

ITEM NO.3+34+35

Court 4 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s).1618/2022

(Arising out of impugned final judgment and order dated 03-01-2022 in OA No. 2167/2021, OA No. 2169/2021 and OA No. 816/2019 passed by the Armed Forces Tribunal)

CDR. AMIT KUMAR SHARMA ETC. ETC.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(WITH IA No.9547/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.9545/2022-STAY APPLICATION and IA No.9552/2022-IMPLEADMENT and IA No.9548/2022-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.9549/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.9544/2022-LEAVE TO APPEAL U/S 31(1) OF THE ARMED FORCES TRIBUNAL ACT, 2007)

WITH

Diary No(s). 1599/2022 (XVII)

(FOR ADMISSION and IA No.11155/2022-EX-PARTE STAY and IA No.11157/2022-PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS and IA No.11156/2022-LEAVE TO APPEAL U/S 31(1) OF THE ARMED FORCES TRIBUNAL ACT, 2007)

Diary No(s). 2265/2022 (XVII)

(WITH IA No.11229/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.11228/2022-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.11227/2022-LEAVE TO APPEAL U/S 31(1) OF THE ARMED FORCES TRIBUNAL ACT, 2007)

Diary No(s). 2007/2022 (XVII)

(WITH IA No.11454/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.11453/2022-STAY APPLICATION and IA No.11455/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.11452/2022-LEAVE TO APPEAL U/S 31(1) OF THE ARMED FORCES TRIBUNAL ACT, 2007)

Diary No(s). 1968/2022 (XVII)

(WITH IA No.11466/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.11465/2022-STAY APPLICATION and IA No.11467/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.11463/2022-LEAVE TO APPEAL U/S 31(1) OF THE ARMED FORCES TRIBUNAL ACT, 2007)

Diary No(s). 2478/2022 (XVII)

(WITH IA No.11669/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED

JUDGMENT and IA No.11662/2022-INTERVENTION/IMPLEADMENT AND I.A. No.11662/2022-PERMISSION TO FILE LENGTHY LIST OF DATES AND I.A.No.11663/2022-LEAVE TO APPEAL U/S 31(1) OF THE ARMED FORCES TRIBUNAL ACT, 2007)

Diary No. 1624-2022 (XVII)

(WITH IA No.13763/2022- EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.13762/2022-STAY APPLICATION and IA No.13765/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.13761/2022-LEAVE TO APPEAL U/S 31(1) OF THE ARMED FORCES TRIBUNAL ACT, 2007)

Date : 31-01-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s)	Mr. C.U. Singh, Sr. Adv. Mr. Huzefa Ahmadi, Sr. Adv. Ms. Shahrukh Alam, Adv. Ms. Gunjan Ahuja, Adv. Ms. Pooja Dhar, AOR Ms. Meenakshi Arora, Sr. Adv. Mr. Anant Vijay Palli, Adv. Mr. Nikhil Palli, Adv. Mr. Deepak Goel, AOR Ms. Baby Devi Bonia, Adv. Ms. Sampta Pushkarna Tripathi, Adv. Mr. Sudhanshu S. Pandey, Adv. Mr. Gaichangpou Gangmei, AOR
For Respondent(s)	Mr. Sanjay Jain, ASG Mr. R. Balasubramanian, Sr. Adv. Mr. Anukalp Jain, Adv. Ms. Swarupama Chaturvedi, Adv. Ms. Neela Kedar Gokhale, Adv. Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 Leave to appeal under Section 31(1) of the Armed Forces Tribunal Act 2007 is granted.

- 2 We have heard Mr C U Singh, Mr Huzefa Ahmadi and Ms Meenakshi Arora, senior counsel, Mr Sudhanshu S Pandey and Ms Pooja Dhar, counsel, who have supported the submissions on behalf of the appellants. Mr Sanjay Jain, Additional Solicitor General has appeared on behalf of the respondents with Mr R Balasubramanian, senior counsel, on caveat.
- 3 The position as it obtains in the batch of civil appeals has been stated in the following terms:
- Item No 3 - Civil Appeal Diary No 1618 of 2022 concerns three men officers;
 - Item No 3.1 - Civil Appeal Diary No 1599 of 2022 concerns two women officers;
 - Item No 3.2 - Civil Appeal Diary No 2265 of 2022 concerns five men officers;
 - Item No 3.3 - Civil Appeal Diary No 2007 of 2022 concerns one woman officer;
 - Item No 3.4 - Civil Appeal Diary No 1968 of 2022 concerns three women officers;
 - Item No 34 - Civil Appeal Diary No 2478 of 2022 concerns four women officers; and
 - Item No 35 - Civil Appeal Diary No 1624 of 2022 concerns three women officers.
- 4 The officers who are appellants in Item Nos 3, 3.1, 3.3, 3.4 and 35 are due for release on 2 February 2022. The other officers have retired from service. In the case of Item No 3.2, the Armed Forces Tribunal¹ has directed re-consideration in terms of its directions.

1“AFT”

- 5 On behalf of the appellants, it has been submitted that the vacancy position which has been computed by the Naval authorities is not in accordance with the directions of this Court in the final judgment in **Union of India v Lieutenant Commander Annie Nagaraja**². It has been submitted that the vacancies have been spread over a period of 15 years and have been substantially reduced as a result of which officers who would otherwise have been eligible for grant of Permanent Commission³ have not been granted PC. Moreover, it has been submitted that the proceedings of the Selection Board were tendered before the AFT on the last date of hearing and the officers had no opportunity to controvert the contents.
- 6 Issue notice.
- 7 Mr Sanjay Jain seeks time to file a counter affidavit. The counter affidavit be filed within a period of four weeks.
- 8 Rejoinder, if any, be filed within a period of two weeks thereafter.
- 9 Having regard to the fact that some of the officers are due for release on 2 February 2022, we direct that the officers who are already in service shall not be released, pending further orders of this Court.
- 10 We clarify that the cases which are pending before the AFT in regard to the pre-2008 Naval recruits may be proceeded with by the AFT and would not be affected by the present proceedings.
- 11 List the appeals on 21 March 2022.

2(2020) 13 SCC 1

3“PC”

- 12 List Civil Appeal Diary No 1866 of 2022, which is stated to pertain to a woman officer who has been denied PC and who is no longer in service, together with the present batch of appeals.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER