



CWP-22379-2025

1

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

(236)

CWP-22379-2025

Date of Decision : November 26, 2025

Union of India and others

..Petitioners

Versus

Maha Singh and another

.. Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Neha Jain, Senior Panel Counsel, for the petitioners.

None for the respondent No.1.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 06.01.2023 (Annexure P-10) passed by respondent No. 2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'the Tribunal') by which, the respondent No. 1 has been granted the benefit of invalid pension w.e.f. the date of his discharge from service i.e. 17.11.1965 for the disability of '*Chronic Tonsillitis*', the extent of which has been assessed as 11 % to 14% for life, on the ground that the same is perverse.

2. Learned counsel for the petitioners places reliance upon the report of Re-survey Medical Board that respondent No. 1 was invalidated out of service due to '*Chronic Tonsillitis*', which was assessed as 11% to 14% but was below 20%, which was neither attributable to military service nor aggravated by military service, hence, the same is not covered for the grant of invalid pension, which has been allowed by the Tribunal while passing the order dated 06.01.2023 (Annexure P-10).



CWP-22379-2025

2

3. We have heard learned counsel for the petitioners and have gone through the record with her able assistance.

4. It may be noticed that respondent No.1 was enrolled in Army on 05.08.1965 and invalidated out on 16.11.1965. The invalidating Medical Board has assessed the disability of the respondent No.1 between 11% to 14% for life but as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No. 5605 of 2010 titled as Sukhvinder Singh Vs. Union of India and others, decided on 25.06.2014***, the invalidation can only be at 20% of disability, the said disability if less than 20% is found, the same has to be treated as 20% for the grant of the benefit. The relevant paragraph 9 of the said judgment is as under :-

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”



CWP-22379-2025

3

5. It is conceded fact that at the time when respondent No.1 was invalidated out from service on 16.11.1965 on medical grounds, he had already rendered 105 days in service with the petitioners-Union of India. It is also a conceded fact that at the time when respondent No.1 joined the armed forces i.e. 15.08.1965 and was medically examined, he was not found suffering from any such disease on the basis of which, respondent No.1 was ultimately discharged from service on medical ground.

6. Further, as per the settled principle of settled by the Three Judge Bench of Hon'ble Supreme Court of India in ***SLP (s)-20330/2011 titled as Union of India and others versus P. A. Thomas***, any officer serving with the Military, who had undergone the medical examination at the time of selection and was found fit but subsequently, he/she has been discharged from service before completing the qualifying service, is entitled to the benefit of invalid pension irrespective of the length of service as the disease on the basis of which such officer is being discharged is attributable to the Military service. The relevant paragraphs of the said judgment are as under:-

“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 subrules 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 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



CWP-22379-2025

5

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) 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.”

7. Learned counsel for the petitioners has not been able to dispute the said proposition of law having been settled in ***P. A. Thomas’s case (supra)***.

8. Keeping in view the facts and circumstances of the present case as well as the settled principle of law as settled in ***P. A. Thomas’s case (supra)*** once, at the time of selection, respondent No.1 was medically examined and was found fit in all respects and it was only at the time of discharge from service after rendering service of 105 days with the petitioners- UOI, he was found suffering from ‘Chronic Tonsillitis’, that

**CWP-22379-2025****6**

being so, the said disease has to be attributed to military service and the report of medical board cannot take away the right of respondent No.1 to claim the benefit of invalid pension in such circumstances.

9. No other argument has been raised.

10. Hence, in the absence of any perversity being pointed out in the impugned order dated 06.01.2023 (Annexure P-10) either on the basis of the facts or the settled principle of law, no ground is made out for any interference by this Court in the facts and circumstances of the present case and the writ petition is accordingly dismissed.

11. Pending application(s), if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

November 26, 2025
harsha

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No