

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.3840 of 2021 (O&M)
Date of Decision:18.02.2021**

Rishav Pathania

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Navdeep Singh, Advocate for the petitioner.

TEJINDER SINGH DHINDSA J.(Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

As per pleadings on record, petitioner joined Military service on 20.03.2018. At the time of joining he was adjudged to be in SHAPE-1, Medical Category . However on account of a disability incurred while in service, petitioner was released from service/invalided out on 14.09.2019.

By virtue of notification dated 04.01.2019 (Annexure P-4) issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare and in exercise of the powers conferred by the proviso to Article 309 read with Clause (5) of Article 148 of the Constitution of India an amendment was carried out called the Central Civil Services (Pension) Amendment Rules 2018. Essentially vide such amendment a Government servant who retired from service on account of any bodily or mental infirmity which permanently incapacitated

him from the service even prior to completing the qualifying service of 10 years was granted invalid pension.

Instant writ petition is directed against communication dated 16.07.2020 (Annexure P-7) which even though has been issued in purported implementation of the notification dated 04.01.2019 (Annexure P-4) but states that invalid pension would henceforth be admissible to Armed Forces Personnel with less than 10 years of qualifying service in cases where personnel are invalidated out of services on account of any bodily or mental infirmity which is neither attributable nor aggravated by military service and which permanently incapacitated the personnel concerned from military service “***as well as civil re-employment***”.

The precise contention raised by learned counsel is that any communication/memo issued by the respondent authorities towards implementation of the amended rule as per notification dated 04.01.2019 cannot add or subtract from the rule and in any case cannot restrict the benefit envisaged to be given to a invalidated army personnel.

It is urged that the condition of an army personnel of permanent incapacitation even “***as regards civil re-employment***” is an expression alien to the rule and which cannot sustain.

At this stage counsel makes a submission that he would be satisfied if the writ petition were to be disposed of with a direction to the authorities concerned to look into the matter in the light of a representation that has already been submitted.

Submission advanced is found to be just and reasonable.

As such without making any observations on merits, the instant writ petition is disposed of with a direction to respondents No.2 and 3/competent authority to examine the issue raised in the instant petition against the backdrop of a detailed representation dated 21.07.2020 at Annexure P-8 and to take a final decision thereupon expeditiously and in any event within a period of 6 weeks from the date of receipt of certified copy of this order.

The final decision to be taken would be in terms of a detailed speaking order and the same be conveyed to the petitioner within the stipulated time frame.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

18.02.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No