

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136

CWP-25668-2023
Date of Decision: 13.12.2023

Sreenivasa Rao Sanapala

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rajeev Anand, Advocate for the petitioner
Mr. Ashish Chaudhary, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to grant him disability pension.
2. The petitioner joined as Constable with Indo Tibetan Border Police Force on 17.10.2005. The petitioner during training suffered from fever and he was diagnosed with 'seizures'. The petitioner was invalidated from service in 2015. The petitioner preferred CWP No.26390 of 2015 before this Court assailing invalidation order. The said petition came to be disposed of vide order dated 04.04.2019 (Annexure P-8) with a direction to the respondents to get the petitioner re-examined from a duly constituted Medical Board. The petitioner was re-examined by Medical Board and again he was

found medically unfit. The petitioner was again invalidated from force in 2020.

3. Learned counsel for the petitioner inter alia contends that in terms of judgment of Hon'ble Supreme Court in Union of India v. P.A. Thomas, the petitioner is entitled to disability pension despite the fact that he has not completed 10 years continuous service.

4. Learned counsel for the respondents submits that Rule 38 of Central Civil Services (Pension) Rules, 1972, has been amended on 04.01.2019 whereby a proviso to sub-rule (2) of Rule 38 has been inserted. As per proviso, the condition of minimum 10 years' service for claiming benefit of invalid pension has been waived. The said amendment is prospective in nature, thus, petitioner is not entitled to benefit of the amendment. The amended rule 38 reads as:-

“(1) The case of a Government servant acquiring a disability, where the provisions of section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are applicable, shall be governed by the provisions of the said section:

Provided that such employee shall produce a disability certificate from the competent authority as prescribed under the Rights of Persons with Disabilities Rules, 2017.

(2) If a Government servant, in a case where the provisions of section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are not applicable, retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service, he may be granted invalid pension in accordance with rule 49:

Provided that a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service before completing qualifying

service of ten years, may also be granted invalid pension in accordance with sub-rule (2) of rule 49 subject to the conditions that the Government servant-

(a) has been examined by the appropriate medical authority either before his appointment or after his appointment to the Government service and declared fit by such medical authority for Government service; and

(b) fulfills all other conditions mentioned in this rule for grant of invalid pension;”

[Emphasis Supplied]

5. The petitioner complies with all the conditions as envisaged by aforesaid amended rule. The respondent is denying benefit of amended rule on the sole ground that amendment is prospective in nature. The amendment has been made to extend benefit of invalid pension to all those employees who have suffered injury during the course of service. It is a beneficial amendment and from the perusal of the amended rule, it is difficult to conclude that amendment is prospective in nature. If it is held that amendment is prospective in nature, all those persons who have been invalidated prior to aforesaid amendment would be deprived of the benefit of invalid pension which would amount to discrimination between two equally situated persons. The said interpretation would be violative of Articles 14 and 21 of the Constitution of India. In the absence of specific or implied intention of the legislature to make the amendment prospective, this Court finds that it would be in the fitness of things and interest of justice if it is read as retrospective in nature and benefit is extended to all those employees who have been invalidated prior to aforesaid amendment and fulfil all the conditions contemplated therein.

6. In the wake of aforesaid facts and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The needful shall be done within six months from today.

(JAGMOHAN BANSAL)
JUDGE

13.12.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>