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

**CWP-19118-2011 (O & M)**

**Reserved on: 05.12.2024**

**Pronounced on: 20.01.2025**

Gurcharan Singh

.....Petitioner

Versus

Union of India and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Sparsh Chhibber, Advocate for  
Mr. Ashok Bhardwaj, Advocate  
for the petitioner.

Mr. Narender Kumar Vashist, Sr. Panel Counsel  
for the respondents – UOI.

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**SURESHWAR THAKUR, J.**

1. Through the instant writ petition, the petitioner herein  
prays for the hereinafter extracted reliefs.

*Civil Writ Petition under Article 226/227 of Constitution of India for  
issuance of a writ in the nature of Certiorari for quashing order  
dated 01.06.2011 (Ann. P-9) passed by Ld. Armed Forces Tribunal  
Chandigarh Bench, order dated 02.09.08 (Ann. P-2), 23.02.09 (Ann.  
P-5), 25.05.09 (Ann. P-6) and order dated 02.06.09 (Ann. P-8) vide  
which the disability pension has been declined to the petitioner. Issue  
a writ in the nature of mandamus commanding the respondents to  
grant disability pension to the petitioner, w.e.f. 09.04.1969.*

*In the alternative issue a writ in the nature of mandamus,  
commanding the respondents to pay service element of disability  
pension from the date of discharge i.e. 09.04.1969.*

*and*

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*issue a writ in the nature of mandamus commanding the respondents to pay arrears of disability pension/service element with interest @ 18 % per annum.*

**Factual Background**

2. The petitioner was enrolled in the Army on 06.11.1962 and was discharged/invalided from service on 09.04.1969. The petitioner was posted in Sialkot (Pakistan) during war. After the war, the petitioner came on leave and during his leave period he met with an accident leading to his foot being seriously injured. The petitioner was discharged from the military service without any pensionary benefits.

3. The disability element claim of the respondent was rejected by the Competent Authority, thus on the ground that the supra disability was neither attributable to nor being aggravated by rendition of military service.

4. The petitioner made various representations to the Army Authorities for grant of disability pension but his requests were rejected.

5. Feeling aggrieved, the petitioner filed O.A., before the learned Armed Forces Tribunal concerned, rather for grant of disability pension. The said O.A. was dismissed by this Court vide order dated 01.06.2011. The operative part of the said order is extracted hereinafter.

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*Coming to the core question, about incurring of disability by petitioner, and his entitlement to get disability pension, or service element, on account of disability being attributable to or aggravated by military service, and its extent being not shown to be 20% or above.*

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*At the outset, we may observe, that the story as projected by the petitioner does not at all inspire confidence whatever on facts, and is clearly appearing from the documents available on record to be a cooked up story. To start with, as noticed above, in para 4(i) the petitioner pleaded that applicant came on leave, and during leave he sustained injuries in the year 1966, when he met with an accident, where his foot was seriously injured. Then in the representation made by the petitioner on 18.11.2008, produced on record as Annexure A2, it is mentioned that "during Armed Corps in March, 1966 I met with an accident and got injury on my foot....." Then in para (b) it is pleaded that "Leave Rules are very clear that leave of army personnel is a privilege and not a right. So, while on leave, if recalled to service, no one can disobey the orders and has to join at the earliest..... As such though it was on Armed Corps I was still entitled to military rules and regulations". Then, in another representation submitted by the petitioner on 26.12.2008 again mentioning that during Armed Corps in March 1966, he met with an accident and got injury on the foot, and that in the end of the year 1966 he was downgraded to medical category "B" permanent, and that he did all duties of Army from January, 1967 to 9.4.1969, when he was discharged through Release Medical Board (service no longer required) under item III (v) of Army Rule 1954. Then a legal notice was sent on behalf of the petitioner on 15.4.2009, through Advocate produced as annexure A4 wherein also in para 1, it is mentioned that in March 1966 he met with an accident, and got injuries on his foot, he did all his duties of Army from January 1967 till 9.4 1969 and that he was discharged from service by order of Release Medical Board against his willingness, and after lapse of three years when he was doing all the duties required to be done by a soldier.*

*As noticed above, today petitioner, of-course was not able to give the exact dates, but maintained that he was granted leave*

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*from February to April, and that on completion of leave, while returning to report on duty, he suffered injury.*

*Then, we have on record another important document being the discharge certificate, photo stat copy whereof has been filed by the petitioner, but then the copy available on record is not completely legible and therefore, on our request, the learned counsel made available another proper legible copy of the said certificate, and therein the cause of discharge is mentioned to be "discharge from service by RMB (service no longer required) under item (III) (v) in Rule 13(3) Army Rule, 1954" Then, at page 4 of the discharge certificate, in the column regarding the amount of service/special gratuity paid, it is mentioned as under-*

*"The invaliding disability having been not accepted as attributable to or aggravated by war service by CDA (P) letter No. G3/CA/ 169/67393/ VII/ 902 no DP is admissible".*

*This, narration of facts, in our view casts serious doubts as to when the injury was received, what was the extent of disability acquired and does not disclose any circumstance under which it can be said to be attributable to or aggravated by military service. Of course from the discharge certificate, it is clear that the petitioner was not discharged on account of the disability. For this limited purpose, we may refer to the provisions of Army Rule 13(3)(III) (iii) and Rule 13 (3) (III) (v), in as much as if a person is to be discharged having been found medically unfit for further service, then he is to be discharged under Rule 13 (3) (III) (iii). On the recommendations of Invaliding Medical Board, while in all other cases the discharge is to be carried out under Rule 13 (3) (III) (v). Of course, in later case also at the time, of discharge the person is required to be subject to Release Medical Board for the purpose of ascertaining disability if any existing at that time, and at the same time the Release Medical Board is also required to give its opinion on all other aspects as*

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*provided in form AFMSF-16 in the present case as noticed above, petitioner has been discharged under Army Rule 13 (3) (III) (v) and not Army Rule 13 (3) (III) (iii). With this, the recital in the discharge certificate about disability having not been accepted as attributable to or aggravated by war service, does give an indication, that probably the petitioner tried to lay claim about his having suffered disability during operations, which, of course, was not accepted. Thereafter, as appears from the papers produced with this petition, that after having been discharged in 1969, the petitioner started laying claim only in 2008. We should not be understood to mean that petitioner is not entitled to lay claim at this belated hour, if he is otherwise entitled to but, then, when the aspect of truthfulness of the version sought to be projected is under suspicion, the variance in the stories, does require significance, and from that stand point, if the matter is examined, in these representations made in the year 2008 and 2009 the petitioner simply alleged to have met with an accident during Armed Corps in March 1996, keeping the things vague within himself to modulate the things as the circumstance may require*

***Then, in the petition before this court, even this 'March' evaporated and it remained only in 1966. Then in the affidavit filed on 28.5.2010, again only year 1966 was there. "March" was not there, and it was deposed that he met with an accident while on leave. It is only for the first time that in the affidavit dated 24-25.7.2010 that it has come, that after completion of annual leave, when he was going to join his duties, he was travelling by bullock-cart which fell down in a ditch and petitioner suffered injury. Admittedly, no medical record has been produced by the petitioner, and respondents have clearly come to the stand that after expiry of permissible period, record has been destroyed. The Long Roll does not mention as to when petitioner was placed in low medical category, or as to when did he receive injury, much less in what circumstances.***

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*To repeat there is nothing on record whatever to show, except bald averments made in the representation, and affidavit from time to time, which are also at complete variance to show as to when and in what manner, the petitioner received the injury, resulting into any disability, and having been placed in low medical category “B” permanent. The petitioner has not disclosed as to what were the circumstance in which he was discharged under Rule 13 (3) (III) (v), which obviously presupposes, issuance of show cause notice before discharge, though today petitioner has given out orally about his having never been given any show cause notice.*

*Thus, in our view, the stories propounded by the petitioner since, do not inspire any confidence, we do not find the petitioner to be entitled to any disability pension or even service element.*

*xxxx”*

6. Feeling aggrieved from the aforesaid order, the petitioner has filed thereagainst the instant writ petition.

7. The instant writ petition vide order dated 18.05.2015, became dismissed alongwith a bunch of writ petitions by a Division Bench of this Court, thus on account of the said writ petition(s) being non maintainable. The operative part of the said order is extracted hereinafter.

*(16) Consequently and for the reasons afore-stated, we dismiss these writ petitions being not maintainable and relegate the petitioners to their respective alternative remedies as are available in law. As of now, following the dictum in **Major General Shri Kant Sharma’s** case, the writ petitions cannot be entertained. Since the petitioners have been bona-fidely pursuing these writ petitions before this Court, liberty is granted to them seek condonation of*

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*delay in filing of appeal etc., for the period spent in the pendency of these cases.*

8. In terms of the afore order, the petitioner preferred SLP (Civil) No. 5111 of 2016 before the Apex Court. The said SLP became disposed of by the Hon'ble Supreme Court vide order dated 21.03.2023, thus with an order of remand to this Court for deciding the same on merits. The operative part of the order (supra) is extracted hereinafter.

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34. *The larger question having been answered, the aforesaid individual matters shall be dealt with depending on the facts of each case, as per the aforesaid directions passed by us.*

35. *The appeals and the writ petition are disposed of in the aforesaid terms leaving the parties to bear their own costs.”*

9. Accordingly, the instant writ petition has been listed before this Bench for deciding the same on merits.

**Submissions of the learned counsel for the petitioner.**

10. The learned counsel for the petitioner submits, that the petitioner suffered multiple injuries while on annual leave and since it is a settled position of law that any type of leave but is a continuation of service, therebys, even if the present petitioner was seriously injured during his leave period, therebys, he cannot be declined disability pension. He rests his submission on the verdict rendered by the Apex Court in case titled as **Madan Shekhawat Versus Union of India**, reported in **SCT (4) 89 SC**. The relevant paragraph of the said verdict is extracted hereinafter.

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*Since on facts there is no allegation in this case that the appellant while travelling to his leave station on the fateful day was travelling unauthorisedly, we are of the opinion that he is entitled to the benefit of disability pension as provided under the Rules.*

**Inferences of this Court.**

11. As per the version of the petitioner, the disability was sustained by him, while he was on annual leave. However, a perusal of the records in the instant case besides a perusal of the impugned order reveals that there were certain ambiguities in the theories propounded by the petitioner, thereby, his version did not inspire any confidence besides with the service records of the petitioner becoming destroyed, thereby, the conclusion was made that it was not possible to conclude as to under what circumstances, the petitioner received the injury on his foot.

12. Be that as it may, there is no wrangle amongst the parties qua the fact that the petitioner served in the Army for more than six years besides he served the nation during war time. Moreover, though the service and medical records of the petitioner have been destroyed after the expiry of their retention period, yet, when as per Long Roll, maintained by the Army Authorities, since he was invalided out with the diagnosis "*fracture left navicular medial and intermediate cuniform effects of*", besides when his claim for disability pension was rejected, thus on the ground of the same being neither attributable to nor aggravated by service. Furthermore, since the petitioner had not put in the minimum 10 years of service, being pre 1973 dischargee,

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therebys, he was declared to not become entitled to service element pension according to the then prevailing Rules.

13. The present petitioner makes an assault both in respect of denial to him of service element of pension besides denial to him of the disability pension.

14. The reason for this Court endowing the service element pension upon the petitioner besides for not endowing upon him the disability element pension becomes garnered from the hereafter premise(s).

15. Since the Apex Court in case titled as ***Union of India and Others Vs. P.A.Thomas***, to which ***Special Leave to Appeal (C) No.20339/2011*** became assigned, thus, in the relevant paragraphs thereof, paras whereof become extracted hereinafter, has made the hereafter extracted expostulations of law.

*“ Rules 38 and 49 of the Central Civil Services (Pension) Rules, 1972 have been amended on 4.1.2019 in the following manner:-*

*”2. In the Central Civil Services (Pension) Rules, 1972 –*

*(i) in rule 38, for sub-rule (1) and sub-rule (2), the following sub-rules shall respectively be substituted, namely:-*

*“(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 SLP(C) 20339/2011 (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*

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*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“;*

*(ii) in rule 49, for sub-rule (2), the following sub-rule shall be substituted, namely: –*

*“(2) Subject to the proviso to sub-rule (2) of rule 38, in the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem.”*

*The said amendments having been placed before the SLP(C) 20339/2011 Court, the Court was of the view that further clarification was required which has now been made by a clarificatory Office Memorandum bearing No. 21/01/2016-P&PW(F) dated 12.2.2019 in the following terms:-*

***“2. In this connection, it is clarified that the condition of qualifying service of ten years for grant of pension under Rule 49(2) of the CCS (Pension) Rules, 1972 shall not be applicable in the case of a Government servant retiring on Invalid Pension on account of any bodily or mental infirmity, under Rule 38. Accordingly, Invalid Pension at the rate of 50% of emoluments or average emoluments, whichever is more beneficial, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem, shall be payable to a Government servant who retires under Rule 38 of CCS (Pension)***

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***Rules, 1972 even before completing a qualifying service of ten years.”***

*Having perused the aforesaid clarification, we are of the view that the matter now stands adequately covered and would be governed by provisions of the amended Rules 38 and 49 of the Central Civil Services (Pension) Rules, 1972, which would be applied to all eligible cases.*

*The special leave petition consequently shall stand disposed of in the above terms.”*

16. Moreover, since a reading of the supra made expostulations of law unravels that :

i) where vis-a-vis the Government servant the provisions of Section 20 of the Rights of Persons with Disabilities Act, are inapplicable, thereupon, if such an individual does as such superannuate(s) from service, on account of any bodily or mental infirmity, thus permanently incapacitating him to further continue in service, thus also resulting in his becoming forbidden to complete the qualifying period of service. Resultantly when therebys, there is permissibility to endow upon such an individual the benefit of the service element of pension. As such, the non rendition of the requisite period of qualifying service by the present petitioner, rather does not incapacitate him, to claim the service element of pension, as in the face of a disability incurred by him and which permanently disabled him to complete the qualifying period of service, thus makes the supra statutory obligation cast upon the Army Authorities, thus to be both unworkable besides makes the same to be also oppressive.

ii) Furthermore since the disability entailed upon the

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disability pension, thereby, it has to be discerned from the records whether as a matter of fact the individual attained the disability during the course of his rendering military service.

17. Be that as it may, the disability pension cannot be endowed to the petitioner, as there is no concrete firm evidence on record suggesting that the disability entailed upon the present petitioner was so attained during the course of his rendering military service.

18. Though the present petitioner claims that he attained the said disability, while his after his completing his leave, thus his returning to join his duties at the establishment concerned. However, there is no concrete evidence to support the same, inasmuch as, neither the period of leave which became sanctioned qua him nor qua that at the end of his leave period rather his proceeding to the Army Establishment, thus to rejoin his duties. The said evidence even if it was maintained by the Army Establishment, and which became also destroyed after the expiration of its retention period, but yet did not relieve the present petitioner to retain copies thereof, or through medical practitioner concerned, his ensuring the production of the relevant records, thus to support the said raised averment. The above cogent evidence to support the supra plea but remaining unadduced. Consequently for non retention, even by the present petitioner of the relevant records supra besides his failing to elicit the said records from the medical practitioner concerned, who examined his injury, but begets an inference that he is not entitled to disability pension.

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19. However, reiteratedly yet in view of the expostulations of law as occur in the verdict made by the Apex Court in case titled as ***Union of India and Others Vs. P.A.Thomas (supra)***, rather the petitioner is entitled to invalid pension for the service rendered by him in the Army.

20. The trite expostulation of law as embodied in the verdict (supra) rather makes explicit expressions, that the parameters appertaining to the '*length of service*', rather shall not be made applicable qua grant of invalid pension, especially where a person was discharged on medical grounds. Resultantly, the supra expostulations, but obviously are also applicable to the instant petitioner as well, who likewise has earned the supra disability.

21. The reason for making an analogical application of the supra expostulation of law as carried in the verdict (supra), vis-a-vis, the facts at hand, necessarily ensues from the fact, that in case a soldier who earns a disability, whereupons, he naturally becomes rendered unfit for retention in the armed forces. Therefore therebys, when he is required to be invalided. As such, when therebys he is completely disabled to render the prescribed 10 years of qualifying service, thus for his earning invalid pension. Resultantly yet the imposition(s) upon the present soldier but the exacting condition(s) qua his peremptorily rendering the said period of qualifying service, rather for therebys his earning the service element pension, but obviously would be an extremely harsh and exploitative condition. Moreover, it is also

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capricious, whimsical, besides an arbitrary condition. As such, it is required to be discarded.

22. Moreover, this Court while rendering a decision upon **CWP-28442-2023** titled as **Union of India and Ors. Vs. No.8994857B Ex. AC UT Sandeep Kumar and Another** has struck off the prescription of the relevant cut-off date whereby, the condition qua rendition of ten years of service for endowment of benefit of service pension has been relaxed for those armed forces personnel, who were/are in service on or after 04.01.2019. The relevant paragraph of the said verdict is extracted hereinafter.

14. *Conspicuously also when the prescription as made in Annexure P-4, contents whereof become extracted hereinafter, thus on plain reading thereof, after making relaxations in the period of rendition of service, yet makes a cut off date, vis-a-vis, the applications thereof. However, the prescriptions therein vis-a-vis the apposite cut off date for the benefits thereof becoming assigned to the concerned, but also is rather arbitrary. The reason for so concluding stems from the factum that since the soldier qua whom the benefits of Annexure P-4, become purveyed when do constitute a homogeneous in-segregable class. Resultantly each member of the homogeneous class was to be co-equally endowed the benefits of Annexure P-4. Therefore, the segregations created through Annexure P-4, thus amongst the same class, rather through the makings therein of a cut off date, and that too when the said cut off date, is not based on any intelligible differentia nor when it has any nexus with the beneficent thereto objects, but are required to be discountenanced.*

**“ 4. The provision of this letter shall apply to those Armed Forces Personnel who were/are in service on or after 04.01.2019. The cases in respect of personnel who were invalidated out from service before 04.01.2019 will not be re-opened.”**

15. Lastly though it has been stated in the order of discharge that the present respondent, is fit to take civil employment but the said echoing therein remains un-

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*substantiated through adduction of any cogent evidence. As such, the supra echoing is declared to be made surmisingly, whereupon, it has not effect at all upon the supra made inferences.*

**Final Order of this Court.**

23. In aftermath, this Court finds merit in the writ petition and with observations above, the same is partly allowed, inasmuch as, the relevant part of the impugned order (Annexure P-9), wherebys, there is denial of service element pension to the petitioner, is quashed and set aside but with a direction to the respondents concerned, to process the case of the petitioner for granting him invalid/service pension. However, the denial of disability pension to the present petitioner is upheld.

24. The above exercise may be done within a period of three months from today.

25. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

**(SURESHWAR THAKUR)**  
**JUDGE**

**(SUDEEPTI SHARMA)**  
**JUDGE**

**20.01.2025**  
kavneet singh

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |