

2024.PHHC.110926 DE



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

CWP-21064-2024 (O&M)

Date of Decision: 28.08.2024

UNION OF INDIA AND OTHERS

...Petitioners

Versus

NO 8953448 G EX AC UT RAVINDER KAUSHIK AND ANR

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Sunil Kumar Sharma, Advocate
for the petitioners (Senior Panel Counsel-UIO).

SUDHIR SINGH, J.

The petitioners seeks issuance of a writ in the nature of Certiorari quashing the impugned order dated 03.11.2023 (Annexure P-3) passed by the learned Armed Forces Tribunal (for short 'the Act') Regional Bench, Chandigarh at Chandimandir, vide which the Original Application filed by respondent No.1 has been allowed and the petitioners (respondents before the learned AFT) were directed to pay the invalid pension to respondent No.1 from the date of his discharge from the service.

2. The facts of the case are that respondent No.1 joined the Indian Air Force service on 03.05.2013 and he was invalided out from service on 12.05.2014, after completion of 10 months and 09 days on

the medical ground as he was suffering from disease “Small Dysmorphic (LT Kidney)”. It was the case of respondent No.1 that he joined the service after having been declared medically and physically fit by the Medical Officer as per the prescribed medical standards and was put in Shape-1 Category. Before the learned AFT, the counsel for respondent No.1 restricted his prayer to grant of invalid pension only.

3. The learned AFT, while allowing the Original Application filed by respondent No.1, has relied upon the judgment of the Hon’ble Supreme Court in Civil Appeal No(s). 16438-16440/2017 titled Ex. RECT Mithilesh Vs. Union of India & others, decided on 27.10.2017 and SLP(C) 20330/2011 titled Union of India & Ors Vs. P.A. Thomas. Still further, reliance has also been placed upon the Co-ordinate Bench judgment of the learned AFT in O.A. 1169 of 2021 titled as Ajay Vs. Union of India & others, decided on 25.07.2022.

4. Learned counsel appearing for the petitioners contends that while passing the impugned order, the learned AFT has not taken into consideration, the letter dated 16.07.2020 issued by the Ministry of Defence, whereby it has been stipulated that in cases where personnel are invalided out of service on account of any bodily or mental infirmity, which is Neither Attributable to Nor Aggravated by military service and which permanently incapacitates them from military service as well as civil re-employment and thus, the impugned order is liable to be set aside.

5. On the other hand, Major Navdeep Singh, Advocate, who is present in Court on the service of advance notice on behalf of respondent No.1 submits that the words “as well as civil re-

employment”, appearing in the aforesaid letter, have been struck down by the Principal Bench of the Armed Forces Tribunal, New Delhi in O.A. No. 2240 of 2019 titled as Lt AK Thapa (Released) vs. Union of India & Ors., decided on 07.07.2023. Still further, it is pointed out that the order passed by the learned AFT in Ajay’s case (supra), which has also been relied upon the learned AFT, while deciding the present case, has already been impugned by the petitioner.

6. We have heard learned counsel for the parties and have also gone through the impugned orders.

7. Indisputably, the letter dated 16.07.2020 was issued by the Government of India, Ministry of Defence, after the judgments of the Hon’ble Supreme Court in Mithilesh Kumar’s and P.A. Thomas cases (supra). However, the words i.e. “as well as civil re-employment” appearing in the letter dated 16.07.2020, have since been struck down by the Principal Bench of the learned AFT in Lt AK Thapa (Released) case (supra). The relevant extract from the said order would read as under:-

“34. Significantly, Section 3(4) of this enactment further stipulates that no person shall be deprived of his or her personal liberty only on the ground of disability. As has been observed by us herein above, as laid down by the Hon’ble Supreme Court, personal liberty in terms of Article 21 of the Constitution of India includes within it as an integral facet thereof, the Right of Livelihood. That the applicant herein is entitled to grant of invalid pension from the date of invalidment is brought forth in terms of the verdict of the Hon’ble Supreme Court in Balbir Singh vs. UOI & Ors., Civil Appeal No. 3086/2016. The provision that was considered therein was Regulation 186 of the

Pension Regulations for the Army, 1961. The analogous provisions in relation thereto for the Indian Navy is the Section 101 of the Pension Regulations for the Navy, 1964 which reads to the effect:-

“Conditions for the grant of disability pension. Unless otherwise specifically provided, a disability pension may be granted to a person who is invalided from service on account of a disability which is attributable to or aggravated by service and is assessed at twenty per cent, or over.

Explanation. (1) The question whether a disability is attributable to or aggravated by service shall be determined in accordance with the rules contained in Appendix V to these regulations.

Explanation (2) Serviced rendered in aid of the civil power shall be treated as service in the Indian Navy for the purpose of this regulation.”

Thus, we hold that the words in clause 2 of the MoD letter dated 16.07.2020 which requires a permanent incapacity for Civil Re-employment as well i.e. which states ‘Permanently incapacitates them from the military service as well as Civil re-employment’ for the receipt of Invalid Pension to be wholly unconstitutional qua the requirement of permanent incapacitation for civil re-employment, for invalid pension being also admissible to Armed Forces Personnel with less than 10 years of qualifying service in cases where personnel are invalided out of service on account of any bodily or mental infirmity which is Neither Attributable to Nor Aggravated by Military Service and which permanently incapacitates them from military service and the said words in the clause (2) of the MoD Letter dated 16.07.2020 for grant of invalid pension by the Armed Forces personnel being wholly unconstitutional and unreasonable and not based on any intelligible differentia nor any reasonable classification are thus set aside, i.e. the words in the MoD letter dated 16.07.2020 for grant of invalid pension, which requires the permanent

incapacitation of the personnel of the Armed Forces ‘as well’ as from Civil Re-employment for grant of invalid pension in cases where the Armed Forces on account of any bodily or mental infirmity even though it be Neither Attributable to nor Aggravated by Military Service are invalidated out to be unconstitutional and the same is thus set aside”.

8. On a query put to the learned counsel for the petitioners, it could not be pointed out that the order passed in Lt A K Thapa (release) case (supra) has been challenged by way of a writ petition or an appeal either before the High Court or the Hon’ble Supreme Court. Thus, the law laid down by the Hon’ble Supreme Court in Mithilesh Kumar’s and P.A. Thomas’ cases (supra), has rightly been relied upon by the learned AFT.
9. The learned counsel appearing for the petitioners could not dispute the fact that the order passed by the learned AFT in Ajay’s (case) supra, which was also relied upon by the learned AFT, while deciding case of respondent No.1, has already been implemented by the authorities.
10. In view of the above, we do not find any ground to interfere with the impugned order passed by the learned AFT. Hence, the present writ petition is dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

28.08.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No