

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

% **Date of decision: 23rd December, 2020.**

+ **W.P.(C) 10172/2020**

SONU KUMAR DUBEY **Petitioner**

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS **Respondents**

Through: Mr. G.D. Sharma, SPGC.

AND

+ **W.P.(C) 10218/2020**

MAHITOSH KUMAR SHARMA **Petitioner**

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA AND ORS **Respondents**

Through: Mr. Vivek Goyal, CGSC

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM APPL. 32372/2020 (for exemption) in W.P.(C) 10172/2020 and CM APPL. 32423/2020 (for exemption) in W.P.(C) 10218/2020.

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

2. The applications are disposed of.

W.P.(C) 10172/2020 & W.P.(C) 10218/2020.

3. Both petitions impugn the order dated 29th September, 2020 of the Armed Forces Tribunal (AFT) in T.A. Nos.07/2017 and 01/2017 preferred by the petitioners, originally in this Court and decided by *Ashit Kumar Mishra v. Union of India* MANU/DE/3584/2017 (DB), seeking the relief

of pro rata pension.

4. The counsels for the respondents Indian Air Force appearing on advance notice states that though this Court in **Brijlal Kumar v. Union of India** 2020 SCC OnLine Del 1477 (DB) and other connected petitions, has 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 in both the petitions 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, 2007; they thus contend 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 v. 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 v. Union of India*** dated 11th December, 2019 in W.P. (C) 5642/2019 (DB) and ***Rakesh Kumar v. 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 v. Union of India*** (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 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, J

ASHA MENON, J

DECEMBER 23, 2020/‘pp’..