query with respect to the jurisdiction of this court under Article 226 of the Constitution of India entertaining a challenge to the order of the AFT, in the face of the alternative remedy available under Sections 30 and 31 of the AFT Act; he thus contends that these petitions before this court, against the order of AFT, are not maintainable and the remedy of the petitioners is to approach either the AFT for leave to approach the Supreme Court or to directly approach the Supreme Court against the order of the AFT.

5. The counsel for the petitioners contends that the subject matter of W.P. (C) 3517/2020 was not pro rata pension and the said petition pertained to promotion and thus what was observed therein would not apply. Attention is drawn to our observations in ***Brijlal Kumar*** (supra) with respect to the orders of the AFT impugned in

these petitions, though not subject matter of ***Brijlal Kumar*** (supra).

6. We have in ***Brijlal Kumar*** (supra) held that AFT is bound by the judgments of the High Court and was thus not entitled to, vide the order impugned in these petitions, decide contrary to the dicta of this court in ***Govind Kumar Shrivastava Vs. Union of India*** 2019 SCC OnLine Del 6425 [Special Leave Petition (SLP) (Civil) No. 8813/2019 whereagainst was dismissed on 26th April, 2019], ***Mohammad Israr Khan Vs. Union of India*** dated 11th December, 2019 in W.P. (C) 5642/2019 (DB) and ***Rakesh Kumar Vs. Union of India*** 2020 SCC OnLine Del 288. The same, as rightly contended by the counsel for the petitioners, brings the matter within the domain of ***Balkrishna Ram Vs. Union of India and Anr.*** (2020) 2 SCC 442**.**

7. Though the petitions have come up today for the first time but in view of the matter having being thrashed out by this court over the years, it is not deemed necessary to keep these petitions pending.

8. The petitions are allowed. The orders of the AFT impugned in these petitions are set aside and the T.As. of the petitioners before the AFT are allowed, by granting to each of the petitioners the same relief as already granted to the petitioners in ***Govind Kumar Shrivastava*** (supra) and ***Brijlal Kumar*** (supra) i.e. of directing the respondents Indian Air Force to, within 12 weeks of today, process the case of each of the petitioners for payment of

pro rata pension and to pay all arrears of pro rata pension to the petitioners, from the month of respective discharge from Indian Air Force and till the month of payment and to continue to pay pro rata pension in future to the petitioners. If the payment is not made within 12 weeks, the same shall also incur interest @ 7% per annum from the expiry of 12 weeks till the date of payment.

9. The petitions are disposed of.

RAJIV SAHAI ENDLAW
(JUDGE)

ASHA MENON
(JUDGE)

DECEMBER 08, 2020
ck