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

CWP-28442-2023

Reserved on: 25.11.2024

Pronounced on: 07.01.2025

Union of India and Ors.

.....Petitioners

Versus

No. 8994857B Ex. AC UT Sandeep Kumar and Anr.

....Respondents

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

Argued by: Mr. Satya Pal Jain, Additional Solicitor General of India
for the petitioners.

Mr. Navdeep Singh, Advocate with
Ms. Roopan Atwal, Advocate and
Ms. Srishti Sharma, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 09.11.2022
(Annexure P-1), as passed by the learned Armed Forces Tribunal,
Regional Bench Chandigarh, at Chandimandir (hereinafter for short
called as 'the Tribunal'), whereby the Tribunal has held the respondent
admissible for grant of invalid pension, but with a further direction to
the present petitioners to pay the invalid pension to the respondent from
the date of his discharge from service.

Factual Background

2. Respondent No. 1 was enrolled in the Indian Air Force on
28.06.2017 and was invalided out from service on 06.01.2018 on being

placed in low medical category. At the time of his
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discharge/invalidation, the respondent was brought before the Release Medical Board, who opined that the respondent was suffering from “*Congenital Hypoplastic left Kidney (fresh)*”. His disability was assessed @ 20 % for life.

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. Respondent No. 1 preferred an appeal against the rejection of his claim for grant of disability pension. However, the said appeal was rejected by the Appellate Committee vide order dated 30.09.2019.

5. Feeling aggrieved, respondent No. 1 filed O.A., before the Tribunal concerned praying for grant of disability pension. The said O.A., became disposed of vide order dated 09.11.2022. The operative part of the said order is extracted hereinafter.

*“Being so and in view of the law laid down by the Hon'ble Apex Court and also this Tribunal, this application succeeds and the same is accordingly allowed. Consequently, there shall be a direction to the respondents **to pay the Invalid Pension** to the applicant from the date of his discharge from service i.e. 06.01.2018 for life. The due and admissible arrears be calculated and released to the applicant within a period of three months from the date of receipt of certified copy of this order by the respondents / OIC Legal Cell, failing which the same shall carry interest @ 8% p.a. from the date of this order till realization of the entire amount. ”*

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6. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners.

7. The learned counsel for the petitioners submit, that the learned Tribunal has failed to appreciate that as per existing policy for invalid pension i.e. para 171 and 172 of Pension Regulations for the Air Force 191 (Part – I), rather one or the other of the hereinafter extracted conditions are necessarily to emerge, thus for the grant of invalid pension :

a) an individual who is invalided out of service on or after 1st April 1964 on account of a disability which is neither attributable to nor becoming aggravated by rendition of service;

b) an individual who is invalided out of service on or after 1st April 1964 on account of a disability assessed at less than 2 % and which is attributable to or becomes aggravated by service;

c) a low medical category individual who is discharged from service on or after 1st April 1964 and who for lack of alternative employment compatible with his low medical category, but subject to the hereafter condition:

d) that the minimum period of qualifying service required for earning invalid pension is 10 years, whereas, for less than 10 years qualifying service only an invalid gratuity is admissible.

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8. Moreover, it is further submitted that since as per GOI (MOD) letter dated 16.07.2020 (Annexure P-4), rather the minimum qualifying service of 10 years, thus become relaxed for the grant of invalid pension to the service personnel concerned, inasmuch as, qua those who were invalided out of service on account of any bodily or mental infirmity, which though was neither attributable to nor becoming aggravated by military service, yet which permanently incapacitated them from rendering service as well as from rendering civil re-employment. However, the provision of the said letter would also apply only to those personnel, who were in service on or after 04.01.2019.

9. Since the date of discharge of the respondent occurred on 06.01.2018, whereupon with the date supra, thus falling earlier than the supra stipulated date in the above mentioned Govt. Policy, besides when he was also fit for civil employment, therefore, the grant of invalid pension to the respondent is illegal and deserves to be quashed and set aside.

10. The learned counsel for the petitioner further submits, that the verdict rendered by 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 and which becomes relied upon by the Tribunal, but was a mis-placed reliance thereons, inasmuch as, though therein the Apex Court observed that *length of service should have no applicability for grant of invalid pension where a person was discharged on medical grounds*. However, the said judgment was

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applicable only to civilian Govt. Employees, qua whom Rights of Persons with disabilities (Equal Opportunities, Protection and Full Participation) Act, 1995 rather is applicable, whereas, when in the instant case, the respondent was a member of the Indian Air Force, thereupon, the provisions of the afore Act do not apply to the present respondent.

11. The relevant paragraphs as occur in the said verdict are extracted hereinafter.

“ 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 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-

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(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) 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.

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

Inferences of this Court.

12. Even though the verdict rendered by the Apex Court in case titled as ***Union of India and Others Vs. P.A.Thomas (supra)*** was rendered in respect of persons earning disabilities under the Act nomenclatured as '*Rights of Persons with Disabilities Act, 2016 (49 of 2016)*'. However, since the trite expostulation of law as embodied therein rather makes explicit expressions that the parameters appertaining to the '*length of service*', shall not be applicable for grant of invalid pension 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 a disability.

13. The reason for making an analogical application of the supra expostulation of law 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 assessed @ 20 % for life, whereupons, he naturally becomes rendered unfit for retention in the armed forces. Therefore, when he is required to be invalided. As such, when therebys he is completely disabled to render the prescribed 10 years of qualifying service for his earning invalid pension. Resultantly the imposition(s) upon the present soldier the condition(s) qua his peremptorily rendering the said period of qualifying service, rather for therebys his earning disability pension, but obviously is an extremely harsh and exploitative condition. Moreover, it is also capricious,

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whimsical, besides an arbitrary condition. As such, it is required to be quashed and set aside.

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 invalided 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

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echoing therein remains un-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.

16.

In aftermath, this Court finds no merit in the writ petition, and with the observations aforesaid, the same is dismissed.
17.

The impugned order passed by the Tribunal concerned is maintained and affirmed besides the cut off date, as detailed in Annexure P-4, thus for endowment of benefits thereof to the Armed Forces Personnel concerned, thus for the reasons aforesaid, is quashed and set aside.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

07.01.2025
kavneet singh

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